



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

November 1, 2011

Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
127 7th 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

A Project Location map is included in the Comments and Recommendations.

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 accepting the application as complete and authorizing EFP staff to name a public advisor. EFP staff is available to answer any questions the Commission may have.

Sincerely,

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

Suzanne Lamb Steinhauer
Energy Facility Permitting

Attachments

Blank Page



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

DOCKET NO. IP6866/WS-11-831

Meeting Date: November 10, 2011.....Agenda Item # 5

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 accept the Application of Getty Wind Company, LLC, for a Large Wind Energy Conversion System as complete and appoint a public advisor?

Should the Commission vary Minnesota 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?

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

Relevant Documents

LWECS Site Permit ApplicationOctober 11 &12, 2011

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

Figure 1 – Project Location Map

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>.

Statement of the Issues

Should the Public Utilities Commission (Commission) accept, conditionally accept, or reject application of Getty Wind Company, LLC (Getty) for a Large Wind Energy Conversion System (LWECS) site permit as complete for the 40 megawatt (MW) Getty Wind Project (Project) in Stearns County? If the application is accepted should the Commission appoint a public advisor?

Should the Commission vary Minnesota Rules, part 7854.0800 to allow more time to determine whether a permit may be issued or should be denied for the Project?

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.

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, which has applied for a permit for the Black Oak Wind Project, 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.

Project Location

The proposed site is comprised of 7,360 acres of agricultural land in Sauk Centre and Getty townships Stearns County, located approximately five miles southwest of Sauk Center. Getty, in their 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 turbine 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
- A project substation
- Access roads
- Up to two permanent meteorological towers

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

Regulatory Process and Procedures

Pursuant to the Minnesota Wind Siting Act, 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. Getty filed an application with the Commission for a LWECs site permit on October 11 and 12, 2011. 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. Because of the financing arrangement with GWE and the proximity to the 42 MW Black Oak Wind Project, 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).

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, other wind turbine locations, discussion of wind rights, project design and associated facilities, environmental impacts, project construction and operation, costs, schedules, energy projections, and decommissioning and restoration.

Application Acceptance

Application acceptance is guided by Minnesota Rule 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 after the Commission's acceptance of a LWECS site permit application, the applicant is required to provide notice of the application. The notice is to be provided to the county board and each city council and township board in each county where the LWECS is proposed to be located and published in a newspaper of general circulation in each county. This notice is also published on eDockets and the Commission's Energy Facility Permitting website. In practice this notice is developed by the applicant, with assistance from EFP staff to ensure that the notice meets the requirements and intent of Minnesota Rule 7854.0600. In practice the notice also identifies a comment period within which interested persons may comment on the application prior to the Commission's preliminary decision on whether a permit may be issued.

As a part of the notice requirements of Minnesota Rule 7854.0600, the applicant must provide a copy of the application to each landowner within the proposed site and to anyone upon request.

The applicant is also required to distribute the application to the Minnesota Historical Society, the regional development commission(s), the auditor of each county, and the clerk of each city and township within 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 (Minnesota Rule 7854.0600, subpart 3). 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 copies of the application along with a cover memo requesting comments on the application or the project to technical representatives from state agencies (Pollution Control Agency, Department of Natural Resources, 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 requires the Commission to designate a staff person to act as the public advisor on the project upon acceptance of the site permit application. The Commission can authorize EFP to name a staff member as the public advisor or assign a Commission staff member.

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. 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. EFP staff anticipates requesting Commission consideration of issuance of a draft site permit for this project in February, 2012.

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 the following:

- the applicant's contact information;
- a description of the proposed project, including a proposed site map;
- locations where the permit 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;
- the time and place of the public information meeting conducted by EFP staff;
- the date on which the comment period terminates;
- a statement that during the comment period any person may submit comments to the Commission on the draft site permit;
- a statement that a person may request a contested case hearing on the matter; and
- a brief description of the procedures for reaching a final decision on the permit application.

Notice of draft site permit availability is sent to all persons or agencies that received a copy of the permit application, is published in the *EQB Monitor* and in the county newspaper(s) where the project is proposed, and is posted on eDockets and on the Commission's Energy Facility Permitting website.

Public Meeting. A public meeting will be held at a convenient location in the vicinity of the proposed LWECS project. The meeting will be held after the LWECS application and draft site permit have been distributed to interested persons and governmental agencies. The meeting will provide the public an opportunity to learn about the proposed project and the Commission's role in review and approval of LWECS and to ask questions of Getty and EFP staff. The meeting is also an opportunity for the public to offer comments on the permit application and draft site permit, which serve as the environmental documents for the project.

Public Comment Period. A minimum 30-day public comment period, commencing with the notice of the draft site permit availability in the *EQB Monitor*, will afford any interested person an opportunity to submit comments on either the site permit application or the draft site permit. If necessary, the Commission may extend the public comment period to provide 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.

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

The application has been reviewed by EFP staff pursuant to the requirements of Minnesota Rules Chapter 7854. 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 the Commission direct Getty to honor requests for additional information as necessary to facilitate the review process. Specifically, EFP staff is requesting that Getty submit a draft Avian and Bat Protection Plan (ABPP) into the record so that it can be included as an appendix to the Draft Site Permit prior to its distribution for public comment, should the Commission decide that it is appropriate to issue a draft site permit following the initial review period. The purpose of the Avian and Bat Protection Plan is to identify and mitigate impacts to avian and bat species during the construction and operation phases of the project. Both Department of Natural Resources and the US Fish and Wildlife Service have expressed concerns with the potential avian impacts from this Project (Site Permit Application, at Appendices G and H) and the Black Oak Wind Farm ((IP-6853/WS-10-1240). Because of the proximity of the Black Oak and Getty projects, as well as the close working relationship of the developers of the two projects, Black Oak and Getty retained HDR Engineering to prepare an *Avian Use Assessment Report on the Black Oak/Getty Wind Development Sites* (Site Permit Application, at Appendix I).

Tolling the Time

EFP staff is also requesting the Commission vary the procedural requirement of Minnesota Rules, part 7854.0800 that requires a preliminary determination on whether to issue a draft site permit within 45 days to allow additional time.

Minnesota Rules, part 7829.3200 provides that the Commission shall grant a variance to its rules when it determines the following three conditions are met:

- A. enforcement of the rule would impose an excessive burden upon the applicant 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.

First, enforcement of the rule would impose an excessive burden on Getty and others affected by the rule because of the short time available between application review and the time when a draft site permit must be addressed by the Commission. EFP practice has, over the past two years, inserted an additional opportunity for members of the public and governmental agencies to comment on the site permit application, prior to the Commission's preliminary determination on whether a site permit may be issued. EFP staff finds that allowing a reasonable comment period and an opportunity to review any comments received and, where appropriate, incorporating them in the draft site permit considered by the Commission within 45 days can be difficult. Additionally, while a pre-construction avian study is included in Appendix I of the Application, Getty needs time to develop a draft ABPP.

Second, granting the variance would not adversely affect the public interest. The public interest would be better served by allowing adequate opportunity for comments on the application; public interest in other wind projects in Stearns County had been moderate to high. Additionally, public interest would be better served by allowing for more timely coordination and sequencing under the CN and site permit procedural requirements. Following the acceptance of the Certificate of Need Application, EFP staff will hold a scoping meeting to gather public input on the issues to be addressed in the Environmental Report to be prepared for the Certificate of Need for the combined Black Oak and Getty projects. EFP staff believes that the information received during the ER scoping period could inform the development of the Draft Site Permit. EFP staff also anticipates that there may be opportunity to enhance public participation and acquire meaningful public comment on this Project, as well as the Black Oak Project currently on hold, by expanding the public hearing in the Certificate of Need Docket (IP6853,IP6866/CN-11-471) to include issues related to the two siting dockets (IP-6853/WS-10-1240, and IP-6866/WS-11-831).

Third, EFP staff believes that an extension, if granted, would not conflict with standards imposed by law. Since a site permit may not be issued prior to issuance of a Certificate of Need, the variance would have no practical effect on the timing of the Commission's final decision on a site permit for the Getty Wind Project.

EFP staff is not aware of any opposition to tolling the time; however, the Commission may wish to offer interested persons the opportunity for oral comment at the Commission meeting.

Commission Decision Options

A. Application Acceptance

1. Accept the application as complete, with the condition that Getty Wind Company, LLC will provide additional information as requested by the Commission and the EFP staff for the Getty 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.

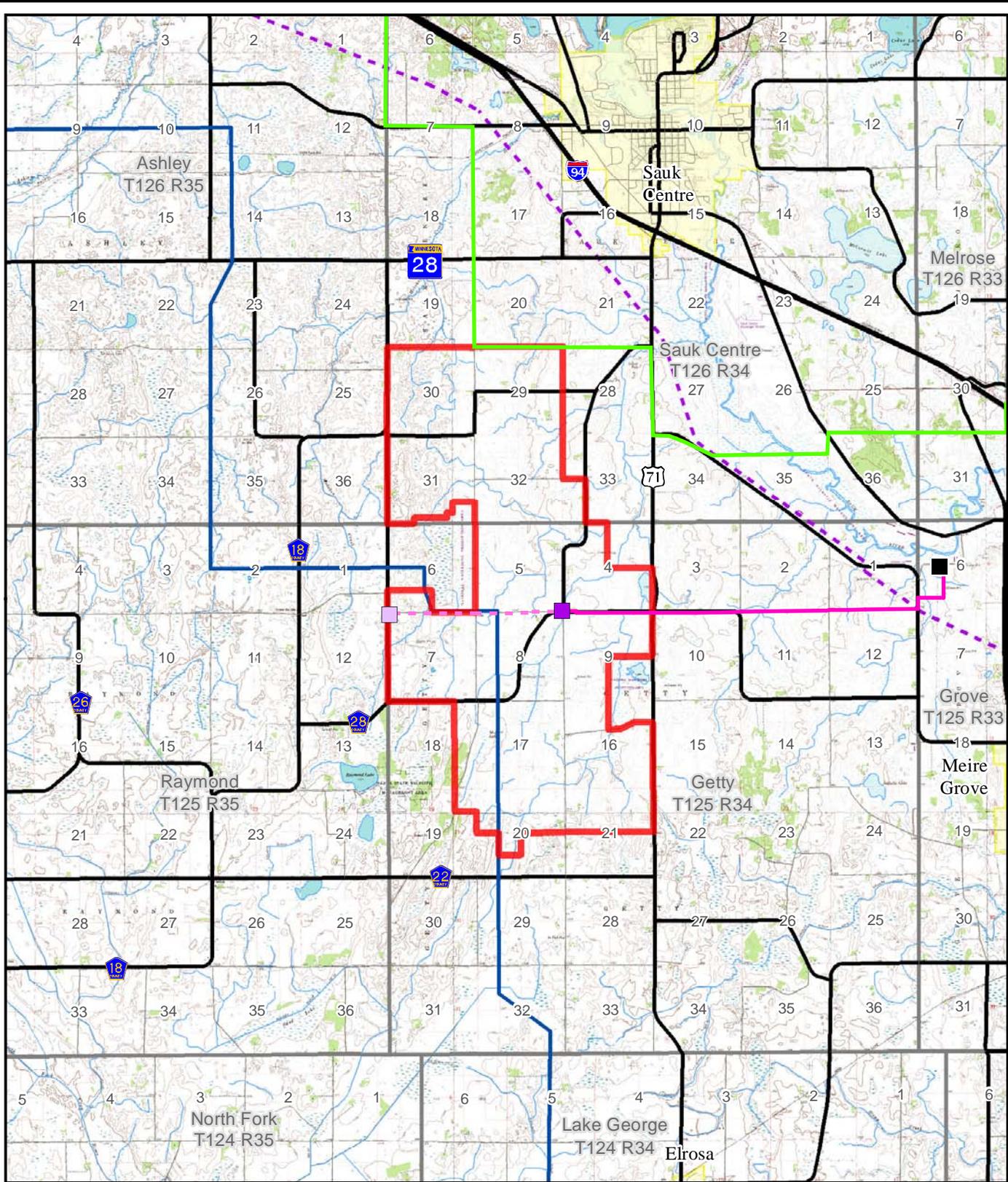
B. Public Advisor

1. Authorize the EFP 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.

EFP staff recommendation: Options A1, B1 and C1.



- ▭ Project Boundary
- Black Oak Substation
- Substation (Proposed)
- Substation (Alternate)
- Proposed 69 kV**
- Proposed
- - - Alternate
- Existing 400 kV DC Transmission Line
- Proposed 345kV Fargo-St Cloud CAPX
- - - Pipeline
- ~ 24k Stream

Figure 2
Project Location Map

Getty Wind Farm
 Stearns County, MN