



In the Matter of the Application of Coneflower Energy, LLC for a Site Permit for the up to 235 MW Coneflower Solar Project in Lyon County, Minnesota

PUC Docket Number: IP-7132/GS-24-215

OAH Docket Number: 71-2500-40396

Exceptions to the Administrative Law Judges' Report

LIUNA Minnesota and North Dakota ("LIUNA") appreciates the opportunity provided by the Minnesota Public Utilities Commission ("Commission") to respond to the Findings of Fact, Conclusions of Law, and Recommendation filed by Administrative Law Judge ("ALJ") Jessica Palmer-Denig ("ALJ Report") concerning the application of Apex Clean Energy ("Apex") for Site Permits for development of an up to 235-megawatt ("MW") solar generation project in Lyon County, Minnesota.

While LIUNA appreciates Judge Palmer-Denig's work, and largely agrees with her findings, conclusions and recommendations, in our view the ALJ Report fails to adequately consider recently-adopted requirements related to maximization of local socioeconomic benefits or address record evidence concerning Apex's commitments and past performance in this area. In these comments, we attempt to clarify why we believe that the record supports the need for inclusion of permit conditions designed to ensure that Apex does a better job of delivering on socioeconomic commitments in Minnesota than the company has done in North Dakota.

In addition to explaining why the law and evidentiary record relied upon by the ALJ require that protections for local workers and communities be strengthened, we will also submit additional evidence concerning Apex's performance in North Dakota that was not available at the time of the May 5 public comment deadline, including our estimate that local residents appear to account for as little as 5% of the workforce on Bowman Wind. While the record remains open in an informal proceeding until a decision is made in an agenda meeting, we understand that the Commission has discretion to consider or ignore information submitted outside of an official comment period. We believe that the evidence provided here is highly relevant to evaluation of Apex's claim that the company "met its commitments" in North Dakota, and urge that it be given due consideration, with the understanding that it would be entirely reasonable for Apex to respond with any additional information or context that the company deems appropriate.

In comments filed in this docket on May 5, 2025, LIUNA highlighted the relevance of statutory requirements related to evaluation of local socioeconomic impacts that were first adopted by the Minnesota Legislature in 2023, and subsequently incorporated into Chapter 216I in 2024 as part of permitting reform legislation that enjoyed broad support from organized labor and the clean energy industry (Minn. Stat. § 216I.05, Subd. 7). Our comments observe that the legislature now not only requires the Commission to give specific consideration to the "quantity and quality of construction and permanent jobs" expected to be created by a project, but also specifically authorize the Commission to "*reject or place conditions on a site or route permit based on the local employment and economic impacts.*" This change was clearly so important to the

legislature that local employment and economics is the only category of impacts where the Commission's authority is explicitly called out.

Unfortunately, the ALJ Report seems to have overlooked this change in the law, despite the fact that it was highlighted in our comments, and instead relied entirely on Minn. R.

7850.4100(A)-(N) which includes no specific mention of local jobs because the rules have largely not been revised to reflect changes to legislation. To the extent that local job impacts is an important and disputed consideration in this proceeding, and the Commission's decisions are ultimately accountable to laws, this oversight represents a serious error.

The fact that the ALJ Report overlooks a key provision of law may explain why so little attention is paid to the concerns raised by LIUNA members in oral comments during in-person and virtual hearings, and by our organization's written comments. While the report briefly summarizes concerns raised by LIUNA in Finding 150, it then essentially takes the word of Apex representatives with respect both to the strength of the company's commitments on the current project and its past performance elsewhere, including in North Dakota (Findings 151-152). The report further relies on the Environmental Assessment ("EA") to conclude that the impacts of the project will be positive and that no additional permits are required, (Finding 153) even though the EA was not informed by any of the evidence provided in the record by LIUNA and its members.

The ALJ Report cites two key claims made by Apex to bolster its conclusions with respect to local job impacts, but these claims are clearly refuted by evidence already provided in the record by LIUNA and its members. First, the ALJ Report relies heavily on commitments made by Apex for construction of Coneflower, including compliance with prevailing wage and apprenticeship utilization requirements, along with commitments to exercise a strong preference in bidding for union contractors subject to certain conditions. However, LIUNA made clear in the record that the legal requirements, which appear to have also applied to Bowman, provide no assurance of the degree to which local workers will benefit. We also made clear that the conditional nature of voluntary commitments appears to give Apex sole discretion over whether commitments must be met and what meeting said commitments actually means.

As we observed, Apex also made conditional commitments to prioritize local hiring before hiring a contractor for Bowman Wind with an apparently poor track record of doing so based on our observations, which were shared with Apex. Further, our estimates of actual local hiring on the project, developed after the end of the comment once the project was substantially mobilized, suggest that it may be one of the worst-performing projects in recent years with an approximate share of local hiring below 5%. It is not clear what would prevent Apex from exercising the conditional language that caveats its commitments, or what LIUNA or the Commission could do to remedy the situation absent specific permit conditions.

Second, in response concerns over reliance on non-local labor to build Bowman Wind despite what appear to be commitments to the contrary in the site permit application filed with the North Dakota Public Service Commission, the ALJ Report cites statements by Apex witness Brie Anderson to the effect that Wanzek Construction the Balance of Plant contractor responsible for construction of the wind farm, is based in North Dakota. Unfortunately, the report ignores public

hearing testimony indicating that, irrespective of the location of the company's *headquarters*, the union's observations that its *workforce* has overwhelmingly been sourced from outside the state.¹ Ms. Anderson's only response to this point in each of the public hearings was to observe that it was too early to draw any conclusions about use of non-local and local workforce because the project, "the rest of the construction is just ramping up in the next four to six weeks, so it's too soon to give the statistics on the labor work force" (Marshall Hearing Transcript P. 34).

It should be clear from the letter submitted in the record from Cambridge Mayor Denise Simmons that LIUNA is not alone in its belief that Apex has done a poor job by local workers with the Bowman project. After writing that letter and having seen little or no evidence that the problem would be resolved, the Mayor filed a proposed resolution condemning Apex's management of the issue which attracted support from stakeholders ranging from local Cambridge residents to Boston-area construction workers to sustainability leader Ceres to the North Dakota AFL-CIO (see full agenda including proposed resolution and written comments here: <https://cambridgema.iqm2.com/citizens/FileOpen.aspx?Type=1&ID=4278&Inline=True>)

The fact that Apex continues to defend the company's performance on Bowman despite the outcry from stakeholders and one of their own clients gives further reason for concern. If the company thinks Bowman is a compliance success, how far short of public expectations should we expect Coneflower to fall.

In summary, while we largely agree with the ALJ Report, we believe that the failure to engage with the applicable law and evidence concerning potential impacts is a serious error that should be remedied. With respect to how the concern could be addressed, we suggest a permit condition that requires Apex to file status reports on contractor selection and engagement with organized labor over workforce on a quarterly or other regular basis, and that the company be required to notify the Commission if it expects to exercise conditional language that would appear to allow the company to take a different path based on safety or other criteria to allow the Commission to ask questions and weigh in.

We thank the Commission for its consideration and look forward to discussing the issue at the agenda meeting.

Dated: July 11, 2025

Respectfully Submitted By:

Kevin Pranis

¹ Chung, Octavio, "Right now they are using contractors that has relied heavily on out-of-state labor based on what we have seen building in the wind farm in North Dakota, even though, when they applied for the permits, they prioritized local labor." Marshall Hearing Transcript, P. 33; Franco, Lucas, "I appreciate the comment from the development team just before I came on about the commitment to localize -- or to maximize local workers, but the truth is, we're just not seeing that from the EPC in North Dakota... And, you know, right now, we believe the company is relying, through their EPC, on a lot of out-of-state labor on the wind project in North Dakota that was discussed based on our observations." Virtual Hearing Transcript, P. 31-32

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