

**STATE OF MINNESOTA  
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Docket No. IP-6687/CN-08-951

In the Matter of the Application of Flat Hill  
Windpark I, LLC for a Certificate of Need  
for a Large Energy Facility, a 201 MW Large  
Wind Energy Conversion System and  
Associated Facilities in Clay County

**PETITION FOR CHANGES TO  
CERTIFICATE OF NEED WITHOUT  
RECERTIFICATION OR FURTHER  
HEARING**

Pursuant to Minn. R. 7849.0400, subp. 2(H), Flat Hill Windpark I, LLC (“Flat Hill”) hereby requests that the Minnesota Public Utilities Commission (“Commission”) grant an extension of the in-service date in the certificate of need (“CON”) in the above-referenced docket without recertification or further hearing, as provided further herein.

**INTRODUCTION**

On February 3, 2010, the Commission issued a CON to Flat Hill<sup>1</sup> for a 201 MW large wind energy conversion system project (“Project”) in Clay County, Minnesota. The proposed in-service date in the original CON was December 2010. In its August 27, 2013 Order Extending Certificate of Need In-Service Date, the Commission granted Flat Hill an extension of the in-service date in the CON to December 2015. The Project, however, will not be in service before the end of 2015. Flat Hill remains committed to moving towards commercial operation expeditiously, and it requests that the Commission accept a change in the in-service date for the Project to December 2017 without recertification. Such relief will align the in-service date in the CON to the in-service date in Flat Hill’s existing Route Permit, and to the extension requested with respect to Flat Hill’s Site Permit, which is being filed concurrently with this Petition.

Pursuant to Minn. R. 7849.0400, changes to the size, type or timing of a proposed facility that do not conform to the provisions in subpart 2(A)–(G) require an applicant to notify the Commission of the proposed change and the reasons for the change. The Commission is then required to evaluate reasons for the change within 45 days of the petition. The Commission is required to order further hearings “if and only if it determines that the change, if known at the time of the need decision on the facility, could reasonably have resulted in a different decision under the criteria specified in part 7849.0120.” Minn. R. 7849.0400, subp. 2(H). The proposal

---

<sup>1</sup> Flat Hill was formerly named Noble Flat Hill Windpark I, LLC. In a letter filed in this Docket on September 1, 2011, the Department of Commerce advised the Commission of the name change. Flat Hill further described the name change and the parent company ownership status of Flat Hill in a compliance filing dated September 13, 2013 in Dockets No. IP-6687/WS-08-1134 and IP-6687/TL-08-988.

to extend the in-service date for the Project does not fall within the one-year delay specified in Minn. R. 7849.044, subp. 2(A) and, thus, Flat Hill must comply with the requirements of Minn. R. 7849.0400, subp. 2(H). Accordingly, Flat Hill files this Petition for Changes to the Certificate of Need Without Recertification or Further Hearing, respectfully requesting that the Commission extend the in-service date in the CON.

In Flat Hill's Petition for Modification or Amendment to the Site Permit filed contemporaneously with this filing in PUC Docket No. IP-6687/WS-08-1134, Flat Hill seeks extension of the Site Permit for the Project. Extending the in-service date of the CON to December 2017, the CON will be consistent with Flat Hill's Route Permit (which was previously extended by 4 years to August 27, 2017) and proposed modification or amendment to the Site Permit (for which Flat Hill requests extension to August 27, 2017).

### **REASONS FOR CHANGING THE IN-SERVICE DATE**

As described in Flat Hill's Petition for Modification or Amendment to the Site Permit, Flat Hill initially experienced significant delays to Project development in the Midcontinent Independent System Operator, Inc. ("MISO") generator interconnection process as well as from the appeal by Radio Fargo-Moorhead, Inc. ("RFM") of the Site Permit and Route Permit for the Project. As a result of the MISO and RFM delays, Flat Hill was unable to advance development of the Project in the first two-year period of the Site Permit.

Since obtaining an extension of the in-service date in the CON and corresponding amendments of the Site Permit and Route Permit in 2013, Flat Hill has continued to face challenges beyond its control that prevented Flat Hill from placing the Project in service. As Flat Hill notes in its Petition for Modification or Amendment to the Site Permit, the 2013 and 2014 calendar years were both down market years for the wind industry as a whole, resulting in two years in a row of total capacity additions among the lowest in the last decade: just over 1,000 MW in 2013 and approximately 4,750 MW in 2014.<sup>2</sup> These down market years were driven largely by uncertainty regarding whether Congress would extend in 2012 and then again in 2014 the expiration date of the federal production tax credit ("PTC"). With Congress extending the PTC only one year at a time, and combined with the low pricing being offered for wind power purchase agreements ("PPA"), the industry as a whole was largely paralyzed during this timeframe. And because of the delays that impaired the advancement of the Project pre-2013, the Flat Hill Project entered this down period at a distinct disadvantage relative to other wind projects, and it was infeasible for Flat Hill to obtain a PPA or otherwise advance the Project to construction.

---

<sup>2</sup> See American Wind Energy Association ("AWEA"), U.S. Wind Industry First Quarter 2015 Market Report at 4 (April 29, 2015) ("AWEA 1Q 2015 Market Report"), available at <http://awea.files.cms-plus.com/FileDownloads/pdfs/1Q2015%20AWEA%20Market%20Report%20Public%20Version.pdf> (June 18, 2015).

Nevertheless, Flat Hill remains committed to the Project and is confident that the Project continues to present a commercially viable option for renewable generation. Flat Hill continues to actively engage in efforts to secure a PPA or other off-take arrangement for the Project and advance the Project to commercial operation. Granting an extension to the in-service date will provide Flat Hill with sufficient time to realize the benefits of the current shift in market conditions and advance the Project to commercial operation by December 2017, and such an extension will not impact the rights of any other parties.

### **ADDITIONAL HEARINGS ON THE CHANGE ARE NOT WARRANTED**

The Commission should not require recertification or additional hearings, as the proposed change to the in-service date would not have reasonably resulted in the Commission reaching a different determination on the CON. Minn. R. 7849.0400, subp. 2(H) provides that the Commission shall order additional hearings on the proposed change only if it determines that if the change was known initially, the Commission could reasonably have reached a different decision under the criteria specified in the Minnesota Rules. As the Commission has determined for other projects making similar requests based on similar grounds, the criteria in Minn. R. 7849.0120 would not have reasonably led the Commission to reach a different conclusion due to a later commercial operation date for the Project.

The Commission's conclusions with respect to the criteria in Minn. R. 7849.0120 are not changed by a delay in the construction and operation of the Project. The criteria specified in Minn. R. 7849.0120 relate to the adequacy, reliability or efficiency of energy supply; alternatives to the Project; and the benefits of the Project to society, none of which are impacted by a delay in commercial operation. For instance, an extension of the commercial operation date does not change the fact that the renewable energy from the Project will be needed by Minnesota utilities to meet renewable energy standards, and/or in response to the pending changes in environmental regulations described in Flat Hill's Petition for Modification or Amendment to the Site Permit, as there continues to be renewable energy standard milestones to be met, along with additional factors driving continued investment in renewable generation, of which wind is generally the least cost resource for meeting those needs. Moreover, Flat Hill continues to dedicate resources to advance development of the Project, and has made a significant investment in the Project to date. Granting an extension of the in-service date under these circumstances will not impact the rights of any other parties (or ratepayers) because the Project is being developed by an independent power producer with only its shareholders at risk. Extension of the in-service date is necessary to preserve this investment and maintain the Project as viable source of renewable energy for Minnesota.

Furthermore, the delays Flat Hill has experienced resulting from first the interconnection process, and then followed by a decline in market conditions, are not unique to the Project. Rather, these delays are systemic, applying to all generators in the MISO queue, and are beyond the control of Flat Hill. As noted in Flat Hill's Petition for Modification or Amendment to the Site Permit, a number of other projects currently face a similar expiration of extended time periods under their site permits and/or certificates of need. Although the majority of these other

projects did not seek similar extensions of timelines from the Commission, the projects are indicative of the impacts of the market conditions in the last two years.

Finally, the benefits from the Project flowing to local communities and the State of Minnesota also will remain unchanged, other than the year in which they will occur. For these reasons, the Commission should conclude that a change to the in-service date in the CON is permitted without recertification or further hearing.

### CONCLUSION

For the reasons set forth above, Flat Hill respectfully requests that the Commission change the in-service date for the Project specified in the CON to December 2017 without recertification of or further hearing on the Project.

Dated: July 15, 2015

Respectfully submitted,

*/s/ Andrew J. Gibbons*

---

Andrew J. Gibbons (#0389692)  
Brian M. Meloy (#0287209)  
STINSON LEONARD STREET, LLP  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402  
Telephone: (612) 335-1500  
Fax: (612) 335-1657

**STATE OF MINNESOTA  
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

In the Matter of the Application of Flat Hill Windpark I, LLC for a Certificate of Need for a Large Energy Facility, a 201 MW Large Wind Energy Conversion System and Associated Facilities in Clay County

Docket No. IP-6687/CN-08-951

**CERTIFICATE OF SERVICE**

Catherine M. Wood certifies that on July 15, 2015 she served a true and correct copy of the **PETITION FOR CHANGES TO CERTIFICATE OF NEED WITHOUT RECERTIFICATION OR FURTHER HEARING** upon the below-listed parties by the method of delivery indicated on the official service list for this docket:

<u>PARTY</u>	<u>E-Mail</u>	<u>Company</u>	<u>Address</u>	<u>Method of Delivery</u>
Julia Anderson	<a href="mailto:julia.anderson@ag.state.mn.us">julia.anderson@ag.state.mn.us</a>	MN Attorney General's Office	1800 BRM Tower 445 Minnesota Street St. Paul, MN 55101-2131	Electronic Service
B. Andrew Brown	<a href="mailto:brown.andrew@dorsey.com">brown.andrew@dorsey.com</a>	Dorsey & Whitney, LLP	50 South Sixth Street Suite 1500 Minneapolis, MN 55402-1498	Electronic Service
Sharon Ferguson	<a href="mailto:sharon.ferguson@state.mn.us">sharon.ferguson@state.mn.us</a>	Department of Commerce	85 7th Place East Suite 500 St. Paul, MN 55101-2198	Electronic Service
John Lindell	<a href="mailto:agorud.ecf@ag.state.mn.us">agorud.ecf@ag.state.mn.us</a>	OAG-RUD	1400 BRM Tower 445 Minnesota Street St. Paul, MN 55101-2130	Electronic Service
Brian Meloy	<a href="mailto:brian.meloy@stinsonleonard.com">brian.meloy@stinsonleonard.com</a>	Stinson Leonard Street LLP	150 South 5th Street Suite 2300 Minneapolis, MN 55402	Electronic Service
Daniel P. Wolf	<a href="mailto:dan.wolf@state.mn.us">dan.wolf@state.mn.us</a>	Public Utilities Commission	121 7 <sup>th</sup> Place East Suite 350 St. Paul, MN 55102	Electronic Service

*/s/ Catherine M. Wood*

\_\_\_\_\_  
Catherine M. Wood