

## **PETITION TO AMEND THE COMFREY WIND ENERGY LLC LWECS SITE PERMIT**

### **I. Introduction**

Comfrey Wind Energy LLC (“Comfrey”) respectfully requests that the Minnesota Public Utilities Commission (the “Commission”) amend the Large Wind Energy Conversion System (“LWECS”) Site Permit (the “Permit”) for the Comfrey Wind Energy 31.5 MW Project (the “Project”) by extending deadlines for construction to start and to obtain a power purchase agreement (“PPA”) for 19 months.

Over the past few years Comfrey has been faced with a number of situations that have prevented Comfrey from getting the Project done. The major issue for the first three years of time allowed for the Project under the Permit was the cost to interconnect the Project attributed to the Midwest Independent Transmission System Operator (“MISO”). The delay caused by MISO caused Comfrey to petition the Commission for an extension to the Permit in 2011. The Commission granted a two-year extension on March 11, 2011. However, MISO’s continued delays consumed the majority of that extension period.

Comfrey did not learn of its final interconnection cost until May 2012. In addition, the Production Tax Credit (“PTC”) was set to expire unless a project started construction by the end of 2012. The PTC was eventually renewed by Congress in the American Taxpayer Relief Act of 2012 which passed on January 1, 2013, approximately four months before the expiration of the first extension period under the Permit amendment. This gave Comfrey a short window to respond to Request for Proposals (“RFPs”) to obtain a PPA, complete negotiations with an

  
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equity partner, conduct engineering studies, secure turbines, and begin construction. Thus, on January 15, 2013 Comfrey asked the Commission to amend the Permit for another two year extension. In May 2013 the Commission granted Comfrey another amendment allowing it two more years to obtain a PPA and begin construction of the wind farm.

Unfortunately, since the last Permit amendment in 2013, problems ensued that further prevented Comfrey from completing the Project:

1. Shortage of capital in 2013 and Q1 of 2014: The development capital needed for this Project is ~\$1MM. This includes environmental and permitting work (biological and natural resource inventories, archaeological resource studies, wind resource assessment(s), etc.). During this period Comfrey could not provide and did not have access to the \$1MM needed to complete the development work and keep the Project moving forward.
2. U.S. government PTC renewal uncertainty in 2014: Similar to 2012, Congress failed to make a decision on whether or not it would renew the PTC. A decision in favor of renewing the PTC was made on December 16<sup>th</sup>, 2014, approximately two weeks before the end of the year. This delay contributed to Comfrey's stall in development activities. Without certainty that the PTC would be renewed Comfrey had a hard time securing investors to raise capital for the Project. Although the PTC was eventually renewed, it simply was not enough time for Comfrey to secure an investor and move forward with development tasks.

  
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Comfrey is finally better positioned to continue with development activities and complete the Project:

1. Comfrey now has access to construction/development and long-term financing:
  - a) Comfrey's President, Pete Samuelson, has raised some additional funds from local investors.
  - b) Banks have expressed interest in financing the Project. However, Comfrey must secure a PPA. *Please see Attachment A, KeyBank Letter of Support.*
2. Comfrey is in discussions with a credible off-taker that is interested in purchasing the power—conversations will seize abruptly if Comfrey's Permit is not renewed.
3. PTCs that make wind energy more competitive and allow for attractive PPA pricing are again available, after a year of complete uncertainty, albeit we have a limited window to begin construction and receive favorable tax treatment.
4. Comfrey has hired credible wind energy development consultants, **RedWind Consulting, LLC**:
  - a) **RedWind** has the expertise, know-how, and relationships for Comfrey to leverage.
  - b) Comfrey engaged **RedWind** to complete the following:
    - i. MISO interconnection review & recommendation
    - ii. Advisory services to secure additional investors to finish the development of the Project
    - iii. Financial modeling

  
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- iv. Lincoln Electric System (“LES”) PPA Request for Proposal (“RFP”) Responses
  - v. Reverse PPA RFP Responses
  - vi. Comfrey LWECS Permit extension request
5. They have continued to invest a significant amount of time and money in advancing the Project:
- a) Completed an updated wind resource assessment in October 2014. *Please see Attachment B, Comfrey Wind Farm – Wind Resource Assessment.*
  - b) Procured wind turbine and engineering, procurement, & construction (“EPC”) quotes
  - c) Continue to maintain wind rights and make land lease payments
  - d) Additional development work is in process such as executing construction contracts and obtaining construction-related permits.

Comfrey asks that the Commission grant them the opportunity to complete their Project. The developers should not be penalized for factors beyond their control that prevented completion of the Project, and directly impact the raising of additional capital from sophisticated and knowledgeable investors. Comfrey will lose the ability to complete this well-sited, quality Project if the Commission does not amend the Permit, as allowed by Minn. R. 7854.1300, subp. 2.

  
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## **II. Petition**

### **A. Overview of the Comfrey Wind Energy Project**

The Project is located on the border of the counties of Brown and Cottonwood, Minnesota, and will consist of up to 17 turbines. Comfrey has a good wind resource, and enjoys good relations with its landowners and neighbors. The Project has resolutions of support from local governments.

The Project is a Community Based Energy Development (“CBED”) facility in the truest sense of the concept. It is owned by 11 local investors, and qualifies as a CBED project under Minn. Stat. § 216B.1612. All investors are individuals that live in or near the area of the Project, and five of the investors are also landowners. The nearby City of Comfrey has a population just under 400, and construction of the Project, at an estimated cost of \$63 million would be a substantial economic benefit to the community.

### **B. Project Development and Current Status**

Comfrey began developing the Project in 2006. Initial development work consisted of raising capital, planning locations for 17 turbines, conducting desk-top environmental review activities and securing land and wind rights from 11 landowners. Comfrey filed its application for the Permit on July 20, 2007. Notice of the Commission’s acceptance of the application was mailed to those likely to be impacted by the Project on August 24, 2007. The Commission issued the Permit on January 15, 2008. The Permit was distributed on January 24, 2008.

  
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Comfrey wasted no time in working to bring the Project to completion after being rewarded the Permit. In 2007, an 80-meter meteorological tower was purchased and installed on the Project site, and Comfrey was in final negotiations for a long-term PPA with Xcel Energy. A microwave signal pattern analysis was completed and submitted to the Commission in May 2008. Comfrey requested and received extensions to its Federal Aviation Administration Permits in May 2009. And additional capital was raised in the spring of 2010 from the local investors in the Project to fund ongoing development costs.

However, Comfrey's efforts to keep the Project moving forward kept getting halted because of unknown interconnection costs, MISO's queue reform, and uncertain PTC policy. These issues persisted for the first five years causing Comfrey to request two permit amendments which the Commission granted. The last amendment was granted in May 2013.

Since the last Permit amendment, Comfrey has faced other problems that have impeded the development progress. In 2013 and early 2014 Comfrey did not have the funding needed to continue developing the Project. The Project's development costs are ~\$1MM - money the Project developers could not provide. Also, Comfrey did not know if Congress would renew the PTC in 2014. The PTC was eventually renewed but on December 16, 2014, only two weeks before the end of the year. Now that the PTC has been renewed Comfrey is discussing financing opportunities with several investors. They have also raised additional development capital from the local Project investors. Comfrey is now prepared to continue with the development and construction of the Project.

  
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**C. A Shortage of Investment Capital, and A Delayed PTC Renewal Have Prevented Comfrey from Completing Development.**

The Commission's approval of Comfrey's second petition amendment in 2013 should have set them on the right path to continue moving the Project forward but they did not have the capital needed to complete the development tasks. The Project's total cost is ~\$63MM, of this \$1MM is to cover development. The development costs include but are not limited to biological and natural resource inventories (surveys and/or studies), shadow flicker analysis, archaeological resources surveying, radio and microwave signal interference assessments, wake loss studies, preconstruction avian or other wildlife surveys, interconnection studies, land option payments, consulting fees, PPA negotiation, continued wind resource monitoring and assessment and a noise study.

Shortly before the 2013 permit amendment, Comfrey assumed they would have the capital needed to move forward with the preconstruction development tasks. They hired a wind project developer that introduced them to an equity company that was willing to finance the development of the Project. Comfrey even entered into a Turbine Supply Agreement ("TSA") with this equity partner to purchase turbines at a discounted rate. To Comfrey this was an ideal situation, the Project would be financed and they would save money on the turbine investment which in turn reduced the overall cost of the Project. Unfortunately, conversations with the equity company ended and the TSA was terminated in July 2013 because of antidumping tariffs

  
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and legal disputes between the turbine manufacturer and the U.S. Government. Thus, after spending more than a year searching for capital sources and negotiating terms with an equity partner, Comfrey was left without any of the capital it expected to receive to fund the Project.

For the remainder of 2013 Comfrey worked with the project developer to determine how best to move the Project forward and secure capital. Comfrey relied heavily on the project developer that had more than five years of experience and over 1,400MWs of wind project developments to guide Comfrey through their project development obstacles. However, the project developer was not effective in attracting potential investors and they were often unresponsive so Comfrey had to terminate the relationship. Comfrey was left to solve their project development problems without any expertise or relationships to leverage for several months until they hired **RedWind** on June 7, 2014.

**RedWind** has proved to be an effective consultant helping Comfrey to continue developing the Project. On behalf of Comfrey **RedWind** has: completed a MISO interconnection review & recommendation; updated the Project's financial model; responded to LES' RFP, procured EPC and wind turbine quotes, solicited potential off-takers to purchase the project power, and conversed with over a dozen equity investors interested in the Project. **RedWind** also completed a wind resource assessment in November 2014 through its partner, Nayxa Energy Services, and helped Comfrey raise additional capital from the local investors 2015. With **RedWind's** help Comfrey was back on track to secure a PPA and construct the Project before the



  
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expiration of the Permit in May 2015. However, Congress' delay in renewing the PTC slowed Comfrey and RedWind's progress.

Congress passed a bill that extended the wind PTC through the end of 2016 on December 16, 2014, approximately two weeks before the end of the year and five months before the expiration of the 2013 permit amendment. The late renewal of the PTC put pressure on Comfrey to obtain a PPA, secure financing from an investor, and begin construction before the Permit expired in May 2015. To complete all these tasks within five months would be a challenge for any developer not just Comfrey.

Prior to the PTC being renewed at the end of 2014 investors strategically refused to provide financing for the Project. Wind projects are not viable investments without the tax subsidy given how competitive power prices have become – cheaper than traditional cost of fossil fuels, and without the gas and fuel price volatility. Utilities and buyers of wind power do so either because they are mandated to do so, i.e., adhere to State Renewable Portfolio Standards or because it pays economically. In other words, the PTC is subsidizing the low cost of power that utilities are procuring from wind developers. Should the PTC go away, there is no certainty today that PPA prices will adjust accordingly, thereby making investors skittish to commit to the Project with no PTC. Comfrey started having conversations with investors that expressed serious interest in investing in the Project in mid-February 2015, three months before the permit amendment was set to expire. On average it takes four months for an investor to perform its due diligence and execute an agreement to provide financing for a wind energy project. Furthermore, most investors do not

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want to provide capital until a project has a PPA. Comfrey responded to RFPs and proactively sent proposals to close to three dozen potential off-takers. In March, a reputable off-taker expressed interest in purchasing the power and started having conversations with Comfrey and RedWind about the Project. The conversations are on-going but it takes approximately three months to negotiate a PPA. This did not leave Comfrey enough time to obtain a PPA before the Permit expired.



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**D. The Commission Has Good Cause to Extend the Deadlines.**

The Commission may amend the Permit to extend the deadlines upon a showing of good cause, which is certainly the case with Comfrey. Comfrey is now in a strong position to complete the Project and its development efforts should not be ended, thereby losing the efforts and funds expended by the local investors, due to events beyond the control of Comfrey (as detailed above). Although the major issues that have prevented Comfrey from developing the Project (PTC uncertainty and a lack of access to capital) have been resolved they were not resolved in a timeframe that allowed Comfrey the ability to ramp-up development activities. It takes 12-16 months to finalize development of a wind project of this size and magnitude, not 3-5 months. There are too many steps involved in finalizing the development of a wind energy project that cannot be compressed into such a short time period. Comfrey simply needs more time to take advantage of its now favorable position.

Additionally, Comfrey has continued to develop the Project and prepare for construction. Comfrey is in the process of executing construction contracts and deciding on a turbine. A Phase I Environmental Assessment and revised desktop studies will be completed within the next two months. A bird and bat study is planned for fall 2015 and the noise study and site layout will be updated after a turbine is selected, within the next 5 weeks. Besides Comfrey's continued commitment to the Project, other good reasons to extend the permit are:

1. Public policy in Minnesota favors CBED facilities like this Project. Comfrey is well positioned to contribute to Minnesota's renewable energy goals by providing low cost

  
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power and jobs – but only if they are given an opportunity to secure a PPA and provide power to a Minnesota electric utility is this possible.

2. Comfrey has strong support from the local community. The Project is owned by 11 local investors and it does not have any conflicts with landowners in the area. Residents in the area are anxious to see the Project get developed and regularly ask about development progress.
3. Comfrey is currently discussing a PPA with a high-quality off-taker.
4. The PTC has been renewed—restoring investors’ confidence and interest in the Project. However, Comfrey needs to secure a PPA. *(Please see Attachment A for KeyBanc’s Letter of Support)*
5. Comfrey has continued to invest significant time and money in advancing the Project by:
  - a. Engaging wind energy development consultants (**RedWind Consulting, LLC**)—RedWind offers expertise, know-how, and relationships to leverage
  - b. Facilitating discussions with potential investors
  - c. Completing an updated wind resource assessment in 2014
  - d. Maintaining the wind rights and making land lease payments
  - e. Responding to renewable energy Requests for Proposals (“RFP”) and proactively sending proposals to over two dozen potential off-takers
  - f. Tightening project costs including updating the financial model and obtaining engineering, procurement & construction (“EPC”) and wind turbine quotes

  
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g. Raising additional capital from local investors

## **E. Request for a Permit Extension**

For the past several years Comfrey has been subject to unfortunate issues that delayed the development and completion of the Project. As a result, the Project has fallen behind schedule after receiving two separate amendments. Comfrey is now back on track and has one more window of opportunity given the political uncertainty of what is to become of the PTC. Comfrey is more confident than ever that they can get the Project complete. However, they need ample time to do so. Comfrey requests that the Commission extend the permit an additional 19 months to acquire a PPA and start construction. The new deadline will allow them to complete development steps for the Project and achieve commercial operation on or before December 31, 2016. These steps include all of the preconstruction compliance requirements (surveying, reports, and meetings), entering into a power purchase agreement, completing negotiations with an equity investor, finalizing a turbine supply agreement and entering into a construction contract. The new extension also gives Comfrey enough time to ensure that their Permit is consistent with recently issued wind farm permits.

Furthermore, Comfrey does not have the time required (6-9 months) to apply and get approval for a new Permit. They need to complete the preconstruction tasks and start constructing this year.

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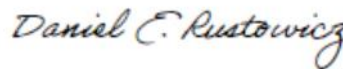
### **III. Conclusion**

Comfrey has been diligently working to develop the Project. The delays it has experienced are beyond its control, and good cause exists to allow Comfrey to continue working on the Project. Over the past several years the state of the economy both nationally and in Minnesota for development of wind power facilities and obtaining a PPA has been challenging due to PTC uncertainty. Comfrey has continued to develop their Project investing both money and time despite the challenges they have faced. They have not been simply sitting idle on the existing Permit. Thus, Comfrey respectfully requests that the Commission do right by MN tax payers by fostering clean, renewable and cheap energy for years to come, enhance economic development in badly needed rural communities, safeguard the health of our children and their children and extend the deadlines, one last time, for the Project to enter into a PPA and commence construction for this latest PTC cycle.

With sincere appreciation and thanks,



Pete Samuelson  
President  
Comfrey Wind Energy, LLC



Daniel E. Rustowicz  
Chief Manager  
**RedWind Consulting, LLC**