



## Staff Briefing Papers

Meeting Date	May 10, 2018	Agenda Item*1
Company	Palmer's Creek Wind Farm, LLC	
Docket No.	<b>IP-6979/WS-17-265</b>	
	In the Matter of the Application of Palmer's Creek Wind Farm, LLC for a Site Permit for the 44.6 megawatt (MW) Palmer's Creek Wind Project in Chippewa County, Minnesota	
Issues	<ol style="list-style-type: none"><li>1. Should the Commission adopt the administrative law judge's (ALJ) summary of public testimony, findings of fact, conclusions of law, and recommendation?</li><li>2. Should the Commission grant a site permit for the 44.6 MW Palmer's Creek Wind Large Energy Conversion System (LWECS) proposed in Chippewa County, Minnesota?</li></ol>	
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### Relevant Documents

### Date

Application for a Site Permit	April 11, 2017
Order Finding Application Complete	June 16, 2017
Order Issuing Draft Site Permit	August 23, 2017
Office of Administrative Hearings (OAH) Report (Summary of Public Testimony, Findings of Fact, Conclusion of Law, and Recommendation)	Nov. 8, 2017
DOC EERA Exceptions to ALJ Report	Nov. 22, 2017
Palmer's Creek Exceptions to ALJ Report	Nov. 22, 2017

**✓ Relevant Documents**

**Date**

MN DNR Comments (6 parts)	Jan. 31, 2018
Palmer’s Creek Revised Site Plan (2 parts)	Feb. 26, 2018
Palmer’s Creek Revised Microwave Beam Study	Mar. 27, 2018
Palmer’s Creek Final Shadow Flicker Report	Mar. 27, 2018
Palmer’s Creek March 2018 Noise Analysis	Mar. 27, 2018
Palmer’s Creek Site Permit Application Amendment	Mar. 27, 2018
DNR Letter (Comments)	Apr. 12, 2018
DOC EERA Comments	Apr. 23, 2018

**I. Statement of the Issues**

- Should the Commission adopt the ALJ’s summary of public testimony, findings of fact, conclusions of law, and recommendation?
- Should the Commission grant a site permit for the 44.6 MW Palmer’s Creek Wind LWECS proposed in Chippewa County, Minnesota?

**II. Background**

**A. Project Description**

Palmer’s Creek Wind Farm, LLC (Palmer’s Creek or Applicant) filed a site permit application with the Minnesota Public Utilities Commission (Commission) for an up to 44.6 MW nameplate capacity LWECS. The project would be comprised of 18 wind turbines of 2.3 MW and 2.5 MW, and associated facilities including a new collection substation, an approximately 1000-foot 115 kilovolt (kV) high-voltage transmission line (HVTL), a 34.5 kV underground collector system, a permanent meteorological tower, access roads, a fiber optic network, a supervisory control and data acquisition system and an operations and maintenance facility. The proposed project footprint would occupy 6,150 acres of privately owned land in Granite Falls Township in Chippewa County, Minnesota.

Palmer’s Creek is an independent power producer based in Granite Falls, Minnesota. The applicant intends to connect the project to the Western Area Power Administration’s (WAPA) Granite Falls Substation under an interconnection agreement with the Southwest Power Pool. The project would supply renewable energy to users in Minnesota, the Dakotas and throughout WAPA’s service territory. The original in-service date for the project was March 2018, the revised in-service date is not known at this time.

## **B. Procedural History**

On April 11, 2017, Palmer's Creek filed a site permit application for the project.

On June 16, 2017, the Commission issued an *Order Finding Application Complete, Referring Application to the OAH, and Varying Time Frames* (June 16 Order).

On June 26, 2017, staff from the Commission and the Department of Commerce Energy Environmental Review and Analysis unit (DOC EERA) conducted a public information meeting in Granite Falls, Minnesota. A comment period was open until July 6, 2017 to receive comments on potential issues to be addressed in the draft site permit (DSP).

On July 18, 2017, Palmer's Creek filed a motion requesting that the Commission confirm that its plan to store wind turbines within the boundaries of the site of its proposed LWECS prior to receiving a site permit does not conflict with the prohibition in Minn. Stat. § 216F.04 and Minn. R. 7854.0100, subp. 4 which prohibit site construction activity before a site permit is granted. Alternatively, the Applicant requested the Commission grant any required rule variance<sup>1</sup> necessary to undertake such storage activities within the proposed project boundaries prior to obtaining a site permit.

On August 23, 2017, the Commission issued its Order Issuing Draft Site Permit that authorized the issuance of a DSP pursuant to Minn. R. 7854.0800. The Order also denied the Applicant's motion for temporary storage or rule variance. A copy of the DSP was filed on July 25, 2017 as an attachment to the DOC EERA's Comments and Recommendations on issuing a draft site permit.

On September 11, 2017, ALJ Barbara J. Case presided over a public hearing on the site permit application that was held at the Montevideo Community Center. A comment period following the public hearing was open until September 21, 2017.

On November 8, 2017, the ALJ filed the Summary of public testimony, Findings of Fact, Conclusions of Law, and Recommendation (ALJ Report).

On November 22, 2017, DOC EERA and Palmer's Creek filed exceptions to the ALJ Report.

On February 5, 2018, in an email communication to agency staff, Palmer's Creek indicated that it had decided to move 4 turbines in response to ongoing concerns expressed by MN DNR that

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<sup>1</sup> The Commission cannot vary statutory requirements.

the turbines at those locations were closer to the Minnesota River Valley than was optimal for the proper siting of a wind project in an environmentally sensitive area.

On March 27, 2018, Palmer's Creek filed an amendment to the site permit application.

On April 12, the MN DNR filed a comment letter on the project with final recommendations.

On April 23, 2018, DOC EERA filed Comments and Recommendations on the revised turbine layout and the final decisions on issuing a site permit for the Project.

### C. Statutes and Rules

**Site Permit.** Under Minn. Stat. § 216F.04, no person may construct an LWECS without the issuance of a site permit by the Commission.<sup>2</sup>

**Large Wind Energy Conversion System.** The proposed project is defined as an LWECS under Minn. Stat. § 216F.01, subd. 2, because it is a wind energy conversion system with nameplate capacity of 5 MW or more.

**Issuing a Site Permit.** In deciding whether to issue a site permit for a LWECS, the Commission must determine the project is compatible with environmental preservation, sustainable development, and the efficient use of resources. Minn. Stat. § 216F.03 and Minn. R. 7854.1000, subp. 3.

**Procedural Treatment of Application.** Review of LWECS site permit applications generally follow the procedural requirements under Minnesota Rules Chapter 7854. In addition to those requirements, the Commission referred the matter to the OAH requesting an Administrative Law Judge (ALJ) conduct a public hearing and to facilitate the development of the factual record and prepare a report setting forth findings of fact, conclusions of law, and recommendations on the merits of the LWECS site-permit application. The Commission also requested that the ALJ propose any permit conditions believed to be appropriate.

**Timing.** Under 7854.1000, subp. 2, the Commission shall approve or deny a site permit for an LWECS within 180 days after acceptance of the application, unless the applicant agrees to an extension or the Commission extends the deadline for cause. In this case, a final decision was initially scheduled for December 21, 2017, only a few days past the 180 day schedule proposed and agreed to by all the parties early in the review process.

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<sup>2</sup> See also Minn. R. 7854.0300, subp. 1.

## **D. Report of the Administrative Law Judge**

On November 8, 2017, the ALJ filed her Report in this matter.

The ALJ Report included 277 findings of fact including a summary of public comments; 11 conclusions of law; and a recommendation. In accordance with Minn. Stat. § 216F.02, the ALJ presented findings on the criteria set forth under Minn. Stat. § 216E.03, subd. 7 (2016), that must be considered when issuing a site permit for a LWECS. The ALJ also documented the actions taken to comply with the procedural requirements of Minnesota Statutes Chapter 216F and Minnesota Rules Chapter 7854.

The ALJ recommended that the Commission issue a site permit to Palmer's Creek to construct and operate the 44.6 MW Palmer's Creek Wind Farm Project in Chippewa County, Minnesota, and that the site permit include the amended conditions identified in the Conclusion of Law paragraphs 6 through 10.

In making the recommendation, the ALJ concluded, among other things, that:

1. It is reasonable and appropriate to amend the DSP to include the changes agreed to between Applicant and DOC EERA regarding conditions 5.2.2 (project representative conditions) and 8.2 (power purchase agreement).
2. The project, with the DSP conditions revised as set forth above and the relocation or removal of turbines 5, 9, 10 and 12, satisfies the site permit criteria for a LWECS contained in Minn. Stat. § 216F.03 and meets all other applicable legal requirements.
3. The project, with the permit conditions discussed above and the relocation or removal of turbines 5, 9, 10 and 12, is compatible with environmental preservation, sustainable development, and the efficient use of resources.
4. The project, with the permit conditions discussed above and relocation or removal of turbines 5, 9, 10 and 12, does not present a potential for significant adverse environmental effects pursuant to the Minnesota Environmental Rights Act and the Minnesota Environmental Policy Act.

## **III. Parties' Comments**

### **Summary of Public Comments**

The concerns raised by citizens during the public hearing and subsequent comment period were also considered by the ALJ. The ALJ concluded that the DSP contained a number of mitigation measures and conditions that address the concerns raised.

Furthermore, Palmer's Creek and DOC EERA each provided separate responses to public comments that explained and addressed the issues and identified the measures to be taken

which are included in the site permit to reduce or eliminate the potential impacts or concerns identified.

In summary, the public comments, both verbal and written, expressed support or opposition to the project, or were seeking further clarification regarding construction activities, or the project's contribution to local tax revenue. Generally, comments opposed to the project cited issues such as aesthetic impacts, the potential impacts to property values and the possible health impacts to humans and wildlife. Some of the comments specifically identified substantive concerns:

1. In a letter, James Olson indicated he owns property where the existing WAPA substation is located, which was built on the SW corner of his property in the 1950's by condemnation. Mr. Olson indicated he is not a participant in this project and expressed concern about the proposed route of the 1000 ft. long 115 kV transmission line that will interconnect the project to the WAPA substation because he has not given the Applicant permission to place any structures on his land. He also expressed concern about the visual impact of the tall wind mills and high mortality rates to migratory birds. In response to Mr. Olson's concern that project infrastructure would be sited on his land without his agreement through condemnation, Palmer's Creek confirmed that no project infrastructure would be located on his property and the closest turbine will be 1435 feet from Mr. Olson's property.
2. The Department of Natural Resources (DNR) recommended that: 1) the site permit and the avian bat protection plan (ABPP) require feathering of turbine blades below the manufacturer's normal cut-in speed and to program turbines to allow adjustment to the cut-in speed; 2) a third party consultant conduct avian and bat fatality monitoring and that the ABPP be updated to include an adaptive management section outlining contingencies if higher avian or bat fatalities occur at the site; 3) turbines 5, 9, 10, and 12 be relocated an additional 200 to 300 feet further away from the Minnesota River Valley; 4) a utility crossing license will be needed for collector lines that would or may cross natural watercourses and which would require horizontal drilling; 5) the Applicant be required to consult with the Board of Water and Soil Resources (BWSR) if any impacts are expected to natural watercourses; and 6) for the lines crossing a Prairie Native Plant Community, the Applicant should detail the avoidance measures to be taken and should be detailed in Applicant's prairie protection and management plan.
3. The Minnesota Pollution Control Agency (MPCA) requested that if an individual Clean Water Act Section 404 permit was required, then the Applicant would also need to secure a Clean Water Act Section 401 Water Quality Certification, or waiver from the MPCA.
4. MnDOT noted that there are several provisions that may have impacts on the state transportation system. The draft site permit should include language specifying that the Permittee shall obtain all relevant permits or authorizations from road authorities

relating to any electric cables and/or feeder lines that may be proposed to be placed in a public road right of way.

#### **IV. Exceptions to ALJ Report**

Under Minn. R. 7829.2700, exceptions to the ALJ Report must be filed within 15 days of the filing of the report for cases subject to statutory deadlines. Palmer's Creek filed exceptions to the ALJ Report. In its exceptions, the Applicant argued against the ALJ's recommendation to relocate turbines 5, 9, 10 and 12 approximately 200 to 300 feet further away from the Minnesota River Valley to reduce the likelihood of bat fatalities, as proposed by the MNDNR in comments filed on September 21, 2017<sup>3</sup>. Palmer's Creek indicated that there are constraints such as turbine spacing requirements and setback requirements that prevent the simple relocation of those four turbines from their currently proposed locations. Palmer's Creek argued that alternative mitigation and monitoring can be developed in the context of the ABPP to reduce the risks of avian and bat fatalities.

On January 12, 2018, Palmer's Creek filed a revised ABPP in which it addressed the bird and bat populations found in the project area and also evaluated the impact of the project on the wildlife, including bald eagles documented in the project area.<sup>4</sup> The applicant proposed a number of wildlife conservation measures and best management practices (BMP) meant to reduce the project's impacts to birds and bats and their habitat. In addition, Palmer's Creek proposed to conduct one year of eagle nest monitoring, three years of avian and bat fatality monitoring. Once the Project is operational, the monitoring would include onsite inspections 4 times per week between March 15 - November 15 and two times per month from December through January. The results of the monitoring will be used to identify the need for operational minimization measures to reduce the direct impact to birds and bats.

#### **V. Palmer's Creek Site Permit Application Amendment**

On March 27, 2018 Palmer's Creek filed an amendment<sup>5</sup> to the original site permit application along with substantial updated supporting documentation. The amendment proposed to alter the project layout by shifting the four turbines closest to the river further north and to include some associated minor shifts to collector lines, access roads, and temporary crane paths. The four turbines were shifted based on recommendations from the DNR and the U.S. Fish and Wildlife Service (FWS) as an avoidance and minimization measure for avian species, such as eagles and other raptors. The DNR had recommended moving the turbines an additional 200 to 300 ft. away from the Minnesota River Valley. The final proposed turbine locations were shifted north between 430 and 690 feet, which resulted in moving each of the four turbines approximately 260 to 360 feet further away in a perpendicular direction from the Minnesota River Valley.

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<sup>3</sup> MN DNR Comments, eDockets ID [20179-135713-01](#).

<sup>4</sup> Revised ABPP, Document ID [20181-138853-01](#).

<sup>5</sup> Application Amendment, Document ID [20183-141419-01](#)

The Applicant revised and submitted a number of documents resulting from the project layout changes including the following:

Appendix B – Noise Study

Appendix D – Shadow Flicker Study

Appendix E – Microwave Beam Study

Appendix H – Wildlife Assessment and Field Studies Report

Appendix J – Avian and Bat Protection Plan (ABPP)

Appendix K – Phase I Reconnaissance Survey (Archaeological Report)

Native Prairie Protection Plan

## **VI. Agency Final Comments**

### **MN DNR Comments**

In letters submitted on January 31, 2018 and April 12, 2018, the DNR offered recommendations regarding the Native Prairie Protection Plan, Wildlife Monitoring Report, and the Avian Bat Protection Plan. Specifically, the DNR had two final recommendations: 1) Because Fagen Engineering has been closely involved in the development of the Project it should not qualify as an objective and unbiased independent third-party consultant and allowed to conduct the post-construction bird and bat fatality monitoring, 2) Appendix C of the ABPP should be revised to clearly state that the plots to be monitored for carcasses should be cleared of vegetation to increase searcher efficiency and the positive identification of the birds and bats being killed. Incorporating this recommendation will improve fatality estimates and add validity to the ABPP.

### **DOC EERA Comments**

The DOC EERA comments focused on the revised turbine layout, the amended or updated supporting documentation provided by the Applicant, and the project record to date. The issues addressed include:

1. Whether the Commission should issue a site permit for the amended Palmer's Creek Wind Farm.
2. Whether the Applicant's environmental review of proposed turbine layout was adequate.
3. Whether the comments and concerns of the DNR with respect to the ABPP and operational phase fatality monitoring have been adequately addressed.

### **Turbine Placement Issue**

DOC EERA staff closely followed the developments in this docket, including the ongoing concerns of the DNR with the Applicant's originally proposed locations of turbines 5, 9, 10, and 12 and the anticipated high risk of their location to avian and bat species. The DOC EERA further considered the permit condition requiring operational phase fatality monitoring.

### Updated Analysis Required for Turbine Relocation

The DNR's concerns led the Applicant to revise the turbine layout and relocate four turbines further away from the Minnesota River Valley. Due to the revisions, the DOC EERA requested the Applicant provide, at a minimum, an addendum to the Site Permit Application, including updated noise modeling and shadow flicker analysis, a revised wildlife monitoring report, and a revised ABPP. The Applicant submitted these required documents as well as additional necessary pre-construction documents. DOC EERA will review and comment on the preconstruction related documents at a later date, as is typical of the compliance review process.

### **DOC EERA Review and Analysis**

The Amendment identifies several resource areas that are likely to experience "no change" when comparing the original turbine layout and the revised turbine layout including wind rights, socioeconomics, land-based economies, public services and infrastructure, public health and safety, hazardous materials, soils and topography, groundwater resources, and floodplain resources, wetlands, and vegetation.

The Amendment indicates that shifting the four turbines further from the Minnesota River Valley would reduce potential impacts to a number of resources including recreation and tourism, land use, wildlife, rare and unique natural resources, as well as cultural and archaeological resources.

EERA provided an analysis of four additional issues including noise, shadow flicker, public services and infrastructure (microwave beam path interference), and wildlife (Wildlife Monitoring Study and ABPP).

### Noise Modeling

Based on the revised noise modeling the highest predicted turbine generated noise level of 45.1 dBA is anticipated to be experienced at modeling Receptor R32. This is an increase of 0.8 dBA at Receptor R32 from the results of the noise modeling completed for the original turbine layout. The increase at Receptor R32 is likely due to the cumulative impact of three turbines being placed within 2,335 feet of Receptor R32.

None of those turbines are being moved as a result of the revised turbine layout. The slight increase in the noise levels between the original noise study and the revised noise study are likely due to modeling scenario variability. The revised noise modeling indicated that turbine generated noise levels plus anticipated ambient noise levels are expected to exceed the Minnesota Noise Standard of 50 dBA at night time only when the ambient noise levels are at, or exceeding, 50 dBA, which is the same result as the noise modeling for the original layout. Based on EERA's review and analysis of available data and modeling, the revised turbine layout does not significantly change the potential noise impacts from those proposed in the original turbine layout.

### Shadow Flicker

The EERA’s review of the revised turbine layout results in an increase to the potential for shadow flicker over the modeling results of the original turbine layout. The Applicant’s updated shadow flicker analysis indicates the proposed relocation of turbines 5, 9, 10, and 12 is anticipated to increase the number of residences that will experience 30 or more hours of shadow flicker per year, as shown in Table 2 below. Modeling of the expected or realistic case situation of shadow flicker for the revised turbine layout indicates that four individual residences will experience 30 or more hours of turbine induced shadow flicker. The original turbine layout identified one residence that would experience 30 or more hours of turbine induced shadow flicker.

	Original Turbine Layout		Revised Turbine Layout	
	Worst Case	Realistic Case	Worst Case	Realistic Case
# of Receptors Experiencing Shadow Flicker	39	39	39	39
# of Receptors Experiencing 30 - 40 hrs per year	7	0	5	2
# of Receptors Experiencing 40 - 50 hrs per year	3	1	3	1
# of Receptors Experiencing >50 hrs per year	10	0	10	1

Table 2. Shadow Flicker Analysis Original Turbine Layout vs. Revised Turbine Layout

Turbine generated shadow flicker is not currently known to cause adverse health impacts, but the benchmark of 30 hours per year has been used by other regulatory bodies a level at which residents may become annoyed by turbine generated shadow flicker.

DSP section 7.2 specifies that shadow flicker produced by the turbines needs to be modeled, and the Permittee is required to identify ways of avoidance, minimization, and mitigation of the anticipated shadow flicker to be experienced by residences.

*Public Services and Infrastructure (Microwave Beam Path Interference)*

As part of the Site Permit Application the Applicant completed a Microwave Beam Path Study of the original turbine layout. In the original turbine layout no proposed turbine locations would interfere with any known microwave beam paths. The Applicant completed an updated Microwave Beam Path Study based on the revised turbine layout for the project, the study indicates the potential of turbine 9, one of the four shifted turbines, to interfere with a known microwave beam path.

Based on EERA’s review and analysis of available data the revised turbine layout changes the potential microwave beam path interference from the data if the original proposed turbine layout. The potential for interference appears to be limited to turbine 9 in the revised turbine

layout.

*Wildlife (Wildlife Monitoring Report and Avian and Bat Protection Plan)*

After revising the turbine layout the Applicant updated and revised the Wildlife Monitoring Report for the Project. In making revisions to the Wildlife Monitoring Report, the Applicant coordinated review with the MN DNR, and incorporated edits to the document based on MN DNR's recommendations. MN DNR indicated in their most recent filing dated April 12, 2018 that their recommended modifications have been appropriately addressed in the March 28, 2018, Wildlife Monitoring Report.

The Applicant has also been coordinating with the MN DNR on revisions to the ABPP taking the revised turbine layout into consideration. The most recent version of the ABPP was filed on April 4, 2018. At this time the Applicant and MN DNR have come to an agreement on the content of the most recent ABPP, with two notable exceptions:

1. The MN DNR has indicated that, as is required in other site permits issued by the Commission, a third party consultant must conduct the operational phase fatality monitoring. For this project, the MN DNR indicated that it does not believe that Fagan, Inc. staff can be considered a qualified third party. The Applicant has indicated to EERA that Fagen, Inc. is a capable third party consultant, and will be completing the operational phase fatality monitoring. The findings in the ALJ Report provided clear detail with respect to the ownership structure of, and the owners of the Project. The Applicant is wholly owned by Project Hawkeye, L.L.C., which is owned by four members of the Fagen family. Those same members of the Fagen family also own Fagen, Inc. In addition, Mike Ruthledge, who is an employee of Fagen, Inc., is also listed as, and has previously signed as the authorized representative of the Applicant.
2. The second recommendation of MN DNR that the Applicant does not agree, is the use of cleared search plots during operational phase fatality monitoring. MN DNR has indicated that keeping the monitoring search plots clear of vegetation should increase search efficiency during monitoring, providing more accurate fatality estimates for the Project. The Applicant has indicated that they would rather not clear the monitoring plots as the practice adds additional costs. The Applicant further asserted that searcher efficiency levels are taken into consideration in the fatality estimate calculations that will be used.

Based on EERA's review and analysis of available data the revised turbine layout should reduce the potential wildlife impacts from those proposed in the original turbine layout, due to increased turbine distance from the Minnesota River Valley and its associated habitat. The degree to which the turbine location shifts will reduce wildlife impacts are not known at this time. EERA addressed the MN DNR concerns with the Project's ABPP in the Recommendation section that follows.

**EERA Recommendations**

EERA has determined that the Applicant has provided sufficient environmental review

documentation of the revised turbine layout for the Project, which moved the locations of turbines 5, 9, 10, and 12 per the request of MN DNR. At this time, the areas of primary concerns of EERA include the anticipated increase in the number of residences that will potentially experience shadow flicker in excess of the 30 hours per year, the potential for turbine 9 to interfere with a known microwave beam path, and the resolution of issues related to the ABPP.

Condition 7.2 in the DSP requires that the shadow flicker modeling differentiate between participants and non-participants, and that the Permittee provide documentation of efforts to avoid, minimize, and mitigate shadow flicker exposure in a filing at least 14 days prior to the Project's pre-construction meeting. If the Commission issues a Site Permit for the Palmer's Creek Wind Farm, EERA recommended the Permittee provide a supplemental shadow flicker document, which complies with Condition 7.2 as identified above. EERA can then confirm whether Condition 7.2 of the Site Permit has been met and authorization to commence construction can be granted. If necessary, authorization to commence construction can be delayed until shadow flicker concerns are adequately addressed.

Condition 5.2.16 indicates the Permittee shall provide documentation assessing the Project's potential impacts to television and radio signal reception, microwave beam path, and telecommunications. The interference assessment document must be submitted at least 14 days prior to the pre-construction meeting for review and analysis by EERA. Additionally, Condition 5.2.16 specifies that the Project may not operate while causing interference to communication services. If the Commission issue a Site Permit for the Palmer's Creek Wind Farm, EERA recommended the Permittee provide a supplemental interference assessment that addresses potential Project related interference of communication services. The supplemental document should also specifically address EERA's concern with respect to the revised location of turbine 9, which places the turbine in very close proximity to a known microwave beam path. At that time, EERA will confirm that Condition 5.2.16 of the Site Permit has been met prior to the pre-construction meeting, and authorization to commence construction can be granted. If necessary, authorization to commence construction can be delayed until interference concerns are adequately addressed.

EERA concurs with MN DNR's concerns with respect to the ABPP, more specifically in what constitutes a qualified third party and the requirement of clearing the fatality monitoring search plots for operational phase fatality monitoring. Condition 6.2 requires fatality monitoring indicates that fatality monitoring shall be conducted by a qualified third party. As stated previously in the Review and Analysis section, EERA believes the ALJ Report clearly demonstrates that Fagen, Inc., and its employees, should not be considered a third party. The owners of the Applicant are also the majority owners of Fagen., Inc. Fagen, Inc. staff have been identified as, and have signed as the authorized representative of the Applicant. If the Commission issues a Site Permit for the Palmer's Creek Wind Farm, EERA recommended the Commission, in its order, make it clear that Fagen, Inc., any of its subsidiaries, or its employees independently, will not be considered as qualified third party consultants with reference to fatality monitoring.

The Applicant has indicated that the fatality estimation equations it will use are able to take searcher efficiency into consideration, so clearing the vegetation from the fatality search plots is not necessary. EERA indicated that although it is true that the equations used to estimate the number of fatalities at an operational wind farm do have factors to account for searcher efficiency, regardless of vegetative cover, the fatality estimator calculations are generally far more accurate with higher searcher efficiencies. Clearing the vegetation from the fatality search plots does come at a financial cost, but the benefits of higher searcher efficiencies and improved fatality estimation are not the only benefits. Cleared search plots also increase the searchers potential for finding fatalities of rare species. Rare species are likely to experience lower fatality rates as there are simply fewer individuals. However, those fewer fatalities could result in a large impact to rare species. With more heavily vegetated plots the searchers visibility decreases, as do the odds of finding a species that is rare versus the more common species. Clearing the search plots also provides the searchers with a safer work environment. If searches are conducted in agricultural row crops the searchers can more easily be exposed to pesticides that have been applied to the surface of the crops, and the heat and humidity exposure for the searchers during the summer months can create dangerous conditions. Providing the searchers with safer field conditions protects their health, but it also allows the searchers to focus on the task of searching, thus again supporting better searcher efficiency. The discussion of vegetative clearing within the fatality monitoring search plots is not specifically identified in any of the DSP conditions. It should be detailed in the ABPP as directed by Conditions 6.2 and 7.5.1

Avian and Bat Protection Plan. If the Commission issues a Site Permit for the Palmer's Creek Wind Farm, EERA recommended that the Commission direct the Permittee to clear the vegetation from the fatality monitoring search plots.

Condition 6.2 and Condition 7.5.1 specify that a detailed monitoring protocol must be included in the Project's ABPP. EERA recommended that the Project's ABPP be revised to include a detailed monitoring protocol, which will identify the specific third party consultant that will complete the operational phase fatality monitoring and include the revisions to clear the vegetation from all of the fatality monitoring search plots. Although not specified in the DSP, for consistency, EERA recommended that a revised ABPP be submitted by the Applicant at least 14 days prior to the pre-construction meeting for review by EERA.

EERA recommended the Commission issue a Site Permit for the Palmer's Creek Wind Farm, based on the revised turbine layout. EERA further recommended the Commission, specifically identify the following in its order:

1. The Permittee shall file, at least 14 days before the pre-construction meeting, a supplemental shadow flicker document, which complies with Condition 7.2 of the Site Permit.
2. The Permittee shall file, at least 14 days before the pre-construction meeting, a supplemental interference document that addresses potential Project related interference to communications services identified in Condition 5.2.16. The supplemental interference document should also specifically address EERA's concern

with respect to the revised location of turbine 9, which appears to place the turbine in very close proximity of a known microwave beam path.

3. Clearly state that Fagen, Inc., any of its subsidiaries, or its employees independently, will not be considered qualified third party consultants with reference to operational phase fatality monitoring under the current ownership structure of the Project.
4. Direct the Permittee to clear the vegetation from the fatality monitoring search plots.
5. The Permittee shall file, at least 14 days prior to the pre-construction meeting, a revised ABPP which will include a detailed monitoring protocol, the identification of the specific third party consultant that will conduct the operational phase fatality monitoring, and include revisions to require the clearing of the vegetation from all of the fatality monitoring search plots.

## **VII. Staff Analysis**

Based on information in Palmer's Creek site permit application, testimony, public comments, post-hearing briefs, the ALJ Report, exceptions, and other evidence in the record; staff provides the following discussion.

### **A. Administrative Law Judge Report**

Staff has examined the full record in this case and agrees with the findings, conclusions, and recommendations reached by the ALJ. Staff finds that the ALJ Report is a sound, comprehensive document reflective of the case record. The ALJ Report documents that the procedural requirements were followed and presents findings of fact for each of the necessary decision criteria for a site permit for a LWECs. Staff has also reviewed the exceptions to the ALJ Report filed by the DOC EERA and the Applicant. Based on this review, staff recommends the Commission adopt the ALJ Report with all the modifications and clarifications proposed by the DOC EERA and also with two clarification from the applicant regarding the corporate names of the various entities mentioned in the introduction section and in finding #3. The rest of the Applicant's exceptions pertained to the four turbines in question, which have since been proposed to be relocated by the Applicant.

### **B. Site Permit Conditions**

Staff agrees with the ALJ's recommended amendments to the DSP as identified in paragraph 6 of the conclusions of law and Findings 271, 272 and 275, 276. In addition to these changes, staff is proposing new or revised permit conditions, as needed, to address the DOC EERA and DNR recommendations as discussed above in these briefing papers.

Permit Section No.	Proposed Revision	Explanation for Revision
5.2.2	<p>The Permittee shall designate a site manager responsible for overseeing compliance with the conditions of this permit during the commercial operation and decommissioning phases of the project. This person, <u>or another project representative</u>, shall be accessible by telephone or other means during normal business hours for the life of this permit.</p>	<p>This proposed change is reasonable, because the main designated contact person may be unavailable at times due to vacation or sick leave or other justifiable reasons. The Department has agreed with this change.</p>
8.2	<p>In the event the Permittee does not have a power purchase agreement or some other enforceable mechanism for sale of the electricity to be generated by the project at the time this permit is issued, the Permittee shall provide notice to the Commission when it obtains a commitment for purchase of the power. 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 two years of the issuance of this permit, the Permittee must advise the Commission of the reason for not having such commitment. In such event, the Commission may determine whether this permit should be amended or revoked. No amendment or revocation of this permit may be undertaken except in accordance with Minn. R. 7854.1300.</p> <p><u>Execution of an interconnection agreement with the Southwest Power Pool or the Midcontinent Independent System Operator, Inc, allowing the sale of output on a merchant</u></p>	<p>Currently there is at least another operating wind farm in Minnesota that sells its output directly into the wholesale energy market.<sup>6</sup></p>

<sup>6</sup> Elm Creek II Wind Project, Docket# WS-09-553

	<p><u>basis in the wholesale energy market would constitute an enforceable mechanism.</u></p>	
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**Additional Compliance Issues**

While compliance with the many terms and conditions set out in project permits is very important, staff believes there are two areas where it is in the public interest to use an independent qualified third party to ensure transparency and accuracy, and to further enhance the public’s confidence that wind Projects are being reviewed and permitted with the interests of the public at large as a consideration in the process. The use of an independent third party also likely to ensure unbiased results.

For example, regarding an issue that has received a fair amount of attention in this docket, the Commission’s permit template and draft site permits include a provision (Section 6.2) that requires the Permittee to utilize a qualified third party to conduct avian and bat fatality monitoring. With the importance of independence and accuracy in mind, the MN DNR has further suggested, and the EERA has adopted, a position that Fagan Inc. - an entity whose ownership is similar, if not identical to the ownership and management of the project itself, should not be considered a qualified third party with respect to the fatality monitoring and should be excluded from participating.

Additionally, Section 7.4 of the DSP requires the Permittee to perform a post-construction noise study and file the completed study within 18 months after commercial operation. Historically the Commission has allowed the Permittee the discretion to determine who will design and implement the approved noise study protocol. Recently, however, there have been noise related complaints filed with the Commission. Complainants have alleged noise exceedances of the MPCA’s noise standards. In response to these complaints the Commission has required the Permittee to contract with an independent third party consultant as approved by the EERA, that reports directly to EERA and Commission staff, and that files the results of the studies directly with the EERA and the Commission. There have also been restrictions placed on the communications between the contractor and the Permittee.

Staff believes that the post-construction noise study required for the Project is as important a compliance feature as avian and bat fatality monitoring. Delegate to the Executive Secretary the ability to approve the protocol. Requiring that noise protocols and studies for Big Blue be developed and conducted independently by a third party contractor and submitted directly to DOC EERA has been done in other cases. The Commission could also require final noise reports

to be e-filed with the Commission directly, with restrictions placed on communications between Big Blue and the contractor (to be outlined by staff) to ensure transparent results

## **VIII. Decision Options**

- A. ALJ's summary of public testimony, findings of fact, conclusions of law, and recommendation
  - 1. Adopt the ALJ's summary of public testimony, findings of fact, conclusions of law, and recommendations for the 44.6 MW Palmer's Creek Wind Project.
  - 2. Adopt the ALJ's summary of public testimony, findings of fact, conclusions of law, and recommendations with modifications proposed by Commission staff, or as modified by the Commission for the 44.6 MW Palmer's Creek Wind Project.
  - 3. Take some other action deemed more appropriate.
- B. Site Permit for the 44.6 MW Palmer's Creek Wind Project.
  - 1. Issue the DSP authorized by the Commission in its August 23, 2017 Order as the site permit for the 44.6 MW Palmer's Creek Wind Project.
  - 2. Issue the DSP authorized by the Commission in its August 23, 2017 Order and incorporate the permit amendments recommended by the ALJ and Commission staff as the site permit for the 44.6 MW Palmer's Creek Wind Project.
  - 3. Do not issue a site permit for the 44.6 MW Palmer's Creek Wind Project.
  - 4. Take some other action deemed appropriate.
- C. Special Conditions
  - 1. Include as order points the five conditions proposed by the Department and listed on page 14 of these briefing papers.
  - 2. Include in the Order a condition to state that Fagen, Inc., any of its subsidiaries, or its employees independently, will not be considered qualified third party consultants with reference to the post-construction noise study as per Section 7.4 of the Site Permit.
- D. Noise Monitoring
  - 1. Require the Permittee to contract for an Independent third party contractor who will be approved by the EERA and report directly to EERA and Commission staff.

Delegate to the Executive Secretary the authority to approve the test protocol and implement the Commission's decision.

2. Decline to require the Permittee to contract for an Independent third party contractor.

E. Administrative Item

1. Authorize Commission staff to make further refinements to the findings of fact and 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:** A2, B2, C1, 2, D1, and E1

**STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION**

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

**IN  
CHIPPEWA COUNTY**

**ISSUED TO  
PALMER'S CREEK WIND FARM, LLC  
PUC DOCKET NO. IP-6979/WS-17-265**

In accordance with the requirements of Minnesota Statutes Chapter 216F and Minnesota Rules Chapter 7854, this site permit is hereby issued to:

**Palmer's Creek Wind Farm, LLC**

The Permittee is authorized by this site permit to construct and operate a Large Wind Energy Conversion System (LWECS) consisting of 18 wind turbines ranging between 2.3 megawatts (MW) to 2.5 MW, with a total project nameplate capacity of 44.6 MW. This site permit also authorizes the construction and operation of associated facilities, including, a 1,000 foot long 115 kilovolt (kV) high voltage transmission line, a 34.5 kV collector line system, a permanent meteorological tower, access roads, a fiber optic network, a supervisory control and data acquisition building, and an operations and maintenance facility.

The Large Wind Energy Conversion System and associated facilities shall be built within the site identified in this permit and as portrayed on the official site maps, in the April 11, 2017 Application for a Site Permit, and in compliance with the conditions specified in this permit.

This site permit shall expire thirty (30) years from the date of this approval.

Approved and adopted this \_\_\_\_ day of \_\_\_\_\_

**BY ORDER OF THE COMMISSION**

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Daniel P. Wolf,  
Executive Secretary

## CONTENTS

1.0	SITE PERMIT .....	1
1.1	Preemption .....	1
2.0	PROJECT DESCRIPTION.....	1
2.1	Associated Facilities .....	1
2.2	Project Location .....	1
3.0	DESIGNATED SITE.....	2
3.1	Turbine Layout.....	2
4.0	SETBACKS AND SITE LAYOUT RESTRICTIONS .....	2
4.1	Wind Access Buffer .....	2
4.2	Residences.....	3
4.3	Noise .....	3
4.4	Roads.....	3
4.5	Public Lands.....	3
4.6	Wetlands .....	3
4.6.1	Calcareous Fens .....	4
4.7	Native Prairie .....	4
4.8	Sand and Gravel Operations .....	4
4.9	Wind Turbine Towers .....	4
4.10	Turbine Spacing.....	4
4.11	Meteorological Towers .....	5
4.12	Aviation.....	5
4.13	Footprint Minimization.....	5
5.0	GENERAL CONDITIONS .....	6
5.1	Notification .....	6
5.2	Construction and Operation Practices.....	6
5.2.1	Field Representative.....	6
5.2.2	Site Manager .....	7
5.2.3	Employee Training and Education of Permit Terms and Conditions .....	7
5.2.4	Topsoil Protection.....	7
5.2.5	Soil Compaction.....	7
5.2.6	Soil Erosion and Sediment Control.....	7
5.2.7	Wetlands .....	8
5.2.8	Vegetation Management .....	8
5.2.9	Application of Pesticides .....	8
5.2.10	Invasive Species.....	9
5.2.11	Noxious Weeds .....	9
5.2.12	Public Roads .....	9

5.2.13	Turbine Access Roads.....	10
5.2.14	Private Roads .....	10
5.2.15	Archaeological and Historic Resources .....	10
5.2.16	Interference .....	11
5.2.17	Livestock Protection .....	11
5.2.18	Fences .....	11
5.2.19	Drainage Tiles.....	11
5.2.20	Equipment Storage.....	11
5.2.21	Restoration .....	11
5.2.22	Cleanup .....	12
5.2.23	Pollution and Hazardous Waste.....	12
5.2.24	Damages.....	12
5.2.25	Public Safety .....	12
5.2.26	Tower Identification.....	12
5.2.27	Federal Aviation Administration Lighting.....	13
5.3	Communication Cables.....	13
5.4	Electrical Collector and Feeder Lines.....	13
5.5	Other Requirements .....	13
5.5.1	Safety Codes and Design Requirements.....	13
5.5.2	Other Permits and Regulations .....	14
6.0	SPECIAL CONDITIONS.....	14
6.1	Scenic Byways.....	14
6.2	Operational Phase Fatality Monitoring.....	15
7.0	SURVEYS AND REPORTING.....	15
7.1	Biological and Natural Resource Inventories .....	15
7.2	Shadow Flicker .....	15
7.3	Wake Loss Studies.....	16
7.4	Noise .....	16
7.5	Avian and Bat Protection.....	16
7.5.1	Avian and Bat Protection Plan.....	16
7.5.2	Quarterly Incident Reports.....	16
7.5.3	Immediate Incident Reports.....	17
7.5.4	Turbine Operational Curtailment.....	17
8.0	AUTHORITY TO CONSTRUCT LWECS.....	17
8.1	Wind Rights .....	18
8.2	Power Purchase Agreement .....	18
8.3	Failure to Commence Construction .....	18
9.0	COMPLAINT PROCEDURES .....	18
10.0	COMPLIANCE REQUIREMENTS.....	19

10.1 Pre-Construction Meeting.....	19
10.2 Pre-Operation Meeting.....	19
10.3 Site Plan .....	19
10.4 Status Reports .....	20
10.5 Notification to the Commission.....	20
10.6 As-Builts .....	20
10.7 GPS Data.....	21
10.8 Project Energy Production .....	21
10.9 Wind Resource Use.....	21
10.10 Emergency Response .....	21
10.11 Extraordinary Events.....	22
11.0 DECOMMISSIONING, RESTORATION, AND ABANDONMENT.....	22
11.1 Decommissioning Plan .....	22
11.2 Site Restoration.....	22
11.3 Abandoned Turbines.....	23
12.0 COMMISSION AUTHORITY AFTER PERMIT ISSUANCE.....	23
12.1 Final Boundaries .....	23
12.2 Expansion of Site Boundaries.....	23
12.3 Periodic Review .....	23
12.4 Modification of Conditions.....	23
12.5 More Stringent Rules .....	24
12.6 Right of Entry .....	24
12.7 Proprietary Information .....	24
13.0 PERMIT AMENDMENT.....	24
14.0 TRANSFER OF PERMIT .....	25
15.0 REVOCATION OR SUSPENSION OF PERMIT .....	26
16.0 EXPIRATION DATE.....	26

**FIGURES**

Official Site Maps

**ATTACHMENTS**

Complaint Procedures for Permitted Energy Facilities

Compliance Filing Procedures for Permitted Energy Facilities

## **1.0 SITE PERMIT**

The Minnesota Public Utilities Commission (Commission) hereby issues this site permit to Palmer's Creek Wind Farm, LLC (Permittee) pursuant to Minnesota Statutes Chapter 216F and Minnesota Rules Chapter 7854. This permit authorizes the Palmer's Creek Wind Farm, LLC to construct and operate the Palmer's Creek Wind Farm (Project), a 44.6 megawatt (MW) nameplate capacity Large Wind Energy Conversion System (LWECS) and associated facilities in Chippewa County. The LWECS and associated facilities shall be built within the site identified in this permit and as identified in the attached site permit map(s), hereby incorporated into this document.

### **1.1 Preemption**

Pursuant to Minn. Stat. § 216F.07, this permit shall be the sole site approval required for the location, construction, and operation of this project and this permit shall supersede and preempt all zoning, building, and land use rules, regulations, and ordinances adopted by regional, county, local, and special purpose governments.

## **2.0 PROJECT DESCRIPTION**

The Palmer's Creek Wind Farm will be up to 44.6 MW, consisting of 18 wind turbines with a nameplate capacity of 2.3 MW or 2.5 MW. Two of the wind turbines will be 2.3 MW and 16 wind turbines will be 2.5 MW.

The initial project area being considered for turbine and associated facilities placement is approximately 6,150 acres of privately owned land, which the Permittee has secured the appropriate easements for access, construction, and operation of the Project. Upon completion of construction, the project site will occupy no more than 40 acres of land converted to wind turbines and associated facilities.

### **2.1 Associated Facilities**

Associated facilities for the Project will include a project substation, underground electric collector lines, approximately a 1,000 foot long interconnection transmission line, operation and maintenance building, wind turbine access roads, one permanent meteorological tower, a supervisory control and data acquisition (SCADA) system, and a temporary laydown yard.

### **2.2 Project Location**

The project is located in the following townships:

County	Township Name	Township	Range	Sections
Chippewa	Granite Falls	116 North	39 West	3-10, 15-22, 27-29
Chippewa	Granite Falls	116 North	40 West	1, 12, and 13

### **3.0 DESIGNATED SITE**

The site designated in this permit is the site described below and shown on the site permit maps attached to this permit. Within the site permit boundary, the project and associated facilities shall be located on lands for which the Permittee has obtained wind rights.

Upon completion, the total land area of the project site occupied by wind turbines and associated infrastructure will be approximately 40 acres.

#### **3.1 Turbine Layout**

The preliminary wind turbine and associated facility layouts are shown on the official site map(s). The preliminary layout represents the approximate location of wind turbines and associated facilities within the project boundary and identifies a layout that seeks to minimize the overall potential human and environmental impacts of the project, which were evaluated in the permitting process.

The final layout depicting the location of each wind turbine and associated facility shall be located within the project boundary. The project boundary serves to provide the Permittee with the flexibility to make minor adjustments to the preliminary layout to accommodate requests by landowners, local government units, federal and state agency requirements, and unforeseen conditions encountered during the detailed engineering and design process. Any modification to the location of a wind turbine and associated facility depicted in the preliminary layout shall be done in such a manner to have comparable overall human and environmental impacts and shall be specifically identified in the site plan pursuant to Section 10.3.

### **4.0 SETBACKS AND SITE LAYOUT RESTRICTIONS**

#### **4.1 Wind Access Buffer**

Wind turbine towers shall not be placed less than five rotor diameters on the prevailing wind direction and three rotor diameters on the non-prevailing wind direction from the perimeter of the property where the Permittee does not hold the wind rights, without the approval of the Commission. This section does not apply to public roads and trails.

#### **4.2 Residences**

Wind turbine towers shall not be located closer than 1,000 feet from all residences or the distance required to comply with the noise standards pursuant to Minn. R. 7030.0040, established by the Minnesota Pollution Control Agency, whichever is greater.

#### **4.3 Noise**

The wind turbine towers shall be placed such that the Permittee shall, at all times, comply with noise standards established by the Minnesota Pollution Control Agency as of the date of this permit and at all appropriate locations. The noise standards are found in Minnesota Rules Chapter 7030. Turbine operation shall be modified or turbines shall be removed from service if necessary to comply with these noise standards. The Permittee or its contractor may install and operate turbines as close as the minimum setback required in this permit, but in all cases shall comply with Minnesota Pollution Control Agency noise standards. The Permittee shall be required to comply with this condition with respect to all homes or other receptors in place as of the time of construction, but not with respect to such receptors built after construction of the towers.

#### **4.4 Roads**

Wind turbines and meteorological towers shall not be located closer than 250 feet from the edge of the nearest public road right-of-way.

#### **4.5 Public Lands**

Wind turbines and associated facilities including foundations, access roads, underground cable, and transformers, shall not be located in public lands, including, but not limited to, Waterfowl Production Areas, State Wildlife Management Areas, Scientific and Natural Areas or county parks. Wind turbine towers shall also comply with the setbacks of Section 4.1.

#### **4.6 Wetlands**

Wind turbines and associated facilities including foundations, access roads, underground cable and transformers, shall not be placed in public waters wetlands, as shown on the public water inventory maps prescribed by Minnesota Statutes Chapter 103G, except that electric collector or feeder lines may cross or be placed in public waters or public waters wetlands subject to permits and approvals by the Minnesota Department of Natural Resources (MN DNR) and the United States Army Corps of Engineers, and local units of government as implementers of the Minnesota Wetlands Conservation Act.

#### **4.6.1 Calcareous Fens**

Should any calcareous fens be identified within the project area, the Permittee must work with MN DNR to determine if any impacts will occur during any phase of the Project. If project impacts to any calcareous fens are anticipated the Permittee must develop a Calcareous Fen Management Plan in coordination with the MN DNR, as specified in Minn. Stat. 103G.223. Should a Calcareous Fen Management Plan be required, the approved plan must be submitted to the Commission 30 days prior to submittal of the site plan required in Section 10.3 of this Permit.

#### **4.7 Native Prairie**

Wind turbines and associated facilities including foundations, access roads, collector and feeder lines, underground cable, and transformers shall not be placed in native prairie, as defined in Minn. Stat. § 84.02, subd. 5, unless addressed in a prairie protection and management plan and shall not be located in areas enrolled in the Native Prairie Bank Program. Construction activities, as defined in Minn. Stat. § 216E.01, shall not impact native prairie unless addressed in a prairie protection and management plan.

The Permittee shall prepare a prairie protection and management plan in consultation with the MN DNR if native prairie, as defined in Minn. Stat. § 84.02, subd. 5, is identified within the site boundaries. The Permittee shall file the plan 30 days prior to submitting the site plan required by Section 10.3 of this permit. The plan shall address steps that will be taken to avoid impacts to native prairie and mitigation to unavoidable impacts to native prairie by restoration or management of other native prairie areas that are in degraded condition, by conveyance of conservation easements, or by other means agreed to by the Permittee, the MN DNR, and the Commission.

#### **4.8 Sand and Gravel Operations**

Wind turbines and all associated facilities, including foundations, access roads, underground cable, and transformers shall not be located within active sand and gravel operations, unless otherwise negotiated with the landowner.

#### **4.9 Wind Turbine Towers**

Structures for wind turbines shall be self-supporting tubular towers. The towers may be up to 90 meters (295 feet) above grade measured at hub height.

#### **4.10 Turbine Spacing**

The turbine towers shall be constructed within the site boundary as shown in the official site maps. The turbine towers shall be spaced no closer than three rotor diameters in the non-prevailing wind directions and five rotor diameters on the prevailing wind directions. If required during final micro-siting of the turbine towers to account for topographic conditions, up to 20 percent of the towers may be sited closer than the above spacing but the Permittee shall minimize the need to site the turbine towers closer.

#### **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 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. There shall be no lights on the meteorological towers other than what is required by the Federal Aviation Administration. This restriction shall not apply to infrared heating devices used to protect the wind monitoring equipment.

All meteorological towers shall be fitted with the necessary equipment to install or attach acoustic recording devices to monitor wildlife activity.

#### **4.12 Aviation**

The Permittee shall not place wind turbines or associated facilities in a location that could create an obstruction to navigable airspace of public and private airports (as defined in Minn. R. 8800.0100, subp. 24(a) and 24(b)) in Minnesota, adjacent states, or provinces. The Permittee shall apply the minimum obstruction clearance for private airports pursuant to Minn. R. 8800.1900, subp. 5. Setbacks or other limitations shall be followed in accordance with the Minnesota Department of Transportation, Department of Aviation, and the Federal Aviation Administration. The Permittee shall notify owners of all known airports within six miles of the project prior to construction.

#### **4.13 Footprint Minimization**

The Permittee shall design and construct the LWECS so as to minimize the amount of land that is impacted by the LWECS. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers, and monitoring systems shall, to the greatest extent

feasible, be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.

## **5.0 GENERAL CONDITIONS**

The Permittee shall comply with the following conditions during construction and operation of the LWECS and associated facilities over the life of this permit.

### **5.1 Notification**

Within 14 days of permit issuance, the Permittee shall send a copy of the permit to any regional development commission, county auditor, city and township clerks in which any part of the site is located. Within 30 days of permit issuance, the Permittee shall provide all affected landowners with a copy of this permit and the complaint procedures. In no case shall the landowner receive this site permit and complaint procedures less than five days prior to the start of construction on their property. The Permittee shall contact landowners prior to entering the property or conducting maintenance within the site, unless otherwise negotiated with the affected landowner.

### **5.2 Construction and Operation Practices**

The Permittee shall follow those specific construction practices, operation practices, and material specifications described in the April 11, 2017 Site Permit Application for the LWECS, and the record of these proceedings unless this permit establishes a different requirement.

#### **5.2.1 Field Representative**

The Permittee shall designate a field representative responsible for overseeing compliance with the conditions of this permit during construction of the project. This person shall be accessible by telephone or other means during normal business hours throughout site preparation, construction, cleanup, and restoration.

The Permittee shall file with the Commission the name, address, email, phone number, and emergency phone number of the field representative at least 14 days prior to commencing construction.

The Permittee shall provide the field representative's contact information to affected landowners, residents, local government units and other interested persons 14 days prior to commencing construction. The Permittee may change the field representative at any time upon notice to the Commission, affected landowners, residents, local government units and other interested persons.

### **5.2.2 Site Manager**

The Permittee shall designate a site manager responsible for overseeing compliance with the conditions of this permit during the commercial operation and decommissioning phases of the project. This person, or another Project representative, shall be accessible by telephone or other means during normal business hours for the life of this permit.

The Permittee shall file with the Commission the name, address, email, phone number, and emergency phone number of the site manager at least 14 days prior to commercial operation of the facility. The Permittee shall provide the site manager's contact information to affected landowners, residents, local government units and other interested persons 14 days prior to commercial operation of the facility. The Permittee may change the site manager at any time upon notice to the Commission, affected landowners, residents, local government units and other interested persons.

### **5.2.3 Employee Training and Education of Permit Terms and Conditions**

The Permittee shall inform all employees, contractors, and other persons involved in the construction and ongoing operation of the LWECs of the terms and conditions of this permit.

### **5.2.4 Topsoil Protection**

The Permittee shall implement measures to protect and segregate topsoil from subsoil on all lands unless otherwise negotiated with the affected landowner.

### **5.2.5 Soil Compaction**

The Permittee shall implement measures to minimize soil compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.

### **5.2.6 Soil Erosion and Sediment Control**

The Permittee shall implement those erosion prevention and sediment control practices recommended by the Minnesota Pollution Control Agency (MPCA) Construction Stormwater Program.

If construction of the facility disturbs more than one acre of land, or is sited in an area designated by the MPCA as having potential for impacts to water resources, the Permittee shall obtain a National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) Construction Stormwater permit from the MPCA that provides for the development of a

stormwater pollution prevention plan (SWPPP) that describes methods to control erosion and runoff.

The Permittee shall implement reasonable measures to minimize erosion and sedimentation during construction and shall employ perimeter sediment controls, protect exposed soil by promptly planting, seeding, using erosion control blankets and turf reinforcement mats, stabilizing slopes, protecting storm drain inlets, protecting soil stockpiles, and controlling vehicle tracking. Contours shall be graded as required so that all surfaces provide for proper drainage, blend with the natural terrain, and are left in a condition that will facilitate re-vegetation and prevent erosion. All areas disturbed during construction of the facilities shall be returned to pre-construction conditions.

### **5.2.7 Wetlands**

Construction in wetland areas shall occur during frozen ground conditions to minimize impacts, to the extent feasible. When construction during winter is not possible, wooden or composite mats shall be used to protect wetland vegetation. Soil excavated from the wetlands and riparian areas shall be contained and managed in accordance with all applicable wetland permits, but may not be returned to the wetlands. Wetlands and riparian areas shall be accessed using the shortest route possible in order to minimize travel through wetland areas and prevent unnecessary impacts.

Wetland and water resource areas disturbed by construction activities shall be restored to pre-construction conditions in accordance with all applicable wetland permits. Restoration of the wetlands will be performed by Permittee in accordance with the requirements of applicable state and federal permits or laws and landowner agreements.

### **5.2.8 Vegetation Management**

The Permittee shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the project.

The Permittee shall minimize the number of trees to be removed in selecting the site layout specifically preserving to the maximum extent practicable windbreaks, shelterbelts, living snow fences, and vegetation, to the extent that such actions do not violate sound engineering principles.

### **5.2.9 Application of Pesticides**

The Permittee shall restrict pesticide use to those pesticides and methods of application approved by the Minnesota Department of Agriculture, Minnesota Department of Natural Resources, and the U.S. Environmental Protection Agency. Selective foliage or basal application shall be used when practicable. All pesticides shall be applied in a safe and cautious manner so as not to damage adjacent properties including crops, orchards, tree farms, apiaries, or gardens. The Permittee shall contact the landowner or designee to obtain approval for the use of pesticide at least 14 days prior to any application on their property. The landowner may request that there be no application of pesticides on any part of the site within the landowner's property. The Permittee shall provide notice of pesticide application to affected landowners, and known beekeepers operating apiaries within three miles of the project site at least 14 days prior to such application.

#### **5.2.10 Invasive Species**

The Permittee shall develop an Invasive Species Prevention Plan to prevent the introduction or spread of invasive species on lands disturbed by Project construction activities. The Invasive Species Prevention Plan shall be filed with the Commission 14 days prior to the pre-construction meeting.

#### **5.2.11 Noxious Weeds**

The Permittee shall take all reasonable precautions against the spread of noxious weeds during all phases of construction. When utilizing seed to establish temporary and permanent vegetative cover on exposed soil the Permittee shall select site appropriate seed certified to be free of noxious weeds. The Permittee shall consult with landowners on the selection and use of seed for replanting. To the extent possible, the Permittee shall use native seed mixes.

#### **5.2.12 Public Roads**

At least 14 days prior to the pre-construction meeting, the Permittee shall identify all state, county, or township roads that will be used for the project and shall notify the Commission and the state, county, or township governing body having jurisdiction over the roads to determine if the governmental body needs to inspect the roads prior to use of these roads. Where practical, existing roadways shall be used for all activities associated with the project. Where practical, all-weather roads shall be used to deliver cement, turbines, towers, assembled nacelles, and all other heavy components to and from the turbine sites.

The Permittee shall prior to the use of such roads, make satisfactory arrangements with the appropriate state, county, or township governmental body having jurisdiction over roads to be

used for construction of the project, for maintenance and repair of roads that may be subject to increased impacts due to transportation of equipment and project components. The Permittee shall notify the Commission of such arrangements upon request.

### **5.2.13 Turbine Access Roads**

The Permittee shall construct the least number of turbine access roads necessary to safely and efficiently operate the project and satisfy landowner requests. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. Access roads shall not be constructed across streams and drainage ways without required permits and approvals. When access roads are constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed. Any access roads that are constructed across streams or drainage ditches shall be designed and constructed in a manner that maintains existing fish passage. Access roads shall be constructed in accordance with all necessary township, county or state road requirements and permits. Access roads that are constructed across grassed waterways, which provide drainage for surface waters that are ephemeral in nature, are not required to maintain or provide fish passage.

### **5.2.14 Private Roads**

The Permittee shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.

### **5.2.15 Archaeological and Historic Resources**

The Permittee shall make every effort to avoid impacts to identified archaeological and historic resources when constructing the LWECs. In the event that a resource is encountered, the Permittee shall contact and consult with the State Historic Preservation Office and the State Archaeologist. Where feasible, avoidance of the resource is required. Where not feasible, mitigation must include an effort to minimize project impacts on the resource consistent with State Historic Preservation Office and State Archaeologist requirements.

Prior to construction, workers shall be trained about the need to avoid cultural properties, how to identify cultural properties, and procedures to follow if undocumented cultural properties, including gravesites, are found during construction. If human remains are encountered during construction, the Permittee shall immediately halt construction at such location, and promptly notify local law enforcement and the State Archaeologist. Construction at such location shall not proceed until authorized by local law enforcement or the State Archaeologist.

### **5.2.16 Interference**

At least 14 days prior to the pre-construction meeting, the Permittee shall submit to the Commission an assessment of television and radio signal reception, microwave signal patterns, and telecommunications in the project area. The assessment shall be designed to provide data that can be used in the future to determine whether the turbines and associated facilities are the cause of disruption or interference of television or radio reception, microwave patterns, or telecommunications in the event residents should complain about such disruption or interference after the turbines are placed into operation. The Permittee shall be responsible for alleviating any disruption or interference of these services caused by the turbines or any associated facilities.

The Permittee shall not operate the project so as to cause microwave, television, radio, telecommunications, or navigation interference in violation of Federal Communications Commission regulations or other law. In the event the project or its operations cause such interference, the Permittee shall take timely measures necessary to correct the problem.

### **5.2.17 Livestock Protection**

The Permittee shall take precautions to protect livestock during all phases of the project's life.

### **5.2.18 Fences**

The Permittee shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner. When the Permittee installs a gate where electric fences are present, the Permittee shall provide for continuity in the electric fence circuit.

### **5.2.19 Drainage Tiles**

The Permittee shall take into account, avoid, promptly repair or replace all drainage tiles broken or damaged during all phases of the project's life unless otherwise negotiated with affected landowners. The Permittee shall notify the Commission of such arrangements upon request.

### **5.2.20 Equipment Storage**

The Permittee shall not locate temporary equipment staging areas on lands under its control unless negotiated with affected landowner. Temporary equipment staging areas shall not be located in wetlands or native prairie as defined in Sections 4.6 and 4.7.

### **5.2.21 Restoration**

The Permittee shall, as soon as practical following construction of each turbine, restore the areas temporarily affected by construction to the condition that existed immediately before construction began to the extent possible. The time period to complete restoration may be no longer than 12 months after completion of the construction, unless otherwise negotiated with the affected landowner. Restoration shall be compatible with the safe operation, maintenance and inspection of the project. Within 60 days after completion of all restoration activities, the Permittee shall advise the Commission in writing of the completion of such activities.

#### **5.2.22 Cleanup**

All waste and scrap that is the product of construction shall be removed from the site and all premises on which construction activities were conducted and properly disposed of upon completion of each task. Personal litter, including bottles, cans, and paper from construction activities shall be removed on a daily basis.

#### **5.2.23 Pollution and Hazardous Waste**

All appropriate precautions to protect against pollution of the environment shall be taken by the Permittee. The Permittee shall be responsible for compliance with all laws applicable to the generation, storage, transportation, clean up and disposal of all wastes generated during construction and restoration of the site.

#### **5.2.24 Damages**

The Permittee shall fairly restore or compensate landowners for damage to crops, fences, private roads and lanes, landscaping, drain tile, or other damages sustained during construction.

#### **5.2.25 Public Safety**

The Permittee shall provide educational materials to landowners adjacent to the site and, upon request, to interested persons about the project and any restrictions or dangers associated with the project. The Permittee shall also provide any necessary safety measures such as warning signs and gates for traffic control or to restrict public access. The Permittee shall submit the location of all underground facilities, as defined in Minn. Stat. § 216D.01, subd. 11, to Gopher State One Call following the completion of construction at the site.

#### **5.2.26 Tower Identification**

All turbine towers shall be marked with a visible identification number.

### **5.2.27 Federal Aviation Administration Lighting**

Towers shall be marked as required by the Federal Aviation Administration. There shall be no lights on the towers other than what is required by the Federal Aviation Administration. This restriction shall not apply to infrared heating devices used to protect the wind monitoring equipment.

### **5.3 Communication Cables**

The Permittee shall place all communication and supervisory control and data acquisition cables underground and within or adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner.

### **5.4 Electrical Collector and Feeder Lines**

Collector lines that carry electrical power from each individual transformer associated with a wind turbine to an internal project interconnection point shall be buried underground. Collector lines shall be placed within or adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner.

Feeder lines that carry power from an internal project interconnection point to the project substation or interconnection point on the electrical grid may be overhead or underground. Feeder line locations shall be negotiated with the affected landowner. Any overhead or underground feeder lines that parallel public roads shall be placed within the public rights-of-way or on private land immediately adjacent to public roads. If overhead feeder lines are located within public rights-of-way, the Permittee shall obtain approval from the governmental unit responsible for the affected right-of-way.

Collector and feeder line locations shall be located in such a manner as to minimize interference with agricultural operations including, but not limited, to existing drainage patterns, drain tile, future tiling plans, and ditches. Safety shields shall be placed on all guy wires associated with overhead feeder lines. The Permittee shall submit the engineering drawings of all collector and feeder lines in the site plan pursuant to Section 10.3.

### **5.5 Other Requirements**

#### **5.5.1 Safety Codes and Design Requirements**

The LW ECS and associated facilities shall be designed to meet or exceed all relevant local and state codes, Institute of Electrical and Electronics Engineers, Inc. standards, the National Electric

Safety Code, and North American Electric Reliability Corporation requirements. The Permittee shall report to the Commission on compliance with these standards upon request.

### **5.5.2 Other Permits and Regulations**

The Permittee shall comply with all applicable state rules and statutes. The Permittee shall obtain all required permits for the project and comply with the conditions of those permits unless those permits conflict with or are preempted by federal or state permits and regulations. A list of the permits known to be required is included in the permit application. The Permittee shall file documentation showing approval or issuance of such permits with the Commission.

The Permittee shall comply with all terms and conditions of permits or licenses issued by federal, state, or tribal authorities including, but not limited to, the requirements of the MPCA (Section 401 Water Quality Certification, NPDES/ SDS stormwater permit for construction activity, and other site specific discharge approvals), DNR (License to Cross Public Lands and Water, Public Water Works Permit, and state protected species consultation), SHPO (Section 106 Historic Consultation Act), FAA determinations, and Mn/DOT (Utility Access Permit, Highway Access Permit, Oversize and Overweight Permit, and Aeronautics Airspace Obstruction Permit).

The Permittee shall consult with the United States Fish and Wildlife Service (USFWS) to determine if an Eagle Incidental Take Permit under the Bald and Golden Eagle Protection Act (BGEPA) is appropriate for the construction and operation of the wind energy facility. The Permittee shall consult with the USFWS to determine if an Incidental Take Permit under the Endangered Species Act (ESA) is appropriate for the construction and operation of the wind energy facility. The Permittee shall file with the Commission all formal written correspondence received from the USFWS. The Permittee shall provide a copy of any additional agency correspondence upon Commission request.

The Permittee shall comply with all terms and conditions of permits or licenses issued by the counties, cities, and municipalities affected by the project that do not conflict with or are not pre-empted by federal or state permits and regulations.

## **6.0 SPECIAL CONDITIONS**

Special conditions shall take precedence over other conditions of this permit should there be a conflict.

### **6.1 Scenic Byways**

The Permittee shall coordinate with MnDOT and New Ulm Convention and Visitors Bureau, or another designated local stakeholder, to identify project related impacts to the Minnesota River Valley National Scenic Byway. The Permittee will work to avoid impacts to the Scenic Byway, and mitigation for unavoidable impacts will be developed in coordination with MnDOT, the local stakeholder group, and Department of Commerce.

## **6.2 Operational Phase Fatality Monitoring**

The Permittee shall utilize a qualified third party to conduct three full years of avian and bat fatality monitoring following the commencement of the operational phase of the project. Monitoring activities and results will be coordinated directly with MN DNR, MN Department of Commerce EERA, USFWS, and the Commission. Detailed monitoring protocols, agency coordination, and any avoidance and minimization measures will be detailed in the project's ABPP.

## **7.0 SURVEYS AND REPORTING**

### **7.1 Biological and Natural Resource Inventories**

The Permittee, in consultation with the Commission, Department of Commerce EERA and Minnesota Department of Natural Resources, shall design and conduct pre-construction desktop and field inventories of existing wildlife management areas, scientific and natural areas, recreation areas, native prairies and forests, wetlands, and any other biologically sensitive areas within the project site and assess the presence of state- or federally-listed or threatened species. The results of the inventories shall be filed with the Commission at least 30 days prior to the pre-construction meeting to confirm compliance of conditions in this permit. The Permittee shall file with the Commission, any biological surveys or studies conducted on this project, including those not required under this permit.

### **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 subject to exposure to turbine shadow flicker. 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.

### **7.3 Wake Loss Studies**

At least 14 days prior to the pre-construction meeting, the Permittee shall file with the Commission the pre-construction micro-siting analysis leading to the final tower locations and an estimate of total project wake losses. As part of the annual report on project energy production required under Section 10.8 of the permit the Permittee shall file with the Commission any operational wake loss studies conducted on this project during the calendar year preceding the report.

### **7.4 Noise**

At least 14 days prior to the pre-construction meeting, the Permittee shall file with the Commission the methodology for the conduct of a post-construction noise study. The study shall be designed to determine the operating LWECS noise levels at different frequencies and at various distances from the turbines at various wind directions and speeds. The Permittee shall file the completed post-construction noise study within 18 months after commercial operation.

### **7.5 Avian and Bat Protection**

#### **7.5.1 Avian and Bat Protection Plan**

The Permittee shall comply with the provisions of their final avian and bat protection plan (ABPP) submitted for this project [*14 days prior to pre-construction meeting*], and revisions resulting from the annual audit of ABPP implementation. The ABPP must address steps to be taken to identify and mitigate impacts to avian and bat species during the construction phase and the operation phase of the project. The ABPP shall also include formal and incidental post-construction fatality monitoring, training, wildlife handling, documentation (e.g., photographs), and reporting protocols for each phase of the project.

The Permittee shall, by the 15th of March following each complete or partial calendar year of operation, file with the Commission an annual report detailing findings of its annual audit of ABPP practices. The annual report shall include summarized and raw data of bird and bat fatalities and injuries and shall include bird and bat fatality estimates for the project using agreed upon estimators from the prior calendar year. The annual report shall also identify any deficiencies or recommended changes in the operation of the project or in the ABPP to reduce avian and bat fatalities and shall provide a schedule for implementing the corrective or modified actions. The Permittee shall provide a copy of the report to the Minnesota Department of Natural Resources and to the U.S. Fish and Wildlife Service at the time of filing with the Commission.

#### **7.5.2 Quarterly Incident Reports**

The Permittee shall submit quarterly avian and bat reports to the Commission. Quarterly reports are due by the 15th of January, April, July, and October commencing the day following commercial operation and terminating upon the expiration of this permit. Each report shall identify any dead or injured avian and bat species, location of find by turbine number, and date of find for the reporting period in accordance with the reporting protocols. If a dead or injured avian or bat species is found, the report shall describe the potential cause of the occurrence (if known) and the steps taken to address future occurrences. The Permittee shall provide a copy of the report to the Minnesota Department of Natural Resources and to the U.S. Fish and Wildlife Service at the time of filing with the Commission.

### **7.5.3 Immediate Incident Reports**

The Permittee shall notify the Commission, U.S. Fish and Wildlife Service, and the Minnesota Department of Natural Resources within 24 hours of the discovery of any of the following:

- (a) five or more dead or injured birds or bats within a reporting period;
- (b) one or more dead or injured state threatened, endangered, or species of special concern;
- (c) one or more dead or injured federally listed species, including species proposed for listing; or
- (d) one or more dead or injured bald or golden eagle(s).

Within seven days of discovering that (a), (b), (c), or (d) has occurred, the Permittee must file with the Commission a compliance report identifying the details of what was discovered, the turbine where the discovery was made, a detailed log of agencies and individuals contacted, and current plans being undertaken to address the issue.

### **7.5.4 Turbine Operational Curtailment**

The Permittee shall operate all facility turbines so that all turbines are locked, or feathered, up to the manufacturer's standard cut-in speed, from ½ hour before sunset to ½ hour after sunrise, from April 1 to October 31, of each year of operation through the life of the project.

All operating turbines at the facility must be equipped with operational software that is capable of allowing for adjustment of turbine cut-in speeds.

## **8.0 AUTHORITY TO CONSTRUCT LWECs**

## **8.1 Wind Rights**

At least 14 days prior to the pre-construction meeting, the Permittee shall demonstrate that it has obtained the wind rights and any other rights necessary to construct and operate the project within the boundaries authorized by this permit.

Nothing in this permit shall be construed to preclude any other person from seeking a permit to construct a wind energy conversion system in any area within the boundaries of the project covered by this permit if the Permittee does not hold exclusive wind rights for such areas.

## **8.2 Power Purchase Agreement**

In the event the Permittee does not have a power purchase agreement or some other enforceable mechanism for sale of the electricity to be generated by the project at the time this permit is issued, the Permittee shall provide notice to the Commission when it obtains a commitment for purchase of the power. 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 two years of the issuance of this permit, the Permittee must advise the Commission of the reason for not having such commitment. In such event, the Commission may determine whether this permit should be amended or revoked. No amendment or revocation of this permit may be undertaken except in accordance with Minn. R. 7854.1300.

Execution of an interconnection agreement with the Southwest Power Pool or the Midcontinent Independent System Operator, Inc, allowing the sale of output on a merchant basis in the wholesale energy market would constitute an enforceable mechanism.

## **8.3 Failure to Commence Construction**

If the Permittee has not completed the pre-construction surveys required under this permit and commenced construction of the project within two years of the issuance of this permit, the Permittee must advise the Commission of the reason construction has not commenced. In such event, the Commission shall make a determination as to whether this permit should be amended or revoked. No revocation of this permit may be undertaken except in accordance with applicable statutes and rules, including Minn. R. 7854.1300.

## **9.0 COMPLAINT PROCEDURES**

Prior to the start of construction, the Permittee shall submit to the Commission the procedures that will be used to receive and respond to complaints. The procedures shall be in accordance

with the requirements of Minn. R. 7829.1500 or Minn. R. 7829.1700, and as set forth in the complaint procedures attached to this permit.

## **10.0 COMPLIANCE REQUIREMENTS**

Failure to timely and properly make compliance filings required by this permit is a failure to comply with the conditions of this permit. Compliance filings must be electronically filed with the Commission.

### **10.1 Pre-Construction Meeting**

Prior to the start of any construction, the Permittee shall participate in a pre-construction meeting with the Department of Commerce and Commission staff to review pre-construction filing requirements, scheduling, and to coordinate monitoring of construction and site restoration activities. Within 14 days following the pre-construction meeting, the Permittee shall file with the Commission, a summary of the topics reviewed and discussed and a list of attendees. The Permittee shall indicate in the filing the construction start date.

### **10.2 Pre-Operation Meeting**

At least 14 days prior to commercial operation of the facility, the Permittee shall participate in a pre-operation meeting with the Department of Commerce and Commission staff to coordinate field monitoring of operation activities for the project. Within 14 days following the pre-operation meeting, the Permittee shall file with the Commission, a summary of the topics reviewed and discussed and a list of attendees.

### **10.3 Site Plan**

At least 14 days prior to the pre-construction meeting, the Permittee shall provide the Commission, the Department of Commerce, and the Chippewa County Environmental Office with a site plan that includes specifications and drawings for site preparation and grading; specifications and locations of all turbines and other structures to be constructed including all electrical equipment, collector and feeder lines, pollution control equipment, fencing, roads, and other associated facilities; and procedures for cleanup and restoration. The documentation shall include maps depicting the site boundary and layout in relation to that approved by this permit. The Permittee shall document, through GIS mapping, compliance with the setbacks and site layout restrictions required by this permit, including compliance with the noise standards pursuant to Minnesota Rules Chapter 7030. At the same time, the Permittee shall notify the affected landowners and city and town clerks that the site plan is on file with the Commission and the Chippewa County Office.

The Permittee may submit a site plan and engineering drawings for only a portion of the project if the Permittee intends to commence construction on certain parts of the project before completing the site plan and engineering drawings for other parts of the project.

The Permittee may not commence construction until the earlier of 7 days following the pre-construction meeting or the date on which the Commission has advised the Permittee in writing that it has completed its review of the documents and determined that the planned construction is consistent with this permit. If the Permittee intends to make any significant changes to its site plan or the specifications and drawings after submission to the Commission, the Permittee shall notify the Commission, the Department of Commerce, the Chippewa County Environmental Office, and the affected landowners, city and town clerks at least five days before implementing the changes. No changes shall be made that would be in violation of any of the terms and conditions of this permit.

In the event that previously unidentified human and/or environmental conditions are discovered during construction that by law or pursuant to conditions outlined in this permit would preclude the use of that site as a turbine site, the Permittee shall have the right to move or relocate turbine site. Under these circumstances, the Permittee shall notify the Commission, the MPCA, DNR, Department of Commerce, the Chippewa County Environmental Office and the affected landowners, city and township clerks of any turbines that are to be relocated, the previously unidentified environmental conditions and how the movement of the turbine mitigates the human and environmental impact at least five days before implementing the changes. No changes shall be made that would be in violation of any of the terms or conditions of this permit.

#### **10.4 Status Reports**

The Permittee shall file with the Commission staff on progress regarding site construction. The Permittee need not report more frequently than monthly. Reports shall begin with the commencement of site construction and continue until completion of site restoration.

#### **10.5 Notification to the Commission**

At least three days before the project is to commence commercial operation, the Permittee shall file with the Commission the date on which the project will commence commercial operation and the date on which construction was completed.

#### **10.6 As-Builts**

Within 90 days after completion of construction, the Permittee shall submit copies of all final as-built plans and specifications developed during the project.

### **10.7 GPS Data**

Within 90 days after completion of construction, the Permittee shall submit to the Commission, in the format requested by the Commission, geo-spatial information (e.g., ArcGIS compatible map files, GPS coordinates, associated database of characteristics) for all structures associated with the LWECS.

### **10.8 Project Energy Production**

The Permittee shall, by February 1st following each complete or partial year of project operation, file a report with the Commission on the monthly energy production of the project including:

- (a) the installed nameplate capacity of the permitted project;
- (b) the total monthly energy generated by the project in MW hours;
- (c) the monthly capacity factor of the project;
- (d) yearly energy production and capacity factor for the project;
- (e) the operational status of the project and any major outages, major repairs, or turbine performance improvements occurring in the previous year; and
- (f) any other information reasonably requested by the Commission.

This information shall be considered public and must be filed electronically.

### **10.9 Wind Resource Use**

The Permittee shall, by February 1st following each complete or partial calendar year of operation, file with the Commission the average monthly and average annual wind speed collected at one permanent meteorological tower during the preceding year or partial year of operation. This information shall be considered public and must be filed electronically.

### **10.10 Emergency Response**

The Permittee shall prepare an Emergency Response Plan in consultation with the emergency responders having jurisdiction over the facility prior to project construction. The Permittee shall submit a copy of the plan, along with any comments from emergency responders, to the Commission at least 14 days prior to the pre-construction meeting and a revised plan, if any, at least 14 days prior to the pre-operation meeting. The Permittee shall provide as a compliance

filing confirmation that the Emergency Response Plan was provided to the emergency responders and Public Safety Answering Points (PSAP) with jurisdiction over the facility prior to commencement of construction. The Permittee shall obtain and register the facility address or other location indicators acceptable to the emergency responders and PSAP having jurisdiction over the facility.

### **10.11 Extraordinary Events**

Within 24 hours of discovery of an occurrence, the Permittee shall notify the Commission of any extraordinary event. Extraordinary events include but shall not be limited to: fires, tower collapse, thrown blade, acts of sabotage, collector or feeder line failure, and injured worker or private person. The Permittee shall, within 30 days of the occurrence, file a report with the Commission describing the cause of the occurrence and the steps taken to avoid future occurrences.

## **11.0 DECOMMISSIONING, RESTORATION, AND ABANDONMENT**

### **11.1 Decommissioning Plan**

The Permittee shall submit a decommissioning plan to the Commission at least fourteen 14 days prior to the pre-operation meeting, and provide updates to the plan every five (5) years thereafter. The plan shall provide information identifying all surety and financial securities established for decommissioning and site restoration of the Project in accordance with the requirements of Minn. R. 7854.0500, subpart 13. The decommissioning plan shall provide an itemized breakdown of costs of decommissioning all project components, which shall include labor and equipment. The plan shall identify cost estimates for the removal of turbines, turbine foundations, underground collection cables, access roads, crane pads, substation(s), and other project components. The plan may also include anticipated costs for the replacement of turbines or repowering the project by upgrading equipment.

The Permittee shall also submit the decommissioning plan to the local unit of government having direct zoning authority over the area in which the project is located. The Permittee shall ensure that it carries out its obligations to provide for the resources necessary to fulfill its requirements to properly decommission the project at the appropriate time. The Commission may at any time request the Permittee to file a report with the Commission describing how the Permittee is fulfilling this obligation.

### **11.2 Site Restoration**

Upon expiration of this permit, or upon earlier termination of operation of the project, or any turbine within the project, the Permittee shall have the obligation to dismantle and remove from

the site all towers, turbine generators, transformers, overhead and underground cables and lines, foundations, buildings, and ancillary equipment to a depth of four feet. Any agreement for removal to a lesser depth or no removal shall be recorded with the county and shall show the locations of all such foundations. To the extent feasible, the Permittee shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. All such agreements between the Permittee and the affected landowner shall be submitted to the Commission prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within 18 months of termination.

### **11.3 Abandoned Turbines**

The Permittee shall advise the Commission of any turbines that are abandoned prior to termination of operation of the project. The project, or any turbine within the project, shall be considered abandoned after one (1) year without energy production and the land restored pursuant to Section 11.2 unless a plan is developed and submitted to the Commission outlining the steps and schedule for returning the project, or any turbine within the project, to service.

## **12.0 COMMISSION AUTHORITY AFTER PERMIT ISSUANCE**

### **12.1 Final Boundaries**

After completion of construction, the Commission shall determine the need to adjust the final boundaries of the site required for this project in accordance with Minn. R. 7854.1300, subp. 1.

### **12.2 Expansion of Site Boundaries**

No expansion of the site boundaries described in this permit shall be authorized without the approval of the Commission. The Permittee may submit to the Commission a request for a change in the boundaries of the site for the project. The Commission will respond to the requested change in accordance with applicable statutes and rules.

### **12.3 Periodic Review**

The Commission shall initiate a review of this permit and the applicable conditions at least once every five years. The purpose of the periodic review is to allow the Commission, the Permittee, and other interested persons an opportunity to consider modifications in the conditions of this permit. No modification may be made except in accordance with applicable statutes and rules.

### **12.4 Modification of Conditions**

After notice and opportunity for hearing, this permit may be modified or amended for cause, including but not limited to the following:

- (a) violation of any condition in this permit;
- (b) endangerment of human health or the environment by operation of the project; or
- (c) existence of other grounds established by rule.

### **12.5 More Stringent Rules**

The Commission's issuance of this permit does not prevent the future adoption by the Commission of rules or orders more stringent than those now in existence and does not prevent the enforcement of these more stringent rules and orders against the Permittee.

### **12.6 Right of Entry**

Upon reasonable notice, presentation of credentials, and at all times in compliance with the Permittee's site safety standards, the Permittee shall allow representatives of the Commission to perform the following:

- (a) to enter upon the facilities easement of the site property for the purpose of obtaining information, examining records, and conducting surveys or investigations;
- (b) to bring such equipment upon the facilities easement of the property as is necessary to conduct such surveys and investigations;
- (c) to sample and monitor upon the facilities easement of the property; and
- (d) to examine and copy any documents pertaining to compliance with the conditions of this permit.

### **12.7 Proprietary Information**

Certain information required to be filed with the Commission under this permit may constitute trade secret information or other type of proprietary information under the Data Practices Act or other law. The Permittee must satisfy requirements of applicable law to obtain the protection afforded by the law.

### **13.0 PERMIT AMENDMENT**

The Commission may amend this permit at any time if the Commission has good cause to do so, in accordance with Minn. R. 7854.1300, subp.2.

Any person may request an amendment of the conditions of this permit by submitting a request to the Commission in writing describing the amendment sought and the reasons for the amendment. The Commission will mail notice of receipt of the request to the Permittee. The Commission may amend the conditions after affording the Permittee and interested persons such process as is required.

#### **14.0 TRANSFER OF PERMIT**

The Permittee may not transfer this permit without the approval of the Commission. If the Permittee desires to transfer this permit, the holder shall advise the Commission in writing of such desire. The Permittee shall provide the Commission with such information about the transfer as the Commission requires in order to reach a decision. The Commission may impose additional conditions on any new Permittee as part of the approval of the transfer.

Within 20 days after the date of the notice provided in Section 10.5, the Permittee shall file a notice describing its ownership structure, identifying, as applicable:

- (a) the owner(s) of the financial and governance interests of the Permittee;
- (b) the owner(s) of the majority financial and governance interests of the Permittee's owners; and
- (c) the Permittee's ultimate parent entity (meaning the entity which is not controlled by any other entity)

The Permittee shall notify the Commission of:

- (a) a change in owner(s) of the majority\* financial or governance interests in the Permittee;
- (b) a change in owner(s) of the majority\* interest financial or governance interests of the Permittee's owners, or,
- (c) a sale which changes the parent entity of the Permittee.

*\*When there are only co-equal 50/50 percent interests, any change shall be considered a change in majority interest.*

The Permittee shall notify the Commission of:

- (a) the sale of a parent entity or a majority interest in the Permittee,
- (b) the sale of a majority interest of the Permittee's owners or majority interest of the owners, or,
- (c) a sale which changes the entity with ultimate control over the Permittee.

## **15.0 REVOCATION OR SUSPENSION OF PERMIT**

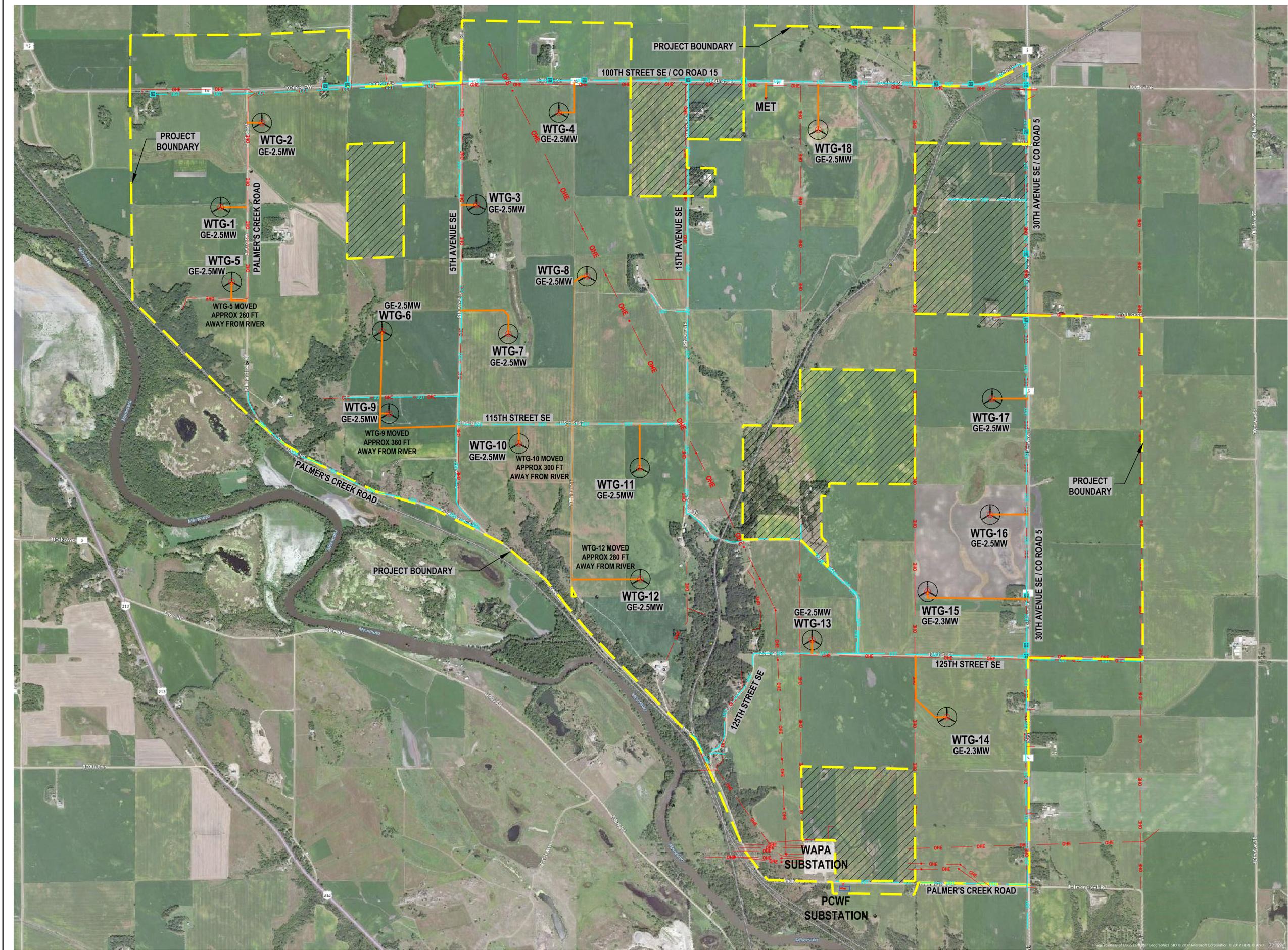
The Commission may take action to suspend or revoke this permit upon the grounds that:

- (a) a false statement was knowingly made in the application or in accompanying statements or studies required of the Permittee, and a true statement would have warranted a change in the Commission's findings;
- (b) there has been a failure to comply with material conditions of this permit, or there has been a failure to maintain health and safety standards;
- (c) there has been a material violation of a provision of an applicable statute, rule, or an order of the Commission; or
- (d) the Permittee has filed a petition with the Commission requesting that the permit be revoked or terminated.

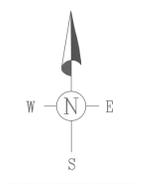
In the event the Commission determines that it is appropriate to consider revocation or suspension of this permit, the Commission shall proceed in accordance with the requirements of Minn. R. 7854.1300 to determine the appropriate action. Upon a finding of any of the above, the Commission may require the Permittee to undertake corrective measures in lieu of having this permit suspended or revoked.

## **16.0 EXPIRATION DATE**

This permit shall expire 30 years after the date this permit was approved and adopted.



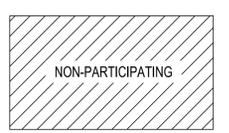
NO	REVISION	BY	CHK'D	DATE
1	RELEASED FOR FINAL REVIEW	HEK	THH	09/15/2017
2	ISSUED FOR CONSTRUCTION	HEK	THH	01/19/2018
3	ISSUED FOR PERMITS - LOCATION MODIFICATIONS - WTG-5, 9, 10&12	THH	TBT	02/02/2018
4	PC / RELOCATED WTG-5, 9, 10&12	HEK	THH	02/23/2018



Note: @  
Architectural D Size  
(24"x36")

NOTE:  
LOCATIONS OF ITEMS SHOWN:  
PROJECT BOUNDARY /  
EXISTING ROADS (MINNESOTA) /  
STREAMS / PARCELS / ETC. /  
ARE OBTAINED FROM SHAPE FILES (SHP)  
(PROVIDED BY BONNEMA SURVEYING)

NOTE:  
BACKGROUND REFERENCE IMAGES SHOWN /  
OBTAINED FROM EARTHSTAR GEOGRAPHICS



The original of this drawing was issued and sealed by TODD H. HAY  
Date: 02/23/2018 Registration No.: 40988  
and is on file at Fagen Engineering LLC  
corporate office in Granite Falls, Minnesota.



**FAGEN**  
**ENGINEERING LLC**  
CIVIL - STRUCTURAL - MECHANICAL - ELECTRICAL  
ENGINEERS

501 HWY. 212 W., GRANITE FALLS, MN. 56241  
Granite Falls, MN 56241 Tel. 320-564-4573

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PALMER'S CREEK  
WIND FARM, LLC  
GRANITE FALLS, MINNESOTA

PALMER'S CREEK WIND FARM  
PROJECT / GE-2.3/2.5 WTG LAYOUT

DRAWN: HEK	SHEET NUMBER
CHK'D: THH	2100
DATE: 01/19/2018	
SCALE: 1"=1000'	
JOB NUMBER	

EG2482 REVISION NUMBER 2

MINNESOTA PUBLIC UTILITIES COMMISSION  
COMPLAINT HANDLING PROCEDURES FOR  
PERMITTED ENERGY FACILITIES

**A. Purpose**

To establish a uniform and timely method of reporting and resolving complaints received by the permittee concerning permit conditions for site preparation, construction, cleanup, restoration, operation, and maintenance.

**B. Scope**

This document describes complaint reporting procedures and frequency.

**C. Applicability**

The procedures shall be used for all complaints received by the permittee and all complaints received by the Minnesota Public Utilities Commission (Commission) under Minn. R. 7829.1500 or Minn. R. 7829.1700 relevant to this permit.

**D. Definitions**

**Complaint:** A verbal or written statement presented to the permittee by a person expressing dissatisfaction or concern regarding site preparation, cleanup or restoration or other site and associated facilities permit conditions. Complaints do not include requests, inquiries, questions or general comments.

**Substantial Complaint:** A written complaint alleging a violation of a specific permit condition that, if substantiated, could result in permit modification or suspension pursuant to the applicable regulations.

**Unresolved Complaint:** A complaint which, despite the good faith efforts of the permittee and a person, remains unresolved or unsatisfactorily resolved to one or both of the parties.

**Person:** An individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

## E. Complaint Documentation and Processing

1. The permittee shall designate an individual to summarize complaints for the Commission. This person's name, phone number and email address shall accompany all complaint submittals.
2. A person presenting the complaint should to the extent possible, include the following information in their communications:
  - a. name, address, phone number, and email address;
  - b. date of complaint;
  - c. tract or parcel number; and
  - d. whether the complaint relates to a permit matter or a compliance issue.
3. The permittee shall document all complaints by maintaining a record of all applicable information concerning the complaint, including the following:
  - a. docket number and project name;
  - b. name of complainant, address, phone number and email address;
  - c. precise description of property or parcel number;
  - d. name of permittee representative receiving complaint and date of receipt;
  - e. nature of complaint and the applicable permit condition(s);
  - f. activities undertaken to resolve the complaint; and
  - g. final disposition of the complaint.

## F. Reporting Requirements

The permittee shall commence complaint reporting at the beginning of project construction and continue through the term of the permit. The permittee shall report all complaints to the Commission according to the following schedule:

**Immediate Reports:** All substantial complaints shall be reported to the Commission the same day received, or on the following working day for complaints received after working hours. Such reports are to be directed to the Commission's Consumer Affairs Office at 1-800-657-3782 (voice messages are acceptable) or [consumer.puc@state.mn.us](mailto:consumer.puc@state.mn.us). For e-mail reporting, the email subject line should read "PUC EFP Complaint" and include the appropriate project docket number.

## ATTACHMENT A

**Monthly Reports:** During project construction and restoration, a summary of all complaints, including substantial complaints received or resolved during the preceding month, shall be filed by the 15th of each month to Daniel P. Wolf, Executive Secretary, Public Utilities Commission, using the eDockets system. The eDockets system is located at:  
<https://www.edockets.state.mn.us/EFiling/home.jsp>

If no complaints were received during the preceding month, the permittee shall file a summary indicating that no complaints were received.

### **G. Complaints Received by the Commission**

Complaints received directly by the Commission from aggrieved persons regarding site preparation, construction, cleanup, restoration, operation and maintenance shall be promptly sent to the permittee.

### **H. Commission Process for Unresolved Complaints**

Commission staff shall perform an initial evaluation of unresolved complaints submitted to the Commission. Complaints raising substantial permit issues shall be processed and resolved by the Commission. Staff shall notify the permittee and appropriate persons if it determines that the complaint is a substantial complaint. With respect to such complaints, each party shall submit a written summary of its position to the Commission no later than ten days after receipt of the staff notification. The complaint will be presented to the Commission for a decision as soon as practicable.

### **I. Permittee Contacts for Complaints and Complaint Reporting**

Complaints may be filed by mail or email to:

*Matt Pesta*  
*501 West Highway 212, Granite Falls, MN 56241*  
*Tel: 320-269-1780*  
*Emergency Tel: 320-564-3324*  
*MPesta@fageninc.com*

This information shall be maintained current by informing the Commission of any changes as they become effective.

**MINNESOTA PUBLIC UTILITIES COMMISSION  
COMPLIANCE FILING PROCEDURE FOR  
PERMITTED ENERGY FACILITIES**

**A. Purpose**

To establish a uniform and timely method of submitting information required by Commission energy facility permits.

**B. Scope and Applicability**

This procedure encompasses all known compliance filings required by permit.

**C. Definitions**

**Compliance Filing:** A filing of information to the Commission, where the information is required by a Commission site or route permit.

**D. Responsibilities**

1. The permittee shall file all compliance filings with Daniel P. Wolf, Executive Secretary, Public Utilities Commission, through the eDockets system. The eDockets system is located at: <https://www.edockets.state.mn.us/EFiling/home.jsp>

General instructions are provided on the eDockets website. Permittees must register on the website to file documents.

2. All filings must have a cover sheet that includes:
  - a. Date
  - b. Name of submitter/permittee
  - c. Type of permit (site or route)
  - d. Project location
  - e. Project docket number
  - f. Permit section under which the filing is made
  - g. Short description of the filing

3. Filings that are graphic intensive (e.g., maps, engineered drawings) must, in addition to being electronically filed, be submitted as paper copies and on CD. Paper copies and CDs should be sent to: 1) Daniel P. Wolf, Executive Secretary, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, MN 55101-2147, and 2) Department of Commerce, Energy Environmental Review and Analysis, 85 7th Place East, Suite 500, St. Paul, MN 55101-2198.

The Commission may request a paper copy of any electronically filed document.

### PERMIT COMPLIANCE FILINGS<sup>1</sup>

PERMITTEE: Palmer's Creek Wind Farm, LLC  
 PERMIT TYPE: LWECS Site Permit  
 PROJECT LOCATION: Chippewa County, Minnesota  
 PUC DOCKET NUMBER: IP-6979/WS-17-265

Filing Number	Permit Section	Description of Compliance Filing	Due Date
1.	4.7	Prairie Protection and Management Plan in consultation with MnDNR, if applicable.	30 days prior to submitting site plan.
2.	5.1	Notification of permit to government entities and affected landowners.	Within 30 days of permit issuance and not less than 5 days prior to construction for affected landowners.
3.	5.2.1	Field Representative	14 days prior to commencing construction to Commission and affected landowners.
4.	5.2.2	Site Manager	14 days prior to commercial operation to Commission and affected landowners.
5.	5.2.10	Invasive Species Prevention Plan	14 days prior to pre-construction meeting.
6.	5.2.12	Road Identification	14 days prior to pre-construction meeting.

<sup>1</sup> This compilation of permit compliance filings is provided for the convenience of the permittee and the Commission. It is not a substitute for the permit; the language of the permit controls.

Filing Number	Permit Section	Description of Compliance Filing	Due Date
7.	5.2.16	Assessment of Television and Radio Signal Reception	14 days prior to pre-construction meeting.
8.	5.2.21	Completion of Restoration	Within 60 days of completion of restoration.
9.	5.4	Electrical Collector and Feeder Lines	Submit with site plan.
10.	5.5.2	Other Permits and Regulations	As received.
11.	6.1	Scenic Byways	Ongoing
12.	6.2	Operational Phase Fatality Monitoring	Submit with ABPP.
13.	7.1	Biological and Natural Resource Inventories	30 days prior to pre-construction meeting.
14.	7.2	Shadow Flicker Analysis	14 days prior to pre-construction meeting.
15.	7.3	Micro-Siting and Wake Loss Analysis	14 days prior to pre-construction meeting.
16.	7.4	Post-Construction Noise Methodology	14 days prior to pre-construction meeting.
17.	7.4	Completed Post-Construction Noise Study	18 months of commercial operation.
18.	7.5.1	Avian and Bat Protection Plan (ABPP)	14 days prior to pre-construction meeting.

Filing Number	Permit Section	Description of Compliance Filing	Due Date
19.	7.5.1	ABPP Annual Report	15th of March following each complete or partial calendar year of operation.
20.	7.5.2	Quarterly Avian and Bat Reports	Quarterly by the 15th of January, April, July, and October commencing the day following commercial operation.
21.	7.5.3	Immediate Incident Reports	24 hours of the discovery.
22.	8.1	Demonstration of Wind Rights	14 days prior to pre-construction meeting.
23.	8.2	Power Purchase Agreement or Other Enforceable Mechanism	Prior to project construction.
24.	8.3	Failure to Commence Construction	Within two years of permit issuance if construction has not commenced.
25.	9.0	Complaint Procedures	Prior to project construction.
26.	10.1	Summary of Pre-Construction Meeting	14 days after pre-construction meeting.
27.	10.2	Summary of Pre-Operation Meeting	14 days after pre-operation meeting.
28.	10.3	Site Plan	14 days prior to pre-construction meeting.
29.	10.4	Status Reports	Monthly from start of construction to completion of restoration.
30.	10.5	Notice of Commercial Operation	Three days prior to commercial operation.

Filing Number	Permit Section	Description of Compliance Filing	Due Date
31.	10.6	As-Builts	90 days after completion of construction.
32.	10.7	GPS Data	90 days after completion of construction.
33.	10.8	Project Energy Production	February 1st following each complete or partial year of project operation.
34.	10.9	Wind Resource Use	February 1st following each complete or partial year of project operation.
35.	10.10	Emergency Response Plan	14 days prior to pre-construction meeting. Revised plan 14 days prior to pre-operation meeting, as necessary.
36.	10.11	Extraordinary Events	Within 24 hours of discovery of an occurrence. A final report to follow 30 days after occurrence.
37.	11.1	Decommissioning Plan	14 days prior to pre-operation meeting, and updates every 5 years thereafter.
38.	11.2	Site Restoration	18 months upon expiration of site permit.
39.	11.3	Abandoned Turbines	Prior to termination of project or one year without energy production.
40.	14.0	Notice of Ownership Structure	20 days after notice of commercial operation.
41.		Immediate Complaint Reports	Same day or following day.

Filing Number	Permit Section	Description of Compliance Filing	Due Date
42.		Monthly Complaint Reports	The 15th of each month starting with construction through termination of project.

PROPOSED