

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: May 25, 2016 **Agenda Item # 2***

Company: Flat Hill Windpark I, LLC

Docket Nos. IP6687/CN-08-951; IP6687/TL-08-988 and IP6687/WS-08-1134

**In the Matter of the Application of Flat Hill Windpark I, LLC for a
Certificate of Need, Route Permit, and Site Permit for an up to 201
Megawatt Large Energy Conversion System and Associated Facilities
in Clay County, Minnesota**

Issue(s): Should the Commission accept Flat Hill Windpark I, LLC’s request to revoke its Certificate of Need, Route, and Site permits as a surrendering of its permits?

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Relevant Documents

CN-08-951

Flat Hill Windpark I, LLC – Letter Requesting Revocation Permits.....May 18, 2016

TL-08-988

Flat Hill Windpark I, LLC – Letter Requesting Revocation of Permits.....May 18, 2016

WS-08-1134

Flat Hill Windpark I, LLC – Letter Requesting Revocation of Permits.....May 18, 2016

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I. Statement of Issues

Should the Commission accept Flat Hill Windpark I, LLC's request to revoke its Certificate of Need, Route, and Site permits as a surrendering of its permits?

II. Procedural History

The Flat Hill Windpark I project (Flat Hill, the Project) is an up to 201 megawatt wind facility proposed to be located in Clay County, approximately 12 miles northeast of Moorhead, Minnesota.

In February 2010, the Commission issued three orders which granted Flat Hill: 1) a certificate of need, 2) a route permit, and 3) a site permit.

On May 20, 2011 the Commission issued an *Order Dismissing Contested Case Proceedings and Adopting and Modifying Proposed Order* as a result of an appeal of the dockets due to issues with a nearby radio tower. The May 20, 2011 Order affirmed the permits without modification, with the exception of authorizing a 'restarted' two year period for Flat Hill to obtain a power purchase agreement (PPA) and commence construction – extending the time authorized to obtain a PPA from May 2011 to May 2013 (first extension).

On August 27, 2013, the Commission issued Orders in the certificate of need, site permit and route permit dockets extending the time to obtain a PPA and construct the project, granting the Permittee's extension request (second extension). The certificate of need was extended to December 2015, the site permit was extended to August 27, 2015, and the route permit was extended to August 27, 2017.

On July 15, 2015, Flat Hill filed petitions to extend the time authorized to commence construction in the certificate of need and site permit dockets (third extension).

On October 6, 2015 the Commission issued an Order Postponing Decision on Permit Amendment and Requiring Filings (October 2015 Order). The Commission postponed its decision to allow the developer to supplement the record with updated turbine type information, layout information, and updated natural resource information (among other items).

On December 30, 2015, and February 3, 2016 Flat Hill filed additional project information and requested further site permit amendments to accommodate a new turbine type.

On April 21, 2016 the Commission met to consider the extension requests, granting the extensions with conditions.

On May 18, 2016 Flat Hill Windpark I, LLC filed a letter requesting the Commission revoke their certificate of need, route permit and site permit for its 201 MW wind facility and associated transmission line.

III. Applicable Statute and Rule

Site Permit Revocation or Surrender

Minnesota Statutes Section 216F governs the Commission's authority to permit large wind generation sites. Section 216F.04(d) provides that "[t]he commission may place conditions in a permit and may deny, modify, suspend, or revoke a permit." Section 216F.05(6) in turn provides that the

Commission shall adopt rules that govern, among other things, “revocation or suspension of a site permit when violations of the permit or other requirements occur.”

Minnesota Rule 7854.1300, subp. 3 sets out the process for the revocation of a wind farm site permit:

The Commission may revoke a site permit for an LWECS [Large Wind Energy System] at any time if the commission determines that any of the following has occurred:

- A. the applicant knowingly made a false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted a change in the commission’s finding;
- B. the applicant has failed to comply with a material condition or term of the permit;
- C. the permitted LWECS endangers human health or the environment and the danger cannot be resolved by modification of the permit or LWECS; or
- D. the permittee has violated other laws that reflect an inability of the permittee to comply with the permit.

Route Permit Revocation or Surrender

The statute and rules governing route permits similarly provide for the revocation of a permit on the grounds of a material false representation by the applicant, or a violation of a term of the permit or of applicable law. Minn. Stat. § 216E.14; Minn. R. 7850.5100.

Certificate of Need Revocation or Surrender

The statute and rules on certificates of need do not contemplate a certificate of need being revoked. See generally Minn. Stat. § 216B.243; Minn. R. 7849.0400.

IV. Staff Discussion

The grounds set forth in statute and rule for the revocation of wind generation site and route permits are (i) wrong-doing by the permittee in applying for or acting pursuant to a permit, or (ii) the wind generation facility proving to be a danger to persons or the environment. None of these grounds are present here, however, as Flat Hills explains it has decided to cancel its project for economic reasons. As a result Flat Hill has no need of its site and route permits, nor its certificate of need, for the project.

While Flat Hill styles its filing as a request for revocation of its certificate of need, and site and route permits (which historically has been the terminology used by the Commission), going forward it might be better to characterize this type of request to surrender a project’s certificate of need and permits to the Commission.

V. Decision Alternatives

1. Accept Flat Hill’s surrender of its certificate of need, and site and route permits.
2. Take some other action.

Staff recommends alternative 1.