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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-687/WS-11-863

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 30.75 MW Community Wind South, LLC Wind Farm in Nobles County

Project Location Map and Existing Wind Turbine Map are included in the Comments and Recommendations.

The site permit application was filed on October 17, 2011 by:

Mark Willers
Community Wind South, LLC
800 Kniss Avenue, Suite 2
Luverne, Minnesota 56156

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,

Larry B. Hartman

LARRY B. HARTMAN
Energy Facility Permitting

LBH/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
COMMENTS AND RECOMMENDATIONS OF THE DEPARTMENT OF COMMERCE ENERGY FACILITY PERMITTING STAFF

DOCKET NO. IP-687/WS-11-863

Meeting Date: November 10, 2011.....Agenda Item # 4

Company: Community Wind South, LLC

Docket No. **IP-687/WS-11-863**

In the Matter of the Site Permit Application of Community Wind South, LLC for a 30.75 MW Large Wind Energy Conversion System in Nobles County.

Issue(s): Should the Commission Accept the Site Permit Application of Community Wind South, LLC for a 30.75 MW Large Wind Energy Conversion System as complete and assign 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?

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

Relevant Documents

Community Wind South, LLC, Site Permit Application……...October 17, 2011

The enclosed materials are the work papers of the 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) by calling 651-296-0391 (voice). Persons 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 Vicinity and Site Map
Figure 2 – Map of Existing Wind Turbines in Project Vicinity

Relevant documents and additional information can be found on eDockets (11-863) or the Commission's Energy Facilities Permitting website at:
http://energyfacilities.puc.state.mn.us/Docket.html?Id=32306

Statement of the Issues

Should the Public Utilities Commission (Commission) accept, conditionally accept, or reject the application of Community Wind South, LLC (Applicant or CWS) for a Large Wind Energy Conversion System (LWECS) site permit as complete for the 30.75- megawatt (MW) Community Wind South, LLC Wind Farm (Project) in Nobles County? If the application is accepted should the Commission appoint a public advisor?

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

Introduction and Background

Community Wind South has submitted a site permit application to construct the proposed 30.75 MW Community Wind South Project in Nobles County. By way of background information, CWS was formed to develop approximately 30 MW of the 60 MW requirement for locally-owned wind generation, as required by an order of the Commission in MPUC Docket No. E002/CN-01-1958, (March 11, 2003)[1].

As noted in the site permit application:

> One requirement of the MPUC Order is that local landowners be given an opportunity to invest in the "locally-owned" projects. To facilitate these investments, CWS created three ownership entities; Chinook Wind, LLC ("Chinook"), Moriah Wind, LLC ("Moriah") and Zephyr Wind, LLC ("Zephyr"); each of which will own 10 MW of the overall generating facility. In addition, CWS created Summit Transmission, LLC ("Summit") as the entity which will design, install and operate the necessary transmission and interconnection facilities between the turbines and the NSP interconnection point.

CWS will be responsible for development of the overall project and will continue to assist with development, financing and operation of the project on an ongoing basis.

[1] document id 1473345

Project Location
The proposed project site is comprised of approximately 3,080 acres in the townships of Summit Lake (Sections 17-20, 30) and Larkin (Sections 13, 23-24), located approximately two miles south of Wilmont in Nobles County (See Figure 1). The Applicant represents having site control of approximately 3,070 acres within the Project area boundaries of 3,080 acres. CWS has secured wind rights through 23 leases with 36 landowners within the site. The proposed project area is located within the footprint of the Nobles Wind project on three sides (See Figure 2). The existing 201 MW Nobles Wind Farm (Docket No. 09-584 and permitted by an order of the Commission on December 11, 2009), is comprised of 134 GE 1.5 MW turbines on 80 meter (262 foot) towers.

Project Description
The Applicant proposes to install 15 REPower 2.05 MW turbines (model MM92) for a rated nameplate capacity of 30.75 MW's. The turbines will have a hub height of 100 meters (328 feet) standing on tubular steel towers. The three bladed rotor assemblies will be 92.5 meters (303.5 feet) in diameter. The rotor swept area will be 6,717 square meters (72,308 square feet). The turbines will be connected by underground wire and cables for communication and electrical output. Other associated facilities include pad mounted transformers, a project collection yard and two sets of underground cable (34.5 kV) extending approximately 19,908 feet from the CWS project collector yard to the Nobles substation owned by NSP and a permanent meteorological tower, which will replace the temporary met tower now on site. Operations and maintenance will be done at an existing facility in Luverne, Minn.

The Applicant's goal is to achieve initial synchronization by August 1, 2012 and commercial operation by October 1, 2012.

Regulatory Process and Procedures

A site permit from the Commission is required to construct a LWECS, which is any combination of wind turbines and associated facilities with the capacity to generate five megawatts or more of electricity. The Minnesota Wind Siting Act is found at Minnesota Statutes chapter 216F. The rules to implement the permitting requirements for LWECS are in Minnesota Rules chapter 7854.

The Applicant filed an application with the Commission for a LWECS site permit on October 17, 2011. Under Minnesota Rule, part 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
CWS notes in its application that a certificate of need from the Commission for a large electric power generating plant is not required because the Project is less than 50 MW in size and, therefore, does not meet the definition of large energy facility in Minnesota Statutes section 216B.2421.

Site Permit Application Contents
The required contents of a site permit application are specified in Minnesota Rule, part 7854.0500. These information requirements include applicant background information, certificate of need compliance, compliance with state policy, proposed site maps, wind characteristics, discussion of wind rights, project design including 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, part 7854.0600. The Commission may 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 which 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 jointly by the applicant and EFP staff to ensure that the notice meets the requirements and intent of Minnesota Rule, part 7854.0600. In practice, the notice also identifies a comment period in 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, part 7854.0600, the applicant must provide a copy of the application to each landowner within the proposed site.

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, part 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 and 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, part 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, part 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, part 7854.0900. A public notice of the availability of the draft site permit 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 to 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, published in the *EQB Monitor* and the county newspaper(s) where the project is proposed, and 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 the applicant 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

Nobles County has not assumed 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, and has not adopted ordinances standards for LWECS, pursuant to Minn. Stat. 216F.081. However, Nobles County Zoning Ordinance, section 729, does address setbacks for wind energy conversion systems (WECS). Those requirements are addressed in the CWS site permit application at Table 8-3. [Local Setback Requirements]. Many of the Nobles County setback requirements are similar to Commission setback requirements, and several are more restrictive. In its application, the Applicant states that the project will be designed to meet or exceed the minimum setbacks required by the Nobles County ordinance. A preliminary analysis finds that the Applicant appears to essentially meet or exceed the requirements in the Nobles County ordinance; however, EFP staff will solicit input from Nobles County on this matter.

EFP Staff Analysis and Comments

The site permit application has been reviewed by EFP staff pursuant to the requirements of Minnesota Rules Chapter 7854. EFP staff concludes that the application is complete. The application provides the information required by Minnesota Rule, part 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 the Applicant to honor requests for additional information as necessary to facilitate the review process.

Tolling the Time

EFP staff is also requesting the Commission vary the procedural requirement of Minnesota Rule, part 7854.0800 that requires a preliminary determination on whether to issue a site permit within 45 days of application acceptance. EFP staff requests this time for interested persons to comment on the application and on issues that should be considered in developing a draft site permit for the project.

Minnesota Rules, part 7829.3200 allows the Commission to 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.

EFP staff believes the conditions for a variance are met in this case. First, enforcement of the rule would impose an excessive burden on the Applicant or 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 few 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 believes that 45 days is inadequate to allow 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.

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.

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

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 Community Wind South, LLC will provide additional information as requested by the Commission and the Energy Facility Permitting staff for the Community Wind South, LLC Wind Farm 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 Energy Facility 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 Rule, part 7854.0800 to extend the period for the Commission to make a preliminary determination on whether a draft 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.

D. Certificate of Need

1. Based on the information in the record to date, 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.

Energy Facility Permitting Staff Recommends: Options A1, B1, C1, and D1.

FIGURE 1

PROJECT VICINITY AND SITE MAP

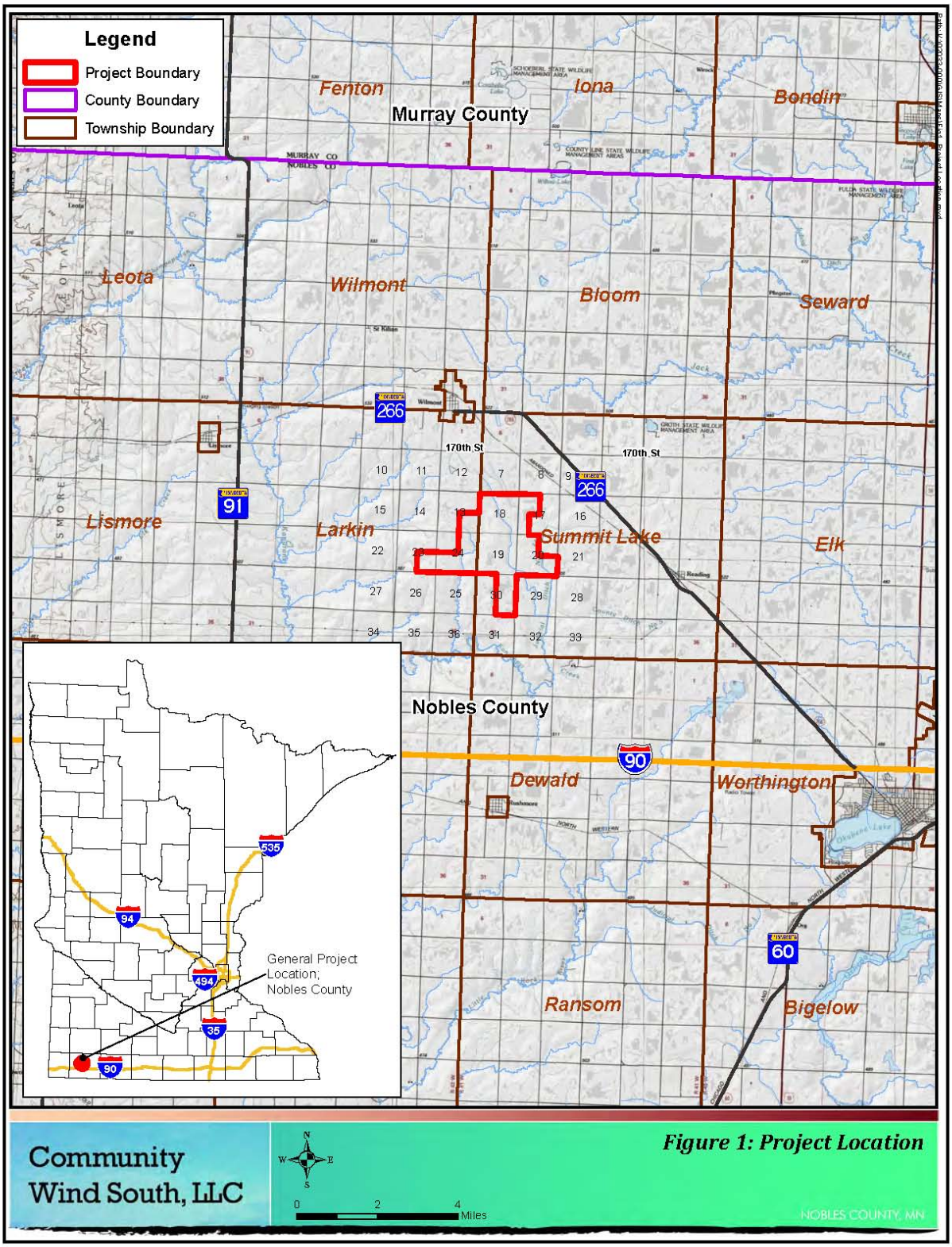
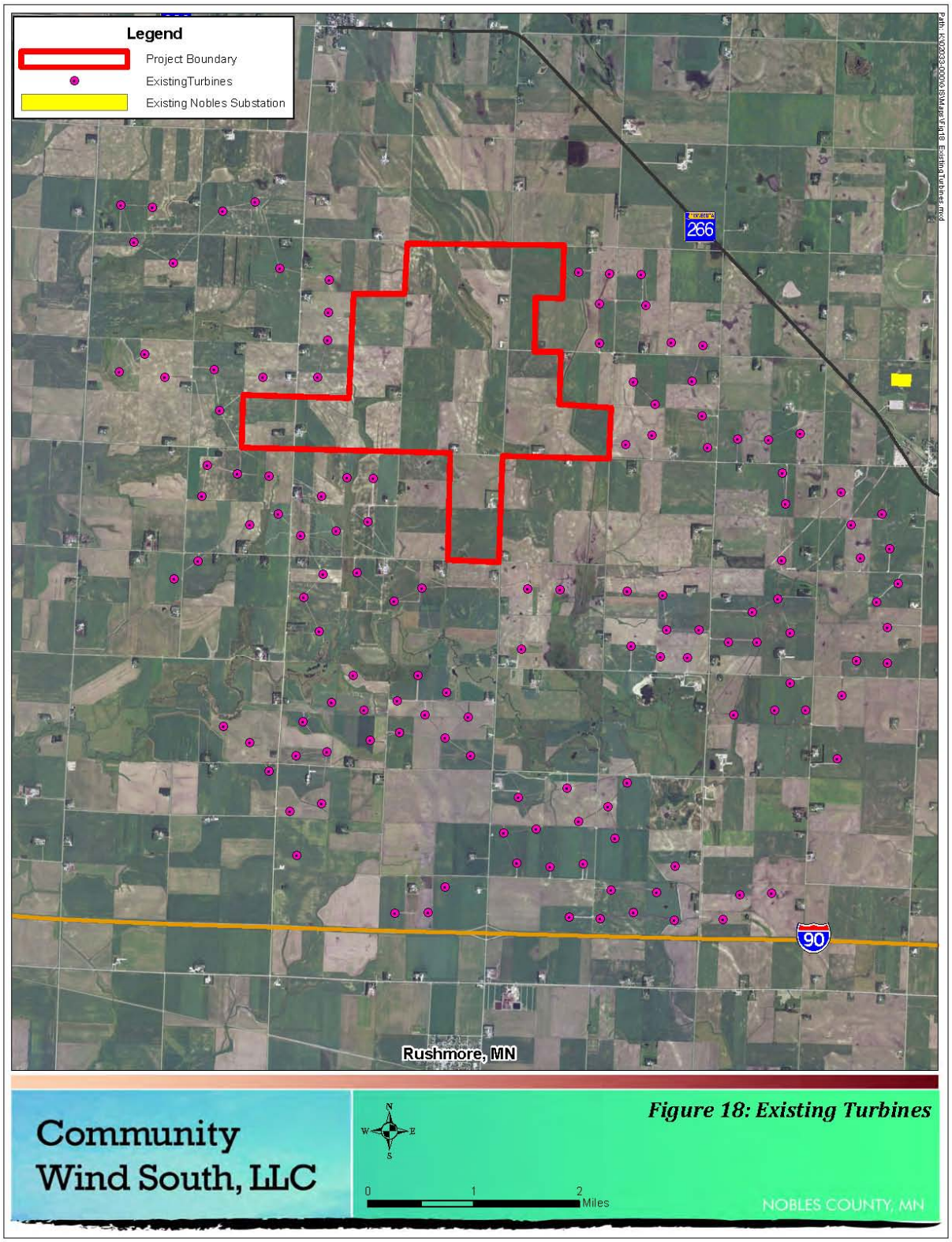


Figure 2

Map of Existing Wind Turbines in Project Vicinity