



414 Nicollet Mall  
Minneapolis, MN 55401

July 16, 2020

—Via Electronic Filing—

Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101

RE: INITIAL COMMENTS ON SITE PERMIT AMENDMENT REQUESTS  
FREEBORN WIND ENERGY PROJECT  
DOCKET NO. IP-6946/WS-17-410

Dear Mr. Seuffert:

Northern States Power Company, doing business as Xcel Energy, submits these comments regarding the two Site Permit Amendment Requests filed on June 8, 2020; one by Kathy and Greg Nelson and one by Sean and Heidi Gaston. The substance of each of these two requests is essentially identical. Both claim the Company's shadow flicker modeling is based on flawed assumptions, and that the modeling and mitigation plan violate Freeborn County Ordinance Section 26-56. These issues have been thoroughly considered by the Commission in its various orders in this Docket. Because the Nelsons and Gastons do not identify any reason to amend the Site Permit that has not already been considered by the Commission, Xcel Energy respectfully asks the Commission to deny their requests.

As both the Nelsons and Gastons, note, they have been active participants in this Docket, and they have repeatedly raised these same issues.<sup>1</sup> All the information included in the Nelsons' and Gastons' current requests for an amendment to the Site Permit have already been thoroughly—and repeatedly—considered and evaluated by the Minnesota Department of Commerce, the Minnesota Office of Administrative Hearings, and the Commission in proceedings dating back to 2017.<sup>2</sup> Based on its review of the entire record, including the Nelsons' and Gastons' filings, the

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<sup>1</sup> See, e.g., Nelson Comments – Proposed Amendment (Nov. 12, 2019, Doc ID 201911-157421-01); Gaston Comments – In Opposition to Proposed Amendment (Nov. 12, 2019, Doc ID 201911-157418-01); Gaston Letter – Requesting the Commissioners Make Adjustments to the Permit to Better Prevent Negative Impacts on Landowners Living in the Project (Jan 8, 2019, Doc ID 20191-148968-01); Nelson Comments – Exceedances of Shadow Flicker to Home (Mar. 15, 2018, Doc ID 20183-141-036-01)

<sup>2</sup> See Order Issuing Site Permit and Taking Other Action (Dec. 19, 2018); Order Amending Site Permit (May 10, 2019); Order Denying AFCL's Petitions and Amending Site Permit (Mar. 30, 2020).

Commission has consistently found the Site Permit conditions related to shadow flicker to be reasonable.

First and foremost, although the Commission found in its December 19, 2018 Order Issuing Site Permit and Taking Other Action (December 2018 Order) that Freeborn Ordinance Section 26-56 “provides evidence of local community standards,” it correctly noted that the “Commission’s jurisdiction pre-empts application of the Ordinance.”<sup>3</sup> In other words, it is irrelevant whether the shadow flicker modeling and mitigation plan comply with Freeborn Ordinance Section 26-56. That notwithstanding, the Company’s shadow flicker modeling aligns with the requirements of the Ordinance, which states:

A flicker analysis shall include the duration and location of flicker potential for all receptors and road ways within a one-mile radius of each turbine within a project. The applicant shall provide a site map identifying the locations of shadow flicker that may be caused by the project and the expected durations of the flicker at these locations from sun-rise to sun-set over the course of a year. The analysis shall account for topography but not for obstacles such as accessory structures and trees. Flicker at any receptor shall not exceed 30 hours per year within the analysis area.

The shadow flicker analysis submitted by the Company on August 20, 2019, analyzed the flicker potential for “263 structures found to be located within two kilometers of the 59 proposed wind turbine locations.”<sup>4</sup> Additionally, although the analysis, accounted for “turbine operational hours and direction as well as local sunshine probabilities,” no “blocking or shading effects due to trees or structures have been accounted for. This means that the ‘realistic’ estimates are still inherently conservative values.”<sup>5</sup> Finally, although the analysis modeled six receptors with shadow flicker values over 30 hours per year, the Company has developed a Shadow Flicker Management Plan designed to mitigate this flicker, so that no receptor will experience more than 30 hours of shadow flicker.<sup>6</sup>

Second, the assumptions underlying the shadow flicker modeling were thoroughly vetted by the Commission. As stated in the December 2018 Order:

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<sup>3</sup> Minn. Stat. §216F.07 (“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.”). Relatedly, Freeborn Ordinance Section 26-20 notes “[t]his article is established to regulate the installation and operation of renewable energy systems within the county not otherwise subject to siting and oversight by the state pursuant to M.S.A. chs. 216F, 216C.25, and 500.30, and Minnesota Rules ch. 1325.1100, as amended.”

<sup>4</sup> Site Permit Amendment Application (Aug. 20, 2019), Attachment F, p. 5.

<sup>5</sup> Site Permit Amendment Application (Aug. 20, 2019), Attachment F, p. 6.

<sup>6</sup> Compliance Filing (July 14, 2020, DOC ID 20207-164893-01). We note that turbines affecting three of the six receptors have been moved to Iowa, leaving only three participating landowners with over 30 hours of projected shadow flicker each year, which will be mitigated using turbine control software.

While the ALJ questioned the reliability of Freeborn Wind's prediction of shadow flicker exposure at various locations, the Commission concludes that Freeborn Wind's testimony remains the best evidence in the record on this question. Accordingly, the Commission will decline to adopt the ALJ's Finding 260 to the extent that the finding challenges the reliability of the Company's analysis without proffering a more reliable substitute standard.

As with Sue Madson's April 21, 2020 filing, although the Nelsons and Gastons are now raising these issues in the form of requests to amend the Site Permit, their filings essentially boil down to requests for the Commission to reconsider its prior orders on shadow flicker. Therefore, we believe the appropriate lens through which the Commission should review these requests is by applying the requirements for a petition for reconsideration pursuant to Minn. Stat. § 216B.27, Subd. 3, and Minn. R. 7829.

As an initial matter, these requests have been submitted far too late. Minn. Stat. §216B.27 requires any request for reconsideration to be submitted "[w]ithin 20 days after the service by the commission of any decision constituting an order or determination[.]" Regardless of which Commission Order the Nelsons and Gastons claim was incorrect, this request was submitted well beyond such deadline, and allowing this request to proceed solely because it was couched as an amendment request rather than a request for reconsideration would undermine the intent of the legislature in passing Minn. Stat. § 216B.27.

Even were these requests not barred as untimely, Minn. Stat. § 216B.27, Subd. 3, permits reconsideration of Commission decisions only if they are "in any respect unlawful or unreasonable." Minn. R. 7829.3000 sets forth additional procedural requirements for petitions for reconsideration, and requires that petitions "set forth specifically the grounds relied upon or errors claimed." Generally, the Commission will review petitions for reconsideration "to determine whether the petition (i) raises new issues, (ii) points to new and relevant evidence, (iii) exposes errors or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it should rethink its decision."<sup>7</sup> The Nelsons' and Gastons' petitions fail to satisfy this standard.

The Commission's Orders, as they relate to shadow flicker, are neither erroneous nor ambiguous, and the Nelsons and Gastons have not raised any new issues or identified any new evidence requiring reconsideration. Having failed to identify any reason why the Commission should reconsider its prior orders on shadow flicker, these requests for an amendment of the Site Permit should be denied.

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<sup>7</sup> ORDER DENYING RECONSIDERATION, DENYING STAY, AND APPROVING COMPLIANCE FILINGS, Oct. 7, 2019, Docket No. E002/M-18-643, at 3.

We have electronically filed this document with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service lists. Please contact me at (612) 330-6064 or [bria.e.shea@xcelenergy.com](mailto:bria.e.shea@xcelenergy.com), or Jennifer Roesler at (612) 330-1925 or [jennifer.roesler@xcelenergy.com](mailto:jennifer.roesler@xcelenergy.com), if you have any questions regarding this filing.

Sincerely,

/s/

BRIA SHEA  
DIRECTOR, REGULATORY AND STRATEGIC ANALYSIS

c: Service List

## CERTIFICATE OF SERVICE

I, Paget Pengelly, hereby certify that I have this day served copies of the foregoing document or a summary thereof on the attached lists of persons:

xx by depositing a true and correct copy or summary thereof,  
properly enveloped with postage paid, in the United States Mail  
at Minneapolis, Minnesota; or

xx via electronic filing

**Docket No.           IP-6946/WS-17-410**

Dated this 16th day of July 2020

/s/

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Paget Pengelly  
Regulatory Administrator

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Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400  St. Paul, MN 55101	Electronic Service	No	OFF_SL_17-410_Official Service list Site permit
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Carol A.	Overland	overland@legalelectric.org	Legaletric - Overland Law Office	1110 West Avenue  Red Wing, MN 55066	Electronic Service	No	OFF_SL_17-410_Official Service list Site permit
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	No	OFF_SL_17-410_Official Service list Site permit
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