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March 1, 2011

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 Recommendation of the Office of Energy Security Energy  
Facility Permitting Staff (Docket No. IP-6630/WS-07-318)**

Dear Dr. Haar:

Attached are the Comments and Recommendation of the Office of Energy Security Energy  
Facility Permitting (EFP) Staff:

**In the Matter of the Site Permit issued to Comfrey Wind Energy, LLC, for a Large  
Wind Energy Conversion System in Brown and Cottonwood Counties.**

A proposed permit amendment and project map is attached.

The Applicant contact person for the Project is:

Peter J. Samuelson, President  
Comfrey Wind Energy, LLC  
58307 County Road 17  
Comfrey, MN 56019

EFP staff is available to answer any questions the Commission may have.

Sincerely,

Suzanne Lamb Steinhauer  
EFP Staff

Attachment

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**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

**COMMENTS AND RECOMMENDATIONS OF THE  
MINNESOTA OFFICE OF ENERGY SECURITY  
ENERGY FACILITY PERMITTING STAFF**

**DOCKET NO. IP-6630/WS-07-318**

Meeting Date: March 8, 2011.....Agenda Item #

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Company: **Comfrey Wind Energy, LLC**

Docket No. **IP-6630/WS-07-318**

**In the Matter of the Site Permit issued to Comfrey Wind Energy, LLC for a Large Wind Energy Conversion System in Brown and Cottonwood Counties.**

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

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

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**Relevant Documents**

Petition for Amendment to Site Permit..... January 14, 2011  
Notice of Comment Period on Petition for Amendment ..... January 24, 2011  
Order Issuing a Site Permit for Comfrey Wind Energy.....January 15, 2008

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

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## **Documents Attached**

1. Site Permit Amendment (revised text and map)

See eDocket filings (07-318) at <https://www.edockets.state.mn.us/EFiling/search.jsp>, or the Commission website at: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=19254> for project related documents.

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## **Statement of the Issues**

Should the Commission amend the site permit per Comfrey Wind Energy, LLC's petition?

## **Introduction and Background**

The Minnesota Public Utilities Commission (Commission) issued a site permit to Comfrey Wind Energy, LLC (Comfrey Wind) to construct an 31.5 Megawatt Large Wind Energy Conversion System (LWECS) in Brown and Cottonwood counties on January 15, 2008, pursuant to Minnesota Rules chapter 7836 (renumbered to 7854).

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

On January 14, 2011, the Commission received a request from Comfrey Wind to amend its site permit by extending both the time in which to obtain a PPA or some other enforceable mechanism for sale of the electricity and the deadline to begin construction to January 15, 2013.

Notice of Comment Period on the Petition for Amendment was issued by the OES EFP staff on January 24, 2011, and was distributed to all persons on the OES EFP project list and those persons subscribed to the project via eDockets. Comments were accepted through February 11, 2011.

## **Regulatory Process and Procedures**

Under Minnesota Statutes 216F.04(d) the Commission has the authority to modify, suspend, or revoke a permit. The Commission's procedure for amending or revoking permits is identified in Minnesota Rule 7854.1300. Under subpart 2 of this rule, the Commission may amend a site permit at any time if the Commission has good cause to do so. Subpart 4 of this rule permits the Commission to initiate action to consider amendment or revocation of a site permit on its own initiative or upon the request of any person. This rule states that no site permit may be amended or revoked without first providing notice and affording due process to the permit holder.

Section III.K.3 of the site permit identifies the situations under which the Commission may modify or amend the permit. Section III.K.4 of Comfrey Wind's site permit identifies the situations under which the Commission may modify, amend, revoke or suspend the permit.

Under Section III.K.4 of the site permit, if the Commission finds that any of the grounds for revocation or suspension are met, the Commission may require the permittee to undertake corrective measures in lieu of having the permit suspended or revoked.

Under Section III.J.4 of the site permit, the permittee must advise the Commission of the reason why it has not obtained a PPA or other enforceable mechanism within three years. The Commission may determine whether the Permit should be amended or revoked.

Under Section III.K.2 of the site permit, the permittees must inform the Commission of the reason why construction has not commenced within three years of the issuance of the permit. The Commission may determine whether the permit should be revoked.

## **Requested Amendments by Comfrey Wind**

Comfrey Wind is requesting two amendments to its Large Wind Energy Conversion System Site Permit.

### ***Power Purchase Agreement***

Comfrey Wind proposes amending section III.J.4 of the site permit to extend the time frame in which to obtain a PPA or some other enforceable mechanism for the sale of electricity until January 15, 2013.

Comfrey Wind argues that the delay for the PPA is needed due to significant delays in the Midwest Independent System Operator (MISO) interconnection process. Comfrey Wind argues that because of the delays and outstanding issues of transmission cost allocation to the Project, it has been impossible for Comfrey Wind to submit an accurate bid in response to the PPA requests issued over the past two years.

### ***Failure to Commence Construction***

Comfrey Wind proposes amending section III.K.2 of the site permit to extend the time frame in which to commence construction until January 15, 2013.

Comfrey Wind argues that because construction cannot begin without a PPA, the requirement to commence construction should be extended for the same reasons it needs an extension to obtain a PPA. Comfrey Wind further argues that the uncertainty created by the MISO study process has prevented it from moving ahead with other development work including securing turbines, securing financing, and obtaining construction-related permits.

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

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

If construction has not commenced within two years after issuance of the site permit, Minnesota Rule 7854.1200 requires the permittee to advise the Commission of the reasons construction has

not commenced. The rule further states that the Commission may determine whether the permit should be revoked. Minnesota Rule 7854.1300, subpart 4 outlines the procedure for amendment or revocation of a site permit.

Minnesota Statutes section 216F.04 states that it is the policy of the state to “site LWECs in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.” Because rules require the permittee to advise the Commission if it fails to commence construction within two years, the Commission can revisit whether the project meets the policy goals of the state.

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

The permittee has requested that the amendment allow an additional two years to obtain a PPA or other enforceable mechanism and commence construction. OES EFP staff notes the Comfrey Permit was one of five permits issued in 2007 and 2008 that contain a technical error by permitting the permittee up to three years for to commence construction, rather than the two years identified in Minnesota Rule 7854.1200.<sup>1</sup> Granting the two-year extension would allow Comfrey Wind up to five years to obtain a PPA or other enforceable mechanism.

To the knowledge of OES EFP staff, only Kenyon Wind has received an extension to obtain a PPA or some other enforceable mechanism and begin construction since the Commission has had the authority to issue permits. The Commission, in an order dated February 18, 2009, amended Kenyon’s permit to allow for an additional two years, thereby allowing Kenyon Wind approximately three and one-half years to obtain a PPA or other enforceable mechanism. On October 21, 2010, Kenyon Wind requested that the permit be amended to allow additional time for the permittee to obtain a PPA or other enforceable mechanism and to commence construction. The Commission denied Kenyon Wind’s request for a second amendment in an order dated December 23, 2010.

At the core of Comfrey Wind’s argument is what has been a very lengthy and uncertain MISO interconnection process. Comfrey Wind initiated the MISO interconnection process in 2006 and was assigned to Study Group 5. The Federal Energy Regulatory Commission (FERC) ordered, in October 2009, that MISO’s recommendation to allocate the entire cost of the Brookings line to wind projects in Study Group 5 was unsupported. As a result of FERC’s order, and a subsequent

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<sup>1</sup> Three of these five projects, Ridgewind, Moraine II, and Elm Creek have already been constructed. In addition to the Comfrey project, the Sibley Wind Project is the only other outstanding permit containing the three-year glitch that has not been constructed; the three-year deadline will come due in September, 2011

order dated May 20, 2010, MISO has initiated a restudy of the Group 5 interconnection requests. The results of the re-study, and the resulting cost allocation to Comfrey Wind, are not yet available. In its arguments before FERC, MISO anticipated that the results of the re-study would be available in January, 2011. Comfrey Wind argues that because of the problems with the MISO Group 5 study process, it has been impossible for Comfrey Wind to submit an accurate bid in response to the PPA requests issued over the past two years.

OES EFP staff does not believe that the record supports revocation of the permit. However, if the Commission chooses to deny Comfrey Wind's petition, Comfrey Wind would remain out of compliance with two of the material permit conditions. If the Commission chooses to deny the petition, OES EFP staff believes that the Commission then must also revoke the permit. No revocation of a permit for failure to commence construction may be undertaken except in accordance with Minnesota Rule, part 7854.1300, subpart 4, which requires providing notice and affording due process to the permit holder. The Commission has provided notice and due process to the permit holder.

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

OES EFP staff has prepared an amendment to the site permit for the Commission's review. The amendment contains a new issue date, with an expiration date 30 years after the issue date, and amends sections III.J.4 and III.K.2 as discussed above. Permit section III.L is amended to refer to an expiration date 30 years from permit approval and adoption, rather than a specific date. Additionally, a new map is included to provide a better illustration of the proposed project.

OES EFP Staff has not prepared additional amendments, as no comments were received on Comfrey Wind's request for a permit amendment. OES Staff also notes that neither Brown nor Cottonwood counties has accepted delegation authority for projects under 25 MW. Both Brown and Cottonwood counties have ordinances for WECS. The major discrepancy between the permit and the county ordinances is that both county ordinances set minimum setbacks of 750 feet from residence and 1.5 times the total height of the tower from roads. These issues were addressed in the Comments and Recommendations the Commission considered in January 2008. The Commission could also amend the permit with additional conditions, such as additional reporting requirements, as it sees fit.

## **Commission Decision Options**

- A. Deny the Petition for Amendment by Comfrey Wind, LLC.
- B. Revoke Comfrey Wind LLC's Large Wind Energy Conversion System Site Permit.

- C. Amend Comfrey Wind, LLC's Large Wind Energy Conversion System Site Permit as provided in the attached Site Permit Amendment.
- D. Amend Comfrey Wind Energy, LLC's Large Wind Energy Conversion System Site Permit in some other way.
- E. Make some other decision deemed more appropriate.

OES EFP staff recommends option C.

**STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION**

**PERMIT AMENDMENT**

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

**COMFREY WIND PROJECT**

**IN  
BROWN AND COTTONWOOD COUNTIES**

**ISSUED TO**

**COMFREY WIND ENERGY, LLC**

**PUC DOCKET NO. IP-6630/WS-07-318**

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

**COMFREY WIND ENERGY, LLC**

Comfrey Wind Energy, LLC is authorized to construct and operate up to a 31.5-Megawatt Large Wind Energy Conversion System on the site identified in this Site Permit and in compliance with the conditions contained in this Permit.

This Permit shall expire ~~on January 31, 2038~~ thirty (30) years from the date of this approval.

Dated: \_\_\_\_\_

Approved and adopted this \_\_\_\_ day of \_\_\_\_\_  
BY ORDER OF THE COMMISSION

\_\_\_\_\_  
BURL W. HAAR  
Executive Secretary

(S E A L)

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

#### 4. POWER PURCHASE AGREEMENT

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

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

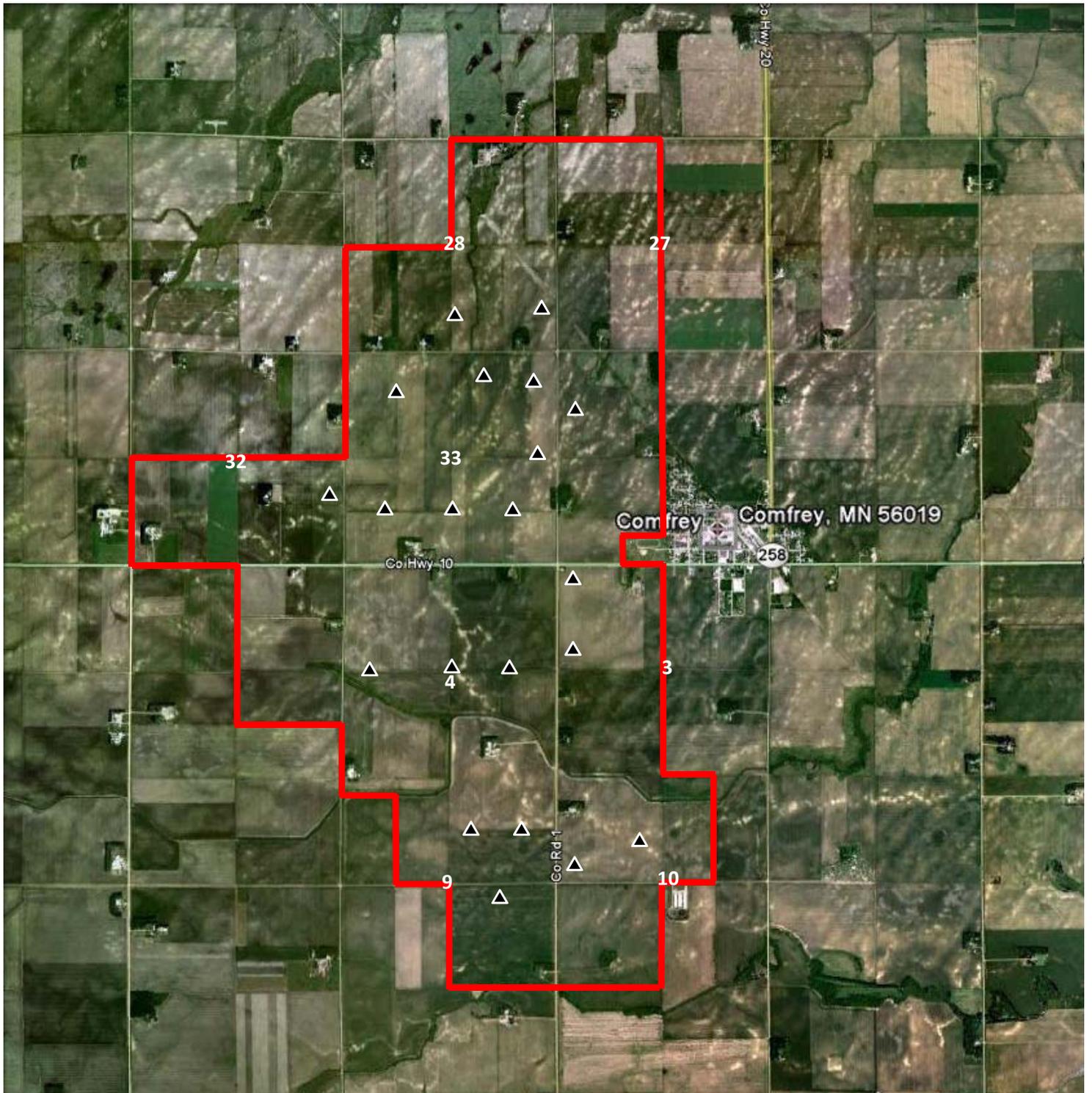
#### 2. FAILURE TO COMMENCE CONSTRUCTION

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

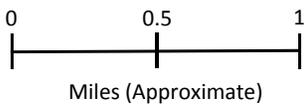
Permit Section III.L is amended as follows, the expiration date is stated on the cover of the amended permit:

#### L. EXPIRATION DATE

This Permit shall expire ~~on January 31, 2008~~ thirty (30) years after the date this permit was approved and adopted.



USDA Farm Service Agency. Google 2001. Imagery Date: June 3, 2009.



- Project Boundary
- ▲ Preliminary Turbine Location

**ATTACHMENT 1  
Preliminary Layout**

Comfrey Wind Energy, LLC  
 Comfrey Wind Farm  
 Brown and Cottonwood Counties, Minnesota

Docket ID: IP6630/WS-07-318