

September 26, 2013

Via electronic mail to

mattj@co.sibley.mn.us and Certified U.S. Mail Return Receipt Requested

Honorable Board of Commissioners for Sibley County Minnesota
400 Court Avenue
PO Box 52
Gaylord, MN 55334

RE: Cornish Township Demand for County Action
Sibley Substation Wind/Wesco Wind, LLC

Dear Honorable Commissioners:

As you know this firm represents Cornish Township, Minnesota (“Cornish”) and we write to you on behalf of the township. Cornish believes that Sibley Substation Wind/Wesco Wind, LLC (collectively “Wesco”) should have all Sibley County (“County”) support and approvals revoked based on violations of County permits, changes in Wesco’s ownership structure and the need to protect all citizens of the county.

Wesco has, and continues, to violate terms of various agreements with the County, including: that Construction Agreement and Road Use and Repair Agreement (“Road Agreement”) between it and the County both dated April 23, 2013, various utility permits, and finally, a change in ownership which causes the project to no longer qualify as a Community Based Energy Development project.

Construction Agreement Violations

The citizens of Sibley County entered into the Construction Agreement with Wesco with the idea that both parties would work cooperatively and in good faith to protect the community as a whole while private party Wesco worked to profit from wind power. However, Wesco has failed to meet the requirements of the Construction Agreement time and time again. The violations include

Construction Agreement Section	Requirement	Violation
Introduction	The Developer is listed as Sibley Wind Substation, LLC	All correspondence on this project is coming from Wesco Wind, LLC which is not listed on any agreement with the County. This seems like a scheme by Wesco to attempt to avoid any liability for its actions.
4.13	Developer is required to obtain permits to work on utilities within right-of-way	Permits previous obtained by Wesco have expired, therefore Wesco currently in violation of this provision
4.15	Prevention of Soil Erosion – Wesco is required to supply Townships, such as Cornish, with a plan to prevent Soil Erosion before the start of construction.	No activity or communication to Cornish Township on this issue as of the date of this letter indicating a violation.
4.18	Developer shall pay <u>all</u> bills to the County within 30 days.	Developer has failed to pay Environmental Services Bills for the project which is a continuing violation.
8.8	Insurance – Wesco is required to supply Townships, such as Cornish, with proof of insurance before the start of construction.	No activity or communication to Cornish Township on this issue as of the date of this letter indicating a violation.

Together, these violations are the “tip of the iceberg” as it relates to Wesco’s complete disregard for the County requirements for its project.

Utility Permit Violations

As mentioned above, Wesco sought, and was granted various utility permits from the Sibley County Public Works Department all with issue dates of September 4, 2013¹ (collectively, the “Utility Permits”). Each one of these Utility Permits contains the same language in Section 13 of the “Conditions and Requirements for Completing Application and for Street or Commercial Access Permit” which says:

13. In the event that the construction has not been started within one year of the permit approval date, the permit shall become null and void and the Permittee will be required to obtain a new permit.

Additionally, the applicant, Wesco, executed the document just below this statement on each final printed Utility Permit. Wesco has failed to commence construction on any of the locations for which these Utility Permits were obtained. Therefore the County needs to demand that Wesco reapply for these permits.

Road Agreement Violations

Similar to the Construction Agreement, Wesco has continued to violate the terms of the Road Agreement and the Cornish wants the County to revoke this Agreement.

Section 1.4 – Cornish Township has rejected participation in the Road Agreement on several occasions and communicated this both verbally and in writing to both Wesco and the County. Currently this Section of the Agreement is void and Wesco is operating as if it still in force by utilizing Cornish Roads for their non-construction activities. Cornish demands that this stop.

Section 3.2 – The section of the Road Agreement requires Wesco to “comply with all applicable laws . . .” when making road modifications. Wesco violated this requirement when its contractors, trespassed upon Township roads and performed destructive testing of the same on August 14, 2013. This was a clear violation of the property and municipal laws of Minnesota and provides another example of Wesco’s inability to abide by the County Agreements.

Section 7.2 – Similar to the Construction Agreement, this Section provides that any amendment to the Road Agreement must be in writing. This has never been done and there is no valid written amendment of record for this Road Agreement.

¹ Permit Numbers 13-09-SC-109, 13-09-SC-110, 13-09-SC-111, 13-09-SC-112, 13-09-SC-114, 13-09-SC-115, and 13-09-SC-116.

Together, these violations of the Road Agreement by Wesco necessitate action by the County to revoke any approvals or permits; however, Wesco continues to take advantage of the County in other ways also.

Disqualification as a CBED Project

Minnesota Statute 216B.1612 requires many conditions for a project to be considered eligible for the Community Based Energy Development (“CBED”) funds tariff. The Wesco Wind Station project currently violates several provisions of Minnesota Statute 216B.1612 in effect in 2007, when the resolution of support was passed by the County and the County must revoke its resolution of support. The project was originally permitted, including:

1. Wesco Wind, LLC is not an entity registered with the Minnesota Secretary of State.
2. Pursuant to Minn. Stat. 216B.1612, Subd. 2 (c) in order for Sibley Wind Substation, LLC (the party which is listed on the Construction Agreement and Road Agreement) to qualify to receive CBED subsidies it must have its principal place of business in Minnesota. The Minnesota Secretary of State currently lists the Sibley Wind Substation, LLC Principal Executive Office Address as Markle, IN.
3. Pursuant to Minn. Stat. 216B.1612, Subd. 2 (h) for Sibley Wind Station to qualify as a "C-BED project" it must have no single qualifying beneficiary, including any parent company or subsidiary of the qualifying beneficiary, owning more than 15 percent of a C-BED wind energy project.

North American Wind Power reported on August 13, 2013 that “Star Distributed Energy...obtained the project from Sibley Wind Substation”. Obviously, Star Distributed Energy, another entity based in Indiana is the owner project.

4. Given the Minnesota Public Utilities Commission’s August 2013 ruling on the New Era Wind Farm (f/k/a Goodhue Wind) it appears that the change in ownership of Sibley Wind Substation, LLC violates the anti-transfer provisions applicable to C-BED projects under Minn. Stat. §216B.1612, subd. 3(c).

For all these reasons the County should revoke their resolution 2007-44 providing support to the project for its CBED status. Based on these findings, Cornish believes the County attorney should begin an investigation of Wesco, Sibley Wind Substation, LLC and

Wayne Hesse to determine if any false or misleading information was given to the County Board or staff regarding the original request for this resolution.

In conclusion, Wesco has, and continues, to violate terms of various agreements with the County. Cornish requests and demands that the County should withdraw all approvals and support based on these various violations of County permits, changes in Wesco's ownership structure and the need to protect our environmental resources and all citizens of the county.

We look forward to your response.

Sincerely,

HALLELAND HABICHT PA



Daniel. S. Schleck

- c. Client
 - State Representative G. Gruendhagen
 - State Senator S. Newman
 - T. Becker – Sibley County
 - D. Schauer – Sibley County
 - B. Harr – Minnesota Public Utilities Commission
 - MPUC Docket 08-208
 - J. Gasele – Fryberger- Buchanan