

**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
Docket No. IP-6687/TL-08-988

**PETITION FOR MODIFICATION
OR AMENDMENT TO SITE AND
ROUTE PERMITS**

In the Matter of the Application for a Route
Permit for the Flat Hill Windpark I 230 kV
Transmission Line

INTRODUCTION

On February 5, 2010, the Minnesota Public Utilities Commission (“Commission”) issued a Site Permit (“Site Permit”) 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, 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.

The Site Permit as modified by the Commission’s Order Dismissing Contested Case Proceedings and Adopting and Modifying Proposed Order issued May 20, 2011 (“May 20, 2011 Order”), requires that certain actions be taken within two years of the date of the issuance of the May 20, 2011 Order. First, permit condition III.J.4 requires that a power purchase agreement (“PPA”) or other enforceable mechanism for the sale of electricity be obtained. Second, permit condition III.K.2 requires that pre-construction surveys be completed and construction be commenced. If these requirements are not satisfied within the two-year time period, 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.

As the two-year time period under the Site Permit will expire on May 20, 2013, 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 are described further herein.

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

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. Additionally, for the same reasons that justify amendment of the Site Permit, Flat Hill requests that the Commission extend the time for commencement of construction or improvement of the route under the Route Permit.

AMENDMENT OF 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 permit conditions III.J.4 and III.K.2 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 permit condition III.L be extended to 30 years after the issuance date of the amendment.

The Commission has specific authority to amend the Site Permit and has granted such amendments to other projects. In addition to the language in Section III.K.3 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.

Indeed, the Commission has 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, and, where necessary, modifying the expiration date of the permit to maintain a 30-year permit life. *See 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-07-31, 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, 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 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 of time); 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).

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.

Interconnection Delays

Similar to the other extensions of site permits previously granted that are referenced above, Flat Hill experienced significant delays in the Midwest Independent Transmission System Operator, Inc. (“MISO”) interconnection process that have impacted Flat Hill’s ability to obtain a PPA or other enforceable mechanism to sell power and to commence construction.

As other developers have encountered and brought to the attention of the Commission, developments in the MISO generator interconnection process have created significant delay for many projects, including the Project. 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 (“FERC”) 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).

In Flat Hill’s case, after over five years in the interconnection queue, the Project has yet to receive reliable study results from MISO. In 2007, Flat Hill submitted a 200 MW interconnection request with MISO. In late 2007, FERC held a technical conference to discuss concerns over the effectiveness of generator interconnection queue management, and by the spring of 2008, MISO had filed a completely revamped interconnection queuing process with FERC (“Initial Queue Reform”). FERC approved the Initial Queue Reform in the summer of 2008. The reforms were intended to eliminate the congestion in the queue and to allow projects that were truly ready to advance to move through the process. However, the reforms were not

sufficient, and queue congestion remained a significant problem. The Project transitioned into MISO's new study process, advanced to the System Planning and Analysis ("SPA") phase, and is part of SPA-2012-West Studies. After numerous studies and re-studies with highly questionable outcomes and continuous delays, it was clear that there would not be legitimate study results coming out of the process.

By late 2010, MISO realized that the Initial Queue Reform was not working and that they would need to file a whole new set of interconnection queuing rules. MISO stopped meaningful processing of interconnection requests, and instead focused on changing the process. In late 2011, MISO filed a second substantive queue reform. FERC conditionally approved the changes in March of 2012, with final acceptance occurring in the summer of 2012. In August of 2012, MISO transitioned interconnections into their new queuing process.

MISO's new queue reform appears to be a step in the right direction. Understanding that the new queue process would greatly expedite the processing of interconnection requests, Flat Hill transitioned the Project's interconnection request into MISO's SPA phase. Flat Hill will continue to advance the Project through MISO's reformed interconnection process.

Due to these delays in the interconnection process, it was impracticable for Flat Hill to ascertain all of the capital costs and risks associated with interconnection of the Project with any degree of certainty. The lack of certainty regarding interconnection costs and their effect on a power purchase price, plus the lack of certainty over interconnection timing, made it unfeasible for the Project to commit to an off-take arrangement or finalize project financing.

Flat Hill, however, continues to actively engage in efforts to secure financing, obtain a PPA and complete pre-construction surveys to meet a revised construction commencement deadline. In fact, Flat Hill has responded to both Minnesota Power and Xcel Energy's RFPs for wind resources. Both Minnesota Power and Xcel are seeking up to 200 megawatts of new wind generation resources. A two-year extension to the Site Permit will provide sufficient time to clear the MISO interconnection process and complete all pre-construction requirements, as Flat Hill anticipates completing the MISO interconnection process and entering into a large generator interconnection agreement no later than the end of 2014. In addition, granting a two-year extension will not impact the rights of any other parties. Flat Hill has invested over \$3 million in the Project to date. Extension of the Site Permit is necessary to preserve this investment and maintain the Project as viable source of renewable energy for Minnesota.

As noted above, the Commission has previously found that good cause exists for a two-year extensions of site permits based on similar justifications relating to the interconnection process, and the Commission should similarly find that good cause exists for an extension in this case. Accordingly, it is appropriate for the Commission to amend the Site Permit as requested herein.

Appeal Delays

Furthermore, the delays resulting from the appeals following the Commission's original issuance of the Site Permit on February 5, 2010 provide further grounds for extending the time for fulfillment of the requirements of the Site Permit.

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 Permit and the transmission line route permit for the Project ("Route Permit"). 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, 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 the by the RFM appeals provide an additional basis for the Commission to find that good cause exists for the extension of the Site Permit.

AMENDMENT OF ROUTE PERMIT

Additionally, Flat Hill requests amendment of the Route Permit. Permit condition IV.J of the Route Permit requires Flat Hill to commence construction or improve the route within four years after the original issuance of the Route Permit on February 5, 2010. Flat Hill requests the Commission to amend the Route Permit to allow Flat Hill four years from the issuance date of the amendment to commence construction or improvement of the route. Section V of the Route Permit provides for amendment of permit conditions, and the Commission also has specific

authority to amend any of the conditions of the Route Permit under Minn. R. 7850.4900. The delays described above that provide good cause for amending the issuance date of the Site Permit also provide strong reasons for amendment of the Route Permit. Furthermore, if the Site Permit is amended as requested in this Petition but the Route Permit is not also amended, the deadline for the commencement of construction under the Route Permit will pass before the deadline for commencement of construction under the Site Permit.

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 Certificate of Need (“CON”) in PUC Docket No. IP-6687/CN-08-951. While the CON has no expiration date, the Commission Order granting the CON indicates a proposed in-service date of December 2010. 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 permit conditions III.J.4 and III.K.2 will be two years after the issuance date of the amended Site Permit;
2. Amend condition III.L of the Site Permit to extend the expiration date of the permit until 30 years after the issuance date of the amended Site Permit; and
3. Amend condition IV.J of the Route Permit to allow Flat Hill until four years after the issuance date of the amendment to commence construction or improvement of the route.

Dated: April 4, 2013

Respectfully submitted,

/s/ Matthew B. Seltzer

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CERTIFICATE OF SERVICE

In the Matter of the Application for a Route Permit for the Flat Hill Windpark I 230 kV Transmission Line

Susan A. Hartinger certifies that on April 4, 2013 she served a true and correct copy of the **PETITION FOR MODIFICATION OR AMENDMENT TO SITE AND ROUTE PERMITS** upon the below-listed parties by the method of delivery indicated on the official service list for this docket:

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/s/ Susan A. Hartinger _____
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