


## Staff Briefing Papers

Meeting Date	December 6, 2018	Agenda Item *14
Company	Flying Cow Wind, LLC	
Docket No.	<b>IP-6984/WS-17-749</b>	
	In the Matter of the Application of Flying Cow Wind, LLC for a Site Permit for the up to 152 MW Bitter Root Wind Project and Associated Facilities in Yellow Medicine County, Minnesota	
Issues	<ol style="list-style-type: none"> <li>1. Should the Commission adopt the administrative law judge's Summary of Public Testimony, Findings of Fact, Conclusions of Law, and Recommendation?</li> <li>2. Should the Commission grant a site permit for the 152 MW Bitter Root Wind Large Wind Energy Conversion System in Yellow Medicine County?</li> </ol>	
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 Relevant Documents	Date
Site Permit Application (21 parts)	November 9, 2017
Order Accepting Site Permit Application, Establishing Procedural Framework, and Varying Rules	January 30, 2018
LDC Petition for Contested Case and Intervention	March 14, 2018
Mankato Building Trades Comments	March 19, 2018
Flying Cow Reply to LDC Petition	March 21, 2018
Site Permit Application Addendum (9 parts)	March 28, 2018
LDC Reply Brief to FCW Regarding Petition for Contested Case and Intervention	March 28, 2018
DOC DER Reply Brief Regarding Request for Contested Case	March 28, 2018
Notice for Additional Comment Period Following Application Addendum	April 3, 2018
DOC EERA Comments & Recommendation for draft site permit (7 parts)	April 19, 2018

 **Relevant Documents**

**Date**

OAH Order on LDC’s Request for Contested Case and Intervention	May 7, 2018
Order Issuing Draft Site Permit	May 25, 2018
Notice of Public Hearing and Draft Site Permit Availability	June 12, 2018
LCIA Petition for Contested Case and Intervention	July 18, 2018
LDC Second Petition for a Contested Case (7 parts)	July 18, 2018
FCW Comments and Proposed Findings	July 18, 2018
LDC Attachments A and B	July 19, 2018
FCW Consolidated Response to LCIA Petitions for Intervention and Contested Case	July 25, 2018
FCW Response to LDC 2nd Petition for Contested Case	July 27, 2018
LCIA Reply to Applicant Objection to Contested Case Request	July 27, 2018
DOC EERA Comments and Recommendations & Response to Applicant’s Proposed FOF	August 6, 2018
LDC Comments & Proposed Revisions to Applicant’s Proposed FOF (3 parts)	August 7, 2018
OAH Order Denying LCIA Petitions	August 10, 2018
OAH Order Denying LDC second petition	August 14, 2018
LDC and LCIA Joint Motion for Certification for Contested Case	August 21, 2018
LCIA Memorandum in Support of Joint Motion for Certification of Issues	August 21, 2018
OAH Order Denying the Joint Motion for Certification of Request for Contested Case Hearing and Intervention to Public Utilities Commission	August 30, 2018
OAH Report – Summary of Public Testimony, Findings of Fact, Conclusions of Law, and Recommendation	Sept. 5, 2018
DOC-EERA Exceptions to ALJ Report	Sept. 10, 2018
Lake Cochrane Improvement Association Exceptions	Sept. 17, 2018
Laborers District Council Exceptions to ALJ Report	Sept. 19, 2018
Flying Cow Exceptions to ALJ Report	Sept. 20, 2018
Flying Cow Notice of Power Purchase Agreement	October 23, 2018
Joint Stipulation of Flying Cow Wind, LLC and LCIA	October 31, 2018

**Attachments**

1. Proposed Site Permit

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email [consumer.puc@state.mn.us](mailto:consumer.puc@state.mn.us) for assistance.

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

**I. Statement of the Issues**

1. Should the Commission adopt the administrative law judge's Summary of Public Testimony, Findings of Fact, Conclusions of Law, and Recommendation?
2. Should the Commission grant a site permit for the 152 MW Bitter Root Large Wind Energy Conversion System in Yellow Medicine County?

**II. Project Description**

Flying Cow Wind, LLC (Flying Cow or applicant) plans to develop and operate an up to 152 megawatt (MW) Large Wind Energy Conversion System (LWECS) in Yellow Medicine County in Minnesota. Flying Cow filed a certificate of need and site permit applications with the Minnesota Public Utilities Commission (Commission) on September 11 and November 9, 2017, respectively. The Bitter Root Wind Farm (Project) is located in Florida, Fortier, and Norman Townships west of the town of Canby. The project was initially proposed to include 37 turbines, but a subsequent March 28 Addendum to the original permit application revised the turbine selection to a smaller unit, which required increasing the number of turbines to 44, plus 8 alternate turbine locations, in order to maintain the same 152 MW output for the Project. The turbine type proposed for the final layout is the Vestas V136 with 3.45 MW nameplate capacity. The turbines have a hub height of 345 feet (ft) (105 meters [m]), a rotor diameter of 446 ft (136 m), and a total tip height of 568 ft (173 m).

The Project's associated facilities would include gravel access roads, an electrical collection system, a supervisory control and data acquisition (SCADA) system, temporary and permanent meteorological towers, a project substation facility, an interconnection facility, an operations and maintenance (O&M) facility, a temporary concrete batch plant for construction, and a temporary staging/laydown construction area.

The Project boundary encompasses approximately 22,888 acres and is mostly agricultural land. A total of approximately 17,196 acres are currently under lease by the Project.

Flying Cow Wind, LLC is a Delaware based Limited Liability Company and a wholly-owned subsidiary of Renewable Energy Systems Americas Inc. (RES Americas). Flying Cow was formed for the purpose of developing and operating the Bitter Root Project. The Applicant is an independent power producer (IPP). RES Americas, through its affiliates, develops renewable

energy projects throughout the United States and Canada. Flying Cow has indicated that the Project is needed to meet the growing demand for additional renewable resources to meet the state's renewable energy requirements and other clean energy requirements in Minnesota and nearby states. The Applicant recently negotiated a power purchase agreement for the Project.

The applicant intends to interconnect the project with Otter Tail Power at a future substation in South Dakota via a 10-mile long 345 kV transmission line also to be built entirely in South Dakota.

### III. Statutes and Rules

**Large Wind Energy Conversion System.** The proposed project is defined as an LWECS under Minn. Stat. § 216F.01, subd. 2, because it is a wind energy conversion system with nameplate capacity of 5 megawatts or more.

**Site Permit.** Under Minn. Stat. § 216F.04, no person may construct an LWECS without the issuance of a site permit by the Commission.

**Site Permit Issuance.** In deciding whether to issue a site permit for an LWECS, the Commission must determine that the project is compatible with environmental preservation, sustainable development, and the efficient use of resources.<sup>1</sup>

**Procedural Treatment of Application.** Review of LWECS site permit applications generally follow the procedural requirements of Minnesota Rules Chapter 7854. In addition to those requirements, the Commission required that the site permit application review process be combined with the certificate of need application review process while expanding the certificate of need public hearing to include issues related to the site permit application.

**Exceptions.** Minnesota Rule 7829.2700 provides that, in cases subject to statutory deadlines, parties may file and serve on other parties any exceptions to an administrative law judge's report within 15 days of its filing.<sup>2</sup> In such cases, replies are not permitted. Parties will be granted an opportunity for oral argument before the Commission prior to its decision.

**Timing.** Under 7854.1000, subp. 2, the Commission shall approve or deny a site permit for an LWECS within 180 days after acceptance of the application, unless the applicant agrees to an extension or the Commission extends the deadline for cause. In this case, a certificate of need was also required, as the project is defined as a large energy facility under Minn. Stat. § 216B.2421, subd. 2(1). Because Minn. R. 7854.0500, subp. 2(A), requires the Commission to

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<sup>1</sup> Minn. Stat. § 216F.03, and Minn. R. 7854.1000, subp. 3.

<sup>2</sup> A party is defined as a person by or against whom a proceeding before the commission is commenced, or a person permitted to intervene in a proceeding, Minnesota Rules, 7829.0100, Subp. 14.

issue a certificate of need for an LWECs project prior to issuing a site permit, the site permit review process followed the 12 month review time limit under the certificate of need statute Minn. Stat. §216B.243, Subd. 5.

#### **IV. Procedural History**

On November 9, 2017, Flying Cow filed a site permit application for an up to 152 MW LWECs in Yellow Medicine County.

On January 30, 2018, the Commission issued an *Order Accepting the Site Permit Application, Establishing Procedural Framework, and Varying Rules*. In its Order, among other things, the Commission requested the Office of Administrative Hearings to assign an administrative law judge to conduct a public hearing, clarify that people may participate in these proceedings without intervening as a party, ask state agencies to participate in the proceeding, emphasize the statutory timeframe for the Commission to make final decisions on the application, address and ask others to address whether the project meets the criteria established under Minn. Stat. § 216F and Minn. Rule, Chapter 7854, summarize the public comments received during the hearing and the subsequent public comment period and prepare a report setting forth findings of fact, conclusions of law, and recommendations on the merits of the application, and provide recommendations, if any, on conditions and provisions regarding the proposed site permit.

March 14, 2018 LDC Petition for Intervention and Request for Contested Case Hearing

March 19, 2018 Mankato Building Trades Council Comments Regarding Incorporating the Project's Potential Human Impact on Local Construction Employment and the Safety of the Workers and Area Residents into the Environmental Document

March 21, 2018 Flying Cow Response to LDC's Request for Contested Hearing and Petition to Intervene

March 28, 2018 Flying Cow Addendum to the Site Permit Application to update and supplement the Application to incorporate a few minor changes to the Project, including using a single turbine type, adding turbines and additional alternate locations, shifting the access roads and the underground collection system, and shifting a meteorological tower.

March 28, 2018 LDC Reply Brief to FCW Comments regarding LDC's Petition for Contested Case and Intervention.

March 28, 2018 DOC DER Reply Brief regarding Request for Contested Case.

On April 3, 2018, the Commission issued a notice of additional comment period in response to the Applicant Addendum to the original Application modifying the scope of the project.

April 19, 2018 EERA Comments and Recommendations to address whether the Commission should issue a Draft Site Permit (DSP) for the Bitter Root Wind Project, and what conditions are necessary in the DSP should the Commission issue one for this project?

On May 7, 2018, ALJ James LaFave of the Office of Administrative Hearings granted the Laborers District Council of Minnesota and North Dakota (LDC) petition for intervention in the docket, but denied the LDC's request for a contested case hearing.

On May 25, 2018, after having established a public comment period and conducting a public information meeting in the project area, the Commission issued a Draft Site Permit (DSP) for the project.

On June 12, 2018, the Commission issued a *Notice of Joint Public Hearing and Draft Site Permit Availability* for both the Certificate of Need and Site Permit applications.

On June 28, 2018, Administrative Law Judge (ALJ) James LaFave conducted a public hearing in the City of Canby, MN.

July 18, 2018 LCIA Petition to Intervene as a party in both Docket # CN-17-676 and WS-17-749.

July 18, 2018 LCIA Request for Contested Case Hearing in Docket # CN-17-676 and WS-17-749.

July 18, 2018 LDC's second Petition for a Contested Case Hearing.

July 18, 2018 FCW submitted comments on certain conditions set forth in the Draft Site Permit and proposed Findings of Fact, Conclusions of Law and Recommendation on the LWECs Site Permit.

July 19, 2018 LDC submitted Attachments A introducing newspaper articles on wind projects and their local impacts and attachment B Employment Statistics Chart for SW Minnesota counties.

July 25, 2018 Flying Cow Consolidated Response to Lake Cochrane Association Petition to Intervene and Request for Contested Case Hearing.

July 27, 2018 Flying Cow Response to the second Request for Contested Case Hearing of the Laborers District Council of Minnesota and North Dakota.

July 27, 2018 LCIA submitted Reply Comments to Applicant's Objection to Contested Case Request.

August 6, 2018 DOC EERA submitted Comments and Recommendations to the Applicant's Proposed Finding of Fact.

August 7, 2018 LDC submitted Comments and Proposed Revisions to Applicant's Findings of Fact

On August 10, 2018, the ALJ denied both a petition for intervention and a request for a contested case hearing by the Lake Cochrane Improvement Association (LCIA) of South Dakota.

August 14, 2018 OAH issued an Amended Order Denying the Second Request for a Contested Case Hearing by the Laborers District Council of Minnesota and North Dakota.

August 21, 2018 LDC LCIA submitted a Joint Motion for Certification of Request for Contested Case Hearing to the Public Utilities Commission.

August 21, 2018 LCIA submitted a Memorandum in support of Joint Motion for Certification of Issues to clarify the position of Lake Cochrane Improvement Association in this case.

On August 30, 2018, the ALJ denied the Joint Motion for Certification of Request for Contested Case Hearing and Intervention to Public Utilities Commission by the LCIA and LDC.

On September 5, 2018, the ALJ issued an *Order - Findings of Fact, Conclusions of Law, and Recommendations* (ALJ Report) for the project.

Between September 10 and 20, 2018, the Commission received exceptions to the ALJ Report from the DOC EERA, LCIA, LDC, and the Applicant.

On October 23, 2018, Flying Cow Wind filed a Notice of Power Purchase Agreement and Revised Project Schedule.

On October 31, 2018, Flying Cow and LCIA filed a Joint Stipulation resolving all issues related to the proximity of wind turbine towers to Lake Cochrane.

## **V. Agency Comments**

### **Minnesota Department of Natural Resources**

The Minnesota Department of Natural Resources (DNR) filed comments on the Project on March 19, April 13, July 18, and August 6, 2018. Among other things, the DNR commented on the project's anticipated impact on birds and bats, concerns about specific turbine impacts (turbine T1 and T20) to nearby wetlands or forested lands suitable for wildlife habitat. DNR also expressed specific concerns about turbines TA8, TA9, TA10, and T39 that are located around a large complex of habitat likely to support a diverse assemblage of birds and bats.

The DNR recommended the applicant explore how to relocate turbines at other locations or farther away from the habitat and suggested a 1,000 foot setback to larger forested tracts to avoid bat fatalities. The 1,000 foot setback<sup>3</sup> is consistent with the United States Fish and Wildlife Service (USFWS) 1,000 feet distance for northern long-eared bats. DNR cited a report<sup>4</sup> that assessed the bat and bird fatality risk at wind farms.

The DNR further expressed concerns about an access road and collector lines that have been proposed through the Fortier 24 Native Prairie Bank Easements, which is inconsistent with the intent of the easement. This program protects prairie through conservation easements, which prohibit the construction or placement of structures or devices, whether permanent or temporary, on the premises without written authorization from the DNR Commissioner. Finally, the DNR recommended that a Native Prairie Protection Plan be required for this project, a permit condition to address calcareous fens, and an endangered and threatened species avoidance plan be completed. These concerns were addressed through proposed conditions throughout the permit, through discussions between the MNDNR and the Applicant or by language proposed to the ALJ by EERA for adoption into the Site Permit.

### **Minnesota Department of Transportation**

The Minnesota Department of Transportation (MnDOT) filed comments on the application on October 6, 2017. MnDOT stated that the DSP should incorporate language specifying that the permittee may need to obtain permits or authorization from road authorities if electric cables or feeder lines would be placed in a public road right of way. MnDOT noted that setbacks must be applied to MnDOT trunk highway right of way. MnDOT noted that Bitter Root Wind would need to coordinate with MnDOT to obtain any permits of road authorities when planning to haul oversize/overweight turbine and equipment. These issues are addressed through conditions set out in Section 5 of the proposed site permit.

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<sup>3</sup> MN DNR Comments, first paragraph pg.2, April 13, 2018, eDocket ID: [20184-141977-01](#)

<sup>4</sup> EDockets Document ID [20184-141977-02](#). Doctoral Thesis U of M PhD Candidate Kevin Heist



### **Minnesota Pollution Control Agency**

The Minnesota Pollution Control Agency (MPCA) filed comments on February 5, 2018. In its comments on the draft site permit the MPCA indicated the project did not offer enough information regarding impacts to the surface water and calcareous fens located in the project area. MPCA indicated that depending on the total number of acres that will be impacted, the Applicant will need to incorporate permanent stormwater treatment into the project plans. The draft site permit indicated that a Stormwater Pollution Prevention Plan (SWPPP) will be developed for the project, but the document does not state the total number of acres that will be disturbed and if the SWPPP will be submitted to MPCA for review. DSP also doesn't describe the best management practices (BMP) that will be utilized to control sediment to prevent impacts to the numerous surface waters within or near the Project boundary. MPCA also commented the Project will need to comply with U.S. Army Corps of Engineers standard individual 401 water quality permit criteria. . These issues are addressed through conditions set out in Section 5 and 9 of the proposed site permit.

### **Department of Comments, Energy Environmental Review and Analysis**

EERA provided comments regarding the regulatory site permit application review process that was followed, including finding the application complete, distributing copies of the application to state and local agencies, holding a public information meeting in the project area, proposing a Draft Site Permit for the Commission's consideration which included input received from citizens at the public meeting and subsequent comment period and comments received from state agencies. EERA staff included a number of special permit conditions in the DSP in response to comments received from MNDNR, MnDOT, MPCA, and LDC as described next in these briefing papers. EERA staff indicated they remained engaged in turbine siting discussions and coordination with agencies for the remainder of the site permit docket (Draft Site Permit review and comment, Public Hearing and comment period, and in development of the final ABPP). Regarding comments received at the Public Hearing and during the comment period that followed, EERA provided the following analysis of remaining issues that required additional attention:

#### **Public Comments**

At the hearing and in subsequent written submissions, most of the public comments were either expressions of support or opposition for the project. These require no response from EERA. Also, no questions were received concerning the Environmental Report<sup>5</sup> (ER) which was part of the Certificate of Need review, so EERA indicated they let its ER stand as entered into the record.

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<sup>5</sup> Environmental Report is addressed specifically in the CN briefing papers.

**Labor District Council of Minnesota, et al.**

Laborers District Council requested a special permit condition requiring reporting of local labor utilization for the Project. EERA supports the use of local labor to the extent practicable and recommended a statistical report at the conclusion of construction, rather than periodic status reports recommended by the LDC, as being less onerous and providing the same data. EERA also recommended including the requirement ordered by the Commission in its Stoneray Order for an accounting of the developer’s efforts to engage local workers. EERA proposed specific language to be included in the site permit section on Labor Statistics Report.

**10.4.1 Labor Statistics Report**

The Permittee shall file a post-construction Labor Statistics Report within 60 days of commencement of operation. The Report shall (a) detail the Permittee’s efforts and the site contractor’s efforts to hire Minnesota workers, and (b) provide an account of 1) the gross number of hours worked by or full-time equivalent workers who are Minnesota residents, as defined in Minn. Stat. 290.01, Subd. 7; 2) the gross number of hours worked by or full-time equivalent workers who are residents of other states, but live within 150 miles of the project; and 3) the total gross hours worked or total full-time equivalent workers. Permittee shall work with its contractor to determine the suitable reporting metric. The Report may not include personally identifiable data.

**Minnesota Department of Natural Resources**

Responding to the MN DNR comments, EERA proposed a new site permit condition on Calcareous Fens.

**4.6.1 Calcareous Fens**

Should any calcareous fens be identified within the project area, the Permittee must work with MN DNR to determine if any impacts will occur during any phase of the Project. If the project is anticipated to impact any calcareous fens, the Permittee must develop a Calcareous Fen Management Plan in coordination with the MN DNR, as specified in Minn. Stat. 103G.223. Should a Calcareous Fen Management Plan be required, the approved plan must be submitted to the Commission 30 days prior to submittal of the site plan required in Section 10.3 of this Permit.

**Native Prairie**

EERA proposed additional language be included in the site permit section 4.7 Native Prairie:

A Threatened and Endangered Species Avoidance Plan shall be incorporated into the Prairie Protection and Management Plan outlining the steps that will be taken to avoid impacts to these species and mitigation for any unavoidable impacts.

**Aircraft Detection Lighting System (ADLS)**

On March 15, 2018, the Applicant filed a letter with the Commission proposing to install, if granted FAA approval, an aircraft detection lighting system at the Bitter Root Wind Project. EERA added a provision into the DSP requiring the installation of ADLS for the Project. Recognizing the uncertainty of obtaining a timely FAA approval for the ADLS, EERA is now proposing an edit to the DSP language in section 6.1.

### **6.1 Obstruction Marking and Lighting**

The Permittee shall install an Aircraft Detection and Lighting System (ADLS) to mitigate the aesthetic and visual effects of the FAA’s aviation lighting requirements. Permittee may install an FAA approved lighting system without ADLS if the Permittee demonstrates that, despite its reasonable efforts to secure FAA approval for an ADLS, one of the following conditions exists:

- 1) The FAA denies the Permittee’s application for an ADLS system, or
- 2) Permittee is unable to secure FAA approval in a timely manner.

If either of these two conditions occur, the permittee’s reasonable efforts to secure FAA approval of the ADLS must be described and filed with the Commission 14 days before the pre-construction meeting.

### **Three-mile Setback from Lake Cochrane**

Numerous individuals commented on the Deuel County, South Dakota’s ordinance (Ordinance B2004-01-23B) that established a setback distance of 3-miles from the Lake Park District located at Lake Cochrane.<sup>67</sup> The majority of these commenters requested that the Commission uphold the 3-mile setback from Lake Cochrane.

A 3-mile setback from Lake Cochrane would extend approximately 2.5 miles into Minnesota and could potentially impact seven turbine locations (A2, T2, T3, T5, T13, T35, and T36).

EERA staff indicated they do not support the requested 3-mile setback from Lake Cochrane. EERA instead discussed the Yellow Medicine County Land Use and Related Resource Management Ordinance (LURRMO) includes management directives related to floodplains, shore-land, rural preservation, and renewable energy. By its terms, the LURRMO applies only to systems that are not otherwise subject to siting and oversight by the Commission and therefore does not apply to the Bitter Root Wind project, however, the project has been designed to comply with the Setbacks, and Requirements and Standards of this ordinance. Concluding their comments, EERA staff recommended issuing a Site Permit for the Bitter Root Wind project with permit conditions as contained in the Draft Site Permit, and with the

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<sup>6</sup> Transcripts Public Hearing Bitter Root Wind Project, Court Reporter, July 13, 2018, eDocket nos. 20187-144799-01

<sup>7</sup> Public Hearing Comments – Written, July 19, 2018. eDocket no. 20187-145040-01

additional permit conditions and edits listed above or in the “Site Permit Conditions” section of the attached proposed Findings of Fact<sup>8</sup>.

## **VI. Report of the Administrative Law Judge**

On September 5, 2018 the ALJ filed his Summary of Public Testimony, Findings of Fact, Conclusion and Recommendation (ALJ Report). The ALJ Report included 317 findings of fact (findings), 12 conclusions of law and a recommendation. The ALJ Report included a summary of public comments received, information about the proposed project, a procedural history of the matter, and an analysis of the siting criteria as applied to the proposed project. The ALJ report stated that the Draft Site Permit contains a number of mitigation measures and other reasonable conditions that adequately address potential impacts of the project on human and natural environments and that it is reasonable to amend the DSP to incorporate additional permit conditions.

The ALJ Report stated the project has satisfied the LWECS site permit criteria and all other applicable legal requirements. The ALJ also made the following specific conclusions as set out on page 62 of the ALJ’s Reports (paragraph numbers listed below are as identified in the ALJ Report):

6. It is reasonable and appropriate to amend the Draft Site Permit to include the changes agreed to between Applicant and DOC-EERA regarding conditions 6.1 (Obstruction Marking and Lighting), 4.6.1 (Calcareous Fens), 4.7 (Threatened and Endangered Species Avoidance Plan), and 10.4.1 (Labor Statistics Report).
8. Removal of Turbines A2, T35, T2, and T3 is necessary for the Project to be compatible with environmental preservation and the efficient use of resources.
9. The Project, with the Draft Site Permit conditions revised as set forth above and removal of turbines A2, T35, T2, and T3, satisfies the site permit criteria for a LWECS contained in Minn. Stat. § 216F.03 and meets all other applicable legal requirements.
10. The Project, with the permit conditions discussed above and removal of turbines A2, T35, T2, and T3, is compatible with environmental preservation, sustainable development, and the efficient use of resources.
11. The Project, with the permit conditions discussed above and removal of turbines A2, T35, T2, and T3, does not present a potential for significant adverse environmental effects pursuant to the Minnesota Environmental Rights Act and the Minnesota Environmental Policy Act.

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<sup>8</sup> EERA Comments and Recommendations and Proposed FOF, eDocket ID: [20188-145537-01](#)

## **VII. Exceptions to the Administrative Law Judge Report**

Timely exceptions were filed by EERA, LCIA, LDC, and the Applicant. A general overview of each parties' exceptions is provided below.

### **EERA Exceptions**

EERA proposed changes<sup>9</sup> to three findings to clarify the record by proposing revised language to address concerns about siting criteria versus public comments, distance from Lake Cochrane to nearest turbines and also to contest the ALJ's recommendation for removal of turbine locations A2, T2, T3, and T35. Consistent with its position, EERA recommended revising conclusions from the ALJ Report that address these four turbine locations.

The ALJ's suggested changes to the Site Permit (i.e., the removal of turbine locations A2, T35, T2, and T3 via micro-siting) are based on the opinion that the presence of these turbines would damage Lake Cochrane's recreational resources, lower property values around the lake, negatively impact tourism along with the benefits it provides to the community, and injure Lake Cochrane's status as a unique natural resource. While the EERA agree that micro-siting is a helpful tool in the mitigation/minimization of those types of impacts, they indicated that the record in the Bitter Root Wind Project docket does not in fact support the supposition that there are significant impacts to the site permit criteria to warrant the removal of turbine locations A2, T35, T2, and T3.

As such, EERA recommended deleting Finding 313 through Finding 317 in the ALJ's report.

EERA staff recommended that the Commission issue a site permit to Flying Cow to construct and operate the up to 152 MW Bitter Root Wind Project in Yellow Medicine County.

### **Lake Cochrane Improvement Association**

LCIA indicated<sup>10</sup> they support adoption of the findings of the ALJ, and if the findings are adopted, LCIA would waive its contention that the Commission should reverse the ALJ's denial of a contested case. If the Commission does not accept the ALJ's recommendation to remove specified towers, then LCIA moved the Commission to reverse the ALJ's denial of the LCIA's request for intervention and a contested case. LCIA's main argument is that the nearby turbines will adversely impact the visual aspect, recreation, tourism, property values and overall quality of life for their lakeshore homes and that the Environmental Report did not

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<sup>9</sup> EERA Exceptions, Document ID [20189-146302-02](#).

<sup>10</sup> LCIA Exceptions, Document ID [20189-146445-01](#).

adequately addressed the impacts of this project on economy and ecology of the region and instead focused on the project footprint only.

### **Laborers District Council**

LDC took exception<sup>11</sup> both to Administrative Law Judge's Report on the application of Flying Cow Wind for a Site Permit for the Bitter Root Wind, and to the informal review process established by the Commission that in their view has left the Commission with a poor decision record.

LDC argued that despite of their best efforts to provide evidence and testimony for this docket showing that without use of Minnesota or local workers for the construction, this project is neither of benefit to society nor consistent with sustainable development based on an existing record that is neither adequate nor consistent with approval, the ALJ Report largely omits to address the labor issue and the overall socioeconomic impacts. LDC proposed multiple changes to the findings, conclusions resulting in a final recommendation to deny the site permit.

### **Flying Cow Wind**

Flying Cow took exception with the ALJ's Report finding that the four turbines close to Lake Cochrane need to be relocated arguing that the visual impact simulation from the four turbines is not a realistic representation for all viewers, stating that the record does not support the conclusion that visual impact will damage Lake Cochrane resources; siting precedent establishing that visual impacts are addressed through setbacks from property owners; arguing that the 3-mile setback requested by LCIA is more than 6 times the normal setback distance of 5 RD. Flying Cow also argued that participant property owners from Minnesota should not be denied the right to use their property to host turbines and lastly indicated they made substantial adjustments to the project to minimize the potential impacts to South Dakota residents, for example eliminating all the turbines from SD as an earlier version of the project was contemplating, siting the turbines away from Lake Cochrane as much as reasonably possible and eliminating turbine T1 from the project layout (resulting in reduced sound modeling results to the vast majority of South Dakota receptors), and agreeing to install an aircraft detection lighting system to minimize nighttime lighting at the Project, a technology that has only recently been required of other wind farms in the state.

### **VIII. Staff Discussion**

Based on information in Flying Cow's certificate of need application, the analysis provided in the environmental report, recommendations from the DOC-DER, DOC-EERA, the ALJ Report, and other evidence in the record; staff provides the following discussion and recommendations.

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<sup>11</sup> Laborers District Council Exceptions, Document ID [20189-146511-04](#).

## **A. Administrative Law Judge Report**

Staff has examined the full record in this case and agrees with the ALJ's conclusions that the Commission has jurisdiction over the Project, that the applicant and the Commission have complied with all procedural requirements under statute and rule, that the Commission has the authority to place conditions in a site permit, that are reasonable and appropriate and that the draft site permit contains a number of important mitigation measures and other reasonable conditions. Staff suggests however, that the ALJ's recommendation of removing several proposed turbine locations to achieve a three mile setback from Lake Cochran is a significant departure from site permit setbacks previously set by the Commission. Therefore, if the Commission were to adopt the ALJ's conclusions on the removal of the turbines, it should be very clear that the decision to do so here is based on the particular circumstances of this project alone and has absolutely no precedential value in the consideration of appropriate setbacks for future projects.

Staff has also reviewed the exceptions to the ALJ Report filed by the DOC EERA, LCIA, LDC, and the Applicant. Staff agrees that the exceptions initially proposed by the applicant and the EERA would be appropriate and would provide additional clarity to the findings of the ALJ. However, staff does not believe they are necessary for the Commission to adopt them at this time. The exceptions most important for the Commission to consider are whether to amend or remove Findings 313 through 316 and Conclusions 9 through 11.

## **B. Joint Stipulation of Flying Cow Wind, LLC and the Lake Cochrane Improvement Association**

On October 30<sup>th</sup>, 2018 Flying Cow Wind, LLC and Lake Cochrane Improvement Association entered into a settlement resolving all issues related to the proximity of wind turbine towers to Lake Cochrane that had been the subject of disagreement between the parties during these proceedings. As part of the agreement, Flying Cow Wind offered to voluntarily withdraw turbine locations A2, T35, T2, and T3 from the Project layout. FCW indicated they will use alternate locations identified in the Project layout in lieu of the withdrawn turbine locations. In return, LCIA withdraws all challenges to the Project that it raised during the proceeding and will now support issuing a CN and a Site Permit to Flying Cow consistent with the conditions and recommendations set forth in the ALJ Report as modified by the deletion of the second sentence of Finding 194 and with the deletion of Findings 314, 315 and 316 in their entirety and modifying the Conclusions of Law accordingly to account for the voluntary withdrawal of turbines. With the Joint Stipulation, the Parties stated they have resolved all claims that had been raised between them in the Proceedings. Staff believes the terms of the Joint Stipulation eliminate the need to further consider the exceptions of the EERA, the Applicant or LCIA.

Also, staff believes that with the acceptance of the Joint Stipulation, the remaining point of contention among participants is whether the Labor Statistics Reporting set out in Permit Condition 10.4.1 should be a single post-construction report within 60 days of commencement

of operation as proposed by the DOC-EERA or to require quarterly report from the date a permit is issued as recommended by the LDC. Commission staff recommends the Commission hear from the parties on this issue at the September 6, 2018 Agenda Meeting.

Finally, staff recommends the Commission adopt the ALJ’s Report with the changes identified by the Parties in the Joint Stipulation and grant a site permit for the Bitter Root Wind project to Flying Cow Wind, LLC.

**C. Site Permit Conditions**

Staff agrees with the ALJ’s recommended amendments to the draft site permit as identified in Section Z of the Report, including Permit Conditions set out in Findings 308, 309, 310 and 311 as earlier proposed by DOC-EERA and agreed to by Flying Cow Wind. The following table details the proposed permit condition revisions:

<b>Permit Section No.</b>	<b>Proposed Revision</b>	<b>Explanation for Revision</b>
4.6.1 Calcareous Fens	<u>Should any calcareous fens be identified within the project area, the Permittee must work with MN DNR to determine if any impacts will occur during any phase of the Project. If the project is anticipated to impact any calcareous fens, the Permittee must develop a Calcareous Fen Management Plan in coordination with MN DNR, as specified in Minn. Stat. 103G.223. Should a Calcareous Fen Management Plan be required, the approved plan must be submitted to the Commission 30 days prior to the submittal of the site plan required in Section 10.3 of this Permit.</u>	Commission staff agrees with this new permit condition as originally proposed by MN DNR in their July 18, 2018 comments, as this standard language has been used for other wind site permits.
4.7 Native Prairie	Wind turbines and associated facilities including foundations, access roads, collector and feeder lines, underground cable, and transformers shall not be placed in native prairie, as defined in Minn. Stat. § 84.02, subd. 5, unless addressed in a prairie protection and management plan and shall not be located in areas enrolled in the Native Prairie Bank Program. Construction activities, as defined in Minn. Stat. §	This revision to existing draft site permit language was proposed by DOC-EERA based on MN DNR comments from July 18, 2018, given the known occurrences of state-listed threatened and endangered species within the project boundary. Commission staff agrees.



	<p>216E.01, shall not impact native prairie unless addressed in a prairie protection and management plan.</p> <p>The Permittee shall prepare a prairie protection and management plan in consultation with the Minnesota Department of Natural Resources if native prairie, as defined in Minn. Stat. § 84.02, subd. 5, is identified within the site boundaries. The Permittee shall file the plan 30 days prior to submitting the site plan required by Section 10.3 of this permit. The plan shall address steps that will be taken 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, the Minnesota Department of Natural Resources, and the Commission.</p> <p><u>A Threatened and Endangered Species Avoidance Plan shall be incorporated into the Prairie Protection and Management Plan outlining the steps that will be taken to avoid impacts to these species and mitigation for any unavoidable impacts.</u></p>	
<p>6.1 Obstruction Marking and Lighting</p>	<p>The Permittee shall install an Aircraft Detection Lighting System (ADLS) to mitigate the aesthetic and visual effects of the FAA’s aviation lighting requirements.</p> <p><u>Permittee may install an FAA approved lighting system without ADLS if the Permittee demonstrates that, despite its reasonable efforts to secure FAA approval for an ADLS, one of the following conditions exists:</u></p>	<p>EERA recognized that the Site Permit should also take into consideration the regulatory uncertainty associated with FAA approval of an ADLS system. Commission staff agrees with this proposed revision to the standard permit condition.</p>

	<p><u>1) The FAA denies the Permittee’s application for an ADLS system, or</u>  <u>2) Permittee is unable to secure FAA approval in a timely manner.</u></p> <p><u>If either of these two conditions occur, the permittee’s reasonable efforts to secure FAA approval of the ADLS must be described and filed with the Commission 14 days before the pre-construction meeting.</u></p>	
<p>10.4.1 Labor Statistics Report</p>	<p><u>The Permittee shall file a post-construction Labor Statistics Report within 60 days of commencement of operation. The Report shall (a) detail the Permittee’s efforts and the site contractor’s efforts to hire Minnesota workers, and (b) provide an account of 1) the gross number of hours worked by or full-time equivalent workers who are Minnesota residents, as defined in Minn. Stat. 290.01, subd. 7; 2) the gross number of hours worked by or full-time equivalent workers who are residents of other states, but live within 150 miles of the project; and 3) the total gross hours worked or total full-time equivalent workers. Permittee shall work with its contractor to determine the suitable reporting metric. The Report may not include personally identifiable data.</u></p>	<p>This permit condition came as a result of LDC’s petition to intervene in the docket and to require the applicant to provide labor statistics for the construction of the project. DOC-EERA drafted this permit condition language. Commission staff agrees with this condition.</p>

Staff recommends that the Commission issue a Site Permit for the up to 152 megawatt Bitter Root Wind Large Wind Energy Conversion System, first issued as the draft site permit by the Commission on May 25, 2018, with the permit amendments discussed above and adopted by the Administrative Law Judge. Staff has attached the proposed site permit to these briefing papers.

**IX. Decision Options**

**A. Administrative Law Judge’s Summary of Public Testimony, Findings of Fact, Conclusions of Law, and Recommendation**

1. Adopt the Administrative Law Judge’s Summary of Public Testimony, Findings of Fact, Conclusions of Law, and Recommendation.
2. Adopt the Administrative Law Judge’s Summary of Public Testimony, Findings of Fact, Conclusions of Law, and Recommendation with the exceptions proposed by the DOC-EERA.
3. Adopt the Administrative Law Judge’s Summary of Public Testimony, Findings of Fact, Conclusions of Law, and Recommendation with the exceptions proposed by the applicant.
4. Adopt the Administrative Law Judge’s Summary of Public Testimony, Findings of Fact, Conclusions of Law, and Recommendation with the exceptions proposed by the LDC.
5. Adopt the Administrative Law Judge’s Summary of Public Testimony, Findings of Fact, Conclusions of Law, and Recommendation and include the suggested changes from the Joint Stipulation of FCW/ LCIA to make the ALJ Report consistent with the latest agreement by FCW and LCIA to remove turbines A2, T35, T2, and T3 from the project layout and replace them with alternate turbines located within the project area.
6. Decline to adopt the Administrative Law Judge’s Summary of Public Testimony, Findings of Fact, Conclusions of Law, and Recommendation and remand the matter back to the ALJ for a contested case proceeding.
7. Take some other action deemed appropriate.

**B. Site Permit for the up to 152 MW Bitter Root Wind Large Wind Energy Conversion System in Yellow Medicine County, Minnesota.**

1. Issue the Draft Site Permit authorized by the Commission in its May 25, 2018 Order as the site permit for the up 152 MW Bitter Root Wind Large Wind Energy Conversion System in Yellow Medicine County, Minnesota.

2. Issue the Draft Site Permit authorized by the Commission in its May 25, 2018 Order and incorporate the permit amendments adopted by the Administrative Law Judge.
3. Decline to issue a site permit.
4. Take some other action deemed appropriate.

**C. Administrative Consistency**

1. Authorize Commission staff to make further refinements to the findings of fact and permit conditions as necessary to ensure consistency with the record, the language of recently issued permits, and the Commission's decision on this matter.

**Staff Recommendation:** A5, B2, and C1.

**STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION**

**PRELIMINARY DRAFT SITE PERMIT  
FOR A  
LARGE WIND ENERGY CONVERSION SYSTEM  
IN  
Yellow Medicine County**

**ISSUED TO  
FLYING COW WIND, LLC**

**PUC DOCKET NO. IP6984/WS-17-749**

In accordance with the requirements of Minnesota Statutes Chapter 216F and Minnesota Rules Chapter 7854, this site permit is hereby issued to:

**Flying Cow Wind, LLC  
330 2<sup>nd</sup> Avenue  
Suite 820  
Minneapolis, MN 55401**

The Permittee is authorized by this site permit to construct and operate an up to 152 megawatt nameplate capacity Large Wind Energy Conversion System, consisting of 44 turbine sites (Vestas V136 3.45 MW models). The Large Wind Energy Conversion System and 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.

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

Approved and adopted this \_\_\_\_ day of \_\_\_\_\_

BY ORDER OF THE COMMISSION

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Daniel P. Wolf,  
Executive Secretary

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**ATTACHMENTS**

Official Site Permit Maps

Attachment A - Complaint Procedures for Permitted Energy Facilities

Attachment B - Compliance Filing Procedures for Permitted Energy Facilities



## **1.0 SITE PERMIT**

The Minnesota Public Utilities Commission (Commission) hereby issues this site permit to Flying Cow Wind, LLC (Permittee) pursuant to Minnesota Statutes Chapter 216F and Minnesota Rules Chapter 7854. This permit authorizes the Permittee to construct and operate the Bitter Root Wind Project (Project), a 152 megawatt (MW) nameplate capacity Large Wind Energy Conversion System (LWECS) and associated facilities in Yellow Medicine. The LWECS and associated facilities shall be built within the site identified in this permit and as identified in the attached official site permit map(s), hereby incorporated into this document.

### **1.1 Preemption**

Pursuant to Minn. Stat. § 216F.07, this permit shall be the sole site approval required for the location, construction, and operation 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.

## **2.0 PROJECT DESCRIPTION**

The Flying Cow wind project, when fully constructed and operational will consist of 44 Vestas V136 3.45 MW (105 Meter hub height {345 ft}) wind turbines for a combined nameplate capacity of approximately 152 MW as identified in the site permit application for the Project. The project area includes approximately 22,888 acres in Florida, Fortier, and Norman townships in Yellow Medicine County. The Project currently hold lease agreements on 21,000 acres. Upon completion, the Project will permanently convert approximately 93 acres of land to wind turbines and associated facilities.

### **2.1 Associated Facilities**

Associated facilities include gravel access roads, an electrical collection system, temporary and permanent meteorological towers, a project substation facility, an interconnection facility, a temporary batch plant for construction, temporary staging/laydown construction areas, and an operations and maintenance (O&M) facility.

### **2.2 Project Location**

The project is located in the following townships and sections:

<b>County Name</b>	<b>Township Name</b>	<b>Township</b>	<b>Range</b>	<b>Sections</b>
--------------------	----------------------	-----------------	--------------	-----------------

Yellow Medicine	Florida	115N	46W	29,30,31,32,33,34
Yellow Medicine	Fortier	114N	46W	3,4,5,6,7,8,9,10,11,13,14,15,16,17,18,19,20, 21,22,23,24,25,26,27,28,29,30,31,32,33,34, 35,36
Yellow Medicine	Norman	114N	45W	30,31

### **3.0 DESIGNATED SITE**

The site designated by the Commission for the Bitter Root Wind project is the site depicted on the official site permit maps attached to this permit. The Project area includes approximately 22,888 acres in Florida, Fortier, and Norman townships in Yellow Medicine County.

#### **3.1 Turbine Layout**

The preliminary wind turbine and associated facility layouts are shown on the official site maps attached to this permit. The preliminary layout represents the approximate location of wind turbines and associated facilities within the project boundary and identifies a layout that seeks to minimize the overall potential human and environmental impacts of the project, which were evaluated in the permitting process.

The final layout depicting the location of each wind turbine and associated facility shall be located within the project boundary. The project boundary serves to provide the Permittee with the flexibility to make minor adjustments (i.e., micro-siting) to the preliminary layout to accommodate requests by landowners, local government units, federal and state agency requirements, and unforeseen conditions encountered during the detailed engineering and design process. Any modification to the location of a wind turbine and associated facility depicted in the preliminary layout shall be done in such a manner to have comparable overall human and environmental impacts and shall be specifically identified in the site plan pursuant to Section 10.3.

### **4.0 SETBACKS AND SITE LAYOUT RESTRICTIONS**

#### **4.1 Wind Access Buffer**

Wind turbine towers shall not be placed less than five rotor diameters on the prevailing wind directions and three rotor diameters on the 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 all residences or the distance required to comply with the noise standards pursuant to Minn. R. 7030.0040, established by the Minnesota Pollution Control Agency, whichever is greater.

## **4.3 Noise**

The wind turbine towers shall be placed such that the Permittee shall, at all times, comply with noise standards established by the Minnesota Pollution Control Agency as of the date of this permit and 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 Minnesota Pollution Control Agency 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 construction, but not with respect to such receptors built after construction of the towers.

## **4.4 Roads**

Wind turbines 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 publicly-owned lands that have been designated for recreational or conservation purposes, including, but not limited to, Waterfowl Production Areas, State Wildlife Management Areas, Scientific and Natural Areas or county parks, except in the event that the public entity owning those lands enters into a land lease and easement with the Permittee. 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 shown on the public water inventory maps prescribed by Minnesota Statutes Chapter 103G, except that 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 and the United States Army Corps of Engineers, and local units of government as implementers of the Minnesota Wetlands Conservation Act.

#### 4.6.1 Calcareous Fens

Should any calcareous fens be identified within the project area, the Permittee must work with MN DNR to determine if any impacts will occur during any phase of the Project. If the project is anticipated to impact any calcareous fens, the Permittee must develop a Calcareous Fen Management Plan in coordination with MN DNR, as specified in Minn. Stat. 103G.223. Should a Calcareous Fen Management Plan be required, the approved plan must be submitted to the Commission 30 days prior to the submittal of the site plan required in Section 10.3 of this Permit.

#### **4.7 Native Prairie**

Wind turbines and associated facilities including foundations, access roads, collector and feeder lines, underground cable, and transformers shall not be placed in native prairie, as defined in Minn. Stat. § 84.02, subd. 5, unless addressed in a prairie protection and management plan and shall not be located in areas enrolled in the Native Prairie Bank Program. Construction activities, as defined in Minn. Stat. § 216E.01, shall not impact native prairie unless addressed in a prairie protection and management plan.

The Permittee shall prepare a prairie protection and management plan in consultation with the Minnesota Department of Natural Resources if native prairie, as defined in Minn. Stat. § 84.02, subd. 5, is identified within the site boundaries. The Permittee shall file the plan 30 days prior to submitting the site plan required by Section 10.3 of this permit. The plan shall address steps that will be taken 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, the Minnesota Department of Natural Resources, and the Commission.

A Threatened and Endangered Species Avoidance Plan shall be incorporated into the Prairie Protection and Management Plan outlining the steps that will be taken to avoid impacts to these species and mitigation for any unavoidable impacts.

#### **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.

#### **4.9 Wind Turbine Towers**

Structures for wind turbines shall be self-supporting tubular towers. The towers may be up to 105 meters (345 feet) above grade measured at hub height.

#### **4.10 Turbine Spacing**

The turbine towers shall be constructed within the site boundary as shown in the official site maps. The turbine towers shall be spaced no closer than three rotor diameters in the non-prevailing wind directions and five rotor diameters on the prevailing wind directions. If required during final micro-siting of the turbine towers to account for site 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. There shall be no lights on the meteorological towers other than what is required by the Federal Aviation Administration. 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 Minn. R. 8800.0100, subp. 24(a) and 24(b)) in Minnesota, adjacent states, or provinces. The Permittee shall apply the minimum obstruction clearance for private airports pursuant to Minn. R. 8800.1900, subp. 5. Setbacks or other limitations shall be followed in accordance with the Minnesota Department of Transportation, Department of Aviation, and the Federal Aviation Administration. The Permittee shall notify owners of all known airports within six 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, 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.

## **5.0 GENERAL CONDITIONS**

The Permittee shall comply with the following conditions during construction and operation of the LWECs and associated facilities over the life of this permit.

### **5.1 Notification**

Within 30 days of permit issuance, the Permittee shall send a copy of the permit and the complaint procedures to any regional development commission, county auditor and environmental office, and city and township clerk in which any part of the site is located. Within 30 days of permit issuance, the Permittee shall provide all affected landowners with a copy of this permit and the complaint procedures. In no case shall the landowner receive this site permit and complaint procedures less than five days prior to the start of construction on their property. The Permittee shall contact landowners prior to entering the property or conducting maintenance within the site, unless otherwise negotiated with the affected landowner.

### **5.2 Construction and Operation Practices**

The Permittee shall comply with the construction practices, operation and maintenance practices, and material specifications described in the *Site Permit Application for the Bitter Root Wind Project*, November 9, 2017, and the record of the proceedings unless this permit establishes a different requirement in which case this permit shall prevail.

#### **5.2.1 Field Representative**

The Permittee shall designate a field representative responsible for overseeing compliance with the conditions of this permit during construction of the project. This person shall be accessible by telephone or other means during normal business hours throughout site preparation, construction, cleanup, and restoration.

The Permittee shall file with the Commission the name, address, email, phone number, and emergency phone number of the field representative 14 days prior to commencing construction. The Permittee shall provide the field representative's contact information to affected landowners, residents, local government units and other interested persons 14 days prior to commencing

construction. The Permittee may change the field representative at any time upon notice to the Commission, affected landowners, residents, local government units and other interested persons.

#### 5.2.2 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 the project. This person shall be accessible by telephone or other means during normal business hours for the life of this permit.

The Permittee shall file with the Commission the name, address, email, phone number, and emergency phone number of the site manager 14 days prior to commercial operation of the facility. The Permittee shall provide the site manager's contact information to affected landowners, residents, local government units and other interested persons 14 days prior to commercial operation of the facility. The Permittee may change the site manager at any time upon notice to the Commission, affected landowners, residents, local government units and other interested persons.

#### 5.2.3 Employee Training and Education of Permit Terms and Conditions

The Permittee shall inform all employees, contractors, and other persons involved in the construction and ongoing operation of the LWECs of the terms and conditions of this permit.

#### 5.2.4 Topsoil Protection

The Permittee shall implement measures to protect and segregate topsoil from subsoil on all lands unless otherwise negotiated with the affected landowner.

#### 5.2.5 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.

#### 5.2.6 Soil Erosion and Sediment Control

The Permittee shall implement those erosion prevention and sediment control practices recommended by the Minnesota Pollution Control Agency Construction Stormwater Program.

If construction of the facility disturbs more than one acre of land, or is sited in an area designated by the Minnesota Pollution Control Agency as having potential for impacts to water resources, the

Permittee shall obtain a National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) Construction Stormwater Permit from the Minnesota Pollution Control Agency that provides for the development of a Stormwater Pollution Prevention Plan (SWPPP) that describes methods to control erosion and runoff.

The Permittee shall implement reasonable measures to minimize erosion and sedimentation during construction and shall employ perimeter sediment controls, protect exposed soil by promptly planting, seeding, using erosion control blankets and turf reinforcement mats, stabilizing slopes, protecting storm drain inlets, protecting soil stockpiles, and controlling vehicle tracking. Contours shall be graded as required so that all surfaces provide for proper drainage, blend with the natural terrain, and are left in a condition that will facilitate re-vegetation and prevent erosion. All areas disturbed during construction of the facilities shall be returned to pre-construction conditions.

#### 5.2.7 Wetlands

Construction in wetland areas shall occur during frozen ground conditions to minimize impacts, to the extent feasible. When construction during winter is not possible, wooden or composite mats shall be used to protect wetland vegetation. Soil excavated from the wetlands and riparian areas shall be contained and managed in accordance with all applicable wetland permits. Wetlands and riparian areas shall be accessed using the shortest route possible in order to minimize travel through wetland areas and prevent unnecessary impacts.

Wetland and water resource areas disturbed by construction activities shall be restored to pre-construction conditions, in accordance with all applicable wetland permits. Restoration of the wetlands will be performed by the Permittee in accordance with the requirements of applicable state and federal permits or laws and landowner agreements.

#### 5.2.8 Vegetation Management

The Permittee shall disturb or clear the project site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the project. The Permittee shall minimize the number of trees to be removed in selecting the site layout specifically preserving to the maximum extent practicable windbreaks, shelterbelts, living snow fences, and vegetation, to the extent that such actions do not violate sound engineering principles.

#### 5.2.9 Application of Pesticides

The Permittee shall restrict pesticide use to those pesticides and methods of application approved by the Minnesota Department of Agriculture, Minnesota Department of Natural Resources, and the U.S. Environmental Protection Agency. Selective foliage or basal application shall be used



when practicable. All pesticides shall be applied in a safe and cautious manner so as not to damage adjacent properties including crops, orchards, tree farms, apiaries, or gardens. The Permittee shall contact the landowner or designee to obtain approval for the use of pesticide at least 14 days prior to any application on their property. The landowner may request that there be no application of pesticides on any part of the site within the landowner's property. The Permittee shall provide notice of pesticide application to affected landowners, and known beekeepers operating apiaries within three miles of the project site at least 14 days prior to such application.

#### 5.2.10 Invasive Species

The Permittee shall employ best management practices to avoid the potential spread of invasive species on lands disturbed by project construction activities. The Permittee shall develop an Invasive Species Prevention Plan to prevent the introduction and spread of invasive species on lands disturbed by project construction activities and file with the Commission 14 days prior to the pre-construction meeting.

#### 5.2.11 Noxious Weeds

The Permittee shall take all reasonable precautions against the spread of noxious weeds during all phases of construction. When utilizing seed to establish temporary and permanent vegetative cover on exposed soil, the Permittee shall select site appropriate seed certified to be free of noxious weeds. The Permittee shall consult with landowners on the selection and use of seed for replanting. To the extent possible, the Permittee shall use native seed mixes.

#### 5.2.12 Public Roads

At least 14 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 may be subject to increased impacts due to transportation of equipment and project components. The Permittee shall notify the Commission of such arrangements upon request.

#### 5.2.13 Turbine Access Roads

The Permittee shall construct the least number of turbine access roads necessary to safely and efficiently operate the project and satisfy landowner requests. 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 ditches without required permits and approvals. When access roads are constructed across streams, drainage ways, or drainage ditches, the access roads shall be designed and constructed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed. Any access roads that are constructed across streams or drainage ditches shall be designed and constructed in a manner that maintains existing fish passage. Access roads that are constructed across grassed waterways, which provide drainage for surface waters that are ephemeral in nature, are not required to maintain or provide fish passage. Access roads shall be constructed in accordance with all necessary township, county or state road requirements and permits.

#### 5.2.14 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.

#### 5.2.15 Archaeological and Historic Resources

The Permittee shall make every effort to avoid impacts to identified archaeological and historic resources when constructing the LWECS. In the event that a resource is encountered, the Permittee shall contact and consult with the State Historic Preservation Office and the State Archaeologist. Where feasible, avoidance of the resource is required. Where not feasible, mitigation must include an effort to minimize project impacts on the resource consistent with State Historic Preservation Office and State Archaeologist requirements.

Prior to 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 human remains are encountered during construction, the Permittee shall immediately halt construction at such location and promptly notify local law enforcement and the State Archaeologist. Construction at such location shall not proceed until authorized by local law enforcement and the State Archaeologist.

#### 5.2.16 Interference

At least 14 days prior to the pre-construction meeting, the Permittee shall submit to the Commission, 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 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.

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 cause such interference, the Permittee shall take timely measures necessary to correct the problem.

#### 5.2.17 Livestock Protection

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

#### 5.2.18 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. When the Permittee installs a gate where electric fences are present, the Permittee shall provide for continuity in the electric fence circuit.

#### 5.2.19 Drainage Tiles

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

#### 5.2.20 Equipment Storage

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

#### 5.2.21 Restoration

The Permittee shall, as soon as practical following construction of each turbine, restore the areas affected by construction to the condition that existed immediately before construction began, to the extent possible. The time period to complete restoration may be no longer than 12 months after completion of the construction, unless otherwise negotiated with the affected landowner. Restoration shall be compatible with the safe operation, maintenance and inspection of the project. Within 60 days after completion of all restoration activities, the Permittee shall advise the Commission in writing of the completion of such activities.

#### 5.2.22 Cleanup

All waste and scrap that is the product of construction shall be removed from the site and all premises on which construction activities were conducted and properly disposed of upon completion of each task. Personal litter, including bottles, cans, and paper from construction activities shall be removed on a daily basis.

#### 5.2.23 Pollution and Hazardous Waste

All appropriate precautions to protect against pollution of the environment shall be taken by the Permittee. The Permittee shall be responsible for compliance with all laws applicable to the generation, storage, transportation, clean up and disposal of all wastes generated during construction and restoration of the site.

#### 5.2.24 Damages

The Permittee shall fairly restore or compensate landowners for damage to crops, fences, private roads and lanes, landscaping, drain tile, or other damages sustained during construction.

#### 5.2.25 Public Safety

The Permittee shall provide educational materials to landowners adjacent to the site 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 Minn. Stat. § 216D.01, subd. 11, to Gopher State One Call following the completion of construction at the site.

#### 5.2.26 Tower Identification

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

#### 5.2.27 Federal Aviation Administration Lighting

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

### **5.3 Communication Cables**

The Permittee shall place all communication and supervisory control and data acquisition cables underground and within or adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner.

### **5.4 Electrical Collector and Feeder Lines**

Collector lines that carry electrical power from each individual transformer associated with a wind turbine to an internal project interconnection point shall be buried underground. Collector lines shall be placed within or adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner.

Feeder lines that carry power from an internal project interconnection point to the project substation or interconnection point on the electrical grid may be overhead or underground. Feeder line locations shall be negotiated with the affected landowner. Any overhead or underground feeder lines that parallel public roads shall be placed within the public rights-of-way or on private land immediately adjacent to public roads. If overhead 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 line locations shall be located in such a manner as to minimize interference with agricultural operations including, but not limited, to existing drainage patterns, drain tile, future tiling plans, and ditches. Safety shields shall be placed on all guy wires associated with overhead feeder lines. The Permittee shall submit the engineering drawings of all collector and feeder lines in the site plan pursuant to Section 10.3.

### **5.5 Other Requirements**

#### **5.5.1 Safety Codes and Design Requirements**

The LW ECS and associated facilities shall be designed to meet or exceed all relevant local and state codes, Institute of Electrical and Electronics Engineers, Inc. standards, the National Electric Safety Code, and North American Electric Reliability Corporation requirements. The Permittee shall report to the Commission on compliance with these standards upon request.

#### **5.5.2 Other Permits and Regulations**

The Permittee shall comply with all applicable state rules and statutes. The Permittee shall obtain all required permits for the project and comply with the conditions of those permits unless those

permits conflict with or are preempted by federal or state permits and regulations. A list of the permits known to be required is included in the permit application. At least 14 days prior to the preconstruction meeting, the Permittee shall submit a filing demonstrating that it has obtained such permits. The Permittee shall provide a copy of any such permit upon Commission request.

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 with or are not preempted by federal or state permits and regulations.

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 MPCA (Section 401 Water Quality Certification, NPDES/ SDS stormwater permit for construction activity, and other site specific discharge approvals), DNR (License to Cross Public Lands and Water, Public Water Works Permit, and state protected species consultation), SHPO (Section 106 Historic Consultation Act), FAA determinations, and Mn/DOT (Utility Access Permit, Highway Access Permit, Oversize and Overweight Permit, and Aeronautics Airspace Obstruction Permit).

The Permittee shall consult with the United States Fish and Wildlife Service (USFWS) to determine if an Eagle Incidental Take Permit under the Bald and Golden Eagle Protection Act (BGEPA) is appropriate for the construction and operation of the wind energy facility. The Permittee shall consult with the USFWS to determine if an Incidental Take Permit under the Endangered Species Act (ESA) is appropriate for the construction and operation of the wind energy facility.

## **6.0 SPECIAL CONDITIONS**

Special conditions shall take precedence over other conditions of this permit should there be a conflict.

### **6.1 Obstruction Marking and Lighting**

The Permittee shall install an Aircraft Detection Lighting System (ADLS) to mitigate the aesthetic and visual effects of the FAA's night-time aviation lighting requirements.

Permittee may install an FAA approved lighting system without ADLS if the Permittee demonstrates that, despite its reasonable efforts to secure FAA approval for an ADLS, one of the following conditions exists:

- 1) The FAA denies the Permittee's application for an ADLS system, or
- 2) Permittee is unable to secure FAA approval in a timely manner.

If either of these two conditions occur, the permittee's reasonable efforts to secure FAA approval of the ADLS must be described and filed with the Commission 14 days before the pre-construction meeting.

## **7.0 SURVEYS AND REPORTING**

### **7.1 Biological and Natural Resource Inventories**

The Permittee, in consultation with the Commission and the Department of Natural Resources, shall design and conduct pre-construction desktop and field inventories of existing wildlife management areas, scientific and natural areas, recreation areas, native prairies and forests, wetlands, and any other biologically sensitive areas within the project site and assess the presence of state- or federally-listed or threatened species. The results of the inventories shall be filed with the Commission at least 30 days prior to the pre-construction meeting to confirm compliance of conditions in this permit. The Permittee shall file with the Commission, any biological surveys or studies conducted on this project, including those not required under this permit.

### **7.2 Shadow Flicker**

At least 14 days prior to the pre-construction meeting, the Permittee shall provide data on shadow flicker for each residence of non-participating landowners and participating landowners within and outside of the project boundary potentially subject to turbine shadow flicker exposure. Information shall include the results of modeling used, assumptions made, and the anticipated levels of exposure from turbine shadow flicker for each residence. The Permittee shall provide documentation on its efforts to avoid, minimize and mitigate shadow flicker exposure. The results of any modeling shall be filed with the Commission at least 14 days prior to the pre-construction meeting to confirm compliance with conditions of this permit.

### **7.3 Wake Loss Studies**

At least 14 days prior to the pre-construction meeting, the Permittee shall file with the Commission the pre-construction micro-siting analysis leading to the final tower locations and an estimate of total project wake losses. As part of the annual report on project energy production required under Section 10.8 of the permit the Permittee shall file with the Commission any operational wake loss studies conducted on this project during the calendar year preceding the report.

### **7.4 Noise Studies**

The Permittee shall file a proposed methodology for the conduct of a post-construction noise study at least 14 days prior to the pre-construction meeting. The Permittee shall develop the post-construction noise study methodology in consultation with the Department of Commerce. The

study must incorporate the Department of Commerce Noise Study Protocol to determine the operating LWECs noise levels at different frequencies and at various distances from the turbines at various wind directions and speeds. The Permittee must conduct the post-construction noise study and file with the Commission the completed post-construction noise study within 18 months of commencing commercial operation.

## **7.5 Avian and Bat Protection**

### **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.

### **7.5.2 Avian and Bat Protection Plan**

The Permittee shall comply with the provisions of their final avian and bat protection plan (ABPP) submitted for this project, 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.

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.

### **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 Minnesota Department of Natural Resources and to the U.S. Fish and Wildlife Service at the time of filing with the Commission.

#### 7.5.4 Immediate Incident Reports

The Permittee shall notify the Commission, U.S. Fish and Wildlife Service, and the Minnesota Department of Natural Resources within 24 hours of the discovery of any of the following:

- (a) five or more dead or injured birds or bats within a five day reporting period;
- (b) one or more dead or injured state threatened, endangered, or species of special concern;
- (c) one or more dead or injured federally listed species, including species proposed for listing;
- or
- (d) one or more dead or injured bald or golden eagle(s).

In the event that one of the four 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.

#### 7.5.5 Turbine Operational Curtailment

The Permittee shall operate all facility turbines so that all turbines are locked, or feathered, up to the manufacturer's standard cut-in speed from one-half hour before sunset to one-half hour after sunrise of the following day, from April 1 to October 31 of each year of operation.

All operating turbines at the facility must be equipped with operational software that is capable of allowing for adjustment of turbine cut-in speeds.

## **8.0 AUTHORITY TO CONSTRUCT LWECS**

### **8.1 Wind Rights**

At least 14 days prior to the 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 boundaries authorized by this permit. Nothing in this permit shall be construed to preclude any other person from seeking a permit to construct a wind energy conversion system in any area

within the boundaries of the project covered by this permit if the Permittee does not hold exclusive wind rights for such areas.

## **8.2 Power Purchase Agreement**

In the event the Permittee does not have a power purchase agreement or some other enforceable mechanism for 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 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 Commission of the reason for not having such commitment. In such event, the Commission may determine whether this permit should be amended or revoked. No amendment or revocation of this permit may be undertaken except in accordance with Minn. R. 7854.1300.

## **8.3 Failure to Commence Construction**

If the Permittee has not completed the pre-construction surveys required under this permit and commenced construction of the project within two years of the issuance of this permit, the Permittee must advise the Commission of the reason 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 Minn. R. 7854.1300.

## **9.0 COMPLAINT PROCEDURES**

Prior to the start of construction, the Permittee shall submit to the Commission the procedures that will be used to receive and respond to complaints. The procedures shall be in accordance with the requirements of Minn. R. 7829.1500 or Minn. R. 7829.1700, and as set forth in the complaint procedures attached to this permit (Attachment A).

## **10.0 COMPLIANCE REQUIREMENTS**

Failure to timely and properly make compliance filings required by this permit is a failure to comply with the conditions of this permit. Compliance filings must be electronically filed with the Commission. Attachment B to this permit contains a summary of compliance filings, which is provided solely for the convenience of the Permittee. If this permit conflicts, or is not consistent with Attachment B, the conditions in this permit will control.

### **10.1 Pre-Construction Meeting**

Prior to the start of any construction, the Permittee shall participate in a pre-construction meeting with the Department of Commerce and Commission staff to review pre-construction filing requirements, scheduling, and to coordinate monitoring of construction and site restoration activities. Within 14 days following the pre-construction meeting, the Permittee shall file with the Commission, a summary of the topics reviewed and discussed and a list of attendees. The Permittee shall indicate in the filing the construction start date.

### **10.2 Pre-Operation Meeting**

At least 14 days prior to commercial operation of the facility, the Permittee shall participate in a pre-operation meeting with the Department of Commerce and Commission staff to coordinate field monitoring of operation activities for the project. Within 14 days following the pre-operation meeting, the Permittee shall file with the Commission, a summary of the topics reviewed and discussed and a list of attendees.

### **10.3 Site Plan**

At least 14 days prior to the pre-construction meeting, the Permittee shall provide the Commission, the Department and the Yellow Medicine County Environmental Office with a site plan that includes specifications and drawings for site preparation and grading; specifications and locations of all turbines and other structures to be constructed including all electrical equipment, collector and feeder lines, pollution control equipment, fencing, roads, and other associated facilities; and procedures for cleanup and restoration. The documentation shall include maps depicting the site boundary and layout in relation to that approved by this permit. The Permittee shall document, through GIS mapping, compliance with the setbacks and site layout restrictions required by this permit, including compliance with the noise standards pursuant to Minnesota Rules Chapter 7030. At the same time, the Permittee shall notify affected landowners and city and town clerks that the site plan is on file with the Commission and the Yellow Medicine County Environmental Office. The Permittee may submit a site plan and engineering drawings for only a portion of the project if the Permittee intends 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 may not commence construction until the 30 days has expired or until the Commission has advised the Permittee in writing that it has completed its review of the documents and determined that the planned construction is consistent with this permit. If the Permittee intends to make any significant changes to its site plan or the specifications and drawings after submission to the Commission, the Permittee shall notify the Commission, the Department, the Yellow

Medicine County Environmental Office, city and town clerks, and the affected landowners at least five days before implementing the changes. No changes shall be made that would be in violation of any of the terms of this permit.

In the event that previously unidentified human and environmental conditions are discovered during construction that 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 turbine site. Under these circumstances, the Permittee shall notify the Commission, the Department, the Minnesota Pollution Control Agency, the Minnesota Department of Natural Resources, the Yellow Medicine County Environmental Office, city and town clerks, and the affected landowners of any turbines that are to be relocated, and provide the previously unidentified environmental conditions and how the movement of the turbine mitigates the human and environmental impact at least five days before implementing the changes. No changes shall be made that would be in violation of any terms of this permit.

#### **10.4 Status Reports**

The Permittee shall file status reports with the Commission on progress regarding site construction. The Permittee need not report more frequently than monthly. Reports shall begin with the commencement of site construction and continue until completion of site restoration.

##### **10.4.1 Labor Statistics Report**

The Permittee shall file a post-construction Labor Statistics Report within 60 days of commencement of operation. The Report shall (a) detail the Permittee's efforts and the site contractor's efforts to hire Minnesota workers, and (b) provide an account of 1) the gross number of hours worked by or full-time equivalent workers who are Minnesota residents, as defined in Minn. Stat. 290.01, subd. 7; 2) the gross number of hours worked by or full-time equivalent workers who are residents of other states, but live within 150 miles of the project; and 3) the total gross hours worked or total full-time equivalent workers. Permittee shall work with its contractor to determine the suitable reporting metric. The Report may not include personally identifiable data.

#### **10.5 Notification to the Commission**

At least three days before the project is to commence commercial operation, the Permittee shall file with the Commission the date on which the project will commence commercial operation and the date on which construction was completed.

#### **10.6 As-Builts**

Within 90 days after completion of construction, the Permittee shall submit copies of all final as-built plans and specifications developed during the project.

### **10.7 GPS Data**

Within 90 days after completion of construction, the Permittee shall submit to the Commission, in the format requested by the Commission, geo-spatial information (e.g., ArcGIS compatible map files, GPS coordinates, associated database of characteristics) for all structures associated with the solar energy generating system.

### **10.8 Project Energy Production**

The Permittee shall, by February 1st following each complete or partial year of project operation, file a report with the Commission on the monthly energy production of the project including:

- (a) the installed 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 shall be considered public and must be filed electronically.

### **10.9 Wind Resource Use**

The Permittee shall, by February 1st following each complete or partial calendar year of operation, file with the Commission the average monthly and average annual wind speed collected at one permanent meteorological tower during the preceding year or partial year of operation. This information shall be considered public and must be filed electronically.

### **10.10 Emergency Response**

The Permittee shall prepare an Emergency Response Plan in consultation with the emergency responders having jurisdiction over the facility prior to project construction. The Permittee shall submit a copy of the plan, along with any comments from emergency responders, to the Commission at least 14 days prior to the pre-construction meeting and a revised plan, if any, at least 14 days prior to the pre-operation meeting. The Permittee shall provide as a compliance filing confirmation that the Emergency Response Plan was provided to the emergency responders

and Public Safety Answering Points (PSAP) with jurisdiction over the facility prior to commencement of construction. The Permittee shall obtain and register the facility address or other location indicators acceptable to the emergency responders and PSAP having jurisdiction over the facility.

### **10.11 Extraordinary Events**

Within 24 hours of discovery 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, acts of sabotage, collector or feeder line failure, and injured worker or private person. The Permittee shall, within 30 days of the occurrence, file a report with the Commission describing the cause of the occurrence and the steps taken to avoid future occurrences.

## **11.0 DECOMMISSIONING, RESTORATION, AND ABANDONMENT**

### **11.1 Decommissioning Plan**

The Permittee shall submit a decommissioning plan to the Commission at least fourteen 14 days prior to the pre-operation meeting, 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.

### **11.2 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 and lines,

foundations, buildings, and ancillary equipment to a depth of four feet. 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. 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 requesting that one or more roads, or portions thereof, be retained. All such agreements between the Permittee and the affected landowner 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 18 months of termination.

### **11.3 Abandoned Turbines**

The Permittee shall advise the Commission of any turbines that are abandoned prior to termination of operation of the project. The project, or any turbine within the project, shall be considered abandoned after one year without energy production and the land restored pursuant to Section 11.2 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.

## **12.0 COMMISSION AUTHORITY AFTER PERMIT ISSUANCE**

### **12.1 Final Boundaries**

After completion of construction, the Commission shall determine the need to adjust the final boundaries of the site required for this project in accordance with Minn. R. 7854.1300, subp. 1.

### **12.2 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.

### **12.3 Periodic Review**

The Commission shall initiate a review of this permit and the applicable conditions at least once every five 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 this permit. No modification may be made except in accordance with applicable statutes and rules.

### **12.4 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 project; or
- (c) existence of other grounds established by rule.

## **12.5 More Stringent Rules**

The Commission's issuance of this 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.

## **12.6 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.

## **12.7 Proprietary Information**

Certain information required to be filed with the Commission under this permit may constitute trade secret information or other type of proprietary information under the Data Practices Act or other law. The Permittee must satisfy requirements of applicable law to obtain the protection afforded by the law.

## **13.0 PERMIT AMENDMENT**

This permit may be amended at any time by the Commission in accordance with Minn. R. 7854.1300, subp. 2. Any person may request an amendment of the conditions of this permit by submitting a request to the Commission in writing describing the amendment sought and the reasons for the amendment. The Commission will mail notice of receipt of the request to the



Permittee. The Commission may amend the conditions after affording the Permittee and interested persons such process as is required.

#### **14.0 TRANSFER OF PERMIT**

The Permittee may request at any time that the Commission transfer this permit to another person or entity. The Permittee shall provide the name and description of the person or entity to whom the permit is requested to be transferred, the reasons for the transfer, a description of the facilities affected, and the proposed effective date of the transfer. The person to whom the permit is to be transferred shall provide the Commission with such information as the Commission shall require to determine whether the new Permittee can comply with the conditions of the permit. The Commission may authorize transfer of the permit after affording the Permittee, the new Permittee, and interested persons such process as is required. The Commission may impose additional conditions on any new permittee as part of the approval of the transfer.

Within 20 days after the date of the notice provided in Section 10.5, the Permittee shall file a notice describing its ownership structure, identifying, as applicable:

- (a) the owner(s) of the financial and governance interests of the Permittee;
- (b) the owner(s) of the majority financial and governance interests of the Permittee's owners;  
and
- (c) the Permittee's ultimate parent entity (meaning the entity which is not controlled by any other entity).

The Permittee shall immediately notify the Commission of:

- (a) a change in owner(s) of the majority\* financial or governance interests in the Permittee;
- (b) a change in owner(s) of the majority\* financial or governance interests of the Permittee's owners; or
- (c) a sale which changes the parent entity of the Permittee.

*\*When there are only co-equal 50/50 percent interests, any change shall be considered a change in majority interest.*

The Permittee shall notify the Commission of:

- (a) the sale of a parent entity or a majority interest in the Permittee;
- (b) the sale of a majority interest of the Permittee's owners or majority interest of the owners;  
or
- (c) a sale which changes the entity with ultimate control over the Permittee.

#### **15.0 REVOCATION OR SUSPENSION OF PERMIT**

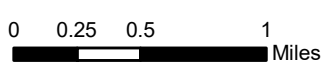
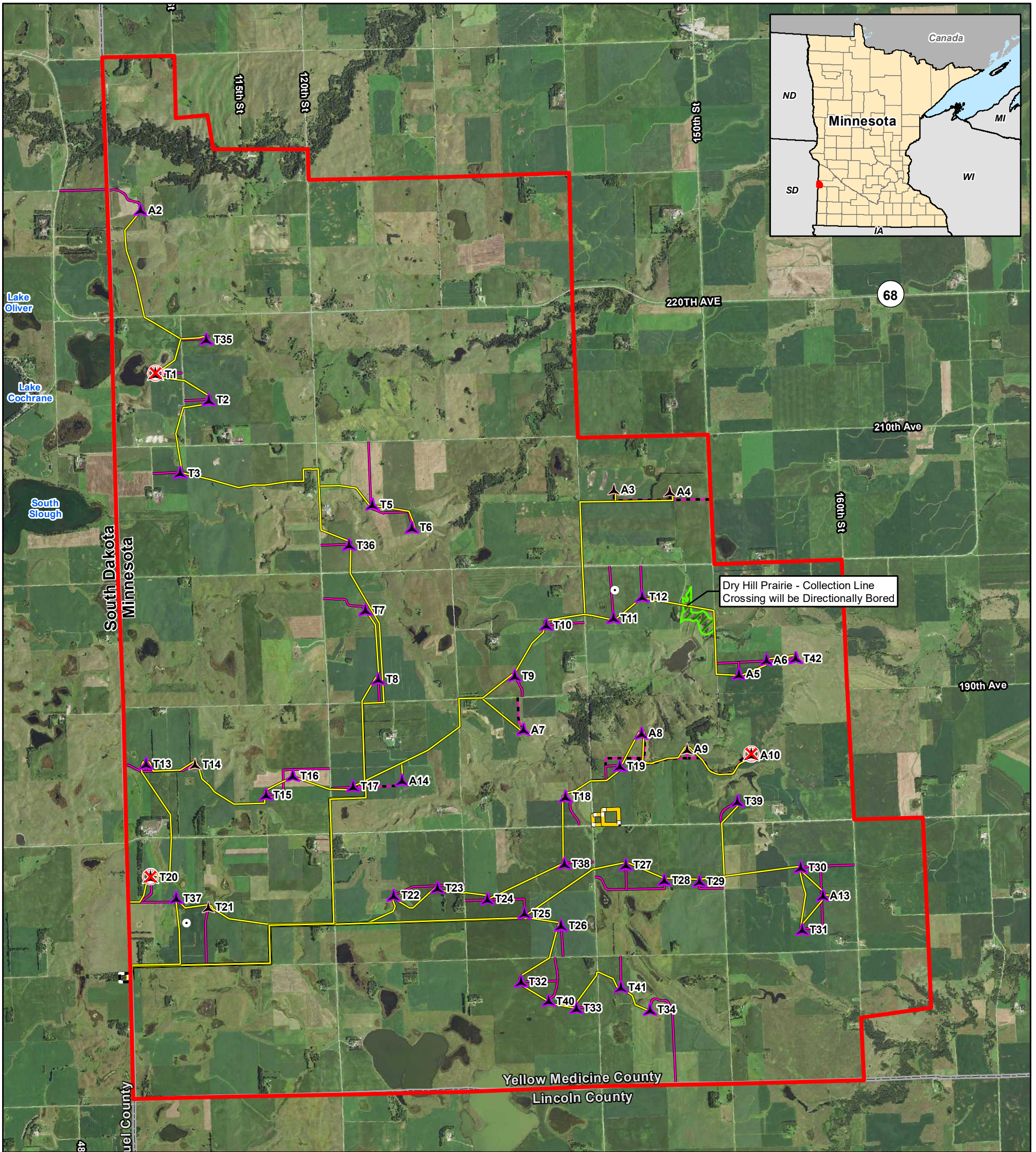
The Commission may take action to suspend or revoke this permit upon the grounds that:

- (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;
- (c) there has been a material violation of a provision of an applicable statute, rule, or an order of the Commission; or
- (d) the Permittee has filed a petition with the Commission requesting that the permit be revoked or terminated.

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 Minn. R. 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.

#### **16.0 EXPIRATION DATE**

This permit shall expire 30 years after the date this permit was approved and adopted.



Data Source: RES Americas, USGS, MNDNR, MNDNR  
 Imagery Source: 2015 Color FSA

**Project Area and Facilities**  
**Bitter Root Wind Farm**  
**Flying Cow Wind, LLC**  
**Yellow Medicine County, Minnesota**

**Updated 6/18/2018**

- Eliminated Turbine
- Proposed Turbine
- Proposed Alternate Turbine
- Proposed Met Tower
- Project Area
- Proposed Facilities Boundary (OM Building and Laydown Yard)
- Project Substation
- Proposed Collection Line
- Proposed Access Road
- Proposed Alternate Access Road

**Note: Turbines T1, T20, and A10 were eliminated  
 T14 and T21 were changed to alternate turbines  
 A7, A8, A13, and A14 were changed to planned**

## **Attachment A - Complaint Procedures for Permitted Energy Facilities**

**Attachment B - Compliance Filing Procedures for Permitted Energy Facilities**

**MINNESOTA PUBLIC UTILITIES COMMISSION  
COMPLAINT HANDLING PROCEDURES FOR  
PERMITTED ENERGY FACILITIES**

**A. Purpose**

To establish a uniform and timely method of reporting and resolving complaints received by the permittee concerning permit conditions for site preparation, construction, cleanup, restoration, operation, and maintenance.

**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 Minnesota Public Utilities Commission (Commission) under Minn. R. 7829.1500 or Minn. R. 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 site and associated facilities permit conditions. Complaints do not include requests, inquiries, questions or general comments.

**Substantial Complaint:** A written complaint alleging a violation of a specific 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, remains unresolved or unsatisfactorily resolved to one or both of the parties.

**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 designate an individual to summarize complaints for the Commission. This person's name, phone number and email address shall accompany all complaint submittals.
2. A person presenting the complaint should to the extent possible, include the following information in their communications:
  - a. name, address, phone number, and email address;
  - b. date of complaint;
  - c. tract or parcel number; and
  - d. whether the complaint relates to a permit matter or a compliance issue.
3. The permittee shall document all complaints by maintaining a record of all applicable information concerning the complaint, including the following:
  - a. docket number and project name;
  - b. name of complainant, address, phone number and email address;
  - c. precise description of property or parcel number;
  - d. name of permittee representative receiving complaint and date of receipt;
  - e. nature of complaint and the applicable permit condition(s);
  - f. activities undertaken to resolve the complaint; and
  - g. final disposition of the complaint.

## **F. Reporting Requirements**

The permittee shall commence complaint reporting at the beginning of project construction and continue through the term of the permit. 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 the Commission's Consumer Affairs Office at 1-800-657-3782 (voice messages are acceptable) or [consumer.puc@state.mn.us](mailto:consumer.puc@state.mn.us). For e-mail reporting, the email subject line should read "PUC EFP Complaint" and include the appropriate project docket number.

**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 Daniel P. Wolf, Executive Secretary, Public Utilities Commission, using the eDockets system. The eDockets system is located at:  
<https://www.edockets.state.mn.us/EFiling/home.jsp>

If no complaints were received during the preceding month, the permittee shall file a summary indicating that no complaints were received.

**G. Complaints Received by the Commission**

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**

Commission staff shall perform an initial evaluation of unresolved complaints submitted to the Commission. Complaints raising substantial permit issues shall be processed and resolved by the Commission. Staff shall notify the permittee and appropriate persons 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 days after receipt of the staff notification. The complaint will be presented to the Commission for a decision as soon as practicable.

**I. Permittee Contacts for Complaints and Complaint Reporting**

Complaints may be filed by mail or email to:

*[Michelle Matthews  
Development Manager II]  
[Flying Cow Wind, LLC  
c/o Renewable Energy Systems Americas Inc.  
330 2<sup>nd</sup> Avenue South, Suite 820  
Minneapolis, MN 55401]  
[612.455.8445]  
[Michelle.Matthews@res-group.com]*

This information shall be maintained current by informing the Commission of any changes as they become effective.



**MINNESOTA PUBLIC UTILITIES COMMISSION  
COMPLIANCE FILING PROCEDURE FOR  
PERMITTED ENERGY FACILITIES**

**A. Purpose**

To establish a uniform and timely method of submitting information required by Commission energy facility permits.

**B. Scope and Applicability**

This procedure encompasses all known compliance filings required by permit.

**C. Definitions**

**Compliance Filing:** A filing of information to the Commission, where the information is required by a Commission site or route permit.

**D. Responsibilities**

1. The permittee shall file all compliance filings with Daniel P. Wolf, Executive Secretary, Public Utilities Commission, through the eDockets system. The eDockets system is located at: <https://www.edockets.state.mn.us/EFiling/home.jsp>

General instructions are provided on the eDockets website. Permittees must register on the website to file documents.

2. All filings must have a cover sheet that includes:
  - a. Date
  - b. Name of submitter/permittee
  - c. Type of permit (site or route)
  - d. Project location
  - e. Project docket number
  - f. Permit section under which the filing is made
  - g. Short description of the filing

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) Daniel P. Wolf, 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.

The Commission may request a paper copy of any electronically filed document.

Proposed

**PERMIT COMPLIANCE FILINGS<sup>1</sup>**

PERMITTEE: Flying Cow Wind, LLC  
 PERMIT TYPE: LWECS Site Permit  
 PROJECT LOCATION: Yellow Medicine County, Minnesota  
 PUC DOCKET NUMBER: IP-6984/WS-17-749

Filing Number	Permit Section	Description of Compliance Filing	Due Date
1.	4.6.1	Calcareous Fens	30 days prior to the Site Plan, as per section 10.3
2.	4.7	Prairie Protection and Management Plan	30 days prior to submitting Site Plan, as deemed necessary
3.	4.12	Notification to Airports	Prior to project construction
4.	5.1	Notification of Permit and Complaint Procedures	30 days of permit issuance
5.	5.2.1	Field Representative	14 days prior to commencing construction
6.	5.2.2	Site Manager	14 days prior to commercial operation
7.	5.2.6	National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) Construction Stormwater Permit	In accordance with Minnesota Pollution Control Agency
8.	5.2.9	Notification of Pesticide Application	14 days prior to application
9.	5.2.10	Invasive Species Protection Plan	14 days prior to pre-construction meeting

<sup>1</sup> This compilation of permit compliance filings is provided for the convenience of the permittee and the Commission. It is not a substitute for the permit; the language of the permit controls.

Filing Number	Permit Section	Description of Compliance Filing	Due Date
10.	5.2.12	Identification of Roads	14 days prior to pre-construction meeting
11.	5.2.16	Assessment of Television and Radio Signal Reception, Microwave Signal Patterns, and Telecommunications	14 days prior to pre-construction meeting
12.	5.2.21	Site Restoration	60 days after completion of restoration
13.	5.2.25	Public Safety/Education Materials	Upon request
14.	5.4	Engineered Drawings of Collector and Feeder Lines	Submit with the Site Plan
15.	5.5.2	Filing Regarding Other Required Permits	14 days prior to pre-construction meeting
16.	7.1	Biological and Natural Resource Inventories	30 days prior to pre-construction meeting
17.	7.2	Shadow Flicker Data	14 days prior to pre-construction meeting
18.	7.3	Wake Loss Studies	14 days prior to pre-construction meeting and annual wake loss with annual report
19.	7.4	Post-Construction Noise Methodology	14 days prior to pre-construction meeting
20.	7.4	Post-Construction Noise Study	18 months of commercial operation
21.	7.5	First Annual Audit and Revision of Avian and Bat Protection Plan	14 days prior to pre-construction meeting

Filing Number	Permit Section	Description of Compliance Filing	Due Date
22.	7.5	Annual Report - Avian and Bat Protection Plan	15th of March each year or partial year
23.	7.5	Quarterly Incident Reports	15th of January, April, July, and October the day following commercial operation
24.	7.5	Immediate Incident Reports	24 hours of discovery and a report within 7 days
25.	8.1	Demonstration of Wind Rights	14 days prior to pre-construction meeting
26.	8.2	Power Purchase Agreement	If not obtained within two years issuance of permit
27.	8.3	Failure to Construct	If within two years issuance of permit
28.	9.0	Complaint Procedures	Prior to start of construction
29.	10.1	Pre-Construction Meeting Summary	14 days following meeting
30.	10.2	Pre-Operation Meeting Summary	14 days following meeting
31.	10.3	Site Plan	14 days prior to pre-construction meeting
32.	10.4	Construction Status Reports	Monthly
33.	10.4.1	Labor Statistics Report	Within 60 days of commercial operation

Filing Number	Permit Section	Description of Compliance Filing	Due Date
34.	10.5	Commercial Operation	3 days prior to commercial operation
35.	10.6	As-Builts	90 days after completion of construction
36.	10.7	GPS Data	90 days after completion of construction
37.	10.8	Project Energy Production	February 1st following each complete or partial year of project operation
38.	10.9	Wind Resource Use	February 1st following each complete or partial year of project operation
39.	10.10	Emergency Response Plan	14 days prior to pre-construction meeting and revisions 14 days prior to pre-operation meeting
40.	10.11	Extraordinary Event	Within 24 hours of discovery
41.	11.1	Decommissioning Plan	14 days prior to pre-operation meeting
42.	14.0	Notice of Ownership	14 days after operation