

# STROBEL & HANSON, P.A.

ATTORNEYS at LAW

Einar E. Hanson † ‡  
Jeffrey R. Underhill

Of Counsel  
Jack C. Strobel

September 22, 2011

† also admitted in Wisconsin  
‡ Civil Trial Specialist, certified by  
the Minnesota State Bar Association

Red Wing 651-388-1891  
Twin Cities 651-222-0109  
Facsimile 651-388-7605  
Email ehanson@strobelhanson.com  
junderhill@strobelhanson.com  
Web www.strobelhanson.com

Clerk of Appellate Court  
Minnesota Court of Appeals  
305 Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd  
St. Paul, MN 55115

*Re: In the Matter of the Application of AWA Goodhue Wing, LLC, for a Large Wind  
Energy Conversion System Site Permit for the 78 MW Goodhue Wind Project in  
Goodhue County  
MPUC Dockets: IP-6701/WS-08-1233  
Appeals Court No. A111681*

Dear Sir/Madam:

Enclosed please find the affidavits of service of Einar E. Hanson and Emily M. Dosdall for service of the appeal of Belle Creek Township in the above captioned matter. Please call with any questions.

Sincerely yours,

STROBEL & HANSON, P.A.



Einar E. Hanson

EEH:emd  
cc: All Counsel of record.  
Enclosure

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**RELATOR'S SERVICE LIST**

Belle Creek Township vs. Minnesota Public Utilities Commission  
PUC Dockets: IP-6701/CN-09-1186 WS-08-1233  
OAH Docket No. 8-2500-21395-2 and 5-2500-19350-2

**Respondent Public Utilities Commission's**

**Counsel**

Lori Swanson  
Minnesota Attorney General  
445 Minnesota St., 1400 Bremer Tower  
St. Paul, MN 55101  
(651) 296-6196

Anna Jenks  
Assistant Attorney General  
445 Minnesota St., 1100 Bremer Tower  
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(651)757-1262  
[anna.jenks@ag.state.mn.us](mailto:anna.jenks@ag.state.mn.us)

**Parties Counsel**

**Attorney for Applicant AWA Goodhue**

**Wind:**

Todd Guerero  
Fredrickson & Byron, P.A.  
200 So. 6<sup>th</sup> St., Suite 4000  
Mpls, MN 55402-1425  
(612) 492-7370  
[tguerrero@fredlaw.com](mailto:tguerrero@fredlaw.com)

**Minnesota Office of Administrative**

**Hearings:**

600 North Robert Street  
St. Paul, MN 55101

**Minnesota Public Utilities Commission**

121 7<sup>th</sup> Place E., Suite 350  
St. Paul, MN 55101-2147

**Attorney for Minnesota Department of Commerce & Energy Facilities Permitting:**

Julia Anderson  
Assistant Attorney General  
Bremer Tower, Suite j1400  
445 Minnesota Street  
St. Paul, MN 55101-2131  
(651)757-1202  
[julia.anderson@ag.state.mn.us](mailto:julia.anderson@ag.state.mn.us)

**AFFIDAVIT OF SERVICE**

*In the Matter of the Application of AWA Goodhue Wind, LLC, for a Large Wind Energy Conversion System Site Permit for the 78 MW Goodhue Wind Project in Goodhue County  
MPUC Dockets: IP-6701/WS-08-1233  
Appeals Court No. A111681*

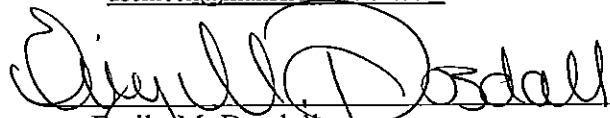
Emily M. Dosedall, after being duly sworn, state that on this date, by electronic transmission by consent, I have served a true and correct copy of Petition for Writ of Certiorari; Writ of Certiorari and Statement of the Case to the parties of record listed below in the above matter:

Attorney for Goodhue County:  
Steve Betcher, County Attorney  
Goodhue County Justice Center  
454 West 6<sup>th</sup> St.  
Red Wing, MN 55066  
(651)267-4950  
[steve.betcher@co.goodhue.mn.us](mailto:steve.betcher@co.goodhue.mn.us)

Goodhue Wind Truth's Counsel  
Carol Overland #254617  
Overland Law Office - Legalectric  
1110 West Avenue  
Red Wing, MN 55066  
(612) 227-8638  
[overland@redwing.net](mailto:overland@redwing.net)

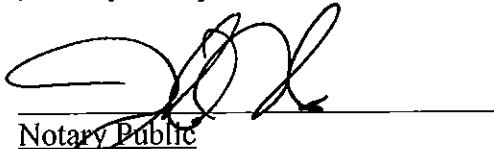
Attorney for Coalition for Sensible Siting:  
Daniel S. Schleck  
Mansfield Tanick & Cohen, P.A.  
220 So. 6thSt., Suite 1700  
Mpls, MN 55402-1425  
(612) 339-4295  
[dschleck@mansfieldtanick.com](mailto:dschleck@mansfieldtanick.com)

Dated: September, 22, 2011

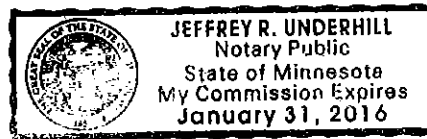


Emily M. Dosedall  
Strobel & Hanson, PA  
406 West Third Street, Suite 200  
Red Wing, MN 55066

Signed and sworn to before me this  
22<sup>nd</sup> day of September, 2011



Notary Public  
F:\AWP\Belle Creek\AFFIDAVIT OF SERVICE Email Sept 22,2011.wpd



**AFFIDAVIT OF SERVICE**

*In the Matter of the Application of AWA Goodhue Wind, LLC, for a Large Wind Energy Conversion System Site Permit for the 78 MW Goodhue Wind Project in Goodhue County  
MPUC Dockets: IP-6701/WS-08-1233  
Appeals Court No. A111681*

Emily M. Dosedall, after being duly sworn, state that on this date, by depositing in first class mail with postage paid, I have served a true and correct copy of Petition for Writ of Certiorari; Writ of Certiorari and Statement of the Case to all parties of record in the above matter:

**Respondent Public Utilities Commission's Counsel**

Lori Swanson  
Minnesota Attorney General  
445 Minnesota St., 1400 Bremer Tower  
St. Paul, MN 55101  
(651) 296-6196

Anna Jenks  
Assistant Attorney General  
445 Minnesota St., 1100 Bremer Tower  
St. Paul, MN 55101  
(651)757-1262  
[anna.jenks@ag.state.mn.us](mailto:anna.jenks@ag.state.mn.us)

**Parties Counsel**

**Attorney for Applicant AWA Goodhue Wind:**

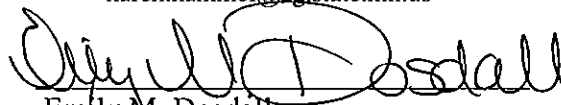
Todd Guerero  
Fredrickson & Byron, P.A.  
200 So. 6<sup>th</sup> St., Suite 4000  
Mpls, MN 55402-1425  
(612) 492-7370  
[tguerero@fredlaw.com](mailto:tguerero@fredlaw.com)

**Attorney for Minnesota Department of Commerce & Energy Facilities Permitting:**

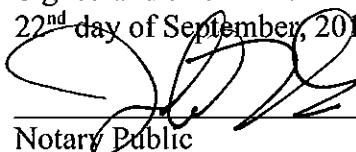
Julia Anderson  
Assistant Attorney General  
Bremer Tower, Suite j1400  
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(651)757-1202  
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Karen F. Hammel  
Assistant Attorney General  
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445 Minnesota Street  
St. Paul, MN 55101-2131  
(651)297-1852  
[karen.hammel@ag.state.mn.us](mailto:karen.hammel@ag.state.mn.us)

Dated: September, 22, 2011

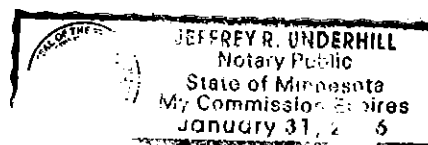
  
Emily M. Dosedall  
Strobel & Hanson, PA  
406 West Third Street, Suite 200  
Red Wing, MN 55066

Signed and sworn to before me this  
22<sup>nd</sup> day of September, 2011



Notary Public

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ATTORNEYS at LAW

Einar E. Hanson † ‡  
Jeffrey R. Underhill

Of Counsel  
Jack C. Strobel

September 21, 2011

† also admitted in Wisconsin  
‡ Civil Trial Specialist, certified by  
the Minnesota State Bar Association

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Twin Cities 651-222-0109  
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junderhill@strobelhanson.com  
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Clerk of Appellate Court  
Minnesota Court of Appeals  
305 Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

Re: *In the Matter of the Application of AWA Goodhue Wind, LLC, for a Large Wind Energy Conversion System Site Permit for the 78 MW Goodhue Wind Project in Goodhue County*  
MPUC Dockets: IP-6701/WS-08-1233  
OAH Dockets 8-2500-21395-2 and 15-2500-19350-2  
Appeals Court No. \_\_\_\_\_

Dear Clerk of Appellate Court:

Enclosed for filing on behalf of Belle Creek Township, please find:

- 1. Petition for Writ of Certiorari
- 2. Writ of Certiorari
- 3. Statement of the Case (original and one copy)
- 4. Public Utilities Commission Order in the above-titled matter.

No filing fee is required (Rule 103.01, subd. 3) nor is a cost bond required (Rule 107.02(e)) because Belle Creek is a governmental subdivision of the State of Minnesota.

If you have any question, or require anything further, please let me know.

Sincerely yours,

STROBEL & HANSON, P.A.

Einar E. Hanson

EEH:emd  
cc: Parties of Record -Attached Service List  
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**RELATOR'S SERVICE LIST**

Belle Creek Township vs. Minnesota Public Utilities Commission  
PUC Dockets: IP-6701/CN-09-1186 WS-08-1233  
OAH Docket No. 8-2500-21395-2 and 5-2500-19350-2

**Respondent Public Utilities Commission's**

**Counsel**

Lori Swanson  
Minnesota Attorney General  
445 Minnesota St., 1400 Bremer Tower  
St. Paul, MN 55101  
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Anna Jenks  
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**Parties Counsel**

**Attorney for Applicant AWA Goodhue  
Wind:**

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Fredrickson & Byron, P.A.  
200 So. 6<sup>th</sup> St., Suite 4000  
Mpls, MN 55402-1425  
(612) 492-7370  
[tguerrero@fredlaw.com](mailto:tguerrero@fredlaw.com)

**Goodhue Wind Truth's Counsel**

Carol Overland #254617  
Overland Law Office - Legalelectric  
1110 West Avenue  
Red Wing, MN 55066  
(612) 227-8638  
[overland@redwing.net](mailto:overland@redwing.net)

**Attorney for Goodhue County:**

Steve Betcher, County Attorney  
Goodhue County Justice Center  
454 West 6<sup>th</sup> St.  
Red Wing, MN 55066  
(651)267-4950  
[steve.betcher@co.goodhue.mn.us](mailto:steve.betcher@co.goodhue.mn.us)

**Attorney for Coalition for Sensible Siting:**

Daniel S. Schleck  
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(612) 339-4295  
[dschleck@mansfieldtanick.com](mailto:dschleck@mansfieldtanick.com)

**Attorney for Minnesota Department of Commerce & Energy Facilities Permitting:**

Julia Anderson  
Assistant Attorney General  
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445 Minnesota Street  
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(651)757-1202  
[julia.anderson@ag.state.mn.us](mailto:julia.anderson@ag.state.mn.us)

Karen F. Hammel  
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(651)297-1852  
[karen.hammel@ag.state.mn.us](mailto:karen.hammel@ag.state.mn.us)



**STATE OF MINNESOTA  
IN COURT OF APPEALS**

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

**WRIT OF CERTIORARI**

PUC Dockets: IP-6701/CN-09-1186 and WS-08-1233  
OAH Docket No. 15-2500-19350-2

Belle Creek Township,

Court of Appeals Case No.: \_\_\_\_\_

Relator,

vs.

**Dates of Decision Triggering Appeal Time:  
August 23, 2011**

Minnesota Public Utilities Commission,

Respondent,

**TO: PUBLIC UTILITIES COMMISSION:**

You are hereby ordered to return to the Court of Appeals and serve on all parties in accordance with Rule 115.04, subdivision 3, within 30 days after service of the petition or 14 days after delivery of a transcript, whichever is later, an itemized statement of the record, exhibits and proceedings in the above-entitled matter so that this court may review the decision of the Minnesota Public Utilities Commission issued on the date noted above.

You are further directed to retain the actual record, exhibits, and transcript of proceedings (if any) until requested by the clerk of the appellate courts to deliver them in accordance with Rule 115.04, subdivision 5.

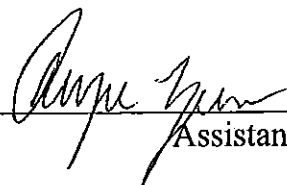
Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the respondent Minnesota Public Utilities Commission, its counsel listed below, and upon the official parties in the above-captioned case.

Anna Jenks, Asst. Attorney General  
ATTORNEY FOR RESPONDENT PUBLIC UTILITIES COMMISSION  
445 Minnesota Street  
Bremer Tower, Suite 1100  
St. Paul, MN 55101

Proof of service shall be filed with the Clerk of the Appellate Courts.

DATED: 09/22/11

Clerk of Appellate Courts

By:   
Assistant Clerk

(Clerk's File Stamp)

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

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

**STATEMENT OF THE CASE**

PUC Dockets: IP-6701/CN-09-1186 and WS-08-1233WS-08-1233  
OAH Docket No. 15-2500-19350-2

Belle Creek Township,

Relator,

vs.

Minnesota Public Utilities Commission,

Respondent,

Court of Appeals Case No.: \_\_\_\_\_

**Dates of Decision Triggering Appeal Time:  
August 23, 2011**

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Relator Belle Creek Township (the “Township”), for its Statement of the Case,  
states as follows:

**1. Agency of case origination:**

This case originated with the Minnesota Public Utilities Commission (hereinafter “PUC”). The Commission referred certain issues to the Minnesota Office of Administrative Hearings for contested case evidentiary proceedings, presided over by Administrative Law Judge Kathleen Sheehy, after which ALJ Sheehy issued a Recommendation to the PUC. The PUC then made its decision of August 23, 2011, and

has filed a memorandum stating that appeals must be filed within 30 days of that date, despite parties' pending requests that would exhaust administrative remedies.

## **2. Jurisdictional statement**

Appeals from final Public Utilities Commission decisions are taken pursuant to the Minnesota Administrative Procedures Act. Minn. Stat. §216B.52. The Administrative Procedures Act authorizes review in the Court of Appeals by writ of certiorari. Minn. Stat. §14.63; Minn. R. Civ. App. P. 103.03(g) and 115.01; see also Minn. Stat. §14.64.

Relators appeal the PUC's final decision on the matter, its August 23, 2011 order granting a Site Permit for the AWA Goodhue Wind Project. This appeal is timely filed no more than 30 days after receipt of the PUC's August 23, 2011 Order (Minn. Stat. §14.64) and received August 24, 2011. Motions for Reconsideration to the Commission have been filed by many parties and are pending at the Minnesota Public Utilities Commission.

## **3. State type of litigation and designate any statutes at issue.**

This is an appeal of a Minnesota Public Utilities Commission action, a state agency action, that followed contested case hearings on narrowly specified issues under the Minnesota Administrative Procedures Act, Minn. Stat. Ch. 14. The specific statute at issue is Minn. Stat. §216F.081, and Minnesota's Certificate of Need Statute, Minn. Stat. §216B.243, wind siting under Minn. Stat. Ch. 216F and rules, and those governing

environmental review, including the Minnesota Environmental Policy Act, Minn. Stat. §116D.

**4. Brief description of claims, defenses, issues litigated and result below.**

This appeal will address whether the Commission should apply the Goodhue County Article 18 Wind Ordinance or whether the Commission has good cause not to apply Goodhue County's Ordinance, as required by Minn. Stat. §216F.081. Also at issue in this case is the Commission's adoption of "EFP Findings of Fact, Conclusions of Law and Order," and whether the setback standards adopted are sufficiently supported by the record.

**5. List specific issues proposed to be raised on appeal.**

The issues proposed to be raised are:

- The Commission's decision that good cause does exist to not apply the County's ordinance is erroneous, for two reasons. The burden of proof should be placed on the applicant or the PUC to show why good cause exists. Contrary to the Commission's Siting Order's cite that the issues is "whether applying the County's standards to this Project is necessary and whether less stringent standards are sufficient to effectively address the concerns raised (Order, p. 7)," this is not the issue. The issue before the Commission is whether there is good cause not to apply the Goodhue County Ordinance,

which the Commission did not meet its burden to show. Minn. Stat. §216F.081.

- Standards for wind projects greater than 25MW do not exist. Thus, to the extent that the Commission's decision is based upon the allegation of such standards, it is in error, as the "General Permit Standards for the Siting of Wind Generation Projects Less than 25 Megawatts," do not provide support for the Commission's decision.
- Whether the setback standards for the towers adopted by the Commission meet the applicable legal standards in law and fact.
- To the extent that the Commission's decision is based upon the status of the AWA Goodhue wind project as a Community Based Energy Development (C-BED) project, it is in error. The project was dramatically changed, and no longer meets that status.

There are also issues regarding Environmental Review. The Environmental Report was insufficient and inadequate because the information presented by the applicants was not independently verified by the Department of Commerce, information regarding protected species including eagles and loggerhead shrike were not adequately considered, and new information discovered just before the Commission meeting was not addressed and not considered by the Commission, including whether this meets the Minnesota Environmental Rights Act.

**6. Related appeals.**

Upon information and belief, other intervenors in this PUC docket may be appealing the Commission's decision. No other appeals are known at this time. There are no prior or pending appeals in separate actions raising similar issues. Belle Creek Township requests consolidation of expected multiple appeals of the Commission's AWA Goodhue Wind Project decisions.

**7. Contents of record.**

For the purposes of Rules 115.04, subd. 1 and 110.02, subd. 1(c), the Township requests a transcript of the hearings in this matter for review of the issues on appeal.

**8. Is oral argument requested? Yes. At another location? No.**

**9. Identify the type of brief to be filed. Formal brief under Rule 128.02.**

**10. Names, addresses, zip codes and telephone numbers of attorneys:**

**Belle Creek Township's Counsel**

Einar E. Hanson  
406 West Third Street, Suite 200  
Red Wing, MN 55066  
651-388-1891  
[ehanson@strobelhanson.com](mailto:ehanson@strobelhanson.com)

Jeffery Underhill  
406 West Third Street, Suite 200  
Red Wing, MN 55066  
651-388-1891  
[junderhill@strobelhanson.com](mailto:junderhill@strobelhanson.com)

**Respondent Public Utilities Commission's Counsel**

Lori Swanson  
Minnesota Attorney General  
445 Minnesota St., 1400 Bremer  
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445 Minnesota St., 1100 Bremer Tower  
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**Parties Counsel**  
**Attorney for Applicant AWA**

**Goodhue Wind:**  
Todd Guerero  
Fredrickson & Byron, P.A.  
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**Attorney for Goodhue County:**  
Steve Betcher, County Attorney  
Goodhue County Justice Center  
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**Goodhue Wind Truth's Counsel**

Carol Overland #254617  
Overland Law Office - Legalectric  
1110 West Avenue  
Red Wing, MN 55066  
(612) 227-8638  
[overland@redwing.net](mailto:overland@redwing.net)

**Attorney for Coalition for Sensible  
Siting:**

Daniel S. Schleck  
Mansfield Tanick & Cohen, P.A.  
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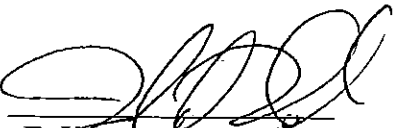


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[karen.hammel@ag.state.mn.us](mailto:karen.hammel@ag.state.mn.us)

Attorneys for Appellant Petitioner

By:   
Einar E. Hanson Atty. No: 142293  
Jeffery R. Underhill Atty. No.390966  
STROBEL & HANSON, P.A.  
406 West Third Street, Suite 200  
Red Wing, Minnesota 55066  
(612) 388-1891

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

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

**PETITION FOR WRIT OF CERTIORARI**

PUC Dockets: IP-6701/CN-09-1186 and WS-08-1233WS-08-1233  
OAH Docket No. 15-2500-19350-2

Belle Creek Township,

Court of Appeals Case No.: \_\_\_\_\_

Relator,

**Dates of Decision Triggering Appeal Time:  
August 23, 2011**

vs.

Minnesota Public Utilities Commission,

Respondent,

**TO: THE COURT OF APPEALS OF THE STATE OF MINNESOTA:**

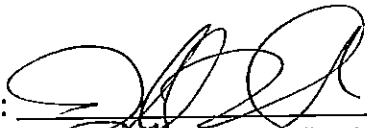
Belle Creek Township (the "Township") hereby petitions the Court of Appeals for a Writ of Certiorari to review the attached August 23, 2011 decision of the Minnesota Public Utilities Commission ("PUC") granting a Site Permit to Applicant AWA Goodhue for the Goodhue Wind Project. The Township has filed a Petition/Motion for Reconsideration of the Site Permit. The PUC has filed a memorandum (attached) stating that Minn. Stat. §14.64 applies, and Petitions for Write of Certiorari must be filed within 30 days of the Commission's Order, which is prior to the Commissions decisions regarding Reconsideration. The Township is filing this Petition now to preserve its right to appeal the Public Utilities Commission's Order.

This petition is made on the grounds that the PUC's decisions were erroneous under Minn. Stat. §216B.081 that good cause existed to not apply Goodhue County's more stringent standards; further, that its decision to not apply a 10-rotor setback standard, and to make the 6-rotor setback standard that it did impose, are not sufficiently supported by the record. This petition is also on grounds that the order violates supported by the Minnesota Environmental Rights Act, Minn. Stat. C. 116B; Minnesota Environmental Policy Act, Minn. Stat. Ch. 116D..

Appeals from final Public Utilities Commission decisions are taken pursuant to the Minnesota Administrative Procedures Act. Minn. Stat. §216B.52; see also Minn. Stat. §14.64. The Administrative Procedures Act authorizes review in the Court of Appeals by writ of certiorari. Minn. Stat. §14.63; see also Minn. R. Civ. App. P. 103.03(g) and 115.01.

For this petition, no filing fee is required under Minn.R.Civ.App.P. 103.01, subd. 3, nor is a cost bond required under Rule 107.02(e), as Belle Creek Township is a governmental subdivision of the State of Minnesota.

September 22, 2011

By:   
Einar E. Hanson Atty. No. 142293  
Jeffery R. Underhill Atty. No. 390966  
STROBEL & HANSON, P.A.  
406 West Third Street, Suite 200  
Red Wing, Minnesota 55066  
(612) 388-1891  
ATTORNEY FOR RELATOR  
**Belle Creek Township**



STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION

DATE: September 13, 2011  
TO: Service List  
FROM: Burl W. Haar, Executive Secretary  
DKT. NO. : IP-6701/WS-08-1233

A handwritten signature in black ink, appearing to read "Burl W. Haar", written over the "FROM:" line.

**In the Matter of the Application of AWA Goodhue Wind, LLC for a Large Wind Energy Conversion System (LWECS) Site Permit for the 78 MW Goodhue Wind Project in Goodhue County**

**SUBJECT: Notice of Appeal Period**

**PLEASE TAKE NOTICE** that the Minnesota Public Utility Commission's siting and routing decisions and orders are governed by the Administrative Procedure Act. Minn. Stat. §§ 216.F.02 (a), 216E.15. Under the Administrative Procedure Act, unless a request for reconsideration is made within ten days of the decision and order of an agency, the appeal period of 30 days is not tolled. Minn. Stat. § 14.64. Consequently, because no request for reconsideration was filed within ten days of the Public Utility Commission's *Order Issuing Site Permit As Amended*, Docket No. IP-6701/WS-08-1233, the appeal period relating to this order will expire on September 22, 2011<sup>1</sup>.

The procedure governing appeal of the Public Utility Commission's siting and routing decisions and orders is contained in Minn. Stat. § 14.64. Under Minn. Stat. § 14.64, an appeal is initiated by serving a petition for writ of certiorari personally or by certified mail upon the agency and by promptly filing the proof of service in the Office of the Clerk of the Appellate Court. Copies of the writ must be served, personally or by certified mail, upon all parties to the proceeding before the agency in the proceeding in which the order sought to be reviewed was made. *Id.* The Minnesota Rules of Civil Appellate Procedure contain additional requirements for filing a petition for writ of certiorari, including but not limited to service on the Minnesota Attorney General. *See* Minn. R. Civ. App. P. 115.03.

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<sup>1</sup> Depending on the manner of service of the Public Utility Commission's order on a particular party, the appeal period might expire on September 26, 2011. *See* Minn. R. Civ. App. P. 125.03; Minn. R. Civ. P. 6.05.

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Ellen Anderson  
David C. Boyd  
J. Dennis O'Brien  
Phyllis A. Reha  
Betsy Wergin

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

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

ISSUE DATE: August 23, 2011

DOCKET NO. IP-6701/WS-08-1233

ORDER ISSUING SITE PERMIT AS  
AMENDED

**PROCEDURAL HISTORY**

On October 19, 2009, AWA Goodhue Wind, LLC (AWA Goodhue or the Applicant) filed its revised site permit application for a large wind energy conversion system. The Applicant also requested a Certificate of Need for the Project, which the Commission approved in Docket No. IP-6701/CN-09-1186.

On November 30, 2009, the Commission accepted the Applicant's site permit application for the Goodhue Wind Project (the Project).

Between July 21 and 22, 2010, four public hearings were held at the Goodhue High School in the City of Goodhue. Administrative Law Judge (ALJ) Eric L. Lipman presided over the hearings and submitted his Summary of Public Testimony on September 7, 2010.

On October 5, 2010, Goodhue County's (the County) Board of Commissioners adopted an amendment to Article 18 of the County Zoning Ordinance governing wind projects.

On November 2, 2010, the Commission issued a Notice and Order for Hearing, referring the matter of the applicability of Goodhue County's ordinance standards on the Goodhue Wind Project to the Office of Administrative Hearings for contested case proceedings.

On April 29, 2011, the Administrative Law Judge (ALJ) assigned to the case submitted her FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS (the ALJ's Report).

On May 16, 2011, exceptions to the ALJ's Report were filed by: the Applicant, Goodhue County, an intervenor, and the following additional intervenors: Belle Creek Township, Goodhue Wind Truth, and the Coalition for Sensible Siting (the Intervenors). The Commission also received exceptions to the ALJ's Report from the Department of Natural Resources and from members of the public.

On June 20, 2011, the Energy Facilities Permitting Unit of the Department of Commerce (EFP) filed comments and recommended that the Commission adopt the ALJ's report and issue a site permit to the Applicant; the EFP's filing also included its proposed Findings and Conclusions.

On June 30, 2011, the Commission met to consider the matter, and the record closed under Minn. Stat. § 14.61, subd. 2.

## **FINDINGS AND CONCLUSIONS**

### **I. Background**

AWA Goodhue has requested a site permit for construction of up to 50 General Electric 1.5 MW xle and 1.6 MW xle wind generators mounted on 262-foot towers with a rotor diameter of 271 feet. The overall height of the tower, nacelle, and blade will be approximately 397 feet. The Project will have a nameplate capacity of 78 MW and will generate between 230,000,000 and 270,000,000 kilowatt hours annually. The Project includes buried collection cables, associated access roads, an Operation and Maintenance building, two project substations, and connection to an existing 69 kV transmission line near the existing Goodhue Substation.

The Project will be located in southeastern Goodhue County on agricultural land west of the City of Goodhue and north of the City of Zumbrota. The Project boundary encompasses approximately 32,684 acres and includes portions of the following townships: Belle Creek, Minneola, Vasa, Goodhue, and Zumbrota.

The site permit is subject to the conditions set forth in Minn. Stat., Chapter 216F and Minnesota Rules, Chapter 7854, which govern the siting of Large Wind Energy Conversion Systems (LWECS).

In addition, Xcel Energy has entered into purchase power agreements with AWA Goodhue for the purchase of the Project's total output of 78 MW.<sup>1</sup> The Commission approved those agreements under the C-BED<sup>2</sup> statute<sup>3</sup>, which operates in conjunction with other state policy initiatives encouraging renewable generation, including the Renewable Energy Standards (RES), contained in Minn. Stat. §216B.1691.

The RES require utilities to generate or procure specific percentages of their total retail sales using eligible renewable technologies by specific deadlines. By 2020, 24 percent of Xcel Energy's total retail electric sales must be generated by wind energy.<sup>4</sup>

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<sup>1</sup> The Commission approved those agreements on April 28, 2010 in Docket Nos. E-002/M-09-1349 and E-002/M-09-1350.

<sup>2</sup> C-BED means community-based energy development under Minn. Stat. § 216B.1612.

<sup>3</sup> Minn. Stat. § 216B.1612.

<sup>4</sup> Minn. Stat. § 216B.1691, subd. 2(a).

## **II. The ALJ's Report**

The ALJ issued her Report on April 29, 2011. The Report addresses Goodhue County's Wind Energy Conversion System Regulations, as set forth in Article 18 of the County's Zoning Ordinance. The Report includes findings on issues, which the Commission requested to be developed in its November 2, 2010 Notice and Order for Hearing. The Commission specifically requested the following:

1. that the ALJ develop a record on every standard in Article 18 that is more stringent than what the Commission has heretofore applied to LWECS and make recommendations regarding each such standard whether the Commission should adopt it for Large Wind Energy Conversion Systems in Goodhue County. The Commission has identified two such standards in this Order (Section 4 and Section 6) but is not by this Order restricting the ALJ from developing the record and making recommendations regarding additional standards in Article 18 that upon further examination meet the "more stringent" qualification;
2. that the ALJ allow the parties to develop a factual record on the question of "good cause" as that term appears in Minn. Stat § 216F.081 and to provide recommendations on whether, with respect to each standard in Article 18 identified in the course of her review as "more stringent" than what the Commission has heretofore applied to LWECS, there is "good cause" for the Commission to not apply the standard to siting LWECS in Goodhue County; and
3. as the ALJ addresses the issues identified in the previous two sections, the ALJ is requested to include (but not limited to, by this Order) whether there is sufficient evidence regarding health and safety to support a 10-rotor diameter setback for non-participating residents and the stray voltage requirements.

The ALJ's Report consists of a summary of the comments made, 179 findings and conclusions, and a recommendation that the Commission issue an Order consistent with the findings and conclusions, which support issuing a site permit for the Project.

Having itself examined the record and having considered the Report of the Administrative Law Judge, the Commission concurs in most of her findings and conclusions. On some issues, however, the Commission reaches different conclusions, as delineated and explained below. On all other issues, the Commission accepts, adopts, and incorporates her findings, conclusions, and recommendation.

The issues disputed among the parties are addressed below.

## **III. Public Comments**

The Commission received dozens of public comments on the Project throughout the duration of these proceedings. The Commission also heard from state representatives, including at the Commission's June 30 meeting. Representative Steve Drazkowski and Representative Tim Kelly, both representing portions of Goodhue County, attended the Commission meeting on the matter

and urged the Commission to apply the County's ordinance standards. Members of the public also appeared expressing their views and concerns regarding the Project.

The Commission respects the concerns raised by landowners, businesses, and state representatives of Goodhue County in this proceeding, and the level of their involvement. The Commission recognizes that its decision affects residents, landowners, and businesses in the Project area, and has carefully weighed the evidence presented and the issues raised.

#### **IV. Applicability of Minn. Stat. § 216F.081**

##### **A. Introduction**

Minn. Stat. § 216F.081 governs the applicability of county standards adopted for Large Wind Energy Conversion Systems that are more stringent than those found in Commission rules or in the Commission's permit standards. In considering a permit application for an LWECS in a county that has adopted more stringent standards, the Commission must consider and apply the county's standards unless the Commission finds good cause not to apply them.

Counties also have the option of assuming permitting authority, under Minn. Stat. § 216F.08, over LWECS under 25 MW in size. Consistent with the Legislature's directive, the Commission has established general permit standards to be applied to permits issued by counties under this provision.<sup>5</sup>

Although the County has not assumed permitting authority for LWECS under Minn. Stat. § 216F.08, the County's ordinance states that "any standards more stringent than those of the MPUC are to be considered and applied to LWECS" under Minn. Stat. § 216F.081. The ordinance then enumerates various standards to be applied to each project, including setbacks from properties, residences, and wetlands, as well as requirements for stray voltage testing.

##### **B. The Applicant**

AWA Goodhue argued that the County's standards do not apply to LWECS because the County has not assumed permitting responsibility for LWECS under Minn. Stat. § 216F.08. The Applicant argued that a county may adopt more stringent standards for LWECS of any size only if it has first elected to assume permitting authority for LWECS under 25 MW in size. Because the standards do not apply to the Project, the Applicant argued that the Commission is not required to determine whether there is good cause not to apply the County's standards.

The Applicant also argued, however, that if the Commission determines that the ordinance does apply to LWECS, that there is good cause not to apply the standards to the Project.

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<sup>5</sup> See the Commission's January 11, 2008 *Order Establishing General Wind Permit Standards*, in Docket E,G-999/M-07-1102.



### **C. The County and the Intervenors**

The County and the Intervenors<sup>6</sup> argued that a county's decision not to assume permitting authority over LWECS does not preclude a county from establishing more stringent standards, which the Commission must apply when considering a permit application for an LWECS. They argued that the statute stands on its own and does not contain the requirement that a county assume permitting authority over LWECS under 25 MW in size as a condition of adopting standards that are more stringent than the Commission's standards. They argued that the ordinance adopted under Minn. Stat. § 216F.081 expressly states that more stringent standards apply to LWECS within the County and that therefore the ordinance standards apply to this Project.

### **D. Recommendation of the ALJ**

The ALJ, in Findings 40-46, concluded that the statute is inapplicable to the Project in this case because the County did not assume permitting authority for projects under 25 MW in size.<sup>7</sup> The ALJ reasoned that the two provisions – Minn. Stat. §§ 216F.08 and 216F.081 – are conflicting, requiring that the second provision be given a meaning other than its plain meaning.

According to the ALJ's analysis, the two provisions, when construed together consistently, require a county to first assume permitting authority over LWECS under 25 MW in size. Then, a county can adopt more stringent standards, which the Commission must consider and apply to other, larger projects within the county, unless it finds good cause not to apply them.

### **E. Commission Analysis and Action**

The Commission respectfully disagrees with the ALJ that there are conflicting statutory provisions, which render Minn. Stat. § 216F.081 inapplicable to the AWA project.<sup>8</sup> Rather, the Commission finds that the statute is clear and unambiguous and not inconsistent with any other provisions.

The statute does not require a county to assume permitting authority over LWECS under 25 MW in size, or take any other action, as a condition of adopting more stringent standards, which the Commission must apply unless it finds good cause not to do so. Allowing a county to adopt more stringent standards *only* if the county has first assumed permitting authority for LWECS under Minn. Stat. § 216F.08, establishes a condition not articulated by the Legislature. Further, the statute does not contain any language that, on its own, cannot be clearly construed. Arguments to the contrary simply disregard the statute's plain meaning.

Furthermore, there is no inextricable link between the two provisions the ALJ identified as conflicting. Each provision provides distinct and separate authority. Authorizing a county to assume permitting authority does not conflict with the subsequent provision authorizing a county to adopt

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<sup>6</sup> The Intervenors include Belle Creek Township, Goodhue Wind Truth, and the Coalition for Sensible Siting.

<sup>7</sup> See ALJ's Report, Finding 45.

<sup>8</sup> The ALJ's findings on this issue are contained in Findings 40-46 of the ALJ's Report.

more stringent standards for LWECS. For all these reasons, the Commission finds that the County's standards apply unless there is a finding of good cause not to apply them.

## V. The Good Cause Standard

As stated above, Minn. Stat. § 216F.081 requires that the Commission apply a county's more stringent standards to an LWECS, unless the Commission finds good cause not to do so.

### A. The Applicant

According to AWA Goodhue, finding good cause means having legally sufficient reasons. The Applicant argued that the record demonstrates that there are legally sufficient reasons not to apply the County's standards, including scientific information showing that concerns over health and safety do not justify using such restrictive standards. In addition, the Applicant argued that applying the County's standards would eliminate the possibility of siting this Project within the boundary footprint.

### B. The County and the Intervenors

The County, along with the Intervenors, argued that requiring the Commission to find good cause not to apply the County's standards presumes that the ordinance standards are applicable. They argued that the Applicant was required to demonstrate, by clear and convincing evidence, that the County's ordinance requirements are arbitrary and capricious, that the Applicant failed to meet this burden, and as a result, there is no good cause not to apply the County's ordinance standards. They further argued that the Commission has no standards for projects over 25 MW in size and therefore the County's standards must be used because there are no Commission standards to fall back on.

### C. The ALJ

According to the ALJ, the common meaning of good cause is a legally sufficient reason, and determining whether good cause exists is a mixed question of fact (what the record shows) and law (whether the showing is sufficient). She used this analysis in evaluating each of the ordinance standards.<sup>9</sup>

She also rejected the claim that the Commission must apply the County's standards because the Commission lacks its own standards. She concluded that the fact that the Commission complied with the legislative directive<sup>10</sup> to provide guidance to counties in its *Order Establishing General Wind Permit Standards*,<sup>11</sup> does not mean that the Commission's existing standards, established in other dockets, became inapplicable to LWECS of 25 MW or more.

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<sup>9</sup> See Finding 47 of the ALJ's Report.

<sup>10</sup> In 2007, the legislature directed the Commission, by order, to establish general permit standards for LWECS less than 25 MW that are sited under Minn. Stat. § 216F.08.

<sup>11</sup> See the Commission's January 11, 2008 *Order Establishing General Wind Permit Standards*, in Docket E,G-999/M-07-1102

## **D. Commission Analysis and Action**

The Commission concurs with the ALJ that good cause is a mixed question of fact and law and that it is necessary to rely on the record to determine whether there are sufficient reasons, in this case, not to apply the ordinance standards.

The Commission rejects the claim that it must apply the County's standards because it lacks standards of its own. The Commission's rules governing LWECS are found at Minn. Rules, Chapter 7854 and set forth the permitting process, project requirements, and the overarching goal of "siting LWECS in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources," as required under Minn. Stat§ 216F.03.

Further, by formalizing general wind permit standards for LWECS under 25 MW, the Commission did not alter or limit its authority to apply its existing standards to projects 25 MW or larger. That authority is ongoing, and maintaining the Commission's flexibility to evaluate issues that are fact-intensive ensures a careful, thorough, and close examination of each project. It appears that the Legislature, too, has recognized the need for project-responsive standards by authorizing use of standards that are specific to project size and by enabling counties to establish more stringent standards, which the Commission must apply unless it finds good cause not to do so.

## **VI. Ordinance Standards**

There is no dispute among the parties that setbacks from locations such as residences, neighboring properties, and roads are necessary to protect the health and safety of residents and the environment. At issue is whether applying the County's standards to this Project is necessary and whether less stringent standards are sufficient to effectively address the concerns raised. The County standards applicable to this Project are discussed below.

### **A. Setbacks from Property Lines**

The County ordinance governs setbacks for property lines of non-participating property owners<sup>12</sup> based on the prevailing and non-prevailing wind directions. The standard requires turbines to be located a distance of 3 rotor diameters (RD) in the direction of the non-prevailing wind and 5 RD in the direction of the prevailing wind, to be measured horizontally from the tower base. Prevailing wind is the azimuth<sup>13</sup> between 290 degrees to 30 degrees and between 130 degrees and 230 degrees. Non-prevailing wind is the azimuth between 30 degrees and 130 degrees and between 230 and 290 degrees.

The Commission's general wind permit standards contain a wind access buffer setback from all boundaries of a developer's site control area of 3 RD on the secondary wind axis and 5 RD on the predominant axis.<sup>14</sup>

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<sup>12</sup> Non-participating property owners are those property owners who do not have turbines on their property.

<sup>13</sup> The ordinance defines azimuth as a horizontal angle measured clockwise in degrees with 00° 00' 00" being the north reference point.

<sup>14</sup> See the Commission's January 11, 2008 *Order Establishing General Wind Permit Standards*, in Docket E,G-999/M-07-1102, which maintain .

## **1. The Applicant**

AWA Goodhue argued that the County's property line setback creates an unreasonably wide arc for prevailing winds not supported by evidence, such as meteorological data of actual wind conditions in Goodhue County. The Applicant argued that applying the County's standards would ultimately preclude placement of 35 of the 50 turbines.

To determine the prevailing wind in Goodhue County, AWA Goodhue used wind data collected from its onsite meteorological tower and found that the prevailing wind is West/Northwest along a directional line of 300 degrees. The Applicant argued that applying the County's standard is not necessary to protect the wind access rights of non-participating property owners and that the Commission's wind access buffer setback is effective in protecting those rights.

## **2. The County and the Intervenors**

Along with the County, the Intervenors supported using the County's property line setback. According to the County, the standard established for property lines was based on a similar ordinance provision adopted in Nicollet County and designed to protect the wind access rights of non-participating property owners. The County and the Intervenors disputed the Applicant's assertion that the property line setback is unreasonable and argued that there was no factual evidence in the record to support that assertion.

## **3. The ALJ**

The ALJ evaluated the County's property line setback, which uses a broadly defined proxy of two 100 degree arcs for determining the prevailing wind. She found this standard to be less precise than using actual wind data, which the Applicant relied on to incorporate a wind access buffer setback consistent with the Commission's general wind permit standards.<sup>15</sup>

The ALJ found that use of the County's proxy is not necessary to protect the wind access rights of non-participating property owners and significantly reduces the availability of land for this Project. As a result, she concluded that there is good cause not to apply the County's property line setback standard to this Project.

## **4. Commission Analysis and Action**

The Commission concurs with the ALJ that use of the County's property line setback is not necessary to protect the rights of non-participating landowners and finds good cause not to apply this standard. Using actual wind data more effectively protects the wind access rights of non-participating property owners and minimizes the effects of wind turbine-induced turbulence downwind. The Commission will therefore require the Applicant to apply its proposed wind access buffer setback, consistent with the Commission's general permit standards.

### **B. Setback from Neighboring Dwellings – the 10 RD Standard**

The County ordinance requires a minimum setback of 750 feet from participating dwellings. For non-participating dwellings, the setback is 10 RD, unless the owner agrees to a lesser setback,

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<sup>15</sup> See Finding 54 of the ALJ's Report.

waiving the 10 RD standard. Although the 10 RD setback varies with the size of the turbine, in this case it equals approximately 2,707 feet, over one-half mile.

The Pollution Control Agency's noise standards are contained in Minn. Rules, Chapter 7030. Minn. Rule, part 7840.0040 limits nighttime noise at the L50 sound level to 50 dB (A).<sup>16</sup>

The Commission's general wind permit standards require a setback of at least 500 feet from all homes, and any additional distance necessary to meet the PCA noise standards.<sup>17</sup> Typically, the Commission requires between 750 and 1,500 feet from homes, depending on turbine model, layout, and site specific conditions.

### 1. The Applicant

AWA Goodhue argued that the 10 RD setback is both unnecessary and excessive in this case and would almost certainly preclude the Project due to the amount of land in the Project area that would be restricted if the standard were applied.

The Applicant argued that the record demonstrates that the County's standard is unnecessary to avert adverse effects of noise and shadow flicker and that there are no sufficiently rigorous scientific studies credibly demonstrating that wind turbines cause adverse health effects, either from noise or shadow flicker. The Applicant further argued that its proposed setback of 1,500 feet from neighboring dwellings will reasonably minimize noise and shadow flicker concerns and that no other factors in the record support applying the County's more stringent standard of 10 RD.

The Applicant conducted both a noise study and a shadow flicker study as part of its evaluation of the potential effects from the Project on area residents.<sup>18</sup> According to the Applicant, the results of the studies provide support for using the Applicant's proposed setback of 1,500 feet from neighboring dwellings.

The noise study showed that at a distance of 1,500 feet, the maximum L50 sound level produced by wind turbines within the AWA Goodhue Project is 43 dB (A) at the nearest receptor. At that level, the sound produced is 7 dB (A) below the most stringent applicable state noise standard of 50 dB (A). The state noise standard is met even when a 5 dB buffer<sup>19</sup> - as supported by the report of the Minnesota Department of Health<sup>20</sup> - is added to account for low-frequency noise.

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<sup>16</sup> Under Minn. Rules, part 7030.0020, L50 means the sound level, expressed in dB(A), exceeded 50 percent of the time for a one hour survey. Under the same rule, dB (A) means A-weighted decibels; and A-weighted means a specific weighting of the sound pressure level for the purpose of determining the human response to sound.

<sup>17</sup> See the Commission's January 11, 2008 *Order Establishing General Wind Permit Standards*, in Docket E,G-999/M-07-1102.

<sup>18</sup> Both studies were conducted by HDR, Inc. on behalf of AWA Goodhue.

<sup>19</sup> In this instance, a buffer is an additive applied to the existing noise level to account for low-frequency noise.

<sup>20</sup> On May 22, 2009, the Department of Health issued a report, *Public Health Impacts of Wind Turbines*, as requested by the Department of Commerce

Furthermore, the Applicant argued that under Minn. Stat. § 116.07, subd. 2, the County is prohibited from establishing more stringent noise standards than those of the PCA.

The shadow flicker study used a scenario in which turbines were running 100 percent of the time. The conclusions of that study showed that no residence is expected to experience shadow flicker for more than one percent of the total annual daylight hours; over 96 percent of homes are expected to experience less than 20 hours of cumulative flicker per year, and a majority will experience less than 10 hours per year.

The Applicant argued that there are no other factors unique to Goodhue County that require far greater setbacks than those applied to other wind farms, most of which are located in agricultural zones, rural in character, and with similar population densities.

## **2. The County and the Intervenors**

The County argued that the 10 RD setback is not simply a noise or shadow flicker standard but is aimed at more effectively protecting the quality of life of County residents. The County stated that limited staffing and financial resources made it difficult to conduct scientific studies and that the adverse effects on residents from wind turbines are difficult to ascertain, making it more reasonable to implement a 10 RD distance to more effectively limit possible adverse effects.

The County also disputed that the PCA noise standards provide sufficient protection, claiming that those standards are dated and are not based on current and more reliable scientific information. The County stated that the Minnesota Department of Health's report supports this conclusion by stating that the PCA standards appear to underweight the penetration of low frequency noise into dwellings.

The County and the Intervenors also argued that wind turbine noise is distinctively annoying, leading to adverse health effects. They argued that computer modeling estimates understate the impact of turbines on the community and that the Minnesota Department of Health's report recognizes that significant health and safety concerns exist as a result of wind turbines.

Furthermore, they argued that AWA Goodhue has not made any attempts to increase landowner participation or to obtain waivers from the 10 RD setback. They also argued that the Applicant did not provide an analysis of the amount of land that would be needed to accommodate the Project under the County's ordinance.

And finally, they argued that the Applicant has failed to demonstrate by clear and convincing evidence that the ordinance standards are arbitrary and capricious, and therefore there is no good cause not to apply the County standards.

## **3. Wind on the Wires**

At the Commission meeting, Wind on the Wires<sup>21</sup> (WOW) commented on the 10 RD standard, stating that there is good cause not to apply the standard. The organization expressed concern that

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<sup>21</sup> Wind on the Wires is a collaborative organization whose aim is to overcome barriers to bringing wind energy to market.

applying the standard would send a broad signal to the wind industry discouraging wind development.

WOW encouraged the Commission to look at the statewide impact of applying such stringent standards on achieving the state's renewable energy requirements and argued that testing the renewable energy requirements against any one particular project would hamstring wind development. Furthermore, WOW also argued that applying new and unexpected standards to this Project at this late point in the process would create uncertainty for future wind development.

#### **4. Energy Facilities Permitting Unit**

The Energy Facilities Permitting Unit (EFP), as part of its examination of the Project proposal, assessed both the Applicant's noise and shadow flicker studies. The EFP stated that the noise study, which was conducted in July 2010, was updated in January 2011 and that the update confirmed the results of the July study.

The EFP, in its comments, stated that the Cadna-A wind turbine noise model, used to conduct the noise study, is based on internationally accepted acoustical standards used to calculate outdoor noise and has been used to model a variety of wind projects throughout the world and in Minnesota. The study results showed that noise levels were modeled at 493 receptors within and near the site.

The maximum noise level from all wind turbines operating simultaneously at their highest rated operating speed was 43 dB (A) at the nearest noise-sensitive receptor. This level is below the level permitted under the PCA's nighttime L50 noise limit of 50 dB (A). And with a 5 dB buffer added as a surrogate for low-frequency noise, the turbine noise level is still 2 dB below the PCA noise limit. Further, the draft site permit requires a subsequent noise monitoring to be conducted after completion of the Project.

The shadow flicker study was conducted using 289 potential receptors within the project vicinity, and assumed that all turbines were operating 100 percent of the time and that there were no obstructions to the receptor offsetting the shadow flicker. The results showed that more than 96 percent of the 289 receptors will experience fewer than 20 hours of shadow flicker per year. The EFP concluded that the Applicant's proposed setback of 1,500 feet would effectively protect against noise and shadow flicker concerns.

#### **5. The ALJ**

In analyzing the County's 10 RD standard, the ALJ looked at numerous factors, including the County's reasoning for establishing the standard, the state's noise standards, the noise and shadow flicker studies conducted by the Applicant, the potential health and safety effects of the Project, the Applicant's efforts to comply with the 10 RD standard, and the effects on the Project if the standard were applied.

**a. Noise and Shadow Flicker**

The ALJ found the Applicant's noise study reliable and concluded that the results confirm that the Project will meet the state's noise standards.<sup>22</sup> The maximum noise level was 43 dB (A), compared to the PCA's noise limit of 50 dB (A). The study also showed that the existing ambient sound conditions in the Project area are between 33 to 52 dB (A) for hourly median noise and are higher than the average and median noise levels calculated for the turbines of 31 and 32 dB (A) respectively.

She also accepted the shadow flicker study results, which show that 96 percent of homes are expected to experience less than 20 hours of shadow flicker per year; 85 percent are expected to experience less than ten hours per year; and of the 11 homes expected to experience more than 20 hours per year, five are participants and six are non-participants.<sup>23</sup> The maximum number of hours per year expected at the six non-participating homes is 33 hours, 11 minutes, and the maximum for a participating home is 39 hours, 21 minutes.<sup>24</sup> The maximum exposure for both participants and non-participants is less than one percent of the available daylight hours per year.<sup>25</sup> The Nicollet County ordinance used as a model by Goodhue County limits shadow flicker to 30 hours per year.<sup>26</sup>

Furthermore, the draft site permit recommended by the EFP requires the Applicant to provide additional data on shadow flicker on both participating and non-participating landowners prior to a pre-construction meeting. And although the Applicant must provide documentation on its efforts to minimize shadow flicker, the ALJ recommended that the site permit include a mitigation plan by the Applicant on how to further alleviate shadow flicker concerns raised by those affected; the Applicant concurred with this recommendation.

**b. Health Reports**

Recognizing that the state noise standards are the law, the ALJ also relied on reports from the Department of Health and the World Health Organization (WHO) as sources of relevant scientific information regarding the health effects of wind farms. These reports address issues primarily related to noise, including low-frequency noise.

The ALJ found that the state's noise standards are consistent with the interim target nighttime noise levels set by the WHO in 2009 for European Union countries.<sup>27</sup> In addition, the Department of Health report recommended using the cumulative impact of all wind turbines to measure noise and stated that human sensitivity to sound is variable and that low-frequency noise may be less

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<sup>22</sup> See Finding 73 of the ALJ's Report.

<sup>23</sup> See Finding 78 of the ALJ's Report.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See Finding 80 of the ALJ's Report.

<sup>27</sup> See Finding 90 of the ALJ's Report.



tolerable.<sup>28</sup> The report provided examples of mitigation measures, such as adding a buffer, to offset low-frequency noise concerns.

The ALJ concluded that the Applicant's proposed setback of 1,500 feet from the dwellings of non-participating landowners not only complies with the state's noise standards, but that the noise study followed the recommendation of the Department of Health to include the cumulative impact of all wind turbines. Furthermore, the noise modeling results meet state standards, even if a 5 dB buffer were added to account for low-frequency noise. And although the County established its 10 RD to better protect the quality of life of its residents, the ALJ concluded that the County's regulation is primarily aimed at noise and shadow flicker concerns, which are not significant issues under a 1,500 setback.

### **c. Other Considerations**

The ALJ also considered the Applicant's information regarding whether the Applicant could comply with the 10 RD setback by using fewer, larger turbines. Because the setback is based on rotor diameters, however, using larger turbines would further increase the setback distance.<sup>29</sup> She also concluded that using smaller turbines would reduce the Project from 50 MW to 36 MW.<sup>30</sup> Further, she found that the Applicant's analysis showed that expanding the Project area would require so much additional land (approximately 7 times more than the current acreage obtained), that the Project would become cost-prohibitive.<sup>31</sup>

For all these reasons, she concluded that there is good cause not to apply the 10 RD standard to this Project.

## **6. Commission Analysis and Action**

The Applicant's noise study included the cumulative impact of all turbines, consistent with a recommendation made by the Department of Health in its report on wind turbines. The Applicant also applied a low-frequency noise buffer, consistent with an example provided in that same report. The noise study showed that the maximum noise level was less than the maximum allowed under the PCA's standards, even with the buffer added to account for low-frequency noise.

In addition, the Applicant's shadow flicker study showed that 96 percent of homes will experience less than 20 hours of shadow flicker per year, and importantly, the maximum number of hours per year for a non-participant is 33 hours. The results of these studies demonstrate that there is no reasonable likelihood of adverse health impacts from this Project.

The County has stated that the 10 RD standard is not aimed simply at shadow flicker and noise but is intended to better protect the quality of life of its residents. Further, the County stated that its limited resources would prevent it from effectively enforcing a standard based on noise limits or

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<sup>28</sup> See Finding 87 of the ALJ's Report.

<sup>29</sup> See Finding 83 of the ALJ's Report.

<sup>30</sup> Id.

<sup>31</sup> Id.

duration of exposure to shadow flicker. The County therefore set a limit to essentially avoid the possibility of *any* exposure.

A de facto “no exposure” standard is not necessary to protect the health, safety, and quality of life of Goodhue County residents. Further, a “no exposure” standard could severely hinder the implementation of state renewable energy policies, which depend in part upon carefully sited wind farms to achieve their goals. There is therefore good cause not to apply a “no exposure” standard to applications for LWECS site permits.

At the same time, however, the Legislature clearly envisioned county governments playing a meaningful role in the orderly siting of LWECS, consistent with environmental preservation, sustainable development, and the efficient use of resources. Meaningful local input in siting LWECS requires close collaboration between wind developers and host communities, and it is not clear in this case that all opportunities for that collaboration have been fully explored.

For example, the record shows that the Applicant has not made any additional attempts to gain participation from landowners – or to obtain waivers of the 10 RD setback from non-participating landowners – since the ordinance was passed. Instead, the Applicant took the position that full compliance was impracticable and that there was no need for further engagement with landowners and community leaders.

At the Commission meeting, however, the Applicant conceded that in some cases a waiver of only 100-200 feet would have met ordinance requirements and satisfied County concerns. Further, while the Applicant did not submit detailed schemata showing alternative wind turbine locations – focusing instead on the difficulties of maintaining 10-RD setbacks throughout the Project footprint – the record strongly suggests that setbacks exceeding the 1,500 feet proposed by the Applicant may be widely achievable.

Under these circumstances, it is reasonable to require serious efforts to accommodate the County’s concerns. The Commission will therefore require the Applicant to make a good-faith effort to meet the 10-RD standard – by increasing landowner participation, by obtaining waivers from non-participating landowners, by reexamining site configurations, and by any other means further study may suggest. The Commission will also require that no turbines be sited closer than 6 RD from any non-participating residence without further Commission review.<sup>32</sup>

And finally, the Commission will require the Applicant to take steps to mitigate shadow flicker, including, for example, use of timed-suspension of the turbines, shades for windows, and trees as buffers.

### **C. Setbacks from Wetlands**

The Ordinance requires turbines to be placed either 1,000 feet from wetlands or at a distance of 3 RD based on the non-prevailing wind and 5 RD based on the prevailing wind.

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<sup>32</sup> The 6 RD standard in this case is the equivalent to 1,626 feet.

The Commission's general wind permit standards prohibit wind turbines from being placed in wetlands but do not contain a setback for turbines from wetlands.<sup>33</sup>

### **1. The Applicant**

The Applicant stated that it had taken all measures of precaution to adhere to local, state, and federal regulations regarding wetlands and to minimize the Project's effects on wetlands. The Applicant has worked in consultation with the U.S. Army Corps of Engineers, the Minnesota Department of Natural Resources (DNR), the Minnesota Board of Water and Soil Resources, and the Goodhue County Soil and Water Conservation District.

The Applicant argued that the County's Ordinance does not define a wetland and requires either a 1,000 foot setback or a 3 RD non-prevailing and 5 RD prevailing distance, without stating when either applies. Further, the Applicant argued that establishing an RD distance setback to an irregularly shaped wetland boundary is impractical. And finally, the Applicant argued that establishing a wetland setback pushes turbines into other land areas that are likely to be greater habitat or environmental quality areas, potentially causing more impact to plants and wildlife.

### **2. The County and the Intervenors**

The County and the Intervenors argued that it is necessary to apply the County's wetland setback particularly because there is no Commission setback requirement for wetlands. Furthermore, they argued that the DNR had previously recommended a turbine setback from wetlands of 1,000 feet. The County and the Intervenors urged the Commission to apply the County standard.

### **3. The ALJ**

The ALJ determined that the County's Ordinance was problematic because it did not define the term wetland or clarify whether the 1,000 foot setback or the 3 RD and 5 RD distance setback would apply.<sup>34</sup>

She also found that the Applicant's efforts to work with regulatory agencies in addition to the Commission, including the DNR, the St. Paul District of the U.S. Army Corps of Engineers, the Minnesota Board of Water and Soil Resources, and the Goodhue County Soil and Water Conservation District, were useful in identifying and addressing possible impacts to wetlands in the Project area. Furthermore, the draft site permit requires the Applicant to provide a desktop and field inventory of potentially impacted native prairies, wetlands, and any other biologically sensitive areas within the site and to submit the results to the Commission and the DNR.

Analysis of the wetland impact was provided through meetings between the Applicant and these agencies and showed that within the Project area there are 45 wetlands that would potentially incur impacts due to access roads. Based on the most current projections of the Project, the ALJ concluded that 0.225 acres of wetlands would be permanently impacted by access roads and subject to replacement through a wetland bank credit.

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<sup>33</sup> See the Commission's January 11, 2008 *Order Establishing General Wind Permit Standards*, in Docket E,G-999/M-07-1102

<sup>34</sup> See ALJ Finding 130.

The ALJ concluded that the Applicant's work with these agencies has resulted in an individualized and valuable analysis of the impacts on the specific quantity, quality, and biological diversity of wetlands in the Project area. She concluded that for these reasons, there is good cause not to apply the County standard to this Project.<sup>35</sup>

#### **4. The Department of Natural Resources**

The DNR filed two exceptions to the ALJ findings regarding wetlands but did not recommend a specific setback or use of the County standard. The DNR did encourage continued evaluation of the effects of turbines on wetlands and incorporating information gained from this and other projects in future project planning.

##### **D. Commission Analysis and Action**

The Commission concurs with the ALJ that there is good cause not to apply the wetland setback to this Project. The Applicant's adherence to the input of the various agencies involved in the regulation and protection of wetlands has demonstrated that the Applicant is effectively putting into place protections that accurately reflect and address the concerns raised by placing turbines near wetlands. The agencies have incorporated their expertise on how to prevent and minimize adverse effects on wetlands in the Project area. Furthermore, the draft site permit reiterates the Applicant's obligations under regulations of the DNR and the U.S. Army Corps of Engineers.

For these reasons, the Commission finds good cause not to apply the County standard to this Project.

##### **E. Stray Voltage**

The Ordinance requires two preconstruction stray voltage tests at all registered feedlots within the proposed project boundary and within a one-mile radius beyond the proposed project boundary.

The Commission's general wind permit standards do not require stray voltage testing.<sup>36</sup>

##### **1. The Applicant**

The Applicant argued that requiring stray voltage testing is unwarranted. Stray voltage, which is neutral-to-earth voltage that occurs where grounded neutral systems are used to supply electricity to the farm, is not known to occur from wind farms. Stray voltage is caused by faulty wiring on a farm or between the farm and the local utility distribution system. The Applicant argued that the County's desire to establish a baseline for stray voltage, despite the lack of evidence that wind farms cause or contribute to stray voltage, does not justify a requirement that the Applicant be required to test preexisting stray voltage conditions.

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<sup>35</sup> Id.

<sup>36</sup> See the Commission's January 11, 2008 *Order Establishing General Wind Permit Standards*, in Docket E,G-999/M-07-1102

## **2. The County and the Intervenor**

The County acknowledged that stray voltage, which can expose livestock to electrical shock, is not likely to occur but argued that because there is little evidence to disprove the possibility that stray voltage could occur if the system is faulty, stray voltage testing is necessary. Testing would result in collection of data on the subject and produce more understanding of the issue. The County and the Intervenor argued that establishing a baseline is in the community's interest.

## **3. The EFP**

In its comments, the EFP concurred with the Applicant that stray voltage is associated with distribution lines, not transmission lines. This Project will not have any direct electrical connection, including grounded circuit conductors, to conductors originating in another system. It will not connect with the local distribution systems. In addition, it will have its own substation and transformers and will be connected to the transmission grid through dedicated 69 kV lines.

The EFP is not aware of any reports of stray voltage associated with any other wind farms in the state. Furthermore, there are no ground currents in the collection system, whether the system is operating at zero generation or maximum generation. Therefore, the grounding for the wind farm collection system has no current with which to create stray voltage.

## **4. The ALJ**

The ALJ found that stray voltage is not associated with transmission lines, the only lines used by the Project. Because the wind farm has its own substations and transformers, the collection system functions separately, meaning there is no current in the ground wire to cause stray voltage. There is no evidence that any wind farm operation has ever caused stray voltage problems.<sup>37</sup> The Applicant did, however, agree to conduct pre and post construction stray voltage testing for three to five landowners who are participants in the Project.

The ALJ therefore concluded that there is good cause not to apply the stray voltage testing requirement to this Project.

## **5. Commission Analysis and Action**

The Commission concurs with the ALJ that there is good cause not to require the Applicant to conduct preconstruction stray voltage testing. The County standard would require the Applicant to conduct testing to establish a baseline that would later be used to assess whether stray voltage has occurred or increased since construction of the Project. Requiring the Applicant to test for an adverse effect that does not apparently exist but could occur as a result of the Project appears premature. Furthermore, there are no reports of stray voltage occurring from other wind farms in the state. The Commission therefore finds good cause not to apply this standard.

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<sup>37</sup> See Finding 151 of the ALJ's Report.

## **VII. Amendments to Draft Site Permit**

### **A. Avian and Bat Protection**

The Commission has received numerous comments on the wildlife studies conducted by the Applicant. Many of the comments came from residents of Goodhue County concerned about the effective protection of birds and bats in and near the Project area, particularly eagles and loggerhead shrike.

Residents' concerns arose as a result of survey work completed in 2010 and conducted by Westwood Professional Services on behalf of the Applicant. The survey identified three bald eagle nests. Subsequent to that study, the U.S. Fish and Wildlife Service confirmed residents' observation of additional bald eagle nesting in the area; two new nests were identified.<sup>38</sup>

The EFP stated that it has worked with the Applicant to develop a draft site permit consistent with the guidelines recommended by the U.S. Fish and Wildlife Service and input from the DNR. In addition, the U.S. Fish and Wildlife Service has made recommendations for ongoing agency coordination with the Applicant, the DNR, and the EFP to continue to coordinate ongoing monitoring during the preparation of the avian and bat protection plan, which must be approved by the Commission prior to construction. The loggerhead shrike protection plan must also be approved by the Commission prior to construction.

The continuing work of the agencies, the Applicant, and the EFP to incorporate evolving information has been instrumental in establishing draft permit conditions that adhere to applicable federal and state regulations. And while the conditions in the draft site permit are aimed at protecting species such as the bald eagle, the loggerhead shrike, and the northern long-eared bat, there are additional steps the Commission will require to further these goals.

Condition 13.1 of the draft site permit will be changed to require the Applicant to submit the results of the summer, fall, and winter surveys, and any subsequent surveys, to the Commission within one month of completion of the surveys. The Applicant must also submit the results of the 2011 monitoring by December 15, 2011 and the 2012 monitoring by December 15, 2012. Each report must include an update on the status of the U.S. Fish and Wildlife Service's potential listing of the northern long-eared bat.

Further, the Applicant must avoid placement of turbines in areas identified as highly suitable or very highly suitable loggerhead shrike habitat and submit to the Commission and the DNR a loggerhead shrike protection plan for Commission approval. And finally, the Applicant, in condition 6.7 of the draft site permit will be required to prepare an avian and bat protection plan and submit it to the Commission for approval prior to the preconstruction meeting.

### **B. Other Changes to Draft Site Permit**

The Commission will make changes to conditions 4.2 and 6.2 of the draft site permit regarding shadow flicker mitigation and use of a 6 RD setback, consistent with the decisions above. The second paragraph of condition 4.2 will be amended to require the Applicant to:

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<sup>38</sup> In a letter to Westwood Professional Services dated June 2, 2011, the U.S. Fish and Wildlife Service confirmed two new eagles' nests based on an April 27, 2011 site visit to the Project.

make a good faith effort to meet the setback requirements of the Goodhue County Ordinance by attempting in good faith to negotiate waivers for those affected by the 10 RD setback but in no event shall wind turbines be located closer than 6 RD from the residences of non-participating residents without further review by the Commission.

Condition 6.2 of the draft site permit will be amended as follows:

The permittee shall make a good faith effort to mitigate shadow flicker including but not limited to timed suspension, trees as buffers, and shades. Additionally, at least ten (10) working days prior to the pre-construction meeting, the Permittee shall provide data on shadow flicker impacts on each residence of non-participating landowners and participating landowners. Information shall include the results of modeling used, assumptions made, and the anticipated duration of shadow flicker for each residence. The Permittee shall provide documentation on its efforts to avoid, minimize, and mitigate shadow flicker impacts.

### **VIII. Changes to EFP Findings and Conclusions**

The Commission will also make the following technical corrections and changes to the EFP Findings and Conclusions.

The Commission will amend EFP Finding 97 as follows (this is a change to the last line on page 19 of the Findings):

Considering these assumptions, the maximum annual expected (cumulative) shadow flicker hours at any non-participating receptor is 33 hours, 11 minutes.

In addition, the Commission will remove the last two sentences of EFP Finding 100.

The Commission will amend the fourth sentence of EFP Finding 138 as follows:

AWA Goodhue then conducted a Loggerhead Shrike Habitat Survey and Pre-Construction Spring Migration Survey to observe avian ~~and bat~~ species present within the projected area.

And the Commission will amend the second sentence of EFP Finding 158 as follows:

By a combination of 1.5 MW and ~~1.5~~ 1.6 MW turbines in the Project, two fewer turbines are required, reducing siting needs for turbines and related facilities.

### **IX. Modifications to the ALJ's Report**

The Commission will make the following technical corrections and modifications to the ALJ's Report, consistent with the decisions contained herein.

The Commission hereby makes the following modification to Finding 10 of the ALJ's Report:

The Applicant ~~owns~~ has contracted with National Wind, LLC, a development company headquartered in Minneapolis, to provide development services for the project.

The Commission rejects Findings 40-46 of the ALJ's Report, consistent with, and for the reasons, contained herein.

The Commission will modify Finding 60 of the ALJ's Report to read as follows:

The Commission's ~~general wind permit standards~~ General Wind Permit Standards Order requires that turbines must be set back at least 500 feet from all homes, plus whatever additional distance is necessary to meet state noise standards.

The Commission will modify the second sentence of Finding 71 of the ALJ's Report to read as follows:

In this case, because multiple turbines could potentially impact a residence, the Applicant conducted a sound modeling study in ~~June 2010~~ January 2011 to determine the maximum sound level from the cumulative effect of all proposed turbines.

The Commission will modify Finding 85 of the ALJ's Report, consistent with the decisions, and for the reasons, contained herein to read as follows:

~~Although the other parties have suggested that the Applicant could re-negotiate its leases and participation agreements to take advantage of the 750-foot setback allowed for participants, or could offer to pay more money to nonparticipants in order to obtain more land rights, the record is clear that application of the 10-RD setback to the project (as it has been developed to date) will effectively may preclude the entire project. The assertion that the Applicant may be able to negotiate waivers of this requirement with those who have declined to participate in the past is speculation that is not founded in any evidence.~~

## X. Conclusion

With the determinations described above, the Commission finds that the Project is compatible with environmental preservation, sustainable development, and the efficient use of resources under Minn. Stat. § 216F.03 and Minn. Rules, part 7854.1000. The Commission also finds that the Applicant has complied with Minn. Rules, Chapter 7854. A site permit will be issued in the form attached.

### ORDER

1. The Commission hereby adopts the Report of the Administrative Law Judge with the following modifications:
  - a. The first sentence of Finding 10 of the ALJ's Report is modified to read as follows:

The Applicant ~~owns~~ has contracted with National Wind, LLC, a development company headquartered in Minneapolis, to provide development services for the project.
  - b. The Commission hereby rejects Findings 40-46 of the ALJ's Report.



- c. Finding 60 of the ALJ's Report is modified to read as follows:

The Commission's ~~general wind permit standards~~ General Wind Permit Standards Order requires that turbines must be set back at least 500 feet from all homes, plus whatever additional distance is necessary to meet state noise standards.

- d. Finding 85 of the ALJ's Report is modified to read as follows:

Although the other parties have suggested that the Applicant could re-negotiate its leases and participation agreements to take advantage of the 750-foot setback allowed for participants, or could offer to pay more money to nonparticipants in order to obtain more land rights, the record is clear that application of the 10-RD setback to the project (as it has been developed to date) will effectively may preclude the entire project. ~~The assertion that the Applicant may be able to negotiate waivers of this requirement with those who have declined to participate in the past is speculation that is not founded in any evidence.~~

2. The Commission hereby issues the site permit to AWA Goodhue with the following amendments:

- a. The second paragraph of section 4.2 of the draft site permit is deleted and the following language inserted:

The permittee shall make a good faith effort to meet the setback requirements of the Goodhue County Ordinance by attempting in good faith to negotiate waivers from those affected by the 10 RD setback but in no event shall wind turbines be located closer than 6 RD from the residences of non-participating residents without further review by the Commission.

- b. Section 6.2 of the draft site permit is amended to read as follows:

The permittee shall make a good faith effort to mitigate shadow flicker including but not limited to timed suspension, tress as buffers, and shades. Additionally, at least ten (10) working days prior to the pre-construction meeting, the Permittee shall provide data on shadow flicker impacts on each residence of non-participating landowners and participating landowners. Information shall include the results of modeling used, assumptions made, and the anticipated duration of shadow flicker for each residence. The Permittee shall provide documentation on its efforts to avoid, minimize, and mitigate shadow flicker impacts.

- c. The first sentence of section 6.7 of the draft site permit is amended to read as follows:

The Permittee shall, in consultation with the Commission and DNR, prepare an avian and bat protection plan and submit it to the Commission for approval ~~at least ten (10)-working days~~ prior to the pre-construction meeting.

- d. The following sentence will be added to the end of Section 13.1.1 of the draft site permit is amended to read as follows:

The Permittee shall submit the results of the summer, fall, and winter surveys, and any subsequent surveys, to the Commission within one month of completion of the surveys.

- e. The following sentence will be added to the end of section 13.1.2 of the draft site permit:

The Permittee shall submit the results of the 2011 monitoring by December 15, 2011 and the 2012 monitoring by December 15, 2012. Each report shall include an update on the status of the U.S. Fish and Wildlife Service potential listing of the Northern long-eared bat.

- f. Section 13.1.3 of the draft site permit is amended to read as follows:

The Permittee shall ~~take steps to avoid~~ placement of turbines in areas identified as highly suitable or very highly suitable loggerhead shrike habitat. Alternate turbine sites are to be considered the primary avoidance strategy. If alternate sites cannot be utilized as ~~the primary mitigation strategy,~~ the Permittee shall provide the Commission and DNR with a Loggerhead Shrike Protection Plan for approval by the Commission detailing why avoidance is not possible, outlining strategies to minimize effects to Loggerhead Shrike, and providing mitigation measures for impacts. Permittee shall conduct two years of post-construction fatality monitoring to evaluate the impacts of wind turbines sited in loggerhead shrike habitat determined to be highly to very highly suitable.

- 3. The Commission hereby adopts the Findings and Conclusions of the EFP with the following changes:

- a. EFP Finding 97 is amended to read as follows:

Considering these assumptions, the maximum annual expected (cumulative) shadow flicker hours at any non-participating receptor is 33 hours, 11 minutes.

- b. The Commission strikes the last two sentences of EFP Finding 100.

- c. The fourth sentence of EFP Finding 138 is amended to read as follows:

AWA Goodhue then conducted a Loggerhead Shrike Habitat Survey and Pre-Construction Spring Migration Survey to observe avian ~~and bat~~ species present within the projected area.

- d. The second sentence of EFP Finding 158 is amended to read as follows:

By a combination of 1.5 MW and ~~4-5~~ 1.6 MW turbines in the Project, two fewer turbines are required, reducing siting needs for turbines and related facilities.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary



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**STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION**

**SITE PERMIT FOR A  
LARGE WIND ENERGY CONVERSION SYSTEM**

**IN GOODHUE COUNTY**

**ISSUED TO  
AWA GOODHUE, LLC**

**PUC DOCKET NO. IP-6701/WS-08-1233**

In accordance with Minnesota Statutes Section 216F.04, this Site Permit is hereby issued to:

AWA Goodhue, LLC

The Permittee is authorized to construct and operate up to a 78 Megawatt Large Wind Energy Conversion System on the site identified in this Site Permit and in compliance with the conditions contained in this Permit.

This Permit shall expire thirty (30) years from the date of this approval.

Approved and adopted this 23rd day of August, 2011

BY ORDER OF THE COMMISSION

\_\_\_\_\_  
BURL W. HAAR  
Executive Secretary



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## Table of Contents

	Page
<b>1. PROJECT DESCRIPTION</b> .....	1
<b>2. DESIGNATED SITE</b> .....	1
2.1 PROJECT BOUNDARY .....	1
2.2 TURBINE LAYOUT .....	1
<b>3. APPLICATION COMPLIANCE</b> .....	2
<b>4. SETBACKS AND SITE LAYOUT RESTRICTIONS</b> .....	2
4.1 WIND ACCESS BUFFER .....	2
4.2 RESIDENCES .....	2
4.3 NOISE.....	3
4.4 ROADS.....	3
4.5 PUBLIC LANDS .....	3
4.6 WETLANDS.....	3
4.7 NATIVE PRAIRIE.....	3
4.8 SAND AND GRAVEL OPERATIONS.....	4
4.9 WIND TURBINE TOWERS.....	4
4.10 TURBINE SPACING .....	4
4.11 METEOROLOGICAL TOWERS .....	4
4.12 AVIATION .....	4
4.13 FOOTPRINT MINIMIZATION.....	5
4.14 COMMUNICATION CABLES .....	5
4.15 ELECTRICAL COLLERTOR AND FEEDER LINES .....	5
<b>5. ADMINISTRATIVE COMPLIANCE PROCEDURES</b> .....	5
5.1 SITE PLAN.....	5
5.2 NOTICE TO GOVERNMENTAL UNITS AND LOCAL RESIDENTS.....	6
5.3 NOTICE OF PERMIT CONDITIONS.....	6
5.4 FIELD REPRESENTATIVE.....	6
5.5 SITE MANAGER.....	7
5.6 PRE-CONSTRUCTION MEETING.....	7
5.7 PRE-OPERATION COMPLIANCE MEETING .....	7
5.8 COMPLAINTS .....	7

<b>6.</b>	<b>SURVEYS AND REPORTING</b> .....	<b>7</b>
6.1	BIOLOGICAL AND NATURAL RESOURCE INVENTORIES.....	7
6.2	SHADOW FLICKER.....	8
6.3	ARCHAEOLOGICAL RESOURCES.....	8
6.4	INTERFERENCE.....	9
6.5	WAKE LOSS STUDIES.....	9
6.6	NOISE.....	9
6.7	AVIAN AND BAT PROTECTION PLAN.....	9
6.8	PROJECT ENERGY PRODUCTION.....	10
6.9	WIND RESOURCE USE.....	10
6.10	EXTRAORDINARY EVENTS.....	11
<b>7.</b>	<b>CONSTRUCTION AND OPERATION PRACTICES</b> .....	<b>11</b>
7.1	SITE CLEARANCE.....	11
7.2	TOPSOIL PROTECTION.....	11
7.3	SOIL COMPACTION.....	11
7.4	LIVESTOCK PROTECTION.....	11
7.5	FENCES.....	11
7.6	DRAINAGE TILES.....	11
7.7	EQUIPMENT STORAGE.....	12
7.8	ROADS.....	12
7.9	CLEANUP.....	12
7.10	TREE REMOVAL.....	13
7.11	SOIL EROSION AND SEDIMENT CONTROL.....	13
7.12	RESTORATION.....	13
7.13	HAZARDOUS WASTE.....	13
7.14	APPLICATION OF HERBICIDES.....	13
7.15	PUBLIC SAFETY.....	14
7.16	EMERGENCY RESPONSE.....	14
7.17	TOWER IDENTIFICATION.....	14
7.18	FEDERAL AVIATION ADMINISTRATION LIGHTING.....	14
<b>8.</b>	<b>FINAL CONSTRUCTION</b> .....	<b>14</b>
8.1	AS-BUILT PLANS AND SPECIFICATIONS.....	14
8.2	FINAL BOUNDARIES.....	15
8.3	EXPANSION OF SITE BOUNDARIES.....	15
<b>9.</b>	<b>DECOMMISSIONING, RESTORATION, AND ABANDONMENT</b> .....	<b>15</b>
9.1	DECOMMISSIONING PLAN.....	15
9.2	SITE RESTORATION.....	15
9.3	ABANDONED TURBINES.....	15
<b>10.</b>	<b>AUTHORITY TO CONSTRUCT LWECS</b> .....	<b>16</b>
10.1	WIND RIGHTS.....	16
10.2	POWER PURCHASE AGREEMENT.....	16
10.3	FAILURE TO COMMENCE CONSTRUCTION.....	16

10.4	PREEMPTION OF OTHER LAWS.....	16
10.5	OTHER PERMITS .....	17
<b>11.</b>	<b>COMMISSION POST-ISSUANCE AUTHORITIES .....</b>	<b>17</b>
11.1	PERIODIC REVIEW.....	17
11.2	MODIFICATION OF CONDITIONS.....	17
11.3	REVOCATION OR SUSPENSION OF PERMIT .....	18
11.4	MORE STRINGENT RULES .....	18
11.5	TRANSFER OF PERMIT .....	18
11.6	RIGHT OF ENTRY .....	18
11.7	PROPREITARY INFORMATION .....	19
<b>12.</b>	<b>EXPIRATION DATE.....</b>	<b>19</b>
<b>13.</b>	<b>SPECIAL CONDITONS .....</b>	<b>19</b>
13.1	AVIAN AND BAT PROTECTION PLAN SPECIALPROVISION .....	19
13.2	APPLICATION OF GOODHUE COUNTY STANDARDS.....	20
<b>ATTACHMENT 1:</b>	<b>Site Permit Map .....</b>	<b>1</b>
<b>ATTACHMENT 2:</b>	<b>Complaint and Handling Procedures for Large Wind Energy Conversion Systems .....</b>	<b>1-3</b>
<b>ATTACHMENT 3:</b>	<b>Compliance Filing Procedure for Permitted Energy Facilities .....</b>	<b>1</b>
<b>ATTACHMENT 4:</b>	<b>Permit Compliance Filings .....</b>	<b>1-3</b>

## **SITE PERMIT**

This **SITE PERMIT** for a Large Wind Energy Conversion System (LWECS) authorizes AWA Goodhue Wind, LLC (Permittee) to construct and operate the Goodhue Wind Project (Project), a 78 Megawatt (MW) nameplate capacity LWECS and associated facilities in Goodhue County, on approximately 12,000 acres of land within the 32,684 acre site boundary in accordance with the conditions contained in this permit.

### **SECTION 1 PROJECT DESCRIPTION**

The up to 78 MW nameplate capacity LWECS authorized to be constructed in this Permit (Goodhue Wind Project) will be developed and constructed by the Permittee. The Project will consist of up to 50 General Electric 1.5 MW xle and 1.6 MW xle wind turbine generators mounted on 262.5 foot (80 meter) towers having a combined nominal nameplate capacity of approximately 78 MW. The rotor diameter is 271 feet (82.5 meters). The overall height of the tower, nacelle and blade will be approximately 397 feet (121 meters).

Associated facilities will include a concrete and steel foundation for each tower, pad mounted step-up transformers for each wind turbine, access roads, an electrical collection and feeder system, and operations and maintenance building, two project substations, and two permanent meteorological towers. The project will also include an underground automated supervisory control and data acquisition system (SCADA) for communication purposes. The energy from the proposed 78 MW project will be delivered from the project substations to the electrical grid via two points of interconnection. The northern 39 MW of the Project will interconnect to an existing 69 kV transmission line adjacent to the existing Vasa Substation approximately three miles north of the project via a new 69 kV transmission line. The southern 39 MW will interconnect to an existing 69 kV transmission line near the existing Goodhue Substation.

### **SECTION 2 DESIGNATED SITE**

#### **2.1 PROJECT BOUNDARY**

The Project boundary is shown on each of the three (3) maps in Attachment 1. The Goodhue Wind Project, except for the new 69 kV transmission line, will be located on lands within the Project boundary on which AWA Goodhue, LLC has lease and easement agreements. The project boundary encompasses approximately 32,684 acres and includes portions of Belle Creek (sections 1-5, 8-17, 20-29, 32-36); Goodhue (sections 17-19, 30 and 31); Minneola (sections 1-5, 8-17; Vasa (sections 35 and 36); and Zumbrota (sections 4-6, 7-9, 16-18) Townships.

#### **2.2 TURBINE LAYOUT**

The preliminary site layout for the wind turbines and associated facilities are shown in Attachment 1 (pages 1 - 3). The preliminary site layout represents the approximate location of wind turbines and associated facilities within the Project boundary and identifies a layout that minimizes the overall potential human and environmental impacts, which were evaluated in the



permitting process. The layout depicting the location of all turbines and associated facilities, except for the new 69 kV transmission line shall be located within the Project boundary. The Project boundary serves to provide the Permittee with the flexibility to do minor adjustments to the preliminary layout to accommodate landowner requests, unforeseen conditions encountered during the detailed engineering and design process, and federal and state agency requirements. Any modification of the location of a wind turbine and associated facility depicted in a preliminary layout shall be done in such manner to have comparable overall human and environmental impacts and shall be specifically identified in the site plan pursuant to Section 5.1. The Permittee shall submit the final site layout in the site plan pursuant to Section 5.1.

### **SECTION 3 APPLICATION COMPLIANCE**

The Permittee shall comply with those practices set forth in its revised site permit application, dated October, 19, 2009, and the record of this proceeding unless this permit establishes a different requirement in which case this permit shall prevail.

Attachment 4 contains a summary of compliance filing, which is provided solely for the convenience of the Permittee. If this permit conflicts or is not consistent with Attachment 4, the conditions in this permit will control.

### **SECTION 4 SETBACKS AND SITE LAYOUT RESTRICTIONS**

#### **4.1 WIND ACCESS BUFFER**

Wind turbine towers shall not be placed less than five (5) rotor diameters (RD) on prevailing wind directions and three (3) RD on non-prevailing wind directions from the perimeter of the property where the Permittee does not hold the wind rights, without the approval of the Commission. This section does not apply to public roads and trails.

#### **4.2 RESIDENCES**

Wind turbine towers shall not be located closer than 1,000 feet from the nearest participating residence unless a waiver has been signed by the property owners, or the distance required to comply with the noise standards pursuant to Minnesota Rule 7030.0040 established by the Minnesota Pollution Control Agency (PCA), whichever is greater.

The permittee shall make a good faith effort to meet the setback requirements of the Goodhue County Ordinance by attempting in good faith to negotiate waivers from those affected by the 10 RD setback but in no event shall wind turbines be located closer than 6 RD from the residences of non-participating residents without further review by the Commission.

### **4.3 NOISE**

The wind turbines shall be placed such that the Permittee shall comply with noise standards established as of the date of this permit by the PCA at all times at all appropriate locations. The noise standards are found in Minnesota Rules Chapter 7030. Turbine operation shall be modified or turbines shall be removed from service if necessary to comply with these noise standards. The Permittee or its contractor may install and operate turbines, as close as the minimum setback required in this permit but in all cases shall comply with PCA noise standards. The Permittee shall be required to comply with this condition with respect to all homes or other receptors in place as of the time of turbine construction, but not with respect to such receptors built after construction of the towers.

### **4.4 ROADS**

Wind turbine and meteorological towers shall not be located closer than 250 feet from the edge of the nearest public road right-of-way.

### **4.5 PUBLIC LANDS**

Wind turbines and associated facilities including foundations, access roads, underground cable, and transformers, shall not be located in public lands, including Waterfowl Production Areas, State Wildlife Management Areas or Scientific and Natural Areas or in county parks, and wind turbine towers shall also comply with the setbacks of Section 4.1.

### **4.6 WETLANDS**

Wind turbines and associated facilities including foundations, access roads, underground cable and transformers, shall not be placed in public waters wetlands, as defined in Minnesota Statutes section 103G.005, subpart 15a. However, electric collector or feeder lines may cross or be placed in public waters or public waters wetlands subject to permits and approvals by the Minnesota Department of Natural Resources (DNR) and the United States Army Corps of Engineers (USACE).

### **4.7 NATIVE PRAIRIE**

The Permittee shall, in consultation with the Commission and DNR, prepare a Prairie Protection and Management Plan and submit it to the "Commission and DNR at least ten (10) working days prior to the pre-construction meeting if native prairie, as defined in Minnesota Statutes section 84.02, subdivision 5, is identified in any biological and natural resource inventories conducted pursuant to Section 6.1. The plan shall address steps to avoid impacts to native prairie and mitigation to unavoidable impacts to native prairie by restoration or management of other native prairie areas that are in degraded condition, by conveyance of conservation easements, or by other means agreed to by the Permittee and Commission. Wind turbines and associated facilities including foundations, access roads, collector and feeder lines, underground cable, and transformers shall not be impact unless addressed in a Prairie Protection and Management Plan Construction activities, as defined in Minnesota Statutes section 216E.01, shall not impact native prairie unless addressed in a Prairie Protection and Management Plan. Wind turbines and

associated facilities including foundations, access roads, collector and feeder lines, underground cable, and transformers shall not be located in areas enrolled in the Native Prairie Bank Program.

#### **4.8 SAND AND GRAVEL OPERATIONS**

Wind turbines and all associated facilities, including foundations, access roads, underground cable, and transformers shall not be located within active sand and gravel operations, unless otherwise negotiated with the landowner with notice given to the owner of the sand and gravel operation.

#### **4.9 WIND TURBINE TOWERS**

Structures for wind turbines shall be self-supporting tubular towers. The towers may be up to 80 meters (262.5 feet).

#### **4.10 TURBINE SPACING**

The turbine towers shall be constructed within the site boundary as shown in Attachment 1. The turbine towers shall be spaced no closer than three (3) RD on non-prevailing wind directions and five (5) RD on prevailing wind directions. 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.

#### **4.11 METEOROLOGICAL TOWERS**

Permanent towers for meteorological equipment shall be free standing. Permanent meteorological towers shall not be placed less than 250 feet from the edge of the nearest public road right-of-way and from the boundary of the Permittee's site control, or in compliance with the county ordinance regulating meteorological towers in the county the tower is built, whichever is more restrictive. Meteorological towers shall be placed on property the Permittee holds the wind or other development rights.

Meteorological towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the meteorological towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the wind monitoring equipment.

#### **4.12 AVIATION**

The Permittee shall not place wind turbines or associated facilities in a location that could create an obstruction to navigable airspace of public and private airports (as defined in Minnesota Rule 8800.0100, subparts 24a and 24b) in Minnesota, adjacent states, or provinces. The Permittee shall apply the minimum obstruction clearance for private airports pursuant to Minnesota Rule 8800.1900, subpart 5. Setbacks or other limitations shall be followed in accordance with the Minnesota Department of Transportation (DOT), Department of Aviation, and the FAA. The Permittee shall notify owners of all known airports within six (6) miles of the Project prior to construction.

#### **4.13 FOOTPRINT MINIMIZATION**

The Permittee shall design and construct the LWECs so as to minimize the amount of land that is impacted by the LWECs. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, step-up transformers and monitoring systems shall, to the greatest extent feasible, be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner(s).

#### **4.14. COMMUNICATION CABLES**

The Permittee shall place all supervisory control and data acquisition (SCADA) cables underground and within or immediately adjacent to the land necessary for the collection and feeder lines and turbine access roads unless otherwise negotiated with the affected landowner(s).

#### **4.15 ELECTRICAL COLLECTOR AND FEEDER LINES**

Collector and feeder lines comprise the electrical collection system. In accordance with the Permittee's site permit application, collector and feeder lines shall be buried. If feeder lines are located within public rights-of-way, the Permittee shall obtain approval from the governmental unit responsible for the affected right-of-way.

Collector and feeder lines shall be located in such a manner to minimize interference with agricultural operations, including, but not limited to, existing drainage patterns, drain tile, future tiling plans and ditches. The Permittee shall submit the site plan and engineering drawings of all collector and feeder lines in the site plan pursuant to Section 5.1.

The Permittee must fulfill, comply with, and satisfy all Institute of Electrical and Electronics Engineers, Inc. (IEEE) standards applicable to this Project, including but not limited to, IEEE 776 [Recommended Practice for Inductive Coordination of Electric Supply and Communication Lines], IEEE 519 [Harmonic Specifications], IEEE 367 [Recommended Practice for Determining the Electric Power Station Ground Potential Rise and Induced Voltage from a Power Fault], and IEEE 820 [Standard Telephone Loop Performance Characteristics] provided the telephone service provider(s) have complied with any obligations imposed on it pursuant to these standards. Upon request by the Commission, the Permittee shall report to the Commission on compliance with these standards.

### **SECTION 5 ADMINISTRATIVE COMPLIANCE PROCEDURES**

The following administrative compliance procedures shall be executed in accordance with the Permit Compliance Filings at Attachments 3 and 4

#### **5.1 SITE PLAN**

At least ten (10) working days prior to the pre-construction meeting the Permittee shall submit to the Commission:

- (a) a site plan for all turbines, roads, electrical equipment, collector and feeder lines and other associated facilities to be constructed;
- (b) engineering drawings for site preparation, construction of the facilities; and
- (c) a plan for restoration of the site due to construction.

Construction is defined under Minnesota Statutes section 216E.01. The Permittee may submit a site plan and engineering drawings for only a portion of the Project 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 Project. The Permittee shall document (through GIS mapping) compliance with the setbacks and site layout restrictions required by the permit. In the event that previously unidentified environmental conditions are discovered during construction which by law or pursuant to conditions outlined in this Permit would preclude the use of that site as a turbine site, the Permittee shall have the right to move or relocate the turbine site. The Permittee shall notify the Commission of any turbines that are to be relocated before the turbine is constructed on the new site and demonstrate compliance with the setbacks and site layout restrictions required by this permit.

## **5.2. NOTICE TO GOVERNMENTAL UNITS AND LOCAL RESIDENTS**

Within ten (10) working days of issuance of this Permit, the Permittee shall, send a printed copy of this Permit to the office of the auditor of each county in which the site is located and to the clerk of each city and township within the site boundaries. If applicable, the Permittee shall, within ten (10) working days of permit issuance, send a printed copy of this permit to each regional development commission, local fire district, soil and water conservation district, watershed district, and watershed management district office with jurisdiction in the county where the site is located.

Within thirty (30) days of issuance of this Permit, the Permittee shall send a printed copy of this permit to each landowner within the site permit boundary. In no case shall the landowner receive this site permit and complaint procedure, developed pursuant to Section 5.8, less than five (5) days prior to the start of construction on their property.

## **5.3 NOTICE OF PERMIT CONDITIONS**

Prior to the start of construction, the Permittee shall inform all employees, contractors, and other persons involved in the construction and ongoing operation of the Project of the terms and conditions of this permit.

## **5.4 FIELD REPRESENTATIVE**

At least ten (10) working days prior to the pre-construction meeting and continuously throughout construction, including site restoration, the Permittee shall designate a field representative responsible for overseeing compliance with the conditions of this permit during the construction phase of this Project. This person (or a designee) shall be accessible by telephone during normal working hours. This person's address, email, phone number and emergency phone number shall be provided to the Commission, which may make the contact information available to local

residents and officials and other interested persons. The Permittee may change the field representative by notification to the Commission.

#### **5.5 SITE MANAGER**

The Permittee shall designate a site manager responsible for overseeing compliance with the conditions of this permit during the commercial operation and decommissioning phases of this Project. The Permittee shall provide the Commission with the name, address, email, phone number, and emergency phone number of the site manager prior to placing any turbine into commercial operation. This information shall be maintained current by informing the Commission of any changes, as they become effective.

#### **5.6 PRE-CONSTRUCTION MEETING**

Prior to the start of any construction, the Permittee shall conduct a pre-construction meeting with the Field Representative and the State Permit Manager designated by the Commission to coordinate field monitoring of construction activities.

#### **5.7 PRE-OPERATIONS COMPLIANCE MEETING**

At least ten (10) working days prior to commercial operation, the Permittee shall conduct a pre-operation compliance meeting with the Site Manager and the State Permit Manager designated by the Commission to coordinate field monitoring of operation activities.

#### **5.8 COMPLAINTS**

At least ten (10) working days prior to the pre-construction meeting, the Permittee shall submit to the Commission the company's procedures to be used to receive and respond to complaints. The Permittee shall report to the Commission all complaints received concerning any part of the Project in accordance with the procedures provided in Attachments 2 and 3 of this Permit.

### **SECTION 6 SURVEYS AND STUDIES**

#### **6.1 BIOLOGICAL AND NATURAL RESOURCE INVENTORIES**

The Permittee, in consultation with the Commission and DNR and Commission, shall design and conduct pre-construction desktop and field inventories to identify potentially impacted native prairies, wetlands, and any other biologically sensitive areas within the site and assess the presence of state threatened, endangered, or species of special concern of federally listed species. The results of any surveys shall be submitted to the Commission and DNR at least ten (10) working days prior to the pre-construction meeting to confirm compliance of conditions in this permit.

The Permittee shall provide to the Commission any biological surveys or studies conducted on this Project, including those not required under this permit. Section 11.7 may apply to data provided pursuant to the section.

## **6.2 SHADOW FLICKER**

The permittee shall make a good faith effort to mitigate shadow flicker including but not limited to timed suspension, trees as buffers, and shades. Additionally, at least ten (10) working days prior to the pre-construction meeting, the Permittee shall provide data on shadow flicker impacts on each residence of non-participating landowners and participating landowners. Information shall include the results of modeling used, assumptions made, and the anticipated duration of shadow flicker for each residence. The Permittee shall provide documentation on its efforts to avoid, minimize, and mitigate shadow flicker impacts.

## **6.3 ARCHAEOLOGICAL RESOURCES**

The Permittee shall work with the State Historic Preservation Office (SHPO) and the State Archaeologist. The Permittee shall file a Phase 1 or 1A Archaeology survey for all proposed turbine locations, access roads, junction boxes and other areas of Project construction impact to determine whether additional archaeological work is necessary for any part of the proposed Project. The Permittee will contract with a qualified archaeologist to complete such surveys, and shall submit the results to the Commission, the SHPO and the State Archaeologist at least ten (10) working days prior to the pre-construction meeting.

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 the Commission in consultation with SHPO and the State Archaeologist. The Permittee shall not excavate at such locations until so authorized by the Commission in consultation with the SHPO and State Archaeologist.

If human remains are encountered during construction, the Permittee 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 SHPO 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 Commission and the SHPO about the discovery. The Commission and the SHPO shall have three (3) 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 SHPO has directed that work shall cease. In such event, work shall not continue until the SHPO determines that construction can proceed.

## **6.4 INTERFERENCE**

At least ten (10) working days prior to the pre-construction meeting, the Permittee shall submit to the Commission the results of an assessment of television and radio signal reception, microwave signal patterns, and telecommunications in the Project area. 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 radio, microwave patterns, or telecommunications in the event residents should complain about such disruption or interference after the turbines are installed or placed in operation. 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 Project so as to cause microwave, television, radio, telecommunications, or navigation interference in violation of Federal Communications Commission (FCC) regulations or other law. In the event the Project or its operations cause such interference, the Permittee shall take timely measures necessary to correct the problem.

## **6.5 WAKE LOSS STUDIES**

At least ten (10) working days prior to the pre-construction meeting, the Permittee shall provide the Commission with a preconstruction micro-siting analysis leading to the final tower locations and an estimate of total Project wake losses. The Permittee shall provide to the Commission any operational wake loss studies conducted on this Project.

## **6.6 NOISE**

The Permittee shall submit a proposal to the Commission at least ten (10) working days prior to the pre-operation compliance meeting for the conduct of a post-construction noise study. Upon the approval of the Commission, the Permittee shall carry out the study. The study shall be designed to determine the LWECs noise levels at different frequencies and at various distances from the turbines at various wind directions and speeds. The Permittee shall submit the study within eighteen (18) months after commercial operation.

## **6.7 AVIAN AND BAT PROTECTION PLAN**

The Permittee shall, in consultation with the Commission and DNR, prepare an avian and bat protection plan and submit it to the Commission for approval prior to the pre-construction meeting. The plan shall address how results of pre-construction avian surveys informed micro-siting and steps to be taken to identify, avoid, minimize and mitigate impacts to avian and bat species during the construction and operation phases of the Project. The plan shall also address formal and informal monitoring, training, wildlife handling, documentation (e.g., photographs), and reporting protocols for each phase of the Project, and shall include specific eagle, bat and Loggerhead Shrike provisions and reporting as provided in Section 13.

The Permittee shall submit quarterly avian and bat fatality reports to the Commission. Quarterly reports are due by the 15<sup>th</sup> of each January, April, July, and October following commercial operation and terminating upon the expiration of this permit. Each report shall identify any dead or injured avian or bat species, location of find by turbine number and date of the find for the



reporting period in accordance with the reporting protocols. If a dead or injured avian or bat species is found, the report shall describe the potential cause of the occurrence and the steps taken to avoid future occurrences.

The Permittee shall notify the Commission, U.S. Fish and Wildlife Service, and DNR within twenty-four (24) hours of the discovery of any of the following:

- (a) five or more dead or injured non-protected avian or bat species within a reporting period;
- (b) one or more dead or injured migratory avian or bat species;
- (c) one or more dead or injured state threatened, endangered, or species of special concern;  
or
- (d) one or more dead or injured federally listed species.

## **6.8 PROJECT ENERGY PRODUCTION**

The Permittee shall submit a report no later than February 1st following each complete year of project operation. The report shall include:

- (a) The rated nameplate capacity of the permitted Project;
- (b) The total monthly energy generated by the Project in MW Hours;
- (c) The monthly capacity factor of the Project;
- (d) Yearly energy production and capacity factor for the Project;
- (e) The operational status of the Project and any major outages, major repairs, or turbine performance improvements occurring in the previous year; and
- (f) Any other information reasonably requested by the Commission.

This information will be considered public and must be submitted electronically.

## **6.9 WIND RESOURCE USE**

The Permittee shall, upon the request of the Commission, report to the Commission on the monthly energy production of the Project and the average monthly wind speed collected at one permanent meteorological tower selected by the Commission during the preceding year or partial year of operation. Section 11.7 shall apply data provided pursuant to section.

## **6.10 EXTRAORDINARY EVENTS**

Within twenty-four (24) hours of an occurrence, the Permittee shall notify the Commission 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.

The Permittee shall, within thirty (30) days of the occurrence, submit a report to the Commission describing the cause of the occurrence, conditions and the steps taken to avoid future occurrences.

## **SECTION 7 CONSTRUCTION AND OPERATION PRACTICES**

### **7.1 SITE CLEARANCE**

The Permittee shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation, and maintenance of the Project.

### **7.2 TOPSOIL PROTECTION**

The Permittee shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner(s).

### **7.3 SOIL COMPACTION**

The Permittee shall implement measures to minimize soil compaction of all lands during all phases of the Project's life and shall confine compaction to as small an area as practicable.

### **7.4 LIVESTOCK PROTECTION**

The Permittee shall take precautions to protect livestock during all phases of the Project's life.

### **7.5 FENCES**

The Permittee shall promptly replace or repair all fences and gates removed or damaged during all phases of the Project's life unless otherwise negotiated with the affected landowner(s). When the Permittee installs a gate where electric fences are present, the Permittee shall provide for continuity in the electric fence circuit.

### **7.6 DRAINAGE TILES**

The Permittee shall take into account the location of drainage tiles during Project layout and construction. The Permittee shall promptly repair or replace all drainage tiles broken or damaged during all phases of the Project's life unless otherwise negotiated with the affected landowner(s).

## **7.7 EQUIPMENT STORAGE**

The Permittee shall not locate temporary equipment staging areas on lands under its control unless negotiated with affected landowner(s). Temporary staging areas shall not be located in wetlands or native prairie as defined in Sections 4.6 and 4.7.

## **7.8. ROADS**

### **7.8.1 PUBLIC ROADS**

At least ten (10) working days prior to the pre-construction meeting, the Permittee shall identify all state, county or township roads that will be used for the Project and shall notify the Commission and the state, county or township governing body having jurisdiction over the roads to determine if the governmental body needs to inspect the roads prior to use of these roads. Where practical, existing roadways shall be used for all activities associated with the Project. 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.

The Permittee shall, prior to the use of such roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over roads to be used for construction of the Project for maintenance and repair of roads that will be subject to extra wear and tear due to transportation of equipment and Project components. Upon request of the Commission, the Permittee shall notify the Commission of such arrangements.

### **7.8.2 TURBINE ACCESS ROADS**

The Permittee shall construct the least 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. Access roads shall not be constructed across streams and drainage ways without required permits and approvals from the DNR, USFWS, and/or (USACOE. 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. Access roads shall also be constructed in accordance with all necessary township, county or state road requirements and permits.

### **7.8.3 PRIVATE ROADS**

The Permittee shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner(s).

## **7.9 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.

## **7.10 TREE REMOVAL**

The Permittee shall minimize the removal of trees and the Permittee shall not remove groves of trees or shelter belts without notification to the Commission and the approval of the affected landowner(s) or designee.

#### **7.11 SOIL EROSION AND SEDIMENT CONTROL**

The Permittee shall develop a Soil Erosion and Sediment Control Plan and submit the Plan to the Commission at least ten (10) working days prior to the pre-construction meeting. This Plan may be the same as the Storm Water Pollution Prevention Plan (SWPPP) submitted to the PCA as part of the National Pollutant Discharge Elimination System (NPDES) permit application.

The Soil Erosion and Sediment Control Plan shall address what types of erosion control measures will be implemented during each Project phase and shall at a minimum identify: plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive re-vegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary Project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, and stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material. Erosion and sedimentation control measures shall be implemented prior to construction and maintained throughout the Project's life.

The Permittee shall develop an invasive species prevention plan to prevent the introduction of invasive species on lands disturbed by project construction activities. This requirement may be included as an element of the Soil Erosion and Sediment Control Plan.

#### **7.12 RESTORATION**

The Permittee shall, as soon as practical following construction of each turbine, considering the weather and preferences of the landowner(s), restore the area affected by any Project activities to the condition that existed immediately before construction began, to the extent possible. The time period may be no longer than twelve (12) months after completion of construction of the turbine, unless otherwise negotiated with the affected landowner(s). Restoration shall be compatible with the safe operation, maintenance, and inspection of the Project.

#### **7.13 HAZARDOUS WASTE**

The Permittee shall be responsible for compliance with all laws applicable to the generation, storage, transportation, clean-up and disposal of hazardous wastes generated during any phase of the Project's life.

#### **7.14 APPLICATION OF HERBICIDES**

The Permittee shall restrict herbicide use to those herbicides and methods of application approved by the Minnesota Department of Agriculture and the U.S. Environmental Protection Agency. Selective foliage or basal application shall be used when practicable. The Permittee

shall contact the landowner(s) or designee to obtain approval for the use of herbicide prior to any application on their property. The landowner may request that there be no application of herbicides on any part of the site within the landowner's property. All herbicides shall be applied in a safe and cautious manner so as to not damage property, including crops, orchards, tree farms, or gardens. The Permittee shall also, at least ten (10) days prior to the application, notify beekeepers with an active apiary within one mile of the proposed application site of the day the Permittee intends to apply herbicide so that precautionary measures may be taken by the beekeeper(s).

#### **7.15 PUBLIC SAFETY**

The Permittee shall provide educational materials to landowners within the site boundary and, upon request, to interested persons, about the Project and any restrictions or dangers associated with the Project. The Permittee shall also provide any necessary safety measures, such as warning signs and gates for traffic control or to restrict public access. The Permittee shall submit the location of all underground facilities, as defined in Minnesota Statute 216D.01, Subdivision 11, to Gopher State One Call.

#### **7.16 EMERGENCY RESPONSE**

The Permittee shall prepare an emergency response plan (fire protection and medical emergency plan) in consultation with the emergency responders having jurisdiction over the area prior to Project construction. The Permittee shall submit a copy of the plan to the Commission at least ten (10) working days prior to the pre-construction meeting and a revised plan, if any, at least ten (10) working days prior to the pre-operation meeting. The Permittee shall also register the Project with the local governments' emergency 911 services.

#### **7.17 TOWER IDENTIFICATION**

All turbine towers shall be marked with a visible identification number.

#### **7.18 FEDERAL AVIATION ADMINISTRATION LIGHTING**

Tower shall be marked as required by the FAA. There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the wind monitoring equipment.

### **SECTION 8 FINAL CONSTRUCTION**

#### **8.1 AS-BUILT PLANS AND SPECIFICATIONS**

Within sixty (60) days after completion of construction, the Permittee shall submit to the Commission a copy of the as-built plans and specifications. The Permittee must also submit this data in a geographic information system compatible format so that the Commission can place it into the Minnesota Geospatial Information Office's geographic data clearinghouse located in the Department of Administration.

## **8.2 FINAL BOUNDARIES**

After completion of construction, the Commission shall determine the need to adjust the final boundaries of the site required for this Project. If done, this Permit may be modified, after notice and opportunity for public hearing, to represent the actual site required by the Permittee to operate the Project authorized by this permit.

## **8.3 EXPANSION OF SITE BOUNDARIES**

No expansion of the site boundaries described in this Permit shall be authorized without the approval of the Commission. The Permittee may submit to the Commission a request for a change in the boundaries of the site for the Project. The Commission will respond to the requested change in accordance with applicable statutes and rules.

# **SECTION 9 DECOMMISSIONING, RESTORATION, AND ABANDONMENT**

## **9.1 DECOMMISSIONING PLAN**

At least ten (10) working days prior to pre-operation compliance meeting, the Permittee shall submit to the Commission a Decommissioning Plan documenting the manner in which the Permittee anticipates decommissioning the Project in accordance with the requirements of Minnesota Rules part 7854.0500, subp.13. The Permittee shall ensure that it carries out its obligations to provide for the resources necessary to fulfill its requirements to properly decommission the Project at the appropriate time. The Commission may at any time request the Permittee to file a report with the Commission describing how the Permittee is fulfilling this obligation.

## **9.2 SITE RESTORATION**

Upon expiration of this Permit, or upon earlier termination of operation of the Project, or any turbine within the Project, the Permittee shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four feet. To the extent feasible the Permittee shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner(s) or designees requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or no removal shall be recorded with the county and shall show the locations of all such foundations. All such agreements between the Permittee and the affected landowner(s) or designee shall be submitted to the Commission prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen (18) months after expiration of this Permit, or upon earlier termination of the Project, or any turbine within the Project.

## **9.3 ABANDONED TURBINES**

The Permittee shall advise the Commission of any turbines that are abandoned prior to termination of operation of the Project. A Project, or any turbine within the Project, shall be

considered abandoned after one (1) year without energy production and the land restored pursuant to Section 9.2 unless a plan is developed and submitted to the Commission outlining the steps and schedule for returning the Project, or any turbine within the Project, to service.

## **SECTION 10 AUTHORITY TO CONSTRUCT LWECS**

### **10.1 WIND RIGHTS**

At least ten (10) working days prior to pre-construction meeting, the Permittee shall demonstrate that it has obtained the wind rights and any other rights necessary to construct and operate the Project within the site boundaries established by this Permit.

Nothing in this Permit shall be construed to preclude any other person from seeking a site permit to construct a wind energy conversion system in any area within the site boundaries established by this Permit if the Permittee does not hold exclusive wind rights for such areas.

### **10.2 POWER PURCHASE AGREEMENT**

In the event the Permittee does not have a power purchase agreement or some other enforceable mechanism for the sale of the electricity to be generated by the Project at the time this permit is issued, the Permittee shall provide notice to the Commission when it obtains a commitment for the purchase of the power. This Permit does not authorize construction of the Project until the Permittee has obtained a power purchase agreement or some other enforceable mechanism for sale of the electricity to be generated by the Project. In the event the Permittee does not obtain a power purchase agreement or some other enforceable mechanism for sale of the electricity to be generated by the Project within two years of the issuance of this Permit, the Permittee must advise the PUC of the reason for not having such power purchase agreement or enforceable mechanism. In such event, the PUC may determine whether this Permit should be amended or revoked. No amendment or revocation of this Permit may be undertaken except in accordance with applicable statutes and rules, including Minnesota Rule 7854.1300.

### **10.3 FAILURE TO COMMENCE CONSTRUCTION**

If the Permittee has not completed the pre-construction surveys required under this permit and has not commenced construction of the Project within two (2) years of the issuance of this Permit, the Permittee must advise the Commission of the reason(s) construction has not commenced. In such event, the Commission shall make a determination as to whether this Permit should be amended or revoked. No revocation of this Permit may be undertaken except in accordance with applicable statutes and rules, including Minnesota Rule 7854.1300.

### **10.4 PREEMPTION OF OTHER LAWS**

Pursuant to Minnesota Statute 216F.07, this Site Permit shall be the only site approval required for the location of this Project, and this Permit shall supersede and preempt all zoning, building, and land use rules, regulations, and ordinances adopted by regional, county, local, and special purpose governments. Nothing in this Permit shall release the Permittee from any obligation imposed by law that is not superseded or preempted by law.

## **10.5 OTHER PERMITS**

The Permittee shall be responsible for acquiring any other federal, state, or local permits or authorizations that may be required to construct and operate a LWECS within the authorized site, and that are not otherwise preempted or superseded by Minn. Stat. 216F.07. The Permittee shall submit a copy of such permits and authorizations to the Commission upon request.

### **10.5.1 COMPLIANCE WITH FEDERAL AND STATE AGENCY PERMITS**

The Permittee shall comply with all terms and conditions of permits or licenses issued by Federal, State, or Tribal authorities including, but not limited to, the requirements of the PCA (Section 401 Water Quality Certification, National Pollutant Discharge Elimination System (NPDES/State Disposal System (SDS) stormwater permit for construction activity, and other site specific approvals), DNR (License to Cross Public Lands and Water, Public Waters Work Permit, and state protected species consultation); SHPO (Section 106 Historic Consultation Act); FAA determinations, and the DOT (Utility Access Permit, Highway Access Permit and Oversize and Overweight Permit, and Aeronautics Airspace Obstruction Permit).

### **10.5.2 COMPLIANCE WITH COUNTY, CITY OR MUNICIPAL PERMITS**

The Permittee shall comply with all terms and conditions of permits or licenses issued by the counties, cities and municipalities affected by the project that do not conflict or are not preempted by federal or state permits and regulations.

## **SECTION 11 COMMISSION POST-ISSUANCE AUTHORITIES**

### **11.1 PERIODIC REVIEW**

The Commission shall initiate a review of this Permit and the applicable conditions at least once every five (5) years. The purpose of the periodic review is to allow the Commission, the Permittee, and other interested persons an opportunity to consider modifications in the conditions of the Permit. No modification may be made except in accordance with applicable statutes and rules.

### **11.2 MODIFICATION OF CONDITIONS**

After notice and opportunity for hearing, this Permit may be modified or amended for cause, including but not limited to the following:

- (a) Violation of any condition in this Permit;
- (b) Endangerment of human health or the environment by operation of the facility; or
- (c) Existence of other grounds established by rule.



### **11.3 REVOCATION OR SUSPENSION OF THE PERMIT**

The Commission may take action to suspend or revoke this permit upon the grounds that:

- (a) A false statement was knowingly made in the application or in accompanying statements or studies required of the Permittee, and a true statement would have warranted a change in the Commission's findings;
- (b) There has been a failure to comply with material conditions of this permit, or there has been a failure to maintain health and safety standards; or
- (c) There has been a material violation of a provision of an applicable statute, rule, or an order of the Commission.

In the event the Commission determines that it is appropriate to consider revocation or suspension of this permit, the Commission shall proceed in accordance with the requirements of Minnesota Rule 7854.1300 to determine the appropriate action. Upon a finding of any of the above, the Commission may require the Permittee to undertake corrective measures in lieu of having this permit suspended or revoked.

### **11.4 MORE STRINGENT RULES**

The Commission's issuance of this Site Permit does not prevent the future adoption by the Commission of rules or orders more stringent than those now in existence and does not prevent the enforcement of these more stringent rules and orders against the Permittee.

### **11.5 TRANSFER OF PERMIT**

The Permittee may not transfer this Permit without the approval of the Commission. If the Permittee desires to transfer this Permit, the holder shall advise the Commission in writing of such desire. The Permittee shall provide the Commission with such information about the transfer as the Commission requires to reach a decision. The Commission may impose additional conditions on any new Permittee as part of the approval of the transfer.

### **11.6 RIGHT OF ENTRY**

Upon reasonable notice, presentation of credentials and at all times in compliance with the Permittee's site safety standards, the Permittee shall allow representatives of the Commission to perform the following:

- (a) To enter upon the facilities easement of the site property for the purpose of obtaining information, examining records, and conducting surveys or investigations;
- (b) To bring such equipment upon the facilities easement of the property as is necessary to conduct such surveys and investigations;
- (c) To sample and monitor upon the facilities easement of the property; and

- (d) To examine and copy any documents pertaining to compliance with the conditions of this permit.

### **11.7 PROPRIETARY INFORMATION**

Certain information required to be submitted to the Commission under this Permit, including energy production and wake loss data, may constitute trade secret information or other type of proprietary information under the Data Practices Act or other law and is not to be made available by the Commission. The Permittee must satisfy requirements of applicable law and Commission procedures to obtain the protection afforded by the law.

### **SECTION 12 EXPIRATION DATE**

This Permit shall expire thirty (30) years after final permit issuance.

### **SECTION 13 SPECIAL CONDITIONS**

Special conditions shall take precedence over any of the other conditions of this Permit if there should be a conflict between the two.

### **13.1 AVIAN AND BAT PROTECTION PLAN SPECIAL PROVISION**

The Avian and Bat Protection Plan in Section 6.7 shall include plans and protocols for pre- and post-construction surveys and protection measures for eagles, bats and Loggerhead Shrike. Annual reports of the results of these efforts, including results of the post-construction avian and bat surveys, shall to be submitted to the Commission, DNR, and U.S. Fish and Wildlife Service in accordance with other requirements of this permit. Based on those results, the Commission may modify conditions in this permit pursuant to Section 11.2.

#### **13.1.1 Eagles**

The permittee shall develop a plan for monitoring Bald and Golden Eagle nest sites near turbine locations and shall develop protocol to identify proposed point count locations, suggested count duration and number of survey visits. Point counts of 20-30 minutes shall be conducted to document eagle movements in these areas. Multiple point count visits shall be conducted to cover the remainder of the 2011 nesting season (eaglets are expected to fledge by mid-July). Additional point counts shall be conducted in the fall of 2011 and the winter of 2011-2012. Details of the plan shall be included in the Avian and Bat Protection Plan. Ongoing monitoring for eagles shall be conducted in accordance with the Avian and Bat Protection Plan and U.S. Fish and Wildlife Service requirements. The Permittee shall submit the results of the summer, fall, and winter surveys, and any subsequent surveys, to the Commission within one month of completion of the surveys.

#### **13.1.2 Bats**

The Permittee shall install a minimum of two Anabat detectors on each temporary or permanent meteorological tower. Data should be collected, at a minimum, from July 15 to November 15, 2011, and May 1 to November 15, 2012. One Anabat detector on each meteorological tower shall be mounted at 5 meters above ground, and one shall be mounted as close to the rotor-swept area as possible. Additional monitoring or mitigation measures may be imposed based on results obtained from bat surveys. The Permittee shall submit the results of the 2011 monitoring by December 15, 2011 and the 2012 monitoring by December 15, 2012. Each report shall include an update on the status of the U.S. Fish and Wildlife Service potential listing of the Northern long-eared bat.

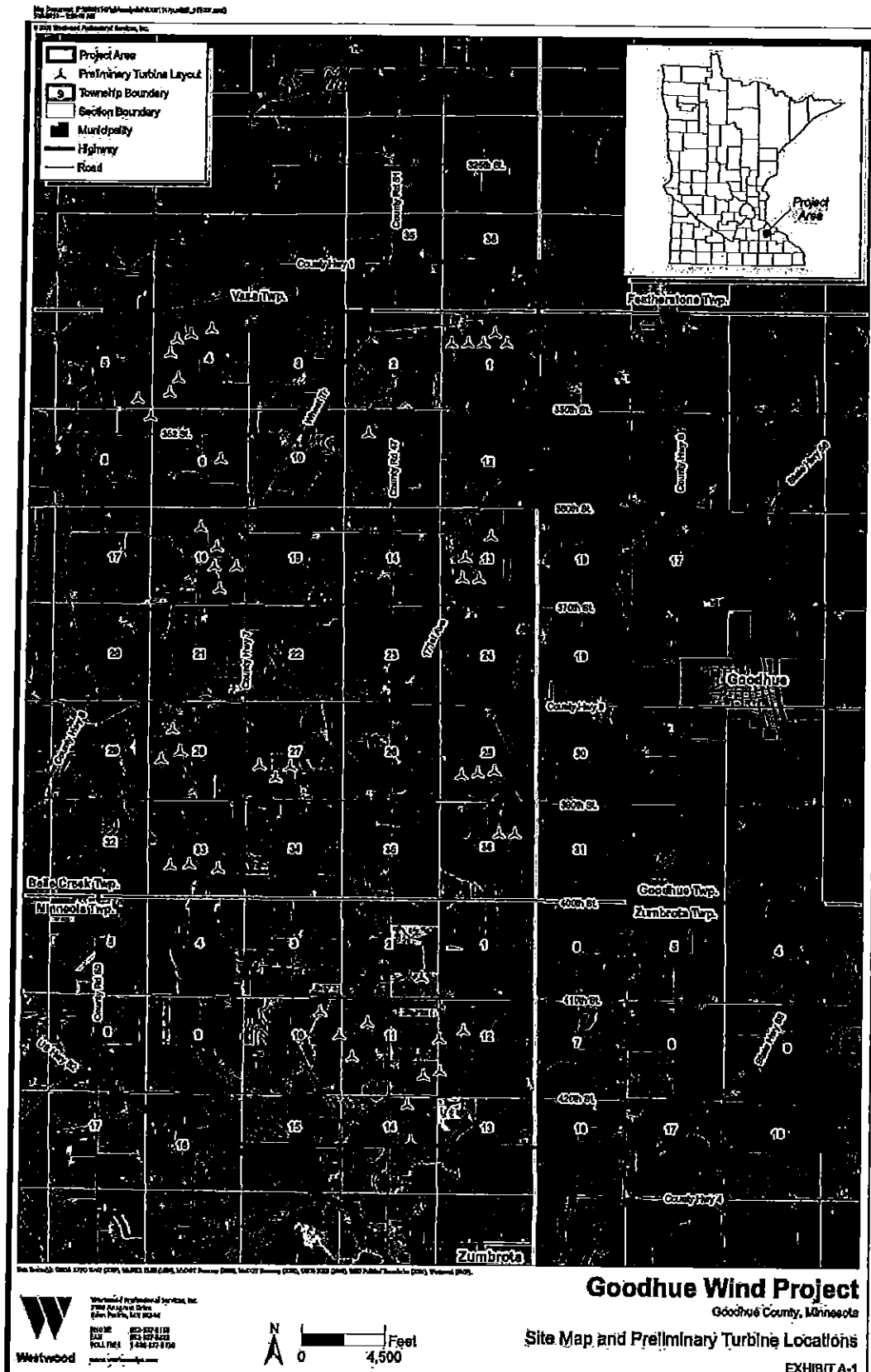
### 13.1.3 Loggerhead Shrike

The Permittee shall avoid placement of turbines in areas identified as highly suitable or very highly suitable loggerhead shrike habitat. Alternate turbine sites are to be considered the primary avoidance strategy. If alternate sites cannot be utilized, the Permittee shall provide the Commission and DNR with a Loggerhead Shrike Protection Plan for approval by the Commission detailing why avoidance is not possible, outlining strategies to minimize effects to Loggerhead Shrike, and providing mitigation measures for impacts. Permittee shall conduct two years of post-construction fatality monitoring to evaluate the impacts of wind turbines sited in loggerhead shrike habitat determined to be highly to very highly suitable.

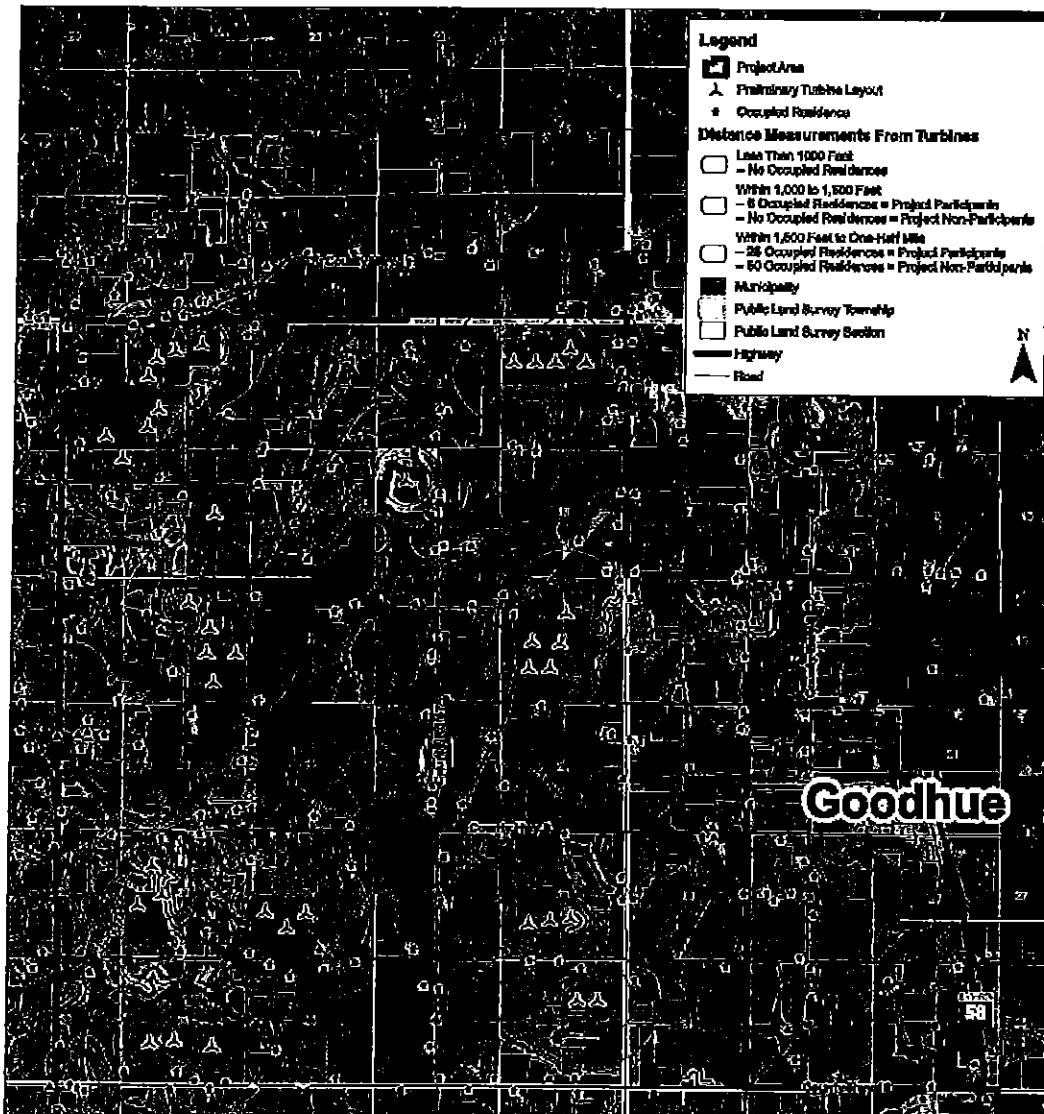
## 13.2 APPLICATION OF GOODHUE COUNTY STANDARDS

The Permittee shall site all wind turbines and associated facilities in accordance with the following provisions of Goodhue County's Wind Energy Conversion System Ordinance:

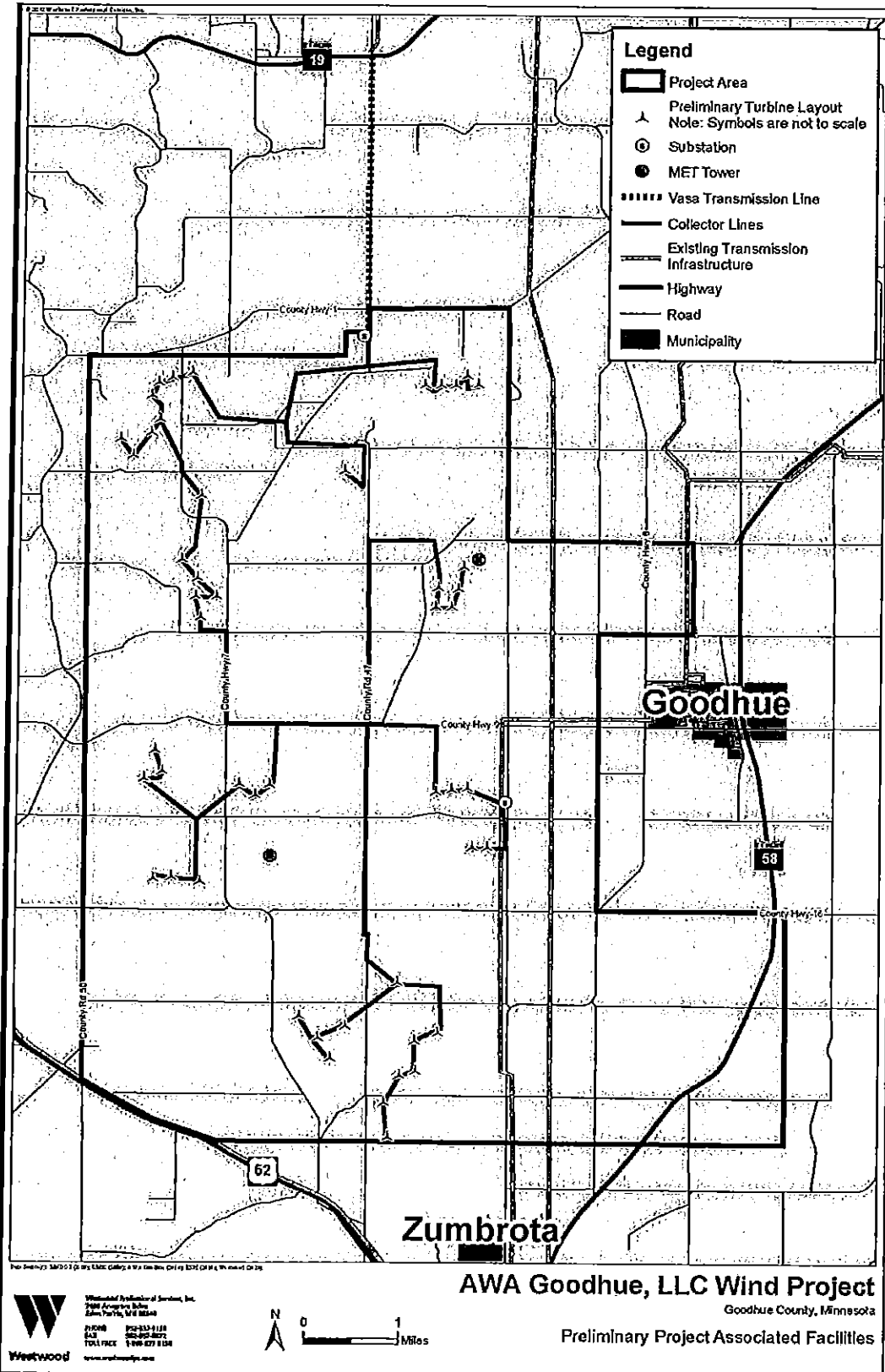
- (a) Section 3, Subd. 6 [Liability Insurance] The Project Owner must provide proof of liability insurance covering the towers/project covering the lifespan of the project from the initial construction to final decommissioning.
- (b) Section 5, Subd. 6 [Lighting] Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by Federal Aviation Administration. Red strobe lights are preferred and 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.
- (c) Section 5, Subd. 8 [Feeder Line] All communication and feeder line, equal to or less than 34.5 kilovolts in capacity, installed as part of a WEC 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.
- (d) Section 5, Subd. 10 [Avoidance and mitigation of damages to Public Infrastructure] Items A – H, [Note: AWA Goodhue Wind, LLC has entered into a "Development Agreement" with Goodhue County. The conditions of the Development Agreement incorporate the requirements of Section 5, Subd. 10].



SITE PERMIT MAP



SITE PERMIT MAP



MINNESOTA PUBLIC UTILITIES COMMISSION  
COMPLAINT HANDLING PROCEDURES  
FOR  
LARGE WIND ENERGY CONVERSION SYSTEMS

A. **Purpose:**

To establish a uniform and timely method of reporting complaints received by the Permittee concerning Permit conditions for site preparation, construction, cleanup and restoration, operation and resolution of such complaints.

B. **Scope:**

This document describes Complaint reporting procedures and frequency.

C. **Applicability:**

The procedures shall be used for all complaints received by the Permittee and all complaints received by the Commission under Minn. Rule 7829.1500 or 7829.1700 relevant to this Permit.

D. **Definitions:**

**Complaint:** A verbal or written statement presented to the permittee by a person expressing dissatisfaction or concern regarding site preparation, cleanup or restoration or other LWECs and associated facilities site permit conditions. Complaints do not include requests, inquiries, questions or general comments.

**Substantial Complaint:** A written Complaint alleging a violation of a specific Site Permit condition that, if substantiated, could result in Permit modification or suspension pursuant to the applicable regulations.

**Unresolved Complaint:** A Complaint which, despite the good faith efforts of the permittee and a person(s), remains to both or one of the parties unresolved or unsatisfactorily resolved.

**Person:** An individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

E. **Complaint Documentation and Processing:**

1. The Permittee shall document all Complaints by maintaining a record of all applicable information concerning the Complaint, including the following:

- a. Name of complainant, address, phone number, and e-mail address.
  - b. Precise property description or parcel number.
  - c. Name of Permittee representative receiving Complaint and date of receipt.
  - d. Nature of Complaint and the applicable Site Permit conditions(s).
  - e. Activities undertaken to resolve the Complaint.
  - f. Final disposition of the Complaint.
2. The Permittee shall designate an individual to summarize Complaints for the Commission. This person's name, phone number and e-mail address shall accompany all complaint submittals.
  3. A Person presenting the Complaint should to the extent possible, include the following information in their communications:
    - a. Name, address, phone number, and e-mail address.
    - b. Date
    - c. Tract or parcel
    - d. Whether the complaint relates to (1) a Site Permit matter, (2) a LW ECS and associated facility issue, or (3) a compliance issue.

**F. Reporting Requirements:**

The Permittee shall report all complaints to the Commission according to the following schedule:

**Immediate Reports:** All substantial complaints shall be reported to the Commission the same day received, or on the following working day for complaints received after working hours. Such reports are to be directed to Wind Permit Compliance, 1-800-657-3794, or by e-mail to: [DOC.energypermitcompliance@state.mn.us](mailto:DOC.energypermitcompliance@state.mn.us). Voice messages are acceptable.

**Monthly Reports:** By the 15th of each month, a summary of all complaints, including substantial complaints received or resolved during the preceding month, shall be Filed to Dr. Burl W. Haar, Executive Secretary, Public Utilities Commission, using the Minnesota Department of Commerce eDocket system (see eFiling instructions attached to this permit).

If no Complaints were received during the preceding month, the permittee shall submit (eFile) a summary indicating that no complaints were received.

**G. Complaints Received by the Commission or Commerce:**

Complaints received directly by the Commission from aggrieved persons regarding site preparation, construction, cleanup, restoration, operation and maintenance shall be promptly sent to the Permittee.



H. **Commission Process for Unresolved Complaints:**

**Initial Screening:** Commission staff shall perform an initial evaluation of unresolved Complaints submitted to the Commission. Complaints raising substantial LWECS Site Permit issues shall be processed and resolved by the Commission. Staff shall notify Permittee and appropriate person(s) if it determines that the Complaint is a Substantial Complaint. With respect to such Complaints, each party shall submit a written summary of its position to the Commission no later than ten (10) days after receipt of the Staff notification. Staff shall present Briefing Papers to the Commission, which shall resolve the Complaint within twenty days of submission of the Briefing Papers.

I. **Permittee Contacts for Complaints:**

**Mailing Address:** Complaints filed by mail shall be sent to one of the addresses below:

AWA Goodhue, LLC  
706 2nd Avenue South, Suite 1200  
Minneapolis, MN 55402

Tel: 612-746-6600