

**STATE OF MINNESOTA
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION**

Katie Sieben
Joseph Sullivan
Matthew Schuerger
John Tuma
Valerie Means

Chair
Vice-Chair Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of
Walleye Wind, LLC for a Certificate of
Need for the up to 110.8 MW Walleye
Wind Project in Rock County, Minnesota

MPUC Docket No.
IP7026/CN-20-269

In the Matter of the Application of
Walleye Wind, LLC for a Site Permit for
the up to 110.8 MW Walleye Wind
Project in Rock County, Minnesota

MPUC Docket No.
IP7006/WS-20-384

OAH Docket No.
5-2500-37275

**Walleye Wind, LLC’s Response to Comments and
Proposed Findings of Fact, Conclusions of Law, and Recommendation**

Pursuant to the First Prehearing Order issued March 18, 2021, Walleye Wind, LLC (“Walleye Wind”) hereby submits responses to the written comments filed by May 20, 2021. Walleye Wind’s proposed Findings of Fact, Conclusions of Law, and Recommendation (“Proposed Findings”) are provided as Attachment A. The Proposed Findings included a summary of the oral comments provided at the May 4, 2021 public hearings.

By the May 20, 2021 deadline, written comments were received from (1) Department of Commerce, Energy Environmental Review and Analysis (“DOC-EERA”); (2) Minnesota Department of Natural Resources (“MnDNR”); (3) the Laborers District Council of Minnesota & North Dakota (“LIUNA”); (4) Walleye Wind Neighbors in Minnesota and South Dakota (“Walleye Neighbors”); and (5) other members of the public.

I. WALLEYE WIND’S RESPONSES TO WRITTEN COMMENTS

A. Response to the Comments of DOC-EERA

DOC-EERA requests that additional information and revisions to Walleye Wind’s decommissioning plan be submitted prior to the start of construction, including updated maps and turbine numbering, information on the Walleye Wind Project’s (“Project”) landscape and infrastructure, the anticipated date of commercial operations, and information and costs associated with the decommissioning of the existing Perch wind project.¹ Walleye Wind is amenable to providing the additional information and making the revisions to the decommissioning plan as requested by DOC-EERA and submitting the revised plan prior to the pre-construction meeting for the Project as required by Section 11 of the Draft Site Permit (“DSP”).

B. Response to the comments of MnDNR

MnDNR requests that erosion and sediment control practices be implemented and maintained near streams and tributaries during crossings and construction, and, therefore, specifically requests that Walleye Wind follow the United States Fish and Wildlife Service (“USFWS”) Recommendations for Projects Affecting Waters Inhabited by Topeka Shiners in Minnesota. Walleye Wind commits to follow the noted USFWS Recommendations.

C. Response to the comments of LIUNA

LIUNA appreciates the efforts Walleye Wind is making to maximize local benefits and ensuring skilled local workers are hired to construct the Project. As LIUNA notes, use of local workers will create meaningful and tangible local benefits to the community and the families of the local construction workers. LIUNA also supports the issuance of a Site Permit and Certificate of Need to Walleye Wind, because it will help Minnesota meet its climate goals, while providing

¹ Comments of DOC-EERA (May 20, 2021).

affordable electricity to the members of Minnesota Municipal Power Agency's ("MMPA"), which serves LIUNA members in cities such as Buffalo and Chaska. Walleye Wind appreciates the supportive comments of LIUNA, as well as numerous members the public who submitted supportive written comments, including the Superintendent of Luverne Public Schools and the Executive Director of the Worthington Minnesota Area Chamber of Commerce.

D. Response to the comments of members of the public and Walleye Neighbors expressing concern with the Project

Written comments from the public opposing or expressing concern with the Project were as follows:²

- (1) Mike Gangstad from Luverne, Minnesota indicated that he does not wish to hear or see the wind turbines, that prime farmland should not be taken out of production for the Project, and there is no need for the Project given that there is sufficient generation capacity and wind power cannot replace baseload generation required for reliability;
- (2) Greg Beaner, the Mayor of Garretson, South Dakota expressed concerns with the lack of notice of the Project to the residents of South Dakota, and the Project's impact on traffic during construction, the sound from the wind turbines, and interference to the wireless utility reporting system;
- (3) Rodney Lowe does not support the Project, because the wind towers may have a negative impact on wildlife, and, therefore, requests that wildlife habitat not be impacted by wind turbines;
- (4) Ronald and Kay Ames wrote that there are six proposed wind turbines within a mile and half from their farm, and they are concerned of the impact the wind turbines will have on wildlife and livestock, humans, property values, and the viewshed;
- (5) Ryan Nelson from Garretson, South Dakota submitted written comments and exhibits on the lack of notice to South Dakota residents and the community at large and the negative impact of the Project on property values, infrasound, low frequency sound, the use of a 0.5 ground attenuation factor to model sound;

² Written Comments in Opposition or Expressing Concern (eDocket No. [20215-173923-01](#); [20215-173924-01](#); [20215-174143-02](#); [20215-174279-02](#); [20215-174269-02](#); [20215-174379-01](#); [20215-174379-03](#); [20215-174379-05](#); [20215-174379-07](#); [20215-174379-09](#); [20215-174341-02](#); [20215-174338-02](#); [20215-174377-02](#); [20215-174421-01](#); [20215-174423-01](#); [20215-174422-01](#); [20215-174442-02](#); [20215-174472-01](#); [20215-174498-01](#); [20215-174499-02](#)).

- (6) Brent and Bethany Waysman from Garretson, South Dakota expressed concerns with the Project's impact on viewshed, human health and wellness, the sound from the Project (although they are modeled to be at 35 dBA), quality of life, infrasound low frequency sound, and the lack of notice of the proposed Project;
- (7) Lance Crawford from Valley Springs, South Dakota opposes the Project, because of its impact on viewshed, property values and enjoyment of the property, health, sound, aerial spraying;
- (8) The Walleye Neighbors assert that Walleye Wind, DOC-EERA, and the DSP rely too much on standards for siting wind farms under 25 MW and shadow flicker levels need to be addressed;
- (9) Jarrod Smart, of Valley Springs, South Dakota believes that the Project will negatively impact the community, including the impact of the Project due to the proximity of turbines to the border with South Dakota, the sound resulting from the wind turbines, the proximity of wind turbines to Palisades State Park, the blinking red lights, the traffic and damage to roads, lack of dust control, viewshed, shadow flicker. Mr. Smart is also concerned that while he lives a mile away from the Project he did not receive notice of it; Mr. Smart requests that turbine nos. 23, 22, 29, 30, and 31, and alternative turbine location 4 be moved to east of Highway 23, and make the turbine heights shorter;
- (10) Charles Brown representing the Garretson Sportsmen's Club stated his opposition to the Project as an eyesore;
- (11) Lisa Weyer from the South Dakota Parks and Wildlife Foundation noted that the Foundation has raised over \$1 million in private funds to purchase 267 acres of adjoining property to expand the Palisades State Park and that a large wind farm would take away from the natural resources and beauty of the area when people are enjoying the outdoors;
- (12) Cindy Heiberger asked that the Commission order the same setbacks on the Minnesota-South Dakota boarder that are in place for Minnesota or deny the Project;
- (13) Rick and Donna Zoellner from Beaver Creek, Minnesota expressed concerns with viewshed, noise and shadow flicker and requested that the turbine closest to their property be moved;
- (14) Baylee Carlson from the Garretson area raised concerns regarding viewshed, noise, shadow flicker and the lack of transparency on the development process and requested that turbines be moved further away from the South Dakota border;

- (15) Bruce & Dinal Carlson from Garretson, South Dakota oppose the Project and expressed concerns with notice; aerial spraying with the tall wind turbines nos. 27, 28 and 29 so close to the land they farm; and shadow flicker, noise, health and property value impacts;
- (16) Brian Carlson from Garretson, South Dakota opposes the Project and expressed concerns regarding notice and inadequate consideration of South Dakota residents, impacts from shadow flicker and noise and impacts to quality of life;
- (17) Wendy Carlson from Garretson, South Dakota opposes the Project and expressed concerns regarding noise and requested the Project be moved further east into Minnesota;
- (18) Amy Pullman from Garretson, South Dakota raised concerns with noise, shadow flicker, and potential health impacts from the Project and requests that turbines closest to the South Dakota border be moved further into Minnesota to mitigate negative impacts on South Dakota;
- (19) Randall Pullman from Garretson, South Dakota raised concerns regarding environmental impacts, noise, lack of notice and likelihood of success completing the Project;
- (20) Shannon Nordstrom from Garretson, South Dakota opposes the Project and is concerned with impacts to wildlife and Palisades State Park and expressed concerns with noise and shadow flicker;
- (21) Eric Kientopf and Michael Scholten on behalf of the Red Rock Township Supervisors in South Dakota commented on the lack of notice and engagement with the impacted communities in South Dakota and raised concerns with road use and requested that a 1 mile setback from the Minnesota South Dakota state border be imposed to ensure safety and quality of life for their residents;
- (22) Keturah Baker from Garretson, South Dakota opposes the Project due to the proximity of wind turbines no. 28 and 29 to his residence, approximately one mile, the sound from the wind turbines, the impact on wildlife, the shadow flicker from the wind turbines, and the impact on viewshed;
- (23) Austin Carlson from Garretson, South Dakota opposes the placement of wind turbines near the South Dakota border, and requests that those wind turbines be moved to the locations of the MinWind wind turbines that will be decommissioned; he opposes the current wind array due to its impact on viewshed, the lack of notice to South Dakota residences, whether the wind turbines are needed, the impact of the Project on sound, shadow flicker, infrasound, humans, livestock, and wildlife, and it adds additional infrastructure because it is not replacing coal or natural gas plant, and, also, the negative economic impact the Project will have on South Dakota; and

- (24) Gregg Taubert from Beaver Creek, Minnesota opposes the Project due to its impact on the viewshed, sound, the proximity of the wind turbines to his and his families' residences, and the impact on property values.

Walleye Wind has grouped its responses by subject matter to address the concerns expressed by these members of the public.

Need and reliability of the Project

As explained in Section 4 of the Amended Certificate of Need Application, the Project is needed to assist in providing electricity for MMPA members and to further MMPA's efforts to meet and exceed the Minnesota Renewable Energy Standard ("RES") and other clean energy requirements.³ The Next Generation Energy Act of 2007 requires that utilities in Minnesota provide 25% of their total retail electric sales from eligible renewable resources by 2025. Additionally, the Minnesota legislature has specified aggressive goals for the reduction of greenhouse gas emissions across all sectors, including the electric sector.

The Legislature's specific goal is to "reduce statewide greenhouse gas emissions across all sectors producing those emissions to a level at least 15 percent below 2005 levels by 2015, to a level at least 30 percent below 2005 levels by 2025, and to a level at least 80 percent below 2005 levels by 2050."⁴ Between the RES and state greenhouse gas emission reduction goals, additional renewable resources will continue to be needed in Minnesota. Therefore, the Project will serve to meet this broader legislative need as well as the specific electricity and renewable energy needs of MMPA.⁵

³ Public Hearing Tr. at 30 (May 4, 2021 (6:00 pm session)).

⁴ See Minn. Stat. § 216H.02, Subd. 1.

⁵ Exhibit 202 – Application for Certificate of Need at 5.

In addition, in Walleye Wind’s August 3, 2020 Reply Comments it provided a table that showed the annual REC deficits MMPA would experience if Walleye Wind is not constructed and operated.⁶ Also, the Project is not intended to replace baseload capacity, and, therefore, is not seeking a determination of need that it is baseload generation. Further, the Project has been studied by the Midcontinent Independent System Operator, Inc. (“MISO”) through the interconnection study and agreement process, MISO determined that the Project can be reliably interconnected and operated. In fact, a generation interconnection agreement with MISO was executed on January 29, 2020.⁷ Therefore, the evidence shows that Walleye Wind is needed and will not negatively impact reliability.

The safety, quality of life, and health impacts of wind turbines

In response to the comments that the Project would negatively impact safety, Walleye Wind explained that it will implement the following safety measures: (1) as explained in Section 5.3 of the Amended Application, the entire collection system will be designed to meet applicable requirements of the National Electric Safety Code (“NESC”); (2) as explained in Section 8.6.1 of the Amended Application, prior to construction, Walleye Wind will coordinate with applicable local and state road agencies to ensure all relevant permits are obtained, delivery plans are communicated, traffic management plans are implemented, where necessary, and weight limits are not exceeded; (3) as explained in Section 8.8.1 of the Amended Application, the Project may also require the temporary closing or relocating of part of the snowmobile trails to ensure the safety of construction personnel and recreationists during construction activities; additionally, Walleye Wind has coordinated with MnDNR to avoid closures or relocations to snowmobile trails and also

⁶ Exhibit 229 – Walleye Wind Reply Comments at 3.

⁷ Exhibit 244 – Walleye Wind Status Update at 2.

to ensure the safety of construction personnel and recreationists during construction activities; and (4) as explained in Section 8.9.1, electric equipment will be properly grounded.⁸ With respect to construction traffic in South Dakota, there are no plans to use South Dakota roads during construction, and, therefore, there will be no impact to South Dakota roads or traffic during construction.

Further, Section 8.9.1 of the Amended Site Application reviews electromagnetic fields (“EMF”), and the potential for electric fields, magnetic fields, and stray voltage hazards. As noted in this Section, extensive research has been conducted by the National Institute of Environmental Health Sciences that there is no conclusive evidence of negative health impacts from EMF that may be emitted from transmission lines and transformers. Regardless, the separation distances being maintained between transformers, turbines, and collector lines from public access and homes, shows that EMFs associated with the Project are not expected to have an impact on public health and safety. Electrical equipment will be grounded per American National Standards Institute and NESC guidelines to ensure safety and reliability. Grounding the electrical equipment will prevent potential issues related to stray voltage.

Finally, stray voltage is typically not associated with underground electric collector lines, which connects to the Project substation. Therefore, stray voltage is not expected to have an impact on public health and safety. Again, no Project facilities, including underground collection lines, transformers, and transmission lines will be installed in South Dakota.⁹

With respect to quality of life and health, Walleye Wind in Section 8.4 and Appendix B (Sound Study) of the Amended Site Application explained that it conducted a sound study that

⁸ Exhibit 235 – Amended Application for Site Permit at 17, 51, 67, 70.

⁹ *Id.* at 69-70.

showed that the Project complies with the Minnesota Pollution Control Agency's ("MPCA") Sound Standards set forth in Minn. R. 7030.0040. Furthermore, as testified by Richard Lampeter, Walleye Wind's sound expert, the study appropriately used a ground attenuation factor of 0.5:¹⁰

0.5 is representative of the land use there, and in addition it's a -- it is one of the inputs, and it's best to look at the various modeling inputs as a whole, as you can adjust different inputs. But as a whole we have found that the modeling as -- methodology as outlined yields conservative results when compared to post-construction measurements. So that's just one of several that go into the analysis and in combination result in predicted-modeled sound levels that would be equal to or above the measured values under worst-case conditions.

Additionally, as explained in the Amended Site Application, Appendix B peer-reviewed scientific studies and a National Association of Regulatory Utility Commissioners' report show that there is no correlation between wind farms and low frequency and infrasound impacting health.¹¹ As for the impact of shadow flicker, Walleye Wind will also comply with the Section 7.2 of the DSP, including documenting efforts to avoid, minimize, and mitigate shadow flicker exposure.¹²

Furthermore, at the public hearing, Walleye Wind's witness, Chris Ollson PHD, who specializes in the health and welfare impacts of wind farms, testified that the Walleye Wind Project has been designed from a sound and shadow flicker standpoint to ensure that it will not negatively impact human health and welfare.¹³

Given the interest from South Dakota residents on sound and shadow flicker issues, Walleye Wind notes that the closest wind turbine is 3,212 feet from any residence and the highest

¹⁰ Public Hearing Tr. at 34 (May 4, 2021 (6:00 pm session)); Exhibit 236 Amended Sound Study at 6-4 to 6-5 (November 4, 2020) (eDocket No. [202011-168046-03](#)).

¹¹ Exhibit 241 -- Amended Sound Study at 8-2.

¹² Exhibit 349 -- Commission Order Issuing Draft Site Permit and Requesting ALJ Report at 17 (March 24, 2021).

¹³ Public Hearing Tr. at 48, 54-55, 61-62 (May 4, 2021 (6:00 pm session)).

modelled sound at a South Dakota residence is 39 dBA and shadow flicker is 9:17 hours annually. The sound and shadow flicker levels are well below levels that would impact health and welfare, as well as well below the MPCA's sound level requirements and the 30-hour annual shadow flicker metric. Therefore, the evidence in the record shows that the Project will not negatively impact health and welfare.

Benefits to South Dakota

In response to questions on whether South Dakota will benefit from the Walleye Wind Project, Walleye Wind witness, Mike Weich, the project developer, testified:¹⁴

As far as the benefits, sir, of the project potentially in South Dakota, there are benefits of the Walleye Wind project via its location on the border for South Dakota as well. As the environmental report states, Walleye Wind will not emit pollutants into the air during its operations; therefore, South Dakota like Minnesota will get the benefits of wind generation that does not produce pollutants into the air. There's also certainly a possibility due to the location of the project that local South Dakota hotels, businesses, and restaurants will see an economic uptick during the construction from the needs of construction workers for the project.

Consistent with Mr. Weich's testimony, the Amended Site Application in 8.13.2 explains that:

Local businesses within Rock County are expected to experience a short-term positive increase in revenue generation during the construction phase of the Project due to the purchase of goods and services. Patronage at hotels and restaurants, the purchase of consumer goods and services by the various workers associated with the Project, as well as the purchase of materials such as fuel, concrete, and gravel from local vendors will generate revenue for local businesses. It is anticipated that the largest increase in economic activity would be located near the Project, between Luverne and Jasper, Minnesota. The economic impact could also expand into towns and cities within adjacent counties such as Pipestone and Nobles Counties in Minnesota, **Minnehaha County in South Dakota**, and Lyon County in Iowa. (emphasis added)

Therefore, South Dakota will not only benefit from the Project's zero carbon emissions, it could benefit from a positive economic impact to local businesses during construction.

¹⁴ *Id.* at 77-78.

Notification to South Dakota Residents

For notice of its initial Application, Walleye Wind complied the notice requirements set forth in Minn. R. 7854.0600, Subp. 3, which requires that Walleye Wind provide copies of the accepted application to “each landowner within the boundaries of the proposed Large Wind Energy Conversion System (LWECS) site.” Therefore, the landowner list did not include South Dakota residences, because South Dakota is not with the Project’s boundary as all Project facilities are located entirely within Minnesota.

However, in response to South Dakota residents’ requests at the public scoping meeting, South Dakota landowners within a half mile of the Project’s boundary were included in notices going forward, including the notice for the public hearing on May 4, 2021, and receipt of the PUC ordered maps that included turbine locations in relationship to receptors, including receptors in South Dakota. Finally, as Mr. Weich noted at the May 4 public hearing: “[A]s a courtesy prior to filing this application, we did each out to Minnehaha County to understand if they would want a presentation on the project. They did not accept that invitation and did not think we needed to make a presentation to the county and to the community.”¹⁵

Impact on viewshed with turbines

The Amended Site Application at Section 8.5 indicates that the existing viewshed is long and open agricultural landscape, which is includes residences, buildings, shelter belts, and small wooded lots. In addition, as described in Section 9.2, MinWind III-IX (also known as Perch Wind), which consists of seven turbines is located within the Project Area itself. These seven wind

¹⁵ Public Hearing Tr. at 77 (May 4, 2021 (6:00 pm session)).

turbines are no longer operating and Walleye Wind plans to decommission these turbines. Additionally, there are 123 wind turbines in the area, with 114 located within a 10-mile radius around the Project Area and 67 of the 123 turbines located within 10 miles of a proposed turbine location for the Project. Of the 123 wind turbines, 114 are located within a 10-mile radius around the Project Area, while 67 of these 123 turbines are located within 10 miles of a proposed turbine location for the Project. There are also two nearby existing transmission lines, one that is 161 kilovolts, and one that is 345 kilovolts.¹⁶ Therefore, while the Project's wind turbines will be visible, the evidence shows the Project will not be a new view in the landscape of the Project Area, as other wind farms and transmission lines are also visible.

Impact on property values

As explained at the public hearing, there is no anticipated impact on property values in the vicinity of the Project.¹⁷ This conclusion is supported by the Environmental Report that explained:¹⁸

In December 2009, the United States Department of Energy Lawrence Berkeley National Laboratory released a technical analysis of wind energy facilities' impacts on the property values of nearby residences. Using a variety of different analytic approaches, the report found no evidence that sales price of homes surrounding wind facilities were measurably affected by either the view of wind facilities or the distance of the home to those facilities. Though the analysis acknowledged the possibility that individual homes or small numbers of homes may be negatively impacted, it concluded that if these impacts do exist, their frequency is too small to result in any widespread, statistically observable impact.

Therefore, contrary to the generalized concerns regarding property values, the evidence shows that Project should not negatively impact property values.

¹⁶ Exhibit 235 – Amended Application for Site Permit at 38-40; Public Hearing Tr. at 78-79 (May 4, 2021 (6:00 pm session)).

¹⁷ Public Hearing Tr. at 48-49 (May 4, 2021 (6:00 pm session))

¹⁸ Exhibit 109 – Environmental Report (Text) at 91.

Impact on wildlife, livestock, birds, and bats

Walleye Wind completed extensive wildlife studies prior to submittal of the Amended Site Application, including the following: Appendix G (Wildlife Studies), Appendix H (Site Characterization Study), and Appendix I (Wildlife Conservation Strategy or “WCS”). Summaries of individual species and reports may be found in Section 8.20 Wildlife and Section 8.21 Rare and Unique Natural Features of the Amended Site Application. Also, Walleye Wind has utilized the U.S. Fish and Wildlife Service (“USFWS”) Land-based Wind Energy Guidelines for assessing and addressing wildlife concerns during all stages the Project’s development.

Additionally, the Amended Site Application and the WCS, which includes an Avian and Bat Protection Plan, sets forth Walleye Wind’s strategies for protecting wildlife during the construction and operation of the Project. Through the careful siting of the Project, avoidance, or minimization of potential impacts on sensitive areas and wildlife, preparation of the WCS and a Prairie Protection and Management Plan, implementation of construction best management practices, post-construction monitoring, and other active measures will ensure that Project facilities will have limited impact on surrounding wildlife.

Section 8.11 “Land-based Economics” of the Amended Site Application also addressed the use of land for the grazing or pasturing of livestock. Landowners may continue to plant crops near and graze livestock up to the gravel roadway around each turbine pad. Temporary fencing may be put in place. Also, if fencing is impacted it will be repaired or replaced after construction by Walleye Wind. Feedlot impacts will also be avoided during construction.¹⁹ Based on the above

¹⁹ Exhibit 235 – Amended Application for Site Permit at 74-78; 103-126.

evidence, Walleye Wind will appropriately mitigate the impact of the Project on wildlife, livestock, birds, and bats.

Recycling wind turbines

Planned decommissioning methods are provided in Walleye Wind's Decommissioning Plan (Appendix J of the Site Permit Application). Wind turbines are primarily made of steel, fiberglass, and electronic components. With recent advancements in the reuse of fiberglass, now virtually all wind turbine components can be recycled. When turbines are decommissioned, crews will separate components, and, wherever possible, recycle the components in the region where the wind farm is located. Recognizing there was a need to recycle wind turbine blades to keep them out of local landfills, Walleye Wind worked with blade manufacturers and suppliers to develop a plan to ensure blades from our wind projects would be recycled. Walleye Wind also frequently donates decommissioned turbine components to colleges and wind technician programs across the country to provide students with hands-on job training. Therefore, Walleye Wind will appropriately recycle wind turbines.

Move wind turbines away from non-participants in South Dakota

With respect to the requests that Walleye Wind move turbines away from the South Dakota border, the nearest wind turbine to a South Dakota resident is 3,212 feet, and the next closest is 3,640 feet away. The wind turbines, therefore, are already considerable distances from South Dakota residents, and, as already explained, these turbines pose no safety or health risk to residents in South Dakota. Further, moving the turbines to another part of the Project Area will not relieve South Dakota residents nor Minnesota residents from the visibility of the wind turbines, as the landscape that already includes other wind turbines and transmission.

In addition, any moving of the turbines could increase the impact sound and shadow flicker to Minnesota residents, and require execution of new wind rights easements. The record shows that the current layout appropriately reflects the interests of Minnesota landowners that are actively participating in the Project, while mitigating the impacts on non-participating landowners through setback requirements set forth in the DSP. Given that the sound and shadow flicker impact to South Dakota residents is minimal and the turbines are already over 3,000 feet away, there is no legal or practicable reason for Walleye Wind to move the turbines, and, thus, the current locations of the wind turbines near the South Dakota border are reasonable.

Use of prime farmland

The Project will not materially impact the use of prime farmland. Crops will be able to be planted up to the gravel roadway around each turbine pad and up to the access roads. Further, Table 30 of the Amended Site Application shows that of the total Project Area of 31,095 acres, less than 20 acres of prime farmland and less than 10 acres of prime farmland, if drained, will be permanently impacted. Therefore, the Project will have minimum impacts on prime farmland.²⁰

GPS, wireless utility supporting system, television, and phone interruptions

Walleye Wind has conducted an Electromagnetic Interference Analysis (Appendix D) as part of the Amended Site Permit Application. The analysis summarizes the following within the Amended Site Application: the known microwave beam paths (Section 8.6.2 Communication Systems), television towers (Section 8.6.3 Television), telephone service (Section 8.6.4 Cell Towers and Broadband Interference), and aviation towers (Section 8.9.2 Aviation).

The Project has been sited to minimize any anticipated impacts to microwave beam paths, television reception, radio reception, communication lines, cell phone reception, internet services,

²⁰ *Id.* at 76.

or aviation communications. This applies to communication lines, stations, and towers located both within Minnesota and South Dakota. In the event during operations interference is suspected, Walleye Wind will address the interference on a case-by-case basis, using the process described in the Amended Site Application.²¹ Finally, Section 5.3.17 of the DSP requires Walleye Wind to “submit to the Commission an assessment of television and radio signal reception, microwave signal patterns, and telecommunications in the project area” prior to the pre-construction meeting. Thus, Walleye Wind has appropriately addressed any electronic interference resulting from the Project.

Damage to roads

As described in Section 8.6.1 of the Amended Site Application, temporary impacts are expected to public roads during the construction phase of development as materials, personnel, and equipment will be brought in via existing highways and roads. Existing road infrastructure within the Project Area consists of federal, state, county, and township roads that typically follow section lines, farmstead driveways, and farming access roads. Walleye Wind will complete all necessary road improvements required for the construction of the Project, along with formalizing a road development agreement with applicable roadway authorities to ensure that impacted or damaged roadways will be restored to their original condition or better. The Project will utilize only roads entirely located in Minnesota consisting of federal, state, Rock County, or local township roads for access to the Project for construction. Also, all turbines will be setback no less than 250 feet from roads.²² Therefore, Walleye Wind will appropriately address damage to roads during construction and operation.

²¹ *Id.* at 51-73.

²² *Id.* at 51.

Debris from wind turbines

While it is unlikely debris will fall from the wind turbines, if it does, Walleye Wind's operations and maintenance team will coordinate with local emergency management officials via their standard operating procedures to address any such debris. Pursuant to Section 10.11 of the DSP, Walleye Wind will prepare an Emergency Response Plan which will include procedures to be followed in the event that a wind turbine is damaged.²³ Therefore, Walleye Wind will appropriately address the unlikely event of debris falling from a wind turbine.

Impact on Aerial Spraying

With respect to the concern that the Project will impact aerial spraying, as explained in Section 8.9.2 of the Amended Site Application, Walleye Wind's operations will coordinate with crop dusting plane pilots, and will work with them on a case-by-case basis. If notified prior to aerial application activities in the Project vicinity, Walleye Wind can adjust turbine direction to create flyways through the wind farm when advance notice of flight plans is provided. This can facilitate crop dusting activities in the Project vicinity. If requested, Walleye Wind may also shut down the turbines to reduce air turbulence to allow for aerial application within or near the Project. Therefore, there should be no adverse impact to aerial spraying, because Walleye Wind will work with landowners to curtail turbines, as needed, so that crops can be dusted safely.

DSP Conditions Generally

In their comments, Walleye Neighbors allege that the DSP inappropriately relies on site permit standards applicable to wind projects less than 25 MWs in size.²⁴ As the Walleye Neighbors concede, however, the Commission has rejected such criticisms after "being challenged on this

²³ Commission Order Issuing Draft Site Permit and Requesting ALJ Report at 24-25 (March 24, 2021).

²⁴ Walleye Neighbors' Comments at 3 (May 20, 2021).

repeatedly.”²⁵ Indeed, the standard conditions incorporated into the DSP have been adopted in numerous Site Permits issued by the Commission.²⁶ Simply because some of the conditions mirror the conditions adopted for smaller wind farms does not mean that they are not also appropriate for larger wind farms – nor do the Walleye Neighbors demonstrate otherwise. As the Commission has previously determined, Walleye Neighbors' criticisms of the DSP standard conditions are without merit.

II. SITE PERMIT SECTIONS

A. Response to the Comments of DOC-EERA

In its May 20, 2021 comments, DOC-EERA proposed the following edits to DPS Section 7.2 related to shadow flicker:

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.~~ The Permittee shall prepare a Shadow Flicker Management Plan detailing the results of any shadow flicker modeling, assumptions made, levels of exposure prior to implementation of planned minimization and mitigation efforts, planned minimization and mitigation efforts, and planned communication and follow up with resident. The Shadow Flicker Management Plan shall be filed with the Commission at least 14 days prior to the preconstruction meeting to confirm compliance with conditions of this permit.

²⁵ *Id.*

²⁶ See e.g., *In the Matter of the Application of Buffalo Ridge Wind Energy, LLC for a Site Permit for the 109 MW Large Wind Energy Conversion System in Lincoln and Pipestone Counties, Minnesota*, DOCKET NO. IP-7006/WS-19-394, ORDER GRANTING CERTIFICATE OF NEED AND ISSUING SITE PERMIT (January 5, 2021).

Should shadow flicker modeling identify any residence of a non-participating landowner that will experience in 30 hours, or more, of shadow flicker per year, the Permittee must specifically identify these residences in the Shadow Flicker Management Plan. If through minimization and mitigation efforts identified in the Shadow Flicker Management Plan the Permittee is not able to reduce anticipated shadow flicker exposure at a nonparticipating landowner’s residence to less than 30 hours per year a shadow flicker detection systems will be utilized during project operations to monitor shadow flicker exposure at the residence. The Shadow Flicker Management Plan will detail the placement and use of any shadow flicker detection systems, how the monitoring data will be used to inform turbine operations, and a detailed plan of when and how turbine operations will be adjusted to mitigate shadow flicker exposure exceeding 30 hours per year at any one receptor. The results of any shadow flicker monitoring and mitigation implementation shall be reported by the Permittee in the Annual Project Energy Production Report identified in Section 10.9 of this Permit.

Commission staff and EERA staff will be responsible for the review and approval of the Shadow Flicker Management Plan. The Commission may require the Permittee to conduct shadow flicker monitoring at any time during the life of this Permit.

Walleye Wind is agreeable to DOC-EERA’s proposed edits and additions to Section 7.2 of the to the DSP, with the addition of the following language: “In the event that Walleye Wind and a non-participant landowner with modelled expected shadow-flicker of 30 hours or more a year reach a mutual agreement on the mitigation of the shadow-flicker, Walleye Wind is not required to implement a Shadow Flicker Management Plan for that non-participant. Walleye Wind will notify the Commission of any such mutual agreement on the mitigation of shadow flicker.” Such a provision addresses the DOC-EERA’s concerns with potential impacts on non-participating landowners and allows Walleye Wind to address any concerns directly with the landowner.

B. Response to the comments of MnDNR

In its May 20, 2021 comments, MnDNR requested that the DSP include a new permit condition that requires Walleye Wind to avoiding stream crossings during the Topeka shiner spawning season, mid-May through mid-August, if streamflow is present.²⁷ Walleye Wind is

²⁷ Comments of MnDNR (May 20, 2021).

agreeable to MnDNR's proposed new condition, and would recommend it read: "The Permittee shall not conduct any stream crossing activities from mid-May through Mid-August, if streamflow is present in the stream."

C. Response to Walleye Neighbors

In their May 20, 2021 comments, Walleye Neighbors requested a number of revisions to the DSP.²⁸ Walleye Neighbors claim that Section 4.1 does not include typical condition related to the placement of wind turbines no closer than five rotor diameters on the prevailing wind directions and three rotor diameters on the non-prevailing wind directions from a non-participant. Walleye Neighbors are incorrect. The plain language of Section 4.1 includes this typical setback:

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.

Hence, there is nothing to add to Section 4.1, and, therefore, Walleye Neighbors' request should be rejected.

Walleye Neighbors also incorrectly claim that Section 4.2 requirement that wind turbines comply with the MPCA sound requirements only requires that the wind turbines be 1000 feet from all residences. Walleye Neighbors' reading of the Section is misplaced, as Section 4.2 requires the greater of 1000 feet if required to comply with MPCA's sound requirements. Walleye Wind's nearest turbine to any resident is alternative turbine location No. 8, which is 1,325 feet away from receptor 147, and all turbine locations are modelled to comply with MPCA sound requirements. Accordingly, there is no need to revise Section 4.2, and, therefore, Walleye Neighbor's request should be rejected.

²⁸ Comments of Walleye Neighbors (May 20, 2021).

Walleye Neighbors assert that Section 4.3 inappropriately allows Walleye Wind to use a 0.5 ground attenuation factor and does not require verification of the use of noise reduced operating (“NRO”) mode. As noted above, it is an industry standard to use a 0.5 ground attenuation factor, which has been recognized by the Commission in issuing recent Site Permits where such a ground factor was used.²⁹ Further, under Section 7.4 of the DSP, Walleye Wind is required to conduct a post construction sound study to demonstrate compliance with MPCA’s sound requirements, which will confirm and test modeling results and assumptions.

Similarly, Walleye Wind has already committed to use NRO, as required, to comply with MPCA’s sound requirements. Therefore, the requirement to conduct a post construction sound study to verify compliance with MPCA’s sound requirements, coupled with its commitment to use NRO, as required, negates any need to modify Section 4.3 as requested by Walleye Neighbors.

Walleye Neighbors assert that Sections 4.4 and 5.3.13 regarding setbacks of 250 feet from public roads is insufficient, given concerns with ice throw from the wind turbines and MnDOT’s concerns with the 250-foot setback. During wind turbine operations, Walleye Wind turbines will shut down when there is a buildup of ice on the blades that causes an imbalance, which mitigates ice throw. In addition, as the record shows Walleye Wind has coordinated with MnDOT on the location of the wind turbines in relation to I-90 and MnDOT is satisfied with Walleye Wind’s plan.³⁰ In particular, Turbine 22, the closest turbine to I-90, is 620 feet from the fence line north of I-90 and 690 feet to the north edge of the shoulder. This distance is more than 1x the turbines height which is 528 feet. Thus, given Walleye Wind’s operational mitigation of ice throw, as well

²⁹ See e.g., *In the Matter of the Application of Buffalo Ridge Wind Energy, LLC for a Site Permit for the 109 MW Large Wind Energy Conversion System in Lincoln and Pipestone Counties, Minnesota*, DOCKET NO. IP-7006/WS-19-394, ORDER GRANTING CERTIFICATE OF NEED AND ISSUING SITE PERMIT at 11 (January 5, 2021).

³⁰ Exhibit 247 – Walleye Wind Reply Comments to MnDOT (February 24, 2021) (eDocket No. [20212-171310-02](#)).

as MnDOT's concurrence with turbine placement, there is no need to revise Sections 4.4 and 5.3.13 of the DSP.

In the context of Section 4.5, Walleye Neighbors assert viewshed concerns related to the distance of wind turbines from Blue Mounds State Park and Palisades State Park. However, the closest turbines to Blue Mounds State Park are approximately 6.7 miles, with another wind turbine approximately 7 miles away, and there are no wind turbines within 5 miles of the park. The nearest wind turbines to Palisades State Park are approximately 3.4 miles, with another wind turbine approximately 3.5 miles away, and only six turbines within 5 miles of the park. Also, as explained above, there are numerous wind turbines and two high voltage transmission lines in the viewshed of the Project. Thus, the distance of the wind turbines from the parks coupled with the already existing viewshed that includes infrastructure demonstrates there is no need or basis to revise Section 4.5, and, therefore, Walleye Neighbors' requested modifications should be rejected.

Walleye Neighbors claim that Section 4.10 related to internal turbine spacing should be more than three rotor diameters in the non-prevailing wind directions and five rotor diameters on the prevailing wind directions, and the condition should require oversight of the Applicant's determination to move up to 20 percentage of the wind turbines closer than the three rotor diameter by five rotor diameter setback rule. First, Walleye Wind is confident that it will not need to move many, if any, wind turbines closer than the allowed three by five setback rule allows, based on its micro-siting to date. Second, Walleye Neighbors also ignore the fact that Walleye Wind must comply with other setbacks associated with sound compliance that also impact Walleye Wind's ability to move wind turbines closer. It should also be recognized that the purpose of Section 4.10 is ensuring economic use of wind resources, as moving turbines closer to each other can impact the ability of the wind turbine to produce energy due to waking from another turbine. Therefore,

there is already an economic incentive for Walleye Wind not to move wind turbines closer together as it could impact Project economics. As noted, other provisions of the DSP also address setbacks to mitigate impacts to landowners. Thus, for these reasons, Walleye Neighbor's requested changes to Section 4.10 should be rejected.

Walleye Neighbors request that Section 5.1 be revised to require timely responses to complaints and associated mitigation, and not require the landowner to execute a waiver an effects agreement, waiver, associated compensation. Affiliates of Walleye Wind, such as Buffalo Ridge, LLC, Lake Benton, LLC, FPL Energy Mower Wind, LLC, and Marshall Solar, LLC have constructed, owned, and operated wind and solar projects in Minnesota for many years and without issue on addressing complaints. Accordingly, there is no evidence that supports revising Section 5.1 beyond the standard language, because there is no evidence that Walleye Wind will perform to any less of a standard on complaints and responsiveness to landowner concerns than its affiliates.

Walleye Neighbors assert that Section 5.3.17 should include language that any issue related to interference must be addressed without a requirement that the complainant execute a waiver. Walleye Wind has already committed to detailed processes to remedy any inference the project causes with electronic devices, such as radio, television, cell towers. *See* Amended Application at 51-71. These procedures do not require the landowner sign a waiver to obtain mitigation. In the event a waiver was sought, it would only be sought if the landowner was in mutual agreement that waiver was reasonable. Thus, there is no need to revise Section 5.3.17.

Walleye Neighbors assert that Section 7.2 on shadow flicker needs to prohibit the allowance of shadow flicker over 30 hours annually. This request should be rejected. Walleye Wind has already agreed to DOC-EERA additions to Section 7.2 that address the issue of non-participants experiencing shadow flicker over 30 hours, with the understanding that Walleye Wind can

mutually agree with non-participants on a mitigation plan that allows for that residence to experience more than 30 hours of shadow flicker. A similar mitigation and consultation process was recently approved by the Commission in issuing a Site Permit.³¹ With the additions of DOC-EERA and Walleye Wind, there is no need to further revise Section 7.2.

Walleye Neighbors assert that Section 7.4 should mandate that the post construction sound study be completed within 6 months, and sound studies should be mandated for any substantive sound complaint within the Project footprint. Walleye Wind is required to conduct a sound study to confirm compliance within 18 months. The number of sound experts who can conduct these studies are limited and it is impracticable to mandate the study be completed in 6 months when the resources are limited. Further, it is not appropriate to require a sound study based on a complaint. Sound studies generally costs \$100,000 if not more, and the complaint may be resulted to a mechanical issue that can be resolved without a study. The Commission ultimately has the authority to order a sound study should it find such a study is warranted. Accordingly, Walleyes Neighbors' proposed revisions to Section 7.4 should be rejected.

Walleye Neighbors recommend that Section 7.5.2 hardwire curtailments due to bird and bat mortalities. The record shows that Walleye Wind has completed a number of studies related to the impact of the Project on birds and bats, and has also developed, and will continue to refine, a WCS. The studies and strategies are found in Appendices G, H, and I of the Amended Site Application, as well as in Section 8 of the Application. In addition, Section 7.5 and its subparts set forth a comprehensive regulatory scheme to monitor and address bird and bat mortalities, and,

³¹ See e.g., *In the Matter of the Application of Buffalo Ridge Wind Energy, LLC for a Site Permit for the 109 MW Large Wind Energy Conversion System in Lincoln and Pipestone Counties, Minnesota*, DOCKET NO. IP-7006/WS-19-394, ORDER GRANTING CERTIFICATE OF NEED AND ISSUING SITE PERMIT at 14 (January 5, 2021) (“Permit condition 7.2 Shadow Flicker is amended to include a requirement that the permittee shall provide a discussion detailing the communications with all the landowners with the expected shadow flicker of more than 30 hours regarding possible mitigations and the complaint process.”).

including the feathering of wind turbine blades from April 1 to October 31. Therefore, there is no reasonable basis to mandate additional feathering or curtailments for Walleye Wind. Thus, the revisions to Section 7.5.2 proposed by Walleye Neighbors should be rejected.

Walleye Neighbors assert that Walleye Wind should be required more than 14 days prior to the pre-construction meeting to demonstrate it has wind rights as part of Section 8.2. At the evidentiary hearing, Walleye Wind indicated it had 95% of the wind rights needed to construct and operate the Project,³² and, further, it now notes that it has wind rights for 98% of the Project. Given it is not set to start construction until early Fall, there is no need to require a showing of wind rights at 100% prior to 14 days before the pre-construction meeting. Therefore, Walleye Neighbors revision to Section 8.1 should be rejected.

Walleye Neighbors requests that the Commission open a docket to review its complaint procedures set forth in Section 9 of the DSP. There is no evidentiary basis for such a docket to be open as part of this proceeding. Although the Commission has the discretion to open such a docket if it so desires, there is no evidence in this record that support the need for such a proceeding. Thus, Walleye Neighbors' request should be rejected.

Walleye Neighbors assert the pre-construction and pre-operations meeting should be noticed as part of Sections 10.1 and 10.2. Walleye Neighbors' concern that without notice the public would be unable "to verify if studies and documents are produced"³³ is unwarranted. All studies, reports and compliance matters that are required to be filed prior to such meetings under the terms and conditions of the DPS are filed in the Commission docket and publicly available for review. There is no basis to depart from past practice with respect to Sections 10.1 and 10.2 of the DSP.

³² Public Hearing Tr. at 21 (May 4, 2021 (6:00 pm session)) ("In Section 7 of the amended site application and subsequent updates, Walleye Wind has explained the status of wind rights, which currently sits at 95 percent.").

³³ Walleye Neighbors' May 20 Comments at 13.

Walleye Neighbors recommend that Section 10.11 require a plan and timeline to the training of Emergency Responders, with no basis or explanation. Given the lack of any foundation for such a request, it should be rejected.

Walleye Neighbors request that the Project decommissioning plan (Section 11) should be revised to require the entire foundation to be removed, a contingency factor for cost estimates, the cost of labor, estimate of time it will take to return the land to reasonable productivity, and a prohibition on transferring of decommissioning responsibility to the landowner. Walleye Wind has the complete responsibility for decommissioning, not the landowner. Further, its cost estimates are best efforts based on current information. In addition, Walleyes Neighbors' generalized implication that removal of the entire foundation is better than extracting four feet of foundation is misguided for the following reasons:

1. Removing the entire foundation can cause new and more damage to surrounding area, particularly wetlands.
2. Landowners generally want decommissioning to be practicable and precise so it does not interrupt crop production or result in more restoration. Requiring the entire foundation be extracted could impact crop production and will result in longer decommission and restoration efforts.
3. Walleye Wind is already required to work with MPCA to ensure that any remove or concrete meets their regulatory requirements, and, therefore, the Commission should defer to MPCA on the removal of foundation to four feet, rather than mandating a new requirement in the Site Permit.

In addition, Walleye Wind has agreed to the changes in the decommissioning plan requested by DOC-EERA. Therefore, no additional changes to the decommissioning plan to Section 11 are warranted.

Walleye Neighbors assert the Site Permit should address property values. As explained herein and in the Environmental Report there is no evidence that property values will be negatively

impacted by Walleye Wind. Therefore, there is no basis to include a condition on property values in the Site Permit.

III. Clarification of Project Capacity

Walleye Wind clarifies that the DSP should be revised to reflect a maximum generating capacity of 109.7 MW, instead of 109.2 MW. While it is correct that the Project could be constructed with a capacity of 109.2 MW, there is a potential for an additional .5 MW in capacity due to changes from primary turbine site to an alternate turbine site, which, in turn, impacts the use of NRO and slightly reduces Project capacity. Specifically, for the Walleye Wind Project, NRO will be one of Modes 1, 2 and 3, with 3 being the most restrictive. Walleye Wind plans to use NRO at the following six turbine locations: Wind Turbines 4, 5, 30, 31, 32, and Alternate 8. If the planned primary turbines for construction are used, the project capacity will be 109.2 MWs. However, if turbine location Alternative 7 is not constructed, turbine location Turbine 4 will then need to operate under NRO Mode 2, instead of NRO Mode 3 and Turbine 5 will operate under normal operation instead of NRO Mode 1. In this scenario, the Project capacity increases by 0.5 MW to 109.7 MWs, because of Turbine 4 operating with less NRO at the NRO Mode 2 and Turbine 5 not operating in NRO Mode 1. Accordingly, Walleye Wind requests that the DSP when finalized reflect that Project capacity could be up to 109.7 MW rather than 109.2 MW.

IV. Conclusion

With these responses and the Proposed Findings, Walleye Wind submits that Judge Mortenson has the information needed to draft and issue his Report and recommend issuance of a Site Permit for the Walleye Wind Project.

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Brian J. Murphy
Managing Attorney
NextEra, Energy Resources, LLC
700 Universe Blvd.
Juno Beach, FL 33408
(561) 694-3814
Brian.J.Murphy@nee.com

Respectfully Submitted,

/s/ Brian Meloy

Brian Meloy
Stinson
50 South Sixth Street
Suite 2600
Minneapolis, Minnesota 55402
(612) 335-1451
Brian.Meloy@stinson.com