

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair  
Commissioner  
Commissioner  
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Commissioner

Paul White  
Project Resources Corporation  
618 SE 2nd Ave.  
Minneapolis, MN 55414

SERVICE DATE: September 6, 2011

DOCKET NO. IP-6603/WS-08-1449

In the Matter of the Site Permit Issued to Lakeswind Power Partners, LLC for up to a 60 Megawatt Large Wind Energy Conversion System for the Lakeswind Power Plant in Becker, Clay and Ottertail Counties

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

**Granted the requests for amendment by Lakeswind Power Partners, LLC and amended its Large Wind Energy Conversion System Site Permit as provided in the attached Permit Amendment, with the following conditions:**

- 1. Lakeswind Power Partners, LLC, is authorized to construct and operate a less than 50 Megawatt Large Wind Energy Conversion System on the site identified in this Site Permit and in compliance with the conditions contained in the Permit.**
- 2. The Amended Permit shall expire on December 31, 2041.**

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

BY ORDER OF THE COMMISSION



Burl W. Haar  
Executive Secretary

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**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

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

**DOCKET NO. IP-6603/WS-08-1449**

Meeting Date: August 24, 2011 ..... Agenda Item # 3

Company: **Lakeswind Power Partners, LLC / Project Resources Corporation**

Docket No. **IP-6603/WS-08-1449**

**In the Matter of the Site Permit issued to Lakeswind Power Partners, LLC  
for up to a 60 Megawatt Large Wind Energy Conversion System for the  
Lakeswind Power Plant in Becker, Clay and Ottertail Counties.**

Issue(s): Should the Commission amend the site permit per Lakeswind Power Partners,  
LLC's requests?

EFP Staff: Larry B. Hartman ..... 651-296-5089

**Relevant Documents**

Order Issuing a Site Permit for Lakeswind Power Plant ..... September 18, 2009  
Request for Amendment to Site Permit ..... March 8, 2011  
Request for Amendment to Site Permit ..... May 18, 2011  
Comment Letters ..... August 16, 2011

The enclosed materials are the work papers of the Department of Commerce (DOC) 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**

Proposed Site Permit Amendments

See eDocket filings (08-1449) at <https://www.edockets.state.mn.us/EFiling/search.jsp>, or the Commission website at: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=19892> for project related documents.

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## **Statement of the Issues**

Should the Commission amend the site permit per Lakeswind Power Partners, LLC's requests?

## **Introduction and Background**

The Minnesota Public Utilities Commission (Commission) issued a site permit to Lakeswind Power Partners, LLC (Lakeswind or permittee) to construct up to a 60 megawatt (MW) Large Wind Energy Conversion System (LWECS) in Becker, Clay and Ottertail Counties on September 18, 2009, pursuant to Minnesota Rules chapter 7836 (renumbered to 7854).

Since issuance of the permit, Lakeswind has been actively moving towards development of the project with regard to power sales and efforts to minimize project impacts.

However, because of timing requirements with respect to specific permit conditions and requirements, Lakeswind has submitted two separate requests for site permit amendments. The first was submitted on March 8, 2011 and the second on May 18, 2011.

### Lakeswind Request of March 8, 2011

The March 8, 2011 submittal requests a modification of the permit at section III.J.4 [Power Purchase Agreement] which does not authorize commencement of construction of the project until it has obtained a power purchase agreement (PPA) with a Minnesota utility for the sale of electricity to be generated by the project.

This section of the permit requires the Permittee to advise the Commission of the reason for not securing a PPA if it has not done so within two years of permit issuance.

Lakeswind is requesting that section III.J.4 be modified to provide greater flexibility for sale of the power. Their request suggests incorporating language from Minnesota Rule, part 7854.1100 Subp. 3, and that incorporation of the language "some other enforceable mechanism" is sufficient to accomplish this purpose and also reflects a higher level of consistency between the rule requirement and permit language.

### Lakeswind Request of May 18, 2011

The May 18, 2011 submittal requests a time extension modification of the permit at section III.K.2 [Failure to Commence Construction] which requires the permittee to inform the Commission of the reason why construction has not commenced within two years of the issuance

of the permit. Lakeswind is requesting that section III.K.2 be modified to extend the timeline for the start of construction by two years.

## **Regulatory Process and Procedures**

Under Minnesota Statute section 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 circumstances under which the Commission may modify or amend the permit, which includes: (a) violation of any condition in this Permit; (b) endangerment of human health or the environment by operation of the facility; and (c) existence of other grounds established by rule.

Section III.K.4 identifies the circumstances under which the Commission may revoke or suspend the permit, which includes: (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 PUC'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 or (c) there has been a material violation of a provision of an applicable statute, rule or an order of the PUC. 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 within two years of issuance of the permit and the Commission may determine whether the permit should be amended or revoked.

Under section III.K.2 of the site permit, the Permittee must inform the Commission of the reason why construction has not commenced within two years of the issuance of the permit and the Commission may determine whether the permit should be amended or revoked.

On March 8, 2011, Lakeswind submitted a request to amend section III.J.4 of the site permit so as to provide more flexibility in identifying an off taker for the power produced by the project.

On May 18, 2011, Lakeswind submitted another request to amend section III.K.4 of the site permit to allow for up to two more years to start project construction.

A Notice of Comment Period for the first request for permit amendment was issued by EFP staff on March 29, 2011, and a second notice for the second request was issued on May 26, 2011. Both notices were distributed to all persons on the project mailing list and those persons subscribed to the project via eDockets. Comments were accepted on the first notice until April 13, 2011 and on the second notice until June 15, 2011.

EFP staff received 16 written comment letters. See Relevant Documents.

## **EFP Staff Analysis and Comments**

### Requested Amendments by Lakeswind

On March 8, 2011, the Commission received its first request from Lakeswind to amend its site permit at section III.J.4 [Power Purchase Agreement]. This section of the permit currently states that:

This Permit does not authorize construction of the Project until the Permittee has obtained a power purchase agreement with a Minnesota Utility for the sale of electricity to be generated by the Project to assist said utility in meeting its renewable energy objective under section 216B.1691 or addressing its resource need in a current commission-approved or commission-reviewed resource plan under identified under section 216B.2422. In the event the Permittee does not obtain a power purchase agreement for the sale of the electricity to be generated by the Project within two years of the issuance of this Permit, the Permittee must advise the PUC of the reason for not having such power purchase agreement. 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 application of statutes and rules, including Minnesota Statute 216F.05 and Minnesota Rules 7836.1300. (Permit, Section III.J.4).

Lakeswind in its request of March 8, 2011, notes: “that by tying the permit exclusively to a power purchase agreement, the Permit is more restrictive than the governing rules.” Specifically, Minnesota Rules 7854.1100, subp. 3 provides:

A site 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 power to be generated by the project. If the permittee does not have a power purchase agreement or other enforceable mechanism at the time the permit is issued the commission shall provide in the permit that the permittee shall advise the commission when it obtains a commitment for purchase of the power. The commission may establish as a condition in the permit a date by which the permittee must obtain a power purchase agreement or other enforceable mechanism or the site permit is null and void. (Emphasis added)

Lakeswind believes that incorporation of language from the rule to reflect the “some other enforceable mechanism” provides them with the flexibility to continue to move forward with the Project and suggests that Section III.J.4 be amended to read as follows:

This Permit does not authorize construction of the Project until the Permittee has obtained a power purchase agreement with a Minnesota Utility for the sale of electricity to be generated by the Project to assist said utility in meeting its renewable energy objective under section 216B.1691 or addressing its resource need in a current commission-approved or commission-reviewed resource plan under identified under section 216B.2422, or some other enforceable mechanism for the sale of the power to be generated from the Project. In the event the Permittee does not obtain a power purchase agreement, or some other enforceable mechanism for the sale of the electricity to be generated by the Project within two years of the issuance of this Permit, the Permittee must advise the PUC of the reason for not having such power purchase agreement. 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 application of statutes and rules, including Minnesota Statute 216F.05 and Minnesota Rules ~~78367854~~.1300. (Permit, Section III.J.4).

Lakeswind noted that the permit amendment as requested is consistent with Minnesota Rules and similar to other requests authorized by the Commission for the Glacial Ridge and Comfrey LWECS projects.

Lakeswind's request also notes that they have been in discussions with potential financing sources that require this additional flexibility. Lakeswind in an August 11, 2011, letter to EFP staff stated that: "Lakeswind has made agreement in principle with an off taker, with approval from the customer board of directors, and is currently working through logistics to finalize power sales agreement." See Relevant Documents (Comment Letters, Paul White, item 17).

In its May 18, 2011, request for permit modification, Lakeswind indicates that an additional issue has now arisen with its project. In its filing Lakeswind states:

Due to issues beyond the control of Lakeswind, MISO is currently re-studying the Lakeswind Project and all "group-5" generation interconnections to establish a new regime of interconnect costs for the proposed generators and possible changes to the schedule regarding when interconnection service will be available. Lakeswind anticipates that the restudy and associated cost allocation/cost recovery procedures will require up to approximately one year to complete. This delay at MISO impacts the project timeline, particularly the timeline for financing Lakeswind. We anticipate that if the MISO group-5 restudy process and associated cost allocation procedures are concluded as now planned, the project will be in a position to close financing in 2012 to enable construction in late 2012 or early 2013.

Therefore, Lakeswind is also requesting that the Permit be further amended (Section III.K.2 [Failure to Commence Construction]) to allow for a two year extension to the current two year period to commence construction, which is now set to expire on September 18, 2011.

Lakeswind suggest that section III.K.2 be amended to read as follows:

If the Permittee has not completed the pre-construction surveys required in paragraph III.D and commenced construction of the LWECS within ~~two~~ four 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 amended or revoked. No revocation of this Permit may be undertaken except in accordance with applicable statutes and rules, including Minnesota Statute 216F.05 and Minnesota Rules ~~7836~~7854.1300.

Lakeswind argues that they and their prospective financing sources(s) require additional time to allow MISO to complete its restudy and associated work to finalize interconnection costs and project schedule. Lakeswind also notes that the Commission has recognized the need for additional time for other wind developments due the delays in the MISO “group-5” process. See Comfrey Wind, MPUC Docket No. IP-6630/WS-07-318, March 11, 2011 Order and Glacial Ridge, MPUC Docket No. IP-6850/WS-07-1073, June 1, 2011 Order.

#### Public Comment

EFP staff received 16 separate letters with comments, one letter was received from the Clay County Board of Commissioners and 15 letters were received from citizens during the comment period. Of the 16 comment letters, 12 favored and supported Lakeswind’s requested amendments and four stated their opposition to the project and the requested permit amendments sought by Lakeswind. See Relevant Documents (Comment Letters).

Supporters of the requested permit amendments include: the Clay County Board of Commissioners, David Thorpe, Marvin Hanson, Wanda Swenson, Jay Bang, Bruce Bang, David Swanson, Roger and Deb Aakre, Everett Paulson, Richard Aakre, Brian Holt and Roger Minch (two separate letters).

The Clay County Board of Commissioners, in its June 14, 2011 letter stated:

We are writing you today to request that the Minnesota Public Utilities Commission approve Lakeswind Power Partners’ requested construction schedule amendment. Project Resources Corporation and Lakeswind project have continued to work diligently with the community on this project and we believe it will benefit Clay County. We feel that PRC’s request is reasonable and should be granted.

The 12 comment letters from citizens supporting the permit amendment requests identified as their primary reasons for support as: construction and permanent jobs, increased tax revenue, community benefits, compliance with goals for clean renewable energy and income for participating landowners.

As noted above, four of the 16 commenter's opposed the requested permit amendments. Those opposed to the requested amendments include: Paul and Kay Ornberg, Per Anderson, Mark and Vicki Haugen and Dwight Mickelson.

Among the issues raised by these commenter's are:

- Approving the request voids the requirements of sales to a Minnesota utility, changes the application/hearing process, without publication and hearing, and increases the cost of electricity to Minnesota residents. Granting the request will change the rules of the permitting process. The PUC would set a precedent and have to grant all requests in the future. When a governing body approves a request that sets a precedent, it has changed the rules without the benefit of due process.
- Approving the requests does not help a Minnesota utility meets its renewable energy objective and the PUC has no mandate to advance the private economic interest of Lakeswind.
- Because Lakeswind apparently cannot meet the power purchase agreement (PPA) requirement of the permit, it seeks to amend the permit, so that the 60 MW project can be built without a PPA. The petition for amendment does not indicate what "enforceable mechanism" Lakeswind will seek if the permit is amended.
- Lakeswind now seeks approval for a project outside the mandate of the PUC to advance the 20/20 objective. Lakeswind has brought forward a petition asking the PUC to shift its energy development from public interest (20/20 objective) to private interest (Lakeswind).
- The Lakeswind petition does not advance the public interest on the 20/20 objective of the permit. The unstated but operative cause for change of permit is the interest of Lakeswind in a for-profit and profitable wind energy project. Such a cause does not fall within the scope of permitting authority and practice of the PUC. The PUC has no charge to help Lakeswind or any other wind energy LLC to find a market for its product to secure private financing for construction. It has no charge to advance the economic interest of private stakeholders through regulatory leniency and exceptional treatment.
- We strongly oppose the development of large wind energy conversion systems in this region of Minnesota lakes country and are firmly against Lakeswind's request for amendment. Such immense projects as those proposed in the Rollag community will have a significant lifelong impact on families and landowners. It is our concern that the Lakeswind project would set a devastating precedent for the region, possibly opening the door for development up and down the length of eastern Clay, Ottertail, Wilkin and Becker Counties. Together the Lakeswind and Global Winds proposed projects propose 235 wind turbines. It is critical that the PUC be well informed and work cooperatively to consider potential issues including: health effects on children and adults living near turbines, property values, economic impacts, turbine noise levels, shadow flicker and

strobe lights, impacts on wildlife, livestock and pets, impacts on roads, Life flight services (emergency services) and aerial spray applications.

- Many folks from the Fargo/Moorhead and surrounding areas travel right into that region to their lake cabins. This is also an area of growth with many people building homes, cottages and hobby farms.
- The current wholesale electricity market is overloaded with electricity.

#### Site Permit Condition III.J.4 [Power Purchase Agreement]

Contrary to the comments provided by commenter's opposed to the Commission's consideration or authorization of this requested permit amendment, the Commission has considered and granted two similar requests: 1) Comfrey Wind, MPUC Docket No. IP-6630/WS-07-318, March 11, 2011 Order and; 2) Glacial Ridge, MPUC Docket No. IP-6850/WS-07-1073, June 1, 2011 Order. However, in these two instances, the amendment requests specifically sought a time extension to secure a PPA or some other enforceable mechanism for the sale of the power. The permit language in those two projects already included language for "some other enforceable mechanism" requirement.

Lakeswind is requesting that the permit language be modified to more closely parallel the language in Minnesota Rule, part 7854.1100 Subp.3. This language is found in LWECS site permits issued prior to and after the issuance of the Lakeswind permit. It is standard language for LWECS site permits issued by the Commission. This language has been used to secure Commission authorization to construct a wind farm (e.g., the Elm Creek II wind farm has been authorized to construct based on the permittee's status as a market participant in the MISO market – status as a market participant being an "other enforceable mechanism").

Thus, for these reasons – consistency with Minnesota rules, consistency with Commission LWECS permits, and the potential usefulness and flexibility provided by the language – it is reasonable to grant this requested permit amendment. However, granting the request would impose certificate of need requirements, which, heretofore, were considered satisfied by the exclusion of the requested language.

The Lakeswind project is an up to 60 MW project, which makes it a large energy facility (Minn. Stat. 216B.2421). This status requires that the project be issued a certificate of need (CON) by the Commission before it can be constructed (Minn. Stat. 216B.243). Lakeswind, in its permit application to the Commission, and EFP staff, in its comments and recommendations to the Commission on application acceptance, noted that the project would not require a CON because the project would be selling its power to a Minnesota utility in furtherance of its renewable energy objective under Minn. Stat. 216B.1691 or to address its resource needs in a current Commission-approved or Commission-reviewed resource plan identified under Minn. Stat. 216B.2422. Projects meeting these requirements do not require a CON (Minn. Stat. 216B.243, Subd. 9; Minn. Stat. 216B.2422, Subd. 5) This sale of power would require a PPA with a Minnesota utility. Accordingly, for the Lakeswind project to meet CON requirements it must (a) apply for and receive a CON from the Commission for the project or (b) satisfy the exceptions

for a CON by selling the power generated by the project through a PPA to a Minnesota utility – thus satisfying Minn. Stat. 216B.1691 or 216B.2422.

If the permit amendment sought by Lakeswind were granted, Lakeswind would have a means, via an “other enforceable mechanism” to construct a large energy facility without a CON from the Commission and without satisfying an exception to CON requirements. The site permit language, as it stands, precludes this possibility by limiting Lakeswind to a PPA. Thus, EFP staff recommends that the Commission grant the permit amendment request only if a further amendment is made – namely, that the project size be limited to “up to 50 MW,” such that the project is not a large energy facility and does not require a CON.

Finally, several commenters’ suggested that issues such as property values, economic impacts, turbine noise, shadow flicker, health effects, and impacts on wildlife should be considered in this permit amendment request. The record developed in the Commission’s consideration of permit issuance addressed these concerns.

#### Site Permit Condition III.K.2 [Failure to Commence Construction]

Lakeswind’s request for a two-year time extension to commence construction is similar to requests previously considered and approved by the Commission for the Glacial Ridge and Comfrey Wind projects. These permit amendment requests argued that the MISO interconnection process has been very lengthy and uncertain. Lakeswind, like Comfrey Wind and Glacial Ridge was assigned to Study Group 5 in the MISO interconnection process. In October 2009, the Federal Energy Regulatory Commission (FERC) ordered that MISO’s recommendation to allocate the entire cost of the Brookings line to wind projects in Study Group 5 was unsupported by the evidence. As a result of FERC’s order, and a subsequent order dated May 20, 2010, MISO has initiated a restudy of the Group 5 interconnection requests. Lakeswind argues that because of the financial uncertainties with the MISO Group 5 study process, it has been unable to effectively bid in response to the request for proposals (RFPs) issued over the past two years by various utilities.

Based on the information provided in the requests, review and consideration of public comments EFP staff believes that Lakeswind’s requests for the two permit amendments are reasonable and supported by the record.

EFP staff has prepared amendments to the site permit for the Commission’s review. The amendments modify sections III.J.4 and III.K.2. Permit section III.L is amended to refer to an expiration date 30 years from permit approval and adoption, rather than a specific date. Therefore the only change necessary for III.K.2 is to update the rule reference; the two year period stays the same and does not need to be modified, because the issue date on the Permit Amendment is extended for two years. The cover page of the amended permit contains a new issue date. See Attachment 1. The attached permit language amends the cover page and sections III.J.4, III.K.2 and III.L of the site permit as described above.

## **Commission Decision Options**

### **A. Deny the Lakeswind Requests for Permit Amendments**

1. Deny the requests for amendment by Lakeswind Power Partners, LLC and revoke its Large Wind Energy Conversion System Site Permit.
2. Deny the requests for amendment by Lakeswind Power Partners, LLC and suspend its Large Wind Energy Conversion System Site Permit.
3. Make some other decision deemed more appropriate.

### **B. Grant the Lakeswind Requests for Permit Amendments**

1. Grant the requests for amendment by Lakeswind Power Partners, LLC and amend its Large Wind Energy Conversion System Site Permit as provided in the attached Permit Amendment.
2. Grant the requests for amendment by Lakeswind Power Partners, LLC and amend its Large Wind Energy Conversion System Site Permit as deemed appropriate.
3. Make some other decision deemed more appropriate.

EFP staff recommends option B1.

**STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION**

**PERMIT AMENDMENT**

**LARGE WIND ENERGY CONVERSION SYSTEM**

**SITE PERMIT  
FOR THE**

**LAKESWIND WIND POWER PLANT**

**IN  
BECKER, CLAY AND OTTER TAIL COUNTIES**

**ISSUED TO**

**LAKESWIND POWER PARTNERS, LLC**

**PUC DOCKET NO. IP-6703/WS-08-1449**

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

**LAKESWIND WIND POWER PARTNERS, LLC**

Lakeswind Wind Power Partners, LLC, is authorized to construct and operate ~~up to a 60~~ a less than 50 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 December 31, 2041.

Approved and adopted this 6th day of  
September, 2011  
BY ORDER OF THE COMMISSION



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BURL W. HAAR  
Executive Secretary

Permit Section III.J.4 [Power Purchase Agreement] is amended as follows:

This Permit does not authorize construction of the Project until the Permittee has obtained a power purchase agreement with a Minnesota Utility for the sale of electricity to be generated by the Project to assist said utility in meeting its renewable energy objective under section 216B.1691 or addressing its resource need in a current commission-approved or commission-review resource plan under identified under section 216B.2422, or some other enforceable mechanism for the sale of the power to be generated from the Project. In the event the Permittee does not obtain a power purchase agreement, or some other enforceable mechanism for the sale of the power to be generated from the Project, within two years of the issuance of this Permit, the Permittee must advise the PUC of the reason for not having such power purchase agreement. 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 application of statutes and rules, including Minnesota Statute 216F.05 and Minnesota Rules ~~7836~~7854.1300. (Permit, Section III.J.4).

Permit Section III.K.2 [Failure to Commence Construction] is amended as follows:

If the Permittee has not completed the pre-construction surveys required in paragraph III.D and commenced construction of the LWECs within 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 amended or revoked. No revocation of this Permit may be undertaken except in accordance with applicable statutes and rules, including Minnesota Statute 216F.05 and Minnesota Rules ~~7836~~7854.1300.

Permit Section III.L [Expiration Date] is amended as follows:

This Permit shall expire on December 31, ~~2039~~ 2041.