

Staff Briefing Papers

Meeting Date	September 5, 2019	Agenda Item 5**
Company	Freeborn Wind Energy LLC; Northern States Power d/b/a Xcel Energy	
Docket No.	IP6946/WS-17-410 (Site Permit) and TL-17-322 (HVTL Route Permit)	
	In the Matter of the Application of Freeborn Wind Energy LLC for a Large Wind Energy Conversion System Site Permit for the 84 Megawatt Freeborn Wind Farm in Freeborn County	
	In the Matter of the Application of Freeborn Wind Energy LLC for a Route Permit for the 161 kV Freeborn Wind Farm Transmission Line and Associated Facilities in Freeborn County	
Issues	Should the Commission authorize the Transfer of the Site and HVTL Route Permits for the Freeborn Wind Project?	
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 Relevant Documents	Date
Freeborn Wind Notice of Acquisition and Request for Site and Route Permit Transfers	June 18, 2019
Notice of Comment Period on Request for Transfer of Site and Route Permits	July 8, 2019
Association of Freeborn County Landowners Motion (filed to Docket 17-410 Only)	July 18, 2019
London and Oakland Townships Comments (filed to Docket 17-410 only)	July 22, 2019
Association of Freeborn County Landowners Comments on Acquisition of Freeborn Wind LLC	July 22, 2019
Marie McNamara Comments	July 22, 2019
Sean and Heidi Gaston Comments	July 22, 2019
Dorenne Hansen Comments	July 22, 2019

 **Relevant Documents**

	Date
Sue Madson Comments	July 22, 2019
DOC EERA Comments and Recommendations	July 22, 2019
Richter Comments	July 23, 2019
Pacovsky Public Comments	July 29, 2019
Xcel Energy Reply Comments (2 parts)	July 29, 2019
Association of Freeborn County Landowners Reply Comments (2 parts)	July 29, 2019
Association of Freeborn County Landowners Filing of Appeal of 5-10-2019 Order Amending Permit 7-2-2019 Denial of Reconsideration (filed to Docket 17-410 only)	August 1, 2019

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I. Statement of the Issue

Should the Commission authorize the Transfer of the LWECS Site and HVTL Route Permits for the Freeborn Wind Project?

II. Statutes and Rules

Minnesota Rule 7854.1400 and Section 14.0 of the Site Permit provide the content requirements for requests to transfer the Large Wind Energy Conversion System (LWECS) site permit. Minnesota Rule 7850.5000 and Section 14.0 of the Route Permit provide the content requirements for request to transfer the High-Voltage Transmission Line (HVTL) route permit. The Commission will approve the transfer requests upon determining that the new permittee will comply with the conditions of the permits. The Commission may also impose reasonable conditions as part of its approval. The Commission may hold a public meeting on the request prior to making a decision.

Minnesota Statute § 216F.07 (Preemption) states: “A permit under this chapter is the only site approval required for the location of an LWECS. The site permit supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances adopted by regional, county, local, and special purpose governments.” Similar language is provided in Minnesota Statute § 216E.10, Subdivision 1 (Site or Route Permit Prevails over Local Provisions).

III. Procedural History

On December 19, 2018, the Commission issued a site permit for construction of the 84 megawatt (MW) Freeborn Wind LWECS in Freeborn County.¹ On the same day, the Commission issued a route permit for an HVTL to provide for interconnection of the project.²

On June 18, 2019, Freeborn Wind LLC (Freeborn Wind) and Northern States Power Company Minnesota (Xcel Energy) jointly submitted a Notice of Acquisition affecting Ownership, a Request to Transfer the Site Permit for the Freeborn Wind Farm HVTL Route Permit and amended LWECS Site Permit.

On July 8, 2019, the Commission issued a notice of comment period on the permit transfer requests jointly to dockets 17-322 and 17-410. The Commission accepted initial comments through July 22, 2019, and reply comments through July 29, 2019.

During the comment periods, comments were received from the Association of Freeborn County Landowners (AFCL), London and Oakland Townships (Townships), Marie McNamara,

¹ *Order Issuing Site Permit and Taking Other Action*, e-Dockets Number [201812-148595-01](#), Docket IP6946/WS-17-410, December 19, 2018. The Site Permit was subsequently amended by the Commission’s *Order Amending Site Permit*, e-Dockets Number [20195-152849-01](#), May 10, 2019.

² *Order Approving Route Permit*, e-Dockets Number [201812-148593-01](#), Docket IP6946/TL-17-322, December 19, 2018.

Sean and Heidi Gaston, Dorene Hansen, Sue Madson, and Stephanie, Gary and Eric Richter, Joseph Pacovsky, and the Department of Commerce Energy Environmental Review and Analysis Unit (DOC EERA) filed comments.

On July 29, 2019, AFCL and Xcel Energy filed reply comments.

Staff Note: On August 1, 2019, AFCL filed a copy of a July 30, 2019 filing with the Minnesota Court of Appeals related to Docket 17-410.

IV. Proposed Permit Transfers

In support of its requests, Freeborn Wind included the following information:

- Name of the existing permittee: Freeborn Wind Energy LLC.
- Name and description of the person to whom the permit is to be transferred: Northern States Power Company, a Minnesota corporation, which is a public utility operating subsidiary of Xcel Energy Inc., a registered public utility holding company.
- Reasons for the transfer: On June 14, 2019, Xcel Energy and Freeborn Wind closed on the sale of Freeborn Wind, including the Freeborn Wind LWECS and HVTL. In connection with that transaction, Xcel Energy and Freeborn Wind are seeking to transfer the Site and Route Permits to Xcel Energy.
- Description of the facilities affected: All facilities described in Sections 2.0-2.2 of the Site Permit and Sections 2.0-2.4 of the Route Permit.
- Requested date of the transfer: July 15, 2019.

The requests included an affidavit of Christopher B. Clark (President, Northern States Power – Minnesota) stating that Xcel Energy can and will comply with the conditions of the Site and Route Permits. Freeborn Wind LLC and Xcel Energy indicated they would provide notice of the requests to those persons identified by the Commission as persons interested in the matter.

V. Comments Received

The public comments received expressed dissatisfaction with the project itself. Several comments took exception to an anticipated permit amendment to the project design.³ Commenters questioned whether the project would have sufficient land to construct the project given Freeborn Wind's termination of leases and agreements. However, few if any of the comments spoke to either the content requirements or Xcel Energy's willingness and ability to comply with the permit conditions.

³ Xcel filed a permit amendment request to the LWECS Site Permit Docket IP6946/WS-17-410 on August 20, 2019, see e-Dockets Numbers [20198-155331-01](#) to [20198-155331-04](#).

London and Oakland Townships asserted that they have been subject to “near continuous harassment, threats and challenges from Freeborn Wind, LLC and now Northern States Power”, regarding the need for the developers to comply with local ordinances for the use of township roads for hauling oversized and overweight loads. The Townships requested the Commission amend the site permit to include a requirement that the Permittee stop the harassment of the Townships and that the Permittee be required to comply with any Township ordinances. The Townships also argued that Minnesota Statute § 216F.07 does not provide the Commission the authority to supersede Township ordinances only for purposes of selecting a project’s location. The Townships ask that Permit Condition 1.1 be modified accordingly by striking the words “construction and operation”.

AFCL argued that Xcel Energy did not provide an accurate description of the facilities affected by the site permit because of lease and landowner agreement changes. AFCL repeated numerous arguments raised in its previous filings which alleged that Freeborn Wind is not in compliance with the permit and requested the Commission issue the permittee an Order to Show Cause requiring a demonstration that the project remains feasible and compliant with the conditions of the permit.

VI. Department of Commerce Energy Environmental Review and Analysis

DOC EERA noted that the basic informational requirements of the permit transfers request have been met and that the petitioners have recognized and agreed to their obligations of the permits. DOC EERA indicated it has no reason to believe that Xcel Energy would not comply with the conditions in the Freeborn Wind Farm Site and Route permits and recommended the Commission approve the transfers.

VII. Xcel Energy Reply Comments

In its reply comments, Xcel Energy noted that no other commenter seriously contests that the company can and will comply with the conditions of the permits. Xcel Energy asserted that concerns raised regarding the permit amendment are premature and cited a recent project (Blazing Star 2 Wind Farm, Docket No. IP-6985/WS-17-700) where the Commission transferred the LWECs site permit before considering a permit amendment request.

Xcel Energy noted the apparent misinformation contained in the AFCL and public comments and further asserted that AFCL’s interpretation of the scope of terminated agreements is incorrect. According to Xcel Energy, AFCL has neither factual nor legal basis for its motion and it should be summarily dismissed. Xcel Energy indicated its willingness to address all concerns raised with the amended permit request when the matter is before the Commission and requested the Commission approve the permit transfers.

VIII. Association of Freeborn County Landowners

In its reply comments, AFCL argued the Commission should not approve any transfer of the permits until its conditions on “missing information” “necessary land rights” and an a priori demonstration of permit compliance by Freeborn Wind have been met.

VIII. Staff Analysis

The Commission may wish to consider whether to hold the requested meeting(s) on the immediate question of permit transfers. As a practical matter, staff does not support such meeting(s) because the public has been afforded an opportunity to provide input during the public comment period. Staff has provided Decision Option A.2 should the Commission decide additional meetings on the question of permit transfers are appropriate for its consideration prior to finalizing a decision.

Upon review of the record to date, including all comments received, staff agrees with DOC EERA that Freeborn Wind LLC and Xcel Energy have met the requirements requisite for transfer of the HVTL Route Permit and amended LWECS Site Permit. Staff agrees that Xcel Energy has committed to, and will comply with the conditions of the permits. Staff notes that Freeborn Wind LLC and Xcel Energy requested that July 15, 2019 be named the effective date of the transfer; staff recommends the Commission grant this request.

Staff emphasizes that, despite a pending site permit amendment request, the primary issues currently before the Commission are: (1) whether Xcel has provided the required information, and (2) whether it can and will comply with the terms of the permits. Staff emphasizes that Section 14.0 of the site permit establishes the provisions for site permit amendments as requested by Xcel. Staff intends to proceed with the amendment request after a decision is reached on this matter. Staff notes that any approved transfer or amendment would necessitate modifications to the permits themselves (at a minimum to update project specifications).

Staff questions the accuracy of the Townships’ statements regarding the scope of the Commission’s statutory authorities. Minnesota Statutes §§ 216F.07 and 216E.10 specifically and plainly state that the Commission’s permits supersede and preempt all zoning, building or land use rules, regulations or ordinances of special purpose governments for purposes of fulfilling its responsibilities.

In order to ensure a complete analysis of the record of Xcel Energy’s pending site permit amendment, staff recommends the Commission direct staff to establish a comment period and/or hold a public meeting on the permit amendment, and include in its analysis all comments received between June 18, 2019 and July 29, 2019 in both the HVTL and LWECS dockets when considering the site permit amendment request. Should the Commission choose to provide public meetings in addition to a comment period, staff requests that the Commission request an Administrative Law Judge from the Office of Administrative Hearings be assigned to preside over the meeting(s).

IX. Decision Options

A. Route Permit Issuance

1. Grant the request to transfer the December 19, 2019 route permit and amended site permit for the Freeborn Wind Farm Project and HVTL from Freeborn Wind Energy LLC to Northern States Power and authorize the reissuance of the site and route permits effective July 15, 2019 for the purpose of modifying the permittee.
2. Request that an Administrative Law Judge from the Office of Administrative Hearings conduct one or more public meetings in the project area to solicit input of the permit transfer requests.
3. Request that an Administrative Law Judge from the Office of Administrative Hearings conduct one or more public meetings in the project area to solicit input of the site permit amendment request.
4. Deny the request to transfer the site and route permits for the Freeborn Wind Farm Project from Freeborn Wind LLC to Northern States Power.
5. Direct staff to issue a notice establishing a comment period on the requested permit amendment and consider all public comments received to date in both the HVTL and LWECs dockets as part of the review of Xcel Energy's August 20, 2019 permit amendment request.
6. Take some other action deemed appropriate.

Staff Recommendation: Options A.1 and A.5