

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

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

ISSUE DATE: December 5, 2017

DOCKET NO. IP-6946/TL-17-322

ORDER FINDING APPLICATION
COMPLETE, VARYING SCOPING
TIME FRAME, AND REFERRING THE
MATTER TO THE OFFICE OF
ADMINISTRATIVE HEARINGS

PROCEDURAL HISTORY

On September 20, 2017, Freeborn Wind Energy LLC (Freeborn Wind or the Applicant) filed an application for a route permit to construct a seven-mile, 161 kilovolt transmission line connecting its proposed Freeborn Wind Farm to the Glenworth Substation.¹

On October 4, the Minnesota Pollution Control Agency (MPCA) filed comments. MPCA recommended that Freeborn Wind provide additional information on the environmental permits it will need to obtain before constructing the transmission line.

On October 24, the Minnesota Department of Commerce (the Department) filed comments. The Department recommended that the Commission find Freeborn Wind's route-permit application substantially complete but require the Applicant to provide the information MPCA identified, as well as a discussion of its plans for acquiring the land rights needed to build the line.

On October 31, Freeborn Wind filed reply comments supplying the information requested by the Department and MPCA.

On November 2, the Department filed a letter stating that it found Freeborn Wind's response satisfactory.

The Commission also received 13 written comments from 16 members of the public, as well as comments on behalf of the Association of Freeborn County Landowners, an informal association of people who own land within or adjacent to the site of the proposed wind farm.

¹ Freeborn Wind's related application for a wind-farm site permit is pending in Docket No. IP-6946/WS-17-410.

These commenters all voiced opposition to the proposed transmission line. Their comments were directed primarily to the merits of the project—raising issues related to the need for the line, its potential human and environmental impacts, and whether alternative routes had been considered.

On November 16, 2017, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Regulatory Background

A party seeking to build a high-voltage transmission line in Minnesota must get a route permit from the Commission.² A “high-voltage transmission line” includes any transmission line longer than 1,500 feet that will operate at a voltage of at least 100 kilovolts.³ Freeborn Wind’s proposed transmission line qualifies as a high-voltage transmission line, triggering the statutory route-permit requirement.

The Commission’s rules establish two tracks for the permitting of high-voltage transmission lines. The “full permitting process” includes preparing an environmental impact statement (EIS) and holding a contested-case hearing.⁴ The “alternative permitting process” generally applies to modestly sized projects.⁵ It requires an environmental assessment instead of an EIS and a “public hearing” instead of the more formal contested-case hearing required for larger projects.⁶

Because Freeborn Wind’s proposed transmission line would operate at a voltage between 100 and 200 kilovolts, it is eligible for the alternative permitting process.⁷

II. Application Completeness

The Commission concurs with the Department that Freeborn Wind’s route-permit application is substantially complete. The application includes the information contemplated by Minn. R. 7850.1900 and .3100, including applicant information; a description of the proposed facility;

² Minn. Stat. § 216E.03, subd. 2.

³ Minn. Stat. § 216E.01, subd. 4.

⁴ See Minn. R. 7850.1700–.2700 (full permitting procedures).

⁵ See Minn. R. 7850.2800, subp. 1 (describing criteria for eligible projects); accord Minn. Stat. § 216E.04, subd. 2.

⁶ See Minn. R. 7850.2900–.3900 (alternative permitting procedures).

⁷ Minn. R. 7850.2800, subp. 1(C).

land uses and environmental conditions along the proposed route; potential environmental impacts; and cost, design, construction, and operational information. The Commission will therefore accept the application as complete.⁸

III. Environmental Assessment Scoping

Under the alternative permitting process, the next step is for the Department to prepare an environmental assessment evaluating the potential human and environmental impacts of the proposed transmission line.⁹ This will require, among other things, giving members of the public an opportunity to comment on the scope of the environmental assessment, including alternative routes to be evaluated.¹⁰

Under Minn. R. 7850.3700, subp. 3, the Department must determine the scope of the environmental assessment within ten days after the close of the scoping comment period. However, the routing statute anticipates that the Commission will have the opportunity to identify alternative routes for consideration in the environmental assessment.¹¹

The Commission finds that the ten-day deadline in Minn. R. 7850.3700, subp. 3, is insufficient to allow for Commission input on the scope of the environmental assessment in this case. The Commission will therefore vary Minn. R. 7850.3700, subp. 3, to extend the ten-day scoping-decision deadline to facilitate Commission input on what alternative routes, if any, should be considered in the environmental assessment.

The Commission must vary a rule when it determines that the following requirements are met:

- (1) Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- (2) Granting the variance would not adversely affect the public interest; and
- (3) Granting the variance would not conflict with standards imposed by law.¹²

⁸ The Commission received a number of comments from members of the public opposing the transmission line for various reasons. However, these comments were directed to the merits of the proposed line and/or the related wind farm and did not bear on the completeness of the route-permit application. These concerns may still be raised and addressed, as appropriate, in the subsequent stages of this proceeding.

⁹ See Minn. R. 7850.3700 (environmental-assessment preparation).

¹⁰ See Minn. R. 7850.3700, subp. 2 (environmental-assessment scoping process).

¹¹ See Minn. Stat. § 216E.04, subd. 5 (providing that the “environmental assessment shall contain information on the human and environmental impacts of the proposed project and other sites or routes identified by the commission”).

¹² Minn. R. 7829.3200, subp. 1.

The Commission specifically finds that enforcement of the ten-day deadline would impose an excessive burden upon the Applicant, the Department, the Commission, and members of the public, all of whom have an interest in ensuring that the environmental assessment is properly scoped, with the Commission's input.

For similar reasons, the Commission finds that granting the variance will not adversely affect the public interest but will, in fact, further the public interest by allowing sufficient time for the Commission and Department to consider any route alternatives that may be proposed during the scoping process and by effectuating Minn. Stat. § 216E.04, subd. 5.

And, finally, the Commission finds that granting the variance will not conflict with any standards imposed by law, since the ten-day deadline originates in the Commission's own rules and not in the routing statute itself.

The Commission will request that the Department file comments with draft route alternatives for the Commission's input before issuing a final scoping decision.

IV. Referral to the Office of Administrative Hearings

Once the environmental assessment has been completed, the Commission will hold a public hearing in Freeborn County.¹³ At this hearing, the public will have an opportunity to make oral presentations, present documentary evidence, and ask questions of the Applicant as well as Commission and Department staff.¹⁴ Following the hearing, the public will have at least ten days to submit written comments into the record. The Commission will then make a final decision on Freeborn Wind's request for a route permit.

The Commission's rules require it to appoint a person to act as the hearing examiner at the public hearing.¹⁵ The Commission generally refers route-permit applications to the Office of Administrative Hearings and asks that agency to appoint an administrative law judge (ALJ) to serve as the hearing examiner. In more complex or controversial cases, the Commission also asks that the ALJ prepare a report with findings of fact and a recommendation on whether a permit should be issued and under what conditions.

The Department stated that the proposed project is controversial and that alternative routes might be proposed during the scoping process. The Department therefore concluded that it might make sense for the Commission to request that the ALJ assigned to the case prepare a report with findings, conclusions, and recommendations on the merits of granting a route permit.¹⁶

¹³ See Minn. R. 7850.3800, subp. 1.

¹⁴ See *id.*, subp. 3 (hearing procedure).

¹⁵ *Id.*, subp. 2.

¹⁶ The Department referred to this type of ALJ report and the procedures surrounding its preparation as a "summary proceeding."

Freeborn Wind recommended that the Commission ask the ALJ to prepare a “summary report,” which would simply summarize the comments received at the public hearing. Freeborn Wind favored this approach because, under it, the case would be ready for the Commission’s review about a month and a half earlier than if the ALJ were to prepare a full report and recommendation.

The Commission agrees with the Department that, in light of the anticipated level of controversy involved in this case, the ALJ should be asked to prepare a full report and recommendation. Having a focused summary of the disputed issues, as well as factual findings relevant to the merits of granting a route permit, will greatly aid the Commission’s decision-making.

Accordingly, the Commission will refer this matter to the Office of Administrative Hearings, requesting that the assigned administrative law judge:

- Encourage the parties to adhere to a schedule that conforms to the statutory time frame for the Commission’s decision;
- Ask the parties, participants, and public to address whether the proposed project and any alternatives meet the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. R. 7850.4100; and
- Prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed project and alternatives to the proposed project, applying the criteria set forth in statute and rule, and provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.

The routing statute encourages public participation and directs the Commission to designate a staff person to act as the public advisor on the project and to be available to answer questions from the public about the permitting process.¹⁷ The Commission designates Bret Eknes as the public advisor in this case. His contact information is: Bret Eknes, Public Advisor, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, Saint Paul, Minnesota 55101-2147. He can be reached at 651-201-2236, and by email at publicadvisor.puc@state.mn.us.

Finally, the Commission will take the following steps to facilitate the permit-review process:

- Request that the Department continue to study the issues and indicate during the hearing process its position on the reasonableness of granting a route permit.
- Require Freeborn Wind to facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff.
- Require Freeborn Wind to place a copy of the application (printed or compact disc) for review in at least one government center or public library in each county where the proposed transmission line project is located.

¹⁷ Minn. Stat. § 216E.08, subd. 3; *accord* Minn. R. 7850.2200.

- Direct its staff to work with the ALJ and Department staff in selecting a suitable location for the public hearing on the application.
- Direct Freeborn Wind to work with Commission staff to arrange for publication of the notice of public hearings in newspapers of general circulation at least ten days prior to the hearing(s). Such notice shall be in the form of visible display ads, and the Applicant shall provide proof of publication.
- Delegate administrative authority to vary time periods to its Executive Secretary under Minn. R. 7829.1275.

ORDER

1. The Commission hereby accepts Freeborn Wind Energy LLC's route-permit application as complete.
2. The Commission varies Minn. R. 7850.3700, subp. 3, to extend the ten-day time limit for the Department to issue its scoping decision in order to allow for Commission review.
3. The Commission requests that the Department file comments with draft route alternatives for the Commission's input before issuing a final scoping decision.
4. The Commission refers this matter to the Office of Administrative Hearings, requesting that the assigned administrative law judge:
 - a. Encourage the parties to adhere to a schedule that conforms to the statutory time frame for the Commission's decision.
 - b. Ask the parties, participants and public to address whether the proposed project and any alternatives meet the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. R. 7850.4100.
 - c. Prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed project and alternatives to the proposed project, applying the criteria set forth in statute and rule, and provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.
5. The Commission requests that the Department continue to study the issues and indicate during the hearing process its position on the reasonableness of granting a route permit.
6. Freeborn Wind shall facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff.
7. Freeborn Wind shall place a copy of the application (printed or compact disc) for review in at least one government center or public library in each county where the proposed transmission line project is located.

8. Freeborn Wind shall work with Commission staff to arrange for publication of the notice of public hearings in newspapers of general circulation at least ten days prior to the hearing(s). Such notice shall be in the form of visible display ads, and the Applicant shall provide proof of publication.
9. The Commission delegates administrative authority to vary time periods to its Executive Secretary under Minn. R. 7829.1275.
10. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.