

August 6, 2015

Daniel P. Wolf, Executive Secretary
Minnesota Public Utilities Commission
127 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: Petition for a Permit Amendment
Flat Hill Windpark I Project
Docket No. IP6687/WS-08-1134

Dear Mr. Wolf:

Attached are the review and comments of the Minnesota Department of Commerce Energy Environmental Review and Analysis (EERA) staff in the following matter:

**In the Matter of the Application for a Large Wind Energy Conversion System (LWECS)
Site Permit for the Flat Hill Windpark I Project in Clay County**

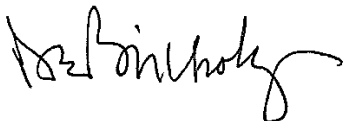
Flat Hill Windpark I, LLC has requested a second Permit Amendment, pursuant to Minnesota Statute 216F.04 (d) and Minnesota Rule 7854.1300, subp 2, to extend the date to commence construction of a 201 MW LWECS for an additional two years.

This filing was made on July 15, 2015, by:

Andrew J. Gibbons and Brian M. Meloy
Stinson Leonard Street, LLP
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

EERA recommends granting a final extension of two years to commence construction of the LWECS upon certain conditions. EERA staff is available to answer any questions the Commission may have.

Sincerely,



David Birkholz, Environmental Review Manager
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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS AND RECOMMENDATIONS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS**

DOCKET NO. IP-6687/WS-08-1134

Date August 6, 2015
EERA Staff..... David Birkholz (651) 539-1838

**In the Matter of the Application for a Large Wind Energy Conversion System (LWECS)
Site Permit for the Flat Hill Windpark I Project in Clay County (Docket no. IP-6687/WS-08-1134)**

Issues Addressed: *These comments and recommendations address whether and under what conditions an additional extension of time to commence construction should be granted.*

Additional documents and information can be found at

<http://mn.gov/commerce/energyfacilities/Docket.html?id=19766> or on eDockets at
<http://www.edockets.state.mn.us/EFiling/search.jsp> (Year 08, Number 1134).

This document can be made available in alternative formats; e.g., large print or audio tape by calling (651) 539-1530.

Introduction and Background

On February 5, 2010, the Minnesota Public Utilities Commission (Commission) issued a Large Wind Energy Conversion System (LWECS) Site Permit to Flat Hill Windpark I, LLC (Flat Hill or Petitioner) to construct the 201 MW Flat Hill Windpark I Project in Clay County.¹

On May 20, 2011, the Commission dismissed a contested proceeding concerning Radio Fargo-Moorhead, Inc. questions re Project compatibility with their radio antennae when the parties reached a settlement agreement. In their Order,² the Commission also ruled:

¹ Commission Order (Original), February 5, 2010, eDocket no. [20102-46844-01](#)

² Commission Order (Affirmed), May 20, 2011, eDocket no. [20115-62760-01](#)

"The Project Permits are affirmed without modification, except the time for commencement of construction of the Project and demonstrating that the Project has obtained a Power Purchase Agreement or other enforceable mechanism for the sale of electricity from the Project under the LWECS Site Permit which is extended to two years from the effective date of this Order."³

On April 4, 2013, prior to the deadline of May 20, 2013, Flat Hill submitted a petition to amend its Site Permit by extending for two years both the time in which to obtain a Power Purchase Agreement (PPA) or some other enforceable mechanism for sale of the electricity and the deadline to begin construction.⁴ The petition also stated, "for the same reasons that justify amendment of the Site Permit, Flat Hill requests that the Commission extend the time for commencement of construction or improvement of the route under the Route Permit."⁵

On August 27, 2013,⁶ the Commission granted the extensions for two years, issued modifications to the site and route permits to ensure consistency with contemporary permits, and ordered additional compliance filings.

On July 15, 2015, Flat Hill petitioned for an additional extension of two years to commence construction of the Project while they continue to pursue a Power Purchase Agreement (PPA) or other enforceable mechanism for off-loading the power.⁷

Regulatory Process and Procedures

Siting of Large Wind Energy Conversion Systems is governed by Minnesota Statute 216F. Minnesota Statute 216F.03 states:

"The legislature declares it to be the policy of the state to site LWECS in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources."

Minnesota Rule 7854.1000, subpart 1, directs the Commission to make a final site permit decision based on the record that has been compiled in the matter. Minnesota Rule 7854.1000, subpart 3, requires that the Commission determine that:

³ *Id.*

⁴ Flat Hill Windpark I, LLC "Petition for Modification or Amendment of Site and Route Permits," April 4, 2013, eDocket no. [20134-85367-01](#)

⁵ *Id.*

⁶ Commission "Order Granting Amendments to Site and Route Permits and Requiring Compliance Filings" (Amendments), August 27, 2013, eDocket no. [20138-90622-04](#)

⁷ Flat Hill Windpark I, LLC "Petition for Modification or Amendment to the Site Permit," July 15, 2015, eDocket no. [20157-112475-01](#)

"...the project is compatible with environmental preservation, sustainable development, and the efficient use of resources, and the applicant has complied with this chapter."

Minnesota Rule 7854.1300, subpart 2, states that:

"The Commission may amend a site permit for an LWECS at any time if the commission has good cause to do so."

EERA Analysis and Comments

The Commission found in its initial permit decision that the proposed project is compatible with environmental preservation, sustainable development and the efficient use of resources. In the amended permit, the original site permit was updated to be compliant with current site permit terms and conditions.

A review of the record for the Flat Hill Wind I Project indicates the site is approximately 20,000 acres in size and predominately used for agricultural purposes. There are no Wildlife Management Areas (WMAs) or Waterfowl Production Areas (WPAs) within four-miles of the Project area. The Bluestem Prairie Scientific and Natural Area (SNA) and Buffalo State Park are approximately six miles southeast of the Project.

Surveys

According to Department of Natural Resources comments on April 26, 2013, "The current project boundary reflects substantial avoidance of a beach ridge habitat for which the DNR had concerns regarding impacts to natural resources. Based on then current information, the DNR estimated that the risk for fatalities to avian and bat species is low for the Noble Flat Hill I Wind Project due to the location of the project in primarily an agricultural setting away from natural resource features the DNR identified during previous coordination with project developers."⁸

According to Section 5.22 of its Site Permit Application, the Permittee has stated it will conduct the following resource inventories for the Project area prior to construction:

- Biological Preservation Survey – inventory of existing WMAs, SNAs, recreation areas, wetlands, native prairies, forests, and other biologically sensitive areas within the Project area;
- Fall and Spring Avian Point County Survey for the Project area;
- Acoustical Bat Survey for the Project area;
- Phase I Environmental Site Assessment (ESA);
- Archaeological Reconnaissance Survey;
- Electromagnetic Interference Study – inventory of microwave beams and television signal reception within the Project area.⁹

⁸ DNR Comment Letter, April 26, 2013, eDocket no. [20134-86222-01](#)

⁹ Site Permit Application, Noble Flat Hill Windpark I, LCC, October 17, 2008, eDocket no. [5568012](#) at 75

DNR had also recommended a new Natural Heritage Information System (NHIS) review (the Permittee's last review was in 2007) in its April 26, 2013 letter.¹⁰ As DNR noted, this new data could inform the Avian and Bat Protection Plan (ABPP) and other inventories planned by the Permittee. Updated natural resource data would make it more efficient for EERA staff to comment on any potential changes in impacts of this project to wildlife or rare or unique natural resources when a site plan is submitted.

The Commission's 2013 Order for an amended permit included a provision that, "Flat Hill shall file a compliance document upon receipt of NHIS data from the Department of Natural Resources indicating whether the data has changed since original NHIS data search was conducted." To date, no such compliance document has been filed. EERA notes that data would help determine if the Project maintains the same favorable site conditions as precipitated the original permit and amended permit.

Conditions for studies and surveys were extensively updated in the 2013 Amended Permit, so several necessary environmental issues are accounted for in the added conditions. However, EERA notes that the lack of an ABPP at this stage of development is not consistent with contemporary permitting practice. If the Permittee has developed any relevant data or made progress in preparing its ABPP, that information would also be an aid to the Commission in deciding to extend this permit.

Consistency with Recently Issued Permits

As previously noted, the amended permit currently in force has updated the terms and conditions from the original. The amended permit is up to date with current Commission permits. The only discrepancy is in numbering. The amended permit added a paragraph to the end of Condition 7.11, "Soil Erosion and Sediment Control."

"The Permittee shall develop an invasive species prevention plan to prevent the introduction of invasive species on lands disturbed by project construction activities. This requirement may be included as an element of the soil erosion and sediment control plan."

Newer permits, e.g., the Odell Project,¹¹ have inserted the same language as a separate Condition 7.12, "Invasive Species," but the same condition is in force regardless. Excepting any Special Conditions the Commission should choose to impose on a newly amended permit, the terms and conditions of the amended permit in force do not require any changes.

Special Conditions

EERA has considered additional special conditions that should be added to an amended permit for Flat Hill Windpark I.

¹⁰ DNR reiterated its request for a new NHIS review in an August 6, 2015, letter commenting on the current permit amendment request. See eDocket no. [20158-113075-01](#).

¹¹ Commission Order Issuing (Odell Wind) Site Permit, July 17, 2014, eDocket no. [20147-101580-01](#)

Amended Permit Distribution Requirement. Although a new amended permit might not contain the same level of extensive changes that occurred from the original to the 2013 Amended Permit, EERA argues that the special order (Special Condition 13.1) to notify landowners should still apply in issuing a new amended permit to provide transparency of the process. EERA notes the Permittee did comply with this special condition of the 2013 Permit Amendment.¹²

Setbacks. A Special Condition from the original permit was not carried forward into the 2013 Amended Permit. The original designated:

"1. The applicant shall fulfill its commitment to provide a minimum setback of 1,200 feet for all turbine towers to non-participating landowners' residences. Adoption of this special condition is based on facts unique to this case, including the fact that the Applicant requested this level of setback ... "

EERA argues that this minimum requirement should be enforced as it was part of the original record. Permit Condition 4.2 assures a minimum setback of 1,000 feet from even landowner residences. Parenthetically, the additional special condition in the original permit to provide data on shadow flicker is no longer necessary, as it is now incorporated in Condition 6.2.

Turbine Layout

The preliminary turbine layout in the 2013 Amended Permit is as of August 2008. This presents several questions about its usefulness in considering a 2015 amended permit. (Below is a cutout from the 2013 Amended Permit's preliminary layout.)

Flat Hill Windpark I Preliminary Turbine Layout



¹² "Notice of the Site Permit and Route Permit extension for the Flat Hill Windpark I," September 6, 2013, eDocket no. [20139-91194-01](#)

1. The layout is based on dated turbine designs. The current unknowns include size in MW, height and rotor diameter of current turbine designs. These variables would likely have a significant effect on locations and setbacks for the preliminary layout.
2. The layout is based on environmental knowledge gathered approximately eight years ago. New NHIS data may have an influence on repositioning turbines or turbine strings.
3. New LWECS layouts are currently designed with the benefit of an ABPP. The layout in the existing amended permit is agnostic in this regard.
4. Finally, the layout does not take into consideration any relocation of turbines attributable to the avoidance of radio towers in the northeast corner of the boundary.

While all of this data may not be immediately available, EERA suggests that best efforts be made to incorporate as much current data as possible to provide a more realistic view of a preliminary layout (and thereby impacts) of the Project. EERA suggests that this is necessarily required for the Commission to make an informed decision on an amended permit.

EERA Conclusions and Recommendations

EERA notes the Department's Division of Energy Resources (DOC-DER) opinion that the Project is still needed and that the change in timing is "acceptable without further hearings."¹³ EERA further notes that the Project was issued a permit because it "...is compatible with environmental preservation, sustainable development, and the efficient use of resources..." (Minn. Rule 7854.1000, subp. 3).

Given the Permittee's explanation of its endeavors to obtain a PPA, there would be no clear reason to deny this extension if the environmental conditions on which the permit was issued remained unchanged. Unfortunately, we don't have the data to verify that is the case. Before the Commission amends the permit to extend the date of construction another two years, EERA recommends the Commission require the Permittee to:

1. Perform an NHIS review and report on any changes from the original;
2. Provide information on any avian and bat studies performed since the last extension;
3. Provide information on anticipated turbine design; and
4. Provide an updated preliminary turbine layout based on the most current data available.

EERA recommends including a special condition to require setbacks from non-participating residences at a minimum of 1,200 feet; and a condition to distribute the amended permit as per Special Condition 13.1 of the 2013 Amended Permit.

EERA further recommends that, failing to commence construction within the time frame of a new amended permit and the existing route permit, both permits should be considered for revocation. Any project going forward would then require a new Application and review before the Commission.

¹³ Comments, DOC-DER, July 29, 2015, eDocket no. [20157-112809-01](#)