

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

Docket No. IP-6687/CN-08-951

In the Matter of the Application of 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

**PETITION FOR CHANGES TO
CERTIFICATE OF NEED WITHOUT
RECERTIFICATION OR FURTHER
HEARING**

INTRODUCTION

On February 3, 2010, the Minnesota Public Utilities Commission (“Commission”) issued a Certificate of Need (“CON”) to Noble Flat Hill I, LLC, now known following a name change as Flat Hill Windpark I, LLC (“Flat Hill”),¹ for a 201 MW large wind energy conversion system project (“Project”) in Clay County. As stated in the CON, the proposed in-service date for the Project was originally December 2010. The Project, however, is not in service. While Flat Hill remains committed to moving towards commercial operation expeditiously, it requests that the Commission accept a change in the in-service date for the Project to December 2015 without recertification. Such relief will align the in-service date to the extensions requested with respect to Flat Hill’s Site and Route Permits, which are being filed concurrently with this Petition.

Pursuant to Minn. R. 7849.0400, changes to the size, type or timing of a proposed facility that do not conform to the provisions in subpart 2(A)–(G) require an applicant to notify the Commission of the proposed change and the reasons for the change. The Commission is then required to evaluate reasons for the change within 45 days of the petition. The Commission is required to 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.” Minn. R. 7849.0400, subp. 2(H). The proposal to extend the in-service date for the Project does not fall within the one-year delay specified in Minn. R. 7849.044, subp. 2(A) and, thus, Flat Hill must comply with the requirements of Minn. R. 7849.0400, subp. 2(H). Accordingly, Flat Hill files this Petition for Changes to the Certificate of Need Without Recertification or Further Hearing, respectfully requesting that the Commission extend the in-service date in the CON.

In Flat Hill’s Petition for Modification or Amendment to Site and Route Permits filed contemporaneously with this filing in PUC Dockets Nos. IP-6687/WS-08-1134 and IP-6687/WS-08-1134, Flat Hill seeks extensions of the Site and Route Permits for the Project.

¹ In a letter filed in this Docket on September 1, 2011, the Department of Commerce advised the Commission of the name change.

Extending the in-service date of the CON to December 2015, the CON will be consistent with Flat Hill's proposed modification or amendment to the Site and Route Permits.

REASONS FOR CHANGING THE IN-SERVICE DATE

Interconnection Delays

As is described in Flat Hill's Petition for Modification or Amendment to Site and Route Permits, the delays in the Midwest Independent Transmission System Operator, Inc.'s ("MISO") processing of Flat Hill's interconnection request have made meeting the Project's initial planned in-service date impossible. The Project, MISO Project Number G821, entered the MISO queue on July 19, 2007. Since entering the generator interconnection queue over five years ago, Flat Hill has been "transitioned" to new generator interconnection processes twice, illustrating fundamental problems with the MISO interconnection process that are entirely beyond Flat Hill's control. While each queue reform market design was designed to improve the interconnection process, fundamental problems remain – prejudicing the ability of interconnection customers to execute on their business plans. The Federal Energy Regulatory Commission acknowledged problems in MISO's interconnection queue in its recent Order accepting MISO's most recent changes to the interconnection process, stating:

Based on the evidence provided by MISO, it appears that MISO is experiencing several challenges in administering its queue. We believe that such evidence justifies MISO's proposed tariff changes, subject to certain conditions established further below. First, the evidence supports a finding that MISO continues to experience a substantial backlog in the Definitive Planning Phase of its queue. According to MISO, as of December 1, 2011, there were approximately 32 GW worth of projects in the queue. . . . In addition, it appears that 141 interconnection requests have been in the queue for over three years – 128 of which lie in Minnesota, Iowa, North Dakota and South Dakota.

See Midwest Independent Transmission System Operator, Inc., 138 FERC ¶ 61,233 at PP 62-63 (2012).

Due to these delays in the interconnection process, it was impossible for Flat Hill to meet a December 2010 in-service date—notwithstanding the fact that the Project entered the interconnection queue over five years ago. Without completing the interconnection process, the Project cannot be interconnected to the bulk transmission system. These delays have also complicated other aspects of Flat Hill's business plan.

As Flat Hill notes in its Petition for Modification or Amendment to the Site and Route Permits, the delays in the interconnection process have made it impracticable to ascertain all of the capital costs and risks associated with interconnection of the Project with any degree of certainty. In this environment, it was unfeasible for Flat Hill to commit to an off-take arrangement or finalize project financing without a firm understanding of the costs and timing of interconnecting the Project to the transmission system.

Flat Hill, however, continues to actively engage in efforts to move the Project through the MISO interconnection process, secure financing and obtain a Power Purchase Agreement (“PPA”) in time to meet its revised December 2015 in-service date. In this respect, an extension to the in-service date will provide sufficient time to clear the MISO interconnection process and achieve commercial operation. Finally, granting the requested extension of the in-service date will not impact the rights of any other parties.

Appeal Delays

The delays resulting from the appeals following the Commission’s original issuance of the Certificate of Need on February 3, 2010 and the Site and Route Permits on February 5, 2010 provide further grounds for extending the in-service date.

In March 2010, Radio Fargo-Moorhead, Inc. (“RFM”) filed two petitions for writs of certiorari in the Minnesota Court Appeals, challenging the Commission’s issuance of the Site and Route Permits. RFM claimed that it had not been properly notified of the Project and that the Commission did not take into account interference with RFM’s radio signal in granting the permits for the Project. Following dismissal of the two petitions for writs of certiorari by the Court of Appeals, RFM filed a Petition for Vacation or Rehearing of the Site and Route Permits with the Commission on May 26, 2010. On August 25, 2010, the Commission issued an Order reopening the record and referring the matter to the Office of Administrative Hearings for a contested case proceeding. After a prehearing conference on October 1, 2010 with then Administrative Law Judge Beverly Jones Heydinger (“ALJ”), the parties entered into a negotiation process that led to resolution of the differences between Flat Hill and RFM and a Stipulation for Dismissal of the contested case. Based upon the Stipulation for Dismissal, the ALJ recommended the dismissal of the proceeding to the Commission on April 1, 2011. Finally, on May 20, 2011, the Commission issued an Order dismissing the contested case and amending the Site Permit to extend the time to demonstrate that the Project has commenced construction and obtained a PPA or other enforceable mechanism for the sale of electricity until two years from the issuance of the May 20, 2011 Order.

Thus, as discussed in Flat Hill’s Petition for Modification or Amendment to the Site and Route Permits, the appeal process placed the Project under a cloud and effectively prevented Flat Hill from moving forward for more than a year, from March 2010 through May 20, 2011. The Commission recognized this fact and changed the issuance date of the Site Permit from February 5, 2010 to May 20, 2011 to account for the delays caused by the RFM dispute. The delays associated with the RFM appeals came at a particularly crucial time in the Project’s development and significantly harmed Project momentum. By the time the appeals were finally resolved, market conditions for the consummation of a PPA had markedly changed and further delays in the interconnection process were experienced. Nevertheless, Flat Hill remains committed to the Project and is confident that the Project is commercially viable.

In sum, the delays caused by the RFM appeals provide an additional basis for the Commission to extend the in-service date.

ADDITIONAL HEARINGS ON THE CHANGE ARE NOT WARRANTED

The Commission should not require recertification or additional hearings, as the proposed change to the in-service date would not have reasonably resulted in the Commission reaching a different determination on the CON. Minn. R. 7849.0400, subp. 2(H) provides that the Commission shall order additional hearings on the proposed change only if it determines that if the change was known initially, the Commission could reasonably have reached a different decision under the criteria specified in the Minnesota Rules. As the Commission has determined for other projects making similar requests based on similar grounds, the criteria in Minn. R. 7849.0120 would not have reasonably led the Commission to reach a different conclusion due to a later commercial operation date for the Project.

The Commission's conclusions with respect to the criteria in Minn. R. 7849.0120 are not changed by a delay in the construction and operation of the Project. The criteria specified in Minn. R. 7849.0120 relate to the adequacy, reliability or efficiency of energy supply; alternatives to the Project; and the benefits of the Project to society, none of which are impacted by a delay in commercial operation. For instance, an extension of the commercial operation date does not change the fact that the renewable energy from the Project will be needed by utilities to meet renewable energy objectives and that there is no better alternative to the Project, as there continues to be renewable energy standard milestones to be met, and wind is generally the least cost resource for meeting those standards. Moreover, the Project is far along in the development process—having secured community support for the Project, required permits and land rights. Granting an extension of the in-service date under these circumstances will not impact the rights of any other parties (or ratepayers) because the Project is being developed by an independent power producer with only its shareholders at risk. Flat Hill has invested over \$3 million in the Project to date. Extension of the in-service date is necessary to preserve this investment and maintain the Project as viable source of renewable energy for Minnesota.

Furthermore, such delays in the interconnection process are not unique to the Project. Rather, the delays are systemic, applying to all generators in the MISO queue, and are beyond the control of Flat Hill. Indeed, other developers have encountered similar delays, brought them to the attention of the Commission, and the Commission has previously found that changes to a certificate of need based on such delays in the interconnection process are justified without recertification or further hearing. *See, e.g., In the Matter of Application of Pleasant Valley Wind LLC for a Certificate of Need for up to 301 MW at the Pleasant Valley Wind Project in Dodge and Mower Counties*, MPUC Docket NO. IP-6828/CN-09-937, February 19, 2013; *In the Matter of the Application of EcoHarmony West Wind, LLC for a Certificate of Need for a 280 Megawatt Wind Farm in Fillmore County in Southeastern Minnesota*, MPUC Docket No. IP-6688/CN-08-961, March 13, 2012.

Finally, the benefits from the Project flowing to local communities and the State of Minnesota also will remain unchanged, other than the year in which they will occur. For these reasons, the Commission should conclude that a change to the in-service date in the CON is permitted without recertification or further hearing.

CONCLUSION

For the reasons set forth above, Flat Hill respectfully requests that the Commission change the in-service date for the Project specified in the CON to December 2015 without recertification of or further hearing on the Project.

Dated: April 4, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

Susan A. Hartinger certifies that on April 4, 2013 she served a true and correct copy of the **PETITION FOR CHANGES TO CERTIFICATE OF NEED WITHOUT RECERTIFICATION OR FURTHER HEARING** upon the below-listed parties by the method of delivery indicated on the official service list for this docket:

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