

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

ISSUE DATE: October 6, 2015

DOCKET NO. IP-6687/WS-08-1134

ORDER POSTPONING DECISION
ON PERMIT AMENDMENT AND
REQUIRING FILINGS

PROCEDURAL HISTORY

On February 5, 2010, the Commission issued a site permit to Noble Flat Hill I, LLC, now known as Flat Hill Windpark I, LLC (Flat Hill or the Company), for a 201 MW wind-farm project in Clay County.

The site permit required Flat Hill to either obtain a power purchase agreement or other legally enforceable mechanism for selling the project's electricity within two years of the date the site permit was issued or advise the Commission of the reason for failing to do so. The permit imposed the same requirement for beginning construction of the wind farm.

On May 20, 2011, the Commission dismissed a contested-case proceeding involving a radio station's challenge to the project after the parties reached a settlement. In its dismissal order, the Commission extended the deadlines for obtaining a power purchase agreement and beginning construction to two years from the date of the order (First Amended Permit).¹

On April 4, 2013, Flat Hill filed a petition to amend the site permit to extend by two years the deadlines for obtaining a power purchase agreement and beginning construction. Flat Hill stated that delays in the Midwest Independent System Operator's (MISO's) processing queue and delays due to the contested-case litigation had made it impossible for the Company to move forward with developing the wind farm.

On August 27, 2013, the Commission granted Flat Hill's petition and issued an amended site permit extending the deadlines to two years from the date of the amendment (Second Amended Permit).²

¹ Order Dismissing Contested Case Proceedings and Adopting and Modifying Proposed Order, this docket.

² Order Granting Amendments to Site and Route Permits and Requiring Compliance Filings, this docket.

On July 15, 2015, Flat Hill filed a second petition asking the Commission to amend its site permit to extend by two years the deadlines for obtaining a power purchase agreement, completing preconstruction surveys, and beginning construction. The Company also requested that the Commission extend the permit's expiration date accordingly. Flat Hill stated that uncertainty over whether Congress would extend the federal Production Tax Credit (PTC) had prevented the Company from finding a buyer for the project's energy.

On August 6, 2015, the Minnesota Department of Natural Resources (DNR) filed comments recommending that Flat Hill query the DNR's Natural History Information System (NHIS) database to determine whether the wind farm could pose a risk to bird or bat populations. The DNR stated that the last NHIS review of the project dates from January 2007.

Also on August 6, the Minnesota Department of Commerce – Energy Environmental Review and Analysis (EERA) filed comments recommending that the Commission require Flat Hill to update the record before deciding whether to grant the Company a final extension of the permit deadlines.

On August 17, 2015, Flat Hill filed reply comments accepting the conditions recommended by the Department and DNR.

On September 17, 2015, the Commission met to consider the matter.³

FINDINGS AND CONCLUSIONS

I. Regulatory Background

Minnesota Statutes section 216F.04 authorizes the Commission to issue, amend, and revoke wind-farm site permits.

Under Commission rules, a wind-farm site permit is issued only if “the project is compatible with environmental preservation, sustainable development, and the efficient use of resources.”⁴ The Commission may amend a wind-farm site permit at any time if there is good cause to do so.⁵

II. Positions of the Parties

A. Flat Hill

Flat Hill argued that good cause existed to extend the deadlines for securing a power purchase agreement and beginning construction of the wind farm. The Company stated that in 2013 and 2014, development of the project was hindered by a weak market for wind energy driven by

³ On the same date, the Commission took up Flat Hill's request to change the in-service date for the project's certificate of need in Docket No. IP-6687/CN-08-951.

⁴ Minn. R. 7854.1000, subp. 3. *See also* Minn. Stat. § 216F.03 (providing that state policy is to site wind farms “in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources”).

⁵ Minn. R. 7854.1300, subp. 2.

uncertainty over whether Congress would extend the PTC. However, Flat Hill maintained that the status of the wind market has improved and stated that it is in discussions with a Minnesota utility regarding a potential power purchase agreement.

Flat Hill committed not to make additional requests to extend timelines without obtaining an executed power purchase agreement or other enforceable mechanism for selling the project's power.

B. The EERA

The EERA stated that it would support granting Flat Hill's requested amendments if the Company can demonstrate that the project remains compatible with environmental preservation, sustainable development, and the efficient use of resources. To that end, the EERA recommended that the Commission require the Company to update the record as follows:

- Perform an NHIS review and report on any changes from the original results;
- Provide information on any avian and bat studies performed since the last extension;
- Provide information on anticipated turbine design; and
- Provide an updated preliminary turbine layout based on the most current data available.

The EERA also recommended including two special conditions in the permit. First, EERA recommended requiring a minimum setback from non-participating residences of 1,200 feet. This condition was included in the original permit but was not carried forward in the Second Amended Permit in 2013. Second, the EERA recommended carrying forward special condition 13.1 from the Second Amended Permit, which required Flat Hill to send landowners in the project area a letter summarizing changes to the permit.

Finally, the EERA recommended that if Flat Hill fails to begin construction by the deadline set in a new amended permit, the permit should be revoked and the Company required to file a new application before continuing with the project.

C. Flat Hill's Reply

Flat Hill agreed to request an NHIS review from the DNR, report on any changes since the last review, and provide an update on anticipated turbine design and layout. At hearing, the Company asked that it be allowed 120 days to provide this information.

Flat Hill stated that it has engaged a consultant to complete updated spring and fall avian surveys in 2016. Flat Hill committed to provide the Commission with the final results of the surveys within four weeks of completing them. Flat Hill stated that, consistent with the requirements of its site permit, it would use the data obtained to prepare an avian and bat protection plan in consultation with the DNR and the EERA.

Flat Hill agreed to the permit conditions recommended by the Department: a 1,200-foot minimum setback, a requirement that it notify landowners by letter of permit changes, and a condition that the site permit would be revoked if the Company fails to commence construction or obtain a power purchase agreement within the timeframes of the amended permit.

Finally, at the hearing, Flat Hill agreed to the following additional changes to its site permit:

- Changing references to “Department of Commerce State Permit Manager” in Sections 5.6 and 5.7 to “Department of Commerce Environmental Review Manager”;
- Replacing the language of Section 11.5 with the more precise language used in a recent wind-farm site permit;⁶ and
- Incorporating other permit modifications necessary for consistency with recently issued permits.

III. Commission Action

The Commission concurs with the Department that giving Flat Hill more time to obtain a power purchase agreement and begin construction would be appropriate only if the project remains consistent with the state policy requiring that wind farms be sited in a manner consistent with environmental preservation, sustainable development, and the efficient use of resources.

In issuing the original permit, the Commission determined that the project was consistent with these policy goals. However, much of the data on which this determination was made, including the original NHIS results, anticipated turbine design, and turbine layout, dates from 2007 or 2008. Therefore, to ensure that its decision is informed by the most current information, the Commission will require Flat Hill to update the record as recommended by the EERA.

The Commission will allow Flat Hill 120 days to obtain an NHIS review from the DNR, to complete a report detailing any changes from the last review, and to file this report along with updates on avian and bat studies, anticipated turbine design, and preliminary turbine layout. Once Flat Hill has filed this information, the Commission will determine whether there is good cause to amend its permit to allow more time to secure a power purchase agreement and begin construction.

Finally, the Commission clarifies that its decision is premised on Flat Hill’s representations that it will, if a permit amendment is ultimately granted,

- Incorporate the EERA’s recommended permit amendments;
- Incorporate Commission staff’s recommended permit amendments as outlined in the briefing papers; and
- Incorporate additional permit modifications necessary to ensure consistency with recently issued wind-farm site permits.

⁶ See *In the Matter of the Application of Odell Wind Farm, LLC for a Site Permit for a 200 MW Large Wind Energy Conversion System for the Odell Wind Farm in Cottonwood, Jackson, Martin, and Watonwan Counties*, Docket No. IP-6914/WS-13-843, Order Issuing Site Permit, Attachment (July 17, 2014).

ORDER

1. The Commission's decision on Flat Hill Windpark I, LLC's amendment request is postponed.
2. Within 120 days, Flat Hill shall do the following:
 - a. Request a Natural Heritage Inventory System (NHIS) review within 20 days of this order and provide the results to the Commission within 20 days 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.
3. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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