

**Minnesota Public Utilities Commission**  
**Staff Briefing Papers**

---

Meeting Date: **September 17, 2015** ..... \*Agenda Item # 4

---

Company: Flat Hill Windpark I, LLC

Docket No. IP6687/CN-08-951 and IP6687/WS-08-1134

**In the Matter of the Certificate of Need for the Flat Hill Windpark I Project in Clay County**

**In the Matter of the Large Wind Energy Conversion Site Permit for the Flat Hill Windpark I Project in Clay County**

Issue(s): Should the Commission approve the Petition for Changes to the Certificate of Need without Recertification or Further Hearing?

Should the Commission amend or revoke the LWECS Site Permit? Should the Commission take some other action?

Staff: Tricia DeBleeckere ..... (651) 201-2254

---

**Relevant Documents**

**CN-08-951**

Commission – Order Finding Environmental Report Adequate and Granting Certificate of Need ..... February 3, 2010  
Commission – Order Reopening Record and Referring Matter to OAH..... August 25, 2010  
Commission – Order Dismissing Contested Case Proceedings (...) ..... May 20, 2011  
Commission – Order Extending Certificate of Need In-Service Date..... August 27, 2013  
Flat Hill Windpark – Petition for Changes to Certificate of Need (...)..... July 15, 2015  
DOC DER – Comments..... July 29, 2015  
Kathleen and Scot Stradley – Comments..... August 17, 2015  
Flat Hill Windpark – Reply Comments ..... August 17, 2015

**WS-08-1134**

Commission – Order (Issuing Site and Route Permit)..... February 5, 2010  
Commission – Order Reopening Record and Referring Matter to OAH..... August 25, 2010  
Commission – Order Dismissing Contested Case Proceedings (...) ..... May 20, 2011  
Commission – Order Granting Amendments to Permits (...) ..... August 27, 2013

Flat Hill Windpark – Petition for Modification or Amendment to the Site Permit .....July 15, 2015  
DOC EERA – Comments and Recommendations on Amending the Site Permit .... August 6, 2015  
MN DNR – Comments ..... August 6, 2015  
Kevin and Barb Wenninger – Comments ..... August 10, 2015  
Kathleen and Scot Stradley – Comments..... August 17, 2015  
Flat Hill Windpark – Reply Comments ..... August 17, 2015  
Commission - Public Comments (SpeakUp Responses) ..... August 18, 2015  
Commission – Public Comments (Mailed or faxed)..... August 18, 2015

The attached materials are work papers of the Commission staff. They are intended for use by the Minnesota Public Utilities Commission (Commission) and are based upon information already in the record unless noted otherwise.

This document can be made available in alternative formats (i.e., large print or audio) by calling 651-296-0406 (voice). Persons with hearing or speech disabilities may call us through their preferred Telecommunications Relay Service.

## **I. Statement of Issues**

---

### *Certificate of Need – CN-08-951*

Should the Commission approve the Petition for Changes to the Certificate of Need without Recertification or Further Hearing?

### *Large Wind Energy Conversion Site Permit – WS-08-1134*

Should the Commission amend or revoke the LWECs Site Permit? Should the Commission take some other action?

## **II. Procedural History**

---

The Flat Hill Windpark I project (Flat Hill, the Project) is a 201 Megawatt wind facility proposed to be located in Clay County, approximately 12 miles northeast of Moorhead, Minnesota. The Project was originally proposed by Noble Flat Hill Windpark I, LLC.<sup>1,2</sup>

In February 2010, the Commission issued three orders which granted Flat Hill: 1) a certificate of need, 2) a route permit, and 3) a site permit.

In March 2010, Radio Fargo-Moorhead, Inc. (RFM), a landowner within the Project site boundary, filed Petitions for Writ of Certiorari with the Minnesota Court of Appeals, appealing the Commission's grant of the Site Permit and Route Permit for the Project ("RFM Appeal"). RFM based its appeal on its claims that it was not properly notified of the Project and that RFM's radio tower was not considered in the development of the records or in the final route and site permit decisions. The Court discharged the writs and appeals and remanded the matter back to the Commission.

On August 25, 2010, the Commission issued an order 1) reopening the records for the limited purpose of supplementing the evidentiary record on issues regarding the potential for impacts of the Project on RFM's operations; and 2) referring the matter to the Office of Administrative Hearings (OAH) to conduct a contested case proceeding specifically addressing the potential for impacts on RFM's operations.

Through their own meetings and negotiations, Flat Hill and RFM reached a settlement resolving all issues raised in the RFM Petition. On May 20, 2011 the Commission issued its *Order Dismissing Contested Case Proceedings and Adopting and Modifying Proposed Order*. The Order affirmed the permits without modification, with the exception of authorizing a 'new' two year period in which Flat Hill would have to commence construction and obtain a power purchase agreement (PPA) – extending the time authorized to May 2013.

---

<sup>1</sup> Noble Flat Hill Wind Park I, LLC was acquired by Quantum Utility Generation, LLC from Noble Environmental Power, LLC in 2011.

<sup>2</sup> The Noble Flat Hill Windpark was renamed Flat Hill Windpark I, LLC on August 5, 2011 following the Quantum Wind acquisition.

On April 4, 2013 Flat Hill filed petitions (second extension) to extend the time authorized in the certificate of need, route permit, and site permit dockets. Flat Hill cited issues related to the Mid-Continent Independent System Operator (MISO) queue and the RFM appeal that caused delays in commencement of the project.

On August 27, 2013, the Commission issued Orders in the certificate of need, site permit and route permit dockets extending the time to obtain a PPA and construct the project. The certificate of need was extended to December 2015 (per the Permittee's request), the site permit was extended to August 27, 2015 (using the standard two year wind permit condition) and the route permit was extended to August 27, 2017 (using the standard four year transmission line permit condition).<sup>3</sup>

On July 15, 2015, Flat Hill Windpark I, LLC filed petitions (third extension) to extend the time authorized to commence construction in the certificate of need and site permit dockets. Flat Hill cited issues related to the earlier MISO issues and RFM appeal and more recently, challenges due to downturn in the wind market, uncertainty regarding the federal production tax credit (PTC), and the timing (post-RFM appeal) that Flat Hill entered the wind market. Flat Hill requested that the certificate of need in-service date be extended to December 2017 without additional hearings or recertification. Flat Hill also requested that the Commission amend the site permit so that Flat Hill would have an additional two years to obtain a PPA and commence construction from the date of the amended permit.

The Department of Commerce Division of Energy Resources (DOC or DER) filed comments in the certificate of need docket. The Department of Commerce Energy Environmental Review and Analysis (DOC EERA) and the Minnesota Department of Natural Resources (MDNR) filed comments in the site permit docket.

Several members of the public filed comments both in support of, and in opposition to, the time extensions in the certificate of need and site permit dockets.

#### **IV. Certificate of Need Petition and Comments**

---

##### *Certificate of Need Change in Circumstances - Relevant Law*

Because the extended certificate of need in-service date exceeds the one year delay allowed under Minnesota Rule 7849.0400, subpart 2(A), Flat Hill Windpark I, LLC must inform the Commission of the desired change and explain the reasons for the change in accordance with Minnesota Rule 7894.0400, subpart 2(H). The Commission must then determine within 45 days whether the delay is acceptable without recertification or whether further hearings are necessary.

---

<sup>3</sup> The text of the Commission's August 27, 2013 Order noted the extension to the route permit was to allow it to proceed in conjunction with the site permit, however, the standard high-voltage transmission line (HVTL) four-year construction window was used in the attached permit language, authorizing a four year period to construct the associated HVTL. Therefore, if the Commission wishes to extend the time period to allow construction/obtain a PPA for the *site* permit, the Commission does *not* need to extend the HVTL Route Permit at this time. If the Commission elects to terminate the site permit, subsequent action on the route permit would be appropriate and would be initiated by staff following the Commission's decision.

*Flat Hill Windpark I, LLC Petition for Changes to CON without Recertification or Rehearing*

Flat Hill requested that the Commission accept a change in the in-service date for the Project from December 2015 to December 2017 without recertification. Flat Hill indicated that several factors initially contributed to the delay including interconnection and appeal issues, and more recently, a down wind energy market and issues related to the federal PTC extension (one year PTC extension increments – creating uncertainty).

Flat Hill argued that further hearings on the change in circumstances are not warranted since the change would not have reasonably resulted in the Commission reaching a different determination on the certificate of need. Flat Hill argued that similar requests have been granted for projects based on similar grounds and that the criteria in Minn. R. 7849.0120 would not have reasonably led the Commission to reach different conclusions due to the later commercial operation date. Flat Hill believes that with a later commercial operation date the renewable energy will still be needed by utilities to meet renewable energy objectives, that there is no better alternative to the project as wind is typically the least cost resource for meeting those standards.

*Department of Commerce Division of Energy Resources Comments*

The Department provided:

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 2017 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.

*Public Comment*

Certificate of need related comments were regarding concerns that the project was not viable since Flat Hill has been unable to secure a PPA or commence construction in the time allotted and therefore permits should not be amended or extended.

Concerns were also raised regarding the use of federal funds to support wind energy (via the PTC) as an inappropriate use of tax payers' money and without the PTC support, the wind project would not be able to be marketable and therefore the Commission should not grant the Flat Hill Petition. Last, it was argued that the decrease in the demand for electricity generally, and the unknowns regarding the potential transition to the use of low cost natural gas as an energy resource create an uncertain energy market – and therefore the Commission should not support the furthering of this project.

## V. Site and Route Permit Petition and Comments

---

### A. Site Permit Amendment – Relevant Law

The Site Permit required the permittee to advise the Commission of the reasons for delay if it has not obtained a power purchase agreement or some other enforceable mechanism for the sale of electricity from the project and commenced construction within two years of the issuance of the permit (Site Permit Sections 10.2 and 10.3).

Because Flat Hill does not expect to begin construction of the project before August 27, 2015, (two years from permit issuance) they must seek the Commission's approval of an amendment to site permit conditions 10.2 and 10.3. Under Minnesota Rule 7854.1300, the Commission may amend a permit at any time if the Commission has good cause to do so.

### B. Flat Hill Windpark I, LLC Petition for Modification or Amendment to Site Permits

The Flat Hill petition requested additional time to obtain a PPA or other enforceable mechanism and commence construction of the Project and extend the expirations date of the Site Permit, specifically:

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

Flat Hill acknowledged that the Commission has not typically granted an extension of this length for other projects - however, Flat Hill argued that in those instances the project proposer allowed the extended permit deadline to pass without action and/or provided notice to the Commission that the conditions would not have been met and requested revocation. Here, Flat Hill argued, revocation is not warranted as Flat Hill has filed a timely request for extension and actively is pursuing development of the project.

Notably, Flat Hill provided that it will not make additional requests for extension or modifications [beyond the request before the Commission at this time] unless it as obtained an executed PPA or other enforceable mechanism in the next two years.

### C. Department of Commerce Energy Environmental Review and Analysis Staff Comments

The DOC EERA staff recommended that prior to granting the Flat Hill Petition, the Commission require the Permittee to:

1. Perform an Natural Heritage Inventory System (NHIS) review and report on any changes from the original NHIS review (conducted in 2007);
2. Provide information on any avian and bat studies performed since the last extension;

3. Provide information on anticipated turbine design; and,
4. Provide an updated preliminary turbine layout based on the most current data available.

DOC EERA noted that the August 27, 2013 Order stated:

Flat Hill shall file a compliance document upon receipt of NHIS data from the Department of Natural Resources indicating whether the data has changed since the original [2007] NHIS data search was conducted.

DOC EERA discussed that this information was requested by the DNR during the comment period of Flat Hill's 2013 amendment petition – but the DOC EERA notes that no compliance filing has been filed. Further, the DNR noted in its 2013 comments that this updated information would inform the ABPP and other inventories planned by the Permittee. The DOC EERA stated this information is necessary to conduct an assessment of potential project changes.

DOC EERA provided that the permit conditions for studies and surveys were extensively updated in the 2013 permit amendment, but cautions that the lack of an ABPP at this stage of development is not consistent with contemporary permitting practice.

DOC EERA noted that if the environmental conditions remain the same as they did at the time of the original authorization, it saw no reason to deny this extension – however, due to the lack of information (listed above), the DOC EERA was unable to determine whether the data supported that conclusion.

The DOC EERA staff also recommended that any permit amendment should include: 1) the 1,200 foot setback provision (included in the original 2010 permit, but inadvertently omitted from the 2013 amended) be included in any amended permit and 2) a condition be included requiring Flat Hill to distribute the amended permit as per Special Condition 13.1 of the 2013 Amended Permit. Last, the DOC EERA recommended that, failure to commence construction in the timeframe authorized by this 2015 extension, both permits (site and route) would be considered for revocation.

#### *D. Department of Natural Resources Comments*

The MDNR filed comments which indicated that if the Commission grants the Flat Hill Petition, it would recommend permit amendments. Specially:

- 1) Noble Flat Hill should request an updated Natural Heritage Information System (NHIS) review from the DNR.
- 2) Based on the results of the NHIS review, the information should be used to inform the developers Avian and Bat Protection Plan (ABPP).
- 3) Flat Hill should file the results of all preconstruction surveys to inform the level of post-construction fatality monitoring.
- 4) Flat Hill should develop a monitoring protocol in coordination with the DOC EERA and the DNR.

#### *D. Public Comments*

Seven comments from the public requested denial of the Petition and addressed issues related to the lack of notification to area landowners of the request for a permit amendment, the erosion of property rights of nearby nonparticipant landowners, property values, lack of a public hearing or public opportunity to be heard on the extension, concerns regarding the endangered prairie chickens in the project area, and general concern to avian species. Two comments from indicated their support for the extensions but didn't provide a basis for the support.

### *E. Flat Hill Reply Comments*

#### *NHIS Review and Update*

Flat Hill noted that they had engaged their consultant to obtain a new NHIS review from the MDNR and agreed with the Department that that information would “help determine if the Project maintains the same favorable site conditions as precipitated the original permit and amendment permit.” However, due to the time needed to obtain the results and prepare a report, there is insufficient time to have the updated NHIS review and report available in advance of the Commission’s meeting.<sup>4</sup> Flat Hill recommended that the Commission not require the NHIS information to be provided in advance of the Commission meeting, and instead, 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.<sup>5</sup>

#### *Avian and Bat Protection Plan*

Flat Hill provided that it will develop a ABPP in consultation with the DNR and DOC EERA prior to construction and additionally, in response to the shift of the ABPP and survey work occurring earlier in the permitting process, Flat Hill has engaged a consultant to complete updated Spring and Fall avian point count surveys for the site in 2016 (consistent with the protocols used for the surveys completed in 2008). Flat Hill commits to providing the survey results to the Commission within four weeks of each seasonal final survey efforts. Flat Hill provided that those results will inform the ABPP to ensure consistency with the requirements of current Site Permits and the appropriate post-construction monitoring.

#### *Turbine Design and Layout*

Flat Hill argued that providing a turbine layout and design at this time would be theoretical, likely to change, and a final layout, once known, would cause only insignificant and immaterial

---

<sup>4</sup> Staff notes that this statement was made by Flat Hill prior to the Commission’s scheduling of the matter on an agenda or the issuance of a ten-day notice for an Commission agenda meeting.

<sup>5</sup> Staff notes that the 2013 staff briefing papers (and 2013 DNR comments) discussed the usefulness of a [2013] updated NHIS information. Staff’s 2013 briefing paper suggested two alternatives in the discussion text, either 1) “Flat Hill submit a request for a new NHIS search within 30-days and a compliance filing with the results to follow to the Commission within 30-days of the receipt of the new information “or 2) the Commission decline to act on the extension request until it has received the information. However, the decision option language was not deadline specific and instead only required Flat Hill to file the information with the Commission *upon Flat Hill’s receipt of the information*, and the Commission’s ordering points reflected that language. Therefore, Flat Hill is not in violation of a permit condition or ordering point.



changes to the level of project impacts.

### *Non-Participating Landowner Setback and Permit Distribution*

Flat Hill agrees with both the 1,200-foot setback provision for non-participating landowners as it originally committed to this condition (in 2010) and the requirement for the amended permit to be distributed in accordance with Special Condition 13.1.

## **III. Staff Discussion**

---

### *A. Certificate of Need - Variance to Minn. R. 7849.0400 (H)*

Minn. Rule 7849.0400 (H) requires that the Commission determine within 45 days of the receipt of the Applicant's petition for changed circumstances whether the change is acceptable without recertification. Staff believes the typical variance granted by the Commission is appropriate here to allow for additional time to consider this request. In most cases staff needs more than 45-days to solicit comments, review the filings, scheduled a Commission meeting and issue an Order on the Commission's decision. Staff has reviewed the variance criteria outlined in Minn. Rule 7829.3200:

- a. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- b. granting the variance would not adversely affect the public interest; and
- c. granting the variance would not conflict with standards imposed by law.

Staff believes that in this instance the criteria have been met. First, enforcement of the rule would impose an excessive burden on staff to conduct the steps necessary to review the Applicant's request within 45-days. Second, granting the variance would not adversely affect the public interest in that it provides for a more thorough review of the Applicant's filing. And third, granting the variance would not conflict with any other standards imposed by law.

### *B. Certificate of Need - Extension Request*

As the Department concluded, staff believes in this instance (with the assumptions outlined by the Department) the Commission can reasonably conclude that the change is acceptable without further hearing or recertification.

### *C. Site Permit Petition for Amendments*

As noted by Flat Hill in their Petitions, the Commission has not yet authorized an extension of time to a wind site permit similar to what is requested here. Flat Hill was provided an additional year upon the reissuance of its permit following the resolution of the RFM appeal, provided a (second) extension in 2013 - and here, has requested a (third) extension. The only other project to request this iteration of extensions was the Comfrey Wind project. The Comfrey Wind matter was heard by the Commission in August and the site permit was revoked for several reasons

(some project specific).<sup>6</sup> Therefore, if approved, this will be the first site permit to obtain this amount of time to obtain a PPA and commence construction. Since there aren't many project characteristics – or issues - specific to the Flat Hill project, staff views this amendment as potentially precedent setting.

Staff believes the Commission should either 1) require additional environmental information be filed prior to its decision on a site permit amendment as DOC EERA suggests, or 2) deny the Petition. Staff agrees with the DOC EERA and DNR that updated NHIS information would be beneficial to the evaluation on whether the project still has similar attributes as to what was permitted in 2010.

### *Submittal of Additional Environmental Information*

It was clear in the 2013 amendment record that the DOC EERA, DNR and Commission staff were seeking updated NHIS information. The Commission authorized the filing of updated NHIS data as compliance filing in lieu of it being a prerequisite to its decision. Since the 2013 amendment, no new NHIS information has been filed by Flat Hill (when the record is clear that the state agencies and staff are seeking this information). Staff does not agree with Flat Hill's proposal to make the filing of the NHIS information a compliance filing to the amendment authorization and instead, agrees with the DNR and the DOC EERA, that it should be filed prior to a Commission decision as it would assist the agencies and the Commission in their decision. Further, staff believes a comment period following the filing of the updated NHIS information would be warranted in order to allow the DNR and DOC EERA time to weigh in on the information in the NHIS review and provide input to the Commission on how the information may impact the site permit and the amendment request.

The DOC EERA and Flat Hill are at an impasse regarding whether Flat Hill should be required to submit an updated turbine layout. The DOC EERA argued that the most current layout is from the 2008 application and needs to be updated to reflect the current state of project information. Flat Hill claims that since negotiations are still underway and turbine types are not yet known, any update would be theoretical and not aid in the Commission's decision – Flat Hill noted that the information would be provided once known and the Commission, and the DOC EERA would evaluate the new layout at that time. The DOC EERA argued that:

1. The layout is based on dated turbine designs. The current unknowns include size in MW, height and rotor diameter of current turbine designs. These variables would likely have a significant effect on locations and setbacks for the preliminary layout.
2. The layout is based on environmental knowledge gathered approximately eight years ago. New NHIS data may have an influence on repositioning turbines or turbine strings.
3. New LWECs layouts are currently designed with the benefit of an ABPP. The layout in the existing amended permit is agnostic in this regard.
4. Finally, the layout does not take into consideration any relocation of turbines attributable to the avoidance of radio towers in the northeast corner of the boundary.

This conflict is an issue that staff sees as an issue solely due to the age of this permit and the lack

---

<sup>6</sup> See Commission Docket WS-07-318.

of progress made on the project. New applicants coming to the Commission must provide this information (to the extent known) at the time of application submittal. With their proposed layout (or plural, layouts – if there is more than one turbine type proposed) is all the requisite environmental information impacts, and proposed mitigation measures, associated with each layout. The information that DOC EERA notes is lacking here is information that is now required prior to the Commission’s issuance of a site permit – or even application acceptance. While information on a turbine type or layout may change either during the permitting process or after, the applicant must provide the Commission with an petition for amendment that includes all the appropriate environmental data to support the layout or turbine type modification. Again, staff agrees with the DOC EERA that this information is necessary to conduct an updated evaluation on whether to amend the site permit and it should be provided prior to the Commission’s decision on whether to amend the site permit.

Or, staff believes the Commission could deny the Petition without prejudice. Staff believes Flat Hill has had sufficient time to obtain a PPA and commence construction under the permit conditions it was afforded in 2010 and amended in 2013. The original site permit application was filed in October of 2008 and the permit was issued in February 2010. At some point, a location for a site permit needs to be reassessed, both in terms of environmental information (which we are lacking here) and also in the ability for the public to be noticed and provided the opportunity to participate. The Notice of Comment Period on the Flat Hill Petition was noticed to the Project Contact List (those who wish to be included on project mailings) and the Commission’s Service List. However, unlike the initial permit review process, no newspaper publications or other general area notice, or public hearing, is required. The Commission should consider how much public notice and participation is appropriate if a project has not commenced, post-permit issuance.

Staff believes it is reasonable for the Commission to deny the extension and revoke the site permit, as the project information is now out of date. The Commission noted in the Kenyon Wind site permit termination order:<sup>7</sup>

“The wind facility siting permits allow the Commission to set time limits in site permits because the public interest requires providing as much certainty and stability as possible for residents, landowners, and communities likely to be affected by potential wind developments. Such time limits promote the siting of LWECs in an orderly manner, consistent with environmental preservation, sustainable development, and the efficient use of resources...”

#### *Approval of Petition Option and Suggested Permit Amendments*

Should the Commission choose to amend the permit, staff recommends that the amended permit include the suggestions proposed by DOC EERA (as modified by staff) and two additional clarifications.

- 1) Inclusion of the 2010 Permit requirement to setback 1,200 feet from non-participating

---

<sup>7</sup> Commission *Order Denying Petition and Allowing Site Permit to Expire*, Docket WS-06-1445, Dated December 23, 2010, at page 4.

landowners (included in the original 2010 permit, but inadvertently omitted from the 2013 amendment).

- 2) A requirement that Flat Hill distribute the amended permit to landowners as per Special Condition 13.1 of the 2013 Amended Permit.
- 3) (Modified DOC EERA) Failure to commence construction in the timeframe authorized by this 2015 extension, and absent a PPA or other enforceable mechanism, the site permit would be revoked by the Commission.<sup>8</sup>
- 4) References to “Department of Commerce State Permit Manager” in Sections 5.6 and 5.7 of the Permit should be changed to “Department of Commerce Environmental Review Manager.
- 5) The language on permit transfer in Section 11.5 of the Permit should be replaced with the more precise language used in Section 11.5 of the Odell Site Permit:

***11.5 Transfer of Permit and Notice of Ownership***

*The Permittee may not transfer this permit without the approval of the Commission. If the Permittee desires to transfer this permit, the holder shall advise the Commission in writing of such desire. The Permittee shall provide the Commission with such information about the transfer as the Commission requires in order to reach a decision. The Commission may impose additional conditions on any new Permittee as part of the approval of the transfer.*

*Within 20 days after the date of the notice provided in Section 8.4, the Permittee shall file a notice describing its ownership structure, identifying, as applicable:*

- a) the owner(s) of the financial and governance interests of the Permittee;*
- b) the owner(s) of the majority financial and governance interests of the Permittee’s owners; and*
- c) the Permittee’s ultimate parent entity (meaning the entity which is not controlled by any other entity).*

Last, staff recommends the Commission consider including two provisions, first, one that allows for staff to make clarifying amendments to the permit it may find necessary during the finalization of the permits (if the Commission authorizes the amendments) to ensure consistency between issued permits.

---

<sup>8</sup> Staff omitted the language regarding the route permit, as included by the DOC EERA staff. The route permit docket was not noticed for the Commission’s agenda.

## VII. Decision Options

---

### A. Certificate of Need (CN-08-951)

1. Vary 7849.0400 subpart 2(H) which requires the Commission consider the request for the change in size, type and timing within 45 days of the Petition.
2. Determine that the change in timing to December 2017 is acceptable without recertification.
3. Determine that the change, if known at the time of the need decision, could have resulted in a different decision and order additional hearings.
4. Take no action.
5. Take some other action.

### B. Site Permit (WS-08-1134)

1. Grant the amendments as requested by Flat Hill Windpark I, LLC in its Petition.
2. Grant the amendments as requested by Flat Hill Windpark I, LLC in its Petition:
  - a. Incorporate EFP staff's permit amendments
  - b. Incorporate DOC EERA's permit amendments as further modified by staff and outlined above.
  - c. Authorize Commission staff to make further permit modifications necessary to ensure consistency of recently issued permits.
  - d. Require Flat Hill Windpark I, LLC request an updated NHIS review within 30-days of the Commission Order authorizing a permit amendment and file a compliance document within 20 days of receipt of NHIS data from the DNR indicating whether the data has changed since original NHIS data search was conducted.
3. Table the decision on whether to amend the site permit and within 60 days require Flat Hill Windpark I, LLC to:
  - a. Perform an Natural Heritage Inventory System (NHIS) review within 20 days of this order, provide the results to the Commission within 20 day of receipt of the information from the DNR, including a report detailing any changes from the original NHIS review;
  - b. Provide information on any avian and bat studies performed since the last extension;
  - c. Provide information on anticipated turbine design; and,
  - d. Provide an updated preliminary turbine layout and associated environmental information based on the most current data available.
4. Deny the amendments as requested by Flat Hill Windpark I, LLC and revoke the site permit for the reason discussed in staff briefing papers and in filed comments.
5. Take some other action.

**Staff recommends:** Certificate of Need: A1 and A2  
Site Permit: B3 or B4