





Staff Briefing Papers

Meeting Date	June 11, 2020	Agenda Item *2
Company	Three Waters Wind, LLC	
Docket No.	IP-7002/WS-19-576	
	In the Matter of the Application of Three Waters Wind, LLC for a Site Permit for the up to 201 MW Large Wind Energy Conversion System in Jackson County, Minnesota	
Issues	1. Should the Commission issue a preliminary draft site permit for the Three Waters Wind Project?	
Staff	Cezar Panait	Cezar.Panait@state.mn.us 651.201.2207

 Relevant Documents	Date
Site Permit Application (19 parts)	Sept. 30, 2019
Three Waters Revised Figure 8 to Site Permit Application	October 10, 2019
Three Waters Revised Appendix D (Noise Study)	October 10, 2019
Three Waters Second Revision to Figure 8	October 11, 2019
Three Water Appendix G (Cultural Resources Review)	October 22, 2019
Order Accepting Application, Establishing Procedural Framework, and Varying Rules	Dec. 23, 2019
Three Waters Revised Noise Modelling Study and Figure 8	February 10, 2020
Verlon Ponto Public Comment	February 26, 2020

 Relevant Documents	Date
Ponto – Newspaper picture of used turbine blades being buried	February 27, 2020
LIUNA Comments	February 28, 2020
International Operating Engineers Union Comments	February 28, 2020
Mike Fisher Public Comment	February 28, 2020
Dave Fisher Public Comment	February 28, 2020
Diane Fisher Public Comment	February 28, 2020
DOC EERA Written Agency Comments Received by EERA	March 11, 2020
DOC EERA Written Comments Received by EERA (6 parts)	March 11, 2020
DOC EERA Comments and Recommendations and Preliminary Draft Site Permit	May 11, 2020

Attachments

1. Preliminary Draft 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 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

Should the Commission issue a preliminary draft site permit for the Three Waters Wind Project?

II. Background

On September 30, 2019 Three Waters Wind, LLC (Three Waters or Applicant), filed a site permit application with the Minnesota Public Utilities Commission (Commission) for the Three Waters Wind Project (the Project), a 201 megawatt (MW) large wind energy conversion system (LWECS)¹. The proposed LWECS would be comprised of up to 71 wind turbines with eight alternative locations² in Minnesota. The Applicant has selected General Electric (GE) 2.82 MW wind turbines as the primary wind turbine model for the Project, and is considering use of the GE 3.03 turbine, as discussed in sections 5.1 and 6.1 of the application. The Project also includes a 300 foot 345 kV transmission line, collector substation, transformers, collection lines, an operation and maintenance building, permanent meteorological tower(s), an Aircraft Detection Lighting System (ADLS) to the extent approved by the Federal Aviation Administration (FAA) in addition to FAA required turbine lighting, gravel access roads, and additional temporary construction areas, including crane paths, pull sites, access roads, a batch plant, and a laydown yard.

The proposed project footprint would occupy approximately 48,087 acres (75.13 square miles) in Jackson County in southwest Minnesota, southwest of the city of Lakefield along the Minnesota-Iowa border (Project Area). The Project's Minnesota site permit boundary spans land parcels in Ewington, Round Lake, Sioux Valley, Rost, Hunter, and Minneota Townships in Jackson County. The Iowa portion of the Project encompasses approximately 11,000 acres. The project will interconnect to ITC's electric transmission grid. The interconnection details will be determined as a result of studies, discussion, and agreements with the Midwest Independent Service Operator (MISO) and ITC, the transmission owner.

Three Waters is a Delaware-based limited liability company and a wholly owned subsidiary of Scout Clean Energy, a North American renewable energy development company focused on utility scale wind development. Three Waters stated that the project is needed to comply with Minnesota's carbon reduction goals, meet Minnesota Municipal Power Agency's (MMPA) internal goal of generating 100 percent of its energy needs from renewables and allowing MMPA to use the project to help it meet any current or future Renewable Energy Standards ("RES") and other clean energy requirements in Minnesota.

¹ Three Waters filed a Certificate of Need for the Project on July 31, 2019. See Dkt. No. CN-19-154.

² An additional 49 alternative wind turbine locations have been developed in the Iowa portion of the Project.

The Applicant anticipates the Project to be in commercial operation by the fourth quarter of 2021, pending Commission and other related approvals.

III. Procedural History

On September 30, 2019, Three Waters filed a site permit application for the project.³

On October 10, 2019, Three Waters Wind submitted a revised Noise Modeling Study and a revised noise modelling map.

On October 22, 2019, Three Waters submitted a Cultural Resources Review (Appendix G to the Application).

On December 23, 2019, the Commission issued an Order Accepting Application, Establishing Procedural Framework, and Varying Rules (December 23 Order).

On February 10, 2020, Three Waters Wind submitted a revised Noise Modeling Study and map (figure 8).

On February 20, 2020, staff from the Commission and the EERA unit conducted a public information and environmental scoping meeting in Jackson, Minnesota. A comment period was open until February 28, 2020, to receive comments on the scope of the environmental report and the draft site permit.

On February 26 and 27, 2020, Verlon Ponto, resident from the project area submitted a public comment and a newspaper picture as evidence.

On February 28, 2020, Dave Fisher, Diane Fisher, and Mike Fisher submitted public comments.

On February 28, 2020, LIUNA Minnesota and North Dakota submitted comments.

On February 28, 2020, International Operating Engineers Union submitted comments.

On March 11, 2020, EERA submitted agency and public comments received during the comment period following the public meeting.

On May 11, 2020, EERA filed Comments and Recommendation and a Proposed Preliminary Draft Site Permit (PDSP). EERA also filed all of the public comments received during this phase of the review process.

³ Separately on July 31, 2019 the applicant filed an application for a certificate of need for the project in Commission Docket Number IP-7002/CN-19-154.

IV. Statutes and Rules

Minnesota Rules 7854.0800 – Preliminary Determination and Draft Site Permit

Subpart 1. **Preliminary determination.** Within 45 days after acceptance of the application, the commission shall make a preliminary determination whether a permit may be issued or should be denied.⁴ If the preliminary determination is to issue a permit, the commission shall prepare a draft site permit for the project. The draft site permit must identify the person or persons who will be the permittee, describe the proposed LWECs, and include proposed permit conditions.

Subpart 2. **Effect of draft site permit.** A draft site permit does not authorize a person to construct an LWECs. The commission may change the draft site permit in any respect before final issuance or may deny the site permit.

V. Department of Commerce Energy Environment Review and Analysis (EERA) Comments and Recommendations

On May 11, 2020, EERA filed Comments and Recommendations and a proposed Preliminary Draft Site Permit.⁵ The EERA also provided a summary of the comments received during the public information meeting and subsequent comment period on a draft site permit.

Agency and Other Officials Comments Received

Two state agencies submitted written comments on the site permit application; the Minnesota Pollution Control Agency (MPCA), and the Department of Administration – State Historic Preservation Office (SHPO). A Jackson County Commissioner and local Township Board Members provided comments at the Public Information and ER Scoping meeting. Rost and Sioux Valley Township Board Chairman provided verbal comments during the February 20th public meeting. A Sioux Valley Township Board Member also provided a written comment during the comment period. One of the Supervisors from the neighboring Dickenson County (Iowa) provided verbal comments during the February 20th public meeting.

Minnesota Pollution Control Agency

⁴ The Commission in its November Order varied the 45-day time period under Minn. R. 7854.0800, subp. 1, to extend the time for making a decision on the issuance of a draft site permit.

⁵ EERA Comments, eDocket No. [20205-163061-01](#)

The MPCA comments⁶ focused on the need for additional information within the record concerning the potential impacts to surface waters and floodplain resources, along with information on avoidance, minimization, and mitigation (BMPs) of said impacts. MPCA also identified the potential for the Project needing wetland permits, water quality certification, and stormwater management. MPCA further indicated that based on the information provided, the Project will be compliant with the MPCA noise rules. However, the agency requested the Applicant provide the final Figure 8 and Appendix D Noise Report prior to finalization of the Project plans.

EERA's Response

EERA indicated they will continue to work with the Applicant, and coordinate with MPCA staff with respect to noise modeling and noise monitoring of the proposed project.

EERA has included the following conditions and special conditions in the attached Preliminary DSP:

- Condition 4.3 Noise – Addresses turbine placement and operation in compliance with the Minnesota Noise Standard.
- Condition 5.3.7 Soil Erosion and Sediment Control – Permittee shall obtain a NPDES/SDS Construction Stormwater Permit, and develop a SWPPP.
- Condition 5.6.2 Other Permits and Regulations – Permittee shall obtain all required permits, authorizations and approvals.
- Special Condition 7.4 Noise Studies - Requires noise monitoring at the Project to confirm and validate the noising modeling completed to determine turbine siting locations.

Minnesota Historical Society – State Historic Preservation Office (SHPO)

The SHPO recommended⁷ that the proposed project be designed to avoid impacts to known cultural resources, properties listed in the state historic site network, state register of historic places, and the National Register of Historic Places. Additionally, SHPO recommended that a Phase I archaeological survey should be completed for the proposed project area.

The PDSP includes a condition specific to Archaeological and Historic Resources, which requires field surveys, avoidance of resources, and consultation with SHPO. EERA will continue to coordinate with the Applicant and SHPO as necessary to ensure Archaeological and Historic

⁶ EERA. Comments – All Written Agency Comments Received by EERA. March 11, 2020, eDocket # [20203-161133-01](#)

⁷ EERA. Comments – All Written Agency Comments Received by EERA. March 11, 2020, eDocket # [20203-161133-01](#)

Resources are appropriately identified and addressed prior to construction of the proposed project

EERA's Response

EERA has included the following condition in the attached Preliminary DSP:

- Condition 5.3.16 Archaeological and Historic Resources – Addresses avoidance of archaeological and historic resources during Project construction, and also addresses the need for consultation with the State Historic Preservation Office.

Local Township and County Boards

The Rost Township Chairman provided comments⁸ specific to the Applicant needing to get agreements in place with the Townships. He also voiced concerns specific to drainage line and culvert damage, and site restoration.

Sioux Valley Township Chairman provided comments⁹ stressing concerns of roadway safety, cemetery setbacks, flooding concerns, wildlife protections, and misleading Project information. The Chairman wants the Applicant to follow the Jackson County Zoning Ordinance (JCZO) turbine setback distance from public roads, which is a distance equivalent to the height of the wind turbine plus one blade length. The Chairman recommended a one mile setback of all turbines from cemeteries, identifying them all as Historical Landmarks, stating that the vibrations from the turbines and construction equipment could cause damage to the stones in the cemeteries. Flooding concerns mentioned by the Chairman appear to focus on the associated roadway damages, and increased turbine setbacks from protected waters within the project area. Additionally, the Chairman recommended at least a ½ mile setback from the wildlife area on the avoidance map (provided by DNR to the Applicant). The Chairman stated he does not believe the Applicant is not being truthful and misleading members of the public to get their project approved.

The Jackson County Commissioner¹⁰ present at the Public Information and ER Scoping meeting indicated that he hopes members of the public will be respectful of each other and to each other's choices with regard to their property. The Commissioner also asked for some clarification on what types of project alternatives would EERA be looking at when completing the ER for the CN process.

⁸ EERA. Comments – Public Information and ER Scoping Meeting Minutes. March 11, 2020. eDocket # [20203-161133-02](#)

⁹ EERA. Comments – Public Information and ER Scoping Meeting Minutes. March 11, 2020. eDocket # [20203-161133-02](#)

¹⁰ EERA. Comments – Public Information and ER Scoping Meeting Minutes. March 11, 2020. eDocket # [20203-161133-02](#)

The Dickinson County (Iowa) Supervisor¹¹ that attended the Public Information and ER Scoping meeting indicated that they are in favor of the project. Citing the production tax benefits Dickinson County currently receives from operating wind turbines and the additional income source the turbines provide farmers, as good financial benefits.

Local input into the environmental review process is greatly appreciated. To assist the EERA in completing the environmental review process, and to assist the Commission in making a decision with respect to the Three Waters Wind Farm.

EERA's Response

EERA understands the Townships concerns with respect to protecting existing infrastructure during all phases of the proposed Project. The PDSP being recommended by EERA includes multiple conditions which directly address their stated concerns, and those conditions will require the Applicant to coordinate with local road authorities, development of road agreements, maintenance of appropriate drainage, and restoration activities. EERA believes concerns raised about flooding and potential impacts to roadways would fall within the Applicant's responsibilities to coordinate with local road authorities, and additional PDSP conditions specific to this issue do not seem appropriate at this time.

EERA has included the following conditions in the attached Preliminary DSP:

- Condition 5.3.13 Public Roads – The Permittee must make arrangements with all road authorities prior to the use of such roads.
- Condition 5.3.14 Turbine Access Roads – Construction of turbine access roads that are low profile, and maintain appropriate drainage.
- Condition 5.3.20 Drainage Tiles – Requires the avoidance, or prompt repair or replacement of damaged tile lines.

The Sioux Valley Township Chairman's recommendation to utilize the JCZO setback of a distance equal to the wind turbine height plus one blade was considered by EERA. The PDSP includes a condition specific to turbine setbacks from public roads, which is a 250 foot setback, which is the standard minimum setback for turbines at permitted LWECS in Minnesota. EERA stated that the JCZO setback is likely based on a total turbine fall down distance if a turbine was to collapse at the base and land with a blade fully extended. EERA does not have any records of a commercial wind turbine experiencing a failure in this manner in the State of Minnesota. EERA stated this type of turbine failure seems highly unlikely. The Chairman also indicated that the JCZO turbine setback from public roads could be important to reduce the chances of ice throw from the turbines hitting vehicles on the road. Icing on wind turbine blades causes an imbalance of the blades, which triggers the newer turbine models to not operate. Additionally,

¹¹ EERA. Comments – Public Information and ER Scoping Meeting Minutes. March 11, 2020. eDocket # [20203-161133-02](#)

EERA stated there have been no confirmed occurrences of turbine ice throw striking a vehicle on a public road in the State of Minnesota. In 2018, there was a reported incident at the Bent Tree Wind Farm in Freeborn County of turbine ice throw striking a semi-truck on Highway 13, but the strike was never confirmed to be the result of turbine ice throw. EERA does not recommend a turbine setback from public roads equal to the total turbine fall down distance.

For reference purposes, and to aid the Commissioners, a total fall down distance for the turbines being considered by the Applicant on this Project would range from 499 to 591 feet.

EERA has included the following condition in the attached Preliminary DSP:

- Condition 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.

Regarding the Sioux Valley Township Chairman's recommendation of a one mile turbine setback from all cemeteries. EERA does not recommend the inclusion of any condition in the attached PDSP specific to a turbine setback from cemeteries. Known cemeteries will have protections afforded by other conditions included in the PDSP, such that the cemeteries would be considered non-participating lands, the property would be granted wind access buffers as specified in the PDSP. Additionally, EERA believes that cemeteries would be considered religious or cultural activities, which would place them in MPCA's Noise Area Classification (NAC) 1¹², this is the same classification as residential households.

The Applicant's noise modeling should identify cemeteries within the project area, and site turbines appropriately based on overall noise levels (ambient + turbine). If turbines are setback from known cemetery locations based on appropriate noise modeling, visitor access and use of the cemetery areas will not be restricted or impacted. The Chairman's comments indicated the cemeteries should be considered Historic Landmarks, and EERA does not dispute this classification, but that classification does not provide a site additional setback protections unless construction activities or the turbine presence will somehow impact the site or the use of the site. EERA does not have any supporting evidence to suggest that operating turbines or construction equipment working near these areas will create enough vibration to cause damage to the existing headstone and markers.

EERA has included the following conditions and special conditions in the attached Preliminary DSP:

- Condition 4.3 Noise – Addresses turbine placement and operation in compliance with the Minnesota Noise Standard.
- Condition 4.1 Wind Access Buffer – Addresses required turbine setbacks from non-participating property boundaries, which includes public lands (excluding public trails).

¹² MPCA. A Guide to Noise Control in Minnesota. November 2015.
<https://www.pca.state.mn.us/sites/default/files/p-gen6-01.pdf>

- Special Condition 7.4 Noise Studies - Requires noise monitoring at the Project to confirm and validate the noising modeling completed to determine turbine siting locations.

The ½ mile setback from the wildlife area on the DNR's avoidance map, recommended by the Sioux Valley Township Chairman is not supported by any of the wildlife surveys that have been conducted within the project area. When recommending avoidance areas, such as the one mapped, DNR staff generally will include a setback or buffer from features they are concerned about, so the extent of the avoidance area would include that desired setback or buffer. EERA would also like to remind the Commission this a recommended avoidance area, and DNR does not have any regulatory control or vested financial interest over the entire identified avoidance area. The attached PDSP includes a standard condition providing DNR owned and managed lands a wind access buffer, as these lands are considered non-participating.

EERA has included the following conditions and special conditions in the attached Preliminary DSP:

- Condition 4.1 Wind Access Buffer – Addresses required turbine setbacks from non-participating property boundaries, which includes public lands (excluding public trails).
- Condition 4.5 Public Lands – Establishes that no turbines or project infrastructure will be placed on public lands managed for wildlife.

EERA staff discussed the project alternatives that will be considered in the ER with the Jackson County Commissioner during the Project Information and ER Scoping Meeting. EERA will be evaluating the alternatives to the proposed project as identified in the ER Scoping Decision¹³, which includes a no build alternative, a 201 MW LWECs in another location, and a 201 MW solar farm.

Public Comments Received and EERA's Response

Approximately 40 – 50 people attended the February 20, 2020 Public Information and ER Scoping meeting. Approximately 50 verbal comments/questions were received during the Public Information and Scoping Meeting, and 18 written submittals were received via email, mail, and filing in eDockets during the public comment period. All verbal comments at the Public Information and ER Scoping meeting are available in the meeting minutes¹⁴, and all written comments received by EERA have been filed in eDockets¹⁵

¹³ DOC. Decision – MN Dept of Commerce – Environmental Report Scoping Decision – Three Waters Wind Farm. March 18, 2020. eDocket # [20203-161345-01](#)

¹⁴ EERA. Comments – Public Information and ER Scoping Meeting Minutes. March 11, 2020. eDocket # [20203-161133-02](#)

¹⁵ EERA. Comments – Written Public Comments Received. Six Part Filing. March 11, 2020. eDocket # [20203-161148-01](#), [20203-161148-02](#), [20203-161148-03](#), [20203-161148-04](#), [20203-161148-05](#), and [20203-161148-06](#)

In the interest of brevity, Commission staff will not reproduce the entire set of comments received from members of the public and the EERA responses and is referencing the EERA's May 11 comments¹⁶ for a complete picture of the public comments received.

In response to the public comments received, EERA has proposed the following permit conditions and included them in the Preliminary Draft Site Permit that was filled by EERA along with the May 11 comments. EERA has also provided responses to other public comments received for which it is not recommending additional permit conditions.

Topic:
Lands Under Lease Agreement

EERA has included the following condition and special condition in the attached Preliminary DSP:

- Condition 4.1 Wind Access Buffer – Addresses required turbine setbacks from non-participating property boundaries, which includes public lands (excluding public trails).
- Special Condition 10.1 Wind Rights – The Permittee shall demonstrate they have obtained the wind rights and any other necessary rights to construct and operate the Project.

Turbine Noise (modeling, monitoring, and impacts)

EERA has included the following condition and special condition in the attached Preliminary DSP:

- Condition 4.3 Noise – Addresses turbine placement and operation in compliance with the Minnesota Noise Standard
- Special Condition 7.4 Noise Studies - Requires noise monitoring at the Project to confirm and validate the noising modeling completed to determine turbine siting locations.

Shadow Flicker

EERA has included the following special condition in the attached Preliminary DSP:

- Special Condition 7.2 Shadow Flicker – Requires modeling of potential shadow flicker that may be experienced by participants and non-participants, and how shadow flicker may be avoided, minimized, or mitigated.

¹⁶ EERA, Comments and Recommendations, May 11, 2020, eDocket # [20205-163061-01](#)

Local Authority Coordination and Ordinances

EERA has included the following conditions in the attached Preliminary DSP:

- Condition 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.
- Condition 5.3.13 Public Roads – The Permittee must make arrangements with all road authorities prior to the use of such roads.
- Condition 5.3.14 Turbine Access Roads – Construction of turbine access roads that are low profile, and maintain appropriate drainage.
- Condition 5.3.20 Drainage Tiles – Requires the avoidance, or prompt repair or replacement of damaged tile lines.

Potential Wildlife Impacts

EERA has included the following conditions and special conditions in the attached Preliminary DSP:

- Condition 4.1 Wind Access Buffer – Addresses required turbine setbacks from non-participating property boundaries, which includes public lands (excluding public trails).
- Condition 4.5 Public Lands – Establishes that no turbines or project infrastructure will be placed on public lands managed for wildlife.
- Condition 4.6 Wetlands – Avoidance of identified protected waters and protected waters wetlands, and permit accusation requirements for public water and public waters wetlands to be crossed by electric collector and feeder lines.
- Condition 4.7 Native Prairie – Avoidance of native prairie impacts, and development of a Prairie Protection and Management Plan
- Condition 5.3.9 Vegetation Removal – Minimization of vegetation clearing and number of trees removed during Project construction.
- Special Condition 7.1 Biological and Natural Resources Inventories – Establishes requirements for conducting pre-construction wildlife surveys.
- Special Condition 7.5.1 Operational Phase Fatality Monitoring – Requires the Permittee to develop protocol, coordinate with agencies, and conduct avian and bat fatality monitoring during Project operation.
- Special Condition 7.5.2 Avian and Bat Protection Plan - Allows for the continual review and revision of the Project's ABPP, in coordination with EERA, MDNR, and USFWS.
- Special Condition 7.5.3 Quarterly Incident Reports – Requires quarterly reporting of injured or dead avian and bat species identified within the Project for the life of the permit.
- Special Condition 7.5.4 Immediate Incident Reports – Requires reporting, within 24 hours of discovery of a dead or injured state listed species, dead or injured federally listed species, dead or injured golden eagle, dead or injured bald eagle, or five or more dead or injured birds or bats within a five day reporting period.
- Special Condition 8 Turbine Operational Curtailment – The Permittee shall operate all turbines so blades are locked or feathered up to the manufacture's cut-in speed.

Turbine feathering to cut-in speed will begin one half hour before sunset to one half hour after sunrise of the following day, April 1 to October 31 of each year of operation.

Decommissioning and Used Turbine Blade Disposal

EERA has included the following special condition in the attached Preliminary DSP:

- Special Condition 13.1 Decommissioning Plan – Requires the Permittee to update the decommissioning plan every five years, and also to identify all sureties and financial securities that are established to ensure site restoration.

Impacts to Agricultural Tile Lines

EERA has included the following condition in the attached Preliminary DSP:

- Condition 5.3.20 Drainage Tiles – Requires the Permittee to avoid, promptly repair or replace all tile lines broken or damaged during all phases of the Project.
- Special Condition 11.0 Complaint Procedures – Requires the Permittee to provide procedures for how they will handle Project related complaints.

Soil Compaction in Agricultural Fields

EERA has included the following condition in the attached Preliminary DSP:

- Condition 5.3.6 Soil Compaction – Requires the Permittee to implement measures to minimize soil compaction during construction, and to decompact areas utilized for project construction.

Turbine Interference with Fixed Wireless Internet Services

EERA has included the following condition in the attached Preliminary DSP:

- Condition 5.3.17 Interference – Requires the Permittee to avoid, minimize, and mitigate for Project related interference with television and radio signal reception, microwave signal patterns, and telecommunications in the project area.

Buried Turbine Communication Lines Interfering with Landline Telephone Service in the Area

EERA has included the following condition in the attached Preliminary DSP:

- Condition 5.3.17 Interference – Requires the Permittee to avoid, minimize, and mitigate for Project related interference with television and radio signal reception, microwave signal patterns, and telecommunications in the project area.

Stray Voltage and Electromagnetic Field (EMF)

EERA has included the following conditions in the attached Preliminary DSP:

- Condition 4.2 Residences – Provides for a 1,000 foot turbine setback from residences.

- Condition 5.4 Electrical Collector and Feeder Lines – Addresses the engineering, design, and layout of the collector and feeder line systems. Requires the Applicant to provide necessary details to allow for appropriate review prior to line placement.
- Condition 5.5.1 Safety Codes and Design Requirements – Requires that all associated facilities are designed to meet or exceed all relevant local, state, and national electrical safety codes.

EERA Recommended Revisions to the Draft Site Permit Template

EERA utilized the Draft Site Permit Template¹⁷ submitted to eDockets by Commission staff to develop the attached Preliminary Draft Site Permit for the Commission’s consideration in the issuance of a Draft Site Permit for the proposed Three Waters Wind Farm. EERA edited portions of the Draft Site Permit Template. Some edits are considered minor in nature, but edits EERA believed to potentially affect the language, intent, and enforceability of permit conditions and special conditions have been included below.

5.3.6 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. Soil decompaction measures shall be utilized on all lands utilized for project construction and travelled on by cranes, heavy equipment, and heavy trucks; even when soil compaction minimization measures are used.

5.3.13 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 (approved permits, written authorizations, road use agreements, development agreements, etc.) 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.

¹⁷ Commission. Briefing Papers – December 12, 2019 Agenda – Sample Permit. December 4, 2019. eDocket # [201912-158050-02](#)

5.6.2 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. ~~The Permittee shall submit a copy of such permits to the Commission upon request.~~ At least 14 days prior to the preconstruction meeting, the Permittee shall submit a filing with a detailed status update of all permits, authorizations, and approvals that have been applied for specific to the project. The detailed status update shall include the permitting agency or authority, the name of the permit, authorization, or approval being sought, contact person and contact information for the permitting agency or authority, brief description of why the permit, authorization, or approval is needed, application submittal date, and the date the permit, authorization, or approval was issued or is anticipated to be issued.

The Permittee shall demonstrate that it has obtained all necessary permits, authorizations, and approvals by filing an affidavit stating as such, prior to commencing project construction. The Permittee shall provide a copy of any such permits, authorizations, and approvals upon Commission request.

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

Proposed Revisions to Draft Site Permit Template Special Conditions

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.

~~7.5.1~~ 7.5.2 Avian and Bat Protection Plan

The Permittee shall comply with the provisions of the ~~[date of Avian and Bat Protection Plan]~~ most recently filed and accepted version of the Avian and Bat Protection Plan (ABPP). The initial version of the ABPP submitted for this project as part of the [date if submitted with Site Permit Application] September 30, 2019 Site Permit Application, and all necessary revisions resulting that occur during the permit issuance process will be incorporated into a Permit Version. The Permit Version of the ABPP will be filed with the Commission 14 days before the

~~preconstruction meeting, and the revision will include any updates associated with the final construction plans and site plans. from the annual audit of ABPP implementation. The first annual audit and revision will be filed with the Commission 14 days before the preconstruction meeting and revisions should include any updates associated with final construction plans.~~ The ABPP must address steps to be taken to identify and mitigate impacts to avian and bat species during the construction phase and the operation phase of the project. The ABPP shall also include formal and incidental post-construction fatality monitoring, training, wildlife handling, documentation (e.g., photographs), and reporting protocols for each phase of the project.

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

~~7.5.3~~ 7.5.4 Immediate Incident Reports

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

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

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

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

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

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

In the event that one of the five discoveries listed above should be made, the Permittee must file with the Commission within seven days, a compliance report identifying the details of what

was discovered, the turbine or turbines where the discovery was made, a detailed log of agencies and individuals contacted, and current plans being undertaken to address the issue.

9 Aircraft Detection Lighting System

Lighting installed pursuant to Section 5.3.28 of this permit shall comply with Aircraft Detection Lighting System standards specified in FAA Circular AC 70/7460-IL CHG 1 Chapter 14.

Permittee may install an FAA approved lighting system without ADLS if the Permittee demonstrates, in a request for a site permit amendment, 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,
- 2) Permittee is unable to secure FAA approval in a timely manner,

If any of the above conditions occur, the permittee may request a site permit amendment of a non-ADLS based system. The permit amendment request will be processed on an expedited basis following receipt of comments from the Department of Commerce, Energy Environmental Review and Analysis.

~~11.1~~ 13.1 Decommissioning Plan

The Permittee shall comply with the provisions of the most recently filed and accepted Decommissioning Plan. The initial version of the Decommissioning Plan was submitted for this project as part of the September 30, 2019 Site Permit Application. The Permittee shall file an updated decommissioning plan, incorporating comments and information from the permit issuance process and any updates associated with the final construction plans, with the Commission 14 days before the preconstruction meeting. The decommissioning plan shall be updated every five years following the commercial operation date.

~~The 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 the 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.

VI. Staff Analysis

Staff has reviewed the Department's comments and recommendations, its proposed DSP, as well as the comments received during the information meeting and subsequent comment period for this matter. With respect to the written public comments received directly by the Commission from some local residents opposed to the project, staff believes those concerns have been properly addressed in the Department's May 11 comments, as they are similar to the comments received at the public meeting on February 20, 2020.

Staff finds the proposed draft site permit put forth by the Department, including all proposed special permit conditions and edits to draft permit template, and the minor editorial changes proposed by staff, as reasonable and appropriate, and recommends the Commission issue the DSP.

Lastly, staff reiterates that the authorization of a DSP is a preliminary step in the LWECS site permit application review process. Upon issuance of a DSP, a comment period of not less than 30 days provides the public an opportunity for additional comment on the conditions contained in the DSP. In addition, two public hearings (afternoon & evening) will be held remotely on June 17, 2020. As provided in Minn. R. 7854.0800, subp. 2, the issuance of a DSP does not authorize construction of an LWECS, and the Commission may change the DSP before final issuance or may deny the site permit.

VII. Decision Options

A. Should the Commission issue a preliminary draft site permit for the Three Waters Wind Project?

1. Issue the draft site permit proposed by the Department of Commerce, including the minor editorial changes proposed by staff.
3. Deny the issuance of a draft site permit for the Three Water Wind Project.
3. Take some action deemed more appropriate.
4. Authorize Commission staff to modify the draft site permit to correct typographic and formatting errors, improve consistency, and ensure agreement with the Commission's final order in the matter.

Staff Recommendation: A1 and A4