

August 31, 2020

Via eDockets

Mr. Will Seuffert  
Executive Secretary  
Public Utilities Commission  
121 Seventh Place East, Suite 350  
St. Paul, MN 55101-2147

**RE: In the Matter of the Site Permit Amendment Application  
for Repowering the Fenton Wind Project in Murray and Nobles Counties  
Docket No. IP-6499/WS-05-1707**

Mr. Seuffert:

Attached are comments and recommendations of Energy Environmental Review and Analysis (“EERA”) staff in the above-mentioned matter.

On August 5, 2020, Fenton Power Partners I LLC (“Fenton”) submitted a notice and application to the Commission that Fenton will not be retrofitting the Fenton Project and their plans to continue to operate the existing Project.

EERA’s review addresses the topics on which the Commission requested comments. Specific recommendations are attached. EERA is available to answer any questions the commission may have.

Sincerely,

*/s/ Larry B Hartman*

Environmental Review Manager  
Energy Environmental Review and Analysis  
T: 651-539-1839 /612-210-4810  
Email: [larry.hartmn@state.mn.us](mailto:larry.hartmn@state.mn.us)

cc: Scott Ek, MNPUC  
Louise Miltich, Energy Environmental Review and Analysis

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## BEFORE THE PUBLIC UTILITIES COMMISSION

### ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS Comments and Recommendations

Fenton Wind Project  
*Docket No. IP-6499/WS-05-1707*

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Date: August 31, 2020

Staff: [larry.hartman@state.mn.us](mailto:larry.hartman@state.mn.us) | (651) 539-1839

**Issues Addressed:** EERA’s comments and recommendations address topics open for comment in a Commission notice dated August 17, 2020 for the above captioned docket, which are:<sup>1</sup>

- Should the Commission approve Fenton Power Partners I, LLC ‘s (Fenton) proposed site permit amendments that involve its decision to not proceed with the previously approved retrofit and upgrade of the Fenton Wind facility?
- Are there other permit conditions that should be modified, or other issues or concerns related to this matter?

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#### BACKGROUND

The Fenton Wind facility is an existing 205.5 megawatt (MW) Large Wind Energy Conversion System operating in Murray and Nobles counties, Minnesota. The Commission originally issued a site permit for the facility on April 13, 2006. On March 8 and April 25, 2019, the Commission approved amendments to the site permit that allowed Fenton to retrofit and upgrade many of the turbines and granted setback waivers to a select set of turbines.

On August 5, 2020, Fenton Power Partners I, LLC pursuant to Section 8.3 of the large wind energy conversion system (“LWECS”) Site Permit issued to Fenton Power Partners I, LLC (“Fenton”) on March 8, 2019, filed notice and application with the Commission indicating that it no longer intends on retrofitting and upgrading the wind facility and requested amendments to

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Additional documents and information, including the route permit, can be found on eDockets by searching “05” for year and “1707” for number: <https://www.edockets.state.mn.us/EFiling/search.jsp> or the EERA webpage: <https://mn.gov/eera/web/project/13429512/>. This document can be made available in alternative formats, that is, large print or audio, by calling (651) 539-1530 (voice).

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<sup>1</sup> MPUC Notice of Comment Period on Site Permit Amendment, August 17, 2020. See Docket Id. No. [20208-165925-01](#).

the site permit issued by the Commission on March 8, 2019 to remove references to the retrofit and conditions that may no longer be consistent with its plans to continue operation of the existing facilities as originally constructed.<sup>2</sup>

Fenton also provided several operations-related compliance filings that are required under the 2019 Amended Site Permit but had not been previously filed and provided clarifications regarding compliance filings that Fenton does not plan to make because no construction activity is occurring.

In support of its amendment request Fenton’s filed notice and application included the following documents:

<b>Permit Section No.</b>	<b>Document Description</b>	<b>Exhibit Number</b>	<b>eDocket Identification No.</b>
	Redline of Proposed Amended Site Permit-Notice Regarding Retrofit and Request for Amendment of Site Permit	Exhibit 1 (Redline and clean version)	<a href="#">20208-165621-03</a>
3.1	Turbine Layout-Compliance filing cover page	2	<a href="#">20208-165621-04</a>
5.1	Notification Letter-template letter to landowners & government officials	3	<a href="#">20208-165621-05</a>
5.2.2	Site Manager-Compliance filing cover page & letter to government officials and landowners	4	<a href="#">20208-165621-06</a>
7.5.1	Avian and Bat Protection Plan-Compliance filing cover page	5	<a href="#">20208-165621-07</a>
7.5.2	Quarterly Incident Report-Compliance filing cover page	6	<a href="#">20208-165621-08</a>
10.8	Emergency Response-Compliance filing cover page & letter to public safety answering points	7	<a href="#">20208-165621-09</a>
11.1	Decommissioning Plan-Compliance filing cover page and letters to Nobles & Murray Counties Environmental Services Department	8	<a href="#">20208-165621-10</a>
14	Transfer of Permit-Compliance filing cover page with organizational chart	9	<a href="#">20208-165622-01</a>

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<sup>2</sup> Fenton Power Partner’s I, LLC’S Notice and Application Regarding Retrofit Construction and Request for Amendment of Site Permit, August 5, 2020. See Docket Id. No. [20208-165621-02](#).

## EERA Staff Comments

As noticed by the Commission, the topics open for comment are:

- Should the Commission approve Fenton Power Partners I, LLC 's (Fenton) proposed site permit amendments that involve its decision to not proceed with the previously approved retrofit and upgrade of the Fenton Wind facility?
- Are there other permit conditions that should be modified, or other issues or concerns related to this matter?

EERA's review and comments address:

- Site permit language changes requested by Fenton.
- EERA's proposed modified site permit conditions;
- EERA review of Fenton's operation-related compliance filings.
- Clarifications regarding compliance filings Fenton does not plan to make because no construction activity is occurring.

Staff's comments concerning the permittee's amendment request application and supporting filings are organized chronologically by site permit section number and Exhibit number as identified above.

### **Fenton's Request to Amend Certain Sections of the 2019 Amended Site Permit (Exhibit 1)**

In its August 5, 2020, filing Fenton provided proposed revised site permit language, and the reasons for the requested change, as proposed in Table 1 and as illustrated in Exhibit 1, (attached, See eDocket. Id. No. [20208-165621-03](#)), which is a redlined version of the proposed amendments to the 2019 Amended Site Permit.

<b>Table 1 - Proposed Amendments<sup>3</sup></b>		
<b>2019 Amended Site Permit Section</b>	<b>Proposed Language</b>	<b>Explanation</b>
Cover	The Permittee is authorized by this site permit to construct and operate the 205.5-Megawatt (nameplate capacity) Fenton Wind Project Large Wind Energy Conversion System and Associated Facilities. The Fenton Wind Project and	Revised to remove reference to repowering; to reflect the size of the Project as 205.5 MW rather than 221 MW; and to state that it replaces the version issued in 2019.

<sup>3</sup> Notice Regarding Retrofit Construction and Request for Amendment of Site Permit, August 5, 2020, See eDocket Id. No. [20208-165621-02](#).

<b>Table 1 - Proposed Amendments<sup>3</sup></b>		
<b>2019 Amended Site Permit Section</b>	<b>Proposed Language</b>	<b>Explanation</b>
	<p>associated facilities shall be built within the site identified in this permit and as portrayed on the official site maps, and in compliance with the conditions specified in this permit.</p> <p>This site permit replaces the versions issued in 2006, 2008, and 2019. This site permit shall expire on December 31, 2036.</p>	<p>Also revises the expiration date of the permit back to December 31, 2036, as stated in the 2006 Site Permit.</p> <p>Revised to reflect current Executive Secretary.</p>
1 SITE PERMIT	The Minnesota Public Utilities Commission (Commission) hereby issues this site permit to Fenton Power Partners I, LLC (Permittee) pursuant to Minnesota Statutes Chapter 216F and Minnesota Rules Chapter 7854. This permit authorizes the Permittee to construct and operate the Fenton Wind Project (Project), a 205.5-megawatt (MW) nameplate capacity Large Wind Energy Conversion System (LWECS) and associated facilities in Murray and Nobles Counties, Minnesota. The LWECS and associated facilities shall be located within the site identified in this permit and as identified in the attached official site permit map(s), hereby incorporated into this document.	Revised to remove reference to repowering and to reflect the size of the Project as 205.5 MW rather than 221 MW.
2 PROJECT DESCRIPTION	The Project’s total nameplate capacity is 205.5 megawatts (MW). The Project consists of up to 137 General Electric (GE) 1.5 sle turbines. The GE1.5 sle wind turbines have a rotor diameter of 77 meters (252.6-feet). Turbines are interconnected by communication and electrical power collection facilities within the wind farm. These facilities include transformers and underground collector lines, and feeder lines that deliver wind-generated power to the	Revised to remove references to the repower and reflect the current size of the Project and existing turbine characteristics. The proposed language slightly modifies Section II of the 2006 Site Permit.

<b>Table 1 - Proposed Amendments<sup>3</sup></b>		
<b>2019 Amended Site Permit Section</b>	<b>Proposed Language</b>	<b>Explanation</b>
	existing switchyard and substation located in Section 20 in Fenton Township in Murray County.	
3 DESIGNATED SITE	The site designated by the Commission for the Fenton Wind Project is the site depicted on the official site permit maps attached to this permit. The estimated size of the Project Area is 38,500 acres (approximately 60.0 square miles) primarily on agricultural land.	Revised to remove references to the repower.
4.1 Wind Access Buffer	Wind turbine towers shall not be placed less than 5 rotor diameters from the perimeter of the site on the north-south axis and 2 rotor diameters on the east-west axis where the Permittee does not hold the wind rights, without the approval of the PUC. Permittee acknowledges that properties within the Project boundaries for which Permittee does not hold the wind rights will not be foreclosed from installing wind turbine generators on such property at a later date, even if such turbine generators cannot be installed on such property in compliance with the setbacks set forth in the first sentence of this section. This section does not apply to public roads and trails.	Revised to reflect the wind access buffer setback from the 2006 Site Permit. The Setback Order recognized that the original setback requirements should be applied to the turbines that are not being retrofitted. Because no turbines will be retrofitted, the original setback requirement from the 2006 Site Permit should be applied to all Project turbines.
5.2 Construction and Operation Practices	The Permittee shall comply with the construction practices, operation and maintenance practices, and material specifications described in this permit.	Revised to remove references to the October 2018 Site Permit Amendment Application.
5.2.16 Interference	The Permittee has completed an assessment of television and radio signal reception, microwave signal patterns, and telecommunications in the Project area. The assessment was designed to provide data that can be	Revised to remove references to the repower. Specifically, request removing the portion regarding interference with the Minnesota Valley TV

<b>Table 1 - Proposed Amendments<sup>3</sup></b>		
<b>2019 Amended Site Permit Section</b>	<b>Proposed Language</b>	<b>Explanation</b>
	<p>used in the future to determine whether the turbines and associated facilities are the cause of disruption or interference of television or radio reception, microwave patterns, or telecommunications in the event residents should complain about such disruption or interference after the turbines are 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.</p> <p>The Permittee shall not operate the Project so as to cause microwave, television, radio, telecommunications, or navigation interference in violation of Federal Communications Commission regulations or other law. In the event the Project or its operations causes such interference, the Permittee shall take timely measures necessary to correct the problem.</p>	<p>Improvement (“MVTI”) beam path and Turbine 47.</p> <p>The beam path was not in service when the Project was constructed and the license for that microwave path was granted on June 6, 2016, despite the presence of the operating Project and possible Turbine 47 interference with its currently permitted 77-meter rotor diameter. The larger rotors for the retrofit of Turbine 47 were expected to have slightly more potential to impact on this beam path than the existing rotors. However, because Turbine 47 will not be retrofitted, no change in impact is anticipated.</p>
7.5.1 Avian and Bat Protection Plan	<p>The Permittee shall comply with the provisions of the Avian and Bat Protection Plan (ABPP) submitted for this project on August 5, 2020, and revisions resulting from the annual audit of ABPP implementation. The ABPP must address steps to be taken to identify and mitigate impacts to avian and bat species during the construction phase and the operation phase of the project. The ABPP shall also include formal and incidental post-construction fatality monitoring, training, wildlife handling, documentation (e.g., photographs), and reporting protocols for each phase of the project.</p>	<p>Request to update reference to the ABPP to reflect the updated ABPP which reflects that Fenton will not be retrofitting the Project.</p>



<b>Table 1 - Proposed Amendments<sup>3</sup></b>		
<b>2019 Amended Site Permit Section</b>	<b>Proposed Language</b>	<b>Explanation</b>
	<p>The Permittee shall, by the 15th of March following each complete or partial calendar year of operation, file with the Commission an annual report detailing findings of its annual audit of ABPP practices. The annual report shall include summarized and raw data of bird and bat fatalities and injuries and shall include bird and bat fatality estimates for the project using agreed upon estimators from the prior calendar year. The annual report shall also identify any deficiencies or recommended changes in the operation of the project or in the ABPP to reduce avian and bat fatalities and shall provide a schedule for implementing the corrective or modified actions. The Permittee shall provide a copy of the report to the Minnesota Department of Natural Resources and to the U.S. Fish and Wildlife Service at the time of filing with the Commission.</p>	
7.5.4 Turbine Operation Curtailment Requirements	[delete section]	Request removing this section because the existing turbine technology at Fenton is not equipped to operate in the manner described. The 2006 Site Permit did not include this condition.
16 EXPIRATION DATE	This Permit shall expire on December 31, 2036.	2019 Amended Site Permit's extended term through 2049 was predicated on repower. This provision should be amended back to the original 2036 termination date from the 2006 Site Permit.

<b>Table 1 - Proposed Amendments<sup>3</sup></b>		
<b>2019 Amended Site Permit Section</b>	<b>Proposed Language</b>	<b>Explanation</b>
Official Site Map	[map of the current Project layout]	Request replacing with the map of the current Project layout submitted with this filing.
Attachment 1 (Complaint Handling Procedures for Permitted Energy Facilities), Paragraph F	Monthly Reports: During project construction and restoration, a summary of all complaints, including substantial complaints received or resolved during the preceding month, shall be filed by the 15th of each month to Will Seuffert, Executive Secretary, Public Utilities Commission, using the eDockets system. The eDockets system is located at: <a href="https://www.edockets.state.mn.us/EFiling/home.jsp">https://www.edockets.state.mn.us/EFiling/home.jsp</a>	Revised to reflect current Executive Secretary.
Attachment 2 (Compliance Filing Procedures for Permitted Energy Facilities), Paragraph D(1)	The Permittee shall file all compliance filings with Will Seuffert, Executive Secretary, Public Utilities Commission, through the eDockets system. The eDockets system is located at: <a href="https://www.edockets.state.mn.us/EFiling/home.jsp">https://www.edockets.state.mn.us/EFiling/home.jsp</a>  General instructions are provided on the eDockets website. Permittees must register on the website to file documents.	Revised to reflect current Executive Secretary.
Attachment 2 (Compliance Filing Procedures for Permitted Energy Facilities), Paragraph D(3)	Filings that are graphic intensive (e.g., maps, engineered drawings) must, in addition to being electronically filed, be submitted as paper copies and on CD. Paper copies and CDs should be sent to: 1) Will Seuffert, Executive Secretary, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, MN 55101-2147, and 2) Department of Commerce, Energy Environmental Review and Analysis, 85 7th Place East, Suite 500, St. Paul, MN 55101-2198.	Revised to reflect current Executive Secretary.

EERA staff has reviewed Fenton’s proposed revised site permit language and supporting rationale in Table 1 and as illustrated in Exhibit I and concurs with Fenton’s proposed revised site permit language.

### **EERA’s Proposed Site Permit Language Amendments to 2019 Amended Site Permit (Exhibit 1)**

Recently EERA staff has collectively reviewed several site permits for large wind energy conversion systems (“LWECS) and noted several site permit language inconsistencies. In order to eliminate these inconsistencies and update site permit requirements EERA staff has developed a base model permit eliminating several minor language differences and updating site permit condition language where appropriate. In some instances, this language involves the Minnesota Department of Natural Resources (MnDNR), and these proposed changes have been reviewed with and are supported by the MnDNR for this and other pending projects seeking a site permit from the Commission.

EERA is proposing to modify the site permit conditions listed below. Most of the EERA proposed permit modifications are minor and shown by underscoring and strikeout in Exhibit 1 and are not reviewed. The more significant proposed modifications are highlighted in red and discussed later in this section.

- 4.12 Aviation
- 5.2.1 Field Representative
- 5.2.2 Site Manager
- 5.2.7 Wetlands
- 5.2.12 Public Roads
- 5.2.19 Drain Tile
- 5.5.2 Other Permits and Regulations
- 7.1 Biological and Natural Resources
- 7.5.1 Operational Phase Fatality Monitoring (New language)
- 7.5.2 Avian and Bat Protection Plan
- 7.5.3 Quarterly Incident Reports
- 7.5.4 Immediate Incident Reports
- 10.2 Site Plan
- 10.6 Project Energy Production
- 11.1 Decommissioning Plan

#### 7.5.1 Operational Phase Fatality Monitoring

The Permittee shall utilize a qualified third party to conduct a minimum of two full years of avian and bat fatality monitoring following the commencement of the operational phase of the project. Monitoring activities and results will be coordinated directly with MN DNR, USFWS, and the Commission. Detailed monitoring protocols, agency coordination, and any avoidance and minimization measures will be detailed in the project’s ABPP.

Justification – Section 7.5.1 is new language and has been added to provide clarification on the

minimum amount of post-construction avian and bat fatality monitoring to occur at the project once operational.

#### ~~7.5.1~~ 7.5.2 Avian and Bat Protection Plan

The Permittee shall comply with the provisions of the [date of Avian and Bat Protection Plan] most recently filed and accepted version of the Avian and Bat Protection Plan (ABPP). The initial version of the ABPP submitted for this project as part of the [date submitted with Site Permit Application] Site Permit Application, and all necessary revisions ~~resulting that occur during the permit issuance process will be incorporated into a Permit Version. The Permit Version of the ABPP will be filed with the Commission 14 days before the preconstruction meeting, and revision will include any updates associated with the final construction plans and site plans. from the annual audit of ABPP implementation. The first annual audit and revision will be filed with the Commission 14 days before the preconstruction meeting and revisions should include any updates associated with final construction plans.~~

The ABPP must address steps to be taken to identify and mitigate impacts to avian and bat species during the construction phase and the operation phase of the project. The ABPP shall also include formal and incidental post-construction fatality monitoring, training, wildlife handling, documentation (e.g., photographs), and reporting protocols for each phase of the project.

The Permittee shall, by the 15th of March following each complete or partial calendar year of operation, file with the Commission an annual report detailing findings of its annual audit of ABPP practices. The annual report shall include summarized and raw data of bird and bat fatalities and injuries and shall include bird and bat fatality estimates for the project using agreed upon estimators from the prior calendar year. The annual report shall also identify any deficiencies or recommended changes in the operation of the project or in the ABPP to reduce avian and bat fatalities and shall provide a schedule for implementing the corrective or modified actions. The Permittee shall provide a copy of the report to the Department of Commerce – Energy Environmental Review and Analysis, Minnesota Department of Natural Resources and to the U.S. Fish and Wildlife Service (FWS) at the time of filing with the Commission.

Justification – Section 7.5.2 has been updated to provide clarification to the filing and updating of the ABPP document from initial application filing through pre-construction compliance filings. Additionally, detail as to what should be included in the annual audit of the ABPP, as well as inclusion of EERA in the reporting and coordination.

#### ~~7.5.2~~ 7.5.3 Quarterly Incident Reports

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

known) and the steps taken to address future occurrences. The Permittee shall provide a copy of the report to the DNR and to the FWS at the time of filing with the Commission.

Justification – Renumbered. No other changes.

#### ~~7.5.3~~ 7.5.4 Immediate Incident Reports

The Permittee shall notify the Commission, EERA, the FWS, and the DNR within 24 hours of the discovery of any of the following:

(a) five or more dead or injured birds or bats, at an individual turbine location, within a single search event~~five day reporting period~~;

~~(a)~~ (b) twenty or more dead or injured birds or bats, across the entire site, within a single search event~~five day reporting period~~;

~~(b)~~ (c) one or more dead or injured state threatened, endangered, or species of special concern;

~~(c)~~ (d) one or more dead or injured federally listed species, including species proposed for listing; or

~~(d)~~ (e) one or more dead or injured bald or golden eagle(s).

In the event that one of the five discoveries listed above should be made, the Permittee must file with the Commission within seven days, a compliance report identifying the details of what was discovered, the turbine where the discovery was made, a detailed log of agencies and individuals contacted, and current plans being undertaken to address the issue.

Justification – Section 7.5.4 has been added to provide clarification to the types of bird and bat fatalities that require immediate reporting, within 24 hours of discovery. These changes directly address fatality events by turbine and throughout the entire project site and are intended to maintain the immediate reporting of significant fatality events and improve efficiencies.

#### 11.1 Decommissioning Plan

~~The Permittee shall submit a decommissioning plan to the Commission within 90 days of the site permit issuance and provide updates to the plan every five years thereafter. The plan shall provide information identifying all surety and financial securities established for decommissioning and site restoration of the project in accordance with the requirements of Minn. R. 7854.0500, subp. 13. The decommissioning plan shall provide an itemized breakdown of costs of decommissioning all project components, which shall include labor and equipment. The plan shall identify cost estimates for the removal of turbines, turbine foundations, underground collection cables, access roads, crane pads, substations, and other project~~

~~components. The plan may also include anticipated costs for the replacement of turbines or repowering the project by upgrading equipment.~~

~~The Permittee shall also submit the decommissioning plan to the local unit of government having direct zoning authority over the area in which the project is located. 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.~~

The Permittee shall comply with the provisions of the most recently filed and accepted Decommissioning Plan. The initial version of the Decommissioning Plan was submitted for this project on September 16, 2013 and an updated Decommissioning Plan on August 5, 2020 as a part of the request for amendment of the site permit. The Permittee shall file an updated decommissioning plan, incorporating comments and information from the permit issuance process and any updates associated with the final construction plans, with the Commission 14 days before the preconstruction meeting. The decommissioning plan shall be updated every five years following the commercial operation date.

The plan shall provide information identifying all surety and financial securities established for decommissioning and site restoration of the project in accordance with the requirements of Minn. R. 7854.0500, subp. 13. The decommissioning plan shall provide an itemized breakdown of costs of decommissioning all project components, which shall include labor and equipment. The plan shall identify cost estimates for the removal of turbines, turbine foundations, underground collection cables, access roads, crane pads, substations, and other project components. The plan may also include anticipated costs for the replacement of turbines or repowering the project by upgrading equipment.

The Permittee shall also submit the decommissioning plan to the local unit of government having direct zoning authority over the area in which the project is located. 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.

Justification – The EERA proposed language modification is intended to provide clarity to the permittee regarding timing requirements for plan filings and greater clarity on information to be including in the decommissioning plan.

## **Operations-Related Compliance Filings**

**Permit Section 3.1 Turbine Layout (Exhibit 2, eDocket Id. No. [20208-165621-04](#))**

This filing is a map of the current wind turbine and associated facility layout for use as the official site map attached to the permit.

EERA Response: Satisfies the requirements of the compliance filing.

**Permit Section 5.1. Notification Letter (Exhibit 3, eDocket Id. No. [20208-165621-05](#))**

Upon site permit reissuance, Fenton will re-send the revised site permit to reflect permit changes. This notification will be sent to landowners, the regional development commission, the county auditor and environmental office, and the city and township clerk in which any part of the site is located. Copies of the template letters to local governmental units and affected landowners are included.

EERA Response: Satisfies the requirements of the compliance filing.

**Permit Section 5.2.2 Site Manager (Exhibit 4, eDocket Id. No. [20208-165621-06](#))**

This compliance filing provides the name, address, email, phone number, and emergency phone number of the site manager. Fenton has provided the site manager's contact information to affected landowners, residents, local governmental units and other interested persons. Copies of the correspondence, certificate of service, and mailing lists are included in this exhibit.

EERA Response: Satisfies the requirements of the compliance filing.

**Permit Section 7.5.1 Avian and Bat Protection Plan (Exhibit 5, eDocket Id. No. [20208-165621-07](#))**

Fenton's updated Avian and Bat Protection Plan reflects that Fenton will not be retrofitting the Project. This exhibit includes the 2019 annual report detailing bird and bat fatalities and injuries.

EERA Response: EERA recommends that future Post-Construction Mortality Monitoring (PCMM) protocols, mitigation, and adaptive management discussions and documents also include and be provided to EERA for review at the same time they are sent to DNR and USFWS.

The ABPP/BBCS lists several wind facilities that have conducted fatality monitoring, and the results are publicly available. These facilities are referenced on page 12, Section 3.3.1 with respect to eagles, and again on page 13, Section 3.3.2 with respect to federally listed bat fatalities. The facilities referenced does not include all Minnesota facilities with publicly available fatality data and references some facilities a great distance from the Fenton Wind Farm. There should be some clarification as to why these facilities were selected.

The ABPP/BBCS identifies the presence of karst features in Moody County, SD, which is approximately 41 miles west of the Project. Was there any additional follow up on this karst site to determine if there is a known bat hibernaculum in the area?

The ABPP/BBCS does not mention any of the State listed Special Concern bat species; big brown bat, little brown bat, and the tri-color bat. Although there is no direct survey data of these species being present within the Project, fatality monitoring data from nearby facilities indicates the presence of big brown and little brown bats and the similarity of the landscape in and around the Fenton Wind Farm and these nearby facilities would suggest that these species would likely be present in and around the Project.

Section 5.1.5 of the ABPP/BBCS addresses bat impact mitigation utilizing blade feathering below the turbine manufacture cut-in speed. EERA acknowledges that due to the Fenton Wind Farm existing turbines being an older model the necessary upgrades to allow feathering the turbines at low wind speeds is not an option and potentially cost prohibitive. However, should fatality monitoring in 2021 identify bat fatality numbers significant enough to implement operational changes to the Fenton Wind turbines, turbine updates to allow for feathering below manufacture cut-in speed may be re-evaluated and considered.

Section 6 of the ABPP/BBCS addresses monitoring and adaptive management planning, and it indicates that Fenton PPI will make the decision on how to handle operations should fatalities be significantly higher than similar projects. Fenton PPI is not the final decision maker with respect to future monitoring and adaptive management plans. Fatality monitoring results are reported and reviewed in coordination with DNR and EERA, and next steps are discussed and determined in coordination with DNR and EERA as well. The Commission has the final authority to determine if additional fatality monitoring is needed, or if changes to project operations are necessary.

**Permit Section 7.5.2 Quarterly Incident Report (Exhibit 6, eDocket Id. No. [20208-165621-08](#))**

The quarterly avian and bat reports were delayed due to plans to repower the Project. Because construction of the Retrofit Project will not occur, the repowered turbines did not commence operation, and monitoring was not started. Fenton will make quarterly avian and bat reports to the Commission during the formal monitoring of all birds, bats, and raptors by a third-party consultant from March 15 to November 15, 2021.

EERA Response: EERA believes that Fenton seems to think the quarterly incident reporting requirement is to be completed during formal post-construction fatality monitoring. However, the permit condition is clear that quarterly incident reporting is required from the commencement of operations through the end of the permit life. These quarterly incident reports should include all fatalities identified throughout the site, whether during formal PCMM or if incidentally discovered by O&M staff.



**Permit Section 10.8 Emergency Response Plan (Exhibit 7, eDocket Id. No. [20208-165621-09](#))**

Fenton has prepared this compliance filing in consultation with the emergency responders having jurisdiction over the facility and submitted in accordance with Section 10.8 of the LWECS Site Permit issued on March 8, 2019 by the Commission. As noted by the Applicant this Plan is updated every year, with a copy of the updated Plan delivered to the local fire department every year. This Plan is also provided to the emergency responders and Public Safety Answering Points (“PSAP”) with jurisdiction over the facility. The filing also contains the correspondence, certificate of service, and mailing list.

EERA Response: Satisfies the requirements of the compliance filing.

**Permit Section 11.1 Decommissioning Plan (Exhibit 8, eDocket Id. No. [20208-165621-10](#))**

Fenton previously filed a decommissioning plan pursuant to Section III.G.1 of the 2006 Site Permit on September 16, 2013 and an updated plan with this filing.

EERA Response: EERA staff has reviewed the decommissioning plan (plan) submitted by Fenton Wind, LLC on August 5, 2020. Although the plan provides detailed information on the anticipated tasks, timing, and costs associated with the decommissioning process, EERA staff identified several pieces that need further explanation – most notably the establishment of financial surety for the 13-year-old project.

Project Description: Although descriptions of various elements of the project (turbines, roads, cables, switching station, met towers, and O&M building, commercial operation date, the power purchaser and length of the power purchase agreement, previous versions of the plan) are sprinkled throughout the plan, there is no succinct description or map of the project. As discussed in EERA staff’s recommendations on decommissioning plans in Docket 17-123, the decommissioning plan should serve as a stand-alone document to orient the reader to the project as it is on the ground. EERA staff recommends the plan provide a concise project description at the beginning of the document.

Permits and notifications: The plan contains a general commitment that Fenton Wind will notify state and local units of government and affected landowners. EERA staff recommends the plan add state agencies with permitting or approval authority to the notification list and include a list of anticipated permits.

Tasks and Timing: The plan provides a detailed description of the anticipated decommissioning tasks and the sequencing of those tasks. EERA staff particularly appreciates the detail provided in the discussion of component disposal. EERA staff notes that the discussion of the probability that most roads will remain after decommissioning in Section 3.4 is inconsistent with Permit at Section 11.2, which

requires removal of all project's roads unless written approval is provided by landowners.

Cost Estimate: The plan provides a detailed and transparent discussion of the cost assumptions and calculations. EERA recommends that the cost discussion and tables in Section 6 include both gross and net costs, and that gross costs per turbine be added to Tables 6.1 and 6.2. EERA appreciates the discussion of resale value but is apprehensive about the inclusion of resale costs in the amount of financial surety.

Financial Surety: The plan is generally lacking in detail on the amount, type, and beneficiary of the financial assurance instrument. Fenton is recording the anticipated costs as an "asset retirement obligation" and will reassess costs closer to the project's end of life (25 – 30 years).

The plan says Fenton Wind will provide financial surety in the form of either funds from the project or a performance bond. The discussion in Section 6.5 as to when the funding will be available is unclear. The discussion comes in the same sentence as the re-assessment near the project's end, but the next sentence says the obligation could be funded in 6-12 months. EERA staff notes the project has been in operation for nearly 13 years. The working group recommended that financial assurances be implemented in a stepwise manner beginning in approximately year 10 and reaching full funding prior to the end of the project's anticipated life. EERA recommends Fenton establish a surety instrument and update the plan when the instrument is in place.

Scheduled Updates: The plan does not include a schedule for updates. EERA recommends Fenton provide a commitment to file an updated plan every five years following submittal of a revised plan that addresses EERA staff's recommendations.

**Permit Section 14 Transfer of Permit (Exhibit 9, eDocket Id. No. [20208-165622-01](#))**  
This compliance filing describes Fenton's current ownership structure.

EERA Response: Satisfies the requirements of the compliance filing.

### **Compliance Filings That Will Not Apply**

Because construction of the Retro Fit Project will not occur, there are a number of sections of the 2019 Amended Site Permit with construction-related compliance filings that will not apply to the Project. Accordingly, Fenton has indicated it will not submit compliance filings under the construction-related permit sections:

- Section 4.7 (Native Prairie)<sup>4</sup>;

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<sup>4</sup> Native prairies are avoided by turbines and associated facilities. Consequently, a Prairie Protection and Management Plan is not needed.

- Section 4.12 (Aviation)<sup>5</sup>;
- Section 5.2.1 (Field Representative);
- Section 5.2.6 (Soil Erosion and Sediment Control);
- Section 5.2.10 (Invasive Species);
- Section 5.2.12 (Public Roads);
- Section 5.2.21 (Restoration);
- Section 5.5.2 (Other Permits and Regulations);
- Section 6.1 (Labor Statistics Reporting);
- Section 7.2 (Shadow Flicker)<sup>6</sup>;
- Section 7.3 (Wake Loss)<sup>7</sup>;
- Section 7.4 (Noise Studies)<sup>8</sup>;
- Section 8.1 (Wind Rights)<sup>9</sup>;
- Section 10.1 (Pre-Construction Meeting);
- Section 10.2 (Site Plan);
- Section 10.3 (Status Reports);
- Section 10.4 (As-Builts)<sup>10</sup>; and
- Section 10.5 (GPS Data).<sup>11</sup>

## **EERA Recommendations**

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<sup>5</sup> There are no airports located closer than approximately eight miles from the nearest Project turbine.

<sup>6</sup> Fenton will comply with its ongoing obligation to address complaints, as needed.

<sup>7</sup> Fenton will comply with the requirement to file any wake loss studies conducted as part of the annual report on project energy production required under Section 10.6 of the permit.

<sup>8</sup> No retrofit construction will occur. Consequently, the turbine technology is not changing, and Fenton will not be conducting the post-construction noise study or any additional noise studies. Fenton will continue to comply with Section 4.3 of the 2019 Amended Site Permit and the Minnesota State Noise Standards.

<sup>9</sup> Fenton has already demonstrated that it has obtained the wind rights and any other rights necessary to operate the Project.

<sup>10</sup> As-built surveys were filed on April 30, 2013.

<sup>11</sup> Turbine coordinates were filed on April 30, 2013.

EERA staff has reviewed the Commission identified topics open for comment on Fenton’s request for amendments to the 2019 Amended Site Permit, associated compliance filings, and provides the following recommendations for Commission consideration:

1. Approval of Fenton’s proposed revised site permit language and supporting rationale presented in Table 1 and as illustrated in Exhibit I.
2. Approval of EERA’s proposed site permit language modifications as described and shown above and as illustrated in Exhibit 1.
3. Approval of the following Operations Compliance Filings:
  - Permit Section 3.1 Turbine Layout (Exhibit 2, eDocket Id. No. [20208-165621-04](#)).
  - Permit Section 5.1. Notification Letter (Exhibit 3, eDocket Id. No. [20208-165621-05](#)).
  - Permit Section 5.2.2 Site Manager (Exhibit 4, eDocket Id. No. [20208-165621-06](#)).
  - Permit Section 7.5.1 Avian and Bat Protection Plan (Exhibit 5, eDocket Id. No. [20208-165621-07](#)).
  - Permit Section 7.5.2 Quarterly Incident Report (Exhibit 6, eDocket Id. No. [20208-165621-08](#))
  - Permit Section 10.8 Emergency Response Plan (Exhibit 7, eDocket Id. No. [20208-165621-09](#)).
  - Permit Section 14 Transfer of Permit (Exhibit 9, eDocket Id. No. [20208-165622-01](#)).
4. Require Establishment of financial surety: Consistent with the working group’s recommendation, EERA staff recommends the Commission direct Fenton to establish a financial surety now, incrementally stepping up to full funding by 2027 (five years prior to the end of the project’s power purchase agreement in 2032).
5. Require Decommissioning Plan Amendments: EERA staff recommends that Fenton update the plan to incorporate the following improvements:
  - Project description: Provide a concise project description early in the plan. The description should include:
    - a site map showing the location of project components (e.g. turbines, roads, cabling, switching station, O&M facility)
    - text describing the project, both the surrounding landscape and project elements (e.g. number of turbines, miles of road, miles of collector lines, etc.)
    - date of commercial operation
    - use of generation output
    - date and eDocket location of past decommissioning plans
  - Permits and Notifications: identify state agencies with permitting or approval authority to the notification list and include a list of anticipated permits.

- Cost Estimate: Discuss and identify both gross and net costs for the project as a whole and per turbine.
- Scheduled Updates: The plan does not include a schedule for updates. EERA recommends Fenton provide a commitment to file an updated plan every five years, beginning in 2025.
- Financial Surety: Updated information on the financial surety established for the project, including the financial instrument, amount, and beneficiary.

6. Approval of Fenton's List of Compliance Filings That Will Not Apply.