

**STATE OF MINNESOTA  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

Katie Sieben  
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Matthew Schuerger  
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John Tuma

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

**In the Matter of the Site Permit Amendment  
Application for Repowering the Fenton  
Wind Project in Murray and Nobles  
Counties**

Docket No. IP6499/WS-05-1707

**FENTON POWER PARTNERS I, LLC'S  
NOTICE REGARDING RETROFIT  
CONSTRUCTION AND REQUEST FOR  
AMENDMENT OF SITE PERMIT**

**I. INTRODUCTION**

Pursuant to Section 8.3 of the large wind energy conversion system (“LWECS”) Site Permit issued to Fenton Power Partners I, LLC (“Fenton”) on March 8, 2019 (the “2019 Amended Site Permit”) by the Minnesota Public Utilities Commission (“Commission”), Fenton submits this notice to the Commission that Fenton will not be retrofitting the Fenton Wind Project (“Project”) and plans to continue to operate the existing Project. In the absence of the retrofit, there are a number of provisions in the 2019 Amended Site Permit that are inconsistent with Fenton’s plans to continue to operate the existing facilities. Accordingly, with this filing, Fenton requests that the Commission find there is good cause to amend certain sections of the 2019 Amended Site Permit to remove references to the retrofit and conditions that cannot be complied with absent retrofit.

Additionally, Fenton provides clarifications below regarding the compliance filings that Fenton does not plan to make because no construction activity is occurring. Finally, Fenton includes a number of operations-related compliance filings that are required under the 2019 Amended Site Permit but had not been previously filed.

## **II. BACKGROUND**

On April 13, 2006, the Commission issued the 2006 Site Permit to Fenton Power Partners, LLC to construct the Project (the “2006 Site Permit”). The 2006 Site Permit allowed construction of up to a 205.5-megawatt (“MW”) LWECS and associated facilities located in Murray and Nobles Counties. In accordance with the issued 2006 Site Permit, Fenton installed 137 General Electric (“GE”) 1.5 sle wind turbines. On December 20, 2007, the Commission amended and reissued the 2006 Site Permit to “Fenton Power Partners I, LLC.”

On October 1, 2018, Fenton submitted an application for amendments to its site permit to retrofit/repower the Project to increase the existing turbines from 1.5 to 1.62 MW for a majority of the existing 137 turbines by installing larger rotors (increasing blade length from 77 to 91 meters), upgraded gear boxes, and associated components (“Retrofit Project”).<sup>1</sup> The Retrofit Project would have increased capacity with upgraded generators (from 205.5 to 221 MW) and increased the estimated energy production by approximately 8 percent. On March 8, 2019, the Commission issued an Order Approving Site Permit Amendments and issued the 2019 Amended Site Permit.

On April 25, 2019, the Commission issued an Order Granting Wind-Access-Buffer Waivers (“Setback Order”). The Setback Order approved certain waivers from the Wind Access Buffer setback. As contained in the 2019 Amended Site Permit, the wind access buffer setback requires that turbines be located at least 3 rotor diameters (“RD”) in the non-prevailing wind directions and 5 RD in the prevailing wind direction from the property lines of nonparticipating

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<sup>1</sup> Fenton originally sought authorization to retrofit 136 of the existing 137 turbines, but later revised its request to retrofit 132 turbines.

parcels. The Setback Order also clarified that the new Wind Access Buffer setback did not apply to a specific set of turbines that were not proposed for retrofit.

**III. NOTICE AND REQUESTED AMENDMENT**

**A. Notice.**

Fenton was unable to reach an agreement on commercial terms related to the Retrofit Project. Therefore, pursuant to Section 8.3 of the 2019 Amended Site Permit, Fenton hereby informs the Commission that it does not intend to retrofit the Project, and thus will not be commencing construction of the Retrofit Project within two years of issuance of the 2019 Amended Site Permit. Fenton plans to continue to operate the existing Project.

**B. Request to Amend Certain Sections of the 2019 Amended Site Permit.**

Absent retrofit, there are a number of conditions in the 2019 Amended Site Permit that do not accurately describe the Project and present complications for ongoing compliance of the existing facilities. As described in this section, Fenton requests that the Commission find there is good cause to amend those certain sections of the 2019 Amended Site Permit to clarify that the Project will continue operating with the existing/current turbines.

Table 1 identifies the sections of the 2019 Amended Site Permit that Fenton requests be amended, the proposed revised language, and the reasons for the requested change. **Exhibit 1** included with this filing is a redline of the proposed amendments to the 2019 Amended Site Permit.

<b>Table 1 - Proposed Amendments</b>		
<b>2019 Amended Site Permit Section</b>	<b>Proposed Language</b>	<b>Explanation</b>
Cover	The Permittee is authorized by this site permit to construct and operate the 205.5 Megawatt (nameplate capacity) Fenton Wind Project Large Wind	Revised to remove reference to repowering; to reflect the size of the Project as 205.5 MW rather than 221 MW; and

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

<b>Table 1 - Proposed Amendments</b>		
<b>2019 Amended Site Permit Section</b>	<b>Proposed Language</b>	<b>Explanation</b>
	deliver wind-generated power to the existing switchyard and substation located in Section 20 in Fenton Township in Murray County.	
3 DESIGNATED SITE	The site designated by the Commission for the Fenton Wind Project is the site depicted on the official site permit maps attached to this permit. The estimated size of the Project Area is 38,500 acres (approximately 60.0 square miles) primarily on agricultural land.	Revised to remove references to the repower.
4.1 Wind Access Buffer	Wind turbine towers shall not be placed less than 5 rotor diameters from the perimeter of the site on the north-south axis and 2 rotor diameters on the east-west axis where the Permittee does not hold the wind rights, without the approval of the PUC. Permittee acknowledges that properties within the Project boundaries for which Permittee does not hold the wind rights will not be foreclosed from installing wind turbine generators on such property at a later date, even if such turbine generators cannot be installed on such property in compliance with the setbacks set forth in the first sentence of this section. This section does not apply to public roads and trails.	Revised to reflect the wind access buffer setback from the 2006 Site Permit. The Setback Order recognized that the original setback requirements should be applied to the turbines that are not being retrofitted. Because no turbines will be retrofitted, the original setback requirement from the 2006 Site Permit should be applied to all Project turbines.
5.2 Construction and Operation Practices	The Permittee shall comply with the construction practices, operation and maintenance practices, and material specifications described in this permit.	Revised to remove references to the October 2018 Site Permit Amendment Application.
5.2.16 Interference	The Permittee has completed an assessment of television and radio signal reception, microwave signal patterns, and telecommunications in the Project area. The assessment was designed to provide data that can be used in the future to determine whether the turbines and associated facilities are	Revised to remove references to the repower. Specifically, request removing the portion regarding interference with the Minnesota Valley TV Improvement (“MVTI”) beam path and Turbine 47.

<b>Table 1 - Proposed Amendments</b>		
<b>2019 Amended Site Permit Section</b>	<b>Proposed Language</b>	<b>Explanation</b>
	<p>the cause of disruption or interference of television or radio reception, microwave patterns, or telecommunications in the event residents should complain about such disruption or interference after the turbines are placed in operation. The Permittee shall be responsible for alleviating any disruption or interference of these services caused by the turbines or any associated facilities.</p> <p>The Permittee shall not operate the Project so as to cause microwave, television, radio, telecommunications, or navigation interference in violation of Federal Communications Commission regulations or other law. In the event the Project or its operations causes such interference, the Permittee shall take timely measures necessary to correct the problem.</p>	<p>The beam path was not in service when the Project was constructed and the license for that microwave path was granted on June 6, 2016, despite the presence of the operating Project and possible Turbine 47 interference with its currently permitted 77-meter rotor diameter. The larger rotors for the retrofit of Turbine 47 were expected to have slightly more potential to impact on this beam path than the existing rotors. However, because Turbine 47 will not be retrofitted, no change in impact is anticipated.</p>
7.5.1 Avian and Bat Protection Plan	<p>The Permittee shall comply with the provisions of the Avian and Bat Protection Plan (ABPP) submitted for this project on August 5, 2020, and revisions resulting from the annual audit of ABPP implementation. The ABPP must address steps to be taken to identify and mitigate impacts to avian and bat species during the construction phase and the operation phase of the project. The ABPP shall also include formal and incidental post-construction fatality monitoring, training, wildlife handling, documentation (e.g., photographs), and reporting protocols for each phase of the project.</p> <p>The Permittee shall, by the 15th of March following each complete or</p>	<p>Request to update reference to the ABPP to reflect the updated ABPP which reflects that Fenton will not be retrofitting the Project.</p>

<b>Table 1 - Proposed Amendments</b>		
<b>2019 Amended Site Permit Section</b>	<b>Proposed Language</b>	<b>Explanation</b>
	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.	
7.5.4 Turbine Operation Curtailment Requirements	[delete section]	Request removing this section because the existing turbine technology at Fenton is not equipped to operate in the manner described. The 2006 Site Permit did not include this condition.
16 EXPIRATION DATE	This Permit shall expire on December 31, 2036.	2019 Amended Site Permit's extended term through 2049 was predicated on repower. This provision should be amended back to the original 2036 termination date from the 2006 Site Permit.
Official Site Map	[map of the current Project layout]	Request replacing with the map of the current Project layout submitted with this filing.

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



## **IV. COMPLIANCE FILINGS**

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

Because construction of the Retrofit Project will not occur, there are a number of sections of the 2019 Amended Site Permit with construction-related compliance filings that will not apply to the Project. Accordingly, Fenton does not plan to submit compliance filings under the following construction-related permit sections:

- Section 4.7 (Native Prairie)<sup>2</sup>;
- Section 4.12 (Aviation)<sup>3</sup>;
- Section 5.2.1 (Field Representative);
- Section 5.2.6 (Soil Erosion and Sediment Control);
- Section 5.2.10 (Invasive Species);
- Section 5.2.12 (Public Roads);
- Section 5.2.21 (Restoration);
- Section 5.5.2 (Other Permits and Regulations);
- Section 6.1 (Labor Statistics Reporting);
- Section 7.2 (Shadow Flicker)<sup>4</sup>;
- Section 7.3 (Wake Loss)<sup>5</sup>;
- Section 7.4 (Noise Studies)<sup>6</sup>;

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<sup>2</sup> Native prairies are avoided by turbines and associated facilities. Consequently, a Prairie Protection and Management Plan is not needed.

<sup>3</sup> There are no airports located closer than approximately eight miles from the nearest Project turbine.

<sup>4</sup> Fenton will comply with its ongoing obligation to address complaints, as needed.

<sup>5</sup> Fenton will comply with the requirement to file any wake loss studies conducted as part of the annual report on project energy production required under Section 10.6 of the permit.

<sup>6</sup> No retrofit construction will occur. Consequently, the turbine technology is not changing, and Fenton will not be conducting the post-construction noise study or any additional noise studies. Fenton will continue to comply with Section 4.3 of the 2019 Amended Site Permit and the Minnesota State Noise Standards.

- Section 8.1 (Wind Rights)<sup>7</sup>;
- Section 10.1 (Pre-Construction Meeting);
- Section 10.2 (Site Plan);
- Section 10.3 (Status Reports);
- Section 10.4 (As-Builts)<sup>8</sup>; and
- Section 10.5 (GPS Data).<sup>9</sup>

**B. Operations-Related Compliance Filings Included with this Filing.**

Fenton submits the following operations-related compliance filings, attached as exhibits hereto, in compliance with the 2019 Amended Site Permit:<sup>10</sup>

- Section 3.1 (Turbine Layout): Attached as **Exhibit 2** to this filing is a map of the current wind turbine and associated facility layout for use as the official site maps attached to permit.
- Section 5.1 (Notification): Upon reissuance, Fenton will re-send the revised site permit to reflect changes made pursuant to Fenton's 2020 Notice and Amendment Request. This notification will be sent to landowners, the regional development commission, the county auditor and environmental office, and the city and township clerk in which any part of the site is located. Copies of the template letters to local governmental units and affected landowners are included in **Exhibit 3**.
- Section 5.2.2 (Site Manager): Attached as **Exhibit 4** to this filing is the name, address, email, phone number, and emergency phone number of the site manager. Fenton has provided the site manager's contact information to affected landowners, residents, local government units and other interested persons. Copies of the correspondence, certificate of service, and mailing lists are also included in **Exhibit 4**.

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<sup>7</sup> Fenton has already demonstrated that it has obtained the wind rights and any other rights necessary to operate the Project.

<sup>8</sup> As-built surveys were filed on April 30, 2013.

<sup>9</sup> Turbine coordinates were filed on April 30, 2013.

<sup>10</sup> Compliance filings under Sections 10.6 (Project Energy Production) and 10.7 (Wind Resource Use) and Section 10.9 (Extraordinary Events) were filed separately on August 5, 2020 as part of Fenton's ongoing compliance efforts.

- Section 7.5.1 (Avian and Bat Protection Plan): Attached as **Exhibit 5** is an updated Avian and Bat Protection Plan which reflects that Fenton will not be retrofitting the Project. Also included in **Exhibit 5** is the 2019 annual report detailing of bird and bat fatalities and injuries.
- Section 7.5.2 (Quarterly Incident Reports): As explained in **Exhibit 6**, the quarterly avian and bat reports were delayed due to plans to repower the Project. Because construction of the Retrofit Project will not occur, the repowered turbines did not commence operation, and monitoring was not started. Fenton will make quarterly avian and bat reports to the Commission during the formal monitoring of all birds, bats, and raptors by a third-party consultant from March 15 to November 15, 2021.
- Section 10.8 (Emergency Response): Although no retrofit construction will occur and a pre-construction meeting will not be held, Fenton has prepared an Emergency Response Plan, attached as **Exhibit 7**, in consultation with the emergency responders having jurisdiction over the facility. Fenton has provided the Emergency Response Plan to the emergency responders and Public Safety Answering Points with jurisdiction over the facility. The correspondence, certificate of service, and mailing list are also included in **Exhibit 7**.
- Section 11.1 (Decommissioning Plan): An updated decommissioning plan is attached as **Exhibit 8**. Fenton previously filed a decommissioning plan pursuant to Section III.G.1 of the 2006 Site Permit on September 16, 2013.
- Section 14 (Transfer of Permit): A compliance filing describing Fenton's current ownership structure is attached as **Exhibit 9**.

## V. CONCLUSION

For the reasons set forth above, Fenton will not be retrofitting the Project and therefore requests that the Commission find there is good cause to amend the 2019 Amended Site Permit as set forth in **Exhibit 1** and described in Table 1 above, to remove references to the retrofit and certain conditions that cannot be complied with absent retrofit. These amendments will clarify requirements for continued operation of the Project without retrofit.

Additionally, Fenton requests that the Commission acknowledge Fenton's compliance clarifications set forth in Section IV above regarding permit sections which would not require future compliance filings and accept the compliance filings Fenton submits with this filing.

Fenton remains committed to operating the Project in a manner consistent with the applicable site permit requirements and appreciates the Commission's attention to this matter.

Dated: August 5, 2020

Respectfully submitted,

*/s/ Christina K. Brusven*

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