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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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**SUPPLEMENTAL COMMENT ON AVANGRID REQUEST TO CLOSE BITTER ROOT DOCKETS**

**APRIL 26, 2019**

LIUNA Minnesota files the enclosed comments in order to reiterate our organization's support for the request filed by Avangrid Renewables, LLC ("Avangrid") to close the Certificate of Need and Site Permit dockets for the proposed Bitter Root Wind project. We are confident that the interests of our members and the public would be best served by allowing Avangrid to withdraw applications that have been the source of controversy over the construction practices of the project's former owner and to make a fresh start.

At the same time, we hope that the Public Utilities Commission will hold the project's former owner, RES Americas, to account for the company's conduct in the weeks preceding the sale of the project to Avangrid, which we believe raises potential concerns over the integrity of the Commission's permitting process. The reasoning behind our concerns is detailed in comments filed on April 12, 2019, incorporated herein by reference. We believe that RES Americas should, at a minimum, be required to appear before the Commission to clarify whether the company withheld material information from the Commission and the Department of Commerce while simultaneously pursuing an Independent Power Producer exemption from Certificate of Need requirements.

Finally, we write to clarify that comments filed by Mr. Joseph Bucci raising concerns about the Bitter Root project do not represent the position of LIUNA Minnesota or, to our knowledge, any other labor organization. We believe that Mr. Bucci's comments are based on outdated information provided through an online comment form that did not account for the transfer of project ownership, and we have attempted to contact Mr. Bucci to inform him of the change.

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for a Site Permit for the up to 152 MW Large Wind  
Energy Conversion System in Yellow Medicine County,  
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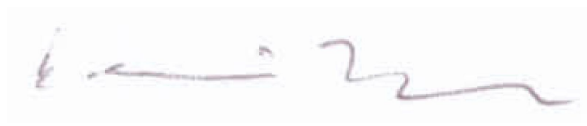
OAH File Nos.  
8-2500-35843

CERTIFICATE OF SERVICE

I, Kevin Pranis, hereby certify that I have this day served a copy of the foregoing comments on the request by Avangrid Renewables, LLC to withdraw Certificate of Need and Site Permit applications for Bitter Root Wind 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 26th day of April, 2019



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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               |
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| Flannery           | Sean           | sean.flannery@res-americas.com       | Renewable Energy Systems Americas Inc. | Electronic Service | No                |
| Gibbons            | Andrew         | andrew.gibbons@stinson.com           | Stinson Leonard Street                 | Electronic Service | Yes               |
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| Kirsch             | Ray            | Raymond.Kirsch@state.mn.us           | Department of Commerce                 | Electronic Service | Yes               |

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| Lipman         | Eric     | eric.lipman@state.mn.us         | Office of Administrative Hearings         | Electronic Service | Yes |
| Matthews       | Michelle | Michelle.Matthews@res-group.com | Renewable Energy Systems                  | Electronic Service | No  |
| Medhaug        | Susan    | Susan.medhaug@state.mn.us       | Department of Commerce                    | Electronic Service | Yes |
| Moynihan       | Debra    | debra.moynihan@state.mn.us      | MN Department of Transportation           | Electronic Service | Yes |
| Pranis         | Kevin    | kpranis@liunagroc.com           | Laborers' District Council of MN and ND   | Electronic Service | Yes |
| 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 |
| Warzecha       | Cynthia  | cynthia.warzecha@state.mn.us    | Minnesota Department of Natural Resources | Electronic Service | Yes |
| Wolf           | Daniel P | dan.wolf@state.mn.us            | Public Utilities Commission               | Electronic Service | Yes |

### Paper Service Member(s)

| Last Name | First Name | Company Name               | Address                                     | Delivery Method | View Trade Secret |
|-----------|------------|----------------------------|---|-----------------|-------------------|
| Burman    | Thomas     | Stinson Leonard Street LLP | 50 S 6th St Ste 2600, Minneapolis, MN-55402 | Paper Service   | Yes               |



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8-2500-35843

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## **LIUNA MINNESOTA COMMENT ON AVANGRID REQUEST TO CLOSE BITTER ROOT DOCKETS**

**APRIL 12, 2019**

LIUNA Minnesota welcomes the notice filed by Avangrid Renewables, LLC ("Avangrid") on April 4, 2019 indicating that the company has acquired RES Americas' interest in Flying Cow, LLC and the associated 152 megawatt Bitter Root wind energy project. We support Avangrid's request to close the Bitter Root Certificate of Need and Site Permit dockets and terminate related contested case proceedings.

Avangrid has a strong track record as a responsible developer of renewable energy projects in Minnesota and the public interest would best be served by allowing Avangrid to make a fresh start. We are confident that the company will address socioeconomic issues of concern to our members, and we look forward to participating in the permitting process when Avangrid is prepared to submit new applications.

In our view, Avangrid's acquisition of the Bitter Root project vindicates the Public Utility Commission's decision not to rubber-stamp RES Americas' application for a Certificate of Need and Site Permit, but instead to order that the record be further developed to better assess the project's socioeconomic impacts. The Commission's action now appears likely to result in a project that delivers the same energy, environmental, lease and tax benefits, while putting many more locals residents to work and injecting millions of additional dollars into local economies.

We recommend, however, that as the page is turned on the Bitter Root project, the Commission should take steps to tie up loose ends and to better ensure the integrity of the permitting process. We do not believe that the sale of the project should allow RES Americas to evade previously outstanding discovery obligations, and we think it is important that the Commission question RES Americas representatives to ascertain whether the company pursued a Certificate of Need exemption while failing to inform the Commission or the Department of Commerce of impending material changes to a Power Purchase Agreement ("PPA") that would have made the project ineligible for said exemption.

First, we urge that RES Americas be required to fulfill information requests that were outstanding when ownership of the project was transferred to Avangrid, including data that was originally requested more than six months ago

during the informal hearing process but never produced. The request was filed on March 11 and was overdue when the project was sold to Avangrid. We were informed by RES Americas' counsel that the company was compiling the requested information and that it would be provided before the next PUC meeting on Bitter Root. We would not expect RES Americas to honor any new information requests related to a project that is no longer theirs. But the company should not be allowed to walk away from delinquent obligations incurred prior to the sale, especially when much of the information should have been provided months ago as part of the informal process.

Second, it appears to us that, in the period prior to the sale, RES Americas either misled the Commission and the Department, or allowed the Commission and the Department to be misled, concerning the status of the PPA that provided the entire basis for Applicant's pending motion to withdraw the Certificate of Need ("CN") application for the project. If RES Americas was aware that the PPA was likely or certain to be dissolved, or even subject to termination based on foreseeable circumstances, the company had an obligation to timely inform the Commission and the Department that the project might be ineligible for the Certificate of Need exemption.

LIUNA Minnesota became aware in mid-March of what we believed to be an impending material change to the PPA, and we filed an information request on March 18, 2019 seeking detailed information. RES Americas would presumably have been aware of such a change well before that date, yet the Applicant continued to pursue an exemption based on the company's previous assertion that a qualifying PPA was in place, even as the agreement was evidently headed for dissolution. As far as we know, RES Americas never informed Commission or Department staff that termination of the PPA was possible, much less imminent.

RES Americas should appear before the Commission to explain when the company knew that the status of the PPA might change in a manner that could disqualify the project from an Independent Power Producer exemption, and why the company evidently failed to inform the Commission and the Department at the time. It is conceivable that there are innocent and reasonable explanations for RES Americas' conduct in this regard, and if so, we hope company representatives will be present to provide those explanations and fully answer Commissioners' questions.

We anticipate that RES Americas might argue that they are no longer subject to discovery or to the Commission's jurisdiction in this case since they have sold their interest in the Limited Liability Corporation ("LLC") that is the official applicant. We hope, however, that the Commission would see through such a ruse and recognize that RES Americas has been a party to the Bitter Root dockets, and cannot so easily escape responsibility by selling its interest in Flying Cow, LLC. We can't imagine a pipeline company, for example, being allowed to escape the Commission's jurisdiction and scrutiny by selling off a project-based LLC.

Third, we suggest that the Commission and the Department consider more carefully scrutinizing future requests for IPP exemptions. LIUNA Minnesota noted in our objection to the Applicant's original petition to withdraw the CN application that the Applicant had not provided sufficient information to assess the project's suitability for an IPP exemption. We observed specifically that the Applicant had not given us, and more importantly had evidently not given the Commission or the Department, details concerning the circumstances under which power generated by the project might be sold to Minnesota customers, including but not limited to expiration, early termination, or other circumstances that could make some or all of the power generated available for sales impacting Minnesota ratepayers.

It seems clear in hindsight that the PPA which was to have provided solid assurance that the power would be sold out-of-state is no longer in force, for reasons that remain opaque to us and possibly to the Commission. It troubles us, and it should trouble the Commission, that RES Americas may have come close to securing an exemption from CN requirements based on an agreement that was, as the saying goes, built on sand.

We have enough confidence in the Commission's commitment to transparency to believe that the Applicant's full request to circumvent the previously ordered contested case process would not have been granted. Nonetheless, it concerns us that, had the Commission taken the case up in February as scheduled and followed the staff's then-recommendation to grant the Applicant's request for a CN exemption and Site Permit, RES Americas might have obtained permission to build based on questionable premises.

The Department's review of the Applicant's request for a CN exemption surfaced important information, including the fact that the customer was licensed by FERC to market power. But the review seemingly failed to identify relevant provisions of the agreement allowing it to be terminated. This may be, in part, because to our knowledge no one at the Department or the Commission ever had an opportunity to review the actual terms the agreement. It is unclear when, if ever, the Commission or Department would have learned of a change in the status of the agreement had LIUNA Minnesota not forced the question of disclosure.

Decisions to permit large energy projects are too important to be made based on incomplete information, especially when those decisions may exempt a project from careful consideration and scrutiny under the CN statutes. We hope that the Commission and Department will take a closer look at such projects and requests going forward.

We thank the Commission for its time and careful attention to these issues and look forward to an opportunity to appear before the Commission to speak to our concerns.

Respectfully,

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

Kevin Pranis, Marketing Manager

Dated: April 12, 2019



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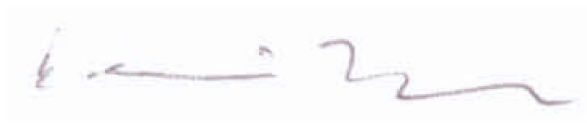
OAH File Nos.  
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CERTIFICATE OF SERVICE

I, Kevin Pranis, hereby certify that I have this day served a copy of the foregoing comments on the request by Avangrid Renewables, LLC to withdraw Certificate of Need and Site Permit applications for Bitter Root Wind 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 12th day of April, 2019



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Kevin Pranis

## 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               |
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| Burman    | Thomas     | Stinson Leonard Street<br>LLP | 50 S 6th St Ste 2600, Minneapolis,<br>MN-55402 | Paper<br>Service | Yes               |