



August 17, 2015

Via electronic mail

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

Re: Reply Comments of Flat Hill Windpark I, LLC

**In the Matter of Flat Hill Windpark I, LLC's Site Permit for a 201 Megawatt Large Energy Conversion System and Associated Facilities in Clay County, Minnesota
Docket Nos. IP-6687/WS-08-1134 and IP-6687/CN-08-951**

Dear Mr. Wolf:

Pursuant to the Minnesota Public Utilities Commission's ("Commission") July 27, 2015 *Notice of Comment Period on Flat Hill Windpark I, LLC's Petition for Approval of Certificate of Need Changes* filed in the above-referenced docket, Flat Hill Windpark I, LLC hereby submits its Reply Comments in response to the August 6, 2015 Comments filed by the Department of Commerce, Division of Energy Resources ("Department") and the Comments filed by the Department of Natural Resources ("DNR"). Consistent with the Department's recommendation, Flat Hill Windpark I, LLC respectfully requests that the Commission amend the site permit, authorizing an additional two years to commence construction and to obtain a power purchase agreement or other enforceable mechanism.

Thank you for your attention to this matter.

Sincerely,

STINSON LEONARD STREET LLP

/s/ Andrew J. Gibbons

Andrew J. Gibbons

AJG:cmw
Attachments

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

In the Matter of Flatt Hill)
Windpark I, LLC's Site Permit)
for a 201 Megawatt Large) **Docket No. IP-6687/WS-08-1134**
Energy Conversion System and)
Associated Facilities)
in Clay County, Minnesota)

REPLY COMMENTS OF FLAT HILL WINDPARK I, LLC

Pursuant to the Minnesota Public Utilities Commission's ("Commission") July 27, 2015 *Notice of Comment Period on Flat Hill Windpark I, LLC's Petition for Approval of Certificate of Need Changes* filed in the above-referenced docket, Flat Hill Windpark I, LLC ("Flat Hill") hereby submits its Reply Comments in response to the August 6, 2015 Comments filed by the Department of Commerce, Energy Environmental Review and Analysis staff ("Department") and the Comments filed by the Department of Natural Resources ("DNR"). As discussed below, Flat Hill appreciates the Department's and DNR's thorough review of its Application and provides responses to their requests for discrete pieces of additional information.

I. RESPONSES TO COMMENTS OF THE DEPARTMENT AND DNR

In its Comments, the Department recommends that the Commission grant a final extension of two years to commence construction upon Flat Hill's satisfaction of certain conditions. DNR, on the other hand, recommended that, should the Commission determine to extend the Site Permit, it should also amend the Site Permit to "reflect more recent updates in environmental permit conditions."¹ The conditions and recommendations of the Department and DNR are addressed in detail below.

¹ DNR Comments at 1.

A. Natural Heritage Information System

First, both the Department and DNR recommend that Flat Hill perform an updated Natural Heritage Information System ("NHIS") review and report on any changes.² Flat Hill agrees with the Department's assessment that an updated NHIS review will "help determine if the Project maintains the same favorable site conditions as precipitated the original permit and amended permit."³ To this end, Flat Hill has engaged its consultant Tetra Tech to complete an updated NHIS review.

Because of the time needed to complete the NHIS review and prepare a report, however, there is insufficient time to have the updated NHIS review and report available in advance of the matter of Flat Hill's extension request coming before the Commission. Accordingly, Flat Hill respectfully requests that, instead of requiring an updated NHIS review and report to be completed in advance of the Commission's determination on the Site Permit extension request, the Commission should make it a condition of the amended Site Permit that an updated NHIS review and report be completed within a time certain from the date of the amendment. Flat Hill will commit to providing this report within 90 days of the Commission's Order approving an amended Site Permit. Should the updated NHIS review raise issues with respect to the continuing suitability of the Project site, the Commission can address such issues at that time as it has continuing oversight and authority over the Site Permit and permittee.⁴

B. Avian and Bat Protection Plan

Second, the Department recommends that Flat Hill "provide information on any avian and bat studies performed since the last extension."⁵ The DNR indicates in its Comments that the risk of bird and bat fatality, which DNR originally assessed to be low, could be updated based on changes to NHIS

² Department Comments at p. 6; DNR Comments at 1.

³ Department Comments at p. 4.

⁴ Section 11.2 of the Site Permit gives the Commission the right to amend or modify the permit for cause, including endangerment of human health or the environment by operation of the Project.

⁵ *Id.*

data and other pre-construction surveys, and recommends that Flat Hill develop an Avian and Bat monitoring protocol in coordination with the Department and DNR.⁶

Flat Hill appreciates the Department's and DNR's and notes that Section 6.7 of Flat Hill's Site Permit, as amended on August 27, 2013, requires Flat Hill to prepare an Avian and Bat Protection Plan in consultation with the Department and DNR prior to construction.⁷ Flat Hill understands, however, that applicants now will typically include a draft Avian and Bat Protection Plan with an application for a Site Permit,⁸ and that the Department, DNR, and the Commission wish to confirm as early in the siting process as possible that a suitable plan is in place to address any potential avian and bat protection issues.

In recognition of this shift to early identification of potential avian and bat impacts, Flat Hill has engaged a consultant to complete updated Spring and Fall avian point count surveys for the Project site in 2016. Survey protocol will be consistent with the original surveys conducted in Spring and Fall of 2008. Flat Hill will commit to providing the final results of the surveys to the Commission within 4 weeks of completion of final survey efforts for each season. Using the information obtained from these surveys, Flat Hill will coordinate with DNR and the Department to prepare and finalize an Avian and Bat Protection Plan prior to construction consistent with the requirements of the current Site Permit, including establishing the appropriate post-construction monitoring to be completed. In the event the survey results raise concerns about the potential for avian and bat impacts, the Commission can address such issues at that time, including requiring Flat Hill to develop and provide a draft Avian and Bat Protection Plan.

⁶ DNR Comments at 1.

⁷ Order Granting Amendments to Site and Route Permits and Requiring Compliance Filings", Docket No. 08-1134 (August 27, 2013) at 4.

⁸ See, e.g., *In the Matter of the Application of Odell Wind Farm, LLC for a Large Wind Energy Conversion System Site Permit for the 200 MW Wind Project in Cottonwood, Jackson, Martin and Watonwan Counties, Minnesota*, MPUC Docket No. IP6914/WS-13-843, Odell Wind Farm, LLC, Site Permit Application – Appendix G (September 26, 2013).

C. Turbine Design and Project Layout

In its Comments, the Department recommends that Flat Hill "provide information on anticipated turbine design" and "provide an updated preliminary turbine layout based on the most current data available."⁹ The Department indicates that this updated information will provide a more realistic view of the impacts of the Project.¹⁰ Flat Hill understands the Department's position, and acknowledges that there is a strong possibility the turbine design and layout will change from what is identified in the Site Permit. Unfortunately, identifying an updated turbine and creating a new turbine layout would largely be a theoretical exercise at this time, as negotiations and/or allocation of turbine supply to the Project is dependent on numerous factors, the most significant of which is entering into a PPA or other enforceable mechanism for the sale of power.

In addition, while selection of a different turbine may result in modification of the layout and some of the environmental characteristics of the Project relative to specific locations (*i.e.*, a property owner may have only 1 turbine instead of 2), Flat Hill believes any such modifications would be minor and would not be a material change in the impacts of the Project, as Flat Hill will still have to comply with all Site Permit conditions such as setbacks. In any event, if and when a different turbine and/or turbine layout is identified with some certainty for the Project, Flat Hill plans (and is required) to apply to the Commission at that time for an amendment of the Site Permit, and, concurrent with any such request, Flat Hill will provide the Commission with updated analyses of potential impacts from the new turbine design and/or turbine layout relative to noise, shadow flicker, and other potential impacts.

D. Setbacks from Non-Participating Landowners

The Department also made several recommendations for modifications to the Site Permit should the Commission determine to grant an extension. First, the Department recommended

⁹ Department Comments at p. 6.

¹⁰ *Id.*

"including a special condition to require setbacks from non-participating residences at a minimum of 1,200 feet," stating that the 1,200-foot setback "Special Condition from the original permit was not carried forward into the 2013 Amended Permit."¹¹ Flat Hill concurs with the Department. Flat Hill takes its commitments to the community very seriously, and has proceeded with development of the Project under the assumption this setback still applied. Thus, Flat Hill has no objection to including this Special Condition in an amended Site Permit.

E. Amended Term for Construction

The Department also recommended that if Flat Hill fails to "commence construction within the time frame of a new amended permit and the existing route permit, both permits should be considered for revocation."¹² As Flat Hill noted in its Application, Flat Hill will commit, and is amenable to including as a permit condition in the amended site permit, not to seek further extension or modification of the period to commence construction in the absence of an enforceable mechanism for the sale of power from the Project.¹³ Flat Hill does request, however, that any such condition still afford Flat Hill the flexibility to seek further amendment or modification of other aspects of the Site Permit to address issues such as the turbine design and layout (as discussed above), and to maintain the ability to seek extension or modification of the time in which to commence construction if an executed PPA or other enforceable mechanism is in place prior to the expiration of the Site Permit.

F. Distribution of the Amended Permit

Finally, the Department recommended including a Special Condition requiring Flat Hill to "distribute the amended permit as per Special Condition 13.1 of the 2013 Amended Permit."¹⁴ Flat Hill had no objection to including this Special Condition in the amended Site Permit issued in 2013,

¹¹ Department Comments at p. 5.

¹² Department Comments at p. 6.

¹³ Application at p. 4.

¹⁴ Department's Comments at p. 6.

and would support including the Special Condition in the amendment currently before the Commission.

II. CONCLUSION

For the foregoing reasons, Flat Hill respectfully requests that the Commission (1) find good cause to, and grant Flat Hill's request for a modification of the Site Permit to extend (a) the time to obtain a PPA or other enforceable mechanism for the sale of power from the Project, (b) the time to commence construction of the Project; and (c) the expiration date of Flat Hill's Site Permit; and (2) include in the amended Site Permit the Special Conditions regarding completing an updated NHIS review, conducting updated avian point count surveys, establishing the setback from nonparticipating residences, and providing notice of the Site Permit amendment to landowners in the Project area, as described herein.

Dated: August 17, 2015

Respectfully submitted,

/s/ Andrew J. Gibbons

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**STATE OF MINNESOTA
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Docket Nos. IP-6687/WS-08-1134 and
IP-6687/CN-08-951

CERTIFICATE OF SERVICE

Catherine M. Wood, certifies that on August 17, 2015, she served true and correct copies of the **REPLY COMMENTS OF FLAT HILL WINDPARK I, LLC** upon the following parties via e-filing and/or U.S. Mail:

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/s/ Catherine M. Wood

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