



85 7th Place East, Suite 500, St. Paul, MN 55101-2198  
main: 651.296.4026 tty: 651.296.2860 fax: 651.297.7891  
[www.commerce.state.mn.us](http://www.commerce.state.mn.us)

December 9, 2009

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-6829/WS-09-1239**

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 Lakefield wind Project, LLC for a Large Wind Energy Conversion System Site Permit for the 205.5 MW Lakefield Wind Project in Jackson County.

The OES EFP staff is also providing you with:

- A. Project Area Map.

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

Sincerely,

/s/ LARRY B. HARTMAN  
OES EFP Staff

LBH/sm  
Attachment

Page Left Intentionally Blank



**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

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

**DOCKET No. IP-6829/WS-09-1239**

Meeting Date: December 17, 2009.....Agenda Item # \_\_\_\_

Company: **Lakefield Wind Project, LLC (Lakefield Wind)**

Docket No. **IP-6829/WS-09-1239**

**In the Matter of the Application of Lakefield Wind Project, LLC for a Large Wind Energy Conversion System (LWECS) Site Permit for the 205.5 MW Lakefield Wind Project in Jackson County.**

Issue(s): Should the Public Utilities Commission (Commission) accept the Application of Lakefield Wind Project, LLC, for a Large Wind Energy Conversion System as complete and appoint a Public Advisor?

Should the Commission vary Minn. Rules, part 7854.0800 to allow more time for a preliminary determination on whether a permit should be issued or denied for a Large Wind Energy Conversion System?

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

**Relevant Documents**

Lakefield Wind Project, LLC, Site Permit Application.....November 4, 2009

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. 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 (09-1239) at <https://www.edockets.state.mn.us/EFiling/search.jsp>, or the PUC website at: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=25684> for project related documents.

---

## Statement of the Issues

Should the Commission accept, conditionally accept, or reject the application of Lakefield Wind Project, LLC, for a Large Wind Energy Conversion System (LWECS) site permit as complete for the 205.5 MW Lakefield Wind Project in Jackson County? If the Application is accepted, should the Commission appoint a Public Advisor?

Should the Commission vary Minnesota Rule 7854.0800 to allow more time to determine whether a permit may be issued or should be denied for the 205.5 MW Lakefield Wind Project Jackson County?

## Introduction and Background

Lakefield Wind Project, LLC, has submitted a site permit application to construct the proposed 205.5 megawatt (MW) Lakefield Wind Project in Jackson County. Lakefield Wind Project, LLC, is a subsidiary of enXco Development Corporation.

### *Project Location*

The proposed Lakefield Wind Project will be located in central Jackson County on agricultural land in Des Moines, Hunter, Belmont and Heron Lake townships. The project area is located several miles west of the city of Jackson and just to the east, north and south of the city of Lakefield. The Project area, approximately 32,445 acres in size, will encompass lands north and south of I-90, as shown on the accompanying map. Lakefield Wind currently has wind rights on over approximately 19,000 acres of private lands within the 32,445 acre Project area boundary. Lakefield Wind believes the site is sufficiently large to provide flexibility in the micro-siting process.

### *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 137 General Electric 1.5 MW wind turbine generators mounted on 80 meter (262.5 foot) towers and a rotor diameter of 77 meters (252.6 feet);
2. Gravel access roads;
3. Electrical collection system, project substation, two permanent meteorological towers; and
4. Operations and maintenance building.

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

### **Regulatory Process and Procedures**

Commission review of Large Wind Energy Conversion Systems is a two step process. First, is the Certificate of Need (CON) process; and, second, is the site permit process. An overview of the CON and site permit process follows:

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

On June 22, 2009, Lakefield Wind Project, LLC, entered into a 20-year Power Purchase Agreement (PPA) with Indianapolis Power & Light Company (IPL).

A Certificate of Need (CON) is required for the Project because it is a 205.5 MW Large Wind Energy Conversion System (LWECS) and a "large energy facility" as defined by Minn. Stat. 216B.2421, subd. 2 (1). The Applicant applied for a Certificate of Need from the Commission (September 2, 2009) prior to filing its site permit application. See Docket No. 6829/CN-09-1046.

On December 3, 2009, a Commission Order accepted Lakefield's certificate of need, provided for use of the informal review process to develop the CON record, using comment and reply and addressed exemption requests and a variance to the 45-day timing requirement in Minn. Rules, part 7849.0200, subp. 6.

As part of the CON process, public notices are issued and OES EFP conducts a public meeting and prepares an Environmental Report evaluating the human and environmental impacts of the proposed project. A public hearing is also held.

#### ***Site Permit Process***

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 7854. Lakefield Wind Project, LLC, filed a site permit application for the Lakefield Wind Project with the Commission on November 4, 2009.

#### ***Site Permit Application Contents***

The required contents of a site permit application are specified in Minnesota Rule 7854.0500. 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, 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 7854.0600. The Commission may elect to accept, conditionally accept, or reject the application. If the Commission conditionally accepts

or rejects an application, the Commission must advise the Applicant of the deficiencies in the application and the manner in which the deficiencies can be addressed.

Within 15 days of LWECS site permit application acceptance, the Applicant is required to provide notice of application acceptance. In addition to publishing this notice in a newspaper of general circulation in each county, the 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 is also posted on eDockets and on the PUC's energy facility permitting web page. In practice this notice is developed by the Applicant, with assistance from OES staff to ensure that the notice meets the requirements and intent of Minnesota Rules 7854.0600.

As a part of the notice requirements of Minn. Rule 7854.0600, 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 the Minnesota Historical Society, the regional development commission(s) within which the LWECS is proposed to be located, 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. In practice, the Applicant also provides a copy of the application to anyone requesting a copy. The Applicant is responsible for maintaining the application distribution list. In practice, EFP staff also distributes or has the Applicant distribute copies of the application accompanied by a cover memorandum requesting comments on the application or the Project, to technical representatives from state agencies (Pollution Control Agencies, Department of Natural Resources, Minnesota Department of Transportation, Department of Employment and Economic Development, Board of Water and Soil Resources) that may have permitting or review authority over the Project.

#### ***Public Advisor***

Minnesota Rule 7854.0700 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 7854.0800 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 September.

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

Public participation in the LWECS site permitting process is guided by Minnesota Rule 7854.0900. The Commission provides public notice of the availability of the draft site permit. The notice is required to include:

- Applicant's contact information;
- A brief description of the proposed project, including 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 role of the public advisor, and how the public advisor may be contacted to obtain more information about the process or the Project;
- Time and place of the public information meeting held by the OES staff;
- The date on which the comment period terminates;
- A statement that during the comment period any person may submit written comments to the Commission on the draft site permit; and
- A statement that a person may request a contested case hearing on the matter.

Notice of draft site permit availability is sent to all persons or agencies who received a copy of the accepted application, published in local newspaper(s), the *EQB Monitor*, and posted on eDockets, and on the Commission's energy facilities permitting web page.

In cases where the Commission elects to issue a draft site permit when the LWECS site permit application is accepted, the notice requirements of application acceptance (Minn. Rule 7854.0600, described above in ***Application Acceptance***) can be and are typically combined with the notice requirements of 7854.0900.

The public information meeting serves several functions. First, it provides OES EFP staff with the opportunity to provide an overview of the Commission's role 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 EFP staff and offer comments on the application and draft site permit, which serve as the environmental documents for the project.

The rule requires a minimum of 30 days (commencing with the notice of draft site permit availability in the *EQB Monitor*) for any interested person to submit comments on either the site permit application or the draft site permit. The rule also contemplates that the Commission may wish to extend the public comment period to afford the public adequate time to review the application and other pertinent information in order to formulate complete comments on the draft site permit and the Project.

### ***Criteria for a Variance***

Minnesota Rule, part 7829.3200 provides that the Commission shall grant a variance to a given rule when it determines that the following three conditions are met:

- A. enforcement of the rule would impose an excessive burden upon the application or others affected by the rule;
- B. granting the variance would not adversely affect the public interest, and
- C. granting the variance would not conflict with standards imposed by law.

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

The Application has been reviewed by EFP staff pursuant to the requirements of Minnesota Rules Chapter 7854 (Wind Siting Rules). The application provides the information required by Minnesota Rule 7854.0500 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 7854.

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

When the CON and site permit processes are run sequentially, the differing requirements and time frames are of little consequence. However, when they run concurrently, as in the case with Lakefield Wind, the differing requirements between the Certificate of Need (CON) rules (Minnesota Rules, chapter 7849) and the LWECs site permit rules (Minnesota Rules, chapter 7854) present barriers with respect to project coordination procedures that limit opportunities to maximize public input. Therefore, OES EFP staff is requesting that the Commission vary the procedural requirement of Minnesota Rule, part 7854.0800 that requires a preliminary determination on whether to issue a draft site permit within 45 days.

For example, without a variance, OES EFP staff believes that the Commission would be placed in the position of having to make a preliminary determination on a draft site permit, before completion of the scoping process to determine what should be included in the environmental report. Several other potential procedural requirements of the rules (CON and Siting) if not coordinated, may also result in less efficiency and limit the ability of the public to participate in the procedural review required by the CON and siting rules.

Commission action to vary this requirement would afford PUC and OES EFP staffs the opportunity to provide for more timely coordination and sequencing of the CON and LWECs site permit procedural requirements, including combining notice requirements, holding joint public meetings and comment periods and including site permit issues within the scope of the CON public hearing. The result would be greater efficiency and enhanced opportunity for participation.

OES EFP staff believes that this request meets the conditions for granting a variance outlined in Minnesota Rule, part 7829.3200. First, enforcement of the rule would impose an excessive burden on the Commission, its staff, and the OES EFP staff, and other interested persons because

of the short time available between application review and the time in which a draft site permit must be addressed by the Commission and because of sequencing and timing issues between the CON procedural requirements and the site permit review requirements for LWECS projects.

Second, the public interest would be better served by allowing sufficient time for agency completeness review of the site permit application and by providing for proper sequencing and review under the CON and site permit review procedural requirements, which can be better coordinated by the granting of a variance request.

Third, OES EFP staff believes that an extension, if granted, would not conflict with standards imposed by law.

### **Commission Decision Options**

#### **A. Application Acceptance**

1. Accept the Lakefield Wind Project, LLC, Site Permit Application for a Large Wind Energy Conversion System with the condition that Lakefield Wind Project, LLC, will provide additional information as requested by the Commission and the Office of Energy Security for the Lakefield 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.

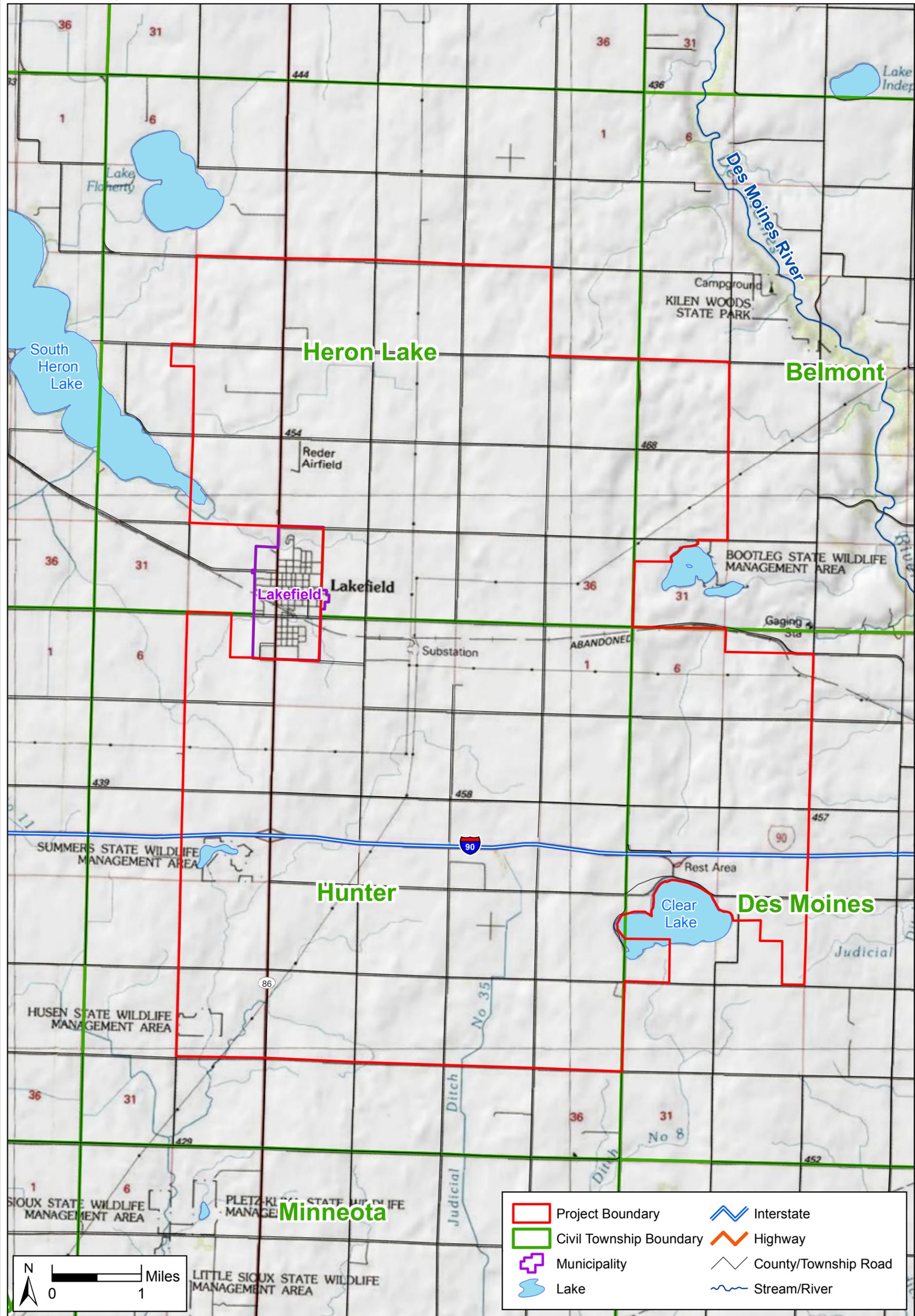
#### **B. Public Advisor**

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. Variance Request**

1. Grant a variance to Minnesota Rules, part 7854.0800 to extend the period for the Commission to make a preliminary determination on whether a permit may be issued or should be denied for an unspecified, but reasonable period of time.
2. Make some other decision deemed more appropriate.
3. Deny the request for a variance.

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



Data Source(s): Municipality boundaries (Minnesota Department of Transportation 2003); county and township roads (Minnesota Department of Transportation 2007); Major Highways, townships, county boundaries, topo (Tele Atlas North America, Inc., ESRI (2008); Lakes (Minnesota DNR Division of Fish & Wildlife 2002); Major Rivers (Minnesota Pollution Control Agency 2006); Westwood (2009).

**Westwood**  
 Westwood Professional Services, Inc.  
 7699 Anagram Drive  
 Eden Prairie, MN 55344  
 PHONE 952-937-5150  
 FAX 952-937-5822  
 TOLL FREE 1-888-937-5150  
 www.westwoodps.com

# Lakefield Wind Project

Jackson County, Minnesota

Project Location Map

EXHIBIT 2