

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David C. Boyd
J. Dennis O'Brien
Thomas Pugh
Phyllis A. Reha
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Noble 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: February 3, 2010

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

ORDER FINDING ENVIRONMENTAL REPORT ADEQUATE AND GRANTING CERTIFICATE OF NEED

PROCEDURAL HISTORY

On October 17, 2008, Noble Flat Hill Windpark I, LLC (Noble or the Applicant) filed an application for a certificate of need for the 201 MW Flat Hill Project and associated facilities.

On January 13, 2009, the Commission issued an ORDER ACCEPTING APPLICATION AS COMPLETE, AUTHORIZING INFORMAL REVIEW PROCESS, AND ENCOURAGING JOINT HEARINGS, AND ENVIRONMENTAL REVIEW.

On February 6, 2009, the Office of Energy Security (OES) filed comments on the merits of the Flat Hill Project. The OES recommended approval pending receipt of further information.

On February 18, 2009 Noble filed reply comments and information in response to the item raised by the OES.

On February 24, 2009, the OES filed a letter indicating that the Applicant's reply was an adequate response to their request. The OES reaffirmed its recommendation to the Commission to issue a certificate of need to Noble Flat Hill Windpark I, LLC.

On July 31, 2009, the Energy Facilities Permitting Unit of the OES issued a draft Environmental Impact Statement (EIS).

On October 8, 2009, a Final EIS on the project was issued.

On October 12, 2009, a *revised* Final EIS was issued. Public Hearings on the Flat Hill Project, the associated transmission line, and other facilities were held on October 13, 2009 at 1:00 PM and 6:00 PM in Glyndon, Minnesota. The deadline for comments on the project was extended to October 26, 2009.

On December 2, 2009, Administrative Law Judge Beverly Heydinger (the ALJ) filed her *Summary of Testimony, Findings of Fact, Conclusions and Recommendation* (ALJ's Report) and served copies of the report to all parties of record in this matter. In her report, which addressed the Applicant's requests for a Certificate of Need (current docket), site permit (Docket No. IP-6687/WS-08-1134), and route permit (Docket No. IP-6687/TL-08-988), the ALJ summarized the public testimony regarding all three dockets, but stated Conclusions and made a Recommendation only regarding the route permit since that was the only docket that had been referred to the Office of Administrative Hearings (OAH) for a contested case hearing.¹

The Commission clarifies that none of the public testimony summarized in the ALJ's Report, which the Commission has adopted, as amended,² contested the need for the electricity to be generated by the project, but focused on issues relevant to the site permit docket (Docket No. IP-6687/WS-08-1134) and the route permit docket (Docket No. IP-6687/TL-08-988).

On December 16, 2009, the Applicant filed exceptions to the ALJ's Report and served copies on all parties of record in this matter.

The Commission met on January 12, 2010 to consider this matter. No party appeared to oppose granting the Certificate of Need.

FINDINGS AND CONCLUSIONS

I. Proposed Project

The proposed Flat Hill Project is a 201 MW wind generation facility in Clay County, twelve miles east of Moorhead, and just north of the City of Glyndon. The project and associated

¹ Regarding referral of the route permit application to the Office of Administrative Hearings for a contested case hearing, see *In the Matter of the Application for a Route Permit for the Noble Flat Hill Windpark 1230 kV Transmission Line Project*, Docket No. IP-6687/TL-08-988, ORDER (September 26, 2008). The statute and Order providing for joint public hearings regarding the route permit and the Certificate of Need are Minn. Stat. § Minn. Stat. § 216B.243, subd. 4 and the Commission's January 13, 2009 Order in the current docket.

² For the ALJ's Report, see <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={C51484FC-5F89-4903-8080-90BE65E42166}&documentTitle=200912-45316-02>. For the Commission's amendments to the ALJ's Report, see the Commission's Order Granting Site Permit in Docket No IP-6687/WS-08-1134 and ORDER GRANTING ROUTE PERMIT in Docket No. IP-6687/TL-08-988.

facilities include up to 134 1.5 MW wind turbines, access roads, an underground collection system, step-up transformers, a new project substation, a new switching station, and an 11-mile, 230 kV transmission line. The line will run from the new substation in the proposed project area to a new switching station south of Glyndon to interconnect with an existing 230 kV transmission line (Sheyenne-Audubon 230 kV) owned by Otter Tail Power Company. The proposed in-service date for the project is December 2010.

Noble has stated that it intends 1) to make the energy from the project available for purchase in the Midwest Independent Transmission System Operator (MISO) wholesale market, in order to assist utilities in Minnesota and the region in meeting their future energy needs, particularly in meeting their Renewable Energy Standard (RES) requirements under law; and 2) to continue discussions with potential long-term purchasers of the energy output of the Project, including Minnesota utilities and other utilities and load serving entities in other states within the MISO system.

Noble further indicated its intent to separately sell the “green tags” or renewable energy credits from the output of the project to Minnesota utilities to help them meet their renewable energy obligations.

II. The Legal Standard for a Certificate of Need

A. The Initial Certificate of Need Statutory Factors

As initially enacted, the certificate of need statute identified eight factors for the Commission to consider in evaluating the need for a proposed large energy facility¹ and directed the Commission to "adopt assessment of need criteria to be used in the determination of need for large energy facilities pursuant to this section."²

The statute also prohibited the Commission from granting any certificate of need unless the applicant demonstrated that the need for electricity cannot be met more cost effectively through energy conservation and load-management measures.³

B. The Rules

In 1983, the Commission, in compliance with its statutory obligation to establish assessment of need criteria, adopted the certificate of need rules, Minnesota Rules Chapter 7849. One of those rules, Minn. Rules, Part 7849.0120, addressed the eight factors identified in the statute and directed the Commission to issue a certificate of need when the applicant demonstrates four things:

¹ Minn. Stat. § 216B.243, subd. 3.

² Minn. Stat. § 216B.243, subd. 1.

³ Minn. Stat. § 216B.243, subd. 3.

(A) that the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states;

(B) that a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record;

(C) that a preponderance of the evidence on the record shows that the proposed facility or a suitable modification of the facility will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health; and

(D) that the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

C. Additional Statutory Requirements

Subsequent to the adoption of the rules, the statute was amended to add four additional factors for the Commission to evaluate in assessing need:

(9) with respect to a high-voltage transmission line, the benefits of enhanced regional reliability, access, or deliverability to the extent these factors improve the robustness of the transmission system or lower costs for electric consumers in Minnesota;

(10) whether the applicant or applicants are in compliance with applicable provisions of sections 216B.1691 and 216B.2425, subdivision 7, and have filed or will file by a date certain an application for certificate of need under this section or for certification as a priority electric transmission project under section 216B.2425 for any transmission facilities or upgrades identified under section 216B.2425, subdivision 7;

(11) whether the applicant has made the demonstrations required under subdivision 3a⁴; and

⁴ Minn. Stat. § 216B.243, subd. 3a: **Use of renewable resource.** The commission may not issue a certificate of need under this section for a large energy facility that generates electric power by means of a nonrenewable energy source, or that transmits electric power generated by means of a nonrenewable energy source, unless the applicant for the certificate has demonstrated to the commission's satisfaction that it has explored the possibility of generating power by means of renewable energy sources and has demonstrated that the alternative selected is less expensive (including environmental costs) than power generated by a renewable energy source. For purposes of this subdivision, "renewable energy source" includes hydro, wind, solar, and geothermal energy and the use of trees or other vegetation as fuel. [Emphasis added.]

(12) if the applicant is proposing a nonrenewable generating plant, the applicant's assessment of the risk of environmental costs and regulation on that proposed facility over the expected useful life of the plant, including a proposed means of allocating costs associated with that risk.

The statute was further amended after the rules were adopted to prohibit the Commission from granting a certificate of need for any large energy facility that transmits electric power generated by means of a nonrenewable energy source unless the applicant demonstrates that it has explored using renewable resources and that the total costs of the project it proposes, including environmental costs, are lower than the cost of using renewables.⁵

III. The OES's Comments and Environmental Report

A. Comments

In its comments filed February 16, 2007, the Department examined Noble Flat Hill's application for a certificate of need with respect to criteria established in statute and rule and explained why it believed the Company's application met those criteria. An itemization of the criteria addressed and the Department's recommendations regarding them follows:

Statutory Criteria: Minn. Stat. § 216B.243	Where Addressed in the OES's February 6, 2009 Comments	The OES's Statement
Minn. Stat. § 216B.243, subd. 3 (9)	Section II, A, 2 Page 4	The Project will not degrade the robustness of the transmission system and that the transmission facilities will be sufficient to interconnect the proposed facility and to deliver the energy where it is needed.
Minn. Stat. § 216B.243 subd. 3a and § 216B.2422, subd. 4	Section II, B, 2 Page 6	The proposed facility meets the preference for renewable facilities.
Minn. Stat. §216B.2426	Section II, C, 3 Page 9	The distributed generation requirement appears to be met.
Minn. Stat. § 216B.1694, subd. 2 (a) (5)	Section II, C, 4 Pages 9-10	This statute does not apply since the proposed facility is not a fossil-fuel-fired generation facility.

⁵ Minn. Stat. § 216B.243, subd. 3a.

Minn. Stat. § 216B.243 subd. 3 (10) and § 216B.1691	Section II, E, 3 Pages 11-12	Given that Noble Flat Hill has no retail customers in Minnesota, this statute does not apply. However, as noted above, the addition of this facility is expected to assist utilities in meeting the RES.
Minn. Stat. § 216B.243, subd. 3 (12)	Section II, E, 4 Page 12	This statute does not apply.
Minn. Stat. § 216B.243, subd. 3 (10) and § 216B.2425, subd. 7	Section II, E, 5 Page 13	Since Minnesota Statutes, section 216B.2425 is applicable only to entities that own or operate electric transmission lines in Minnesota, it does not appear that this statute applies in this proceeding.
Minn. Stat. § 216B.243 subd. 3 and § 216B.243, subd. 3 (8)	Section II, B, 3 Page 7	The Commission's October 16, 2008 Order exempted Noble from providing information on conservation programs and the potential for reducing the need for this generation project because Noble does not operate any conservation programs.

In addition, the Department addressed the criteria established in Minn. Rules, Part 7849.0120, Subparts A-D, which effectively cover the criteria established in Minn. Stat. § 216B.243, subd. 3, (1) to (8).

Having analyzed, then, the standards established in Minn. Rules, Part 7849.0120, the Department recommended that the Commission find that High Prairie has met the four basic criteria established by that rule in Subparts A-D. The specific subcriteria considered in the Department's comments are as follows:

Regulatory Criteria: Minn. Rules, Part 7849.0120	Where Addressed in the OES's February 6, 2009 Comments	The OES's Statement
Subpart A (1)	Section II, A, 1, a Page 3	Noble's forecasted need for renewable energy is reasonable.
Subpart A (2)	Section II, B, 3 Page 7	The Commission's October 16, 2008 Order exempted Noble from providing information on conservation programs and the potential for reducing the need for this generation project because Noble does not operate any conservation programs.

Subpart A (3)	Section II, E, 2 Page 11	In its October 16, 2008 Order, the Commission granted Noble an exemption to Minnesota Rules part 7849.0240, subp. 2 (B) which calls for the Applicant to provide a summary of the promotional activities that may have given rise to the demand for the facility. The exemption was granted because Noble does not have captive retail customers and there is no authorized rate of return to consider.
Subpart A (4)	Section II, C, 1, a Page 7	A facility not requiring a Certificate of Need is not more reasonable than the proposed Project.
Subpart A (5)	Section II, D Page 10	The Commission should consider the EIS that will be filed by the Energy Facilities Permitting Staff of the OES in the Commission's decision in this matter.
Subpart B (1)	Section II, B, 1 Pages 5-6	The Department concludes that the facility's size, type, and timing are reasonable.
Subpart B (2)	Section II, C,1,b Page 8	The amount of energy produced by the proposed Project will be modest in comparison to the annual energy consumption of Minnesota and the region. Therefore, the price of the energy will not have a significant effect on wholesale rates.
Subpart B (3)	Section II, C, 1,c Page 8	This subcriterion has been met.
Subpart B (4)	Section II, C, 2 Page 8	This subcriterion has been met.
Subpart C (1)	Section II, A, 1,b Page 4	This project fits the state's overall state energy needs.
Subpart C (2)	Section II, D Page 10	The Commission should consider the EIS that will be filed by the Energy Facilities Permitting Staff of the OES in the Commission's decision in this matter.
Subpart C (3)	Section II, D Page 10	The Commission should consider the EIS that will be filed by the Energy Facilities Permitting Staff of the OES in the Commission's decision in this matter.
Subpart C (4)	Section II, D Pages 10	The Commission should consider the EIS that will be filed by the Energy Facilities Permitting Staff of the OES in the Commission's decision in this matter.

Subpart D	Section II, E, 1 Page 11	The record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.
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B. The OES’s Environmental Assessment

The certificate of need process requires an environmental report (ER) on the proposed project and on potential alternatives to the project. The ER examines the impacts on humans and the environment. In addition, due to the voltage of the transmission interconnection facilities (230 kV), the project was required to go through the full route permitting review process, accompanied by an Environmental Impact Statement (EIS).

On October 8, 2009, the OES filed the EIS for this project, incorporating the information required to be supplied in an ER into the EIS in Sections 3-5, pages 8 – 38. On page 38, the OES concluded that “the relatively minor impacts resulting from the construction and operation of the proposed project and the minimal associated mitigation make the proposed windpark a feasible option for energy generation.”

IV. The Commission’s Analysis and Action

A. Environmental Report

The Commission has reviewed the OES’s EIS and finds that it contains the information required by applicable statutes and rules for a certificate of need proceeding regarding impacts on humans and the environment. Accordingly, the Commission will approve it for purposes of the current certificate of need review.

B. Certificate of Need

The Commission, having taken into consideration all the factors identified in statute and rule, finds that Noble has proved the need for its proposed wind generation facility in Clay County and will issue the Noble a Certificate of Need.

No party opposed granting the Certificate of Need to Noble Flat Hill and the OES recommended, after lengthy analysis, that the Commission should grant it. As shown above, the OES based its recommendation to grant the certificate of need on its examination of each of the statutory criteria cited above and the four criteria listed in Minn. Rules, Part 7849.0120.

Having reviewed the OES’s comments, the Commission will accept the OES’s soundly grounded findings and recommendations. Based on those findings, augmented by the OES’s Environmental Report (Section 3, 4, and 5 of the EIS) and the record as a whole, the Commission makes findings on these four points:

- First, the probable result of denial of the Applicant’s petition would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the people of Minnesota and neighboring states, taking into account the five factors listed in Minn. Rules, Part 7849.0120, A(1)-(5).
- Second, a more reasonable and prudent alternative to the Applicant’s proposed facility has not been demonstrated by a preponderance of the evidence on the record, considering the four factors listed in Minn. Rules, Part 7849.0120, B(1)-(4).
- Third, by a preponderance of the evidence on the record, the Applicant’s proposed facility will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health, considering the four factors in Minn. Rules, Part 7849.0120, C(1)-(4).
- Fourth, the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments. See Minn. Rules, Part 7849.0120, D.

In its thorough and well-founded comments, the OES has also discussed Noble’s asserted need in light of the applicable additional statutory factors listed in Minn. Stat. § 216B.243, Subd. 3 (9) - (11).⁷ The Commission agrees with the OES’s analysis that consideration of these statutory criteria support granting the Certificate of Need.

ORDER

1. The Commission confirms that the Environmental Impact Statement prepared by the OES and filed with the Commission on October 12, 2009 is adequate for Certificate of Need purposes.
2. The Commission hereby grants Noble Flat Hill Windpark I, LLC a Certificate of Need for its proposed 201 MW Flat Hill Project and associated facilities in Clay County.

⁷ Minn. Stat. § 216B.243, Subd. 3 (12) is inapplicable to Noble’s application because it applies to a nonrenewable generating plant and Noble is proposing a wind generation facility.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



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STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I, Margie DeLaHunt, being first duly sworn, deposes and says:

That on the 3rd day of February, 2010 she served the attached

ORDER FINDING ENVIRONMENTAL REPORT ADEQUATE AND GRANTING
CERTIFICATE OF NEED.

MNPUC Docket Number: IP-6687/CN-08-951

XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

XX By personal service

XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

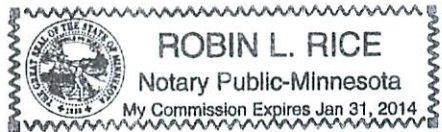
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Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 3rd day of
February, 2010

Robin L. Rice
Notary Public



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OFF_SL_08-951_1	Julia	Anderson	Julia.Anderson@state.mn.us	MN Office Of The Attorney General	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	No
OFF_SL_08-951_1	Sharon	Ferguson	sharon.ferguson@state.mn.us	State of MN - DOC	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	Yes
OFF_SL_08-951_1	Todd J.	Guerrero	tguerrero@fredlaw.com	Fredrikson & Byron, P.A.	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No
OFF_SL_08-951_1	Volha	Andreyeva	volha.andreyeva@leonard.com	Leonard, Street and Deinard	Suite 2300 150 South Fifth Street Minneapolis, MN 55402	Paper Service	No