

**STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION**

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December 3, 2014

In the Matter of the Sibley Wind Substation, LLC; Site Permit for a 20-Megawatt Large Wind Energy Conversion System Project in Sibley County

ISSUE DATE: September 23, 2008; October 12,  
2011 DOCKET NO. IP-6666/WS-08-208

Honorable Commissioners:

The Sibley Wind Substation, LLC's ("SWS") project was permitted by the Commission as a Community Based Energy Development ("CBED") project by the Minnesota Public Utilities Commission ("PUC") issuance of that certain Site Permit to Sibley Wind Substation, LLC dated September 23, 2008 and amended October 6, 2011 (collectively, the "Permit").

The SWS project (the "Project") has violated its Site Permit, Minnesota Rules and Minnesota Statutes in several ways. These include: Misrepresentation of CBED Status; Ownership Transfer in Violation of the Permit; Failure to Commence Continuous Construction; Changes to the Project without PUC Approval; Failure to comply with County and Township Requirements; and Failure to Meet Statutory Permit Update and Submittal Requirements. These violations are detailed herein below.

**MISREPRESENTATION OF CBED STATUS**

Minnesota Statute 216B.1612 requires many conditions for a project to be considered eligible for the CBED tariff. The PUC has an ongoing duty to investigate and regulate the collection of this public subsidy to wind developers.

The SWS project currently appears to violate several provisions of Minnesota Statute

216B.1612 in effect in 2008, when the project was originally permitted. These violations include:

1. Pursuant to Minn. Stat. 216B.1612, Subd. 2 (c) in order for SWS to qualify to receive CBED subsidies it must have its principal place of business in Minnesota. It appears that Sibley Wind Substation LLC was purchased by Star Distributed Energy located in Markle, Indiana. Star Distributed Energy is not registered as a Minnesota company with the Minnesota Secretary of State.
2. Pursuant to Minn. Stat. 216B.1612, Subd. 2 (h) for Sibley Wind Station to qualify as a "C-BED project" it must have no single qualifying beneficiary, including any parent company or subsidiary of the qualifying beneficiary, owning more than 15 percent of a C-BED wind energy project.

Furthermore, Minn. Stat. 216B.1612, Subd. 2 (h)(2) provides that for Sibley Wind Station to qualify as a "C-BED project" it must also demonstrate that at least 51 percent of the net present value of the gross revenues (not actual revenues) from a power purchase agreement over the life of the project are qualifying revenues.

The original Site Permit Application, which the Commission approved and adopted, stated that the project was owned by 10 Minnesota investors. Star Distributed Energy's website states in part, "Star Distributed Energy LLC (Star) purchased the membership interests in [Sibley Wind Station, LLC]". North American Wind Power reported on August 13, 2013 that "Star Distributed Energy...obtained the project from Sibley Wind Substation". And, "Star Distributed Energy has obtained a 20-year power purchase agreement with Minnesota Municipal Power Agency (MMPA) for a 19.5 MW wind project located in Sibley County, Minn."

This leads us to conclude that Star Distributed Energy is the owner and is not a qualifying beneficiary of the project. It is unclear at this time if there are any qualifying owners and who the qualifying beneficiaries in this project may be.

3. Given the Commission's recent August 2013 order on the New Era Wind Farm (f/k/a Goodhue Wind) it appears that the change in ownership violates the anti-transfer provisions applicable to C-BED projects under Minn. Stat. §216B.1612, subd. 3(c). In the case of New Era, the Commission ruled in part that, "The commission shall require that C-BED projects provide sufficient security to secure performance under the power purchase agreement, and shall prohibit transfer of a C-BED project during the initial term of a power purchase agreement if the transfer will result in the project no longer qualifying under subdivision 2, paragraph (h)."

Star claims to have obtained Power Purchase Agreements for their Sibley project in August 2013. It is unclear when the transfer of ownership of the project occurred, so it is unclear if

the transfer occurred “during the initial term of a power purchase agreement.”

### **OWNERSHIP TRANSFER IN VIOLATION OF PERMIT**

There is no request, nor Commission approval, for the transfer of this permit on the SW (08-208). Briefing papers relied upon by the Commission as a basis for issuance of the original permit states in part, “The Applicant, a limited liability corporation based in Minnesota, will own the Project...” Star Distributed Energy is based in Indiana and appears to have violated the general transfer prohibitions in the permit which reads as follows:

#### **K. MISCELLANEOUS**

##### **6. TRANSFER OF PERMIT**

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

Assuming that the PUC has done its due diligence in applying the law, the Project has already received benefits of C-BED status by being given preferential treatment—especially during a time of considerable application traffic before the Commission - as was the case in 2008.

The position of SWS appears to be that there is no obligation to maintain the ownership structure that was originally permitted if additional benefits are not sought. The PUC’s statutory position is somewhat different: current benefits are contingent on maintaining Minnesota ownership into the future.

When the PUC reviewed other permitted projects, the attempt to skirt the law by upstream ownership changes was thoroughly investigated, and it was determined that an upstream ownership change absolutely constitutes an ownership change for the purpose of a PUC site permit. (Doc ID 20137-89590-01) The fact that New Era was attempting to maintain C-BED status while Sibley Wind Substation is not, is irrelevant as Sibley Wind Substation’s site permit includes restrictions on ownership that are not specifically contingent on C-BED status.

In light of the recently discovered unreported ownership changes with Shaokatan Wind, Lakota Wind and Grant County Wind, the importance of the Commission determining ownership and stream of benefits according to MS 216B.1691, subd. 9 is clear. Sibley Wind Substation’s transfer of ownership was a violation of its permit and the PUC should void this permit based on this violation.

We request that the PUC investigate and evaluate the C-BED status of the Sibley Wind Station project. We request that the Commission investigate whether the project's ownership transfer is in violation of their site permit. If the Commission finds a material violation of the Site Permit, we request that the Commission modify, suspend or revoke the Site Permit in accordance with Minnesota Statutes 216F.04 (d)

**FAILURE TO COMMENCE CONTINUOUS CONSTRUCTION.**

1. Sibley Wind has performed no significant construction to date, is already many months behind their published construction schedule, and, due to weather, is unlikely to be able to perform construction work until at least next spring. This makes an excellent opportunity for the state to bring this permit up to current standards.

2. Dan Wolf, Assistant Executive Secretary, Minnesota Public Utilities Commission, in July 2013 prepared the attached email to State Representative Glen Gruenhagen about what signifies the "start of construction." The email states in part:

*Definition of Construction: Pursuant to Minn. Stat. 216E.01, which is applicable to wind farms as well, construction is defined as:*

*Subd. 3. Construction. "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.*

*Permit condition III.K.2. Failure to Commence Construction, as amended, states in part:*

*If the Permittee has not...commenced construction of the LWECs within two years of the issuance of this [amended] Permit, the Permittee must advise the Commission of the reason construction has not commenced.*

Furthermore, after additional research PUC Minnesota Administrative Rules for Large Wind Energy Conversion systems clearly define Construction and state:

*Minn. R. 7854.0100 Subp. 4. **Construction.** "Construction" means to begin or cause to begin as part of a continuous program the placement, assembly, or installation of facilities or equipment or to conduct significant site preparation work for installation of facilities or equipment.*

To date, the only activities undertaken by SWS have been at best for “temporary use,” certainly for “nonutility uses” and not “continuous” nor “significant” (See our attached pictures showing corn and weeds growing in the area SWS claims were its commencement of construction). There is no interpretation of the Minnesota Rules, no matter how liberally construed, for which SWS can claim it has met its burden to commence continuous construction as required. There is no other way to state the obvious, this lack of activity by SWS is a pure violation of Minnesota Rules and its own permit.

As recently as June 4, 2014, SWS had removed their one and only small construction trailer from the proposed substation site. This is clear evidence that there is no “continuous program for the placement, assembly, or installation of facilities or equipment” as required by the rules.

The only feeble response from SWS when State Representative Glen Gruenhagen asked why no construction was taking place was made in Docket entry 20142-96565-01, wherein SWS flippantly states “The Project did start construction.” SWS has never provided any facts, pictures, evidence or confirmation to support this false and misrepresentative statement. This is not a response to the complaint and is meaningless, inaccurate and incomplete.

The PUC extended the permit for the Sibley Wind Substation project in October 12, 2011. On the afternoon of October 11, 2013 (the last possible day of compliance with the permit), SWS moved a very small amount of dirt around a cornfield at one location in a shabby attempt to try to represent it had complied with the Rule and Permit. SWS filed document (DOC ID 201310-92416-01) furthered its misrepresentation by telling PUC that it had started construction.

From: "Wolf, Dan (PUC)"  
<[dan.wolf@state.mn.us](mailto:dan.wolf@state.mn.us)> Date: July 29, 2013  
2:08:37 PM CDT  
To: "Glenn Gruenhagen"  
<[Rep.Glenn.Gruenhagen@house.mn](mailto:Rep.Glenn.Gruenhagen@house.mn)> Cc:  
"Gabrielle Soojian" <[Gabrielle.Soojian@house.mn](mailto:Gabrielle.Soojian@house.mn)>  
Subject: Sibley County Wind Project

Representative Gruenhagen,

Following up on our conversation from a little under two weeks ago, here is some more information pulled together by Ms. DeBleekere regarding wind site permit requirements .

1) Definition of Construction:

Pursuant to Minn. Stat. 216E.01, which is applicable to wind farms as well, construction is defined as:

Subd. 3.Construction. "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.

This is the threshold that the project would need to meet/prove to the Commission in order to not need to come back for a permit extension.

- 2) The latest correspondence from the Dept. of Commerce (on behalf of the Commission) stated: As a reminder, Permit Condition III.J.4., Power Purchase Agreement, as amended, states in part: "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 [amended] Permit, the Permittee must advise the Commission of the reason for not having such power purchase agreement or enforceable mechanism."

Permit condition III.K.2., Failure to Commence Construction, as amended, states in part: "If the Permittee has not completed the pre-construction surveys required in paragraph III.D., and commenced construction of the LWECs within two years of the issuance of this [amended] Permit, the Permittee must advise the Commission of the reason construction has not commenced."

If the Permittee has obtained a power purchase agreement, or other enforceable mechanism, we are requesting that you e-file a reply now indicating the parties to the agreement and its duration, with an affidavit of the accuracy of the documentation. If not, please provide this information prior to construction or before October 12, 2013.

- 3) SWS' Decommission Plan was filed with the Commission on November 15, 2011 and is available at the link below.
- 4) Sibley has not yet requested a pre-construction meeting (a requirement of all developers).
- 5) Xcel's latest Wind Request for Proposal results were submitted to the Commission and the Sibley Wind Farm did not obtain a contract with Xcel.

If you need any further information, please don't hesitate to

ask. Dan

Dan Wolf  
Assistant Executive Secretary  
Minnesota Public Utilities Commission

SWS' response to these questions and inquiries raises significant veracity questions as demonstrated in its response to Representative Gruenhagen's October 6, 2014 complaint (DOC ID 201410-103633-01). The response by SWS continues its pattern of half-truths and unreliable statements that began with their deceptive and thin attempt to commence construction less than one day before their permit extension was to expire. SWS demonstrates its exaggerated and false claims of progress with its own response filed on the PUC docket on October 16, 2014 (DOC ID 201410-103889-01) only contain pictures from 2013. Details of False and Misleading statements made by SWS's response filed on the PUC docket (DOC ID 201410-103889-01), include:

**SWS claim:** "...Construction on the project is scheduled to resume shortly after the frost laws are removed in May of 2015."

**Response:** There are no such frost "laws" in Minnesota that prevent SWS from undertaking construction. This statement all by itself proves that there has been no continuous construction because it must "resume", and that there is no plan for any construction activity at the proposed SWS site until at least May 2015. The last work of any kind was performed in November 2013. Zero construction activity as defined by SWS' permit and state statute and rule for 1 ½ years cannot be construed as "continuous construction".

In the exhibit attached to SWS' submittal (DOC ID 201410-103889-01), SWS falsely tries to indicate to the PUC that there is continuous construction by the following statement: "This [substation] lot...will initially be used to house the construction office trailer during the project construction phase." As previously stated and proven by photographs, the "construction office trailer" was removed from the substation lot on June 4, 2014.

**SWS claim:** "The work included grading for...service roads to 40% of the wind turbine sites..."

**Response:** There is no grading to proposed turbine sites 7, 8, and 9; and there never was. The access road to these three turbines had construction staking installed a year ago – nothing more. Now the stakes are gone.





**Previous location of survey stakes for turbine 7, 8, and 9 access road. Photo: November 3, 2014.**

Spring 2014 waterfowl migration pictures from the original complaint show ducks, geese and swans swimming where SWS claims that they created roads for turbine 7, 8 and 9 (DOC ID 20147-101838-01). Soybeans were planted in the area of these three turbine sites and proposed access road locations during the very brief period that the location was not flooded (Photo in DOC ID 201410-103633-01).

The alleged “access road to turbine 6” is gone. The amount of dirt moved by SWS last autumn was so insignificant, that the alleged access road was easily eliminated by routine fall field tillage on November 4, 2014:





**Turbine 6 access road, November 4, 2014; SWS Exhibit A red line added.**



**Turbine 6 "access Road" May 2014; SWS Exhibit A red line added (Photo DOC ID 20147-101838-01)**





This picture demonstrates the previous contention that as of June 4, 2014, SWS had removed their one and only small construction trailer from the proposed substation site. This is clearly evidence showing that they continue to misrepresent their “continuance of construction”, are not complying with the terms of their permit and continue to take advantage of the PUC’s slack enforcement of the terms of their permit.

This failure to diligently pursue the project after a failure of over 6 years to commence the project should be grounds to revoke Wesco’s permit.

**SWS Claim:** “Work on...Turbine foundations will resume as weather permits.”

Response: There has never been any work on turbine foundations; you can’t “resume” something which was never started. This twisting of the facts and mischaracterization of the information must be investigated by the PUC through the public hearing process.

There is currently no dirt-moving equipment on the Sibley Wind project site. The sum total of nearly three months of SWS’ “construction” activities has been one driveway entrance. According to SWS’ project schedule (see below part of DOC ID 20138-90546-07), by December 21, 2013, the turbine foundations should have been poured; the substation and interconnection construction finished; and, the collector lines installed. It seems clear that the minimal dirt-moving activities were not carried out to begin construction, but to avoid

further state review after overrunning their two-year permit extension.

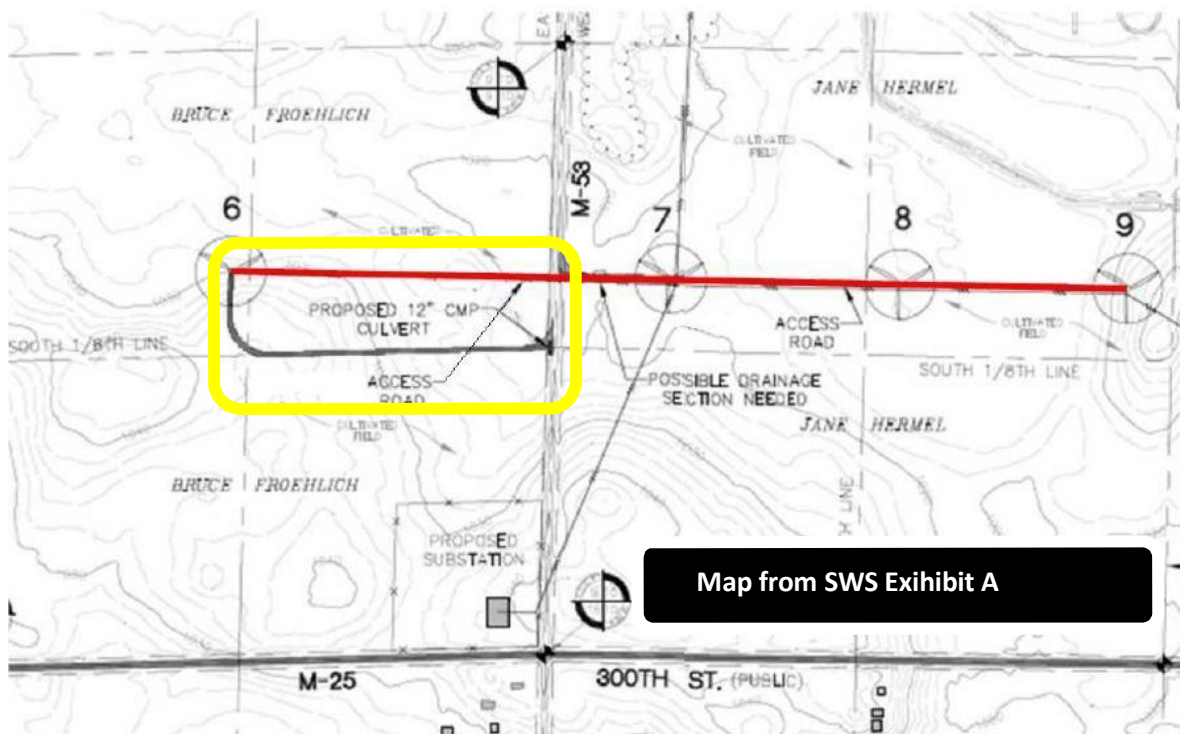
The point of Minn. Rule Section 7854.0100 is that construction is not merely started, but shows a **CONTINUOUS** program of construction and installation of facilities and equipment. SWS has never engaged in any continuous progress toward completion of this project and its permit should be revoked, even after the PUC has granted an extension, SWS has not complied with the requirement to begin continuous construction



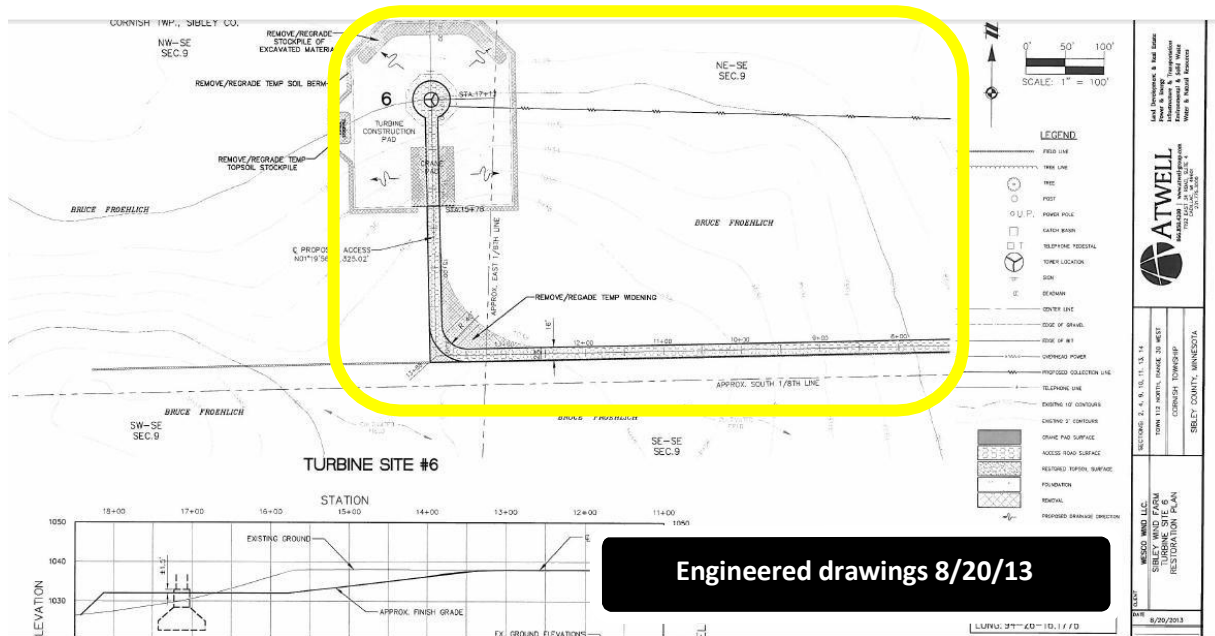
**SPECIFIC PERMIT VIOLATIONS.**

SWS has acted in violation and omitted key requirements of its permit for this project. Some these examples include:

**1. Changes to SWS Project not approved by PUC.** The map provided by SWS as part of its response (DOC ID 201410-103889-01) shows access roads with a bright red line. The red line on the first drawing below, as submitted by SWS (DOC ID 201410-103889-01) shows where SWS mistakenly surveyed and graded a part of the alleged turbine 6 access road. The second drawing below, from SWS (8/20/2013 engineered drawings (DOC ID 20138-90546-07)) shows that SWS represented to the PUC that this was to be the location of a collector line. This major design change, unapproved by the PUC, is a clear violation of SWS' permit and State rule and statute.







**2. Failure to Obtain Necessary Local Permits.** SWS does not have the permits required by Section B(b) of Site Permit which requires “Access roads shall not be constructed across streams and drainage ways without required permits and approvals from DNR, FWS and/or USACOE.” Ms. Sue Steinhauer, Environmental Review Manager, Energy Environmental Review and Analysis, Minnesota Department of Commerce wrote in late 2014, “EERA staff requested Sibley to file a status report on its plans regarding road usage, given the questions that had arisen concerning Sibley’s ability to use roads under the jurisdiction of Cornish Township during construction.

Sibley Wind proposed these access roads to their turbine sites across private property because of their failure to come to a mutually acceptable road use agreement with Cornish Township for the planned use of Township roads. Unfortunately, Ms. Steinhauer failed to notice that these “Alternate Road Access Route[s]” also cross streams and drainage ditches, thus requiring additional permits and additional environmental review by PUC, DNR, FWS and USACOE. (blue lines; Doc ID 20139-91763-01; page 6 of 10)

Ms. Steinhauer indicated that although she essentially granted permission for construction to commence while failing to notice the need for additional water crossing permits, she asserts that only the Commission can stop construction. I request you do so immediately in order for the Commission to have time to address these numerous unanswered questions.

**3. Violation of Permit Section III.B.8** It appears that SWS is in a material violation of the terms of its Permit in several ways. (DOC ID 201310-92416-01) SWS appears to be in violation of Section III.B.8 of the Permit, because it failed to abide by the requirements of this section for its Road and Transportation Plan and does not have agreements in place to

use Cornish Township roads for overweight and oversize loads. Sibley Wind appears to be in violation of other Sections of its permit including: Soil Erosion plan (III.B.9) and Public Safety and Emergency Response (III.B.15) does not have permits to build private access roads across streams and drainage ditches

Permit Section III.8.a. of the Sibley Permit states that all roads used in the construction process must be identified:

“Prior to commencement of construction, the Permittee shall identify all state, county or township roads that will be used for the LWECS Project and shall notify the PUC 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 LWECS.**

Where practical, all-weather roads shall be used to deliver cement, turbines, towers, assembled nacelles and all other heavy components to and from the turbine sites.

**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 LWECS for maintenance and repair of roads that will be subject to extra wear and tear due to transportation of equipment and LWECS components. The Permittee shall notify the PUC of such arrangements upon request of the PUC.”

The alternate routes would involve nearly 4,000 feet of new road through valuable, irreplaceable cropland all because SWS refuses to negotiate in good faith with Cornish Township. These alternate routes would cross two county drainage ditches which would require additional permits. (See map attached) The extent of the disruption and destruction of environmental resources is unclear right now as there has been no environmental review for building overweight and oversized roads across these large drainage ditches. The same risk applies to the county as Sibley tries to proceed with a county agreement only.

Furthermore, this change in the road transportation plan, impacts other plans that have not been resubmitted to PUC as modified as a result of the change in the Transportation Plan, including without limitation, Soil Erosion plan (III.B.9) and Public Safety and Emergency Response (III.B.15). It is unclear that any of these plans were updated as part of the update to the road transportation plan.



### Field Access Road Changes Required for the Alternate Access Route



#### LEGEND:

Red = Planned Road Access Route

Blue = Alternate Road Access Route in Addition to Planned

Routes Yellow = Proposed Electrical Collector System

**4. Failure to Maintain Sibley County Permits.** SWS, and was granted various utility permits from the Sibley County Public Works Department all with issue dates of September 4, 2013 (collectively, the "Utility Permits"). Each one of these Utility Permits contains the same language in Section 13 of the "Conditions and Requirements for Completing Application and for Street or Commercial Access Permit" which says:

*13. In the event that the construction has not been started within one year of the permit approval date, the permit shall become null and void and the Permittee will be required to obtain a new permit.*

Wesco has failed to commence construction on any of the locations for which these Utility Permits were obtained. Based on the clear language of each of the permits, on its face, each one is expired and SWS must reapply for the same. This expiration is a direct result of SWS' failure to commence continuous construction as required by Minnesota Administrative Rules.

**5. Failure to Comply with Sibley County Agreements.** The citizens of Sibley County entered into the Construction Agreement with SWS with the idea that both parties would work cooperatively and in good faith to protect the community as a whole while private party SWS worked to profit from wind power. However, SWS has failed to meet the requirements of the Construction Agreement time and time again. The violations include

Sibley County Construction Agreement Section	Requirement	SWS Violation
Introduction	The Developer is listed as Sibley Wind Substation, LLC	All correspondence on this project is coming from SWS, LLC which is not listed on any agreement with the County. This seems like a scheme by Wesco to attempt to avoid any liability for its actions.
4.13	Developer is required to obtain permits to work on utilities within right-of-way	Permits previous obtained by Wesco have expired, therefore Wesco currently in violation of this provision
4.15	Prevention of Soil Erosion – Wesco is required to supply Townships, such as Cornish, with a plan to prevent Soil Erosion before the start of construction.	No activity or communication to Cornish Township on this issue as of the date of this letter indicating a violation.
4.18	Developer shall pay <u>all</u> bills to the County within 30 days.	Developer has failed to pay Environmental Services Bills for the project which is a continuing violation.
8.8	Insurance – Wesco is required to supply Townships, such as Cornish, with proof of insurance before the start of construction.	No activity or communication to Cornish Township on this issue as of the date of this letter indicating a violation.

## **6. Sibley County Road Agreement Violations**

Similar to the Construction Agreement, Wesco has continued to violate the terms of the Road Agreement and Cornish Township has requested that the County revoke this Agreement.

**Section 1.4** – Cornish Township has rejected participation in the Road Agreement on several occasions and communicated this both verbally and in writing to both Wesco and the County. Currently this Section of the Agreement is void and Wesco is operating as if it still in force by utilizing Cornish Roads for their non-construction activities. Cornish demands that this stop.

**Section 3.2** – The section of the Road Agreement requires Wesco to “comply with all applicable laws . . .” when making road modifications. Wesco violated this requirement when its contractors, trespassed upon Township roads and performed destructive testing of the same on August 14, 2013. This was a clear violation of the property and municipal laws of Minnesota and provides another example of Wesco’s inability to abide by the County Agreements.

**Section 7.2** – Similar to the Construction Agreement, this Section provides that any amendment to the Road Agreement must be in writing. This has never been done and there is no valid written amendment of record for this Road Agreement.

**7. Failure to Comply with Cornish Township Environmental Review Rules.** Since Cornish Township roads differ significantly from county or state roads and were not designed or built with the intention that they would be used by thousands of heavy, overweight and oversized loads in a relatively short period of time, Township ordinances require an environmental review before any party within the Township undertakes such an operation to assure no irreparable harm occurs. The environmental review required by the Township is rationally related to its police powers to protect the health safety and welfare of the community by maintaining, among other things, irreplaceable natural resources including surface water and prime farmland. This review also serves the purpose of allowing the Township officials responsible for upkeep of township roads to have an accurate picture of what the roads will support, what will need to be done to protect them during and after the construction phase, and determine an approximation of what will need to be spent to restore them. SWS has never even attempted to comply with the Cornish Township Environmental Review Ordinance in violation of its Permit.

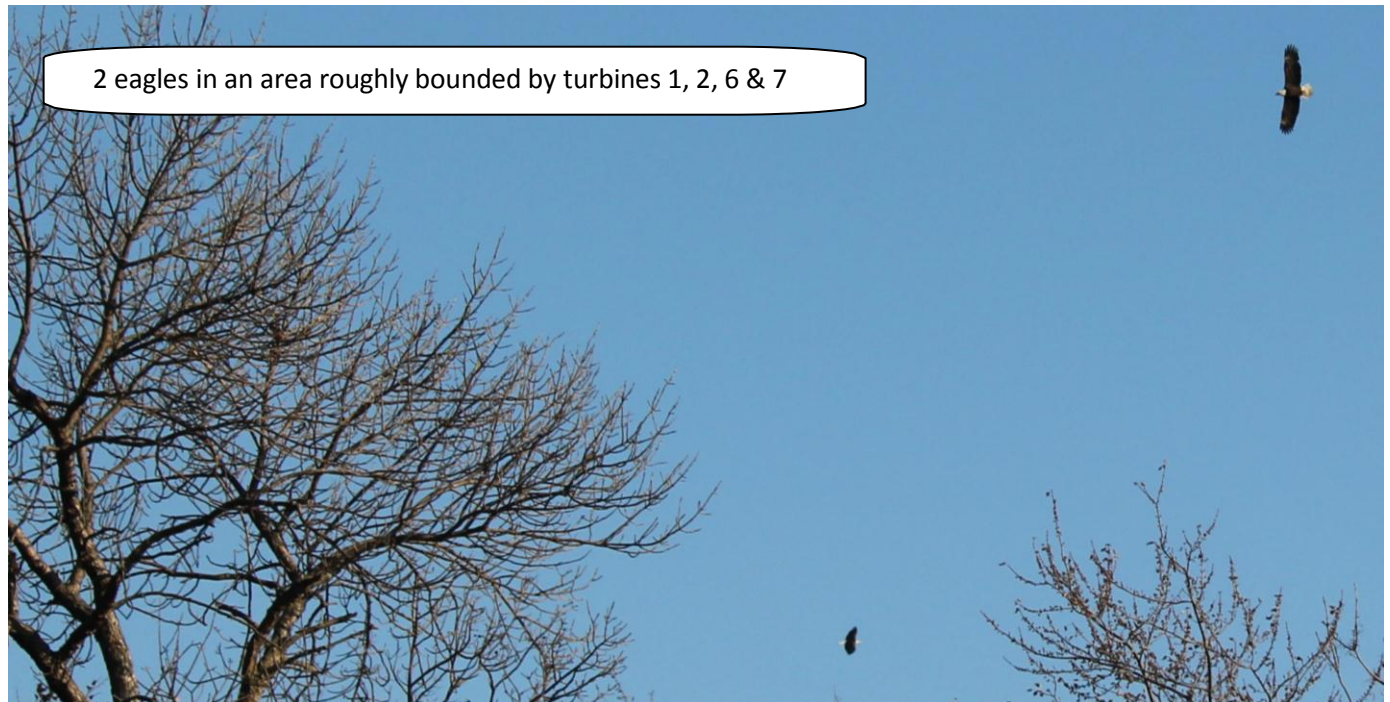
The Cornish Ordinance requiring environmental review for any action that requires a governmental approval and may have the potential to create significant environmental effects. Nothing in the ordinance attempts to restrict or create a new approval requirement for the LOCATION of the LWECs Sibley Wind is attempting to construct.

As noted in SWS' comment letter dated October 21, 2013, this ordinance applies to ALL projects that seek a governmental approval or agreement or permit from the Township. It is a general ordinance that does not merely apply to land use issues but any type of approval from the Township. It doesn't matter whether the approval sought is for a LWECs installation or construction of a factory or construction of a new Township building or school or Fire Station.

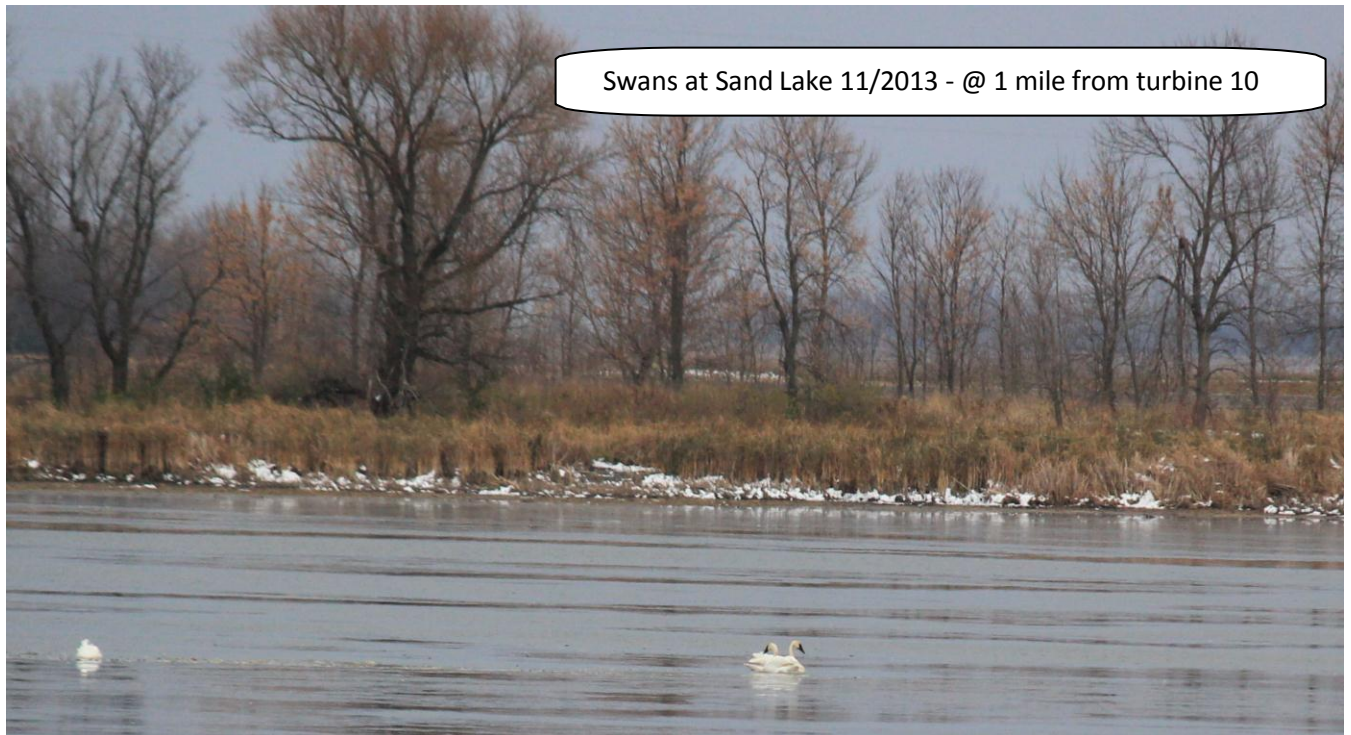
**8. Failure to Meet Statutory Permit Update and Submittal Requirements.** PUC previously extended the permit for the SWS project on October 12, 2011 without requiring the applicant to update its previous submittals to meet the environmental review standards contained in Minnesota Statute 216F. SWS' environmental review (DOC ID 201112-69606-06) states in part, "The field assessment conducted in October 2011 by GES confirmed a landscape dominated by agriculture.... Although October is not the optimal time to conduct a detailed floristic inventory, it does allow for a general assessment of the presence of tallgrass prairie." This statement defines the complete lack of thoroughness and appears to present the sum total of the minimal environmental field study performed for the SWS project – looking for native tallgrass prairie in October 2011. Neither this submittal nor any of the other purported environmental submittal for this project presents adequate compliance with State standards. Pictures speak louder than words.







The PUC must require a fresh start for the Sibley Wind project as well? SWS' environmental, health and safety, and economic submittals are outdated and based upon questionable and unreliable data that was generated almost 6 years ago. Sibley Wind failed to consider, or attempted to mislead the PUC, about the possible interactions and effects of its project on Bald Eagles and Trumpeter Swans. In addition to eagles and waterfowl in the harvested fields that comprise the project area, there are several important non-agriculture wildlife areas in close proximity to the proposed project.



Sibley Wind project is proposed to be constructed in an established avian migratory pathway. This area provides critical stopover habitat for migratory waterfowl including, but not limited to, swans, ducks and geese. It is also a migratory pathway for passerines and raptors, including bald eagles, hawks and golden eagles. There is no ITP (Incidental Take Permit) for golden eagles at locations east of the 100<sup>th</sup> meridian which includes the project area.







Swans in flooded agricultural field 4/2011 - @ 1.75 miles from turbine 1-9 & turbine 10



3 eagles @ 7 miles from project; there were up to 7 eagles at a time at this location 11/2013



**June 2014; Proposed turbines locations 7-9**

As can be seen in the picture, the Applicant's claim that the Project meets setback requirements for wetlands is questionable at best. As stated so many times, the Applicant's studies, data and information presented to the PUC is faulty, out of date and do not meet the requirements for LWEC Site Permitting Administrative Rules and Statutes in Minnesota. Other than a brief period in May, the proposed locations for turbines 7-9 have had standing water since the snow melted in March and until crops were planted. SWS has continuously misrepresented the condition of its proposed turbine locations to the PUC. The proposed turbine locations are underwater much of the time. There is no possibility that these locations meet wetland setback requirements from the Permit.





**Proposed turbines 7-9 on March 31, 2014: ducks & possibly geese attracted to seasonal flooding flying directly through the rotor sweep area.**





**4-14-2014 Swans swimming on proposed turbine site 7-9.**



**June 27, 2014; Proposed turbine sites 7-9**





**7-2-2014; Duck swimming on proposed turbine site 7-9.**

In the original site application (PUC DOC ID 5141491; 4-28-2008) Sibley Wind states in part, “**5.5.3 Geologic and Groundwater Resources;** In the proposed wind park site, the land is well-drained and tiled farmland.” Also, “**5.5.4 Surface Water and Floodplain Resources;** The project will not disturb water run off areas during pre and post construction or during decommissioning. The only surface water in the project area consists of a manmade drainage ditch, which will not be affected. The terrain affected by the project has very little surface water.” These pictures clearly show that SWS has misrepresented the condition of the turbine locations in their permit application calling into question the entire application.

Not only has this location been flooded in March, April, June and July so far in 2014, it appears this location has flooded 5 out of the last 5 years. The following shows the severe flooding from earlier years. (Some of these images were included in DOC ID [201311-93811-01](#).) Found in PUC DOCKET NO. IP-6666/WS-08-208)



**June 23, 2013; Area of proposed turbine 2, 7, 8 and 9.**

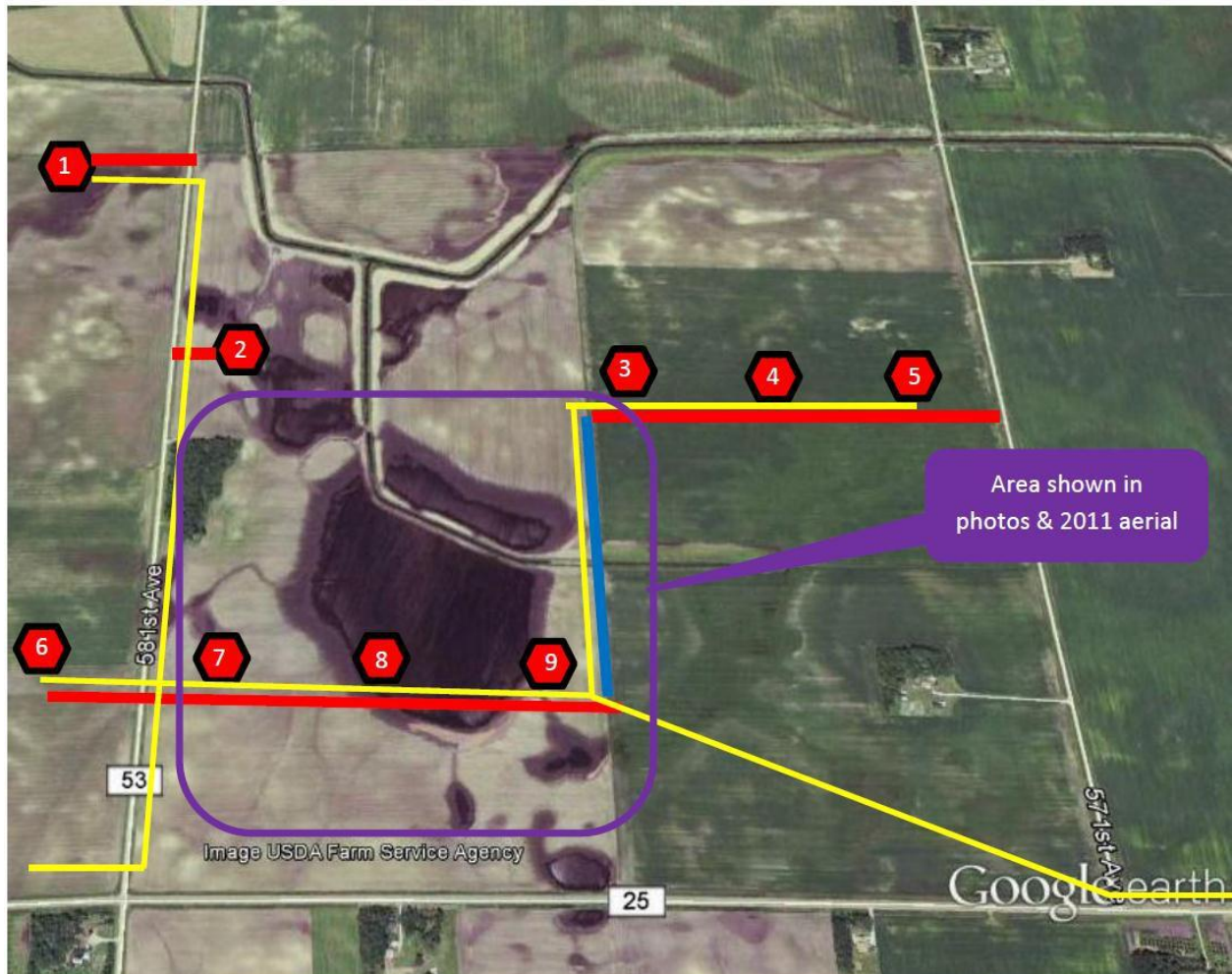
(DOC ID 201311-93811-01) shows a fall 2011 image as a “non-flood year”, however, further research of Google earth images revealed that the field location for proposed turbines 7-9 was flooded on 5-17-2011 in addition to the date of the previous pictures:



This 2010 Google Earth image included in (DOC ID [201311-93811-01](#)) showing flooding at proposed turbines 1, 2, 8 and 9; and close to turbine 7 more than 4 years ago. SWS is required by the language of the Permit to update their PUC permit application as new information becomes available. SWS' failure to provide the PUC with accurate information regarding its project must be investigated by the PUC.




2013 Proposed Turbines 1-9 overlaid on image from 6/23/2010



Planned Road Access Route —————

Alternate Road Access Route in Addition to Planned Routes —————

Proposed Electrical Collector System —————

Turbine 



**"Access Road" May 2014**



**"Access Road" June 2014 demonstrating unidentified wetland**

SWS claims that this entire area is not classified by the State as a “wetland”. Review of Minnesota Department of Natural Resources state mapped wetland’s alone is not sufficient to

meet the requirements of PUC rules regarding identification of wetlands for purposes of Site Permit Application. A better description by SWS in its permit application would have been “intermittent lake” and “seasonal waterfowl habitat.”

SWS was warned in 2012 by Wilcox Professional Services, LLC: “...it is understood that the general project area is prone to periodic seasonal flooding. At such times, water tends to accumulate at the surface and groundwater levels may rise above the levels observed during our investigation. Therefore, if inclement weather occurs during excavation and/or foundation construction, there is a potential for temporary ponding to occur in the excavations, which could have adverse effects on the foundation bearing conditions.”

Additionally, as demonstrated by recent filings in PUC docket 08-208, SWS continues to fail to obtain approval of other state and federal agencies regarding regulation of waterfowl and associated habitat (DOC ID 201412-105123-01, 201412-105057-01 and DOC ID 201412-105126-01).

The PUC must investigate SWS’ failure to update its permit application in violation of its Permit and make reports on proper delineation of wetlands for the Project site. So far, SWS continues to withhold information from the PUC and misrepresent the status and condition of its Project and the Project site.

## **CONCLUSION**

SWS is not complying with the terms of their permit, is not following their own project schedule, and continues to take advantage of the PUC’s lack of diligent and timely enforcement on the Permit.

As detailed above, the Project has violated its Site Permit, Minnesota Rules and Minnesota Statutes in several ways. These include: Misrepresentation of CBED Status; Ownership Transfer in Violation of the Permit; Failure to Commence Continuous Construction; Changes to the Project without PUC Approval; Failure to comply with County and Township Requirements; and Failure to Meet Statutory Permit Update and Submittal Requirements. These violations are detailed herein below.

As a side note, letter of support submitted for the project have no bearing on the request from PUC for evidence of SWS’ material violation of Minnesota Statute, Rule of terms of the Site Permit. These irrelevant documents should be ignored by PUC in evaluating SWS Compliance. All of the letters of support submitted come from biased individuals that live outside of the Project area.

The PUC must act to maintain the integrity of the permitting process and protection of the citizens of Minnesota. If no consequences result from the heinous violations and disregard of State Rules, Ordinances and the PUC permitting process, regulated parties will see this as a free



pass to permit violations of all kinds in the future.

Respectfully Submitted

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