

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: **August 1, 2013** Agenda Item #4*

Company: Noble Flat Hill I, LLC (Flat Hill Windpark I, LLC)

Docket No. IP6687/CN-08-951, TL-08-988, WS-08-1134

Subject: **In the Matter of Flat Hill Windpark I, LLC's Certificate of Need, Route Permit and Site Permit for its 201 MW Wind Project in Clay County**

Issue(s): What action should the Commission take on the Flat Hill Project in regard to the Applicant's Petitions?

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The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted.

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I. Relevant Documents

Docket IP6687/CN-08-951

*Order - Dismissing Contested Case and Adopting and Modifying Proposed Order	May 20, 2011
*Department of Commerce EFP – Record of LLC Name Change	September 1, 2011
Flat Hill Windpark I, LLC – Petition for Changes to CON	April 4, 2013
Department of Commerce - Division of Energy Resources – Comments.....	April 19, 2013
*PUC – Public Comment	April 29, 2013
*PUC – Public Comments.....	May 23, 2013
*PUC – Public Comments.....	May 29, 2013
*Flat Hill Windpark I, LLC – Supplemental Reply Comments	June 11, 2013
*PUC – Public Comments.....	July 1, 2013

Docket IP6687/TL-08-988 and Docket IP6687/WS-08-1134

*Order - Dismissing Contested Case and Adopting and Modifying Proposed Order	May 20, 2011
*Department of Commerce EFP – Record of LLC Name Change	September 1, 2011
Flat Hill Windpark I, LLC – Petition for Amendment to Site and Route Permit.....	April 4, 2013
DOC EFP – Extension Variance Request.....	April 26, 2013
*PUC – Public Comment	April 29, 2013
*PUC – Public Comment	May 23, 2013
DOC EFP – Comments and Recommendations on Permit Amendments	May 24, 2013
*PUC – Public Comment	May 29, 2013
Quantum Utility Gene – Reply Comments.....	May 31, 2013
*Flat Hill Windpark I, LLC – Supplemental Reply Comments	June 11, 2013
*PUC – Public Comments.....	July 1, 2013

Docket IP6687/WS-08-1134 Only

**PUC – Public Comment (3 rd Resubmitted Attachment).....	May 1, 2013
**PUC – Public Comment (Public Comment Attachment)	May 1, 2013

**Document is the same for all three dockets.*

*** Documents are only available in WS-08-1134.*

II. Statement of Issues

What action should the Commission take on the Flat Hill Project in regard to the Applicant's Petitions?

III. Project Overview and History

The Noble Flat Hill Windpark I project (the Project) is a 201 Megawatt wind facility proposed to be located in Clay County, approximately 12 miles northeast of Moorhead, Minnesota. The Project was proposed by Noble Flat Hill Windpark I, LLC (Noble), a wholly-owned subsidiary of Noble Environmental Power (NEP).

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

In March 2010, Radio Fargo-Moorhead, Inc. (RFM), a landowner within the Project site boundary, filed Petitions for Writ of Certiorari with the Minnesota Court of Appeals, appealing the Commission's grant of the Site Permit and Route Permit for the Project ("RFM Appeal"). RFM based its appeal on its claims that it was not properly notified of the Project and that RFM's six tower AM directional antenna system (radio tower) was not considered in the development of the records or in the final route and site permit decisions.

On April 20, 2010, the Court discharged RFM's writs of certiorari and dismissed its appeals and remanded the matter back to the Commission for further proceedings on RFM's petitions to vacate or suspend the Route and Site Permit orders. All parties had agreed that a remand would enhance judicial economy.

On May 26, 2010, RFM submitted a petition (RFM Petition) for the Commission to vacate, stay, and/or reconsider the February 2010 Orders granting Noble a route permit and a site permit. The petition included a request which was not included in the original Court appeal, i.e., a request to vacate or stay the Commission's Order granting a certificate of need.

On August 25, 2010, the Commission issued an order (1) reopening the record in Docket No. IP-6687/TL-08-988 (Route Permit) and Docket No. IP-6687/WS-08-1134 (Site Permit) for the limited purpose of supplementing the evidentiary record on issues regarding the potential for impacts of the Project on RFM's operations; and (2) referring the matter to the Office of Administrative Hearings (OAH) to conduct a contested case proceeding specifically addressing the potential for impacts on RFM's operations.

Through their own meetings and negotiations, Noble and RFM reached a settlement resolving all issues raised in the RFM Petition, including but not limited to RFM's stated concern that the construction of the Project would unreasonably interfere with the operation of RFM's Radio Station KVOX(AM). RFM withdrew all challenges raised in the RFM Petition respecting the Project Permits in the Commission Proceedings and agreed that the Project Permits should be affirmed by the Commission.

On May 20, 2011 the Commission issued its *Order Dismissing Contested Case Proceedings and Adopting and Modifying Proposed Order*. The Order affirmed the permits without modification,

except for 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 Site Permit which was extended to two years from the effective date of the Order.

On September 1, 2011, the Department of Commerce Energy Facilities Permitting (DOC EFP) staff submitted a filing which documented the name change with the Minnesota Secretary of State of Noble Flat Hill Windpark I to Flat Hill Windpark I (Flat Hill). DOC EFP concluded that since the permits are still held by the same LLC, transfer of the permits is not necessary.

On April 4, 2013 Flat Hill filed two petitions, one in the certificate of need docket and another jointly in the route and site permit dockets. The Flat Hill Petition for Changes to CON without Recertification or Rehearing noted that the project is not yet in service and requested that the Commission accept a change in the in-service date for the Project from December 2010 to December 2015 without recertification. Flat Hill indicated that the extension would align the in-service date to the extensions sought in the Site and Route Permits. The Petition in the Site and Route Permit dockets requested that the Commission:

1. Issue an amended Site Permit such that the date for compliance with permit conditions III.J.4 and III.K.2 will be two years after the issuance date of the amended Site Permit;
2. Amend condition III.L of the Site Permit to extend the expiration date of the permit until 30 years after the issuance date of the amended Site Permit; and
3. Amend condition IV.J of the Route Permit to allow Flat Hill until four years after the issuance date of the amendment to commence construction or improvement of the route.

On April 19, 2013 the Department of Commerce Division of Energy Resources (the Department) filed comments in response to the Certificate of Need Petition recommending that the Commission find the changes acceptable without further hearings.

On April 26, 2013 the Minnesota Department of Natural Resources (DNR) filed comments in response to the Site and Route Petition and recommended that updated Natural Heritage Information System (NHIS) data be provided.

In April and May 2013 several public comments were filed in the Site and Route Permit Dockets in response to Flat Hill's Petition (summarized below).

On May 24, 2013, the DOC EFP staff filed comments and recommendations on the permit amendments and included proposed amended permit language. The DOC EFP ultimately recommended the Commission approve the amendments with modifications.

On June 7, 2013 the Commission issued a notice that the matter would be heard at the June 20, 2013 Agenda Meeting.

On June 11, 2013 Flat Hill Windpark I, LLC filed supplemental (out of comment period) reply comments and requested that the Commission delay the hearing of its Petition until late July or August, as the representative from Flat Hill was unavailable for the June 20th hearing.

On July 1, 2013, the Pederson's filed comments (out of comment period) on the project.

IV. Certificate of Need Petition and Comments

Certificate of Need Change in Circumstances

Because the extended certificate of need in-service date exceeds the one year delay allowed under Minnesota Rule 7849.0400, subpart 2(A), Flat Hill Windpark I, LLC must inform the Commission of the desired change and explain the reasons for the change in accordance with Minnesota Rule 7894.0400, subpart 2(H). The Commission must then determine within 45 days whether the delay is acceptable without recertification or whether further hearings are necessary.

Flat Hill Windpark I, LLC Petition for Changes to CON without Recertification or Rehearing

Flat Hill requested that the Commission accept a change in the in-service date for the Project from December 2010 to December 2015 without recertification. Flat Hill indicated that several factors contributed to the delay including interconnection and appeal issues. First, Flat Hill argued that it has been transitioned to new generator interconnection processes within MISO twice since entering into the MISO queue process in July of 2007. Flat Hill argued that new queue market reform designs within MISO were intended to improve the interconnection process, but problems remained which prejudiced the ability of interconnection customers to execute their business plans. Flat Hill further argued that the delays within the interconnection process have made ascertaining all of the capital costs and risks associated with interconnection of the Project with any degree of certainty impracticable. Second, Flat Hill argued that the "cloud of uncertainty" which surrounded the project due to the RFM Petition the project was delayed for more than a year during a crucial stage of project development, a fact the Commission recognized by changing the effective date of the site permit. By the time the appeals were resolved, market conditions had changed and further interconnection delays were experienced.

Therefore, Flat Hill stated that it was impossible to meet the December 2010 in-service date and indicated that it was continuing to actively engage in efforts to move 1) the Project through the MISO queue process, 2) secure financing and 3) obtain a power purchase agreement (PPA) in the time to meet its revised December 2015 in-service date.

Flat Hill argued that further hearings on the change in circumstances are not warranted since the change would not have reasonably resulted in the Commission reaching a different determination on the certificate of need. Flat Hill argued that similar requests have been granted for projects based on similar grounds and that the criteria in Minn. R. 7849.0120 would not have reasonably led the Commission to reach different conclusions due to the later commercial operation date. Flat Hill believes that with a later commercial operation date the renewable energy will still be needed by utilities to meet renewable energy objectives, that there is no better alternative to the project as wind is typically the least cost resource for meeting those standards. Flat Hill believes the status of the project in the development process (community support, permits in hand, land rights), the investment by the developers of \$3 million, and the lack of impact to rights of other parties (and ratepayers) support keeping the project as a source of renewable energy.

Department of Commerce Division of Energy Resources Comments

The Department noted:

“Flat Hill filed requests for a change in in-service date for its route and site permits concurrently with the instant Notice. The Department concludes that the Petitioner assumed that since the Commission had extended the date by which Flat Hill was required to obtain a PPA [in 2011], the Commission was already aware of the Project’s delay and therefore no further notice to the Commission was necessary regarding the continued relevance of the in-service date specified in the CN, nor was notice from the Commission to the Petitioner that the delay was acceptable without recertification necessary. Given those assumptions, the Department concludes that the instant Notice is of an in-service date delay from May 2013 to December 2015. The Department notes that it would have been preferable for Flat Hill to have specifically requested, prior to December 2011, that the in-service date associated with the CN be extended.

And provided further:

“Regarding timing, the Department’s (then known as the Office of Energy Security or OES) February 6, 2009 comments indicated that, given the substantial need for additional renewable generation needed to meet the 2012 Minnesota Renewable Energy Standard (RES), the Project’s size and timing were reasonable. Given that the RES requires an increasing percentage of renewable resources through 2025, the Department concludes that an in-service date of December 2015 for the Flat Hill Project, if known at the time of the need decision, could not reasonably have resulted in a different decision. Therefore, the Department recommends that Commission determine that the change is acceptable without further hearings.”

V. Site and Route Permit Petition and Comments

The Site Permit required the permittee to advise the Commission of the reasons for delay if it has not obtained a power purchase agreement or some other enforceable mechanism for the sale of electricity from the project and commenced construction within two years of the issuance of the permit (Site Permit Sections 10.2 and 10.3). Because Flat Hill does not expect to begin construction of the project before May 20, 2013, (two years from permit issuance) they must seek the Commission’s approval of an amendment to site permit conditions 10.2 and 10.3. Under Minnesota Rule 7854.1300, the Commission may amend a permit at any time if the Commission has good cause to do so.

The Route Permit also required that if the Permittee had not commenced construction or improvement of the route within four years of the issuance of the permit, the Commission shall consider suspension of the permit in accordance with Minnesota Rule 7849.5970 (now 7850.4700).

A. Flat Hill Windpark I, LLC Petition for Modification or Amendment to Site and Route Permits

Flat Hill petition requested additional time to obtain a PPA or other enforceable mechanism,

complete pre-construction surveys, and commence construction of the Project and extend the expirations date of the Site Permit. Additionally, and for the same reasons, Flat Hill petitioned for an extension of time to commence construction or improvement of the route under the Route Permit.

The reasoning provided for the request was the same as was provided for the Certificate of Need, outlined above. Ultimately, Flat Hill requested that the Commission:

4. Issue an amended Site Permit such that the date for compliance with permit conditions III.J.4 and III.K.2 will be two years after the issuance date of the amended Site Permit;
5. Amend condition III.L of the Site Permit to extend the expiration date of the permit until 30 years after the issuance date of the amended Site Permit; and
6. Amend condition IV.J of the Route Permit to allow Flat Hill until four years after the issuance date of the amendment to commence construction or improvement of the route.

B. Department of Natural Resources Initial Comments

The DNR filed comments which indicated that the NHIS review of this project should be updated and the updated information should be used to inform the Avian and Bat Protection Plan (ABPP). Further, the DNR provided that the project boundary had substantially avoided beach ridge habitat for which the DNR originally had concerns. Based on current information, the DNR estimates that the risk for fatalities for avian and bat species to be low due to the project location, and while the DNR typically does not recommend a permit requirement for formal monitoring of low risk sites, the DNR suggested that the NHIS review should inform planning for a Biological Inventory and should inform the ABPP. Any new information found in the NHIS could change the DNR's risk estimate or survey recommendations.

C. Department of Commerce Energy Facilities Permitting Staff Initial Comments

DOC EFP Site Permit Comments

The DOC EFP staff indicated that since the Commission found in its initial permit decisions that the proposed project is compatible with environmental preservation, sustainable development and the efficient use of resources¹, it would appear that any permit amendment should also meet those standards. DOC EFP staff focused its efforts on three areas:

- 1) New information that would substantially change the findings accompanying the Commission's original permit decisions and potentially change the Commission's determination that the project is compatible with the standards set out in Statute and Rule**

DOC EFP staff noted that no new information was provided by the Permittee, except for the request for amendment to its Site and Route Permits. The DOC EFP staff agreed with the DNR recommendation that a new NHIS review be conducted and any new data that is found should be used to inform the ABPP and other inventories planned by the Permittee. DOC EFP outlined the following resource inventories that are to be conducted by the

¹ Minnesota Rule 7854.1000 Subpart 1.

Permittee:

- Biological Preservation Survey
- Fall and Spring Avian Point Count Survey
- Acoustical Bat Survey for the Project area; and
- Phase I Environmental Site Assessment.

2) Compliance with existing site permit terms and conditions

Since this permit was issued, EFP staff noted that it has developed a permit compliance filing and tracking system that allows EFP staff to effectively monitor state permitted wind projects. EFP staff has reviewed Flat Hill's compliance filings to date and found them to be current with compliance filing requirements.

Flat Hill's petition seeks to rectify potential compliance issues with permit conditions 10.2 and 10.3 by amending the language to extend the timelines in those conditions to two years following issuance of the Amended Site Permit.

3) Consistency with recently issued LWECS Site Permits

DOC EFP staff noted that the Commission has made several changes to its Site Permits since the issuance of the Permittee's February 2010 Site Permit. DOC EFP provided an updated proposed permit (redlined to highlight changes) and noted its use of the most current or in some cases, entirely new, permit language in the following Permit sections:

Modified Language

- A. Section 4.7 Native Prairie
- B. Section 5.6 Pre-Construction Meeting
- C. Section 6.6 Noise
- D. Attachment 2 – Complaint Handling Procedures
- E. General change to allowing 14 calendar days for the submittal of compliance filings
- F. Other minor or technical changes

New Language

- G. Section 4.12 Aviation
- H. Section 5.7 Pre-Operation Meeting
- I. Section 6.2 Shadow Flicker
- J. Section 6.7 Avian and Bat Protection
- K. Section 8.4 Notification to Commission

DOC EFP staff noted that the changes proposed were nearly identical to the changes resulting from the permit amendments of Pleasant Valley and Lake County. Further, DOC EFP outlined changes made to update or clarify language for consistency with other permits.

DOC EFP Route Permit Comments

DOC EFP staff recommended the following Route Permit changes to reflect the Petition for

Amendment from the Permittee:

Condition IV.J [Delay in Construction]. If the Permittees have not commenced construction or improvement of the route within four years after the date of issuance of this amended permit, the Commission shall consider suspension of the permit in accordance with Minnesota Rule ~~7849.5970~~ 7850.4700.

EFP also recommended the following changes:

Erratum. The Commission issued an Erratum Notice on March 15, 2010, to update the length of the route in the permit to 11.4 miles. The Amended Route Permit incorporates this change.

Condition IV.A [Plan and Profile]. Newer permits require permittees to file a plan and profile "thirty (30)" days before right-of-way preparation for construction begins. The proposed Amended Route Permit updates this section from "14" days to the new standard.

Compliance Filing Procedure. EFP has incorporated the same updated GIS preferences as those included in the proposed Amended Site Permit.

Complaint Handling Procedures. EFP has incorporated the same updated complaint handling procedures as those included in the proposed Amended Site Permit, adapted for high voltage transmission lines.

DOC EFP Recommendation

"EFP staff believes the environmental conditions in the project area are essentially the same as they were when the EIS¹⁶ was released and the permits were initially ordered. In addition, there are a number of surveys and inventories called for above and in the Permit that should well inform the site plan and any potential need for follow up monitoring. The Commission originally ruled the Flat Hill Windpark I Project "is compatible with environmental preservation, sustainable development, and the efficient use of resources." EFP believes this is still the case. EFP recommended:

1. The Commission issue an amended permit to Flat Hill Windpark I, LLC for a 201 MW LWECS Site Permit in Clay County, incorporating the changes in the proposed, attached Amended Site Permit; and
2. The Commission issue an amended permit to Flat Hill Windpark I, LLC for a 230 kV HVTL Route Permit in Clay County, incorporating the changes in the proposed, attached Amended Route Permit."

D. Public Comments - Initial

Alton J. Larson - Moorhead, MN

Mr. Larson recommended that the Commission approve the Petitions.

Dan and Natalie Herzog - Glyndon, MN

The Herzog's recommended that the Commission deny the requests made by Flat Hill. The Herzog's argued that Flat Hill has had ample time to start construction and the delay experienced proves that demand for wind energy is declining. The Herzog's provided an article from their energy supplier (Red River Valley Co-op) on the costs of the 2007 renewable mandate and the opinions of the Red River Valley Co-op's Chief Executive Officer Lauren Brorby.

Lanny Baer – Glyndon, MN

Mr. Baer argued that there is no need for the project and therefore no need for the increased costs to consumer (in higher energy bills) and no need for the increased taxes to subsidize wind energy. Mr. Baer indicated that the extensions should not be granted as the inability of the developer to obtain a PPA proves that there is no need for the energy.

Further, Mr. Baer does not believe that the Site and Route Permits should be approved on staggering terms, as requested by Flat Hill (2 year extension for the Site Permit and 4 year extension for the Route Permit).

Last, Mr. Baer argued that the permits should be allowed to expire to allow the landowners in the area to freely market their properties without the need to disclose the potential of a wind farm development on the horizon.

Kathy Stradley – Glyndon, MN

Ms. Stradley stated that she is opposed to any extension, reissuance, renewal or amendment to Flat Hill's permits. She references her previous comments submitted in this docket (during the permitting processes) as well as indicating that she would like to adopt the comments previously provided by Tony Frink, Natalie Herzog, Lanny and Donna Baer, Scott Stradley, Susan Larson Pederson, and Daniel Pederson. Ms. Stradley attached Lanny Baer's recent (2013) comments, a copy of the DOC EFP Public Meeting transcript from August 31, 2009 and the Pederson's comments from July 23, 2010.

Ms. Stradley argued that the public had no opportunity to comment or to have a public hearing on Flat Hill's request to extend its in-service date to December 2015. Ms. Stradley believes that the rights of the property owners in the area have been violated and that the Commission and Flat Hill have destroyed her property value with the project even being built due to the requirement that she disclose to any future buyer that there will be a transmission line project in her front yard. The comments incorporated by reference by Ms. Stradley's covered the gamut of wind energy related issues and common concerns.

E. Flat Hill Reply Comments

On May 31, 2013 Flat Hill provided response comments to the DOC EFP and the DNR comments. Flat Hill agreed with DOC EFP's recommended changes to reflect updated permit requirements. In response to the DNR comments, Flat Hill indicated it agrees with the DNR's recommendation and notes that Section 6.1 of proposed Amended Site Permit requires that Flat Hill complete updated Biological and Natural Resources Inventories prior to the pre-construction meeting. Such

inventories will be conducted in consultation with the Department and DNR.

F. Flat Hill Supplemental Reply Comments

On June 11, 2013, Flat Hill requested leave to submit additional reply comments as well as provided its supplemental comments.

Flat Hill wanted to relay the community support for the project, which was most recently shown by the extensions granted Flat Hill's Clay County Conditional Use Permits for the project meteorological towers.

Regarding the public comments, Flat Hill provided responses to the concerns of the three local residents. First, Flat Hill addressed the request by the Herzog's and Mr. Bear which to deny Flat Hill's extension request on the ground that demand for wind power is decreasing and the high costs of wind power and associated burdens. Flat Hill indicated that they still believe that there is a demand for renewable energy from the Flat Hill project as evidenced by Minnesota Power and Xcel Energy's recent RFP's for wind generation sources. Regarding the cost of wind energy and associated tax concerns, Flat Hill believes that due to the robust competition in Minnesota, wind pricing has never been more advantageous for consumers and further, Minnesota has made the public policy determination that renewable energy should be a significant part of the State's policy.

Flat Hill addressed Mr. Bear's concern of allowing the Route Permit extension two years beyond the date Flat Hill must begin construction of the wind farm. Flat Hill noted that in no circumstance will the transmission line be constructed two years after the wind farm is constructed as both are part of a single project.

Last, Flat Hill addressed the concerns of Ms. Stradley, who had concerns that her property rights would be impacted by the siting of the wind farm and transmission line. Flat Hill reiterated that all facilities will be located on property owned by participating landowners who exercised their own rights to develop their land. Flat Hill believes that the proposed permit put forth by the DOC set forth a number of restrictions that protect the rights on non-participating landowners, including setback requirements, pre-construction studies and other mitigation measures.

VI. Staff Discussion

A. Variance to Minn. R. 7849.0400 (H)

Minn. Rule 7849.0400 (H) requires that the Commission determine within 45 days of the receipt of the Applicant's petition for changed circumstances whether the change is acceptable without recertification. Staff believes the typical variance granted by the Commission is appropriate here to allow for additional time to consider this request. In most cases staff needs more than 45-days to solicit comments, review the filings, scheduled a Commission meeting and issue an Order on the Commission's decision. Staff has reviewed the variance criteria outlined in Minn. Rule 7829.3200:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and

C. granting the variance would not conflict with standards imposed by law.

Staff believes that in this instance the criteria have been met. First, enforcement of the rule would impose an excessive burden on staff to conduct the steps necessary to review the Applicant's request within 45-days. Second, granting the variance would not adversely affect the public interest in that it provides for a more thorough review of the Applicant's filing. And third, granting the variance would not conflict with any other standards imposed by law (that staff is aware of).

B. Staff Discussion on Certificate of need

From the MISO queue webpage, it appears that the Flat Hill interconnection request (G821) is in the System Planning and Analysis (SPA) phase as of August of 2012, it is listed as having a study status of 'SPA', and its overall project status is "active" which means that the interconnection request is still pending and is either parked or undergoing further analysis.

Staff agrees with the Department that it would have been preferable to have Flat Hill file a separate request for the delay of the in-service date separately within the CN docket at the time the Commission was extending the site and route permits (in 2011). Staff believes that the circumstances would be different if the May 20, 2011 Order was not eFiled by the Commission in all three dockets. If that had not occurred, there would have been no information provided to the CN record of the Commission-approved delayed in-service date in the Site and Route Permit dockets since the Applicant did not file that request.

Ms. Stradley noted that there was no opportunity for public comment on Flat Hill's petition requesting to extend the in-service date from May 2013 to December 2015. The Commission may want to consider whether a public hearing in the area is appropriate to address the concerns outlined by the members of the public in any or all dockets. However regarding the certificate of need in-service date extension, pursuant to Rule (7849.0400), intervenors are the only entities listed as being permitted to submit comments. No petitions for intervention were received and as typical practice, public comment related to the in service date changes are considered.

As the Department concluded, staff believes in this instance (with the assumptions outlined by the Department) the Commission can reasonably conclude that the change is acceptable without further hearing or recertification.

C. Staff Discussion on the Site and Route Permit Petition for Amendments

Staff has reviewed the proposed amended Site and Route Permits provided by the DOC EFP. Staff believes that the revisions to the permits mostly reflect the current permit language and are appropriate if the Commission grants the amendments. Staff believes the concerns of the DNR are adequately reflected in existing and updated permit terms. The Commission may wish to consider whether it would like 1) the updated NHIS prior to its determination on the Site and Route Permits (as has been discussed in other permit amendments) or if it would be appropriate to 2) request that Flat Hill submit a request for a new NHIS search within 30-days and a compliance filing with the results to follow to the Commission within 30-days of the receipt of the new information.

A member of the public suggested that it was unnecessary to extend the Site Permit for two years

and the Route Permit for 4 years. The Commission may wish to consider whether to amend the permits for a similar amount of time (or to mirror the potential extension in the Certificate of Need Proceeding). Staff notes that the Certificate of Need extension is to allow an in-service date out to December 2015, which according to rule, allows for a year beyond the approved in-service date before the Permittee would need to return to the Commission. Essentially, the requests before the Commission are for a two year extension to the Site Permit, a four year extension to the Route Permit and a three (plus) year extension on the Certificate of Need (December 2016).

Last, staff recommends the Commission consider including two provisions, first, one that allows for staff to make clarifying amendments to the permit it may find necessary during the finalization of the permits (if the Commission authorizes the amendments) to ensure consistency between issued permits, and second, one that requires Flat Hill to file a compliance filing outlining the parent company ownership (designating percentages) of Flat Hill Windpark, LLC and Quantum Utility Generation, LLC.

VII. Decision Options

A. Certificate of Need

1. Vary 7849.0400 subpart 2(H) which requires the Commission consider the request for the change in size, type and timing within 45 days of the Petition.
2. Determine that the change in timing from June 2011 to December 31, 2015 is acceptable without recertification.
3. Determine that the change, if known at the time of the need decision, could have resulted in a different decision and order additional hearings.
4. Take no action.
5. Take some other action.

B. Site Permit

1. Grant the amendments as requested by Flat Hill Windpark I, LLC in its Petition.
2. Grant the amendments as requested by Flat Hill Windpark I, LLC in its Petition:
 - a. Incorporating EFP staff's permit language amendments
 - b. Authorizing Commission staff to make further permit modifications necessary to ensure consistency of recently issued permits.
 - c. Requesting an ownership chart be filed by Flat Hill Windpark I, LLC.
3. Require an additional public hearing be held in the project area prior to making a decision on the requested permit amendments.
4. Deny the amendments as requested by Flat Hill Windpark I, LLC.
5. Require Flat Hill Windpark I, LLC to file a compliance document upon receipt of NHIS data from the DNR indicating whether the data has changed since original NHIS data search was conducted.
6. Require Flat Hill Windpark I, LLC to provide the updated natural resource information identified by EFP staff prior to making a final decision on issuing an amended permit.
7. Take some other action.

C. Route Permit

1. Grant the amendments as requested by Flat Hill Windpark I, LLC in its Petition.

2. Grant the amendments as requested by Flat Hill Windpark I, LLC in its Petition:
 - a. Incorporating EFP staff's permit language amendments
 - b. Authorizing Commission staff to make any technical or clerical permit updates necessary
3. Require an additional public hearing be held in the project area prior to making a decision on the requested permit amendments.
4. Deny the amendments as requested by Flat Hill Windpark I, LLC.
5. Require Flat Hill Windpark I, LLC to file a compliance document upon receipt of NHIS data from the DNR indicating whether the data has changed since original NHIS data search was conducted.
6. Require Flat Hill Windpark I, LLC to provide the updated natural resource information identified by EFP staff prior to making a final decision on issuing an amended permit.
7. Take some other action.

Staff recommends:

Certificate of Need: A1 and A2
Site Permit: B2a-c and B5
Route Permit: C2a-b and C5