

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
John A. Tuma
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Certificate of Need for the
Flat Hill Windpark I Project in Clay County

ISSUE DATE: October 6, 2015

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

ORDER VARYING
MINN. R. 7849.0400, SUBP. 2(H)

PROCEDURAL HISTORY

On February 3, 2010, the Commission granted Noble Flat Hill I, LLC, now known as Flat Hill Windpark I, LLC (Flat Hill or the Company) a certificate of need for the construction of a 201 MW wind farm in Clay County. In its application, Flat Hill indicated that it expected the project to be in service by December 2010.

On May 20, 2011, in a related proceeding involving Flat Hill's request for a site permit, the Commission extended Flat Hill's deadlines for obtaining a power purchase agreement and beginning construction to May 2013.¹

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. The Commission determined that the change in timing was acceptable without recertification.

On July 15, 2015, Flat Hill filed a second petition to extend the project's in-service date, this time to December 2017. Concurrent with that petition, Flat Hill filed a petition to amend its site permit to extend the deadlines to obtain a power purchase agreement and begin construction of the wind farm.² Flat Hill stated that a weak market for wind energy had frustrated efforts to secure a power purchase agreement and, consequently, that the project would not be in service by the end of 2015.

On July 29, 2015, the Minnesota Department of Commerce, Division of Energy Resources (the Department) filed comments recommending that the Commission determine that the change in timing was acceptable without further hearing.

¹ See *In the Matter of the Large Wind Energy Conversion Site Permit for the Flat Hill Windpark I Project in Clay County*, Docket No. IP-6687/WS-08-1134, Order Dismissing Contested Case Proceedings and Adopting and Modifying Proposed Order.

² See *Petition for Modification or Amendment to the Site Permit*, Docket No. IP-6687/WS-08-1134.

On August 17, 2015, Flat Hill filed reply comments.

On September 17, 2015, the Commission met to consider both the request for an in-service date extension and the request for a site-permit amendment. At that meeting, the Commission postponed a decision on amending Flat Hill's site permit and gave the Company 120 days to file updated information on potential bird and bat impacts, anticipated turbine design, and project layout. An order memorializing that decision is being issued simultaneously with this order.

FINDINGS AND CONCLUSIONS

Under Commission rules, a delay of more than one year in the in-service date of a large generation facility previously certified by the Commission requires the Commission to evaluate the reasons for the delay and determine whether the change is acceptable without recertification.³

In general, the Commission must notify the applicant of its decision within 45 days of receiving the request for a change in timing.⁴ However, the Commission's rules of practice and procedure permit it to vary any of its rules upon making the following findings:

- (1) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the 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.⁵

Here, 45 days was not enough time to review Flat Hill's filing, solicit and review comments, schedule a Commission meeting, and prepare a written order. Accordingly, the Commission will vary the 45-day timeline of Minn. R. 7849.0400, subp. 2(H), making the following findings:

- (1) Enforcement of the 45-day timeline 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 timeline would not adversely affect the public interest and would in fact serve the public interest by supporting the integrity of the Commission's decision-making process.
- (3) Varying the 45-day timeline would not conflict with any other standards imposed by law.

³ Minn. R. 7849.0400, subp. 2

⁴ *Id.*, subp. 2(H).

⁵ Minn. R. 7829.3200.

The Commission will not address the merits of Flat Hill’s request for an in-service date extension at this time. The Commission has postponed a decision on Flat Hill’s related site-permit amendment request and given the Company 120 days to file updated project information. The Commission will similarly postpone its certificate-of-need decision until Flat Hill updates the site-permit record.

ORDER

1. The Commission hereby varies the 45-day timeline of Minn. R. 7849.0400, subp. 2(H).
2. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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