

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

In the Matter of the Application for a Large
Wind Energy Conversion System (LWECS)
Site Permit for the Flat Hill Windpark I
Project in Clay County

Docket No. IP-6687/WS-08-1134

**PETITION FOR MODIFICATION
OR AMENDMENT TO THE SITE
PERMIT**

Pursuant to Minn. Stat. § 216F.04(d) and Minn. R. 7854.1300, subp. 2., Flat Hill Windpark I, LLC (“Flat Hill”) hereby requests that the Minnesota Public Utilities Commission (“Commission”) grant a modification or amendment of the site permit (“Site Permit”) in the above-referenced docket as provided further herein.

INTRODUCTION

On February 5, 2010, the Commission issued a Site Permit to Flat Hill¹ for a 201 MW large wind energy conversion system project (“Project”) in Clay County, Minnesota. On the same day, the Commission also issued a Route Permit (“Route Permit”) for the 9.9 mile 230 kV high voltage transmission line associated with the Project.²

On May 20, 2011, the Commission issued an Order Dismissing Contested Case Proceedings and Adopting and Modifying Proposed Order issued May 20, 2011 (“May 20, 2011 Order”), in which the Commission required that Flat Hill obtain a power purchase agreement or other enforceable mechanism for the sale of power from the Project (“PPA”), complete pre-construction surveys, and commence construction within two years of the date of the issuance of the May 20, 2011 Order. On August 27, 2013, the Commission issued an Order Granting Amendments to Site and Route Permits and Required Compliance Filings (the “August 27, 2013 Order”). In the August 27, 2013 Order, the Commission extended the deadline to obtain a PPA, complete pre-construction surveys, and commence construction to two years from the date of the amended Site Permit.³ If these requirements are not satisfied by this date, Flat Hill must advise the Commission of the reasons for not meeting the requirement or requirements, and the Commission may determine whether the permit should be amended or revoked.

¹ Flat Hill was formerly named Noble Flat Hill Windpark I, LLC. In a letter filed in this Docket on September 1, 2011, the Department of Commerce advised the Commission of the name change. Flat Hill further described the name change and the parent company ownership status of Flat Hill in a compliance filing dated September 13, 2013.

² *In the Matter of the Application for a Route Permit for the Flat Hill Windpark I 230 kV Transmission Line*, MPUC Docket No. IP-6687/TL-08-988.

³ August 27, 2013 Order at 5.

As the two-year time period under the Site Permit will expire on August 27, 2015, Flat Hill hereby advises the Commission that a PPA or other enforceable mechanism has not been obtained for the Project, the pre-construction surveys for the Project have not been completed, and construction of the Project has not commenced. The reasons for not meeting these site permit requirements and for the current extension request are described further herein.

With this Petition, Flat Hill hereby requests that the Commission amend the Site Permit to allow additional time to obtain a PPA or other enforceable mechanism, complete pre-construction surveys, and commence construction of the Project and extend the expiration date of the Site Permit.

AMENDMENT OF THE SITE PERMIT

To allow Flat Hill the additional time needed to fulfill the requirements of the Site Permit, Flat Hill requests the Commission to issue an amended Site Permit such that the date for compliance with Sections 10.2 and 10.3 of the Site Permit will be two years after the issuance date of the amended Site Permit. By amending the permit in this way, Flat Hill will have another two years to obtain a PPA or other enforceable mechanism, complete pre-construction surveys, and commence construction of the Project under the Site Permit. In addition, Flat Hill requests that the expiration date in Section 12 be extended to 30 years after the issuance date of the amendment to maintain a 30-year permit life, consistent with the length of the original permit and the amendments made in the August 27, 2013 Order.

The Commission has specific authority to amend the Site Permit. In addition to the language in Section 11.2 of the Site Permit providing for modification of permit conditions, the Commission also has specific authority to modify or amend a site permit for a wind project pursuant to Minn. Stat. § 216F.04(d) and Minn. R. 7854.1300, subp. 2.

The Commission has on numerous occasions amended site permits for wind projects to allow additional time to comply with PPA, pre-construction, and construction requirements in the permits, modifying the permit to allow for an additional two-year period from the date of the amendment.⁴ Flat Hill recognizes, however, that these extensions were made for a single two-

⁴ See May 20, 2011 Order; *In the Matter of the Site Permit issued to Comfrey Wind Energy, LLC for a Large Wind Energy Conversion System in Brown and Cottonwood Counties*, MPUC Docket No. IP-6630/WS-07-318 (“Comfrey Docket”), March 11, 2011 Order (approving an extension of time of two years to commence construction for reasons related to MISO study process delays); *In the Matter of the Site Permit of Glacial Ridge Wind, LLC for a 20 Megawatt Large Wind Energy Conversion System in Pope County*, MPUC Docket No. IP-6850/WS-07-1073 (“Glacial Ridge Docket”), June 1, 2011 Order (approving a two-year extension); *In the Matter of the Site Permit Issued to Lakeswind Power Partners, LLC for up to a 60 Megawatt Large Wind Energy Conversion System for the Lakeswind Power Plan in Becker, Clay and Ottertail Counties*, MPUC Docket No. IP-6603/WS-08-1149, September 6, 2011 Order (approving amendments including a two-year extension to commence construction); *In the*

year extension, and that the Commission has not typically granted a second extension of these site permit timelines when a PPA or other enforceable mechanism for the sale of the Project output has not been executed. Notably, the Commission has recently revoked the site permit for multiple wind projects that have not satisfied similar site permit conditions within timeframes previously extended by the Commission.⁵ In all of these dockets, however, the project-proposer allowed the extended permit deadline to pass without action and/or the provided notice to the Commission that the conditions would not be met and requested that the Commission revoke the site permit without prejudice.⁶ Unlike for these other wind projects, revocation of the Site Permit upon passing of the Site Permit deadlines is not warranted, and extension of the Site Permit for an additional two-year period is appropriate because Flat Hill is proactively seeking another extension of the Site Permit, continues to actively pursue development of the Project, and is currently engaged in negotiations that support the continued potential of the Project.

Matter of the Site Permit for Bear Creek Wind Partners, LLC for a 47.5 Megawatt Large Wind Energy Conversion System in Todd and Otter Tail Counties, PUC Docket No. IPP-6629/WS-07-297, September 28, 2011 Order (approving a two-year extension); and *In the Matter of the Application of Pleasant Valley Wind Farm LLC for a Site Permit for the 300 MW Pleasant Valley Project in Dodge and Mower Counties*, PUC Docket No. IP-6828/WS-09-1197, February 20, 2013 Order (approving two-year extension of time due to MISO study process delays); *In the Matter of the Application of EcoHarmony West Wind, LLC for a Large Energy Conversion System Site Permit for the 280 Megawatt EcoHarmony West Wind Project in Fillmore County*, MPUC Docket No. IP-6688/WS-08-973 (“EcoHarmony Docket”), April 22, 2013 Order (approving a two-year extension); *In the Matter of the Application of Morgan Wind Acquisition Group, LLC for a Large Energy Conversion System Site Permit for the 31.5 Megawatt Morgan Wind Project in Redwood and Brown Counties*, MPUC Docket No. IP-6723/WS-09-360 (“Morgan Wind Docket”), July 26, 2012 Order (approving a two-year extension); *In the Matter of the Application of West Stevens Wind, LLC for a Large Energy Conversion System Site Permit for the 20 Megawatt West Stevens Wind Project in Stevens County*, MPUC Docket No. IP-6824/WS-09-830 (“West Stevens Docket”), February 29, 2012 Order (approving a two-year extension); *In the Matter of the Application of Paynesville Wind, LLC for a Large Energy Conversion System Site Permit for the 95 MW Paynesville Wind Farm in Stearns County*, MPUC Docket No. IP-6830/WS-10-49 (“Paynesville Docket”), Feb. 7, 2013 Order (approving a two-year extension).

⁵ See Glacial Ridge Docket, October 20, 2014 Order (revoking Site Permit without prejudice); EcoHarmony Docket, PUC June 25, 2015 Agenda Meeting Decision Items (“June 25, 2015 Commission Meeting”), available at <https://minnesotapuc.legistar.com/Calendar.aspx> (revoking permit); Morgan Wind Docket, June 25, 2015 Commission Meeting (revoking permit); West Stevens Docket, June 25, 2015 Commission Meeting (revoking permit); Paynesville Docket, June 25, 2015 Commission Meeting (revoking permit).

⁶ The Commission has not yet addressed the request by Comfrey Wind Energy LLC to extend its site permit. Comfrey Docket, Petition to Amend the Comfrey Wind Energy LLC LWECS Site Permit (June 16, 2015).

In short, although development of the Project did not progress as expeditiously as desired during the amended Site Permit term because of various market factors described below, Flat Hill submits this extension request well in advance of the August 27, 2015 Site Permit deadline because Flat Hill believes that market conditions will not continue to have the same limitations on the Project, and Flat Hill is confident in the potential viability of the Project moving forward. Given the potential for the Project, and in acknowledgement of the administrative burden on the Commission in maintaining open permit dockets for extended periods, Flat Hill commits not to make additional requests for extension or modification of the Site Permit without an executed PPA or other enforceable mechanism for the sale of the power from the Project.

GOOD CAUSE EXISTS TO AMEND THE SITE PERMIT

Good cause exists to amend the Site Permit to allow additional time needed to fulfill the requirements of the Site Permit. The Commission may amend the Site Permit at any time “if there is good cause to do so.” Minn. R. 7854.11300, subp. 2.

In the Petition for Modification or Amendment to Site and Route Permits dated April 4, 2013 filed in this docket, Flat Hill detailed the delays it experienced in the Midcontinent Independent System Operator, Inc. (“MISO”) generator interconnection process as well as those delays caused by the appeal by Radio Fargo-Moorhead, Inc. (“RFM”) of the Site Permit and Route Permit for the Project. As a result of the MISO and RFM delays, Flat Hill was unable to advance development of the Project in the first two-year period of the Site Permit.⁷

In the time since the amendment of the Site Permit, Flat Hill has continued to face challenges beyond its control that prevented Flat Hill from meeting the PPA, pre-construction survey, and construction commencement deadline in the Site Permit. The 2013 and 2014 calendar years were both down market years for the wind industry as a whole. Wind capacity additions in 2013 and 2014 totaled just over 1,000 MW and approximately 4,750 MW, respectively.⁸ These annual capacity addition totals were the two lowest for the industry since 2006.⁹ These down market years were driven largely by uncertainty regarding whether Congress would extend in 2012 and then again in 2014 the expiration date of the federal production tax credit (“PTC”). With Congress extending the PTC only one year at a time, and combined with the low pricing being offered for wind PPAs, the industry as a whole was largely paralyzed during this timeframe. And because of the delays that impaired the advancement of the Project pre-2013, the Flat Hill Project entered this down period at a distinct disadvantage relative to

⁷ Flat Hill did not receive the results of the System Impact Study until shortly before the August 27, 2013 Order granting the Site Permit extension.

⁸ See American Wind Energy Association (“AWEA”), *U.S. Wind Industry First Quarter 2015 Market Report* at 4 (April 29, 2015) (“AWEA 1Q 2015 Market Report”), available at <http://awea.files.cms-plus.com/FileDownloads/pdfs/1Q2015%20AWEA%20Market%20Report%20Public%20Version.pdf>.

⁹ *Id.*

other wind projects, and, thus, Flat Hill was unable to obtain a PPA or other enforceable mechanism for the sale of the output of the Project in these years, and otherwise advance the Project to construction.

The status of the wind market, however, has improved, and Flat Hill remains optimistic about the opportunities to advance the Project to commence construction in the next two years. Several Minnesota utilities have renewable resource addition needs to meet the renewable energy standard (“RES”) requirement for 2025.¹⁰ Flat Hill expects that these Minnesota utilities will seek to add renewable resources in the near term well in advance of their projected RES compliance shortfall, as has been the industry practice to-date. Minnesota utilities are also likely to continue to add renewable resources in the near term due to factors other than RES compliance, such as the long-term viability of the PTC and anticipated regulatory changes. For example, Xcel Energy recently stated in its December 10, 2015 Resource Plan:

[Xcel Energy] currently expects to generate a sufficient amount of RECs in 2016 and 2020 to satisfy our renewable obligations in those years without adding any wind capacity beyond the projects we currently have under contract. ***However, if the federal Production Tax Credit (PTC) is extended, it may be prudent to secure another increment of wind generation before the tax credit expires.***¹¹

In addition to planning for the potential permanent end to the availability of the PTC, Minnesota utilities are planning to adjust to shifts in baseload resources resulting from pending changes in environmental regulations. For example, Xcel acknowledged that there is a need to add renewable energy for reasons other than RES compliance, stating in its 2015 Resource Plan:

[O]ur Preferred Plan utilizes significantly more renewable energy to minimize the reliance on natural gas during and beyond the planning period, rather than for merely compliance purposes. We structured the Preferred Plan this way because natural gas is likely to play a much larger role in potentially replacing key baseload resources in the out years of the planning period and beyond. . . . Further, utilizing significant renewable energy additions will also position us well to meet future GHG requirements.¹²

The Commission also has acknowledged the need to add wind generation for reasons other than RES compliance. In modifying Otter Tail Power Company’s (“Otter Tail”) 2014-2028 resource plan to authorize the acquisition of up to 300 MW of wind generation capacity, the Commission stated:

¹⁰ Minnesota Department of Commerce, Division of Energy Resources, “Minnesota Renewable Energy Standard Utility Compliance” at 7-8 (Jan. 2015)(“2013 REC Compliance Report”).

¹¹ Xcel Energy, 2015 Resource Plan, Appendix E – Renewable Energy, at 11 (January 2, 2015) (emphasis added) (“2015 Xcel Resource Plan”).

¹² 2015 Xcel Resource Plan, Preferred Plan at 12.

In addition to the 200 MW capacity need, the [Minnesota Department of Commerce's] analysis shows that up to 300 MW of wind energy in the 2017-2021 timeframe is cost-effective. ***It is essential that Minnesota electric utilities continue to add cost-effective wind generation to their systems if this state is to achieve its greenhouse-gas reduction goals.*** Moreover, wind additions could help Otter Tail secure its energy needs while insulating ratepayers from excessive market risk. . . . Otter Tail must be able to react to market conditions and federal regulations to obtain renewable energy reliably and at the lowest cost to its ratepayers.¹³

In fact, replacement of baseload resources and decreasing capacity margins are anticipated across the region – not just with Xcel or other Minnesota utilities – in response to developments in environmental regulation such as the Environmental Protection Agency's ("EPA") Cross-State Air Pollution Rule (CSAPR), Mercury and Air Toxics Standards (MATS), and the Clean Power Plan. The MISO Independent Market Monitor ("IMM") indicated that "MISO expects large quantities of capacity to retire in response to environmental rules, and is forecasting a capacity shortfall as soon as 2016."¹⁴ These environmental regulations are "surveyed to affect 57 GW of the 75 GW of coal-fired capacity in MISO"¹⁵ and will "put substantial economic pressure on existing coal resources to retire, which should reduce planning reserve margins in MISO."¹⁶ Minnesota's State policy clearly mandates that renewable capacity be added to meet increasing demand in the region, and, thus, Flat Hill believes the market for wind energy projects such as the Flat Hill Project will be much more favorable for securing a PPA and commencing construction of the Project in the two-year extension period requested than conditions have been in the current two-year period spanning 2013, 2014, and the first part of 2015.

Indeed, Flat Hill has recently experienced renewed interest in the Project from potential offtakers, and is currently engaged in discussions with a Minnesota utility regarding a potential off-take arrangement, although a definitive agreement has not been reached. These discussions are ongoing, and Flat Hill plans to continue to actively seek a PPA moving forward with this Minnesota utility, or another utility or load-serving entity in the MISO system.

Finally, a second extension of the Site Permit for the Project would still be within the timelines already approved for construction of the high voltage transmission line for the Project

¹³ *In the Matter of Otter Tail Power Company's 2014-2028 Resource Plan*, Order Approving Plan With Modifications and Setting Requirements for Next Resource Plan, MPUC Docket No. E-017/RP-13-961, December 5, 2014 Order at 6 (emphasis added).

¹⁴ IMM, 2013 State Of The Market Report For MISO Electricity Markets, at 12 (June 2014) ("IMM 2013 Report"), available at <https://www.misoenergy.org/Library/Repository/Report/IMM/2013%20State%20of%20the%20Market%20Report.pdf> (6/18/2015).

¹⁵ *Id.* at 10.

¹⁶ *Id.* at 16.

pursuant to the terms of the Route Permit. In the August 27, 2013 Order approving the extension of the Site Permit, the Commission also approved Flat Hill's request for an extension of the Route Permit. The Commission extended the Route Permit by four years from the date of the amendment, or August 27, 2017. Flat Hill is not requesting further extension of the deadline to commence construction or improve the route under the Route Permit at this time. Thus, an extension of the Site Permit as requested herein (and the corresponding extension of the in-service date under the Certificate of Need ("CON") requested concurrently herewith) will align the corresponding deadlines for completion of the Project and the associated transmission infrastructure under the Site Permit, Route Permit, and CON.

For these reasons, good cause exists to grant an extension of the deadline to obtain a PPA, complete pre-construction surveys, and commence construction to two years from the date of the amended Site Permit. Flat Hill will continue to comply with all Site and Route Permit conditions, and is amenable to further modification of the Site Permit as necessary to update the Site Permit conditions to current standards, as is consistent with past Commission Site Permit amendments.

CERTIFICATE OF NEED

Concurrently with this Petition for Modification or Amendment to Site and Route Permits, Flat Hill is filing a petition for changes to its CON in PUC Docket No. IP-6687/CN-08-951. Concurrently with the amendment of the Site Permit, the Commission in its August 27, 2013 Order Extending Certificate of Need In-Service Date also extended the in-service date provided in the CON.¹⁷ Accordingly, Flat Hill is requesting a modification of the in-service date in the CON without recertification. Flat Hill proposes that the Commission establish a single comment period for both petitions and make a final decision on the petitions at the same time.

CONCLUSION

Because good cause exists and for the reasons set forth herein, Flat Hill respectfully requests the Commission to take the following actions:

1. Issue an amended Site Permit such that the date for compliance with Site Permit Sections 10.2 and 10.3 will be two years after the issuance date of the amended Site Permit; and
2. Issue an amended Site Permit such that the expiration date of the permit in Section 12 is 30 years after the issuance date of the amended Site Permit.

¹⁷ The originally-expressed in-service date for the Project was December 2010, which was extended to December 2015.

Dated: July 15, 2015

Respectfully submitted,

/s/ Andrew J. Gibbons

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CERTIFICATE OF SERVICE

Catherine M. Wood certifies that on July 15, 2015 she served a true and correct copy of the **PETITION FOR MODIFICATION OR AMENDMENT TO SITE PERMIT** upon the below-listed parties by the method of delivery indicated on the official service list for this docket:

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