

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: **April 21, 2016** **Agenda Item # 1***

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 an extension to the in-service date of the Certificate of Need without Recertification or Further Hearing?

Should the Commission amend or revoke the LWECS Site Permit pursuant to Minn. Rule 7854.1200 and 1300?

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Relevant Documents

CN-08-951

Commission – Order Finding ER Adequate and Granting Certificate of Need .. February 3, 2010
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
Commission – Order Varying Minn. R. 7849.0400, Subp. 2H October 6, 2015

WS-08-1134

Commission – Order (Issuing Site and Route Permit)..... February 5, 2010
Commission – Order Granting Amendments to Permits (...) August 27, 2013
Flat Hill Windpark – Petition for Modification or Amendment to the Site PermitJuly 15, 2015
DOC EERA – Comments and Recommendations on Amending the Site PermitAugust 6, 2015
MDNR – 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
Commission – Staff Briefing Papers for September 17, 2015 Agenda	September 10, 2015
Commission – Order Postponing Decision and Requiring Filings	October 6, 2015
Flat Hill – Letter on NHIS Data Request.....	October 26, 2015
Flat Hill – Compliance Filing Updated NHIS Report	December 30, 2015
Flat Hill – Compliance Filing Supplement for Modification or Amendment	February 3, 2016
DOC EERA – Comments and Recommendation on Filings and Amendment....	February 26, 2016
Commission – Public Comments.....	March 7, 2016

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.

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I. Statement of Issues

Should the Commission approve the Petition for an extension to the in-service date of the Certificate of Need without Recertification or Further Hearing?

Should the Commission amend or revoke the LWECS Site Permit pursuant to Minn. Rule 7854.1200 and .1300?

II. Procedural History

The Flat Hill Windpark I project (Flat Hill, the Project) is an up to 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.^{1,2}

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.

On May 20, 2011 the Commission issued an *Order Dismissing Contested Case Proceedings and Adopting and Modifying Proposed Order* as a result of an appeal of the dockets due to issues with a nearby radio tower. The Order affirmed the permits without modification, with the exception of authorizing a ‘restarted’ two year period in which Flat Hill obtain a power purchase agreement (PPA) and commence construction – extending the time authorized to obtain a PPA from May 2011 to May 2013 (first extension).

On April 4, 2013, Flat Hill filed petitions to extend the time authorized to obtain a PPA and commence construction in the certificate of need, route permit, and site permit dockets (second extension). Flat Hill cited issues related to the Mid-Continent Independent System Operator (MISO) queue and the appeal, noted above, as factors causing delay in the 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 term).³

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

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

³ 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 amended permit, 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.

On July 15, 2015, Flat Hill filed petitions to extend the time authorized to commence construction in the certificate of need and site permit dockets (third extension). Flat Hill cited issues related to the earlier MISO queue issues and the appeal; and more recently, challenges due to a downturn in the wind market, uncertainty regarding the federal production tax credit (PTC), and the timing of Flat Hill entering into 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.

In August 2015 comments were received on both the certificate of need and site permit Petitions (third extensions):

- The Department of Commerce Division of Energy Resources (Department or DER) filed comments in the certificate of need docket recommending an extension.
- The Department of Commerce Energy Environmental Review and Analysis (EERA) and the Minnesota Department of Natural Resources (MDNR) filed comments in the site permit docket requesting that the developers submit supplemental project information prior to a Commission decision.
- Several members of the public filed comments both in support of, and in opposition to, the requested time extensions in the certificate of need and site permit dockets.

The Commission met to consider the matters in September 2015, and in its October 6, 2015 *Order Postponing Decision on Permit Amendment and Requiring Filing* (October 2015 Order), the Commission postponed a site permit decision to allow the developer to supplement the record with updated turbine type information, layout information and updated natural resource information (among other items).⁴

On December 30, 2015, Flat Hill filed its 2015 National Heritage Information System (NHIS) review and summary report (NHIS Summary Report).

On February 3, 2016, Flat Hill filed additional project information and a supplemental petition (Supplemental Petition).⁵

On February 26, 2016, EERA filed its comments recommending that the Commission find that Flat Hill has satisfactorily addressed the requirements of the Commission's Order and recommending the Commission grant a final extension to Flat Hill.

⁴ The Commission also postponed the certificate of need decision pending the filing of additional information, see *Order Varying Minn. Rule 7849.0400, Subp. 2H.* and Doc ID: [201510-114624-01](#).

⁵ The Commission issued a comment period on the Supplement and noticed all three related docket service lists, the wind docket's project contact list and state agencies. See Comment Period Notice Doc. ID: [20162-118096-03](#) and Certificate of Service (which outlines all docket lists served)- Doc. ID: [20162-118096-06](#)

IV. Certificate of Need Petition

A. 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) and 2(H), Flat Hill must inform the Commission of the desired change and explain the reasons for the change.

In its July 15, 2015, Petition, Flat Hill requested an extension to the certificate of need in-service date until December 2017 (which is effectively December 2018 due to the wording in Minnesota Rule 7829.0400).

B. Certificate of Need – Summary of Events

Staff summarized the certificate of need Petition in its briefing papers for the September 17, 2015 agenda:

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.

C. Certificate of Need Public Comment

Public comments relating to the certificate of need docket indicated general concern 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.

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 extension of this project.

Last, since the developer had essentially submitted a new filing with its Supplement, the Commission should not allow further extensions.

V. Site Permit Petition

A. Site Permit Amendment – Relevant Law

The original 2010 Site Permit (and later amended versions) required the permittee to advise the Commission of the reasons for delay if it was not able to obtain a power purchase agreement or some other enforceable mechanism for the sale of electricity from the project or commence construction within two years of the date of issuance of the permit (Site Permit Sections 10.2 and 10.3).

Because Flat Hill did not begin construction of the project before August 27, 2015, (two years from the most recent extension) it must seek Commission approval of an amendment to the site permit. Under Minnesota Rule 7854.1300, the Commission may amend a permit at any time if the Commission has good cause to do so.

B. July 2015 - Third Extension Petition Overview

On July 15, 2015, Flat Hill filed a request for extension and amendment of its site permit for an additional two years (from the date of the Commission's new authorization). At the time of Flat Hill's Third Extension Petition, EERA noted that if the environmental conditions remained the same as they were at the time of the original authorization, there would be no

reason to deny the extension, however, due to a lack of information, the EERA was unable to determine whether the data supported that conclusion. Both the EERA and the MDNR (in separate comments) recommended the Commission request additional information on the project before making a decision on a permit extension.

The Commission met to consider the matter in September 2015 and agreed with the agencies' recommendations that additional information was necessary. In its October 2015 Order, the Commission directed Flat Hill to file supplemental project information and delayed decisions on the certificate of need and site permit extensions. The Commission required Flat Hill to:

- 1) 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 MDNR, including a report detailing any changes from the original NHIS review;
- 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 and associated environmental information based on the most current data available.

The Commission conditioned any further amendments on the representations made by Flat Hill that it will:

- 1) Continue to include a 1,200-foot turbine setback from non-participating landowners;
- 2) Distribute the amended permit to landowners as per condition 13.1;
- 3) Not seek an additional site permit amendment (fourth extension) if it fails to obtain a PPA within the timeframe authorized by the current (third extension) amendment; and,
- 4) Adhere to updated site permit conditions and language that has been applied to more recent site permits.

C. December 2015 NHIS Review Report

As required, Flat Hill filed the NHIS Review Report on December 30, 2015.

Several issues were noted by the MDNR in its letter. The MDNR review indicated that “**rare features may be adversely affected** by the proposed project” [emphasis added by MDNR] and that Flat Hill should address potential implications to the above rare features in the Site Permit Application and the required Avian and Bat Protection Plan (ABPP) should include measures to minimize impacts to rare birds and bats..⁶

Additionally, the 2015 NHIS review stated that for environmental review purposes, the inventory is only valid for a period of one-year and that the MDNR should be contacted if construction does not commence within that period. Areas discussed in the report included:

⁶ Staff notes that the MDNR did request the information be included in the Site Permit Application however, due the nature of this amendment request – an application is not before the Commission at this time.

1. Native Prairie

The MDNR noted in both the 2007 and 2015 NHIS reviews that native prairie remnants had been identified in the railroad right-of-way within the project area.

In the MDNR's 2007 NHIS Review the agency recommended that wind turbines not be placed within $\frac{1}{4}$ mile (and preferably $\frac{1}{2}$ mile) of native prairie remnants. However, this recommended setback was *not* noted in the 2015 NHIS review letter.

In the 2015 update regarding native prairie, the MDNR recommended that Flat Hill:

- Avoid ground disturbance within the railroad right-of-way (ROW);
- Do not park equipment or stockpile supplies within the railroad ROW;
- Divert runoff away from the native prairie remnants;
- Revegetate disturbed soil with native prairie species immediately following construction; and
- Use only weed-free mulches, topsoils, and seed mixes.

2. Proximity to state natural resources

The MDNR indicated that due to revisions made by Flat Hill since the 2007 NHIS review, natural resource areas that had been located within or adjacent to the project boundary are no longer within or adjacent to the area reviewed by the MDNR. Figure 3 from the Supplemental Petition shows the nearby state natural resource areas and is attached to this paper for reference.⁷

3. State Listed Species

a. Black Sandshell mussel

The 2015 NHIS review identified the presence of the black sandshell mussel in the Buffalo River in the vicinity of the proposed project. The MDNR recommended standard erosion and sediment control practices be implemented and maintained near the river.

b. State-listed birds, generally

Due to the proximity of the Felton Prairie Important Bird Area (IBA) to the project area, the MDNR continued to recommend post-construction avian fatality monitoring as it had in the 2007 review.

⁷ It is staff's understanding that the proposed site boundary has not been modified since the 2008 *application* submittal. However, staff believes that the areas evaluated in the 2007 NHIS review and the 2015 NHIS review may have been different, which explains some of the changes to the NHIS review results.

c. Prairie Chicken

Greater prairie-chicken booming grounds have been documented in the project boundary and within the Felton Prairie IBA. Both the 2007 and 2015 NHIS reviews recommended that Flat Hill contact the Area Wildlife Manager for current information on prairie-chicken activity within the project boundaries as the booming areas can change from year to year. As it recommended in 2007, the MDNR restated its recommendation that if active booming grounds are present, no construction work near the areas should occur from April 1 to May 15. In addition, Flat Hill should minimize the placement of roads, fences, and other infrastructure in the vicinity of the known booming grounds.

4. Federally Listed Species

a. Northern long-eared bat (NLEB)

The 2015 NHIS review noted that no records of bats in the vicinity of the project were found, however it noted that the NHIS database is not exhaustive. Further, the MDNR stated that based on acoustic data collected by Tetra Tech in 2008, all seven of Minnesota's bat species likely use the project area. Due to the potential of wind farms to adversely affect ("take") the NLEB, the MDNR recommended that Flat Hill coordinate with the United States Fish and Wildlife Service given the May 4, 2015 listing of the northern long-eared bat as a threatened species.

D. February 2016 Supplemental Petition

Flat Hill filed a response (Supplemental Petition) to the Commission's October 6, 2015 *Order Postponing Decision on Permit Amendment and Requiring Filings* and addressed the four requirements of the Commission's Order to:

- 1) 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 MDNR, including a report detailing any changes from the original NHIS review;
- 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 and associated environmental information based on the most current data available.

As noted above, the first item was provided in December 2015 as part of the NHIS Review Report.

Regarding the second item, Flat Hill 1) stated its intention to conduct spring and fall point count surveys, 2) provided details on the study proposal and 3) proposed a timeframe for

completion of work.⁸ Flat Hill committed to submitting that information to the Commission following the completion of work. Flat Hill noted that in the event the survey results raise concerns about avian and bat impacts, the Commission can address those as they arise.

To comply with the third item, Flat Hill submitted updated information on the newly proposed turbine for the project, the 3.0 MW Acconia AW 132/3000. Flat Hill provided a comparison of the previously permitted 1.5 MW GE turbine to the updated Acconia turbine (including information such as hub height, cut-in speed, rotor speed, etc.)

To accommodate the new turbine size and type, the Supplemental Petition also included a petition for two additional permit amendments to accommodate the change:

Section 1. Project Description

The up to 201 MW LWECS authorized to be constructed in this Permit will be owned and operated by Flat Hill Windpark I, LLC. The Project will consist of ~~134~~ 67 wind turbine generators each ~~1.5 MW~~ 3.0 MW in capacity with a combined nominal nameplate capacity of no more than 201 MW...

Section 4.9 Wind Turbine Towers

Structures for wind turbines shall be self-supporting tubular towers. The towers will be up to ~~328 feet~~ 120 meters [393.7 feet] above grade measured to hub height...

To meet the terms of the fourth item, Flat Hill provided a new proposed Project Layout, which due to the reduced number of turbines, has a condensed turbine footprint (though not a reduced project boundary). Flat Hill stated that it has engaged Tetra Tech to develop more detailed constraint maps and noise and shadow flicker modeling reports for the project. Flat Hill stated its commitment to provide the reports to the Commission within 120 days of the extension of the Site Permit. Flat Hill noted that while the reports are not available at this time, it is required to comply with all applicable law in the final siting of turbines, including:

“Minnesota Pollution Control Agency noise standard compliance and post-construction noise monitoring, and pre-construction shadow flicker data for each residence subject to exposure from turbine shadow flicker.”

Additionally, Flat Hill explained its plans to evaluate the revised turbine locations for potential impacts to cultural resources, wetlands, and other biological and natural resources in compliance with Site Permit pre-construction evaluation requirements.

⁸ The proposed (spring) schedule provides a February 22, 2016 Authorization to Proceed, March 21, 2016 Spring Field Work Commencement, June 10, 2016 Spring Field Work Completion, and a July 15, 2016 Spring Survey Report.

VI. Comments on the Supplemental Petition

A. EERA Comments

EERA staff stated that its August 6 comments still stand. In that filing EERA indicated that its recommendation on whether to amend the permit was dependent on the Applicant providing certain information.⁹ EERA's recommendation stated:

EERA notes the Department's Division of Energy Resources (DOC-DER) opinion that the Project is still needed and that the change in timing is "acceptable without further hearings." EERA further notes that the Project was issued a permit because it "...is compatible with environmental preservation, sustainable development, and the efficient use of resources..." (Minn. Rule 7854.1000, subp. 3).

Given the Permittee's explanation of its endeavors to obtain a PPA, there would be no clear reasons to deny this extension if the environmental conditions on which the permit was issued remained unchanged. Unfortunately, we don't have the data to verify that is the case. Before the Commission amends the permit to extend the date of construction another two years, EERA recommends the Commission require the Permittee to:

1. Perform an NHIS review and report on any changes from the original;
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.

EERA recommends including a special condition to require setbacks from non-participating residences at a minimum of 1,200 feet; and a condition to distribute the amended permit as per Special Condition 13.1 of the 2013 Amended Permit.

EERA further recommends that, failing to commence construction within the time frame of a new amended permit and the existing route permit, both permits should be considered for revocation. Any project going forward would then require a new Application and review before the Commission.

In its comments on the Supplemental Petition, EERA suggested that the issue to be resolved is whether the Permittee has satisfied the intent of the Commission's October 2015 Order with its submission of the supplemental information (NHIS Review Report and Supplemental Petition). The DOC EERA staff indicated its belief that Flat Hill has filed the appropriate information.

⁹ [DOC EERA Comments - August 6, 2015](#)

B. Site Permit Amendment Public Comments

1. Original Comment Period (August 2015)

Seven comments from the public requested denial of the Petition due to 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, loss in property values, the lack of a public hearing or other opportunity to be heard regarding the extension, concerns regarding the endangered prairie chickens in the project area, and general concern for avian species.

Two comments from the public indicated their support for the extensions but did not provide a basis for the support.

2. Supplemental Petition Comment Period (March 2016)

Two comments were received, subsequent to the October 2015 Commission Order, from Scot Stradley and Kathleen Stradley, both local area residents.

Mr. Stradley argued that the project is being hastily put together and with the latest submission, Flat Hill is now attempting to submit an entirely new project. He noted concerns with the larger turbine size and a lack of information provided about the impacts from the larger turbines generally and to the local area.

He argued that the perpetual permitting process has allowed Flat Hill to ‘seize’ his property without compensation which has resulted in a violation of his property rights. He argued that the project has not been approved by the Department of Health. Additionally, he requested that a public comment period should be authorized following any change to turbine height, size, or blade diameter. He indicated his belief that public comment periods on this project have excluded residents.¹⁰

Last, he noted his concern regarding the impact of the larger turbines to birds and he requested a full environmental impact study for the new project. He suggested that the environmental report should be made available to the public and that the public should be provided an opportunity to comment following the release of the report.

Ms. Stradley argued that the project is no longer needed and that a recent (unnamed) report from the Department of Commerce indicated that Minnesota will be able to surpass its goal for renewable energy.

¹⁰ Staff notes that the notice of comment period on the Third Extension Petition and the Supplemental Petition were provided to project Service Lists, Project Contact Lists and state agencies.

VII. Staff Discussion

A. Certificate of Need - Extension Request

Staff agrees with the Department's conclusion (using the reasoning and assumptions outlined by the Department) that in this instance the Commission can reasonably conclude that the change is acceptable without further hearing or recertification.

B. Site Permit Petition for Amendment and Turbine Type Modifications

Staff will not repeat its comments made in the staff briefing papers for the September 17, 2015 agenda meeting, but refers the Commission to the staff discussion in that paper for further relevant background.

While EERA argued that the question before the Commission was whether Flat Hill has filed the information required by the Commission's October 2015 Order, staff does not view the question so narrowly. Staff still believes the Commission must also consider whether the information before it is sufficient to find that the project "is compatible with environmental preservation, sustainable development, and the efficient use of resources..." pursuant to Minn. Rule 7854.1000, subp. 3.

Additionally, staff notes that the Commission did not so narrowly adopt the recommendations made by EERA during the earlier decision on the Third Extension Petition. The Commission (following from the discussion during the agenda meeting) directed that, not only should Flat Hill file an updated turbine design and layout, but it also required Flat Hill to file *associated environmental information*.

Flat Hill provided updated information, but did not file information equivalent to the level necessary for a site permit *application* were it submitted today. While some of the information would be difficult to obtain during the previous six-plus months since the October 2015 Order (a completed ABPP, for example) other information could have been provided. Flat Hill has committed to submit additional reporting on shadow flicker and noise modeling, but it noted that it would only do so 120-days after the Commission has authorized an extension of the site permit.

The turbine layout does not provide details on access roads or other project components, nor does the supplemental filing call out whether the new turbine layout is anticipated to have differing impacts (nor does it propose mitigation measures) to native prairie or other natural resources.¹¹ Flat Hill noted at page 6 of their Supplemental Petition:

¹¹ From knowledge of the site, and the MDNR's comments, staff believes native prairie (and other natural resources) would likely not be impacted or would be impacted at a level similar to the original turbine layout. However, it is not explicitly discussed by the Applicant – nor is any of the updated NHIS data and its relation to the new turbine layout and size.

“Additionally, Flat Hill plans to evaluate the revised turbine locations for potential impacts to cultural resources, wetlands, and other biological and natural resources in compliance with Site Permit pre-construction evaluation requirements.”

While that level of detail may not have been required in 2008, the analysis of potential impacts for a project is required of applicants today. Staff notes that the Department of Commerce’s *Application Guidance for Site Permitting of Large Wind Energy Conversion Systems in Minnesota*, issued in August 2010, outlines the information that should be filed with a project’s *initial application*. As an example, that guidance includes a requirement at item 8.20.2 that an applicant, prior to submittal of an application identify native prairie within or adjacent to the project boundary.¹² The record to date indicates (from Flat Hill’s 2008 Site Permit Application):

- If native prairie impacts are necessary, the Applicant shall, with the advice of the MDNR, and any others selected by the Applicant, prepare a prairie protection and management plan. The plan will be submitted to the PUC and MDNR after issuance of the site permit and prior to construction. The plan shall address steps to be taken to identify native prairie within the Project area, measures to avoid impacts to native prairie, and measures to minimize and mitigate for impacts if unavoidable. Project facilities including wind turbines, foundations, access roads, underground collector lines, and transformers, shall not be placed in native prairie unless addressed in the prairie management plan. Measures to be taken to mitigate unavoidable impacts to native prairie will be agreed to by the Applicant and MDNR.

In the Environmental Impact Statement (EIS) conducted for the project, at pg. 87, noted “that based on the preliminary turbine array … the Proposed Project would not impact …native prairie tracts”. This is an indication how the environmental review of the project was turbine-location dependent and is need of additional supplementation.

Wildlife

The Proposed Project would result in a minimal loss of native vegetation that provides significant wildlife habitat. The majority of construction activities and land alterations for the wind turbines, access roads, associated facilities and HVTL would occur on agricultural lands. Based on the preliminary turbine array and Proposed HVTL routes, the Proposed Project would not impact the wildlife habitat within natural areas such as the Buffalo River State Park, WMAs, Scientific and Natural Areas or native prairie tracts.

The EIS (in the same section) discusses how any potential impacts could be mitigated, but staff questions whether this is sufficient for current Commission permitting standards:

¹² Available at http://www.mn.gov/commerce/energyfacilities/documents/LWECS_APP_Guide_AUG2010.pdf

A concern with the past construction of some windparks was the absence of consideration of potential wildlife impacts during siting and design. By coordinating with MDNR on potential habitat and wildlife impacts and shifting the overall project area to avoid sensitive habitats, the Applicant has taken measures during the planning stages of the project to minimize potential wildlife impacts. As required by the Draft Site Permit, the Applicant will conduct a pre-construction inventory of existing biological resources, native prairie, and wetlands in the Proposed Project Area (Appendix D). The Applicant will use the results of the pre-construction biological survey to minimize and avoid impacts to wildlife and sensitive native habitats during final project engineering and design of wind turbines, access roads and transmission line pole placement. If it is determined that impacts would occur the Applicant will coordinate with the MDNR or other appropriate agencies to develop an acceptable mitigation strategy as required by the Draft Site Permit.

Permit Amendment Option

Should the Commission choose to find the record sufficiently complete and elects to amend the permit, staff recommends that the Commission include the suggestions proposed by DOC EERA (as modified by staff) and an additional clarification for administrative consistency (discussed further below).

- 1) Inclusion of the 2010 Permit requirement to setback 1,200 feet from non-participating 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 2016 2015 extension, and absent a PPA or other enforceable mechanism, the site permit would be revoked by the Commission.¹³
- 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 most recent issued permit] 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.

¹³ Staff omitted the language regarding the route permit, as included by the EERA staff. The route permit docket was not noticed for the Commission’s agenda.

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).*

Per the DOC EERA staff's earlier comments in this record, EERA noted that the Flat Hill permit conditions were updated in Flat Hill's 2013 amendment to reflect requirements more recently issued permits and staff believes that to be accurate.¹⁴ However, staff requests the Commission authorize staff the ability to make clarifying amendments that may be necessary during the finalization of the permit and order to ensure consistency between the amended permits (if necessary).

Last, staff notes that while Flat Hill has petitioned the Commission for a two year extension from the date of the Commission's order authorizing the extension (likely to extend to May 2018), the Commission could allow an extension of a time period it deems appropriate. The original request was to align the certificate of need, route permit and site permit together and authorize an extension to December 2017. If the Commission does not explicitly indicate an 'expiration date' of the permit the deadline to obtain a PPA and construct will be approximately May of 2018.

¹⁴ Staff notes that while the *permit conditions* may be up to current standards, the concern staff has is whether the data and facts supporting the decision of whether to issue a site permit is comparable to current standards.

VII. Decision Options

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

1. Determine that the change in timing to December 2017 is acceptable without recertification.
 2. Determine that the change, if known at the time of the need decision, could have resulted in a different decision and order additional hearings.
 3. Take no action.
 4. Take some other action.

B. Site Permit (WS-08-1134)

1. Grant the amendments as requested by Flat Hill Windpark I, LLC in its July 2015 Petition and February 2016 Supplemental Petition.
 2. Grant the amendments as requested by Flat Hill Windpark I, LLC in its July 2015 Petition and February 2016 Supplemental Petition as modified by:
 - a. EERA's staff's permit amendments
 - b. EERA's permit amendments as further modified by staff and outlined above.
 3. Authorize Commission staff to make further permit modifications necessary to ensure consistency with recently issued permits.
 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
Site Permit: B2(b) or B4

Figure 3. - Flat Hill's February 3, 2016 Supplement (Site Boundary)

