Fredrikson
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December 30, 2010

Judge Kathleen Sheehy
Minnesota Office of Administrative Hearings
P.O. Box 64620
600 North Robert Street
St. Paul, Minnesota 55164-0620

Re: In the Matter of the Applications of AWA Goodhue, LLC for a Certificate of Need and Site Permit for a 78 MW Large Wind Energy Conversion System in Goodhue County, Minnesota
MPUC Docket Nos. IP6701/CN-09-1186 and WS-08-1233
OAH Docket No. 3-2500-21662-2

Dear Judge Sheehy:

Enclosed for filing in the above referenced dockets, please find Applicant's Notice of Motion and Motion for Summary Disposition, and Memorandum in Support of Motion for Summary Disposition. Please fell free to call with any questions you may have.

Thank you for your consideration.

Very truly yours,

Todd J. Guerrero

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TJG:kas

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OAH 8-2500-21395-2
MPUC Docket No. IP-6701/CN-09-1186
MPUC Docket No. IP-6701/WS-08-1233

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of AWA Goodhue, LLC for a Certificate of Need and a Site Permit for a 78 MW Wind Project and Associated Facilities in Goodhue County	**NOTICE OF MOTION AND MOTION FOR SUMMARY DISPOSITION**

NOTICE OF MOTION

PLEASE TAKE NOTICE that AWA Goodhue, LLC is filing this Motion for Summary Disposition with Administrative Law Judge Kathleen Sheehy in the above entitled matter. Please be advised that parties wishing to contest this motion must file a written response with the judge and serve copies on all parties by January 14, 2010. Minn. R. part 1400.6600.

MOTION

Pursuant to Minn. R. parts 1400.5500(k) and 1400.6600, AWA Goodhue, LLC hereby moves the Office of Administrative Hearings for an Order Recommending Summary Disposition and respectfully asks that the ALJ: (1) find that the county ordinance, on its face, does not apply to this project, (2) find that the county lacks authority to adopt more stringent standards for LWECS, (3) recommend dismissal of this contested case on legal grounds, and (4) recommend that the Commission take up the merits of this case without consideration or application of Article 18 of Goodhue County's Zoning Ordinance.

As explained fully in the accompanying Memorandum in Support, the grounds for this Motion are (1) by its plain language, the Goodhue County ordinance does not apply to

LWECS such as the AWA Goodhue project, and (2) because it has not assumed permitting authority under Minn. Stat. § 216B.08, Goodhue County lacks the authority to adopt more stringent standards for LWECS.

This motion is based on all the files, records and proceedings herein, including the Memorandum in Support of Summary Disposition and the attached exhibits.

Dated: December 30, 2010

Respectfully submitted,

/s/ *Todd J. Guerrero*

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MPUC Docket No. IP-6701/CN-09-1186
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of AWA Goodhue, LLC, for a Certificate of Need and a Site Permit for a 78 MW Wind Project Goodhue County

AWA GOODHUE, LLC's MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

INTRODUCTION

On October 5, 2010, Goodhue County enacted amendments to Article 18 of its zoning ordinance pertaining to wind energy conversion systems. Several of the amendments purported to set standards more stringent than the Public Utilities Commission's wind permit standards. Pursuant to Minn. Stat. § 216F.081, the Commission is now considering, among other things, whether there is good cause not to apply the county's regulations to the 78 MW AWA Goodhue, LLC wind project.

By its plain terms, the county's ordinance applies only to small wind projects up to 5 MW and therefore does not set standards that apply to the AWA Goodhue project. In addition, because the county has chosen not to regulate wind projects up to 25 MW, it has no authority under Minn. Stat. § 216F.081 to adopt "more stringent wind standards" and, as a result, there are no county standards for the Commission to consider or apply.

AWA Goodhue respectfully asks that the Administrative Law Judge summarily dispose of this matter by declaring the county ordinance, as a matter of law, does not set standards that apply to the AWA Goodhue project.

ARGUMENT

This motion is brought pursuant to Minnesota Rules parts 1400.5500(K) and 1400.6600. Minn. R. part 1400.5500 K states that part of an ALJ's duties include recommending "a summary disposition of the case or any part thereof where there is no genuine issue as to any material fact."

ALJs regularly handle summary dispositions:

> Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law. The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters. A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.[1]

Whether the county ordinance applies to this project is entirely a question of law, and there are no questions of fact that need to be addressed in order to resolve this legal issue.

A. The Goodhue County Ordinance Does Not Establish Standards That Apply To This Project.

For almost ten years, one of Minnesota's highest priorities has been the replacement of fossil fuels with cleaner, renewable energy sources. To help accomplish this priority, the Legislature gave the Commission the exclusive authority to site wind farms greater than five megawatts. Pursuant to Minnesota Statute § 216F.07, a site permit from the Commission "supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances adopted by regional, county, local, and special purpose governments." The reason for the preemption is to ensure that the state's paramount renewable energy goals are not subordinated or made subservient to the interests of its political subdivisions, interests that are often influenced by local, not state-wide, concerns.

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[1] *In the Matter of the Disqualification of the E & L Food Market, WIC Vendor No. 0630*, OAH Docket No. 3-0900-21030-2, *Recommendation on Motion for Summary Disposition*, April 21, 2010 (footnotes to case citations omitted) (ALJ K. Sheehy).

There are two limited exceptions to the Commission's preemptive authority: (1) the ability of a county, under Minn. Stat. § 216F.08, to assume permitting responsibility for projects under 25 MW, and (2) a county's adoption, pursuant to Minn. Stat. § 216F.081, of standards for LWECS that are more stringent than the Commission's existing permit standards. An LWECS is defined as "any combination of WECS[2] with a combined nameplate capacity of 5,000 kilowatts [5 MW] or more."[3] At 78 MW, the AWA Goodhue project is an LWECS.

Section 216F.081 states as follows:

> A county may adopt by ordinance standards for LWECS that are more stringent than standards in commission rules or in the commission's permit standards. The commission, in considering a permit application for LWECS in a county that has adopted more stringent standards [for LWECS], shall consider and apply those more stringent standards, unless the commission finds good cause not to apply the standards. (Clarification supplied.)

Pursuant to section 216F.081, the Commission is required to consider applying a county's more stringent standards where the county has adopted standards *specifically for LWECS*. Here, Goodhue County has not adopted standards for LWECS. It has instead adopted standards for projects *other than* LWECS.

Section 1 of the county ordinance states that its purpose is to "regulate the installation and operation of Wind Energy Conversion Systems (WECS) within Goodhue County *that have a total nameplate capacity of 5 Megawatts or less (Small wind Energy Conversion Systems – SWECS)* . . . ." (Emphasis added). More specifically, sections 4 and 6 of the ordinance, the sections that contain the bulk of the "more stringent" regulations, including the 10 rotor diameter setback and stray voltage requirements, address only (1) "Non-

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[2] A Wind Energy Conversion System, or WECS, means any device such as a wind charger, windmill, or wind turbine and associated facilities that converts wind energy to electrical energy. Minn. Stat. § 216F.01, subd. 4.

[3] Minn. Stat. § 216F.01, subd. 2.

Commercial WECS" (a WECS[4] of less than 1 MW and 225 feet high or less),[5] (2) "Commercial WECS" (a WECS between one and five megawatts),[6] and (3) "Non-Commercial Micro WECS" (a WECS of one kilowatt or less which use towers 40 feet or less).[7] In short, by its plain terms, the ordinance doesn't set a single standard for LWECS. A copy of the county's ordinance is attached as Exhibit A.

In *Mohler v. City of St. Louis Park*, 643 N.W.2d 623, 634 (Minn. Ct. App. 2002), the court of appeals succinctly set forth the standard for construing zoning ordinances such as the county's, a standard that is well settled in the law.[8] According to *Mohler*, courts focus on three rules of construction: (1) the ordinance should be construed in accordance with the plain and ordinary meaning of its terms, (2) zoning ordinances are to be construed strictly against the governmental entity and in favor of the property owner, and (3) the ordinance must be considered in light of its underlying policy. As *Mohler* clarifies, where the meaning of the ordinance is free from ambiguity (i.e., if it is not susceptible to two or more meanings), there is no room for construction. Only if the court determines the ordinance is ambiguous does it look to legislative intent. *Id.* (citations omitted).

Here, the ordinance is unambiguous; it establishes standards for three different types of wind projects, none of which fall within the definition of LWECS. The most offending of the county's regulations, the 10 RD setback, applies by its plain terms only to "Commercial

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[4] A WECS is defined under Section 2, subp. 37 of the ordinance as "any device such as a wind charger, windmill, or wind turbine and associated facilities that converts wind energy to electrical energy" and is the same definition for WECS under Minn. Stat. § 216F.01, subd. 4.

[5] Ordinance, Section 2, subd. 17.

[6] Ordinance, Section 2 subd.

[7] Ordinance, Section 2, subd. 15.

[8] *See, e.g., SLS P'ship v. City of Apple Valley*, 511 N.W.2d 738, 741 (Minn. 1994); *Franks Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 603, 608-9 (Minn. 1990); *Watab Twp. Citizen Alliance v. Benton County Bd.*, 728 N.W.2d 82 (Minn. Ct. App. 2007), *review denied*; *Clear Channel v. City of St. Paul*, 675 N.W.2d 343 (Minn. Ct. App. 2004), *review denied*; and *SuperAmerica Group, Inc. v. City of Little Canada*, 539 N.W.2d 264, 266 (Minn.Ct. App. 1995), *review denied*.

WECS." Under the ordinance, a Commercial WECS is any WECS between one and five megawatts. The other provisions apply to the other defined categories of SWECS (WECS less than five megawatts). According to the first *Mohler* prong, the ordinance should be given its plain and ordinary meaning, and there is no room for construction. The ordinance by its terms, does not apply to LWECS.

Goodhue County certainly could have drafted its ordinance to apply to LWECS, and a number of other Minnesota counties have done so. Meeker County, for example, has adopted its own ordinance which, unlike Goodhue County's ordinance, defines "Commercial WECS" as any WECS over 100 kW, and plainly states that the more stringent setback of 1000 feet from residences applies to "Commercial WECS." (Section 22.35(5)). Meeker County's ordinance establishes no upper limit, so a project of 78 MW or more will still fall within the county's standards. In addition, Meeker County has taken responsibility for permitting wind projects up to 25 MW, which Goodhue County deliberately refrained from doing.

Stearns County has also established standards for LWECS by adopting an ordinance that doesn't limit its definition of regulated projects to a particular size. The Stearns County ordinance, attached as Exhibit B, simply states that its purpose is to "set forth a process for permitting wind energy conversion systems (WECS) and meteorological towers (MT) not otherwise subject to siting and oversight by the State of Minnesota under the Minnesota Power Plant Siting Act . . . ." It then goes on to set *actual* setback standards for all WECS based on the size of the particular WECS in question. Stearns County, like Meeker, has also taken responsibility for permitting wind projects up to 25 MW.

These distinctions are meaningful. According to *Mohler's* second prong, zoning ordinances, are to be strictly construed *against* the governmental entity and *in favor of* the

property interest holder.[9] Meeker and Stearns Counties show that there are ways in which to draft more stringent standards for LWECS. The law requires the ordinance be construed strictly against Goodhue County and in favor of AWA Goodhue and its more than 200 participating landowners.

In construing zoning ordinances, the last rule of construction allows courts to consider the ordinance in light of its underlying policy.[10] In the last sentence of section 1, the Goodhue County ordinance states that "standards more stringent than those of the MPUC are to be considered and applied to LWECS per MS 216F.081." A mere statement of intent, however, is insufficient to overcome the ordinance's failings under the first two rules of construction. In other words, it would be improper to rescue the ordinance based on obscure policy objectives, where, as here, it is unnecessary to look beyond the words of the ordinance, words that are required to be construed strictly against the county and in favor of AWA Goodhue and its participating landowners.

Minnesota Stat. § 216F.081 requires the Commission to consider and apply a county's standards where the county has specifically adopted more stringent standards for LWECS. Article 18 of the county's zoning ordinance sets standards for wind projects five megawatts and under, not for LWECS such as the AWA Goodhue project. AWA Goodhue respectfully requests that the ALJ declare the ordinance, as a matter of law, inapplicable to this project.

B. A County Must Assume Permitting Authority before the Commission must Consider its "More Stringent Standards."

Paragraph 13 of the ALJ's First Prehearing Order asks parties to brief, in closing arguments, whether Minn. Stat. § 216F.081 is intended to apply only to counties that have assumed, pursuant to section 216F.08, the responsibility to permit LWECS up to 25 MW.

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9 *Mohler,* at 634.

10 *Id.*

Because this issue, like the above issue, presents a dispositive legal question that does not require a factual record before it can be answered, it is appropriate that the question be addressed at the outset of this proceeding before significant time and resources are committed.

Minnesota Statutes § 216F.081 only applies to counties that have assumed responsibility to permit LWECS up to 25 MW under Minn. Stat. § 216F.08. As laid out by the Office of Energy Security's December 20 submittal, including the two affidavits of staff, the legislative authors of section 216F.081 *did intend* that only counties that have adopted permitting responsibility for projects up to 25 MW be able to adopt more stringent standards. The legislative history on the subject matter, including the testimony of former Assistant OES Commissioner Michael Bull, in direct response from a question from Senator Olseen, leaves little doubt that the Legislature intended that the Commission would take into account only those more stringent standards which a county had adopted for the processing of permit applications for LWECs under 25 MW.[11]

Section 216F.081 can reasonably be interpreted in two ways: (1) that *any* county, even those that have not assumed permitting responsibility for LWECS up to 25 MW under section 216F.08, may adopt more stringent standards than the Commission's general standards, or (2) that it is limited *only* to those counties that have actually assumed permitting responsibility for LWECS up to 25 MW. In other words, the statute is ambiguous. And where a statute is ambiguous, reviewing judges are free to examine legislative intent and construe it to effectuate that intent, as the object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. [12]

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[11] OES' Bjorklund Aff. paragraph 17.

[12] Minn. Stat. § 645.16. ("The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.")

Interpreting the statute so that it is limited only to counties that have assumed permitting authority for projects up to 25 MWs is the most reasonable interpretation in light of the established regulatory framework for siting wind turbines in Minnesota. The legislature has designated the Commission as the primary siting authority for large energy projects, including LWECS.[13] Even in the limited circumstance where a county assumes responsibility for permitting LWECS under 25 MWs, the default under section 216F.08(c) is that the Commission's general siting standards (which are based on the Commission's expertise and past experience) apply unless the county adopts more stringent standards.

It is wholly inconsistent with this framework to then read section 216F.081 to require the Commission, when making a decision on a project located in a county that has not adopted permitting authority, to apply the county's more stringent standards. Moreover, it makes little sense for a county to adopt standards for LWECS if the county has no intention of regulating LWECS (up to 25 MW) in the first place. And, it makes even less sense for the Commission to have to apply those standards if the county itself is not inclined to do so.

Last, interpreting section 216B.081 to allow *any* county to adopt more stringent standards is at odds with section 216F.07, which expressly states that a site permit from the Commission preempts all county rules, regulations and ordinances. Rules of statutory construction require that every law be interpreted, to the extent possible, to give effect to all of its related provisions.[14] Accordingly, to give effect to section 216F.07, county standards must be applied only where a county has assumed permitting authority for LWECS up to 25 MW. Any other interpretation would allow the exception to swallow the general rule.

Minn. Stat. § 216F.081 can readily be interpreted so that it is limited, as the Legislature plainly intended, only to those counties that have assumed permit responsibility under Minn. Stat. § 216B.08. Goodhue County is not one of those counties. As the ALJ

[13] Minn. Stat. §§ 216E.02, subd. 2 and 216F.04(a).
[14] Minn. Stat. § 645.16.

surmised in paragraph 13 of the First Prehearing Order, because Goodhue County has chosen not to assume permit responsibility for LWECS up to 25 MW, it has no authority under section 216F.081 to adopt standards for LWECS more stringent than the Commission's permit standards for LWECS, and accordingly, there are no county standards for the Commission to even consider, let alone apply.

CONCLUSION

For the reasons set forth above, AWA Goodhue respectfully asks that the ALJ (1) find that the county ordinance, on its face, does not set standards that apply to this project, (2) that the county lacks authority to adopt more stringent standards for LWECS, (3) recommend dismissal of this contested case on legal grounds, and (4) recommend that the Commission, *post haste*, take up the merits of this case without consideration or application of Article 18 of Goodhue County's Zoning Ordinance.

Dated: December 30, 2010

Respectfully submitted,

/s/ *Todd J. Guerrero*

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Article 18 Wind Energy Conversion System Regulations

SECTION 1. PURPOSE

Purpose – This ordinance is established to regulate the installation and operation of Wind Energy Conversion Systems (WECS) within Goodhue County that have a total nameplate capacity of 5 Megawatts or less (Small Wind Energy Conversion Systems – SWECS) and are not otherwise subject to siting and oversight by the State of Minnesota pursuant to Minnesota Statutes, Chapter 216F, Wind Energy Conversion Systems, as amended. For LWECS, the county does not assume regulatory responsibility or permit authority under MS 216F.08, but any standards more stringent than those of the MPUC are to be considered and applied to LWECS per MS 216F.081

SECTION 2. DEFINITIONS

Subd. 1. **Airfoil**: A part such as a blade, with a flat or curved surface, designed to provide a desired reaction.

Subd. 2. **Azimuth**: A horizontal angle measured clockwise in degrees with 00° 00′ 00″ being the north reference point.

Subd. 3. **Aggregated Project**: Aggregated projects are those which are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual WECS within the larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also included as part of the aggregated project.

Subd. 4. **C-BED Project**: As defined in Minnesota Statutes 216B.1612, as amended. Based on the total name plate generating capacity, C-BED Projects are considered to be (1) Micro-WECS, (2) Non-Commercial WECS or (3) Commercial WECS as defined in this Section.

Subd. 5. **Commercial WECS**: A WECS of 1 megawatt to 5 megawatts in total name plate generating capacity.

Subd. 6. **Comprehensive Plan**: Comprehensive Plan means the policies, statements, goals, and interrelated plans for private and public land and water use, transportation, and community facilities including recommendations for plan execution, documented in texts, ordinances and maps which constitute the guide for future development of the unincorporated area of the County.

Subd. 7. **Decibel**: A unit of measure of sound pressure.

Subd. 8. **dB (A), A-Weighted Sound Level**: A measure of over-all sound pressure level in decibels, designed to reflect the response of the human ear.

Subd. 9. **Fall Zone**: The area, defined as the furthest distance from the tower base, in which a guyed tower will collapse in the event of a structural failure. This area is less than the total height of the structure.

Subd. 10. **Feeder Line**: Any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electric power grid, in the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the WECS.

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EXHIBIT A

Subd. 11. **Generator nameplate capacity**: The maximum rated output of electrical power production of a generator under specific conditions designated by the manufacturer with a name plate physically attached to the generator.

Subd. 12. **Hub Height**: The distance from the ground to the center axis of the turbine rotor.

Subd. 13. **Large wind energy conversion system or LWECS.** "Large wind energy conversion system" or "LWECS" means any combination of WECS with a combined nameplate capacity of 5,000 kilowatts or more.

Subd. 14. **Meteorological Tower**: For the purposes of this Wind Energy Conversation System Ordinance, meteorological towers are those towers which are erected primarily to measure wind speed and directions plus other data relevant to siting WECS. Meteorological towers do not include towers and equipment used by airports, the Minnesota Department of Transportation, or other similar applications to monitor weather conditions.

Subd. 15. **Micro-WECS**: Micro-WECS are WECS of 1 kilowatt nameplate generating capacity or less and utilizing supporting towers of 40 feet or less.

Subd. 16. **Nacelle:** Contains the key components of the wind turbine, including the gearbox, yaw system, and electrical generator.

Subd. 17. **Non-Commercial WECS**: A WECS of less than 1 megawatt in total name plate generating Capacity and 225 feet in total height or less.

Subd. 18. **Non Prevailing Wind**: The non-dominant wind direction in Goodhue County.

Subd. 19 **Power Purchase Agreement**: A legally enforceable agreement between two or more persons where one or more of the signatories agrees to provide electrical power and one or more of the signatories agrees to purchase of power.

Subd. 20. **Preliminary Acoustic Study**: A study certifying the WECS will be in compliance with State of Minnesota Noise Standards.

Subd. 21. **Prevailing Wind**: The predominant wind direction in Goodhue County.

Subd. 22. **Project**: A WECS or combination of WECS.

Subd. 23. **Project Boundary**: The boundary line of the area over which the entity applying for a WECS permit has legal control for purposes of installation of a WECS. This control may be attained through fee title ownership, easement, or other appropriate contractual relationship between the project developer and landowner.

Subd. 24. **Project Owner**: An individual or entity with legal ownership of WECS project.

Subd. 25. **Public conservation lands**: Land owned in fee title by State or Federal agencies and managed specifically for conservation purposes, including but not limited to State Wildlife Management Areas, State Parks, State Scientific and Natural Areas, federal Wildlife Refuges and Waterfowl Production Areas. For the purposes of this section public conservation lands will also include lands owned in fee title by non-profit conservation organizations. Public conservation lands do not include private lands upon which conservation easements have been sold to public agencies or non-profit conservation organizations.

Subd. 26. **Qualified Independent Acoustical Consultant**: A person with Full Membership in the Institute of Noise Control Engineers/INCE, or other demonstrated acoustical

engineering certification. The Independent Qualified Acoustical Consultant can have no financial or other connection to a WECS developer or related company.

Subd. 27. **Rotor**: A system of airfoils connected to a hub that rotates around an axis.

Subd. 28. **Rotor Blades**: See Airfoil.

Subd. 29. **Rotor diameter (RD)**: The diameter of the circle described by the moving rotor blades.

Subd. 30. **Small wind energy conversion system or SWECS:** "Small wind energy conversion system" or "SWECS" means any combination of WECS with a combined nameplate capacity of less than 5,000 kilowatts.

Subd. 31. **Substations**: Any electrical facility designed to convert electricity produced by wind turbines to a voltage greater than 35,000 volts (35 kilovolts) for interconnection with high voltage transmission lines shall be located outside of the road right of way.

Subd. 32. **Total height**: The highest point, above ground level, reached by a rotor tip or any other part of the WECS.

Subd. 33. Total Name Plate Capacity: The total of the maximum rated output of the electrical power production equipment for a WECS project

Subd. 34. **Tower**: Towers include vertical structures that support the electrical generator, rotor blades, or meteorological equipment.

Subd. 35. **Tower height**: The total height of the WECS exclusive of the rotor blades.

Subd. 36. **Transmission Line**: Those electrical power lines that carry voltages of at least 69,000 volts (69 kilovolts) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

Subd. 37. **WECS**: "Wind energy conversion system" or "WECS" means any device such as a wind charger, windmill, or wind turbine and associated facilities that converts wind energy to electrical energy.

Subd. 38. **Wind Turbine**: A wind turbine is any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy through the use of airfoils or similar devices to capture the wind.

SECTION 3. PROCEDURES

Subd. 1. Land Use Permits, Conditional Use Permits, and Variances shall be applied for and reviewed under the procedures established in Article 2, Article 4 and Article 5 of the Goodhue County Zoning Ordinance, except where noted below.

Subd. 2. The application for WECS that are under the permitting authority of this ordinance shall include the following information:

A. The name and address of all project applicants and project owners.
B. The legal description, address, and parcel identification numbers associated with the project.

C. Project description including: the number and type of towers, tower height; if applicable, name plate generating capacity, rotor diameter, and total structure height with blades.
D. A site plan drawn to scale showing the following information within the project boundary and within one mile of the project boundary, unless otherwise noted, (in the case of single towers, the plan shall show this information within a one mile buffer of the individual tower):
    1. The project boundary, parcels lines, and landowner names.
    2. Contours: 2 foot – 10 foot depending on the scale of the project.
    3. Existing structures including but not limited to: buildings, communication towers, and WECS towers.
    4. Existing registered feedlots, registered mining operations, airports, air strips.
    5. Natural and Regulatory features as defined in the County's Environmental Constraints Land Use Evaluation (ECLUE) Model.
    6. Existing roads.
    7. Proposed location of towers, related accessory structures, concrete batch plants, and staging areas. If the location of related structures and staging areas are unknown at the time of application, indicate the proposed size or area dimensions as a note on the plan.
    8. Proposed Haul Routes within the County to be utilized for material transport, construction, and maintenance activities. Indicate which roads the anticipated loads are more than posted weight limits.
E. If energy produced will be used exclusively on-site or connected to a utility electrical grid. If connected to a grid, indicate on the site plan the proposed route and connection points.
F. A Decommissioning plan as outlined in Section 5 of this article.

The application for Commercial WECS, as defined in this article, shall also include the following information:

G. Preliminary Stray Voltage Test as outlined in Section 6, Subd. 1 of this article.
H. A Preliminary Acoustic Study as outlined in Section 8 of this article.
I. A list of all other State and Federal regulatory permits necessary for the project. Evidence of these permit approvals must be provided to the County prior to the issuance of building permits.
J. Documentation indicating if the project is a C-BED project. If the project is a C-BED project, the documentation shall indicate the percentage ownership of the project owners.
K. If the energy produced from a project is not used exclusively on-site but is distributed to a utility electrical grid, provide documentation from the utility companies involved indicating they have entered a Power Purchase Agreement with the project participants.

Subd. 3. Aggregated Projects – Procedures: Aggregated Projects may jointly submit a single application and be reviewed under joint proceedings, including notices, hearings, reviews, and as appropriate, approvals. Permits will be issued and recorded separately. Joint applications will be assessed fees as one project. Aggregated projects having a combined capacity equal to or greater than the threshold for State oversight as set forth in MS Statute 216F.01 through 216F.07 shall be regulated by the State of Minnesota.

Subd. 4 The County may, at its discretion, require a Development Agreement to address specific technical procedures which may include but are not limited to: road use and repair, telephone line repair, site specific issues, payment in lieu of taxes, other financial securities, or real property value protection plans. The County may negotiate with applicants to limit night time noise to a limit of an annual average of 40 decibels (dBA), corresponding to the sound from a quiet street in a residential area (World Health Organization night noise guidelines for Europe).

Subd. 5 WECS projects that have a total nameplate capacity of more than 5 megawatts as regulated by the County shall provide to the County copies of all PUC filings and decisions as it pertains to the proposed project. The owners/operators of such WECS projects shall also provide the items listed in this Section to the County at the time of filing with the PUC in order that the County has adequate time to review and comment on the project to the PUC. The County may, at its discretion, hold public meetings to discuss such projects.

Subd. 6 The applicant must provide proof of liability insurance covering the towers/project covering the lifespan of the project from the initial construction to final decommissioning.

SECTION 4. DISTRICT REGULATIONS

Subd. 1. WECS will be permitted, conditionally permitted or not permitted based on the generating capacity and land use district as established in the table below:

DISTRICT	NON-COMMERCIAL MICRO WECS	NON-COMMERICAL*	COMMERCIAL	METEOROLOGICAL TOWER*
A-1	Permitted	Permitted	Conditionally Permitted	Permitted
A-2	Permitted	Permitted	Conditionally Permitted	Permitted
A-3	Permitted	Conditionally Permitted	Not Permitted	Conditionally Permitted
R-1	Permitted	Not Permitted	Not Permitted	Not Permitted
B-1	Permitted	Conditionally Permitted	Not Permitted	Not Permitted
B-2	Permitted	Conditionally Permitted	Not Permitted	Not Permitted
MXH	Conditionally Permitted	Not Permitted	Not Permitted	Not Permitted
I	Permitted	Permitted	Conditionally Permitted	Permitted
S	Not Permitted	Not Permitted	Not Permitted	Not Permitted
FP	Not Permitted	Not Permitted	Not Permitted	Not Permitted
WS	Not Permitted	Not Permitted	Not Permitted	Not Permitted
CR	Not Permitted	Not Permitted	Not Permitted	Not Permitted
W	Not Permitted	Not Permitted	Not Permitted	Not Permitted

*. **Setbacks – Wind Turbines and Meteorological Towers**

	WIND TURBINE – NON-COMMERICAL MICRO WECS	WIND TURBINE – NON-COMMERCIAL WECS	WIND TURBINE – COMMERCIAL WECS	METEOROLGOCIAL TOWERS
Property lines	1.1 times the total height or in A-1 and A-2 Districts only the distance of the fall zone as certified by a professional engineer plus 10 feet.	1.1 times the total height or in A-1 and A-2 Districts only the distance of the fall zone as certified by a professional engineer plus 10 feet.	3 RD Non-prevailing and 5 RD Prevailing***	The fall zone, as certified by a professional engineer plus 10 feet or 1.1 times the total height.
Neighboring Dwellings*	750 feet This setback requirement may be reduced by the Zoning Administrator subject to maintaining adequate health and safety requirements.	750 feet	750 feet from participating neighboring dwellings; non-participating dwelling setbacks are 10 RD; Setbacks can be less if an owner agrees to a reduced setback, but no less than 750 feet.	The fall zone, as certified by a professional engineer plus 10 feet or 1.1 times the total height.
ROAD RIGHTS OF WAY**	The Distance Of The Fall Zone, As Certified By A Professional Engineer Plus 10 Feet Or 1.1 Times The Total Height	The Distance Of The Fall Zone, As Certified By A Professional Engineer Plus 10 Feet Or 1 Times The Total Height	1.1 Times The Height May Be Reduced For Minimum Maintenance Roads Or A Road With An Average Daily Traffic Count Of Less Than 10.	The Fall Zone, As Certified By A Professional Engineer Plus 10 Feet Or 1.1 Times The Total Height.
OTHER RIGHTS-OF-WAY (RAILROADS, POWER LINES, ETC.)	THE LESSER OF 1.1 TIMES THE TOTAL HEIGHT OR THE DISTANCE OF THE FALL ZONE, AS CERTIFIED BY A PROFESSIONAL ENGINEER PLUS 10 FEET.	The fall zone, as certified by a professional engineer plus 10 feet or 1.1 times the total height.	THE LESSER OF 1.1 TIMES THE TOTAL HEIGHT OR THE DISTANCE OF THE FALL ZONE, AS CERTIFIED BY A PROFESSIONAL ENGINEER PLUS 10 FEET.	THE FALL ZONE, AS CERTIFIED BY A PROFESSIONAL ENGINEER PLUS 10 FEET OR 1.1 TIMES THE TOTAL HEIGHT.

	WIND TURBINE – NON-COMMERICAL MICRO WECS	WIND TURBINE – NON-COMMERCIAL WECS	WIND TURBINE – COMMERCIAL WECS	METEOROLGOCIAL TOWERS
Public conservation lands	1.1 TIMES THE TOTAL HEIGHT	The fall zone, as certified by a professional engineer plus 10 feet or 1.1 times the total height.	3 RD Non-Prevailing and 5 RD Prevailing***	600 feet
Wetlands	1.1 TIMES THE TOTAL HEIGHT	The fall zone, as certified by a professional engineer plus 10 feet or 1.1 times the total height.	1,000 FEET OR 3 RD NON-PREVAILING AND 5 RD PREVAILING***	600 feet
Other Structures	The fall zone, as certified by a professional engineer plus 10 feet or 1.1 times the total height.	3 RD Non-Prevailing and 5 RD Prevailing***	The fall zone, as certified by a professional engineer plus 10 feet or 1.1 times the total height.	The fall zone, as certified by a professional engineer plus 10 feet or 1 times the total height.
Other Existing WECS and Internal Turbine Spacing	NA	750 FEET FROM TOP OF BLUFF (MISSISSIPPI RIVER AND CANNON RIVER), 500 FEET FROM TOP OF BLUFF FROM OTHER BLUFFS IN SHORELAND AREAS OR FOR NON-SHORELAND BLUFFS.	3 RD Non-Prevailing and 5 RD Prevailing	The fall zone, as certified by a professional engineer plus 10 feet or 1 times the total height. -Extent of wake interference impacts on existing WECS shall be considered
BLUFFS	750 FEET FROM TOP OF BLUFF (MISSISSIPPI RIVER AND CANNON RIVER), 500 FEET FROM TOP OF BLUFF FROM OTHER BLUFFS IN SHORELAND AREAS OR FOR NON-SHORELAND BLUFFS.		1350 FEET FROM TOP OF BLUFF (MISSISSIPPI RIVER AND CANNON RIVER), 500 FEET FROM TOP OF BLUFF FROM OTHER BLUFFS IN SHORELAND AREAS OR FOR NON-SHORELAND BLUFFS.	1350 FEET FROM TOP OF BLUFF (MISSISSIPPI RIVER AND CANNON RIVER), 500 FEET FROM TOP OF BLUFF FROM OTHER BLUFFS IN SHORELAND AREAS OR FOR NON-SHORELAND BLUFFS.

* The setback for dwellings, schools, churches, health care facilities, campgrounds shall be reciprocal unless the owner or authorized agent signs a letter of understanding waiving this setback, but no less than a 750 foot setback.

** The setback shall be measured from future rights-of-way if a planned changed or expanded right-of-way is known.

***Prevailing and Non Prevailing Rotor Diameter setbacks shall be measured horizontally from the

tower base.

- Prevailing Wind –Azimuth between 290 degrees to 30 degrees and between 130 degrees and 230 degrees.

- Non-Prevailing Wind – Azimuth between 30 degrees and 130 degrees and between 230 degrees and 290 degrees.

Setbacks – Substations and Accessory Facilities:

Minimum setback standards for substations and feeder lines shall be consistent with the standards for essential services established in Article 15 (Essential Services) of the Goodhue County Zoning Ordinance.

Substation setbacks

- 0 feet / structure setback from road ROW – located wholly outside the ROW.

- Property lines 0 feet / structure setback from property lines/side yard.

SECTION 5. REQUIREMENTS AND STANDARDS

Subd. 1. Safety Design Standards

A. Engineering Certification – For all WECS, a Minnesota licensed engineer shall certify that the turbine, foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.

B. Clearance – Rotor blades or airfoils must maintain at least 12 feet of clearance between their lowest point and the ground.

C. Warnings –For all Commercial WECS, a sign or signs shall be posted on the tower, transformer and substation warning of high voltage.

Subd. 2. Total height – Non-Commercial WECS shall have a total height of 225 feet or less.

Subd. 3. Tower configuration – All wind turbines, which are part of a commercial WECS, shall be installed with a tubular, monopole type tower.

Subd. 4. Meteorological towers may be guyed.

Subd. 5. Color and Finish – All wind turbines and towers that are part of a commercial WECS shall be white, grey or another non-obtrusive color. Blades may be black in order to facilitate deicing. Finishes shall be matte or non-reflective. Exceptions may be made for metrological towers, where concerns exist relative to aerial spray applicators.

Subd. 6. Lighting – Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by Federal Aviation Administration permits and regulations,. Red strobe lights are preferred for night-time illumination to reduce impacts on migrating birds. Red pulsating incandescent lights should be avoided. Exceptions may be made for metrological towers, where concerns exist relative to aerial spray applicators.

Subd. 7. Other Signage – All signage on site shall comply with Article 11 (Performance Standards), Section 18. (Sign Regulations) of the Goodhue County Ordinance. The manufacturer's or owner's company name and/or logo may be placed upon the nacelle of the WECS.

Subd. 8. Feeder Lines – All communications and feeder lines, equal to or less than 34.5 kilovolts in capacity, installed as part of a WECS shall be buried where reasonably feasible. Feeder lines installed as part of a WECS shall not be considered an essential service. This standard applies to all feeder lines subject to Goodhue County Ordinances.

Subd. 9. Waste Disposal – Solid and Hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site promptly and disposed of in accordance with all applicable local, state and federal regulations.

Subd. 10. Avoidance and mitigation of damages to Public Infrastructure:

A. All public roads to be used for the purpose of transporting WECS, substation parts, materials, and/or equipment for construction, operation or maintenance of the WECS shall obtain applicable weight and size permits from the impacted road authorities prior to construction.

B. Contact the road authority for road closures, road signage removals, road signage re-locating, road signage restoring, moving permits, culverts, access/driveway permits, tile outlet permits, widening road intersections, standard utility permits and any other road activities that may require permits.

C. Contact Goodhue County Dispatch prior to any road closures for the re-routing of emergency vehicles. Notify and consult with affected property owners to ensure reasonable access.

D. Contact the road authority to conduct an inspection of the road conditions of the haul routes prior to and after construction.

E. The applicant shall retain a Minnesota Licensed Engineer approved by the County Engineer to analyze bridges along the haul routes to determine if the bridges have the capacity to support the oversized vehicles. The applicant shall provide a signed report by the registered engineer to the road authority to the use of the bridges identified on the haul routes.

F. The applicant shall provide financial assurance in the form of a cash escrow or irrevocable letter of credit in an amount equal to 125% of the cost(s) to repair anticipated damages to public infrastructure including public roads and drainage systems as determined by the road authority, to be held by the County until the Township and/or County road authority have provided the County Public Works Director and the County Finance Director with a written release that all haul routes within their jurisdiction in Goodhue County have been returned to pre-construction condition by the Applicant/Developer. As an alternative for paved roads the road authorities may agree to accept a payment as reimbursement for the road life consumed by the project.

G. The developer will be responsible to maintain the haul roads during construction to insure they can be used by the travelling public.

H. The road authority will repair the roads if the Applicant/Developer is not responsive and invoice Applicant/Developer.

Subd. 11. The Applicant shall be responsible for immediate repair of damage to public and private drainage systems stemming from construction, operation, maintenance, or decommissioning.

Subd. 12. Discontinuation and Decommissioning - A WECS shall be considered a discontinued use after 1 year without energy production, unless a plan is developed and submitted to the Goodhue County Zoning Administrator outlining the steps and schedule for returning the WECS to service.

A. All WECS towers shall be removed from the properties and properly disposed of, recycled, or reclaimed within 90 days of discontinuation of use. Accessory facilities, footings and foundations must be reviewed by an engineer, geoscientist, and/or the Building Official to determine the reuse or environmental impact of removal within 90 days of the discontinuation of use. If it is determined that the footings or foundations must be removed, a removal plan must be submitted to the County for approval.

B. Each WECS shall have a Decommissioning plan outlining the anticipated means and cost of removing WECS at the end of their serviceable life or upon becoming a discontinued use.

C. The cost estimates shall be made by a competent party approved by the County; such as a Professional Engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning.

D. The plan shall also identify the financial resources that will be available to pay for the decommissioning and removal of the WECS and accessory facilities.

E. The owner and/or operator shall provide financial security in the form of a cash escrow or an irrevocable letter of credit in an amount equal to 125% of the cost estimate prepared by a competent party (see paragraph C) to ensure that decommissioning of Commercial WECS is completed as required in this subdivision.

Subd. 13. Orderly Development – Upon issuance of a conditional use permit, all Commercial WECS shall notify the PUC or Department of Commerce, Energy Facility Permitting staff of the project, location, and details on the survey form specified by the PUC.

SECTION 6. STRAY VOLTAGE TESTING FOR COMMERCIAL WECS PROJECTS

Subd. 1 Pre-construction Stray Voltage Test. The applicant shall offer to perform at least two pre-construction stray voltage tests at all registered feedlots within the proposed project boundary and within a one-mile radius beyond the proposed project boundary. The applicant shall pay for these associated costs.

Subd. 2. A copy of the test results shall be sent to each of the following: property owners, Minnesota Public Utilities Commission, local utilities, and the County. The applicant shall obtain written permission from property owners prior to stray voltage testing. If permission is denied, all responsibility for stray voltage problems shall be with the property owner.

Subd. 3 If a registered feedlot owner within the project boundary has a stray voltage test performed for their facility, and it is found that the cause of the stray voltage is attributed to the Commercial WECS project, the project owners shall pay for all costs associated with the testing and correcting of the problem.

SECTION 7. PRELIMINARY ACOUSTIC STUDY FOR COMMERCIAL WECS PROJECTS

Subd. 1. An acoustic study that demonstrates the project will be compliant with State of Minnesota Noise Standards.

Subd. 2. This shall include the estimated dB (A) levels at all receptors within one (1) mile of the nearest turbine within a project area and shall include accumulated sound within the project.

SECTION 8. LOCAL EMERGENCY SERVICES NOTIFICATION REQUIREMENTS FOR COMMERCIAL WECS PROJECTS

Subd. 1 The Applicant shall provide a copy of the project summary and site plan to local emergency services, including paid or volunteer Fire Department(s) that serve the WECS project area.

Subd. 2. The Applicant shall coordinate with local emergency response serves for the WECS Project. A copy of the plan shall be submitted to the Goodhue County Office of Emergency Management.

SECTION 9. OTHER APPLICABLE STANDARDS

Subd. 1. Noise – All WECS shall comply with State of Minnesota Noise Standards.

Subd. 2. Electrical codes and standards – All WECS and accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.

Subd. 3. Owner/Operator contact information shall be provided to the County on a yearly basis.

Subd. 4. Minnesota State Building Code – All WECS shall comply with the Minnesota State Building Code.

Subd. 5. Interference – The applicant shall minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals cause by any WECS. The applicant shall notify all communication tower operators within two miles of the proposed WECS location upon application to the county for permits. No WECS shall be constructed so as to interfere with County or Minnesota Department of Transportation microwave transmissions.

07-1102

COUNTY OF STEARNS

Environmental Services Department

Administration Center Rm 343 • 705 Courthouse Square • St. Cloud, MN 56303
320-656-3613 • Fax 320-656-6484 • 1-800-450-0852

December 10, 2009

Minnesota Public Utilities Commission
Burl Haar, Executive Director
Public Utilities Commission
121 7th Place E., Suite 350
Saint Paul, MN 55101-2147

Dear Mr. Haar:

Pursuant to Minnesota Statute, Chapter 216F.08, the purpose of this letter is to inform you that on November 17th, 2009 the Stearns County Board of Commissioners assumed responsibility for processing applications for permits for Large Wind Energy Conversion Systems with a combined nameplate capacity of less than 25,000 kilowatts. A copy of the Resolution and related Ordinance are enclosed.

If you have any questions, please call 656-3613 or 1-800-450-0852.

Sincerely,

Angie Berg
Land Use Division Director

OK FOR PAPER COPY
TRANSMITTAL
Burl Haar 2/12/10
Burl Haar, Executive Secretary/Date

CC: Deb Pile, PUC
Enc.

Stearns County Resolution Number 09-81

RESOLUTION FOR THE ASSUMPTION OF LARGE WIND ENERGY CONVERSION SYSTEMS PERMIT AUTHORITY

WHEREAS, the Stearns County Environmental Services Director will forward all Wind Energy Conversion System (WECS) applications to the Minnesota Public Utilities Commission in determining what jurisdiction has siting authority pursuant to Minnesota Statutes Chapter 216F.011; and

WHEREAS, the Minnesota Public Utilities Commission shall consider and apply the Stearns County Land Use and Zoning Ordinance standards as they relate to wind energy conversion systems as amended that are more stringent than commission rules unless the commission finds good cause not to apply the standards pursuant to Minnesota Statutes Chapter 216F.081; and

WHEREAS, the Stearns County Board of Commissioners has adopted the following specific standards that are more stringent than the General Wind Turbine Permit Setbacks as cited in Minnesota Public Utilities Commission Order Establishing General Wind Permit Standards, issued January 11, 2008, PUC Docket E,G-999/M-07-1102:

1. Residential Dwellings/Occupied Structures shall have a more stringent setback of 750 feet; and
2. Property Lines shall have a more stringent setback of 1.1 times the total height; and
3. Right of Way shall have a more stringent setback of 250 feet or 1.1 times the total height, whichever is greater; and
4. Project boundary shall have a more stringent setback of 5 times the rotor diameter unless otherwise approved by the Board; and
5. Internal turbine spacing shall be 5 rotor diameters downwind spacing and 3 rotor diameters apart for crosswind spacing.

WHEREAS, the Stearns County Board of Commissioners fully entrusts the Minnesota Public Utilities Commission to ensure full compliance with the General Wind Permit Standards, issued January 11, 2008, PUC Docket E,G-999/M-07-1102 and those more stringent standards as identified within this resolution. The Stearns County Board of Commissioners consider the compliance of the Wind Access Buffer Setback for land and/or wind rights not under permittee's control paramount to the orderly development of Large Wind Energy Conversion System (LWECS) Development in Stearns County; and

WHEREAS, the Stearns County Environmental Services Director shall create an integrated process with the Minnesota Public Utilities Commission and notify the Stearns County Board of Commissioners of any actions by the Minnesota Public Utilities Commission or LWECS Permittee that would preclude or hinder the strict

adherence to Murray County's more stringent standards and as cited in the resolution; and

THEREFORE BE IT RESOLVED, the Stearns County Board of Commissioners hereby assume responsibility for processing permit applications for LWECS within Stearns County, Minnesota, with combined nameplates of less than 25,000 kilowatts, pursuant to Minnesota Statutes Chapter 216F.08.

Adopted by the Stearns County Board of Commissioners this 17th day of November 2009.

Leigh Lenzmeier, Chair
Stearns County Board of Commissioners

ATTEST:

Randy R. Schreifels
Stearns County Auditor-Treasurer
Clerk, Stearns County Board of Commissioners

ORDINANCE NUMBER 433

AN ORDINANCE AMENDING STEARNS COUNTY ORDINANCE NUMBER 209

THE COUNTY BOARD OF STEARNS COUNTY ORDAINS:

Section 1.0 That the following is hereby enacted as *Section 3.2.5A of Stearns County Ordinance Number 209:*

3.2.5A Aggregated Project
Aggregated projects are those WECS projects which are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual WECS within the larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also included as part of the aggregated project.

Section 2.0 That the following is hereby enacted as *Section 3.2.79A of Stearns County Ordinance Number 209:*

3.2.79A Feeder Line
Any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electric power grid, in the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the WECS.

Section 3.0 That the following is hereby enacted as *Section 3.2.129A of Stearns County Ordinance Number 209:*

3.2.129A Micro-WECS
Micro-WECS are WECS of 1kw nameplate generating capacity or less and utilizing supporting towers of 40 feet or less.

Section 4.0 That the following is hereby enacted as *Section 3.2.178A of Stearns County Ordinance Number 209:*

3.2.178A Rotor Diameter
The diameter of the circle described by the moving rotor blades of a WECS.

Section 5.0 That the following is hereby enacted as *Section 3.2.211A of Stearns County Ordinance Number 209:*

3.2.211A Transmission Line
Those electrical power lines that carry voltages of at least 69,000 volts (69KV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

Section 6.0 That the following is hereby enacted as *Section 3.2.218A of Stearns County Ordinance Number 209:*

3.2.218A WECS – Wind Energy Conversion System
An electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, substations and meteorological towers that operate by converting the kinetic energy of wind into electrical energy. The energy maybe used on-site or distributed into the electrical grid.

Section 7.0 That the following is hereby enacted as *Section 3.2.220A of Stearns County Ordinance Number 209:*

3.2.220A Wind Turbine
A wind turbine is any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy through the use of airfoils or similar devices to capture the wind.

Section 8.0 That *Section 6.53 of Stearns County Ordinance Number 209* as presently enacted is hereby repealed.

Section 9.0 That the following is hereby enacted as *Section 6.53 of Stearns County Ordinance Number 209:*

6.53 Wind Energy Conversion Systems (WECS)

6.53.1 Purpose

A. The purpose of this section is to set forth a process for permitting wind energy conversion systems (WECS) and meteorological towers (MT) not otherwise subject to siting and oversight by the State of Minnesota under the *Minnesota Power Plant Siting Act, Minnesota Statutes, section 216F.01-216F.081; or successor statutes.*

6.53.2 Procedures

A. Applicants requesting a construction site permit, interim use permit or conditional use permit for a WECS greater than 1kw or MT shall furnish the Department the following information: a site plan showing lot lines, the accurate location of all buildings and structures on the site and on each adjacent lot, the proposed location of the WECS or MT and any related guy wires, poles or anchors, interconnection points with the electrical grid, and a sketch elevation of the premises accurately depicting the proposed WECS or MT and its relationship to structures on adjacent lots;

B. An analysis of the impact of the proposed WECS locations on the ability of adjoining property owners to site WECS on their property;

C. For WECS less than 40kw, the Department will send notification to all communication tower operators within ¼ mile of the proposed WECS. For WECS 40kw or more, documentation that the applicant notified all communication tower operators within 5 miles of the proposed WECS location and that the proposed WECS will minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals. No WECS shall be constructed so as to interfere with County or Minnesota Department of Transportation microwave transmissions. The burden of proof shall be placed on the applicant to document that the proposed WECS will not interfere with the line of sight of other towers;

D. Location of existing or proposed access roads;

E. For WECS over 40kw, evidence of power purchase contracts, if applicable;

F. Manufacturer's description of all equipment;

G. Location of wetlands, scenic and natural areas and shoreland within 1,320 feet of the proposed WECS or MT;

H. An acoustical analysis;

I. A decommissioning plan;

J. A description of potential impacts on nearby WECS and communication equipment;

K. Means of interconnecting with the electrical grid;

L. For WECS that are 5mw - 25mw, the latitude and longitude of individual wind turbines, a USGS topographical map, or map with similar data, of the property and surrounding area, including any other WECS within 10 rotor diameters of the proposed WECS, and an FAA permit application.

M. Applicants requesting a construction site permit or conditional use permit for a micro-WECS shall furnish the Department the following information: a site plan showing lot lines, the accurate location of all buildings and structures on the site, setbacks, and the proposed location of the micro-WECS.

6.53.3 Aggregated Projects – Procedures

A. Proposers of Aggregated Projects may jointly submit a single application and be reviewed under joint proceedings, including notices, hearings, reviews and as appropriate approvals. Permits will be issued and recorded

separately. Joint applications will be assessed fees as one project. Aggregated projects having a combined capacity equal to or greater than the threshold for State oversight as set forth in *Minnesota Statutes 216F.01 through 216F.08; or successor statutes,* shall be regulated by the State of Minnesota.

6.53.4 District Regulations

A. WECS and MT may be allowed as a permitted, interim or conditional use, or not permitted based on the generating capacity and/or zoning district as established in the table below:

District	Micro-WECS	1.1kw-5.99kw	6kw-40kw	40.01kw-4.99mw	5mw and larger	Meteorological Towers
A-160	Permitted	Permitted	Permitted	CUP	CUP	IUP
A-80	Permitted	Permitted	Permitted	CUP	CUP	IUP
A-40	Permitted	Permitted	Permitted	CUP	CUP	IUP
T-20	Permitted	Permitted	Permitted	CUP	Not Permitted	IUP
R-20	Permitted	Permitted	CUP	Not Permitted	Not Permitted	Not Permitted
R-10	Permitted	Permitted	CUP	Not Permitted	Not Permitted	Not Permitted
R-5	Permitted	Permitted	CUP	Not Permitted	Not Permitted	Not Permitted
R-1	Permitted	Permitted	CUP	Not Permitted	Not Permitted	Not Permitted
Rural Townsite	Permitted	Permitted	CUP	Not Permitted	Not Permitted	Not Permitted
Commercial Recreation	Permitted	Permitted	CUP	CUP	Not Permitted	IUP
Limited Industrial	Permitted	Permitted	Permitted	CUP	CUP	IUP
General Industrial	Permitted	Permitted	Permitted	CUP	CUP	IUP
Educational/Ecclesiastical	Permitted	Permitted	CUP	CUP	CUP	IUP
Scenic River	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Residential Manufactured Home	Conditional	Conditional	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Shoreland Overlay	Permitted	Permitted	Permitted	Not Permitted	Not Permitted	Not Permitted

6.53.5 Setbacks

A. All WECS and MT shall adhere to the setbacks established in the table below.

	Micro-WECS	1.1kw-5.99kw	6kw-40kw	40.01kw-4.99mw	5mw and larger	Meteorological Towers[5]
Property Lines[1]	1.1 times the total height	1.1 times the total height	1.1 times the total height	1.1 times the total height	1.1 times the total height	1.1 times the total height
Right of Way	1.1 times the total height	1.1 times the total height	1.1 times the total height	1.1 times the total height	250 feet or 1.1 times the total height, whichever is greater	1.1 times the total height
Occupied Structure[2]	1.1 times the total height	1.1 times the total height	200 feet or 1.1 times the total height whichever is greater	750 feet	750 feet	The fall zone, as certified by a professional engineer + 10 feet or 1.1 times the total height.
Project Boundary[3]					5 times the rotor diameter[4]	
Internal Turbine Spacing					5 rotor diameters downwind spacing, 3 rotor diameters apart for crosswind spacing	

1) A recorded fall zone easement acceptable to the Department may be allowed in lieu of the required setback, provided all other setbacks are met.

2) The setbacks for an occupied structure shall be reciprocal. For the purposes of this Section, an occupied structure shall include, but is not limited to, structures such as residential dwelling units, schools, churches and places of business. In instances where a fall zone easement has been recorded, the occupied structure setback is not required. For WECS 40kw or less, the setback for an occupied structure does not apply to structures on the same parcel as the WECS.

3) Project boundary shall include all parcels of land which have a wind easement for one wind project.

4) It has been documented that the most important directions to access wind for energy production is north, northwest, southwest, and south therefore the Board may authorize a setback of less than 5 times the rotor diameter if the applicant demonstrates that due to the wind direction, the wake interference is less than 5 rotor diameters.

5) Meteorological towers in conjunction with a wind energy project between 5mw and 25mw shall be placed no closer than 250 feet from the edge of the road right-of-way and from the boundaries of the developer's site control.

B. Substations and accessory facilities
   (1) Minimum setback standards for substations and feeder lines shall be consistent with the standards for essential services established in *Section 7.6 of this Ordinance.* For purposes of this section, substations are defined as any electrical facility designed to convert electricity produced by wind turbines to a voltage greater than 35,000 volts (35KV) for interconnection with high voltage transmission lines shall be located outside of the road right-of-way.

6.53.6 Requirements and Standards

A. Safety Design Standards.
   (1) Engineering Certification. The manufacturer's engineer or another qualified engineer shall certify that the turbine, foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.
   (2) Clearance. Rotor blades or airfoils must maintain at least 25 feet of clearance between their lowest point and the ground.
   (3) All WECS or MT utilizing a tower as the support structure shall be guarded against unauthorized climbing. The first twelve (12) feet of the tower shall be unclimbable by design or be enclosed by a six (6) foot high unclimbable fence with a secured access.
   (4) Maintenance. All WECS must have routine maintenance as recommended by the manufacturer and at a minimum of once every three years. A copy of the maintenance report shall be filed with the Department. Maintenance must be completed by a qualified individual acceptable to the Department.

B. Total Height. Total height is measured as the highest point, above ground level, reached by a rotor tip or any other part of the WECS. All WECS that are less than 40Kw must be less than two hundred (200) feet in total height, unless approved pursuant to *Section 4.8 of this Ordinance.*

C. Tower Configuration.
   (1) All WECS with a rating greater than 5Kw must use self supporting towers. The base for such towers shall be designed to anchor and support the tower for the site, and is further subject to *Section 6.53.6A(1) of this Ordinance.*
   (2) Meteorological towers may be guyed provided the guy wires are protected by fencing or other means to protect the safety of the users of the property.

D. Design. To the extent feasible, projects involving multiple WECS shall consist of turbines of similar design, height and size. All turbines shall rotate in the same direction and shall be consistent in design, color and rotational direction with adjacent facilities.

E. Noise. WECS shall, at a minimum, meet the noise standard of *Minnesota Rules, chapter 7030; or successor rules*. Additional, local limits relative to impulsive and pure tone noises may be imposed if the Planning Commission determines it is appropriate and necessary to protect the public health and welfare.

F. Feeder Lines. All feeder lines used to collect power from individual turbines and all associated communication lines shall be buried underground. Exemptions may be granted by the Department in instances where shallow bedrock interferes with the ability to bury lines. Feeder lines installed as part of a WECS shall not be considered an essential service.

G. Color and Finish. All wind turbines and towers that are part of a 5mw or larger project shall be white, grey or another non-obtrusive color. Blades may be black in order to facilitate deicing. Finishes shall be matt or non-reflective. Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators.

H. Decommissioning. Applications for WECS above 5Kw and MT shall include a decommissioning plan to ensure that facilities are properly removed after their useful life. A WECS shall be considered a discontinued use after 1 year without energy production, unless a plan is developed and submitted to the Director outlining the steps and schedule for returning the WECS to service. Decommissioning shall be completed within 120 days. The decommissioning plan shall include provisions for removal of all structures and foundations, restoration of soil and vegetation and a cost estimate made by a competent party; such as a Professional Engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning. The plan shall also identify the financial resources that will be available to pay for the decommissioning and removal of the WECS and accessory facilities. Disposal of structures and/or foundations shall meet the provisions of *Stearns County Solid Waste Ordinance Number 171; or successor Ordinance.* In the case of facilities requiring a conditional use permit or interim use permit, the Planning Commission may require the posting of a bond, letter of credit or the establishment of an escrow account to ensure proper decommissioning.

I. Orderly Development. Upon issuance of a conditional use permit, all owners of 5mw - 25mw WECS shall notify the Minnesota Public Utilities Commission Power Plant Siting Act program staff of the project location and details.

J. Minimum Standards.

(1) All WECS and MT shall be in compliance with any applicable local, state and federal regulatory standards, including the following:

(a) The *State of Minnesota Uniform Building Code, as amended*; and

(b) The *National Electric Code*, as amended; and

(c) Any applicable MNDOT Department of Aviation and Federal Aviation Administration requirements.

(d) Setbacks from private air strips shall be determined on a case by case basis.

(2) Equipment for all WECS and MT shall conform to the applicable industry standards, including the *American Wind Energy Association Standard for Wind Turbine Design* and related standards adopted by the *American National Standards Institute (ANSI)*.

(3) All WECS to be installed shall be equipped with redundant braking systems, including aerodynamic, variable pitch overspend controls and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode, whereby they are engaged in the case of loss of load on the generator. Stall regulation shall not be considered a sufficient braking system for over speed protection.

(4) Lighting, including lighting intensity and frequency of strobe shall adhere to, but not exceed, requirements established by Federal Aviation Administration permits and regulations. Red strobe lights are preferred for night-time illumination to reduce impacts on migrating birds. Red pulsating incandescent lights should be avoided.

(5) WECS and MT shall be located such that they do not cause interference with legal commercial or private telecommunication devices including, but not limited to radios, televisions, telephones, personal communication devices and other electronic equipment or devices in accordance with the Federal Communications Commission.

(6) Each WECS or MT shall have one sign not exceeding three square feet posted at the base of the tower specifying the following information: warning, high voltage; manufacturer's name; and emergency phone numbers. No other signage is permitted on a WECS or MT.

(7) All applicants shall identify all county, city or township roads or drainage systems to be impacted by or used for the purpose of transporting any equipment or supplies related to construction, operation and maintenance of a WECS or MT and obtain applicable weight and size permits from the applicable road authority(ies) prior to construction. The applicant shall conduct a pre-construction survey with the local road and drainage authority(ies) to determine existing road conditions and the conditions of any drainage utilities potentially impacted and shall document said conditions photographically and thereafter enter into a written agreement with the appropriate road and drainage authority(ies) to document the road and/or drainage utility conditions. The applicant is responsible for restoring roads, bridges or drainage utilities to preconstruction conditions or for paying damages as agreed to by the applicable road and drainage authority(ies).

K. The Department may choose to consult with outside agencies and/or consultants to determine if the application meets the requirements of this ordinance, state and federal laws. Any charges of fees resulting from such consultation will be the responsibility of the applicant for payment.

L. For wind energy conversion systems between 5mw and 25mw, the applicant shall follow the *Minnesota Department of Commerce Large Wind Energy*

Conversion System General Wind Turbine Permit Setbacks and Standards; or successor standards attached as *Appendix D of this Ordinance.* All setbacks shall conform to *Section 6.53.5A of this Ordinance.*

Section 10.0 That the following is hereby enacted as *Appendix D of Stearns County Ordinance Number 209:*

(See attached Appendix D)

Section 11.0 That this Ordinance shall be in full force and effect after its passage and publication as provided by law.

Passed by the Stearns County Board of Commissioners this 17th day of November, 2009.

Leigh Lenzmeier, Chair
Stearns County Board of Commissioners

Attest:
Randy R. Schreifels,
Stearns County Auditor-Treasurer
Clerk
Stearns County Board of Commissioners

Appendix D

Minnesota Public Utilities Commission

General Wind Turbine Permit Setbacks and Standards for Large Wind Energy Conversion System (LWECS) Permitted Pursuant to Minnesota Statute 216F.08

Resource Category	General Permit Setback	Minimum Setback
Wind Access Buffer (setback from lands and/or wind rights not under permittee's control)	Wind turbine towers shall not be placed less than 5 rotor diameters (RD) from all boundaries of developer's site control area (wind and land rights) on the predominant wind axis (typically north-south axis) and 3 rotor diameters (RD) on the secondary wind axis (typically east-west axis), without the approval of the permitting authority. This setback applies to all parcels for which the permittee does not control land and wind rights, including all public lands.	3 RD (760 – 985 ft) on east-west axis and 5 RD (1280 – 1640 ft) on north-south using turbines with 78 – 100 meter rotor diameters.
Internal Turbine Spacing	The turbine towers shall be spaced no closer than 3 rotor diameters (RD) for crosswind spacing (distance between towers) and 5 RD downwind spacing (distance between strings of towers). If required during final micro siting of the turbine towers to account for topographic conditions, up to 20 percent of the towers may be sited closer than the above spacing but the permittee shall minimize the need to site the turbine towers closer.	5 rotor diameters downwind spacing 3 rotor diameters apart for crosswind spacing
Noise Standard	Project must meet Minnesota Noise Standards, Minnesota Rules Chapter 7030, at all residential receivers (homes). Residential noise standard NAC 1, L50 50 dBA during overnight hours. Setback distance calculated based on site layout and turbine for each residential receiver.	Typically 750 – 1500 ft is required to meet noise standards depending on turbine model, layout, site specific conditions.
Homes	At least 500 ft and sufficient distance to meet state noise standard.	500 feet + distance required to meet state noise standard.
Public Roads and Recreational Trails	The turbine towers shall be placed no closer than 250 feet from the edge of public road rights-of-way. Setbacks from state trails and other recreational trails shall be considered on a case-by-case basis.	Minimum 250 ft
Meteorological Towers	Meteorological towers shall be placed no closer than 250 foot from the edge of road rights-of-way and from the boundaries of developer's site control (wind and land rights). Setbacks from state trails and other recreational trails shall be considered on a case-by-case basis.	Minimum 250 ft
Wetlands	No turbines, towers or associated facilities shall be located in public waters wetlands. However, electric collector and feeder lines may cross or be placed in public waters or public water wetlands subject to DNR, FWS and/or USACOE permits.	No setback required pending further PUC action.

Native Prairie	Turbines and associated facilities shall not be placed in native prairie unless approved in native prairie protection plan (see native prairie standard below). Native prairie protection plan shall be submitted if native prairie is present.	No setback required.
Sand and Gravel Operations	No turbines, towers or associated facilities in active sand and gravel operations, unless negotiated with the landowner.	
Aviation (public and private airports)	No turbines, towers or associated facilities shall be located so as to create an obstruction to navigable airspace of public and private airports in Minnesota or adjacent states and/or providences.	Setbacks or other limitations determined in accordance with MNDOT Department of Aviation and Federal Aviation Administration requirements.

Additional General Permit Standards

Pre-Application Project Size Determination.

Pursuant to Minnesota Statute 216F.011, applications to a county for a LWECS permit are not complete without a project size determination provided by the Commissioner of the Minnesota Department of Commerce. Requests for size determination shall be submitted on forms provided by the Department of Commerce. Upon written request of a project developer and receipt of any supplemental information requested by the commissioner, the commissioner of commerce shall provide a written size determination within 30 days. In the case of a dispute, the chair of the Public Utilities Commission shall make the final size determination.

Pursuant to Minnesota Statute 216F.011, the total size of a combination of wind energy conversion systems for the purpose of determining what jurisdiction has siting authority must be determined according to the criteria below:

The nameplate capacity of one wind energy conversion system must be combined with the nameplate capacity of any other wind energy conversion system that:

(1) is located within five miles of the wind energy conversion system;

(2) is constructed within the same 12-month period as the wind energy conversion system; and

(3) exhibits characteristics of being a single development, including, but not limited to, ownership structure, an umbrella sales arrangement, shared interconnection, revenue sharing arrangements, and common debt or equity financing.

Wind Turbines Design Standards. All turbines shall be commercially available, utility scale, not prototype turbines. Turbines shall be installed on tubular, monopole design towers, and have a uniform white/off white color. All turbine towers shall be marked with a visible identification number.

Underground and Overhead Electric Collection and Feeder Lines. The permittee shall place electrical lines, known as collectors, communication cables, and associated electrical equipment such as junction boxes underground when located on private property. Collectors and cables shall also be placed within or adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.

The permittee shall place overhead or underground 34.5 kV electric lines, known as feeders within public rights-of-way or on private land immediately adjacent to public rights-of-way if a public right-of-way exists, except as necessary to avoid or minimize human, agricultural, or environmental impacts. Feeder lines may be placed on public rights-of-way only if approval or the required permits have been obtained from the governmental unit responsible for the affected right-of-way. In all cases, the permittee shall avoid placement of feeder lines in locations that may interfere with agricultural operations. Not withstanding any of the requirements to conduct surveys before any construction can commence, the permittee may begin immediately upon issuance of a LWECS site permit to construct the 34.5 kV feeder lines that will be required as part of the project.

Any guy wires on the structures for feeder lines shall be marked with safety shields.

Topsoil and Compaction. The permittee must protect and segregate topsoil from subsoil on all lands unless otherwise negotiated with affected landowner. Must minimize soil compaction of all lands during all phases and confine soil compaction to as small area as possible.

Fences. The permittee shall promptly repair or replace all fences and gates removed or damaged during project life and provide continuity of electric fence circuits.

Drainage Tile. The permittee shall take into account, avoid, promptly repair or replace all drainage tiles broken or damaged during all phases of project life unless otherwise negotiated with affected landowner.

Equipment Storage. The permittee shall negotiate with landowners to locate sites for temporary equipment staging areas.

Public Roads. The permittee shall identify all state, county or township roads that will be used for the LWECS Project and shall notify the permitting authority (PUC or county) and the state, county or township governing body having jurisdiction over the roads to determine if the governmental

body needs to inspect the roads or issue any road permits prior to use of these roads. Where practical, existing roadways shall be used for all activities associated with the LWECS. Where practical, all-weather roads shall be used to deliver cement, turbines, towers, assembled nacelles and all other heavy components to and from the turbine sites.

Prior to construction, the permittee shall make satisfactory arrangements (including obtaining permits) for road use, access road intersections, maintenance and repair of damages with governmental jurisdiction with authority over each road. The permittee shall notify the permitting authority (PUC or county) of such arrangements upon request.

Turbine Access Roads. The permittee shall construct the smallest number of turbine access roads it can. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.

Private Roads. The permittee shall promptly repair private roads, driveways or lanes damaged unless otherwise negotiated with landowner.

Soil Erosion and Sediment Control. Prior to commencing construction, the Permittee shall submit its National Pollution Discharge Elimination System (NPDES) construction permit issued by the Minnesota Pollution Control Agency (MPCA) to the permitting authority (PUC or county).

Cleanup. The permittee shall remove all waste and scrap that is the product of construction, operation, restoration and maintenance from the site and properly dispose of it upon completion of each task. Personal litter, bottles, and paper deposited by site personnel shall be removed on a daily basis.

Tree Removal. The permittee shall minimize the removal of trees and shall not remove groves of trees or shelter belts without the approval of the affected landowner.

Site Restoration. The permittee shall, as soon as practical following construction of each turbine, considering the weather and preferences of the landowner, restore the area affected by any LWECS activities to the condition that existed immediately before construction began, to the extent possible. The time period may be no longer than eight months after completion of construction of the turbine, unless otherwise negotiated with the landowner. Restoration shall be compatible with the safe operation, maintenance, and inspection of the LWECS.

Hazardous Waste. The permittee shall be responsible for compliance will all laws applicable to the generation, storage, transportation, clean up and disposal of hazardous wastes generated during any phase of the project's life.

Application of Herbicides. Restrict use to those herbicides and methods approved by the Minnesota Department of Agriculture. The permittee must contact landowner prior to application.

Public Safety. The permittee shall provide educational materials to landowners within the site boundaries and, upon request, to interested persons, about the Project and any restrictions or dangers associated with the LWECS Project. The permittee shall also provide any necessary safety measures, such as warning signs and gates for traffic control or to restrict public access to turbine access roads, substations and wind turbines.

Fire Protection. Prior to construction, the permittee shall prepare a fire protection and medical emergency plan in consultation with the fire department having jurisdiction over the area prior to LWECS construction. The permittee shall register the LWECS in the local government's emergency 911 system.

Native Prairie. Native prairie plan must be submitted if native prairie is present and will be impacted by the project. The permittee shall, with the advice of the DNR and any others selected by the permittee, prepare a prairie protection and management plan and submit it to the county and DNR Commissioner 60 days prior to the start of construction. The plan shall address steps to be taken to identify native prairie within the Project area, measures to avoid impacts to native prairie, and measures to mitigate for impacts if unavoidable. Wind turbines and all associated facilities, including foundations, access roads, underground cable and transformers, shall not be placed in native prairie unless addressed in the prairie protection and management plan. Unavoidable impacts to native prairie shall be mitigated by restoration or management of other native prairie areas that are in degraded condition, or by conveyance of conservation easements, or by other means agreed to by the permittee, DNR and PUC or county.

Electromagnetic Interference. Prior to beginning construction, the permittee shall submit a plan for conducting an assessment of television signal reception and microwave signal patterns in the Project area prior to commencement of construction of the Project. The assessment shall be designed to provide data that can be used in the future to determine whether the turbines and associated facilities are the cause of disruption or interference of television reception or microwave patterns in the event residents should complain about such disruption or interference after the turbines are placed in operation. The assessment shall be completed prior to operation of the turbines. The permittee shall be responsible for alleviating any disruption or interference of these services caused by the turbines or any associated facilities.

The permittee shall not operate the LWECS and associated facilities so as to cause microwave, television, radio, telecommunications or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event the LWECS and its associated facilities or its operations cause such interference, the permittee shall take timely measures necessary to correct the problem.

Turbine Lighting. Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA.

Pre-Construction Biological Preservation Survey: The permittee, in consultation with DNR and other interested parties, shall request a DNR Natural Heritage Information Service Database search for the project site, conduct a pre-construction inventory of existing wildlife management areas, scientific and natural areas, recreation areas, native prairies and forests, wetlands, and any other biologically sensitive areas within the site and assess the presence of state- or federally-listed or threatened species. The results of the survey shall be submitted to the permitting authority (PUC or county) and DNR prior to the commencement of construction.

Archeological Resource Survey and Consultation: The permitee shall work with the State Historic Preservation Office (SHPO) at the Minnesota Historical Society and the State Archaeologist as early as possible in the planning process to determine whether an archaeological survey is recommended for any part of the proposed Project. The permitee will contract with a qualified archaeologist to complete such surveys, and will submit the results to the permitting authority (PUC or county), the SHPO and the State Archaeologist. The SHPO and the State Archaeologist will make recommendations for the treatment of any significant archaeological sites which are identified. Any issues in the implementation of these recommendations will be resolved by permitting authority (PUC or county) in consultation with SHPO and the State Archaeologist. In addition, the permitee shall mark and preserve any previously unrecorded archaeological sites that are found during construction and shall promptly notify the SHPO, the State Archaeologist, and the permitting authority (PUC or county) of such discovery. The permittee shall not excavate at such locations until so authorized by the permitting authority (PUC or county) in consultation with the SHPO and the State Archaeologist.

If human remains are encountered during construction, the permitee shall immediately halt construction at that location and promptly notify local law enforcement authorities and the State Archaeologist. Construction at the human remains location shall not proceed until authorized by local law enforcement authorities or the State Archaeologist.

If any federal funding, permit or license is involved or required, the permittee shall notify the MHS as soon as possible in the planning process to coordinate section 106 (36 C.F.R 800) review.

Prior to construction, construction workers shall be trained about the need to avoid cultural properties, how to identify cultural properties, and procedures to follow if undocumented cultural properties, including gravesites, are found during construction. If any archaeological sites are found during construction, the permittee shall immediately stop work at the site and shall mark and preserve the site and notify the permitting authority (PUC or county) and the MHS about the discovery. The permitting authority (PUC or county) and the MHS shall have three working days from the time the agency is notified to conduct an inspection of the site if either agency shall choose to do so. On the fourth day after notification, the permittee may begin work on the site unless the MHS has directed that work shall cease. In such event, work shall not continue until the MHS determines that construction can proceed.

Project Energy Production: The permittee shall, by July 15 of each year, report to the PUC on the monthly energy production of the Project and the average monthly wind speed collected at one permanent meteorological tower selected by the PUC during the preceding year or partial year of operation.

Site Plan: Prior to commencing construction, the permittee shall submit to the permitting authority (PUC or county) a site plan for all turbines, roads, electrical equipment, collector and feeder lines and other associated facilities to be constructed and engineering drawings for site preparation, construction of the facilities, and a plan for restoration of the site due to construction. The permittee may submit a site plan and engineering drawings for only a portion of the LWECS if the permittee is prepared to commence construction on certain parts of the Project before completing the site plan and engineering drawings for other parts of the LWECS. The permittee shall have the right to move or relocate turbine sites due to the discovery of environmental conditions during construction, not previously identified, which by law or pursuant to this Permit would prevent such use. The permittee shall notify the permitting authority (PUC or county) of any turbines that are to be relocated before the turbine is constructed on the new site.

Pre-construction Meeting: Prior to the start of any construction, the permittee shall conduct a preconstruction meeting with the person designated by the permitting authority (PUC or county) to coordinate field monitoring of construction activities.

Extraordinary Events: Within 24 hours of an occurrence, the permittee shall notify the permitting authority (PUC or county) of any extraordinary event. Extraordinary events include but shall not be limited to: fires, tower collapse, thrown blade, collector or feeder line failure, injured LWECS worker or private person, kills of migratory, threatened or endangered species, or discovery of a large number of dead birds or bats of any variety on site. In the event of extraordinary avian mortality the DNR shall also be notified within 24 hours. The permittee shall, within 30 days of the occurrence, submit a report to the permitting authority (PUC or county) describing the cause of the occurrence and the steps taken to avoid future occurrences.

Complaints: Prior to the start of construction, the permittee shall submit to the permitting authority (PUC or county) the company's procedures to be used to receive and respond to complaints. The permittee shall report to the permitting authority (PUC or county) all complaints received concerning any part of the LWECS in accordance with the procedures provided in permit.

As-Built Plans and Specifications: Within 60 days after completion of construction, the permittee shall submit to the county and PUC a copy of the as-built plans and specifications. The permittee must also submit this data in a geographic information system (GIS) format for use in a statewide wind turbine database.

Decommissioning Plan. As part of its permit application, the permittee must submit a decommissioning plan describing the manner the permittee plans on meeting requirements of Minnesota Rule 7836.0500, subpart 13.

Special Conditions: Pursuant to Minnesota Statute 216F.04 and Minnesota Rule 7836.1000, the permitting authority (PUC or county) may adopt special permit conditions to LWECS site permits to address specific issues on a case-by-case basis.

AFFIDAVIT OF SERVICE BY MAIL

In the Matter of the Application of Goodhue Wind, LLC for a Site Permit for a 78 MW Large Wind Energy Conversion System in Goodhue County

MPUC Docket No. IP-6701/WS-08-1233 and CN-09-1186
OAH Docket No. 3-2500-21662-2

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Kristen A. Swenson, of the City of Minneapolis, County of Hennepin, in the State of Minnesota, being duly sworn, says that on the 30th day of December, 2010, she e-filed with the Minnesota Public Utilities Commission the following:

1. **Notice of Motion and Motion for Summary Disposition;**
2. **Memorandum in Support of Motion for Summary Disposition; and**
3. **Affidavit of Service.**

A copy has also been served via electronic mail or U.S. Mail in accordance with the service list of record.

Kristen A. Swenson

Subscribed and sworn to before me
on December 30, 2010.

Notary Public

VIRGINA E. RAHN
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2015

4681754_1.DOC

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@state.mn.us	Office of the Attorney General-DOC	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_8-1233_CC-SL1-08-1233
Stephen	Betcher	Steve.Betcher@co.goodhue.mn.us	County of Goodhue	Goodhue County Justice Center 454 West Sixth Street Red Wing, Minnesota 55066	Electronic Service	No	OFF_SL_8-1233_CC-SL1-08-1233
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson & Byron, P.A.	200 S 6th St Ste 4000 Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_8-1233_CC-SL1-08-1233
Bob	Cupit	bob.cupit@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012198	Electronic Service	No	OFF_SL_8-1233_CC-SL1-08-1233
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Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	Yes	OFF_SL_8-1233_CC-SL1-08-1233
Todd J.	Guerrero	tguerrero@fredlaw.com	Fredrikson & Byron, P.A.	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_8-1233_CC-SL1-08-1233
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_8-1233_CC-SL1-08-1233
Karen Finstad	Hammel	Karen.Hammel@state.mn.us	Office of the Attorney General-DOC	1400 BRM Tower 445 Minnesota Street St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_8-1233_CC-SL1-08-1233
Patrick	Hynes	phynes@strobelhanson.com	Strobel & Hanson, P.A.	406 W Third Street Suite 200 Red Wing, MN 55066	Electronic Service	No	OFF_SL_8-1233_CC-SL1-08-1233

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Jack	Levi		Goodhue Wind LLC	Suite 525 3033 Excelsior Blvd. Minneapolis, MN 55416	Paper Service	No	OFF_SL_8-1233_CC-SL1-08-1233
John	Lindell	agorud.ecf@state.mn.us	Office of the Attorney General-RUD	900 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_8-1233_CC-SL1-08-1233
Marie and Bruce	McNamara	macland@sleepyeyetel.net		35815 165th Ave. Goodhue, MN 55027	Paper Service	No	OFF_SL_8-1233_CC-SL1-08-1233
Carol	Overland	overland@legalectric.org	Legalectric, Inc.	P.O. Box 176 Red Wing, MN 55066	Paper Service	No	OFF_SL_8-1233_CC-SL1-08-1233
Peter	Reinarts	preinarts@myclearwave.net	Olmsted Wind Truth	11748 Hwy 30 SW Hayfield, MN 55940	Paper Service	No	OFF_SL_8-1233_CC-SL1-08-1233
Laura	Schlatter	Laura.Schlatter@state.mn.us	Office of Administrative Hearings	P.O. 64620 Saint Paul, MN 55164	Paper Service	Yes	OFF_SL_8-1233_CC-SL1-08-1233
Daniel	Schleck	dschleck@schleckpa.com		505 Hwy 169 N #260 Minneapolis, MN 55441	Paper Service	No	OFF_SL_8-1233_CC-SL1-08-1233
Joe	Sedarski	joe.sedarski@westwoodps.com	Westwood Professional Services	7699 Anagram Drive Eden Prairie, MN 55344	Paper Service	No	OFF_SL_8-1233_CC-SL1-08-1233
Kathleen D.	Sheehy	kathleen.sheehy@state.mn.us	Office of Administrative Hearings	PO Box 64620 St. Paul, MN 551640620	Electronic Service	Yes	OFF_SL_8-1233_CC-SL1-08-1233
Leon	Steinberg	N/A	Goodhue Wind, LLC	3033 Excelsior Boulevard Suite 525 Minneapolis, MN 55416	Paper Service	No	OFF_SL_8-1233_CC-SL1-08-1233

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Julia	Anderson	Julia.Anderson@state.mn.us	Office of the Attorney General-DOC	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_9-1186_Official
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Seth	Dunn	seth.dunn@ge.com	GE Energy	1 River Road 53-401A Schenectady, NY 12345	Paper Service	No	OFF_SL_9-1186_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	Yes	OFF_SL_9-1186_Official
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_9-1186_Official
Ben	Kerl	N/A	National Wind, LLC	3033 Excelsior Blvd. Suite 525 St. Louis Park, MN 55416	Paper Service	No	OFF_SL_9-1186_Official
Jack	Levi		Goodhue Wind LLC	Suite 525 3033 Excelsior Blvd. Minneapolis, MN 55416	Paper Service	No	OFF_SL_9-1186_Official
John	Lindell	agorud.ecf@state.mn.us	Office of the Attorney General-RUD	900 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_9-1186_Official
Marie and Bruce	McNamara	macland@sleepyeyetel.net		35815 165th Ave. Goodhue, MN 55027	Paper Service	No	OFF_SL_9-1186_Official
Carol	Overland	overland@legalectric.org	Legalectric, Inc.	P.O. Box 176 Red Wing, MN 55066	Paper Service	No	OFF_SL_9-1186_Official
Peter	Reinarts	preinarts@myclearwave.net	Olmsted Wind Truth	11748 Hwy 30 SW Hayfield, MN 55940	Paper Service	No	OFF_SL_9-1186_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Beth H.	Soholt	bsoholt@windonthewires.org	Wind on the Wires	Suite 203 1619 Dayton Avenue St. Paul, MN 551046206	Paper Service	No	OFF_SL_9-1186_Official