

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Ellen Anderson
J. Dennis O'Brien
Phyllis Reha
David Boyd
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

Wayne Hesse
Sibley Wind Substation, LLC
1756 County Highway 7
Tyler, MN 56178

SERVICE DATE: October 12, 2011

DOCKET NO. IP-6666/WS-08-208

In the Matter of the Sibley Wind Substation, LLC's Site Permit for a 20 MW Large Wind Energy Conversion System in Sibley County

The above entitled matter has been considered by the Commission and the following disposition made:

Granted the petition for amendment by Sibley Wind, LLC, and amended its Large Wind Energy Conversion System Site Permit as provided in the attached Amendment.

The Commission agrees with and adopts the recommendations of the Department of Commerce which are attached and hereby incorporated in the Order.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS AND RECOMMENDATIONS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
ENERGY FACILITY PERMITTING STAFF**

DOCKET NO. IP-6666/WS-08-208

Meeting Date: October 6, 2011.....Agenda Item #

Company: **Sibley Wind Substation, LLC**

Docket No. **IP-6666/WS-08-208**

In the Matter of the Sibley Wind Substation, LLC's Site Permit for a 20 MW Large Wind Energy Conversion System in Sibley County

Issue(s): Should the Commission amend the site permit per Sibley Wind Substation, LLC's petition?

DOC Staff: Suzanne Lamb Steinhauer.....651-296-2888

Relevant Documents

Petition for Amendment to Site Permit..... August 12, 2011
Notice of Comment Period on Proposed Permit Amendment..... August 15, 2011
Order Issuing a Site Permit for Sibley Wind Substation, LLC.....September 23, 2008

The enclosed materials are the work papers of the Department of Commerce Energy Facility Permitting Staff (EFP). They are intended for use by the Public Utilities Commission and are based on information already in the record unless otherwise noted.

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Documents Attached

1. Site Permit Amendment (revised text and map)

See eDocket filings (08-208) at <https://www.edockets.state.mn.us/EFiling/search.jsp>, or the Commission website at: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=19541> for project related documents.

Statement of the Issues

Should the Commission amend the site permit per Sibley Wind Substation, LLC's petition?

Introduction and Background

The Minnesota Public Utilities Commission (Commission) issued a site permit to Sibley Wind Substation, LLC (Sibley Wind) to construct a 20 Megawatt Large Wind Energy Conversion System (LWECS) in Sibley County on September 23, 2008, pursuant to Minnesota Rules chapter 7836 (renumbered to 7854).¹

Under the site permit, Sibley Wind must obtain a power purchase agreement (PPA) or some other enforceable mechanism for sale of the electricity (Section III.J.4) and begin construction (Section III.K.2) within three years of the issuance of the permit.

On August 12, 2011, the Commission received a filing from Sibley Wind advising the Commission that it had not obtained a PPA or commenced construction on the Sibley Wind Farm and explaining the reasons it had not done so. The filing requested that the Commission amend its site permit by extending both the time in which to obtain a PPA or some other enforceable mechanism for sale of the electricity and the deadline to begin construction to September 23, 2013.² Sibley Wind argues that the delay for the PPA is needed due to significant delays in the Midwest Independent System Operator (MISO) interconnection process. Sibley Wind argues that because of the delays and outstanding issues of transmission cost allocation to the Project, it has been impossible for Sibley Wind to submit an accurate bid in response to the PPA requests issued over the past two years. Sibley Wind also argues that because construction cannot begin without a PPA, the requirement to commence construction should be extended for the same reasons it needs an extension to obtain a PPA. Sibley Wind further argues that the uncertainty created by the MISO study process has prevented it from moving ahead with other development work including securing turbines, securing financing, and obtaining construction-related permits.

Notice of Comment Period on the Petition for Amendment was issued by the EFP staff on August 15, 2011, and was distributed to all persons on the Sibley Wind project list and those

¹ eDocket ID, [5518770](#)

² eDocket ID, [20118-65306-02](#). Sibley Wind originally filed a petition on June 29, 2011, [20116-64224-02](#), to amend the site permit by extending the time in which to obtain a PPA and to commence construction, as well as to use 90 meter towers. The August 12, 2011, petition supersedes the June 29, 2011 petition and withdraws the request to use taller towers.

persons subscribed to the project via eDockets.³ Comments were accepted through September 2, 2011.

Regulatory Process and Procedures

Under Minnesota Statutes 216F.04(d) the Commission has the authority to modify, suspend, or revoke a permit. The Commission's procedure for amending or revoking LWECS permits is identified in Minnesota Rule 7854.1300. Under subpart 2 of this rule, the Commission may amend a site permit at any time if the Commission has good cause to do so. Subpart 3 of this rule identifies circumstances under which the Commission may revoke a site permit:

- A. The applicant knowingly made a false statement in the application or accompanying statement or studies required of the applicant, if a true statement would have warranted a change in the commission's findings;
- B. The applicant has failed to comply with a material condition or term of the permit;
- C. The permitted LWECS endangers human health or the environment and the danger cannot be resolved by modification of the permit or LWECS; or
- D. The permittee has violated other laws that reflect an inability of the permittee to comply with the permit.

Subpart 4 of this rule permits the Commission to initiate action to consider amendment or revocation of a site permit on its own initiative or upon the request of any person. This rule states that no site permit may be amended or revoked without first providing notice and affording due process to the permit holder.

The site permit language mirrors the language in Rule. Under Section III.K.3 of the site permit the Commission may modify or amend the permit for cause including, but not limited to:

- (a) A violation of any permit condition;
- (b) Endangerment of human health or the environment by operation of the facility; or
- (c) Existence of other grounds established by rule.

Section III.K.4 of the site permit identifies circumstances under which the Commission may revoke or suspend the permit; these circumstance are essentially the same as the circumstances identified in Minnesota Rule 7854.1300 (see above). If the Commission finds that any of the grounds for revocation or suspension are met, the Commission may require the permittee to undertake corrective measures in lieu of having the permit suspended or revoked.

Under Section III.J.4 of the site permit, the permittee must advise the Commission of the reason why it has not obtained a PPA or other enforceable mechanism within three years. Under Section III.K.2 of the site permit, the permittee must inform the Commission of the reason why construction has not commenced within three years of the issuance of the permit. The Commission may determine whether the permit should be revoked (Minnesota Rule, 7854.1200).

³ eDocket ID, [20118-65412-01](#)

EFP Staff Analysis and Comments

EFP staff did not receive any comments during the comment period. Absent public or agency comments, EFP staff provides the following analysis and comments on the petition for amendment.

If construction has not commenced within two years after issuance of the site permit, Minnesota Rule 7854.1200 requires the permittee to advise the Commission of the reasons construction has not commenced. The rule further states that the Commission may determine whether the permit should be revoked. Minnesota Rule 7854.1300, subpart 4 outlines the procedure for amendment or revocation of a site permit.

Minnesota Statutes section 216F.03 states that it is the policy of the state to “site LWECS in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.” Because rules require the permittee to advise the Commission if it fails to commence construction within two years, the Commission can revisit whether the project meets the policy goals of the state.

Permit Sections III.J.4 and III.K.2 require the permittee to advise the Commission of the reasons why the permittee has not obtained a PPA or commenced construction, allowing the Commission to determine whether the permit should be amended or revoked. The permittee has notified the Commission of the reasons why it is unable to comply with these permit conditions, and has requested that these conditions be amended. Some permits issued by the Commission in the past have contained a condition allowable under Minnesota Rule 7854.1100, subpart 3, that nullifies the permit if the permittee has not obtained a PPA or other enforceable mechanism by a particular date. The site permit issued to Sibley Wind does not have such a condition, so the permit has not expired.

The permittee has requested that the amendment allow an additional two years to obtain a PPA or other enforceable mechanism and commence construction. EFP staff notes the Sibley Permit was one of five permits issued in 2007 and 2008 that contain a technical error by permitting the permittee up to three years for to commence construction, rather than the two years identified in Minnesota Rule 7854.1200.⁴ Granting the two-year extension would allow Sibley Wind up to five years to obtain a PPA or other enforceable mechanism.

There is some precedent for the Commission to amend LWECS siting permits to provide additional time for the permittee to obtain a PPA or some other enforceable mechanism and begin construction. Glacial Ridge Wind Project, LLC, Kenyon Wind, LLC (Kenyon Wind), Comfrey Wind Energy, LLC (Comfrey Wind), Lakeswind Power Partners, LLC and Bear Creek received extensions to obtain a PPA or some other enforceable mechanism and begin construction since the Commission has had the authority to issue permits. Permit extensions were granted for an additional two years in these cases. The Commission denied Kenyon Wind LLC’s request for a second amendment to allow additional time for the permittee to obtain a PPA or other enforceable mechanism and to commence construction in an order dated December 23, 2010.

⁴ Three of these five projects, Ridgewind, Moraine II, and Elm Creek have already been constructed. The Commission amended the site permit for Comfrey Wind in January, 2011.

Sibley Wind's petition cites similar reasons to the others, most notably Comfrey Wind. At the core of Sibley Wind's argument is what has been a very lengthy and uncertain MISO interconnection process. Sibley Wind initiated the MISO interconnection process in 2006 and was assigned to Study Group 5. The Federal Energy Regulatory Commission (FERC) ordered, in October, 2009, that MISO's recommendation to allocate the entire cost of the Brookings line to wind projects in Study Group 5 was unsupported. As a result of FERC's order, and a subsequent order dated May 20, 2010, MISO initiated a restudy of the Group 5 interconnection requests. In its arguments before FERC, MISO anticipated that the results of the re-study would be available in January, 2011; Sibley Wind received the results of the restudy in May, 2011. Although the restudy results allow Sibley Wind to move forward, Sibley Wind argues that because of the problems with the MISO Group 5 study process, it has been impossible for them to submit an accurate bid in response to the PPA requests issued over the past two years.

Although Sibley Wind has not begun construction, it has continued to move forward with various preconstruction studies and surveys. The petition notes that Sibley Wind understands that it will be required to demonstrate site control, meet required setbacks (including those required to meet the MPCA noise standard), and prepared a biological survey, among other tasks, prior to commencing construction.⁵

EFP staff believes that the information provided in the permittee's petition supports amending the site permit to extend the deadline by which the permittee must obtain a PPA or other enforceable mechanism. Based on the information provided in the petition, forces beyond Sibley Wind's control have introduced a level of uncertainty that make it difficult, if not impossible, to execute a PPA or other enforceable mechanism for offload of the energy from the Project. Because the permit prohibits construction of the project without a PPA or other enforceable mechanism, it follows that if the Commission extends the time to allow Sibley Wind to secure a PPA, the permit should also extend the time for Sibley Wind to commence construction.

EFP staff does not believe that Sibley Wind has met any of the conditions under Minnesota Rule 7854.1300, subpart 3, that would trigger revocation of the permit. Sibley Wind has advised the Commission of the reasons why it has not obtained either a PPA or other enforceable mechanism for sale of the power and why, as a consequence, it has not yet commenced construction. EFP staff finds no indication that Sibley Wind has made a false statement, failed to comply with a material condition of the permit, or violated any other laws. EFP staff does not believe that the Project presents a danger to human health or the environment that cannot be resolved through compliance with permit conditions. No revocation of a permit may be undertaken except in accordance with Minnesota Rule, part 7854.1300, subpart 4, which requires providing notice and affording due process to the permit holder. Upon examination of the notice provided in this proceeding, EFP staff believes that additional notice of permit revocation may be required before the Commission could act to revoke the permit.

Sibley County has an ordinance addressing small wind facilities, but has not adopted standards for LWECs or pursued delegation pursuant to Minnesota Statutes 216F.08 and 216F.081. The primary discrepancy between the permit and the county ordinance is that the county ordinance sets minimum setbacks of 750 feet from residences and 300 feet from roads. As a practical

⁵ eDocket ID [20118-65306-02](#), at p. 6.

matter, setbacks from residences are governed by the requirement under section III.E.3, that turbines be placed in a manner that complies with all MPCA noise standards; the distance required to meet the noise standards is anticipated to exceed 750 feet for turbines of the size proposed.

EFP staff has prepared an amendment to the site permit for the Commission's review. The amendment contains a new issue date, with an expiration date 30 years after the issue date, and amends sections III.J.4 and III.K.2 as discussed above. Permit section III.L is amended to refer to an expiration date 30 years from permit approval and adoption, rather than a specific date. The amendment also contains a revised map, reflecting Sibley Wind's current layout.

EFP Staff has not prepared additional amendments, as no comments were received on Sibley Wind's request for a permit amendment and the three comments received during the initial permitting process in 2008⁶ were addressed in the original permit.

However, as noted above, under Minnesota Rule 7854.1300, subpart 2, and Permit Section III.K.3, the Commission may amend a site permit at any time if it has good cause to do so after providing notice and affording due process to the permit holder.

Commission Decision Options

- A. Deny the Petition for Amendment by Sibley Wind, LLC.
 - 1. Deny the petition for amendment by Sibley Wind, LLC and revoke or suspend the site permit.
 - 2. Deny the petition for amendment by Sibley Wind, LLC, and direct EFP staff to issue notice to revoke or suspend the site permit.
 - 3. Make some other decision deemed more appropriate.

- B. Grant the Petition for Amendment by Sibley Wind, LLC.
 - 1. Grant the petition for amendment by Sibley Wind, LLC, and amend its Large Wind Energy Conversion System Site Permit as provided in the attached Amendment.
 - 2. Grant the petition for amendment by Sibley Wind, LLC, and amend its Large Wind Energy Conversion System Site Permit with additional conditions deemed appropriate.
 - 3. Make some other decision deemed more appropriate.

EFP staff recommendation: Option B1.

⁶ eDocket ID, [5487904](#). These comments were addressed in Minnesota Public Utilities Commission, Findings of Fact, Conclusions and Order Issuing a Large Wind Energy Conversion System Permit to Sibley Wind Substation, LLC, for the Up to 20 MW Sibley County Wind Project, September 23, 2008. eDocket ID [5518770](#), Findings 24, 25, 26 – 29, 47, 50, 64 and 67, and Permit Conditions III.B.8, III.C.1, and III.K.7.

STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION

PERMIT AMENDMENT

**LARGE WIND ENERGY CONVERSION SYSTEM
SITE PERMIT
FOR**

SIBLEY COUNTY WIND PROJECT

**IN
SIBLEY COUNTY**

ISSUED TO

SIBLEY WIND SUBSTATION, LLC

PUC DOCKET NO. IP-6666/WS-08-208

In accordance with Minnesota Statutes Section 216F.04 this Site Permit is hereby issued to:

SIBLEY WIND SUBSTATION, LLC

Sibley Wind Substation, LLC is authorized to construct and operate up to a 20-Megawatt Large Wind Energy Conversion System on the site identified in this Site Permit and in compliance with the conditions contained in this Permit.

This Permit shall expire ~~on September 23, 2038,~~ thirty (30) years from the date of this approval.

Dated: _____

Approved and adopted this 12th day of October, 2011
BY ORDER OF THE COMMISSION

BURL W. HAAR
Executive Secretary



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Permit Section III.J.4 is amended as follows:

4. POWER PURCHASE AGREEMENT

This Permit does not authorize construction of the Project until the Permittee has obtained a power purchase agreement or some other enforceable mechanism for sale of the electricity to be generated by the Project. In the event the Permittee does not obtain a power purchase agreement or some other enforceable mechanism for sale of the electricity to be generated by the Project within ~~three~~ two years of the issuance of this Permit, the Permittee must advise the PUC of the reason for not having such power purchase agreement or enforceable mechanism. In such event, the PUC may determine whether this Permit should be amended or revoked. No amendment or revocation of this Permit may be undertaken except in accordance with applicable statutes and rules, including Minnesota Statute 216F.05 and Minnesota Rule ~~7836.1300~~ 7854.1300.

Permit Section III.K.2 is amended as follows:

2. FAILURE TO COMMENCE CONSTRUCTION

If the Permittee has not completed the pre-construction surveys required in paragraph III.D., and commenced construction of the LWECS within ~~three~~ two years of the issuance of this Permit, the Permittee must advise the PUC of the reason construction has not commenced. In such event, the PUC may determine whether this Permit should be revoked. No revocation of this Permit may be undertaken except in accordance with applicable statutes and rules, including Minnesota Statute section 216F.05 and Minnesota Rule ~~7836.1300~~ 7854.1300.

Permit Section III.L is amended as follows, the expiration date is stated on the cover of the amended permit:

L. EXPIRATION DATE

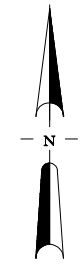
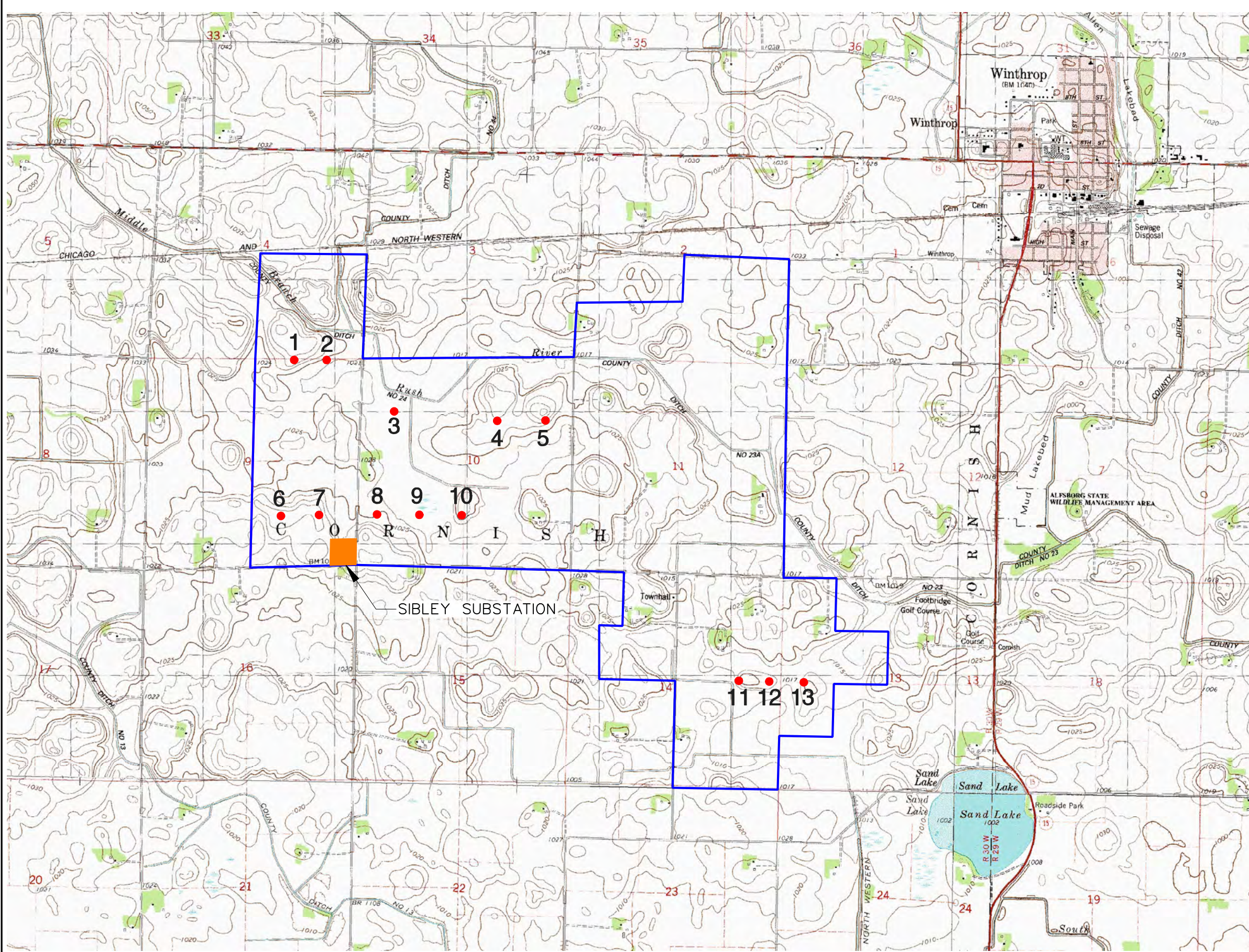
This Permit shall expire ~~on September 30, 2038~~ thirty (30) years after the date this permit was approved and adopted.

M. SPECIAL CONDITIONS

Special conditions shall take precedence over any of the other conditions of this Permit if there should be a conflict between the two. ~~No special conditions have been identified.~~

1. Shadow Flicker

At least ten (10) working days prior to the pre-construction meeting, the Permittee shall provide data on shadow flicker impacts on each residence of non-participating landowners and participating landowners. Information shall include the results of modeling used, assumptions made, and the anticipated levels of impact from turbine shadow flicker on each residence. The Permittee shall provide documentation on its efforts to avoid, minimize and mitigate shadow flicker impacts.



PRELIMINARY TURBINE LAYOUT
SIBLEY COUNTY WIND PROJECT

LEGEND

- -PRELIMINARY TURBINE LAYOUT
- -PROPOSED SUBSTATION
- -PROJECT AREA



NO.	REVISION	BY	CHKD	DATE	ENGINEER
1	SITE LAYOUT PLAN	SJV	JDG	9/26/11	
					DRAWN SJV 9/26/2011
					CHECKED JDG 9/26/2011
					APP'D JDG 9/26/2011
					SCALE 1"=2500'

WESCO WIND LLC. SIBLEY WIND FARM CORNISH TWP., SIBLEY CO., MINNESOTA	
PROJECT NUMBER 10535.00001	SHEET 1 OF 1