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April 19, 2013

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Comments on Delayed In-Service Date**
Docket No. IP6687/CN-08-951

Dear Dr. Haar:

Attached are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department,) in the following matter:

Petition for Changes to Certificate of Need without Recertification or Further Hearing.

The Petitioner is:

Brian M. Meloy
Matthew B. Seltzer
Leonard, Street and Deinard
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

The Department recommends that the Minnesota Public Utilities Commission **determine that the change is acceptable without further hearings** and is available to answer any questions the Commission may have.

Sincerely,

/s/ SUSAN MEDHAUG
Supervisor, Energy Regulation & Planning

SM/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET No. IP6687/CN-08-951

I. BACKGROUND

Regarding a project granted a Certificate of Need (CN) by the Commission, Minnesota Rules, part 7849.0400, subpart 2A states that “a delay of one year or less in the in-service date of a large generation or transmission facility previously certified by the commission is not subject to review by the commission.” Further, Minnesota Rules, part 7849.0400, subpart 2H states, in part:

If an applicant determines that a change in size, type, timing, or ownership other than specified in this subpart is necessary for a large generation or transmission facility previously certified by the commission, the applicant must inform the commission of the desired change and detail the reasons for the change.

On April 4, 2013, Flat Hill Windpark I, LLC (Flat Hill or the Petitioner), formerly known as Noble Flat Hill I, LLC,¹ submitted the Petitioner’s *Petition for Changes to Certificate of Need without Recertification or Further Hearing* (Notice). The Notice indicated that the in-service date of the 201 MW wind farm in Clay County (Project) would be delayed by more than one year – to December 2015.

¹ Notice of the name change was incorporated into the record on September 1, 2011.

Minnesota Rules, part 7849.0400, subpart 2H states that “Intervenors may comment on the proposed change within 15 days of being notified of the change.” Below are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) regarding the Notice.

II. DEPARTMENT ANALYSIS

A. OVERVIEW

The stated purpose of the Petitioner’s Notice was to inform the Commission that the timing of the Project had changed. Regarding such a notice, Minnesota Rules, part 7849.0400, subpart 2H states:

The commission shall evaluate the reasons for and against the proposed change and, within 45 days of receipt of the request, notify the applicant whether the change is acceptable without recertification. The commission shall order 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 criteria specified in part 7849.0120.

Thus, the Department evaluates the proposed change to the in-service date to determine if the change “could reasonably have resulted in a different decision.”

B. TIMING CHANGE

The anticipated in-service date at the time of the Commission’s February 3, 2010 decision on the CN for the Flat Hill Project was December 2010.

On May 26, 2010, Radio Fargo-Moorhead, Inc. (RFM) filed a *Petition for Vacation or Rehearing* of the Commission’s Orders in the CN, site, and route permit proceedings. In response, the Commission, through its August 25, 2010 Order, reopened the record in the site and route permit proceedings² in order to supplement those records on the issues raised by RFM. The Commission’s August 25, 2010 Order indicated that there was no need to take action regarding RFM’s request to vacate or reconsider the CN Order.

The issues raised by RFM were resolved; however, due to the passage of time, the Commission’s May 20, 2011 *Order Dismissing Contested Case Proceedings and Adopting and Modifying Proposed Order* extended the deadline set in the Project’s Site Permit for the Project to obtain a

² Docket Numbers IP6687/WS-08-1134 and IP6687/TL-08-988, respectively.

Power Purchase Agreement (PPA) to two years from the effective date of the Order, i.e., until May 20, 2013. The site permit prohibits construction of the Project until a PPA or some other enforceable mechanism for the sale of the electricity generated by the Project has been obtained. Therefore, the Commission's extension of the PPA requirement meant that construction of the Project could be delayed until after May 20, 2013.

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, 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.

Flat Hill's Notice indicated that delays caused by the Midwest Independent Transmission System Operator, Inc.'s (MISO) transmission interconnection queue process have caused the Project's in-service date delay. The Petitioner stated that the Project was entered in the MISO queue on July 19, 2007. Flat Hill further stated that, without completing MISO's interconnection process:

- “the Project cannot be interconnected to the bulk transmission system;”
- “it [is] impracticable to ascertain all of the capital costs and risks associated with interconnection of the Project;” and
- “it [is] unfeasible for Flat Hill to commit to an off-take arrangement or finalize project financing.”

Flat Hill stated that “an extension to the in-service date will provide sufficient time to clear the MISO interconnection process and achieve commercial operation.”

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.

III. DEPARTMENT RECOMMENDATION

The Department recommends that the Commission determine that the change in timing is acceptable without further hearings.

/ja

CERTIFICATE OF SERVICE

I, Linda Chavez, hereby certify that I have this day served copies of the following document on the attached list of persons by electronic filing, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

MINNESOTA DEPARTMENT OF COMMERCE – COMMENTS

Docket No. **IP6687/CN-08-951**

Dated this **19th** day of **April, 2013**

/s/Linda Chavez

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