

# SIBLEY WIND PROJECT

Sibley County, MN

Large Wind Energy Conversion System (LWECS) Permit

ISSUE DATE: September 23, 2008;

October 12, 2011 DOCKET NO. IP-6666/WS-08-208

Reply to Comments from Comment Period Closing Dec. 3, 2014

By

SIBLEY WIND SUBSTATION

There were several comments received during the Open Comment Period that ended on December 3, 2014. Basically, they were restated from comments over the past two (2) years that have been responded too and filed with the Minnesota Public Utilities Commission (MPUC). We will once again respond on a question by question basis as follows:

1. **CBED status of project** – The project was originally granted CBED status at the time the permit was issued. However, as indicated in the Sibley Wind Substation filing with the Commission -- # 201410-103861-01 – the Power Purchase Agreement for this project does not rely upon CBED status.
2. **Ownership Transfer in Violation of Permit** – There has been no transfer of ownership in violation of the State Site Permit for the Sibley Wind project. Sibley Wind Substation LLC continues to be the entity developing the project. WESCO-Sibley, SPV, LLC, a Minnesota Limited Liability Company acquired the membership interests in Sibley Wind Substation LLC. The ownership structure for the project was explained at the Preconstruction Meeting with the Commission and Department staff.
3. **Alleged - Failure to Commence Continuous Construction** – Continuous Construction as defined by the State is as follows: *Definition of Construction: Pursuant to Minn. Stat. 216E.01, which is applicable to wind farms as well, construction is defined as: Subd. 3. Construction. "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.*  
Construction was started on October 11, 2013 in compliance with the State Permit. The start of construction was acknowledged in documents filed by the “Concerned Citizens Group”. The work to date has included excavation for the substation, for the Operation

and Maintenance facility, roads to approximately 40% of the wind turbine sites and beginning of the electrical grid upgrade for the interconnection of the facility. This work is part of the permanent construction of the facility and is not of a temporary nature.

Due to adverse weather conditions the construction process was slowed during the winter months of 2013 and spring months of 2014.

Also, even though it was not required by the State Permit, the Developer in good faith and to prove there were no avian risks, engaged a Minnesota engineering firm to do an Avian study to respond to concerns by the ‘Concerned Citizens Group’. The duration of the study was for the spring and fall timeframes of 2014 which affected the project funding and schedule adversely. The avian study was completed as of December 4, 2014 and shows the project will not adversely affect the local eagle or other avian species population. Therefore, funding is anticipated to be released by the end of the year to fund the Turbine Supply Agreement and other project requirements in order for the project to meet the new completion schedule of 11-13-2015. A complete updated schedule is included in a following Section of this document.

#### 4. Updated Schedule –

ID	PROJECT MILESTONE SCHEDULE	Dur.	Start	Finish
1	Sibley Wind Farm Construction	998 days	Mon 3/25/13	Fri 12/18/15
2	PPA Received and signed	116 days	Mon 3/25/13	Fri 7/19/13
3	PUC approves PPA	53 days	Fri 7/19/13	Tue 9/10/13
4	Initial financing completed	240 wks	Wed 5/1/13	Mon 12/22/14
5	Financing with Tax Equity Investor closes	5 days	Mon 12/22/14	Sat 12/27/14
6	All Project Financing finalized	4 days	Sat 12/27/14	Wed 12/31/14
7	Finalize TSA for Turbines	35 days	Mon 11/17/14	Mon 12/22/14
8	Finalize Contracts with BOP	45 days	Fri 11/7/14	Mon 12/22/14
9	PUC grants construction approval	1 day	Tue 9/10/13	Wed 9/11/13
10	Construction start, first phase	791 days	Fri 10/11/13	Fri 12/11/15
11	Order "Long Lead Time" Items	116 days	Mon 2/2/15	Fri 5/29/15
12	Project Site / Concrete Pour / Roads Construction	60 days	Mon 5/18/15	Fri 7/17/15
13	Pour WTG Tower Foundations	45 days	Mon 5/18/15	Thu 7/2/15
14	Collector System Construction	93 days	Fri 5/29/15	Sun 8/30/15
15	Order and Deliver turbines to site	10 mons	Mon 12/29/14	Wed 8/26/15
16	Erect Turbines, complete substation	18 days	Sat 8/29/15	Wed 9/16/15
17	Mechanical Completion	39 days	Sat 9/5/15	Wed 10/14/15
18	Commissioning	33 days	Wed 10/14/15	Mon 11/16/15
19	Back-Feed Interconnect Completed (Proj Energized)	12 days	Sat 10/17/15	Thu 10/29/15
20	All tasks completed for Commercial Operation	25 days	Mon 11/16/15	Fri 12/11/15
21	COD achieved	0 days	Fri 12/11/15	Fri 12/11/15
22	Project Closing for ITC Implementation	7 days	Fri 12/11/15	Fri 12/18/15

5. **Alleged - Changes to Project –**

A. **Access Road to Wind Turbine #6** – The property owner asked if the road to wind turbine #6 could go straight east from the center of the pad to County Road 53 (581<sup>st</sup> Avenue) as this would work better for his agricultural operation. The road was originally designed to be constructed along the Section fractional line. This meant moving the road approximately 325' north. The overall benefit is that less agricultural land would be disturbed and the future agricultural operation would be more efficient. It was not felt that this was a material change to the plans as the wind turbine was not moved, which would require preapproval by the Commission per Section III.A.1 of the LWECS Site Permit, and that the move would be documented on the required as-built drawings per Section III.I.1 of the LWECS Site Permit.

6. **Alleged - Failure to Obtain Necessary Local Permits** – This complaint concerns permits for building any kind of field road over drainage ditches. An email was received on October 25, 2013 from the Sibley County Environmental Services Director. In that document he listed the design criteria for a new crossing of a drainage ditch in the County. He also stated that no permit is required for the installation of a crossing.

7. **Alleged - Violation of Permits Section III.B.9** – This Section of the permit deals with the use of public roads. The Developer worked extensively with Sibley County on the Road Agreement for the County. Most of the roads to be used are County Roads with the exception of approximately 4,000 lineal feet of Township Roads. The Township approved a Resolution on March 12, 2012 as follows:

**APPENDIX D TO ROAD AGREEMENT  
CORNISH TOWNSHIP RESOLUTION**

WHEREAS, Sibley Wind Substation, LLC intends to enter into a Construction Agreement with Sibley County, Minnesota related to the installation of 13 wind turbines; and

WHEREAS, the Construction Agreement will address use of the public right-of-way and required maintenance and restoration of the public roadways used for transportation purposes during the wind turbine construction; and

WHEREAS, Cornish Township desires to be part of and covered by the Construction Agreement as it pertains to use of the public right-of-way and the maintenance and restoration of the township roads and drainage systems; and

WHEREAS, Cornish Township has reviewed a form of Construction Agreement currently being negotiated between Sibley Wind Substation, LLC and Sibley County; and

WHEREAS, Cornish Township agrees to have the Sibley County Engineer represent them in the negotiation and enforcement of the provisions of the Construction Agreement to ensure proper construction of infrastructure within the public right-of-way and proper maintenance and restoration of the roadways.

NOW, THEREFORE, BE IT RESOLVED, by the Township Board of Cornish Township, Sibley County Minnesota, that Cornish Township agrees to be a party to the conditions and provisions of the Construction Agreement; and

BE IT FURTHER RESOLVED, that Cornish Township approves the Sibley County Engineer to act in its behalf to negotiate and execute a final Construction Agreement with Sibley Wind Substation, L.L.C. to act on its behalf as provided for in the Construction Agreement and to make the final determination that the provisions of the Construction Agreement have in all things been met.

*Supervisors of Cornish Township:*

*Andy By*  
*Jan 12, 2012*  
*[Signature]*

*March 12, 2012*

CERTIFICATION

STATE OF MINNESOTA     )  
  )ss.  
COUNTY OF Sibley )  
TOWNSHIP OF Cornish )



I, Margaret Mages, Clerk of said township of Cornish, do hereby certify that I have compared the foregoing copy with the original resolution adopted by the Cornish Township Board on March 12, 2012 and now remaining on file and of record and that the same is a correct transcript there from and of the whole of such original.

Witness my hand and official seal

this 12 day of March, 2012

Margaret Mages, Clerk  
Township of Cornish, Sibley County, Minnesota

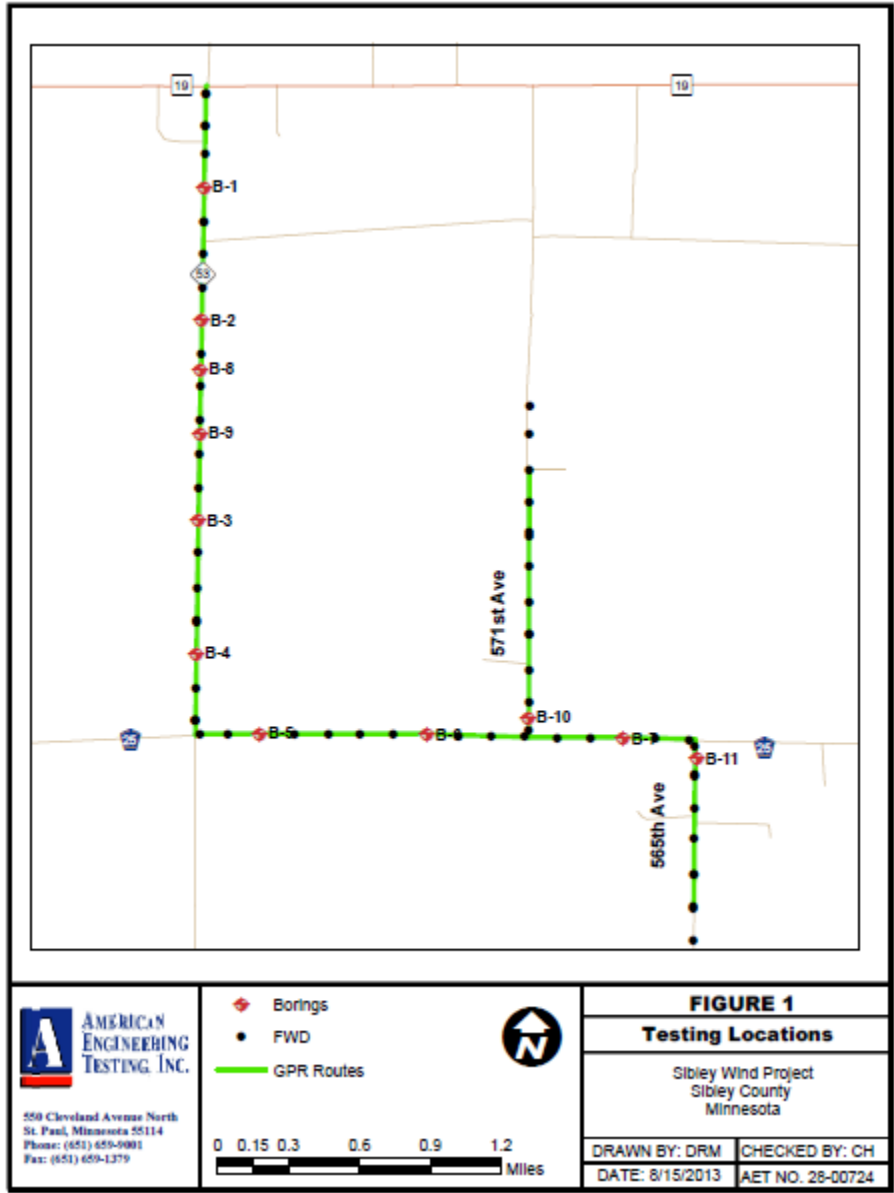
As can be seen in the Resolution, Cornish Township did want to be part of the Road Agreement, they had reviewed a copy of the Agreement being negotiated, to have the Sibley County Engineer to act in its behalf to negotiate and execute a final Construction Agreement and to make the final determination that the provisions of the Construction Agreement have in all things been met.

The Road Agreement was finalized with Sibley County on April 23, 2013. For some unknown reason the Township passed a Resolution in August of 2013 trying to rescind the March 12, 2012 Resolution. The Developer has tried on several occasions to determine the problem with Cornish Township to no avail. The only comment the Developer could get was a 'we think the security deposit is to low', this being the provision in the Road Agreement for a \$300,000 cash or Letter of Credit deposit to be used by the County should the Developer damage any roads and then not make the repair. This is backed up with an additional \$1,000,000 Bond. Even though the Developer could not get anything confirming this from the Township, the Developer in the spirit of cooperation asked the County to Amend the Agreement and require a \$500,000 cash deposit or Letter of Credit. The County agreed to do that and it now a provision in the Road Agreement. With not being able to establish any type of dialogue with Cornish Township, please see filing 201310-92782-02 for further clarification, the Developer is proceeding per the terms of the Road Agreement in place with Sibley County. It should be noted the Road Agreement requires the Developer to add approximately 8" of road grave to the approximately 4,000 lineal feet of Township roads to bring them up to County specifications. The Developer has continued in good faith that the Road Agreement is valid since the Township agreed by Resolution to be part of the County Road Agreement.

If this does come to be an issue, the project can be constructed, at a much inflated cost to the Developer, by constructing field roads for the heavy and oversize loads. The Township roads would still be used for routine maintenance, Safety and Emergency Response per the original plan as this work would all be done with light vehicle equipment.

8. **Alleged - Failure to Maintain Sibley County Permits** – The ‘Concerned Citizens Group’ alleges in this matter that the Developer’s County permits such as Road Access (Driveway Permit) and Utility Crossing permits have expired. This is incorrect. All permits with Sibley County, including the Road Access and Utility Crossing permits are current.
  
9. **Alleged - Failure to Comply with Sibley County Agreements** –
  - A. Allegation – Sibley Wind Substation, LLC is listed on the permits and some correspondence is coming as SWS, LLC. SWS is simply an abbreviation of Sibley Wind Substation , just as the Minnesota Public Utilities Commission is commonly referred to as MPUC.
  - B. Allegation - Developer has to have permits to work on utilities in public right-of-way. The allegation is that the permits have expired. Again, this is incorrect. All permits are current.
  - C. Allegation – Developer has to supply Township with Soil Erosion Permit – The Developer has obtained and submitted to the MPUC a Storm Water Pollution Protection Plan (SWPPP) from the Minnesota Pollution Control Agency (MPCA) as required by Section III.B.9 of the LWECS Site Permit. This plan is also used as the Soil Erosion and Sediment Control Plan. It is to be filed with the MPUC and not the Township.
  - D. Allegation – Developer has failed to pay Environmental Services bill to the County – No billings have been received nor are anticipated as the Section III.J.3 clearly states that the LWECS Site Permit covers this item.
  - E. Allegation – Developer failed to supply Cornish Township with proof of insurances – Cornish Township by Resolution became part of the Road Agreement with Sibley County and appointed the County to act on its behalf. Therefore, the insurance certificates required by the Road Agreement were presented to and approved by the County.
  
10. **Alleged - Sibley County Road Agreement Violations** –
  - A. Allegation - Cornish Township has rejected participation in the Road Agreement – The Developer is acting in good faith that Cornish Township appointed Sibley County to act on its behalf in the Road Agreement (See #7 above).
  - B. Allegation – Developer trespassed on Township roads and did destructive testing – The Developer, per the County Road Agreement, was obligated to do testing to ascertain the existing condition of haul roads for the project. The Developer engaged a local engineering firm to perform the testing. The testing consisted of borings with a 2.125 inch O.D. pipe pushed to a depth of 3.8’ and also Ground Penetrating Radar (GPR) consisting of using high definition video cameras mounted on a moving vehicle, such as a SUV, to capture images. In this particular project several boring were conducted in

County roads. There are two (2) Township gravel roads that intersect with a County paved road. A boring was done at the centerline of each Township road at the approximate intersection of the property line of the County road which would be in County road right-of-way. All other testing on the Township roads were by the GPR method which is non-destructive. Please see following drawing:



C. Allegation - No valid written amendment of record for this Road Agreement – This is not correct. Amendment #1 to the Road Agreement was passed by the County Board in May of 2014 and Amendment #2 to the Road Agreement was passed by the County Board in September of 2014.

11. **Alleged - Failure to Comply with Cornish Township Review Rules** – The Township passed a motion relative to overweight loads expect for agricultural equipment on Township Roads well after their Resolution to appoint Sibley County to represent them in the Road Agreement for the Sibley Wind Project. It is the Developer’s position per the Road Agreement that all oversized and overweight permits required will be issued by the County.

12. **Alleged - Failure to Meet Statutory Permit Update and Submittal Requirements** – The Developer has met all required submittal requirements as evidenced by the letter from the Commission on October 28, 2013. The letter states “Commission staff has reviewed the compliance filings submitted by the Permittee and has concluded that they are in compliance with the terms and conditions of the site permit issued by the Commission in this docket.”

Please note that neither an avian or bat study is required by this permit. The issue was raised in the fall of 2013 by the ‘Concerned Citizens Group’ that the project would create a problem with the local eagle population. Even though a study is not required by the Site Permit, the USF&WS or the MNDNR, and the Developer decided to do an eagle study. The Developer contacted the USF&WS, the MNDNR and Westwood Engineering to determine the correct parameters of the study. Once this was established, Westwood Engineering was engaged to do a spring study and a fall study in 2014. The fall study was concluded in late November of 2014. Since this not a required study, the entire study will not be released to the general public, but only the summary that follows:

*Eagle monitoring field work is completed for 2014 with the end of the fall migration. Work at the site in 2014 included a nest survey, point count and flight path observations for the spring migration, and point count and flight path observations for the fall migration. Information for each of these is summarized below and will be detailed in the pending final report. This work was conducted in accordance with U.S. Fish and Wildlife Service (USFWS) Land-Based Wind Energy Guidelines (WEG) (March 2012); the Eagle Conservation Plan Guidance Module 1 – Land-based Wind Energy Version 2 (ECPG) (April 2013); and the State Avian and Bat Survey Protocols for Large Wind Energy Conversion Systems in Minnesota (draft March 3, 2014). Work was conducted following meetings and correspondence with USFWS regional field staff and Minnesota DNR staff to discuss work methodologies and procedures.*

*There were no eagles observed in the project area in either the spring or fall survey and there were no nests observed in the project area.*

Again, the Developer has worked diligently to address the eagle concern by conducting an avian study. Due to this process the Developer extended a great deal of capital and loss a year of construction time.



**Conclusion:**

The Sibley Wind Substation project has made its way through a long and thorough process, meeting all requirements to receive a Site Permit from the MPUC. Local opposition surfaced only when the project was nearly ready to proceed with construction. The opposition group consists of a number of members who do not live in the vicinity of the project. Opposition concerns were not expressed during the public comment periods in 2008 and again in 2011. The project was placed on hold by Sibley Wind Substation to conduct an avian study that was not required by the Site Permit. However, out of concern to respond to questions from the opposition group, the study was conducted and the results indicate no conflict with eagles or other avian species.

With the Avian study complete, the project is now ready to renew construction activity. By year-end, the Project Turbine Supply Agreement will be in place. The Balance of Plant Contract with the project's general contractor, the Generator Interconnection Agreement and the Power Purchase Agreement all remain in place.