

May 13, 2015

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce - Division of Energy Resources**
Docket No. IP6946/CN-15-343

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce-Division of Energy Resources (Department) in the following matter:

Application of Freeborn Wind Energy LLC for a Certificate of Need for the 200 MW
Freeborn Wind Project in Freeborn County, Minnesota

The petition was filed on April 7, 2015 by:

Andrew Gibbons, Attorney
Stinson Leonard Street
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402

The Department recommends **approval of the requested exemptions**. The Department is available to answer any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ CHRISTOPHER SHAW
Rates Analyst

CS/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES**

DOCKET No. IP6946/CN-15-343

I. INTRODUCTION

On April 7, 2015, Freeborn Wind Energy LLC (Freeborn Wind or the Petitioner) filed a *Petition for Exemption from Certain Certificate of Need Application Requirements* (Petition). In response to the Petition, the Minnesota Public Utilities Commission (Commission) issued its *Notice of Comment Period* on April 29, 2015 establishing May 13, 2015 and May 20, 2015 deadlines for comments and reply comments, respectively.

A. PROJECT BACKGROUND

Freeborn Wind is an independent power producer (IPP) and affiliate of Invenergy Wind Development LLC. Freeborn Wind proposes to develop, own and operate the Freeborn Wind Project (Project). The Project is expected to be a 200 MW facility located on an approximately 40,000 acre site located 1.5 miles east of Glenville, Minnesota in Freeborn County. Such a facility would qualify as a large electric generating facility (LEGF) as defined by Minn. Stat. § 216B.2421, subd. 2. While the proposed facility would qualify as an “eligible energy technology” under the Minnesota Renewable Energy Standard (RES), Freeborn Wind does not have a buyer for the output of the proposed facility. Thus, the certificate of need (CN) exemptions found in Minn. Stat. § 216B.243, subd. 8(7) and subd. 9 do not apply to the Project.

B. EXEMPTION REQUESTS

In the petition Freeborn Wind requests exemption from providing data relevant to the Minnesota Rules listed below:

1. 7849.0240, subp. 2(B): Promotional Activities;
2. 7849.0250, subp. B(1), (2), (3), and (5): Description of Certain Alternatives;
3. 7849.0250(C) (1) – (9): Details Regarding Alternatives;
4. 7849.0250(C) (7): Effect of Project on Rates Systemwide;

5. 7849.0250(D): Map of Applicant's System;
6. 7849.0270: Peak Demand and Annual Consumption Forecast;
7. 7849.0280: System Capacity;
8. 7849.0290: Conservation Programs;
9. 7849.0300: Consequences of Delay;
10. 7849.0330: Transmission Facilities; and
11. 7849.0340: No Facility Alternative.

The Commission has previously granted exemption requests for the items numbered above for similar IPP wind projects.

II. DEPARTMENT ANALYSIS

Minnesota Statute § 216B.243, subd. 2 states that no LEGF shall be constructed without a CN. Freeborn Wind's Petition requests exemption from several of the filing requirements related to a future CN application for the proposed Project.

Minnesota Rules, part 7849.0200, subp. 6 states that an exemption is appropriate if the data requirement is not necessary in order to determine the need, or can be obtained via another document:

Before submitting an application, a person is exempted from any data requirement of parts 7849.0010 to 7849.0400 if the person (1) requests an exemption from specified rules, in writing to the commission, and (2) shows that the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document. A request for exemption must be filed at least 45 days before submitting an application. The commission shall respond in writing to a request for exemption within 30 days of receipt and include the reasons for the decision. The commission shall file a statement of exemptions granted and reasons for granting them before beginning the hearing.

The Department examines each specific exemption request separately. The required criterion to be considered is whether the Petitioner has shown that "the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document."

1. 7849.0240, subp. 2(B): *Promotional Activities*

This rule requires an applicant to provide an explanation of the relationship of the proposed facility to promotional activities that may have given rise to the demand for the facility. The Petitioner states that they have not engaged in any promotional activities, so there is no information to provide pursuant to this rule. The Department notes that the Commission has granted this exemption to other IPPs because these companies do not have captive retail customers and there is no authorized rate of return to consider. The circumstances are the same in this case.

Therefore, the Department recommends that the Commission grant the exemption.

2. 7849.0250, subp. B(1) – (5): *Description of Certain Alternatives*

Minnesota Rules, part 7849.0250 (B) requires an applicant to provide:

- B. a discussion of the availability of alternatives to the facility, including but not limited to:
 - 1) purchased power;
 - 2) increased efficiency of existing facilities, including transmission lines;
 - 3) new transmission lines;
 - 4) new generating facilities of a different size or using a different energy source (fuel oil, natural gas, coal, nuclear fission, and the emergent technologies); and
 - 5) any reasonable combinations of the alternatives listed in sub items (1) to (4).

Freeborn Wind requests an exemption from data requirements (1), (2), (3), and (5). Freeborn Wind requests a partial exemption to data requirement (4).

Freeborn Wind states that, as an IPP, it will be offering for sale, not purchasing power. Further, the Petitioner states that it does not own any facilities in Minnesota for which it can pursue increased efficiency as an alternative to the proposed Project. Finally, Freeborn Wind indicates that it does not plan to build new transmission lines beyond what may be needed to interconnect the proposed project to the transmission grid. As subitems (1) through (3) are not applicable to Freeborn Wind, the Petitioner requests an exemption from combinations of the alternatives listed in the subitems.

Freeborn Wind requests a partial exemption from subitem (4). Freeborn Wind states that since the goal of the project is to provide renewable electricity that will help utilities satisfy Minnesota's RES, information regarding non-renewable alternatives would not be relevant. The Petitioner notes that the Commission has previously determined that it is appropriate to

grant an exemption from the requirement to discuss any resource that would not satisfy the renewable energy generation goals of proposed wind projects.

The Department agrees that Freeborn Wind's requested exemptions are consistent with the requests of other IPPs. Therefore, the Department recommends that the Commission grant the requested exemptions, including the partial exemption from discussing non-renewable alternatives to the project, limiting Freeborn Wind's response to subitem (4) to renewable alternatives.

3. *7849.0250(C) (1) – (9): Availability of Alternatives to the Facility*

This rule requires the applicant to provide the following information for the proposed facility and each of the alternatives provided in response to 7849.0250 (B):

- 1) capacity costs in current dollars per kilowatt;
- 2) service life;
- 3) estimated average annual availability;
- 4) fuel costs in current dollars per kilowatt hour;
- 5) variable operating and maintenance costs in current dollars per kilowatt hour;
- 6) total cost in current dollars of a kilowatt hour provided by it;
- 7) estimate of its effect on rates systemwide and in Minnesota;
- 8) efficiency, expressed as the estimated heat rate; and
- 9) major assumptions made in providing the above information (e.g. escalation rates used, projected capacity factors).

Nonrenewable alternatives could not fulfill the proposed purpose of increasing the supply of renewable generation. Therefore, Freeborn Wind proposes to provide a discussion of only the renewable alternatives discussed in response to Minnesota Rules, part 7849.0250 (B). The Department recommends that the Commission grant the exemption.

4. *7849.0250 (C) (7): Effect of Project on Rates Systemwide*

Since Freeborn Wind does not have a system and is not a utility with regulated rates, it requests an exemption from this requirement. Instead, the Petitioner proposes to submit data on the Project's impact on state or regional wholesale electricity prices. The Department recommends that the Commission grant the exemption.

5. *7849.0250 (D): Map of Applicant's System*

This rule requires provision of a map of appropriate scale showing the applicant's system. As an IPP, Freeborn Wind does not have a system, so such information is not reasonably available. Instead, Freeborn proposes to submit a map showing the proposed Project site

and its interconnection to the bulk transmission system. The Department recommends that the Commission grant the requested exemption.

6. *7849.0270: Peak Demand and Annual Consumption Forecast*

This rule requires the applicant to provide information regarding its system peak demand and annual energy consumption within the applicant's service area and system. Since the Petitioner does not have a system, it intends to submit information with respect to use, forecasts, and demand for independently produced renewable energy in the Midcontinent Independent System Operator (MISO) region. In the event Freeborn Wind enters into a power purchase agreement or similar arrangement with a Minnesota utility, Freeborn Wind will include in its application relevant information regarding the utility's system and future resources needs and/or seek an exemption from the CN requirement.

The Department notes that the Commission has previously allowed IPPs to provide regional data from credible sources in lieu of the data requirements of Minnesota Rules, part 7829.0270. The Department recommends that the Commission grant the same exemption in this proceeding.

7. *7849.0280: System Capacity*

This rule requires the applicant to describe the ability of the existing system to meet the forecasted demand for energy provided in response to Minnesota Rules, part 7849.0270. Since Freeborn Wind does not have a system it is requesting an exemption from this rule. Freeborn Wind proposes to submit 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 power purchase agreement or similar arrangement with a Minnesota utility, Freeborn Wind will include in its application relevant information regarding the utility's system and future resources needs. The Department recommends that the Commission grant the exemption.

8. *7849.0290: Conservation Programs*

This rule requires the applicant to provide information regarding its energy conservation, energy efficiency, and demand-side-management (DSM) programs. Since Freeborn Wind has no retail customers and plans to sell the proposed Project's electricity output to as yet undetermined buyers, it requests an exemption from this requirement. The Department agrees and recommends that this exemption be granted.

9. *7849.0300: Consequences of Delay*

This rule requires the applicant to provide information regarding the consequences on its system, neighboring systems, and the power pool should the proposed facility be delayed.

The Petitioner states that since it does not have a system, this data requirement is inapplicable and unnecessary to determine the need for the proposed project. Instead, Freeborn Wind proposes to submit data on the consequences of delay on the MISO region and the ability of Minnesota utilities to meet the RES. If Freeborn Wind enters into a definitive power purchase agreement of similar arrangement with a Minnesota utility, Freeborn Wind will include in its application relevant information regarding the consequences of delay on that utility's ability to meet its resource needs and satisfy the RES, if necessary. The Department agrees and recommends the Commission grant this exemption.

10. 7849.0330: Transmission Facilities

This rule requires the applicant to provide information regarding each alternative that would involve construction of a Large High Voltage Transmission Line (LHVTL). The Petitioner states that transmission facilities are not true alternatives to the proposed facility, since the purpose is to increase the supply of renewable energy to utilities. Except for the facilities needed to interconnect the proposed Project to the transmission system, Freeborn Wind does not plan to build any transmission lines.

The Department notes that the Commission has granted this exemption in the past.¹ As in past similar dockets, the Department concludes that transmission is not a viable alternative to the proposed project and the data requirements regarding LHVTLs, as alternatives, are unnecessary to determine the need for the proposed facility. Therefore, the Department recommends that the Commission grant this exemption.

11. 7849.0340: No Facility Alternative

This rule requires the applicant to provide information on the alternative of no facility for each of the three levels of demand specified in Minnesota Rules, part 7849.0300. Instead, the Petitioner proposes to provide information regarding the impact on the wholesale market if the proposed project is not built. If 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 the anticipated consequences to that utility's system if the proposed Project is delayed. The Department agrees that this is a reasonable way to address this information requirement.

¹ See, e.g., Docket Nos. IP6646/CN-13-193, IP6902/CN-13-163, and IP6853,6866/CN-11-471.

III. DEPARTMENT RECOMMENDATION

The Department recommends that the Commission grant Freeborn Wind's exemption request.

/ja

CERTIFICATE OF SERVICE

I, Linda Chavez, hereby certify that I have this day served copies of the following document on the attached list of persons by electronic filing, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

MINNESOTA DEPARTMENT OF COMMERCE – COMMENTS

Docket Nos. **IP6946/CN-15-343**

Dated this **13th** day of **May, 2015**.

/s/Linda Chavez

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