MINNESOTA DEPARTMENT OF COMMERCE

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February 26, 2016

Daniel P. Wolf, Executive Secretary
Minnesota Public Utilities Commission
127 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: **Compliance Filings in the Petition for a Permit Amendment**
Flat Hill Windpark I Project
Docket No. IP6687/WS-08-1134

Dear Mr. Wolf:

Attached are the review and comments of the Minnesota Department of Commerce Energy Environmental Review and Analysis (EERA) staff in the following matter:

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

Flat Hill Windpark I, LLC has responded to the Commission's October 6, 2015, Order for further information in the Permittee's request for a second Permit Amendment, pursuant to Minnesota Statute 216F.04 (d) and Minnesota Rule 7854.1300, subp 2, to extend the date to commence construction of a 201 MW LWECS for an additional two years.

These filings were made on October 26, 2015, January 30, 2015, and February 3, 2016, by:

Andrew J. Gibbons
Stinson Leonard Street, LLP
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

EERA recommends the Permittee has satisfactorily addressed the requirements of the Commission's Order and should be granted a final extension of two years to commence construction of the LWECS Project. EERA staff is available to answer any questions the Commission may have.

Sincerely,

David Birkholz, Environmental Review Manager
Energy Environmental Review and Analysis
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MINNESOTA DEPARTMENT OF COMMERCE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS AND RECOMMENDATIONS OF THE MINNESOTA DEPARTMENT OF COMMERCE ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS

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

Date ..... February 26, 2016
EERA Staff ..... David Birkholz (651) 539-1838

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)

Issues Addressed: *These comments and recommendations address whether the Permittee has satisfactorily complied with the Commission's October 26, 2015, Order for additional filings updating environmental information and turbine and preliminary layout information.*

Additional documents and information can be found at
http://mn.gov/commerce/energyfacilities/Docket.html?Id=19766 or on eDockets at http://www.edockets.state.mn.us/EFiling/search.jsp (Year 08, Number 1134).

This document can be made available in alternative formats; e.g., large print or audio tape by calling (651) 539-1530.

Introduction and Background

On February 5, 2010, the Minnesota Public Utilities Commission (Commission) issued a Large Wind Energy Conversion System (LWECS) Site Permit to Flat Hill Windpark I, LLC (Flat Hill or Permittee) to construct the 201 MW Flat Hill Windpark I Project in Clay County.[1]

[1] Commission Order (Original), February 5, 2010, eDocket no. 20102-46844-01

On May 20, 2011, the Commission dismissed a contested proceeding concerning Radio Fargo-Moorhead, Inc. questions re Project compatibility with their radio antennae when the parties reached a settlement agreement. In their Order, the Commission also ruled:

> "The Project Permits are affirmed without modification, except the time for commencement of construction of the Project and demonstrating that the Project has obtained a Power Purchase Agreement or other enforceable mechanism for the sale of electricity from the Project under the LWECS Site Permit which is extended to two years from the effective date of this Order." [2]

On April 4, 2013, prior to the deadline of May 20, 2013, Flat Hill submitted a petition to amend its Site Permit by extending for two years both the time in which to obtain a Power Purchase Agreement (PPA) or some other enforceable mechanism for sale of the electricity and the deadline to begin construction.[3] The petition also stated, "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."

On August 27, 2013,[4] the Commission granted the extensions for two years, issued modifications to the site and route permits to ensure consistency with contemporary permits, and ordered additional compliance filings.

On July 15, 2015, Flat Hill petitioned for an additional extension of two years to commence construction of the Project while they continue to pursue a Power Purchase Agreement (PPA) or other enforceable mechanism for off-loading the power.[5]

On October 6, 2015, the Commission issued an Order postponing a decision on the requested Permit Amendment pending filings within 120 days of updated environmental information and updated turbine and Project layout information.[6]

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[2] Commission Order (Affirmed), May 20, 2011, eDocket no. 20115-62760-01

[3] Flat Hill Windpark I, LLC "Petition for Modification or Amendment of Site and Route Permits," April 4, 2013, eDocket no. 20134-85367-01

[4] Commission "Order Granting Amendments to Site and Route Permits and Requiring Compliance Filings" (Amendments), August 27, 2013, eDocket no. 20138-90622-02

[5] Flat Hill Windpark I, LLC "Petition for Modification or Amendment to the Site Permit," July 15, 2015, eDocket no. 20157-112475-01

[6] Commission "Order Postponing Decision on Permit Amendment and Requiring Filings," October 6, 2015, eDocket no. 201510-114625-01

Permittee's Responses to Order

Order Point	Description	eDocket Number	Date eFiled
2.a.	Request a Natural Heritage Inventory System (NHIS) review within 20 days of this order…	201510-115101-01	October 26, 2015
	…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;	201512-116877-02	December 30, 2015
2.b.	Provide information on any avian and bat studies performed since the last extension;	20162-117987-02	February 3, 2016
2.c.	Provide information on anticipated turbine design; and		
2.d.	Provide an updated preliminary turbine layout and associated environmental information based on the most current data available.		

EERA Analysis and Comments

EERA first notes that its analysis and comments in its original comments[7] on the petition for a Site Permit Amendment still stand, including the recommendation to amend the Permit dependent on answering certain concerns. EERA's concerns at that time were the same as those eventually ordered by the Commission to be addressed before the Commission would make its final decision.

The matter to be resolved here is if the Permittee has satisfied the intent of the Commission's Order with its submissions noted in the above table. EERA believes that it has.

[7] EERA "Comments and Recommendations," August 6, 2015, eDocket no. 20158-113083-01

NHIS Request and Review (2a)

According to Flat Hill's December 30, 2015, filing, Tetra Tech (a consulting firm acting on its behalf) submitted an updated NHIS request to the DNR on October 23, 2015. The October request fulfilled the Commission's first Order item to request a Natural Heritage Inventory review within 20 days.

The new request was for the Project boundary as described in the Permit. The original (2007) request had anticipated a different set of boundaries for dual projects. DNR provided results of that review to Flat Hill on December 10, 2015. Flat hill's December 30, 2015, filing includes copies of DNR's response to the 2015 request and the 2007 request. The filing also contains Tetra Tech's comparison of the two sets of results, as anticipated in the Order.

The new review does not differ significantly from the original, except it does define the proper boundaries of the Project. In doing so, it actually identifies fewer species in the Rare Features Database. However, the implications generally remain the same. For example, the DNR continues to recommend avoiding prairie chicken booming grounds and avoiding native prairie areas within the railroad right-of-way. DNR also continues to recommend post-construction avian fatality monitoring.

Avian and Bat Studies Updates (2b)

While the February 3, 2016, response to this Order point does not provide detailed species information, it does provide information on the Permittee's plan to acquire some of that information and to develop an Avian and Bat Protection Plan (ABPP). Details about gathering information on bat populations are not immediately evident.

The Permittee is aware that the ABPP must be designed to inform the final site plan and any post-construction monitoring requirements. Pre-construction review of any avian and bat studies and the ABPP itself will help determine if any changes are necessary from the updated preliminary turbine layout the Permittee has provided. The ABPP will also help determine how long post-construction monitoring should be conducted.

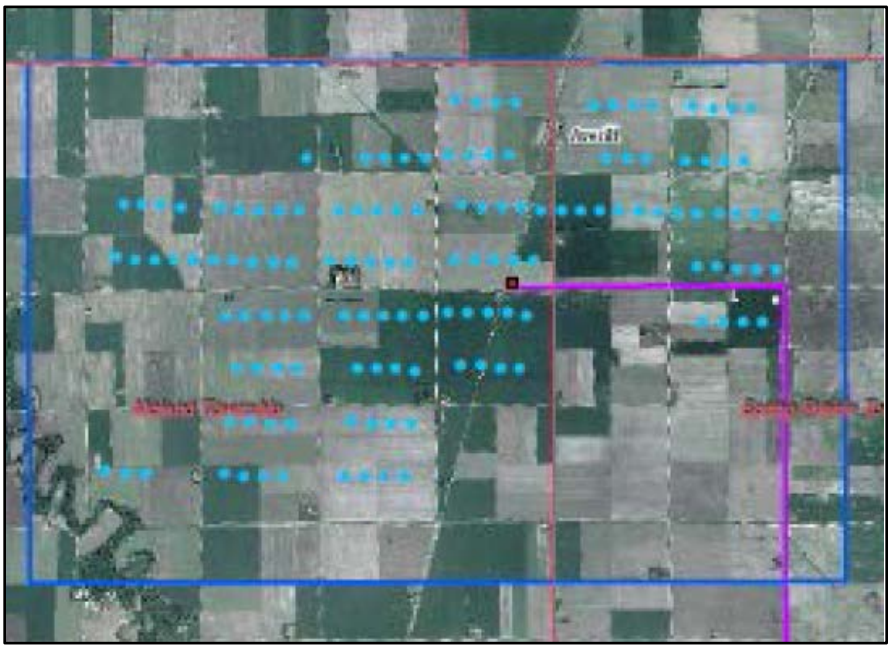
Anticipated Turbine Design (2c)

The February filing provided extensive information on the Permittee's new choice of turbine type, including size and design parameters. EERA considers it likely the Permittee will employ a similar turbine type in the Project, especially as the Permittee has requested that the dimensions be inserted into amended permit conditions.

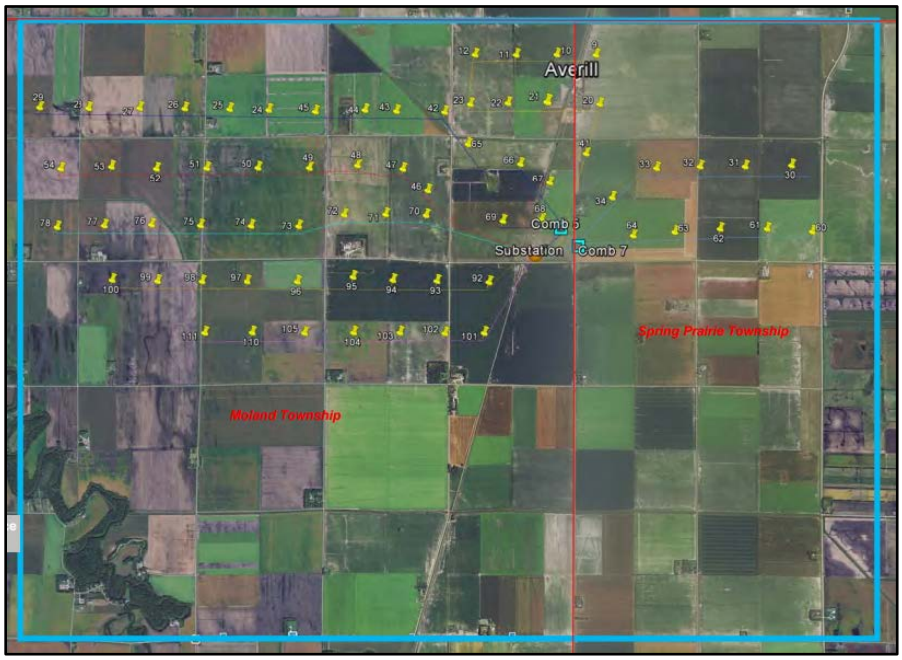
Updated Preliminary Turbine Layout (2d)

The preliminary turbine layout in the 2013 Amended Permit was based on data from 2008. The Permittee has made efforts to incorporate more current data, including the updated turbine type, to provide a more predictive view of the actual Project layout.

2013 Amended Permit Preliminary Turbine Layout



2016 Updated Preliminary Turbine Layout



Noise and shadow flicker studies, as well as the other anticipated surveys will need to be conducted before a final site plan is developed. That plan would then be reviewed by EERA and Commission staff before construction would be authorized. However, the new preliminary layout submitted by the Permittee does provide a much clearer picture than had been available for the Commission to make its amendment decision.

EERA Conclusions and Recommendations

In EERA's opinion, the Permittee has provided the additional information requested by the Commission's Order postponing a decision on a Permit Amendment. The Permittee has complied with each point of the Order and has provided information required by the Commission to make its decision on issuing an amended permit. The Permittee:

1. Requested an updated NHIS review and reported back to the Commission with the results and analysis of the review in a timely fashion;
2. Provided information on avian and bat studies performed since the last extension. The Permittee additionally provided information on its plans for avian studies and developing an ABPP;
3. Provided extensive information on anticipated turbine design. The Permittee also verified its intent by requesting the dimensions be included directly in the permit condition; and
4. Provided an updated preliminary turbine layout based on the environmental information it has to date.

In keeping with its earlier position, and in light of the Permittee's compliance with the Order of the Commission, and in light of the new information provided by the Permittee, EERA recommends the Commission has good cause to amend the Site Permit under Minn. Rule 7854.1300 to extend the date to commence construction by two years from the date of its new Order.

Also in keeping with its earlier position, EERA recommends that, failing to commence construction within the time frame of a new amended permit, the Site Permit should be considered for revocation. Any project going forward would then require a new Application and review before the Commission.