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June 2, 2009

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
127 7th 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. E282/WS-09-178**

Dear Dr. Haar:

Attached are the Comments and Recommendation of the Office of Energy Security Energy Facility Permitting Staff in the following matter:

In the Matter of the Application of New Ulm Public Utilities Commission for a Large Wind Energy Conversion System Site Permit for the New Ulm Wind Project in Nicollet County.

The OES EFP staff is also providing you with:

- A. Proposed Site Map

Staff is available to answer any questions the Commission may have.

Sincerely,

/s/ LARRY B. HARTMAN
OES EFP Staff

LBH/sm
Attachment



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

DOCKET NO. E282/WS-09-178

Meeting Date: June 11, 2009.....Agenda Item # ____

Company: **New Ulm Public Utilities Commission (NUPUC)**

Docket No. **E282/WS-09-178**

In the Matter of the New Ulm Public Utilities Commission Application for a Large Wind Energy Conversion System (LWECS) Site Permit for the New Ulm Wind Project in Nicollet County.

Issue(s): Should the Public Utilities Commission (Commission) accept the New Ulm Public Utilities Commission Site Permit Application for a Large Wind Energy Conversion System as complete and assign a Public Advisor?

OES Staff: Larry B. Hartman651-296-5089

Relevant Documents

New Ulm Public Utilities Commission Site Permit Application..... May 5, 2009

The enclosed materials are the work papers of the Office of Energy (OES) Security 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. This document can be made available in alternative formats, i.e., large print or audio tape by calling (651) 201-2202 (Voice) or 1-800-627-3529 (TTY relay service).

Documents Attached

1. Site Map

See eDocket filings (09-178) at <https://www.edockets.state.mn.us/EFiling/search.jsp>, or the PUC website at: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=20053> for project related documents.

Statement of the Issues

Should the Commission accept the New Ulm Public Utilities Commission Site Permit Application for a Large Wind Energy Conversion System (LWECS) site permit as complete and assign a Public Advisor in the matter?

Introduction and Background

The New Ulm Public Utilities Commission (NUPUC) has submitted a site permit application to construct and operate the proposed 10.5 megawatt (MW) New Ulm Wind Project (Project) in Nicollet County.

Project Location

The proposed NUPUC Project is located in Lafayette Township in western Nicollet County in south central Minnesota approximately five miles north of the city of New Ulm. The proposed Project site includes all or portions of the following Sections: 17, 18, 19 and 20. The Project boundary currently encompasses approximately 550 acres, which may not be large enough given the required setbacks in the Commission's General Wind Permitting Standards. As of the date of this application, the Applicant had obtained lease and easement agreements with landowners for approximately 237 acres.

Project Description

The Project for which a permit is being requested includes the following associated facilities:

1. A wind turbine layout consisting of up to five, 2.1 MW Suzlon S88 wind turbine generators or five, 1.65 MW Vestas V82 Turbines;
2. Gravel access roads;
3. Electrical collection system, and
4. Operations and maintenance building located next to the project substation.

The Applicant's goal is to complete the construction of the Project and achieve commercial operation prior to December 31, 2010.

Project History

The proposed New Ulm Wind Farm Project comes to the Commission with a somewhat sullied history and polarized positions between landowners within and adjacent to the project site and NUPUC. OES EFP staff is not aware of the Project's history prior to 2008.

The New Ulm Public Utilities Commission is located in Brown County. The New Ulm Wind Project is proposed to be located about five miles north of New Ulm in Nicollet County.

Originally, the New Ulm Wind Project was proposed to be less than 5 Megawatts and NUPUC was going to seek approval at the local level from Nicollet County through its wind energy conversion system (WECS) regulatory process, which has been used to permit several small wind turbines in Nicollet County. Under Minnesota Statutes 216F.01, Subd. 3, Nicollet County may only review wind projects that are less than 5 Megawatts, unless they seek authority from the Commission to permit LWECS up to 25 MW in size (See Minn. Stat. 21F.08). Nicollet County has not sought or requested jurisdiction for projects larger than 5 Megawatts. If Nicollet County determines they would like to regulate wind projects up to 25 MW they will need to follow the requirements of Minn. Stat. 216F.08(a), including, adopting a resolution, providing written notification to the Commission that they are assuming responsibility for processing applications for LWECS, and applying the general permit standards to permits issued by the county.

In the Fall of 2008, NUPUC applied to Nicollet County for a permit to erect a meteorological tower (MET Tower), to collect data for the Project. The MET Tower permit application was met with significant public resistance from residents in the immediate vicinity of the NUPUC proposed Project site. The residents believed that granting such a permit meant that the NUPUC's Project would be built, and that there would be significant quality of life and health risks associated with the Project.

Nicollet County issued a conditional use permit to erect the MET Tower. After issuance of the conditional use permit, Nicollet County Commissioners, pursuant to Minn. Statute 394.34, adopted a 12 month moratorium on the issuance of WECS permits in the county in order to revise and update the county's WECS regulations for small wind turbines. Nicollet County expects to hold public hearings on the proposed ordinance in July or August of this year. Again, any revised ordinance adopted by Nicollet County applies only to projects less than 5 MW.

It would appear that NUPUC may have increased the size of the Project from something less than 5 MW to a project size of around 10 MW, in order to avoid Nicollet County review of the Project. NUPUC is proposing to build this Project in two phases. Phase I, would be comprised of three turbines and Phase II, two turbines, possibly within 3 years of Phase I. Depending on funding the Phase II turbines may also be constructed during Phase I.

NUPUC has also applied for and received Clean Renewable Energy Bond (CREB) bonding authority of almost \$3 million. The CREB bonds have been issued by NUPUC for this project.

Regulatory Process and Procedures

A site permit from the Commission is required to construct a Large Wind Energy Conversion System, which is any combination of wind turbines and associated facilities with the capacity to generate five megawatts or more of electricity. This requirement became law in 1995. The Minnesota Wind Siting Act is found at Minnesota Statutes Chapter 216F. The rules to implement the permitting requirement for LWECS are in Minnesota Rules Chapter 7836. NUPUC filed an application with the Commission for a site permit on May 5, 2009.

Certificate of Need

A Certificate of Need (CN) from the Commission is not required because the Project does not exceed 50 MW in size.

Site Permit Application Contents

The required contents of a site permit application are specified in Minnesota Rule 7836.0500. OES EFP staff has reviewed the NUPUC site permit application filed on May 5, 2009, for compliance with the requirements of Minnesota Rule 7836. These information requirements include but are not limited to applicant background information, certificate of need compliance, compliance with state policy, proposed site maps, wind characteristics, other turbine locations, discussion of wind rights, project design, associated facilities, environmental impacts, project construction, project operation, costs, schedules, energy projections and decommissioning and restoration.

Application Acceptance

Application acceptance is guided by Minnesota Rules 7836.0600. Typically, within 15 days of LWECS site permit application acceptance, a notice of application acceptance is prepared by the Applicant and OES EFP staff. This notice is distributed to the county board, each city council and each township board in each county where the LWECS is proposed to be located. This notice must also be published in a newspaper of general circulation in each county. This notice is also published in the *EQB Monitor*, and posted on the PUC's web page, eDockets and on the PUC's energy facility permitting web page.

As a part of the notice requirements of Minn. Rule 7836.0600, the applicant must provide a copy of the accepted application to each landowner within the site and to anyone on request. The applicant is also required to distribute the accepted application to several state agencies, technical representatives, regional development commissions of a development region, the auditor of each county and the clerk of each city and township in which the LWECS is proposed to be located. The auditors and clerks are to retain the application and make it available for public inspection on request. The applicant is responsible for maintaining the application distribution list.

Public Advisor

Minnesota Rule 7836.0700 states: "Upon acceptance of an application for a site permit, the PUC shall designate a staff person to act as the public advisor on the project." The Commission can authorize OES to name a staff member from the EFP staff as the public advisor or assign a Commission staff member.

Preliminary Determination on Draft Site Permit

Minnesota Rule 7836.0800 states that: "Within 45 days after acceptance of the application by the PUC, the PUC shall make a preliminary determination whether a permit may be issued or should be denied. If the preliminary determination is to issue a permit, the PUC 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 confer an authority to construct an 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. EFP staff anticipates requesting Commission consideration of issuance of a draft site permit for this project in early July.

Public Participation

Public Participation is guided by Minnesota Rule 7836.0900.

If the PUC elects to issue a draft site permit when the LWECS site permit application is accepted, the notice requirements of application acceptance (Minn. Rule 7836.0600, described above in ***Application Acceptance***) can be and are typically combined with the notice requirements of 7836.0900.

If the PUC elects not to issue a draft site permit when the LWECS site permit application is accepted, the notice requirement of Minn. Rule 7836.0900 will be handled separately and will include the applicant's contact information, a brief description of the proposed project, a proposed site map, locations where the application and draft site permit are available for review and information on how to obtain a copy of the application and site permit.

The notice will also identify the Public Advisor and how to the public advisor may be contacted to obtain more information. This notice will also provide the date and address of where OES will hold the public meeting and the deadline for submitting comments on the application and draft site permit; and a statement that a person may request a contested case hearing.

Notice of draft site permit availability would also be sent to all persons or agencies who received a copy of the accepted application, published in local newspaper, the *EQB Monitor*, and posted on edockets, and on the PUC's energy facility permitting web page.

In cases where the PUC elects to issue a draft site permit when the LWECS site permit application is accepted, for efficiency purposes, a project mailing would include a copy of the accepted application, draft site permit and the notice prepared for application acceptance, availability of draft site permit and notice of public meeting.

The public information meeting serves several functions. First, it provides OES EFP staff with the opportunity to provide an overview of the PUC's roles in the review and approval of LWECS and associated facilities, and respond to questions or comments about the regulatory review process. Second, it also provides the Applicant with an opportunity to present an overview of its proposed LWECS project. Prior to the public meeting, interested persons and governmental agencies would have received the LWECS application and draft site. Third, the public meeting provides the public with an opportunity to ask questions of the applicant and staff and offer comments on the application and draft site permit, which serve as the environmental documents for the project. The public and governmental agencies typically have 30 days to submit comments on these documents.

OES EFP Staff Analysis and Comments

The Application has been reviewed by EFP staff pursuant to the requirements of Minnesota Rules Chapter 7836 (Wind Siting Rules). The application provides the information required by Minnesota Rule 7836.0500 in a format that all members of the public can access. Acceptance of the Application will allow staff to initiate the procedural requirements of Minnesota Rules, Chapter 7836.

EFP staff is requesting that the PUC direct the applicant to honor requests for additional information as necessary to facilitate the review process.

It is the understanding of OES EFP staff that NUPUC will attempt to acquire the necessary easements and buffer easements; however, they may also attempt to seek an exemption from those requirements. In the event easements cannot be obtained from landowners, or exemptions granted, then NUPUC proposes to use eminent domain to obtain the necessary easements if a site permit is authorized by the PUC.

Commission Decision Options

A. Application Acceptance

1. Accept the New Ulm Public Utilities Commission Site Permit Application for a Large Wind Energy Conversion System, with the condition that the New Ulm Public Utilities Commission will provide additional information as requested by the Commission and the Office of Energy Security for the New Ulm Wind Project.
2. Reject the Application as incomplete and issue an order indicating the specific deficiencies to be remedied before the Application can be accepted.
3. Find the Application complete upon the submission of supplementary information.
4. Make another decision deemed more appropriate.

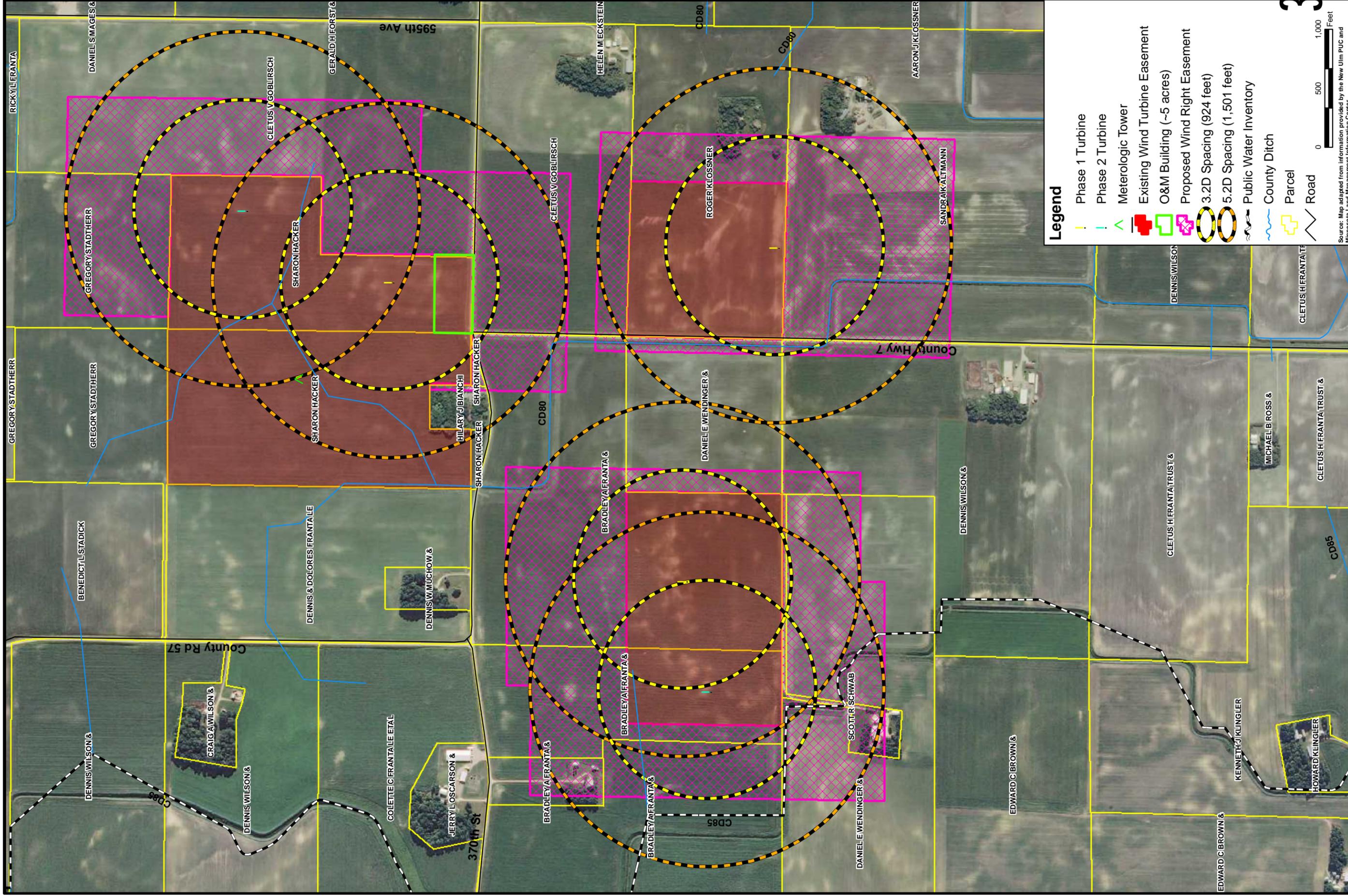
B. Public Advisor

1. Authorize the Minnesota Office of Energy Security Energy Facilities Permitting staff to name a public advisor for this project.
2. Appoint a Commission staff person as public advisor.
3. Make another decision deemed more appropriate.

C. Certificate of Need

1. Find that a Certificate of Need is not required.
2. Make no findings regarding the Certificate of Need.
3. Make some other decision deemed more appropriate.

DOC EFP Staff Recommendation: Staff recommends option A1, B1 and C1.



Legend

- Phase 1 Turbine
- Phase 2 Turbine
- Meteorologic Tower
- Existing Wind Turbine Easement
- O&M Building (~5 acres)
- Proposed Wind Right Easement
- 3.2D Spacing (924 feet)
- 5.2D Spacing (1,501 feet)
- Public Water Inventory
- County Ditch
- Parcel
- Road

0 500 1,000 Feet
 Source: Map adapted from information provided by the New Ulm PUC and Minnesota Land Management Information Center.

Prepared By:

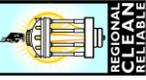


Prepared For: New Ulm Public Utilities Commission

APR. 2009

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POWER OF INDEPENDENCE



New Ulm Public Utilities Commission
 REGIONAL RELIABLE

FIGURE 1

PROPOSED WIND RIGHT EASEMENT MAP
 NEW ULM PUBLIC UTILITIES COMMISSION
 WIND ENERGY PROJECT
 NICOLLET COUNTY, MINNESOTA