

Staff Briefing Papers

Meeting Date February 17, 2022 Agenda Item *1

Company Zephyr Wind, LLC

Docket No. **IP-6871/WS-11-863**

In the Matter of the Site Permit Amendment Application of Zephyr Wind, LLC for the Community South Wind Repower Project in Nobles County, Minnesota

Issue

1. Should the Commission adopt the Findings of Fact and Conclusions of Law Report?
2. Should the Commission grant the site permit amendments as requested?

Staff Cezar Panait Cezar.Panait@state.mn.us 651-201-2207

 Relevant Documents	Date
Site Permit Amendment Application (21 parts)	September 30, 2021
DOC EERA Comments on Application Completeness and Draft Site Permit	November 1, 2021
Notice of Public Information Meeting and Comment Period	November 8, 2021
MN DNR Comments	December 13, 2021
MN DOT Comments	December 16, 2021
Nobles County Comments	December 21, 2021

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.

 **Relevant Documents**

Date

Zephyr Wind Reply Comments, Wind Access Buffer Request,
Proposed Findings of Fact

January 7, 2022

DOC EERA Comments on FOF and Draft Site Permit

January 14, 2022

Zephyr Wind, LLC Reply Comments

February 4, 2022

I. Statement of the Issues

1. Should the Commission adopt the Findings of Fact and Conclusions of Law Report?
2. Should the Commission grant the site permit amendments as requested?

II. Project Description

Zephyr Wind, LLC (Community Wind or Applicant) proposes repowering the existing MM92 turbines using Vestas V110 turbines. The Applicant's proposed repowering includes the removal of the old nacelles and blades, installing an adapter on top of the existing towers, followed by the placement of new nacelles and blades. Community Wind proposes to repower each of the 15 existing MM92 turbines. The increase in the length of the blades is from 92.5 m to 110 m (303 ft to 361 ft), and the increase to the hub height of the existing structures is from 98.5 m to 105.05 m (323 ft to 345 ft), resulting in an increase in the rated capacity of each turbine from 2,050 kW to 2,200 kW. The increased hub height includes a 7 m (23 ft) adapter added to the existing towers. Community Wind indicated that it had selected the Vestas 110 because of its increased rotor sweep, hub height, and performance reliability, while still being able to utilize the existing foundations and towers.

The longer blades will more efficiently convert the wind to energy, and with the increase in hub height the turbines should encounter faster wind speeds than the existing turbines. The Vestas 2.2 MW turbines will replace the existing MM92 2.05 MW turbines resulting in a change in the name plate capacity of the project of 2.25MW from 30.75MW to 33 MW. Despite the higher capacity rating, the project will be governed at the Point of Interconnect (POI) to maintain power delivery to the grid at or below 30.75 MW provided for under the existing interconnection agreement with the Midcontinent Independent System Operator (MISO).

The Applicant indicated that minor facilities upgrades will also be required in order to comply with the requirements of its amended GIA and plans to utilize the existing foundations, towers and much of the electrical infrastructure and access roads. Minor upgrades to the electrical collection system may be needed to support the higher capacity turbines and the project substation/switchyard may require an expansion on one side to install new capacitor banks for each medium voltage circuit to meet voltage and power factor requirements as required by MISO. The applicant will not be moving or adding turbines to the project and the project boundary will not be altered.

The Applicant has lease agreements for all 15 wind turbine locations and seeks to extend the length of the agreements, although the current lease agreements allow for the activities associated with repowering the project. Critically, several of the 3 RD x 5 RD wind access buffer setbacks extend outside the current project boundary within lands encumbered by wind lease agreements for the Nobles Wind Project owned and operated by Xcel Energy. Originally, the Community Wind South Project obtained rights to these overlapping wind access buffer setback areas via an acknowledgement and consent from Xcel. For the Repower Project, Community Wind is coordinating closely with Xcel Energy to finalize a mutual consent agreement and to obtain non-exclusive wind rights agreements directly from the affected landowners.

Community Wind anticipates that the project will be constructed and operational by December 2022.

The following table (Table 5.2 in the application) provides a wind turbine characteristics comparison between the old turbines and the new turbines being proposed:

Design Features	Existing REpower 2.05 MW Wind Turbines	Repowered Vestas V110 2.2 MW Wind Turbines
Rated Capacity	2,050 kW	2,200 kW
Nameplate Capacity	30.75 MW	33 MW
Hub Height	323 ft (98.5 m)	345 ft (105.05 m)
Adapter	N/A	7 m adapter for Vestas turbines will be installed on top of existing towers
Total Height	475 ft (144.75 m)	525 ft (160.05 m)
Rotor Diameter	303 ft (92.5 m)	361 ft (110 m)
Design Life	Minimum of 20 years	Minimum of 20 years
Cut in Wind Speed	6.7 mph (3 m/s)	6.7 mph (3 m/s)
Power Regulation	The rotor utilizes blade pitch regulation and variable speed operation to achieve optimum power output at all wind speeds. Unit is also equipped with low voltage ride through technology.	The rotor utilizes blade pitch regulation and variable speed operation to achieve optimum power output at all wind speeds. Unit is also equipped with low voltage and over voltage ride through technology.
Generation	2.05 MW per turbine	2.2 MW per turbine
Tower	Multi-coated, conical tubular steel with safety ladder to the nacelle	Multi-coated, conical tubular steel with safety ladder to the nacelle
Nacelle Bedplate	2 part - cast iron front part; girder structure rear part	2 part - cast iron front part; girder structure rear part
Main Bearings	Spherical roller bearings	Spherical roller bearings
Supervisory Control and Data Acquisition (SCADA)	Each turbine is equipped with SCADA controller hardware, software and database storage capability	Each turbine is equipped with SCADA controller hardware, software and database storage capability
FAA Lighting	Standard FAA lighting	Standard FAA lighting

III. Statutes and Rules

Site Permit Issuance. Under Minn. Stat. § 216F.03, the siting of a large wind energy conversion system will be done in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.

Permit Amendment. Minn. R. 7854.1300, subp. 2, provides that the Commission may amend a site permit for a large wind energy conversion system at any time if the Commission has good cause to do so.

Under Minn. Stat. § 216F.04 (d), the Commission may place conditions in a permit and may deny, modify, suspend, or revoke a permit. Section 11 of the 2012 Community Wind South

LWECS Site Permit provides that “this permit may be modified or amended for cause...” at any time by the Commission.

IV. Procedural History

On September 30, 2021, Community Wind South, LLC filed a site permit amendment application to repower the 30.75 MW Community Wind South Project.

On November 1, 2021, the Department of Commerce Energy Environmental Review and Analysis (DOC EERA or Department) provided comments on application completeness, recommendations on the review process, and introduced a draft sample permit.

On November 8, 2021, Commission issued a Notice of Public Information Meeting and Comment Period for the in-person public meeting held on November 29, 2021 in Reading, MN followed by a virtual public meeting on November 30, 2021.

On November 29, 2021, staff from the Commission and DOC EERA conducted an in-person public meeting in Reading, MN followed by a virtual public meeting on November 30, 2021. A comment period was open until December 17, 2021.

On December 13, 2021, Minnesota Department of Natural Resources submitted comments.

On December 16, 2021, Minnesota Department of Transportation submitted comments.

On December 21, 2021, Nobles County Planning and Zoning submitted comments.

On January 7, 2022, Community Wind submitted reply comments, a wind access buffer request, and proposed findings.

On January 14, 2022, DOC EERA submitted comments and recommendations on Community Wind’s proposed Findings of Fact and on the draft site permit, as amended by the Applicant.

On February 4, 2022, Community Wind submitted reply comments.

Department of Commerce, Energy Environmental Review and Analysis

DOC EERA submitted initial comments on application completeness and the review process on November 1, 2021. The Department concluded that the site permit amendment application contained sufficient information necessary to begin the review process and recommended the Commission review the application using the “partial repowering” process as described in Table 2 of the comments.¹ DOC EERA also submitted a Draft Site Permit to be used by state and local agencies and the public to comment on and propose additional permit conditions, where applicable. DOC EERA staff prepared the Draft Site Permit based on the Commission’s LWECS

¹ DOC EERA Comments, pg. 3, Document ID# [202111-179411-01](#)

site permit template and on recent repowering permit amendments granted by the Commission.

EERA also provided comments regarding the following topics: Draft Decommissioning Plan, Pre-Construction Noise Modeling, Draft Site Permit, Wind Access Buffer Setback, Turbine Tower Lighting, Avian and Bat Fatality Monitoring, Prairie Protection Plan, Zoning and Project Setbacks, Third Party Construction Monitor, Applicant Requested Site Permit Changes, and Other Amendments and Clarifications. Rather than trying to summarize the Department's complete set of comments addressing these various topics, staff refers the Commission to EERA's November 1, 2021, and January 14, 2022, Comments².

A. Public Meeting Comment Period

Minnesota Department of Natural Resources

The Minnesota Department of Natural Resources (DNR) filed comments on the Project, indicating that the site permit application does not include a plan for post-construction fatality monitoring. The DNR recommended two years of post-construction fatality monitoring, which is consistent with the monitoring requirements included in recent site permits and site permit amendments issued by the Commission. The Draft Bird and Bat Conservation Strategy (provided in Appendix K) should be revised to include a post-construction fatality monitoring plan. It is noteworthy that post-construction fatality monitoring was not conducted for the original Community Wind South Wind Project.

DNR also stated that any DNR permits, or licenses required for the project will not be granted until the PUC has issued an approved permit for this project.

Minnesota Department of Transportation

MnDOT submitted comments on the Project indicating that with any repower/upgrade wind project, existing turbine locations in proximity (minimum 250-foot setback) to state trunk highway right of way warrant concern regarding the proposed height increases as they relate to the safety of the traveling public in the project area. MnDOT indicated these proposed height changes should be taken into consideration when reviewing the potential human and environmental impacts of this project and not solely as they apply to their agency's concerns. For this project, none of the existing turbines are near state trunk highway right-of-way and therefore, do not present any concerns for MnDOT.

The Applicant has indicated that there are no planned changes to the collection line crossing of MnDOT trunk highway (TH) 266. Should this information change and upgrades to lines affecting MnDOT right-of-way be needed, the Applicant will need to work with MnDOT District 7 staff on applicable utility permits for those changes. Additionally, any state highways or state highway

² DOC EERA Comments and Recommendations on Amended Site Permit Application and Draft Site Permit, Document ID [20221-181561-01](#).

intersections that will need minor upgrading or modifications to deliver new equipment, or haul replaced equipment, would require the same coordination. It should be noted that all utility permit applications are subject to review by MnDOT's Office of Environmental Stewardship which could result in additional permitting criteria and/or a request to move the line outside of any significant area of environmental concern.

Any MnDOT permits applied for as a part of the Community Wind South Project will not be issued until the PUC has issued an approved, amended Site Permit for this project. All applicable permitting, traffic control and construction coordination efforts should be made through MnDOT's District 7B Engineering Specialist.

Nobles County

Nobles County submitted comments regarding waivers to the Nobles County Zoning Ordinance for certain turbine setback requirements as follows:

Turbine T-9: Nobles County required setback to road right-of-way is one times the height, however, may be reduced for minimum maintenance roads. This turbine is located on a minimum maintenance road; therefore, Nobles County does not have an issue with the waiver request of 23 feet from the required setback for this turbine. No permits will be required by Nobles County for the repower of this turbine.

Turbine T-15: Nobles County requires a 600-foot setback from wetlands, USFW Types III, IV, and V. The Applicant indicated in an email to Nobles County that the wetland delineation determined the setback will be 23 feet short of the required setback. As there have not been any complaints/concerns received by Nobles County concerning this turbine and the effects on the wetland area, no permits will be required by Nobles County for the repower of this turbine.

Turbines T-6, T-12 and T-13: Nobles County requires a setback of 1.25 times the total height from property lines. During the public meeting held by Commission and Department of Commerce staff, the applicant indicated they were in negotiations with two of the property owners affected and in subsequent email communication received from the Applicant, it now appears that all the neighboring landowners have now agreed to become project participants, pending recording of the appropriate documents. Therefore, no permits will be required by Nobles County for the repower of these turbines.

Nobles County indicated they do not support Community Wind requesting the MPUC remove references to the Nobles County setbacks from the project's state site permit entirely.

Lastly, Nobles County requested that a Road Agreement and Decommission Plan, including written financial security for Nobles County be completed prior to the beginning of construction in calendar year 2022.

Community Wind

On January 7, 2022, Community Wind submitted comments which included responses to agency and public comments, a map showing the wind access buffer setback waiver requests

(Attachment 2), and Community Wind Proposed Findings of Fact and Conclusions of Law (Attachment 3).

Response to DOC-EERA comments

Community Wind responded to DOC EERA comments from November 1, 2021 addressing the following matters:

Draft Site Permit

Community Wind proposed the following additions and modifications to the draft site permit, mainly for clarity and accuracy:

- Section 2 (Project Description). The Project description in the draft site permit is largely accurate, but Community Wind is planning some modest upgrades to Project facilities (as described in the Application) that may not be adequately reflected. Community Wind recommended the following updates:

2 PROJECT DESCRIPTION

The project is a repowering of the existing Community Wind South's existing 15 repower MM92 turbines with the Vestas V110 turbines will result in an increased rating capacity from 30.75 MW to 33 MW capacity. The repowering of all 15 turbines includes (1) removing the old nacelles and blades; (2) installing an adapter on top of the existing tower; (3) installing new nacelles and blades; (4) installation of a lighting mitigation system; (5) minor upgrades to the underground electrical connection system; (6) minor upgrades and expansion of the substation/switchyard; (7) upgrades to meteorological towers; (8) and other minor updates to project facilities.

There are no changes to existing turbine locations, ~~turbine towers, meteorological towers, the underground electrical connection system, or the project substation.~~ The nameplate capacity of the wind farm increases from 30.75 MW to 33 MW, with generation at the interconnection point remaining at 30 MW per MISO agreement. The project area includes approximately 3,111 acres of land, and the Permittee currently holds easements and participation agreements with all landowners within the project area. Upon completion of Project construction and restoration, the project site will include no more than 3,111 acres of land for wind turbines and associated facilities approved by this site permit.

- Section 4.1 (Wind Access Buffer). Section 4.1 of the draft site permit appears to be missing some language in the first sentence. Community Wind proposed adding the language below to complete the sentence to be consistent with the Commission's LWECS site permit template. In addition, as noted above, Community Wind has requested wind access buffer setback waivers with respect to turbines T-1, T-3, T-12, T-13, and T-14.

4.1 Wind Access Buffer

Wind turbine towers shall not be placed less than five rotor diameters on the prevailing wind directions and three rotor diameters on the non-prevailing wind directions from the perimeter of the property where the Permittee does not hold the wind rights, without the approval of the Commission. For areas that extend outside the project boundary and overlap with lands encumbered by wind lease agreements for the Nobles Wind Project (owned and operated by Xcel Energy), the applicant shall provide verification of the mutual consent agreement with Xcel Energy and non-exclusive wind rights agreements from the affected landowners. This section does not apply to public roads and trails.

The Commission authorizes a variance of the wind access buffer setback for the following turbine locations: 5 turbines, including turbines: T-1, T-3, T-12, T-13, and T-14.

These variances are granted on the condition that the permittee shall extend a final offer to the remaining landowners for the same amount and terms agreed to by other landowners in similar circumstances or their last offer, whichever is higher. At least 14 days before the preconstruction meeting, the permittee must make a compliance filing describing in detail the results of the negotiation.

- Section 4.11 (Meteorological Towers); Section 5.3.29 (Federal Aviation Administration Lighting). The MnDOT permits tall structures and it is Community Wind's understanding that such permits can include lighting requirements (typically by reference to Federal Aviation Administration requirements). Therefore, Community Wind recommended including a reference to the MnDOT in Sections 4.11 and 5.3.29 as set forth below. In addition, Community Wind requested that Section 5.3.29 be clarified to confirm that the lighting mitigation system requirement applies only to turbine towers, which would be consistent with the requirements of Minn. Stat. § 216F.084.

4.11 Meteorological Towers

Permanent towers for meteorological equipment shall be free standing. Permanent meteorological towers shall not be placed less than 250 feet from the edge of the nearest public road right-of-way and from the boundary of the Permittee's site control, or in compliance with the county ordinance regulating meteorological towers in the county the 9 tower is built, whichever is more restrictive. Meteorological towers shall be placed on property the Permittee holds the wind or other development rights.

Meteorological towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the meteorological towers other than what is required by the FAA and/or the Minnesota Department of Transportation. This restriction shall not apply to infrared heating devices used to protect the wind monitoring equipment.

5.3.29 Federal Aviation Administration Lighting

Towers shall be marked as required by the FAA and, if applicable, the Minnesota Department of Transportation. There shall be no lights on the towers other than what is required by the FAA and, if applicable, the Minnesota Department of Transportation. This restriction shall not apply to infrared heating devices used to protect the wind monitoring equipment.

The Permittee shall install and employ an FAA-approved lighting mitigation system for the turbine towers. Such a system shall use aircraft detection (aircraft detection lighting system, ADLS), dimming (light intensity dimming solution, LIDS) or other FAA-approved mitigation method. The Permittee shall describe the lighting mitigation system used for the project in its site plan.

- Section 7.5.4 (Immediate Incident Reports). Community Wind recommended the correction below to Section 7.5.4 of the draft site permit.

7.5.4 Immediate Incident Reports

The Permittee shall notify the Commission, EERA, the USFWS, 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;
- (b) twenty or more dead or injured birds or bats, across the entire facility, within a five day reporting period;
- (c) one or more dead or injured state threatened, endangered, or species of special concern
- (d) one or more dead or injured federally listed species, including species proposed for listing; or
- (e) one or more dead or injured bald or golden eagle(s).

In the event that one of the ~~four~~ 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 where the discovery was 10 made, a detailed log of agencies and individuals contacted, and current plans being undertaken to address the issue.

As of the date of their comments³, Community Wind has obtained signed agreements from landowners except for with respect to four parcels: Parcel 09-0072-000 (affected by Turbine T-13), Parcel 09-0070-000 (affected by Turbines T-12 and T-13), Parcel 17- 0032-500 (affected by Turbine T-14), and Parcel 17-0090-500 (affected by Turbines T-1 and T3). The affected parcels and turbines are shown on the map attached as Attachment 2. Community Wind indicated they will continue negotiations to reach commercially reasonable agreements with the remaining landowners, but in the event such negotiations are unsuccessful, Community Wind requested that the Commission grant wind access buffer setback waivers for Turbines T-1, T-3, T-12, T-13, and T-14. The locations of the turbines will not change as a result of the repowering, and, to Community Wind's knowledge, none of the affected landowners have raised objections to the repowering plans.

Avian and Bat Fatality Monitoring

EERA included a requirement for two years of avian and bat fatality monitoring in the draft site permit. Community Wind does not object to this provision and, as noted below in the response to MDNR's comments, Community Wind will update the Project's Bird and Bat Conservation Strategy to include a post-construction monitoring plan that complies with this condition.

Prairie Protection Plan

Community Wind completed a desktop and field inventory of proposed construction corridors for the presence of native prairies in September 2021. The field findings were summarized in a report and submitted to the MDNR and EERA for review and comment. MDNR staff reviewed the report and responded that they do not have any concerns regarding the results of the desktop and field inventory. The agency also indicated that because native prairie (as defined under Minn. Stat. § 84.02, subd. 5) has not been identified within the Project boundary, a Prairie Protection and Management Plan is not needed.

Draft Decommissioning Plan

Community Wind indicated they will provide several updates to the decommissioning plan that was included with the application, and it will file the updated plan 14 days prior to the repowering pre-construction meeting. As interim updates, Community Wind confirmed the following:

- a. Project Description. EERA requested that the decommissioning plan be updated to provide date and eDocket location of the site permit and that future updates also include a link to past decommissioning plans. Community Wind will make these updates to the decommissioning plan.
- b. Permits and Notification.
 - i. EERA requested that the permit list be made more specific as the facility nears the end of its useful life. Community Wind will follow this recommendation in future updates to the decommissioning plan.

³ Zephyr Wind Comments, January 7, 2022, Document ID [20221-181316-02](#).

- ii. EERA noted that the decommissioning plan must be provided to local governments and that such requirements should be incorporated into the decommissioning plan. Community Wind will make this update in the decommissioning plan and will provide copies of the plan to local units of government, as required by the site permit.
- c. Tasks and Timing
 - i. EERA requested that additional detail be added to the decommissioning plan with respect to waste disposal and disposal assumptions for blades. Community Wind will provide this additional detail in the updated decommissioning plan.
 - ii. EERA also requested clarification on the planned methodology for decommissioning. Community Wind will make this clarification in the updated decommissioning plan.
- d. Cost Estimate. EERA requested the addition of separate lines for blade and nacelle disposal or other clarification of assumptions in the tasks and timing discussion. Community Wind will make such clarifications in the updated decommissioning plan.
- e. Scheduled Updates. EERA requested removal of reference to EERA recommendations. Community Wind will make this update in the updated decommissioning plan.
- f. Financial Surety. With respect to the decommissioning financial surety, Community Wind is planning to propose providing a letter of credit starting in 2022 for a value of one tenth of the decommissioning cost and then increasing that amount by one tenth each year such that full decommissioning cost will be covered by 2032 when the Projects' current power purchase agreement expires. Community Wind would reserve the right to replace the letter of credit with another acceptable form of security. Community Wind also proposes that the beneficiary be the County and is working with the County to confirm that this plan is acceptable. Community Wind would inform EERA and the Commission when the financial security is established by e-filing a confirmation letter. Community Wind believed this plan conforms with EERA's recommendations and the Solar and Wind Decommissioning Group recommendations referenced by EERA in its comments.

Zoning and Project Setbacks. In the Application, Community wind provided background on incorporation of certain County setbacks as special conditions in the Project's original 2012 site permit and noted a few cases in which the existing Project facilities modestly encroach on those setbacks. In its comments, EERA recommended that Community Wind obtain waivers from the County for these encroachments. The County's December 16, 2021, letter, discussed further below, provides the necessary waivers with respect to Turbine T-9 and the road right-of-way

setback and Turbine T-15 and the wetlands setback. With respect to Turbines T-6, T-12, and T-13 and the non-participating property line setback, the County also indicated on December 16, 2021, that no permits will be required by the County for the repower of those turbines because Community Wind has made progress toward obtaining participation agreements from the affected landowners, which would make the property line setback inapplicable. By way of an update, Community Wind has executed participation agreements from the landowners affected by T-6 and T-13, and therefore no waivers or further action should be necessary related to property line setbacks for those turbines. With respect to T-12, Community Wind continues to work with the affected landowner to sign a participation agreement. Community Wind will follow up with the County to seek a waiver via a variance from the County if the applicable participation agreement cannot be finalized.

Response to DNR comments

DNR recommended that the Project's draft Bird and Bat Conservation Strategy ("BBCS") be revised to include a post-construction fatality plan and noted that MDNR recommends two years of post-construction fatality monitoring. Community Wind will include the requested updates in the updated BBCS to be filed at least 14 days prior to the repowering pre-construction meeting.

Response to MnDOT comments

MnDOT filed a letter commenting on the Application on December 16, 2021. MnDOT noted that none of the existing turbines are located near a state trunk highway right of way and therefore do not present any concerns to MnDOT. MnDOT also stated that it confirmed via discussions with Community Wind that the minor upgrades planned for the Project's electrical system will not affect the collection line crossing of MnDOT trunk highway 266. As recommended by MnDOT, if such plans change, Community Wind will seek any necessary utility permits and will coordinate with MnDOT as necessary related to any MnDOT highway construction activities.

Response to Nobles County Planning and Zoning Department

Community Wind has been coordinating with the County to address several modest encroachments on the County setback areas that were incorporated by reference into the Project's 2012 site permit and which are included in the new draft site permit. On December 16, 2021, the County submitted a comment letter regarding waivers for these encroachments.

1. Turbine T-9. In the December 16, 2021, letter, the County confirms that it will waive the road right-of-way setback with respect to Turbine T-9.
2. Turbine T-15. In the December 16, 2021, letter, the County confirms that it will waive the wetlands setback with respect to Turbine T-15.
3. Turbines T-6, T-12, and T-13. In the December 16, 2021, letter, the County confirmed that no waivers will be required for the property line setback because the neighboring

landowners have agreed to become participants and Community Wind is in the process of recording the appropriate documents. Community Wind confirmed this it is accurate with respect to Turbines T-6 and T-13. However, discussions are ongoing with the affected neighboring landowner for T-12. Community Wind stated they will continue to work with this landowner to sign a participation agreement. But if the participation agreement cannot be completed, Community Wind will follow up with the County to seek a waiver via a formal variance, as was originally requested by the County in the event Community Wind could not obtain the necessary participation agreements.

Response to Public Comments

Community Wind responded to the Agency and public comments received at the November 29 public meeting in Attachment 1 included with their January 7 comments.

Department of Commerce, Energy Environmental Review and Analysis

On January 14, 2022, DOC-EERA submitted comments⁴ on the Applicant's Proposed Findings of Fact and on the Draft Site Permit. With respect to EERA's comments/edits on the FOF report, Commission staff refers to EERA's comments which include a redline version of the FOF report with EERA's comments and proposed changes added.

With respect to the Draft Site Permit, EERA specifically addressed the permittee's (Community Wind) proposed edits to the Draft Site Permit as summarized below:

Wind Access Buffer

Community Wind requested waivers to the Wind Access Buffer (Permit Condition 4.1). EERA suggested this language be moved to section 6 (Special Permit Conditions) of the permit.

6.2 Wind Access Buffer Waivers

The Commission authorizes a variance of the wind access buffer setback for the following turbine locations: T-1, T-3, T-12, T-13, and T-14. These variances are granted on the condition that the permittee shall extend a final offer to the remaining landowners for the same amount and terms agreed to by other landowners in similar circumstances or their last offer, whichever is higher. At least 14 days before the preconstruction meeting, the permittee must make a compliance filing describing in detail the results of the negotiation.

Met Towers and Lighting Mitigation

Community Wind proposed minor changes to Section 4.11 (Meteorological Towers) and Section 5.3.29 (Federal Aviation Administration Lighting) of the Draft Site Permit. Community Wind requested that Section 5.3.29 be clarified to note that the lighting mitigation system

⁴ DOC EERA Comments on Proposed Findings of Fact and Draft Site Permit, January 14, 2022, Document ID [20221-181561-01](#).

requirement applies only to turbine towers and not meteorological towers. Community Wind indicated that this clarification would be consistent with the requirements of Minn. Stat. § 216F.084.

EERA indicated they do not support Community Wind's proposed edits to Section 5.3.29 of the Draft Site Permit. EERA's understanding is if the Community Wind South Repower Project utilizes meteorological towers that are greater than 200 feet in height, they must, per FAA requirements, be lit. If they are lit, EERA believed that impacts from these light sources should be mitigated similarly to those from turbine tower lights. To EERA's reading of Minn. Stat. § 216F.084, nothing in the statute dictates a different lighting mitigation approach for meteorological towers and turbine towers.

Public Comments

During the November 29, 2021 Public Information Meeting held in the project area, there were a few public comments in support of the project because it creates good jobs, payments to the participating landowners and contributes as the production tax paid to the county and local townships. Two representatives from Nobles County spoke and requested that the Applicant apply for a variance from the County Planning and Zoning regarding the setback requirements in case they are not successful in securing all the agreements with the affected landowners. Nobles County Planning and Zoning Administrator stated that she didn't believe it's fair to arbitrarily grant wind developers permission to infringe on other people's potential air space and projects that they may or may not be involved in in the future. Another question was about the downtime during construction that may affect the production tax payments to the county, so the county can plan for that shortfall into their budget; question about the disposal/reuse of the old fiberglass blades and how long those blades will sit on the ground before being shipped, because they could cause crop losses; question about the impact on local roads; question about any increase in noise levels and additional shadow flicker from the longer blades; and whether the project substation will be expanded.

There were no comments at the November 30th virtual public meeting and no written comments were received from members of the public during the comment period, following the public meetings.

V. Reply Comments

On February 4, 2022, Community Wind submitted reply comments in response to the Department of Commerce – Energy Environmental Review and Analysis staff comment dated January 14, 2022, and to provide updates on Community Wind's plans for repowering the Community Wind South Project.

With regard to EERA's recommended updates and clarifications to Community Wind's Proposed Findings of Fact and the Draft Site Permit for the Project, Community Wind indicated they

support all of EERA's recommended updates and clarifications, including EERA's recommendation that the lighting mitigation requirements in Section 5.3.29 of the Draft Site Permit apply to both turbine towers and the meteorological tower. Community Wind indicated they will plan for its lighting mitigation system to include all turbine towers and the Project's meteorological tower.

With respect to the Project updates, Community Wind has determined that it may be efficient to derate the repowered turbines from 2.2 MW to 2.05 MW for an initial period following repowering construction. As described in Community Wind's application, the repowering will include replacing the existing 2.05 MW MM92 turbines with new Vestas V110 2.2 MW turbines. Derating would mean operating the new turbines at 2.05 MW, with no other changes to the turbines. Since the turbine model has not changed and Community Wind may be able to use the full 2.2 MW capability of the turbines in the future, the descriptions of the planned repowering in the Draft Site Permit and Proposed Findings of Fact remain accurate. However, to reflect this change in plans, Community Wind suggested the following changes as appropriate:

- 1) Revise the table in Section 4.9 of the Draft Site Permit to describe the turbine capacity as "up to 2.2. MW" rather than "2.2 MW"; and
- 2) Add the following sentence to paragraph 20 of the Proposed Findings of Fact: "Zephyr is considering derating the turbines to 2.05 MW for an initial period following repowering construction but may increase the nameplate capacity of each turbine to 2.2 MW in the future."

In closing, Community Wind requested wind access buffer setback waivers with respect to turbines T-1, T-3, T-12, T-13, and T-14. Community Wind indicated they recently obtained a signed participation agreement for one of the affected parcels (Parcel 09-0072-000) and that they will continue good faith negotiations with the other affected landowners but maintains its request for wind access buffer setback waivers for the five turbines: T-1, T-3, T-12, T-13, and T-14.

VI. Staff Analysis

Based on a review of the information in Community Wind's permit amendment application, the public comments received, the comments and recommendations of the DOC EERA, the state agencies, and other evidence in the record, staff provides the following discussion and recommendations:

Regarding comments received from state agencies, staff notes these state agencies provided helpful information to inform this docket, as well as most recent similar new energy facility proposed projects and believes that a good working relationship exists between this applicant and state agencies. The Applicant has indicated that it plans on complying with all state agency requirements. Staff believes there are no outstanding issues the Commission needs to resolve with respect to state agency comments. With respect to Nobles County Planning and Zoning

setback requirements, it is staff's understanding that Community Wind will continue to work with Nobles County and request a variance from the County Board of Adjustments, if unable to secure agreements from the affected landowners for any of the five turbines.

With regard to the public comments received regarding old blades, down time during construction and increased noise and shadow flicker from the larger turbines, Community Wind responded the old blades will be either sold for reuse or broken down for recycling, minimizing down time during construction between when the existing project is taken off line and the repowered project is completed and lastly they did indicate there will be potential modest increase in noise and shadow flicker that could result from the repowering.

Findings of Fact Report

On January 7, 2022, the Applicant filed Findings of Fact and Conclusion of Law (FOF Report). The FOF Report included 173 findings of fact (findings) and 10 conclusions of law. The FOF Report included a summary of public comments received, information about the proposed project, a procedural history of the matter, and an analysis of the siting criteria as applied to the proposed project. The FOF Report stated that the Draft Site Permit contains a number of mitigation measures and other reasonable conditions that adequately address potential impacts of the project on human and natural environments as well as provisions to ensure proper site restoration and decommissioning of the Project.

The FOF Report concluded that the Project with the Draft Site Permit conditions as revised satisfies the site permit criteria for a LWECS contained in Minnesota Statutes Section 216F.03 and meets all other applicable legal requirements.

The Department reviewed the Applicant's Proposed FOF Report and provided a few clarifying edits and two additional findings, namely to include the wind access buffer setbacks in Section 6 of the permit, as a special condition and second to indicate that EERA does not support Community Wind's proposed edits to Section 5.3.29 of the DSP, to exclude the meteorological tower from the requirement to add lighting mitigation to it, because it exceeds 200 feet in height, and as per FAA requirements, should be lit.

Commission staff has reviewed both the Applicant's proposed FOF Report and the Department's suggested edits and additions and recommends that the Commission adopt the FOF Report as revised by DOC EERA and with the additional finding suggested by the Applicant in their reply comments about derating the turbine's capacity for an initial period of time.

Site Permit Conditions

Commission staff agrees with the Applicant proposed changes to the Draft Site Permit to the extent the changes have also been agreed to by the EERA, namely adopting the language changes to permit sections 2 (Project Description), 4.1 (Wind Access Buffer), 4.11 (Meteorological Towers), 5.3.29 (Federal Aviation Administration Lighting), and 7.5.4 (Immediate Incident Reports). Commission staff also concurs with EERA regarding moving the

wind access buffer waiver requests to section 6 (Special Permit Conditions) of the permit as follows:

6.2 Wind Access Buffer Waivers

The Commission authorizes a variance of the wind access buffer setback for the following turbine locations: T-1, T-3, T-12, T-13, and T-14. These variances are granted on the condition that the permittee shall extend a final offer to the remaining landowners for the same amount and terms agreed to by other landowners in similar circumstances or their last offer, whichever is higher. At least 14 days before the preconstruction meeting, the permittee must make a compliance filing describing in detail the results of the negotiation.

Regarding the request for wind access buffer waivers for up to 5 of the 15 turbines, including turbines T-1, T-3, T-12, T-13, and T-14, based on information available in the record staff agrees that granting a waiver for the reasons provided by the Applicant and combined with the language in section 6.2 of the permit, is appropriate.

Commission staff has prepared a proposed site permit, attached to these briefing papers, that will reflect all the changes described in these briefing papers.

VII. Decision Options

1. Findings of Fact and Conclusions of Law Report

- A. Adopt the Applicant proposed Findings of Fact and Conclusions of Law Report as submitted.
- B. Adopt the FOF Report as revised by DOC EERA.
- C. Adopt the FOF Report as revised by DOC EERA and by Commission staff.

2. Wind Access Buffer Setback Waiver for turbines T-1, T-3, T-12, T-13, and T-14

- A. Grant a waiver to Community Wind South Project of the wind access buffer setback as requested by the Applicant.
- B. Deny the wind access buffer waiver.
- C. Direct Community Wind South to continue negotiations to obtain wind rights.

3. Site Permit Amendment for the up to 33 MW Community Wind South Repower Project in Nobles County, Minnesota

- A. Issue an amended Site Permit for the up to 33 MW Community Wind South Project in Nobles County, Minnesota as originally proposed by DOC EERA as the Draft Site Permit.
- B. Issue an amended Site Permit as revised by the Applicant and including revisions proposed by DOC EERA and Commission staff.

4. Administrative Consistency

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

Staff Recommendation: 1.C, 2.A, 3.B, and 4.A