

April 7, 2015

Via electronic mail and/or U.S. mail

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 East Seventh Place, Suite 350
St. Paul, MN 55101

Re: ***In the Matter of the Application of Freeborn Wind Energy LLC for a Certificate of Need for the 200 MW Freeborn Wind Project in Freeborn County, Minnesota***

Docket No. IP-__ /CN-15- ____

Dear Mr. Wolf:

Pursuant to Minn. R. 7849.0200, Subp. 6, Freeborn Wind Energy LLC respectfully submits this Petition for Exemption from Certain Certificate of Need Application Requirements. As discussed herein, the requested exemptions are similar to those exemptions that have been routinely granted to other independent power producers developing large wind energy conversion systems.

Thank you for your attention to this matter.

Sincerely,

STINSON LEONARD STREET LLP

Andrew Gibbons

Andrew Gibbons

AJG/cw
Attachments

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

In the Matter of the Application)
of Freeborn Wind Energy LLC for a)
Certificate of Need for the 200 MW) **Docket No. IP-___/CN-15-___**
Freeborn Wind Project and)
Associated Facilities)
in Freeborn County, Minnesota)

**PETITION FOR EXEMPTION FROM CERTAIN CERTIFICATE
OF NEED APPLICATION REQUIREMENTS OF FREEBORN WIND ENERGY LLC**

Pursuant to Minn. R. 7849.0200, Subp. 6, Freeborn Wind Energy LLC (“Freeborn Wind”), respectfully submits this Petition for Exemption from Certain Certificate of Need Application Requirements (“Petition”) to the Minnesota Public Utilities Commission (“Commission”). As discussed below, consistent with past decisions, Freeborn Wind respectfully requests that the Commission grant exemptions from certain Certificate of Need (“CON”) information requirements not applicable to independent power producers (“IPPs”) developing large wind energy conversion systems (“LWECS”).

**I.
PETITIONER**

Freeborn Wind is an IPP and affiliate of Invenergy Wind Development LLC (“Invenergy”). Invenergy and its affiliates develop, own, operate and manage large-scale electricity generation assets in North America. Invenergy-affiliated companies currently have over 2,200 MW of natural gas-fueled electric generating projects in operation, 900 MW in construction and wind energy projects totaling over 5,400 MW in operation around the country.

Freeborn Wind was established to develop, own and operate the Freeborn Wind Project, a 200 MW LWECS to be located on an approximately 40,000 acre site located 1.5 miles east of Glenville, Minnesota in Freeborn County. The Freeborn Wind Project is a “large energy facility,” as defined by Minn. Stat. § 216B.2421, Subd. 2. Accordingly, a CON issued by the Commission is required under Minn. Stat. § 216B.243. The Freeborn Wind Project is also a LWECS as defined by Minn. Stat. § 216F.01, for which a Site Permit is required under Minn. Stat. § 216F.04. The Freeborn Wind Project qualifies as “eligible energy technology” for the purposes of satisfying the Minnesota Renewable Energy Standard (“RES”), as set forth in Minn. Stat. § 216B.1691.

II. REQUEST FOR EXEMPTIONS

The Commission’s CON rules set forth in Chapter 7849 of Minnesota Rules apply to a broad range of projects and are in some respects focused on determining need for utility-built generation. With this recognition, the rules explicitly permit applicants to request exemptions from filing requirements that are not applicable to particular projects. Specifically, Minn. R. 7849.0200, Subp. 6 provides that the Commission will grant exemptions to information requirements of Chapter 7849 when the data requirements at issue (1) are unnecessary to determine need in a specific case; or (2) can be satisfied by submitting information/documents other than those required in the Rules. In this case, Freeborn Wind respectfully requests that the Commission grant the exemptions requested below, because the identified information requirements are not applicable to the proposed wind generation project and, therefore, not necessary for the determination of the need.

As discussed below, Freeborn Wind requests exemptions from requirements that are inapplicable to the Freeborn Wind Project because: (a) the requirements are specific to traditional utilities and inapplicable to IPPs (*e.g.*, the requirements focusing on the applicant’s “service area” and “system”) and Freeborn Wind is an IPP that does not have “service area” or a “system”; (b) the

requirements related to consideration of nonrenewable alternatives and the Freeborn Wind Project is a renewable energy project intended to assist Minnesota utilities meet the mandated RES; and/or (c) the requirements seek data that does not exist with respect to the Freeborn Wind Project or can be satisfied by submitting documents/information other than those required in the Rules. Specifically, Freeborn Wind respectfully requests exemptions from the following requirements, which the Commission has granted in similar circumstances:¹

- 7849.0240, subp. 2 (B);
- 7849.0250 (B) 1, 2, 3, and 5;
- 7849.0250 (C) 1 to 9;
- 7849.0250 (C) 7;
- 7849.0250 (D);
- 7849.0270;
- 7849.0280;
- 7849.0290;
- 7849.0300;
- 7849.0330; and

¹ The Commission has granted exemption requests for other similarly situated wind farms. *See e.g., In the Matter of a Joint Request of Black Oak Wind, LLC and Getty Wind, LLC for a Determination Regarding Whether a Certificate of Need is Required for Two Large Wind Energy Conversion Systems in Stearns County, Minnesota*, Docket No. IP-6853,6866/CN-11-471, Order approving exemption requests (August 21, 2011) (“Black Oak”); *In the Matter of the Application of Prairie Rose Wind, LLC for a Certificate of Need for up to 200 MW wind project in Rock and Pipestone Counties*, Docket No. IP6838/CN-10-80, Order Approving Exemption Request (May 14, 2010); *In the Matter of the Application of Freeborn Wind, LLC for a Certificate of Need for the 299.5 MW Freeborn Wind Project in Dodge, Olmstead and Mower Counties*, Docket No. IP6828/CN-09-937, Order approving exemption requests (October 8, 2009); *In the Matter of the Application of Noble Flat Hill Windpark I, LLC for a Certificate of Need for a Large Energy Facility, a 201 MW Large Wind Energy Conversion System and Associated Facilities in Clay County*, Docket No. IP-6687/CN-08-951, Order Granting Exemption, Approving Notice Plan As Modified And Granting Variance (October 16, 2008) (“Flat Hill”); *In the Matter of the Application of Elm Creek Wind, LLC, for a Certificate of Need for a Large Energy Facility, the Elm Creek Wind Project in Jackson and Martin Counties*, Docket No. IP6631/CN-07-789, Order Granting the Exemptions (August 1, 2007) (“Elm Creek”); *In the Matter of the Application for a Certificate of Need for the Trimont Area Wind Farm*, Docket No. IP-6339/CN-03-1841, Order Granting Exemption Requests In Part, Permitting Expedited Filing, Accepting Application As Of Date Of Supplemental Filing, And Requesting Preparation Of Environmental Report (December 22, 2003) (“Trimont”).

- 7849.0340.

The basis for each requested exemption is discussed in turn below.

A. Promotional Activities (Minn. R. 7849.0240, subp. 2 (B)).

Each application for a CON is required to contain “an explanation of the relationship of the proposed facility to . . . promotional activities that may have given rise to the demand for the facility.” Freeborn Wind does not intend to sell electricity generated by the Freeborn Wind Project directly to end-use customers and therefore has not engaged in any promotional activity that “may have given rise to the demand” for the Freeborn Wind Project’s electric output. As such, information related to such promotional activities does not exist. Consistent with the Commission’s decision to grant an exemption from this requirement in similar circumstances,² Freeborn Wind requests an exemption from Minn. R. 7849.0240, Subp. 2(B).

B. Availability of Alternatives (Minn. R. 7849.0250 (B)).

Minnesota Rules, Part 7849.0250(B)(1)-(4) requires an applicant to discuss the availability of alternatives to the facility, including (1) purchased power, (2) increased efficiency of existing facilities, (3) new transmission lines, and (4) new generating facilities of a different size or using a different energy source. Freeborn Wind requests an exemption from information requirements (1), (2), (3) and a limited exemption from (4) – as they are not applicable to the Freeborn Wind Project. Further, none of these alternatives provide renewable energy needed by Minnesota electric utilities to meet the RES.

Initially, Freeborn Wind should not be required to provide data regarding the alternative of purchased power. As an IPP, it will be offering for sale, not purchasing, the Project’s output. Second, with respect to the alternative of increased efficiency, unlike a traditional public utility Freeborn Wind has no existing facilities in Minnesota. As such, improving the efficiency of existing facilities is not an

² See e.g., *Elm Creek* at 3.

option. Third, with respect to the alternative of new transmission lines, Freeborn Wind is not a developer or owner of transmission facilities – other than those discrete facilities that will be necessary to interconnect the Project to the transmission system. Generally, Minnesota utilities develop, own and operate transmission and distribution facilities consistent with their obligations to serve retail customers. Therefore, new transmission lines are not true alternatives to the Freeborn Wind Project.

Finally, Freeborn Wind should be granted an exemption from the requirement that it discuss non-renewable alternatives to the Freeborn Wind Project, because non-renewable alternatives could not fulfill the proposed Project’s purpose of increasing the supply of renewable generation as directed by the RES.³ In this respect, non-renewable resources are not true alternatives to the proposed Project, and information about them is unnecessary to determine need. The Commission has previously granted this partial exemption to a renewable energy project agreeing that “[n]on-renewable alternatives could not fulfill the proposed Project’s purpose of increasing the supply of renewable generation as set out by the RES statute.”⁴ The same is true with respect to the Freeborn Wind Project. Freeborn Wind will, however, discuss renewable alternatives to the Freeborn Wind Project in its CON application.

C. Details Regarding Alternatives (Minn. R. 7849.0250, Subp. C(1)-(9)).

Minn. R. 7849.0250, Subp. C(1)-(9) requires an applicant to provide a description of alternatives that could provide electric power at the asserted level of need. As noted above, nonrenewable alternatives could not fulfill the proposed Project’s purpose of increasing the supply of

³ Minn. Stat. § 216B.243, Subd. 8 (7) provides an exemption from the CON requirements for “a wind energy conversion system or solar electric generation facility if the system or facility is owned and operated by an independent power producer and the electric output of the system or facility is not sold to an entity that provides retail service in Minnesota or wholesale electric service to another entity in Minnesota other than an entity that is a federally recognized regional transmission organization or independent system operator.” In the event Freeborn Wind ultimately enters into a PPA with an entity that does not provide “retail service in Minnesota or wholesale electric service to another entity in Minnesota utility,” it would qualify for an exemption.

⁴ *Elm Creek* at 4.

renewable generation. Therefore, Freeborn Wind proposes to provide a discussion of only those renewable alternatives it identifies that could provide electric power at the asserted level of need.

D. Effect on Rates System-Wide (Minn. R. 7849.0250 (C) 7).

Minn. R. 7849.0250 (C) 7 requires an applicant to estimate the Project’s “effect on rates system-wide and in Minnesota, assuming a test year beginning with the proposed in-service date.” As an IPP, Freeborn Wind does not operate a “system.” As such, the required data is neither available to Freeborn Wind nor necessary to determine need for the Project. In lieu of such data, Freeborn Wind proposes to submit general data on the proposed Project’s impact on state/regional wholesale prices.

E. Map of Applicant’s System (Minn. R. 7849.0250, Subp. D).

Minn. R. 7849.0250 (D) requires a CON applicant to include a map showing the applicant’s system. As previously discussed, Freeborn Wind is an IPP and does not have a “system” or Commission-approved customer service area. Therefore, such information does not exist and is unnecessary to determine the need. Alternatively, Freeborn Wind proposes to submit a map showing the site of the Freeborn Wind Project and its proposed interconnection to the bulk transmission system.

F. Peak Demand and Annual Consumption Forecast (Minn. R. 7849.0270).

Minn. R. 7849.0270 requires an applicant to provide “data concerning peak demand and annual electrical consumption within the applicant’s service area and system. . .” Freeborn Wind requests an exemption from this requirement on the grounds that it does not own a “system” or maintain a “service area” within the meaning of the Rule.

In addition, at this time Freeborn Wind does not have sufficient information about its future purchasers to provide data concerning peak demand and annual electric consumption. With its application for a CON, however, Freeborn Wind proposes to submit general information with respect to use, forecasts, and demand for independently produced renewable energy in the MISO region. In the event Freeborn Wind enters into a definitive power purchase agreement or similar arrangement

with a Minnesota utility, Freeborn Wind will include in its application relevant information regarding that utility's system and future resource needs and/or seek an exemption from the CON requirement.⁵

G. System Capacity (Minn. R. 7849.0280).

Freeborn Wind requests an exemption from the requirement that it provide information related to system capacity. As noted above, Freeborn Wind does not have a "system" within the meaning of the Rule and, therefore, the requested information is inapplicable. With its application for the CON, Freeborn Wind proposes to submit general information with respect to use, forecasts, and demand for independently produced renewable energy in the MISO region. In the event Freeborn Wind enters into a definitive power purchase agreement or similar arrangement with a Minnesota utility, Freeborn Wind will include in its application relevant information regarding that utility's system and future resource needs.

H. Conservation Programs (Minn. R. 7849.0290).

In accordance with Minn. R. 7849.0290, an applicant is required to provide information related to conservation programs, including information on the programs an applicant has considered, description of the major accomplishments, costs, and a discussion of their expected effects in reducing the need for new generation and transmission facilities. This rule is specifically tailored for utilities and is not applicable to an IPP, like Freeborn Wind. Freeborn Wind is not a utility, and does not have a system or retail customers. Thus, Freeborn Wind does not maintain a conservation program. In

⁵ Minn. Stat. § 216B.243, Subd. 9 provides that a CON is not required for a wind energy conversion system "that is intended to be used to meet the obligations of section 216B.1691; provided that, after notice and comment, the commission determines that the facility is a reasonable and prudent approach to meeting a utility's obligations under that section. When making this determination, the commission must consider: (1) the size of the facility relative to a utility's total need for renewable resources; (2) alternative approaches for supplying the renewable energy to be supplied by the proposed facility; (3) the facility's ability to promote economic development, as required under section 216B.1691, subdivision 9; (4) the facility's ability to maintain electric system reliability; (5) impacts on ratepayers; and (6) other criteria as the commission may determine are relevant." This exemption has thus far been applied where the Commission has approved a PPA with a Minnesota utility that has a renewable energy obligation and the Commission makes a finding that the project represents a cost-effective, reasonable, and prudent approach for the utility to meet its obligations under the RES. *See e.g., In the Matter of Xcel Energy's Petition for Approval of a Solar Portfolio to Meet Initial Solar Energy Standard, Docket No. E-002/M-14-162, Order Approving Solar Portfolio (March 24, 2015).*

addition, only an increase in the amount of energy derived from eligible energy technologies will enable Minnesota utilities to meet their RES obligations. Consistent with the Commission's decision to grant this exemption to other IPPs, Freeborn Wind respectfully requests that an exemption from this requirement be granted.⁶

I. Consequences of Delay (Minn. R. 7849.0300).

Freeborn Wind requests an exemption from the requirement in Minn. R. 7849.0300 that it analyze the consequences of delay on its system – since it has no system. As a result, the required information is not necessary to determine need. In its application for the CON, Freeborn Wind intends to generally discuss potential consequences of delay on the MISO region and the ability of Minnesota utilities to meet the RES. In the event Freeborn Wind enters into a definitive power purchase agreement or similar arrangement with a Minnesota utility, Freeborn Wind will include in its application relevant information regarding consequences of delay on that utility's ability to meet its resource needs and satisfy the RES (if necessary).

J. Facility Information for LHVTL Alternatives (Minn. R. 7849.0330).

Freeborn Wind requests an exemption from the requirement in Minn. R. 7849.0330 that it provide information related to transmission line alternatives. Transmission facilities are not true alternatives to the proposed Project, since the purpose of the facility is to increase the supply of renewable energy to assist Minnesota utilities to meet their renewable energy obligations. Moreover, new high-voltage transmission facilities are not an integral part of renewable alternatives to the proposed Project. Finally, any transmission facilities associated with the Freeborn Wind Project are limited to the facilities necessary to interconnect the wind farm with the bulk transmission system. Any additional transmission facilities required beyond the point of interconnection will be determined

⁶ See e.g., Black Oak (incorporating Department of Commerce Comments) at 4.

through the MISO generator interconnection process. Therefore, an exemption from this information requirement is appropriate.

K. The Alternative of No Facility (Minn. R. 7849.0340).

Minn. R. 7849.0340 requires an applicant to discuss “anticipated consequences to its system, neighboring systems, and the power pool should the proposed facility be delayed one, two, and three years, or postponed indefinitely.”⁷ Since Freeborn Wind has no system the requirement is inapplicable and Freeborn Wind respectfully requests that an exemption be granted. As an alternative, Freeborn Wind proposes to submit data reasonably available to it regarding the impact on the wholesale market of the "no facility" alternative. In the event Freeborn Wind enters into a definitive power purchase agreement or similar arrangement with a Minnesota utility, Freeborn Wind will include in its application relevant information regarding anticipated consequences to the utility’s system should the proposed Project be delayed (if necessary).

**III.
CONCLUSION**

The requested exemptions above are consistent with well-established Commission precedent.⁸ The Commission granted the proposed exemptions requested above on the basis that exemptions from these filing requirements were appropriate because the applicant (a) was an IPP that did not operate a public utility system; (b) was proposing a renewable energy facility where the legislature has enacted preferences for renewable energy; and (c) did not possess the information required by the Commission’s rules or that such information requirements can be satisfied by submitting documents other than those required in the Rules.⁹ Here, Freeborn Wind is an IPP, proposing a renewable energy facility, and does not possess much of the information required by the Commission’s rules. Moreover,

⁷ Referencing the requirements of Minn. R. 7849.0300.

⁸ See *infra*, footnote 1.

⁹ See e.g., *Trimont* at 3-4.

the Commission has granted analogous exemption requests for other proposed wind farms. For the reasons stated above, Freeborn Wind respectfully requests that the Commission grant its requested exemptions.

Dated: April 7, 2015

Respectfully submitted,

/s/ *Andrew Gibbons*

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Andrew J. Gibbons

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**STATE OF MINNESOTA
BEFORE THE
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In the Matter of the Application)
of Freeborn Wind Energy LLC for a)
Certificate of Need for the 200 MW)
Freeborn Wind Project and)
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in Freeborn County, Minnesota)

Docket No. IP-___/CN-15-___

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **PETITION FOR EXEMPTION FROM CERTAIN CERTIFICATE OF NEED APPLICATION REQUIREMENTS ON FREEBORN WIND ENERGY LLC** has been served today by e-mail and/or U.S. Mail to the following:

NAME	EMAIL	ADDRESS	SERVICE
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Dated this 7th day of April 2015

/s/ Catherine M. Wood

Catherine M. Wood