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In the Matter of the Application of Flying Cow Wind, LLC for a Certificate of Need for the 152 MW Large Wind Energy Conversion System in Yellow Medicine County, Minnesota;

MPUC Dockets Nos.  
IP-6984/CN-17-676  
IP-6984/WS-17-749

In the Matter of the Application of Flying Cow Wind, LLC for a Site Permit for the up to 152 MW Large Wind Energy Conversion System in Yellow Medicine County, Minnesota;

OAH DOCKET No.  
8-2500-35843

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**LIUNA MINNESOTA REPLY COMMENT ON FLYING COW WIND, LLC's PETITION TO WITHDRAW CERTIFICATE OF NEED APPLICATION**

**FEBRUARY 8, 2019**

On January 10, 2019, LIUNA Minnesota filed an objection to the petition filed by Flying Cow Wind, LLC ("the Applicant") seeking to withdraw the application for a Certificate of Need ("CN") for the Bitter Root Wind Project ("Bitter Root"). In our filing, we made four observations: first, that our ability to assess the project's eligibility for an Independent Power Producer ("IPP") exemption was limited by our lack of access to filings designated as trade secret by the Applicant, to which we had requested access under a non-disclosure agreement; second, that the Applicant had not yet met its burden to prove that the project would not affect the interests of Minnesota ratepayers by serving as a retail or wholesale source of power to Minnesota customers based on undisclosed terms of the Power Purchase Agreement ("PPA"); third, that approval of the petition would prejudice LIUNA Minnesota as a party; and fourth, that the relevant information had been designated as trade secret without sufficient justification and should be redesignated as public.

On February 1, LIUNA Minnesota filed additional comments as part of the public comment period, in which we indicated that the Applicant has informed us that the company does not intend to share the allegedly trade-secret information shared filed with the Commission with our organization, despite our willingness to sign a non-disclosure agreement. The Applicant's refusal to provide access to the relevant information limits LIUNA Minnesota's ability to provide an informed response and ignores our rights as a party in the case.

Despite being kept in the dark on the details of the agreement, we have gleaned enough information from the Applicant's responses to us and to the Department of Commerce to conclude that the Applicant has not met the criteria for the IPP exemption and appears unlikely to do so without making significant changes to the PPA. First, we concur with the Department's assessment that the project does not qualify for the exception because the Applicant can provide no concrete assurance that electricity generated by the project will not end up burdening Minnesota ratepayers via wholesale sales by the customer to a local electric provider.

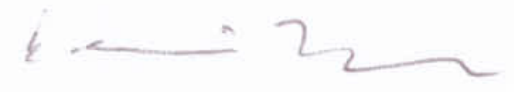
Second, we are concerned that the Applicant's answer to our query about the disposition of electricity generated by the facility is that it "plans" to sell the output into MISO. The Applicant's statements regarding its plans are not binding commitments, and they provide no assurance that Minnesota ratepayers may not end up paying for power generated by the facility. The IPP exemption clearly exists for projects that will not burden Minnesota ratepayers, not projects that will likely not burden Minnesota ratepayers for a limited period of time.

Beyond the Applicant's failure to make the case for exemption, we believe that granting the exemption would not serve the public's interest in transparency and appropriate scrutiny of proposed energy projects, and would significantly prejudice LIUNA Minnesota's interests in full examination of the project's impacts through a contested case proceeding. Having failed to secure Commission approval for its project, the Applicant now seeks to circumvent the process ordered by the Commission based on a secret agreement with a secret customer. By allowing such a gambit to succeed, the Commission would risk severely undermining confidence in the regulatory process, let alone the merits of this particular project.

We urge the Commission to deny the Applicant's petition and immediately designate the filings in the record as public, based on the Applicant's failure to provide a legitimate basis for trade secret protection. To the degree that any questions remain regarding the suitability of the project for an IPP exemption, we recommend that the question be referred to Judge Lipman to be considered in the contested case process.

We appreciate the Commission's time and attention to these issues.

Respectfully,



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Kevin Pranis, Marketing Manager

Dated: February 8, 2019

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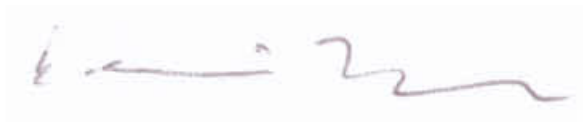
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CERTIFICATE OF SERVICE

I, Kevin Pranis, hereby certify that I have this day served a copy of the foregoing reply to requests for reconsideration for the Enbridge Line 3 Replacement Project on the attached list of persons in the method and manner indicated on the attached service list and as set forth below:

Via electronic service; or by depositing a true and correct copy in a proper envelope with postage paid, addressed to the person, in the United States Mail at St. Paul, Minnesota, according to the preference each person has indicated on the attached service list.

Dated this 8<sup>th</sup> day of February, 2019

A handwritten signature in blue ink, appearing to read 'Kevin Pranis', is written over a horizontal line.

Kevin Pranis

## Service List Member Information

### Electronic Service Member(s)

Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
Commerce Attorneys	Generic Notice	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Dobson	Ian	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Fairman	Kate	kate.frantz@state.mn.us	Department of Natural Resources	Electronic Service	Yes
Felix Gerth	Annie	annie.felix-gerth@state.mn.us	N/A	Electronic Service	Yes
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	Yes
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Howe	Kari	kari.howe@state.mn.us	DEED	Electronic Service	Yes
Kirsch	Ray	Raymond.Kirsch@state.mn.us	Department of Commerce	Electronic Service	Yes
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Roos	Stephan	stephan.roos@state.mn.us	MN Department of Agriculture	Electronic Service	Yes
Shaddix Elling	Janet	jshaddix@janetshaddix.com	Shaddix And Associates	Electronic Service	Yes
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Wolf	Daniel P	dan.wolf@state.mn.us	Public Utilities Commission	Electronic Service	Yes