



**Energy Facility Permitting**  
85 7th Place East, Suite 500  
St. Paul, Minnesota 55101-2198  
ph 651.296.4026 | fx 651.297.7891  
[www.energyfacilities.puc.state.mn.us](http://www.energyfacilities.puc.state.mn.us)

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February 9, 2012

Dr. Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
127 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101-2147

**RE: Comments and Recommendations of the Department of Commerce Energy Facility Permitting Staff  
Docket No. IP-6866/WS-11-831**

Dear Dr. Haar:

Attached are the comments and recommendations of the Department of Commerce Security Energy Facility Permitting (EFP) staff in the following matter:

**In the Matter of the Application for a Large Wind Energy Conversion System Site Permit for the 40 MW Getty Wind Project in Stearns County**

The site permit application was filed on October 11 and 12, 2011 by:

Keith Thorstad  
Vice President, Getty Wind Company, LLC  
PO Box 321, Chokio, Minnesota 56221

EFP staff recommends issuing a Draft Site Permit in the above matter. A Proposed Draft Site Permit is attached to these comments. Staff is available to answer any questions the Commission may have.

Sincerely,

A handwritten signature in black ink that reads 'Suzanne Lamb Steinhauer'. The signature is written in a cursive, flowing style.

Suzanne Lamb Steinhauer  
Energy Facility Permitting

Attachments

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

DOCKET NO. IP6866/WS-11-831

Meeting Date: February 16, 2012 ..... Agenda Item #

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Company: **Getty Wind Company, LLC**

Docket No. **PUC Docket Number: IP6866/WS-11-831**

**In the Matter of the Application for a Large Wind Energy Conversion System Site Permit for the 40 MW Getty Wind Project in Stearns County.**

Issue(s): Should the Public Utilities Commission issue a Draft Site Permit for public comment?

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

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**Relevant Documents**

LWECS Site Permit Application .....October 11 &12, 2011  
Public Comments Received on LWECS Application..... January 18, 2012

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

This document can be made available in alternative formats (i.e. large print or audio tape) by calling 651-296-0391. Citizens with hearing or speech disabilities may call us through Minnesota Relay at 1-800-627-3529 or by dialing 711.

## **Documents Attached**

1. Proposed Draft Site Permit with Preliminary Turbine Locations maps

Relevant documents and additional information can be found on eDockets (11-831) or the Commission's Energy Facilities Permitting website at:

<http://energyfacilities.puc.state.mn.us/Docket.html?Id=32297>.

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## **Statement of the Issues**

Should the Public Utilities Commission (Commission) issue a Draft Site Permit to Getty Wind Company, LLC (Getty) for a Large Wind Energy Conversion System (LWECS) for the 40 megawatt (MW) Getty Wind Project (Project) in Stearns County?

## **Introduction and Background**

Getty has submitted a site permit application to construct the proposed 40 MW Getty Wind Project in Stearns County. Getty is a wholly owned subsidiary of Getty Wind, LLC, which, in turn, is wholly owned by 10 Minnesota limited liability companies formed by 18 Minnesota residents for the intent and purpose of owning Getty collectively and developing the Project as a Community Based Energy Development (C-BED) wind project. Mnioka Construction, LLC (Mnioka), a North Dakota limited liability corporation, will develop the Project. Keith Thorstad, a member of one of Getty Wind, LLC's owners, has an ownership stake in West Stevens Wind, LLC, which has developed the 20 MW West Stevens Wind Project in Stevens County.

### ***Project Location***

The proposed site is comprised of 7,360 acres of agricultural land in Sauk Centre and Getty townships Stearns County, located approximately two miles southwest of Sauk Center. Getty, in its LWECS application, states that approximately 4,632 acres are under site control. Depending upon the turbine model selected and final layout, approximately 18 to 32 acres would be permanently converted to turbines and associated infrastructure.

### ***Project Description***

Getty is considering 21 Repower MM100 1.8 MW turbines for a total output of 37.8 MW. Getty is also considering two additional turbine types: up to 26 Goldwind 87/1500 1.5 MW turbines for an installed capacity of 39 MW, and up to 13 Vestas V112 3.0 MW turbines for an installed capacity of 39 MW. Depending upon turbine models selected, towers would range from 262 to 328 feet (80 to 100 meters), with rotor diameters of 286 to 367 feet (87 to 112 meters), for a total height of 423 to 492 feet (129 to 150 meters). The project would also require the following associated facilities as identified in the permit application:

- Pad mount transformers, depending upon the turbine model selected
- Electric feeder and collection lines
- Supervisory Control and Data Acquisition (SCADA) communication lines
- An Operations and Maintenance building

- A project substation
- Access roads
- Up to two permanent meteorological towers

The Project would interconnect with the electrical grid at Xcel Energy's Black Oak Switching Station. Getty intends to seek a permit from Stearns County for a 69 kV transmission line to connect the Project Substation with the Black Oak Switching Station and the operations and maintenance building for the Project.

### **Regulatory Process and Procedures**

Pursuant to the Minnesota Wind Siting Act, Minnesota Statutes chapter 216F, a site permit from the Commission is required to construct a LWECS, which is any combination of a wind charger, windmill, or wind turbine and associated facilities with a combined nameplate capacity of five MW or more that converts wind energy to electric energy. The rules to implement the permitting requirement for LWECS are found in Minnesota Rules 7854.0100 to 7854.1500. Under Minnesota Rule 7854.1000, subpart 2, the Commission has 180 days to reach a final permit decision from the date an application is accepted

### ***Certificate of Need***

The Project itself is 40 MW, and does not meet the 50 MW threshold size of a large electric power generating plant as defined in Minnesota Statute 216B.2421. Getty has entered into an agreement with Geronimo Wind Energy, LLC (GWE) to facilitate financing of the Project. GWE, a Minnesota-based wind energy developer, is the parent of Black Oak Wind, LLC (Black Oak), which has applied for a permit for the Black Oak Wind Farm, a 42 MW LWECS adjacent to the Getty Wind Project (IP-6853/WS-10-1240). GWE is also the developer of the 95 MW Paynesville Wind Farm in Stearns County, and two C-BED-certified wind farms, the Odin Wind Farm and the Marshall Wind Farm.

Because of the financing arrangement with GWE and the proximity to the 42 MW Black Oak Wind Farm, and the possibility that the two projects may come under joint ownership at a future date, Getty and Black Oak jointly submitted an Application for a Certificate of Need for the combined projects on October 11, 2011 (PUC Docket IP-6853 & IP-6866/CN-11-471).

As part of the development of the Environmental Report(ER) required in the Certificate of Need process, public notices were issued and EFP staff conducted a public scoping meeting in Sauk Centre on January 26, 2012. A public comment period is open through February 15, 2012. After issuance of a Scoping Decision by the Department of Commerce Deputy Commissioner, anticipated in late February 2012, staff will prepare an ER evaluating the human and environmental impacts of the proposed project. A public hearing will be presided over by the Office of Administrative Hearings after the ER is available.

### ***Site Permit Application Decision***

Getty filed an application with the Commission for a LWECS site permit on October 11 and 12, 2011. The Commission, in its Order issued November 14, 2011, accepted the application as complete.

### ***Public Comments***

An EFP notice of site permit application acceptance was issued on November 23, 2011. As part of the notice of site permit application acceptance, EFP staff solicited public comments on issues that should be considered in developing a Draft Site Permit for the Project. On November 29, 2011, Getty provided a notice of the application to landowners and local officials. On December 1, 2011, Getty published a notice of application acceptance and public comment period in the *Sauk Centre Herald*. Public comments on issues to be considered in developing a Draft Site Permit were taken until December 30, 2011.

Staff received eight comments from individuals as well as comment letters from Minnesota Departments of Transportation (MnDOT) and Natural Resources (DNR), the Minnesota Pollution Control Agency, the United States Fish and Wildlife Service (USFWS), and Stearns County. Comments received are discussed under "EFP Staff Analysis and Comments."

### ***Preliminary Determination on Draft Site Permit***

In accordance with Minnesota Rule 7854.0800, the Commission shall make a preliminary determination on whether a permit may be issued or should be denied within 45 days after acceptance of the application. In its Order of November 14, 2011, the Commission granted a variance to Minnesota Rule, part 7854.0800 to extend the period for the Commission to make a preliminary determination on whether a permit may be issued or denied.

If the preliminary determination is to issue a permit, the Commission shall prepare a draft site permit for the project. The draft site permit must identify the permittee, the proposed LWECS, and proposed permit conditions. Issuing a draft site permit does not authorize a person to construct a LWECS. The Commission may change, amend or modify the draft site permit in any respect before final issuance or may deny the site permit at a later date.

### ***Public Participation Process***

If the Commission makes a preliminary determination that a Draft Site Permit may be issued, the EFP staff will implement the public participation process identified in Minnesota Rule 7854.0900. The Public will be notified that a Draft Site Permit has been issued, a public comment period will be established, and a public information meeting will be held near the Project location. EFP staff will work with the public, local governmental units, state agencies and the Applicant to identify issues, impacts, and potential mitigation measures prior to bringing this matter back to the Commission for a final permit decision upon conclusion of the LWECS site permit process.

Minnesota Rule 7854.0900, subpart 5, provides the opportunity for any person to request that a contested case hearing be held on the propose LWECS project. The request must be filed within the time period established for submitting comments on the draft site permit and must include the

issues to be addressed in a contested case hearing and the reasons a hearing is required to resolve these issues.

### ***County Ordinance Standards for LWECS***

Minnesota Statutes section 216F.08 authorizes counties to assume responsibility for processing permit applications for LWECS with a combined nameplate capacity of less than 25,000 kilowatts. Pursuant to Minnesota Statutes section 216F.08, Stearns County notified the Commission in writing on December 10, 2009, that the Stearns County Board of Commissioners assumed permitting responsibility for projects under 25 megawatts. The Stearns County Board amended its ordinance governing Wind Energy Conversion Systems on December 14, 2010. Certain standards adopted by ordinance by Stearns County are more stringent than the Commission's General Permit Standards as set forth in Docket No. E,G-999/M-07-1102. Minnesota Statutes section 216F.081 states that the Commission shall consider and apply those more stringent standards unless the Commission finds good cause not to apply the standards. In its application, Getty identified Stearns County's standards and states, at page 6, that "General Permit Standards for LWECS developed by the MPUC and found in Docket No. E999/M07-1102 (Table 5.1) as well as Stearns County setback requirements (Table 5.2) will dictate turbine locations."

### **EFP Staff Analysis and Comments**

For the Getty Wind Project, EFP staff analysis and comment focus on several topics for the Commission's consideration in making a preliminary determination on whether a site permit may be issued or denied.

#### ***Avian and Wildlife Issues***

Several of the comment letters from individuals as well as the comments from DNR and USFWS addressed wildlife concerns, primarily with regard to avian species. DNR, USFWS and several other commenters identified the need for avian studies to assess avian use in the project area.

Avian Impacts: The DNR and USFWS acknowledged the preconstruction avian surveys done for the Getty and Black Oak projects and recommend development of an Avian and Bat Protection Plan (ABPP). The USFWS recommended that annual raptor nest surveys be completed through the construction and extending into the operation phase of the Project and that the Project be monitored post-construction to determine impacts to birds and bats. The USFWS also requested that electric collector and feeder lines be buried where possible and that any overhead electric lines within or adjacent to wetlands or surface waters be marked with bird flight diverters.

*EFP Response:* The results from pre-construction studies and ongoing surveys over the fall and winter of 2011-2012 for the Getty and Black Oak projects indicate that impacts to birds and bats from the projects are likely. Based on results from pre-construction surveys, the Applicant has revised layouts to avoid identified flight paths.

Getty and GWE have prepared a draft ABPP pertaining to both Projects. The Permit, at 6.7, requires the Permittee to comply with the procedures and protocols identified in the ABPP. The

draft ABPP is included in the Draft Site Permit as Attachment 5 to provide opportunity for interested persons to comment on proposed monitoring and mitigation measures outline in the draft. EFP staff will send the draft ABPP, along with a memo requesting comment on the plan, to DNR and USFWS.

The Draft Site Permit, at 13.2, includes a special condition requiring the Permittee to use bird flight diverters to mark overhead electric collector or feeder lines located within or adjacent to delineated wetlands or surface waters.

**Bat Impacts:** Both DNR and USFWS commented on the lack of information on potential impacts to bats. The wetlands and rivers within and near the Project provide habitat for bats. The USFWS recommends that Getty Wind collect data on bat use in the Project area in 2012 and into the operation phase of the Project. DNR recommended post-construction fatality monitoring.

*EFP response:* As discussed in the ABPP, Getty and Black Oak have relied on the pre-construction bat monitoring performed for the Paynesville Wind Project, located approximately 12 miles southeast of the Getty Project. At this time, EFP does not believe that there is sufficient information in the record to determine whether site-specific acoustic bat monitoring for the Getty Project should be performed. EFP staff has included a special condition in the Draft Site Permit, at 13.3, requiring the Permittee to conduct pre-operational acoustic monitoring of bat use in the Project area. Staff believes that highlighting this requirement in a special condition would allow for development of a more robust record on the need for site-specific information.

**Threatened and Endangered Species:** DNR and USFWS both commented on the likely presence of the Poweshiek skipper, a butterfly listed as a candidate species under the Endangered Species Act, in the Trisko Waterfowl Production Area (WPA) adjacent to the Project. USFWS has recommended that the Project avoid siting turbines in grassland habitats.

*EFP Response:* Getty has committed to avoiding areas of native prairie and maintaining a 1800-foot setback from all WPAs and WMAs. Getty will also re-vegetate non-cropland and pasture areas disturbed during construction or operation with an appropriate native seed mix to maintain plant species diversity.

#### ***Conservation, Wetlands, and Environmentally Sensitive Areas***

Both DNR and USFWS comments noted the presence of high-value areas in maintaining habitat for wildlife. Both the Trisko and Kenna WPAs are adjacent to the Project. The Padua Wildlife Management Area (WMA) is located immediately west of the Project, and the Spirit Marsh and Sauk River WMAs are located within three miles of the Project boundary.

USFWS recommends that turbines be setback  $\frac{1}{4}$  mile from Conservation Reserve Program, Wetland Reserve Program, or other federally-or state-funded restoration projects. USFWS also recommends that turbines be setback at least  $\frac{1}{2}$  mile, and preferably one mile, from WPAs. USFWS recommends post-construction mortality surveys of turbine locations within one mile of WPAs.

Stearns County requests that, as administrator for the Minnesota Wetland Conservation Act, the county be contacted once final turbine siting is complete in order to properly assess potential wetland impacts.

*EFP Response:* With respect to setbacks from WPAs, the USFWS has identified its primary concern as impacts to avian species. As discussed above, the Project has adjusted the turbine layout to avoid identified avian flight paths. The Commission, in its general siting docket (Docket No. E,G-999/M-07-1102), considered but ultimately rejected setbacks in excess of the 3 by 5 RD setback from WMAs and WPAs. At this point in the process, EFP staff recommends maintaining the 3 by 5 RD setback and allowing for comment on the proposed measures to minimize impacts to avian species as shown in the proposed layouts and in the ABPP attached to the draft site permit.

Getty Wind has not identified any conservation easements on properties within the Project boundary. EFP staff has requested the Getty Wind inform the Commission of any conservation easements within the Project Boundary by the close of the comment period on the Draft Site Permit.

The Draft Site Permit, at 10.5, requires the Permittee to be responsible for acquiring any other federal, state, or local permits or authorizations. EFP staff has included language under Section 4.6, identifying local units of government as implementers of the Minnesota Wetland Conservation Act, and under Section 10.5.2, stating that local authorizations include, but are not limited to, compliance with Minnesota's Wetland Conservation Act.

### ***Wind Rights***

Mr. Cyril Felling expressed concern that land he owns in Sections 16 and 21 of Getty Township is shown as part of the Project, although he has not given permission for wind rights within the Project Area.

*EFP Response:* The site boundary includes areas for which the Permittees does not hold wind rights. The Permittee must obtain wind sufficient to construct and operate the Project. Wind rights pertain not only to the locations of the turbines, but must also be obtained to establish a setback from areas where the Permittee does not have wind rights. Section 10.1 of the Draft Site Permit requires the Permittee to demonstrate that it has wind rights sufficient to construct and operate the Project. Section 10.1 of the Permit specifically states that any person may seek to site a LWECs within the boundaries of the Project if the Permittee does not hold exclusive wind rights to such areas.

### ***Property Values***

Commenters expressed concern with the potential impact to property values of non-participating lands near the Project.

*EFP Response:* Developers must reach agreement with willing landowners regarding location of wind turbines and associated facilities. Developers may wish to compensate nearby landowners, but LWECs permits to date have not required such compensation.

### ***Turbine Locations***

Commenters requested information on the proposed turbine locations.

*EFP Response:* Proposed turbine locations are shown in Attachments 1a, 1b, and 1c to the Draft Site Permit.

### ***Interference***

Commenters expressed concern with potential interference with cell phones and internet from the Project. Stearns County also requested that the Permittee submit a plan to conduct an assessment of television signals and microwave signal patterns prior to construction.

*EFP Response:* The Draft Site Permit, at Section 6.4, prohibits the Project from causing interference with microwave, television, radio, telecommunications, or navigation functions. The Permittee is required to assess television signal reception and microwave signal patterns in the Project area prior to installation of the turbines. The Permittee is responsible for alleviating any disruption or interference with these services.

### ***Transportation***

MnDOT requested that the Draft Site Permit include language requiring the Permittee to obtain all relevant permits or authorizations from road authorities related to electric cable or feeders to be placed in a public road right-of-way and that the Getty apply and obtain permits for any of its associated facilities that may intersect with the trunk highway system. MnDOT also requested that the Permittee coordinate with MnDOT when planning equipment delivery to the site.

*EFP Response:* The Draft Site Permit, at Section 4.15, requires the Permittee to negotiate the location of feeder and collector lines with affected landowners. Overhead feeder lines located within public rights-of-way require approval from the governmental unit responsible for the affected right-of-way. The Draft Site Permit, at Section 7.8.1, requires the Permittee to identify all roads used for the Project and notify the Commission, as well as all state or local transportation authorities, least 14 days prior to construction. Section 10.5 of the Draft Site Permit identifies potential MnDOT permits and approvals, including the compliance with the Utility Accommodation Policy, that may be required by the Project.

### ***Zoning and Permitting***

Stearns County submitted comments relating to local and county planning and zoning authority with respect to the Project. Stearns County requested that the site permit not include an Operations and Maintenance building or 69 kV transmission line as associated facilities, as the county zoning ordinance requires permitting for these facilities.

The Stearns County zoning ordinance governing Wind Energy Conversion Systems identifies a 5 RD setback from Project Boundaries. The ordinance allows the Stearns County Board of Commissioners to authorize a setback of less than 5 RD from Project boundaries if an Applicant demonstrates that wake interference is less than 5 RD. In this case, Stearns County believes that

Getty Wind has demonstrated wake interference of less than 5 RD, and recommends a setback of 5 RD on the prevailing wind axis and 3 RD on the non-prevailing wind access.

*EFP Response:* The Permit, at Section 1, clarifies that the Permittee will seek local permitting for the Operations and Maintenance building and the proposed 69 kV transmission line. Stearns County's finding that a 5 RD by 3 RD setback is warranted for the Getty Project is consistent with the 5 RD by 3 RD setback from lands where wind rights are not under control of the Applicant in Section 4.1 of the Draft Site Permit. Stearns County ordinances governing LWECs sites have been incorporated into the draft site permit when the conditions are more restrictive than the Commission's General Siting Guidelines. These conditions, along with voluntary setback conditions, identified in the site permit application and instituted by the applicant have been incorporated into the draft site permit, at 13.1, under the Special Conditions section.

### ***Decommissioning***

Ms. Janell Westerman expressed concerns about long-range planning for dismantling of the Project.

*EFP Response:* The Draft Site Permit, at Section 9, requires the Permittee to submit a Decommissioning Plan to the Commission prior to the pre-construction meeting. Recent permits issued by the Commission have required this filing prior to operation, but EFP staff believes it makes sense to have this information available prior to construction to ensure that local officials are provided an opportunity to review the filing. Minnesota Rules 7854.0500, subpart 13, identifies the required components of a Decommissioning Plan. Section 9.3 of the Draft Site Permit also requires the Permittee to remove abandoned turbines, those not producing energy for one year. The Draft Site Permit, at Section 9, addresses restoration of abandoned turbines; at Section 9.2, requires the Permittee to remove all site components to a depth of four feet, unless by agreement with landowner, and restore and reclaim the site to its pre-project topography to the extent feasible. Any agreements between the Permittee and affected landowner must be recorded with the county, and submitted to the Commission prior to completion of restoration activities.

### ***Human and Animal Health Effects***

Commenters expressed concerns with potential health effects from the Project to humans and livestock. Potential effects identified were noise, headaches, stress, dizziness, stray voltage, and shattering of wind turbines.

*EFP Response:* Issues related to health impacts from wind projects are frequently raised. Site permits require compliance with noise standards established by the Minnesota Pollution Control Agency. Permits recently issued by the Commission require permittees to provide information on shadow flicker on each residence.

### ***Effect on Electric Rates***

Commenters expressed concern on the impact to electric rates from wind projects.

*EFP Response:* Rate impacts from this Project are beyond the scope of the site permit process.

***Certificate of Need for Black Oak and Getty Wind Projects***

Ms. Colleen Mueller remarked on the need for a Certificate of Need for both the Getty and Black Oak projects to be issued prior to a Site Permit.

*EFP Response:* As discussed above, under Certificate of Need, the Commission does need to make a determination on the Certificate of Need before approving final site permits for either the Getty Wind Project or the Black Oak Wind Farm. Much of Ms. Mueller's comments are directed toward the merits of the need and are also filed under Docket CN-11-471.

EFP staff notes that, given the relationship between the Getty Wind Project and the Black Oak Wind Farm, the timing of the site permit and Certificate of Need applications, there appears to be some understandable confusion among members of the public as to which issues relate to which docket. Further, the official comment period on the Draft Site Permit for the Black Oak Wind Farm closed in April, 2011. EFP staff recommends that the Commission consider broadening the scope of the Certificate of Need hearing in order to allow the public to comment on issues related to the Certificate of Need and the site permits for both the Getty Wind Project and the Black Oak Wind Farm.

**Changes in Permit Language**

In addition to the changes to permit language noted above, EFP staff has also made some changes to the Draft Site Permit to assist in compliance tracking. EFP staff has introduced a new condition, at Section 8.4, requiring the Permittee to notify the Commission of the date on which the Project will commence commercial operation. Throughout the Draft Site Permit, EFP staff has changed references to "working days" to "days," both to remove confusion, and to allow for better tracking of the timeliness of compliance filings.

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EFP staff has used the information in the site permit application, comments received from the Minnesota Department of Transportation, DNR, USFWS, Stearns County, as well as comments from the public, and experience with other LWECS projects as a guide for evaluating whether a draft site permit may be issued for the is project or should be denied, pursuant to Minnesota Rules 7854.0800, subpart 1. EFP staff considers the available information sufficient to make a preliminary determination that a site permit may be issued for the Project. The Applicant a will continue to provide additional necessary information as requested by the EFP staff.

EFP staff has prepared a draft site permit identifying the permittee, the proposed LWECS, and proposed permit conditions. The draft site permit is attached to these Comments and Recommendation. Commission approval of the draft site permit will allow for distribution of the draft site permit and initiation of the public review process, which includes a formal public comment period and a public meeting in Stearns County.

## **Commission Decision Options**

### **A. Preliminary Determination to issue a Draft Site Permit**

1. Make a preliminary determination that a draft site permit may be issued.
2. Make a preliminary determination that the draft site permit should be denied.
3. Make another decision deemed more appropriate.

### **B. Approve the proposed Draft Site Permit for distribution and public comment**

1. Approve the proposed draft site permit for the Getty Wind Project for distribution and public comment. Authorize EFP staff to implement the public participation process found in Minnesota Rules 7854.0900.
2. Amend or modify the proposed draft site permit for the Getty Wind Project for distribution and public comment. Authorize EFP staff to implement the public participation process found in Minnesota Rules 7854.0900.
3. Make another decision deemed more appropriate.

**EFP Staff Recommendation:** Staff recommends option **A1 and B1**.