

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
J. Dennis O'Brien
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

ISSUE DATE: August 27, 2013

DOCKET NO. IP-6687/CN-08-951

ORDER EXTENDING CERTIFICATE OF NEED IN-SERVICE DATE

PROCEDURAL HISTORY

On February 3, 2010, the Commission granted Noble Flat Hill I, LLC, now known as Flat Hill Windpark I, LLC (Flat Hill) a certificate of need for the construction of a 201-megawatt large wind energy conversion system in Clay County.

In its certificate-of-need application, Flat Hill indicated that it expected the project to be in service by December 2010. On April 4, 2013, Flat Hill filed a petition to extend the project's in-service date to December 2015, without recertification or further hearing.

On April 19, 2013, the Minnesota Department of Commerce, Division of Energy Resources (the Department) filed comments recommending that the Commission find the timing change acceptable without further hearings.

The matter came before the Commission on August 1, 2013.

FINDINGS AND CONCLUSIONS

I. Positions of the Parties

Flat Hill explained that the delay in the in-service date is needed for two reasons. First, the project had entered the Midwest Independent Transmission System Operator's (MISO's) processing queue in 2007, but delays in the processing of the interconnection request have made meeting the project's planned in-service date impossible. Second, contested case proceedings with Radio

Fargo Moorhead, Inc. (RFM) concerning the siting and routing processes for the Flat Hill project caused additional unforeseen delays in commencement of the project.¹

The Department recommended that the Commission find that the change in timing of the Flat Hill's in-service date until December 2015 is acceptable without further hearings. The Department treated Flat Hill's request as a request to extend the in-service date from May 2013 to December 2015.²

II. Commission Action

A. Extension of In-Service Date

Under Minn. R. 7849.0400, subpart 2, a delay of one year or less in the in-service date of a large generation facility previously certified by the Commission is not subject to review by the Commission. However, if an applicant seeks to delay a project's in-service date by more than a year, the Commission must evaluate the reasons for the proposed change and determine whether the change is acceptable without recertification. The Commission orders 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 [certification criteria]."³

Flat Hill seeks to extend the in-service date of the project to December 2015. The Commission must therefore determine whether the change is acceptable without recertification. Having examined the record in this matter, the Commission concurs with the parties that the project's in-service date should be extended to December 31, 2015, without recertification proceedings. The delay, while significant, is the result of factors outside Flat Hill's control and will not adversely affect any party, community, or the public interest.

The Commission recognizes that unanticipated delays in MISO's interconnection process have prevented the project from adhering to its anticipated time frame. Further, the Commission is aware that the Flat Hill project underwent lengthy delays due to its now resolved litigation with Radio Fargo Moorhead, Inc. As a result of that litigation, the deadline set in the project's site permit for the project to obtain a power purchase agreement was extended to two years from the effective date of the order, or May 20, 2013.

¹ See, Docket Nos. IP-6687/TL-08-988 (Route Permit), and IP-6687/WS-08-1134 (Site Permit).

² According to the Department, in 2010, RFM filed a petition for a writ of certiorari claiming that it had not been properly notified of the Flat Hill project and that the Commission did not take into account interference with RFM's radio signal in granting the siting and routing permits for the project. On May 20, 2011 the Commission dismissed the complaint pursuant to a stipulation of dismissal agreed to by the parties. The Commission amended the site permit to extend the time to demonstrate that the project had commenced construction and obtained a purchase power agreement or other enforceable mechanism for the sale of electricity. The Commission also extended the time for securing a site permit until two years from the issuance of the May 20, 2011 order, or May 20, 2013. *Id.*, Order Dismissing Contested Case Proceedings and Adopting and Modifying Proposed Order (May 20, 2011).

³ Minn. R. 7849.0400, subp. 2H.

The Commission concurs with the Department that Flat Hill apparently assumed that since the date to obtain a power purchase agreement had been extended, there was no need to further inform the Commission regarding the delay in the in-service date specified in the certificate of need. While the Commission would have preferred for Flat Hill to have specifically requested that the in-service date associated with the certificate of need be extended prior to December 2011, under the unique circumstances presented here, the Commission will approve the request to extend the in-service date without recertification proceedings.

Finally, given that the Minnesota Renewable Energy Standard, Minn. Stat. § 216B.1691, Sub. 2a requires utilities to procure an increasing percentage of energy from renewable resources through 2025, there will be continued demand for the project's energy well beyond 2015.

B. Variance

Minn. R. 7849.0400, subp. 2(H) requires that the commission evaluate the reasons for and against the proposed change in in-service date within 45 days of receipt of the request. The Commission's rules of practice and procedure permit it to vary any of its rules making the following findings:

- (1) enforcement of the rule would impose an excessive burden upon the applicant or others affected by this rule;
- (2) granting the variance would not adversely affect the public interest; and
- (3) granting the variance would not conflict with standards imposed by law.

Here, the Commission finds that the 45-day review period was not sufficient to allow time to review the filing, solicit and review comments, schedule a Commission meeting, and prepare a written order.

Accordingly, the Commission will vary the 45-day time line of Minn. R. 7849.0400, subp. 2(H), making the following findings:

- (1) Enforcement of the 45-day time line would impose an excessive burden upon the public, upon parties to the proceeding, and upon the Commission by jeopardizing the thoroughness of the Commission's decision-making process;
- (2) Varying the 45-day time line would not adversely affect the public interest and would in fact serve the public interest by protecting the Commission's decision-making process; and
- (3) Varying the 45-day time line would not conflict with any other standards imposed by law.

ORDER

1. The Commission hereby determines that the change in timing in the in-service date from December 2010 to December 2015 is acceptable without recertification or further hearings.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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