

Staff Briefing Papers

Meeting Date May 16, 2019 Agenda Item *2

Company Avangrid Renewables, LLC

Docket No. **MN PUC Docket# IP-6984/CN-17-676; WS-17-749**
OAH Docket# 8-2500-35843

In the Matter of the Application of Flying Cow Wind, LLC for a Certificate of Need and Site Permit for the up to 152 MW Bitter Root Wind Project and Associated Facilities in Yellow Medicine County, Minnesota

- Issues
1. Should the Commission approve Avangrid’s request to withdraw the Certificate of Need and the Site Permit dockets for the Bitter Root Wind Project?
 2. Should the Commission place any conditions on the withdrawal of the dockets?

Staff Cezar Panait Cezar.Panait@state.mn.us 651-201-2207

 **Relevant Documents**

Date

| | |
|--|-------------------|
| Flying Cow Request to Withdraw its Application for a Certificate of Need | December 28, 2018 |
| Order Deferring Action and Initiating Negotiations | January 3, 2019 |
| Flying Cow Request for Reconsideration and Rehearing | January 14, 2019 |

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

 **Relevant Documents**

| | Date |
|---|----------------|
| Order Continuing Proceedings and Tolling Deadline | March 4, 2019 |
| OAH Order for Certification | March 12, 2019 |
| Avangrid Request to Close the Certificate of Need and Site Permit Dockets | April 4, 2019 |
| LIUNA Comments, 3 parts | April 12, 2019 |
| Commission issued a notice of comment period on the request to withdraw by Avangrid | April 16, 2019 |
| OAH Fourth Prehearing Order | April 17, 2019 |
| Public Comment – Joseph Bucci | April 22, 2019 |
| Public Comment – John Cole | April 23, 2019 |
| LIUNA Comments | April 29, 2019 |
| RES Americas Reply Comments | May 3, 2019 |

I. Statement of the Issues

1. Should the Commission approve Avangrid's request to withdraw the Certificate of Need and the Site Permit dockets for the Bitter Root Wind Project?
2. Should the Commission place any conditions on the withdrawal of the dockets?

II. Statutes and Rules

Withdrawal of Filings – Uncontested Withdrawal

Under Minn. R. 7829.0430, subp.1, the Minnesota Public Utilities Commission has delegated to its Executive Secretary the authority to approve the withdrawal of a filing if the following conditions are met:

- A. The party that submitted the filing has requested that the filing be withdrawn and has served notice on the persons listed on the official service list;
- B. No person has expressed opposition to the withdrawal of the filing within 14 days of service of the notice; and
- C. No commissioner or commission staff person has identified a reason that the matter should not be withdrawn.

Withdrawal of Filings – Contested Withdrawal

Under Minn. R. 7829.0430, subp. 2. if any person opposes a withdrawal request within 14 days of service of the notice, the commission may still allow a filing to be withdrawn at the request of the filing party if the commission determines that the proposed withdrawal:

- A. does not contravene the public interest;
- B. does not prejudice any party; and
- C. does not concern a filing that raises issues requiring commission action.

If the commission determines that withdrawal would contravene the public interest or would prejudice a party, the commission may allow the withdrawal subject to conditions that mitigate the harm identified.

III. Procedural History

On December 28, 2019, Flying Cow Wind, LLC (Applicant or FCW) filed a petition to withdraw its application for a certificate of Need (CN).

On January 3, 2019, the Commission issued an Order Deferring Action and Initiating Negotiations; Notice and Order for Hearing. Specifically, the Commission:

1. Declined the ALJ's recommendation to issue a site permit based on the current record;
2. Declined to act on the applicant's petitions at that time;
3. Referred this matter for contested case proceedings;
4. Requested the ALJ to identify the issues and determine the appropriate scope and conduct of the hearing according to applicable law, due process, and fundamental fairness;

5. Asked the Department of Commerce to facilitate discussions and negotiations among the parties and to report back promptly if they achieve any resolution.

On December 28, 2018, FCW filed a request to withdraw its application for a Certificate of Need based on the IPP exemption.

On January 3, 2019, the Commission issued an Order Deferring Action and Initiating Negotiations between FCW and Laborers District Council.

On January 14, 2019, FCW filed a request for reconsideration and rehearing of the Commission's January 3 Order.

On March 4, 2019, the Commission issued an Order Continuing Proceedings and Tolling Deadline to continue consideration of Flying Cow's petition for reconsideration of the Commission's January 3, 2019 Order.

On March 12, 2019, Administrative Law Judge Lipman issued an Order for Certification to certify to the Commission the question whether Flying Cow Wind, LLC should be allowed to withdraw its application for a Certificate of Need.

On April 4, 2019, Avangrid Renewables, LLC filed a letter informing the Commission and the OAH about the change in the Bitter Root Wind Project (Project) ownership and requesting closure of both the Certificate of Need and the Site Permit.

On April 12, 2019, LIUNA submitted initial comments on the request to withdraw (3 parts).

On April 16, 2019, the Commission issued a notice informing the parties and the public that there has been a change in ownership of the project and a request by that new ownership to close both the CN and the Site Permit dockets.

On April 17, 2019, ALJ Lipman issued the Fourth Prehearing Order cancelling all further proceedings in this matter, pending an additional order from the Commission or the Administrative Law Judge.

On April 22, 2019, Joseph Bucci submitted comments as a private citizen.

ON April 23, 2019, John Cole submitted comments as a private citizen.

On April 29, 2019, LIUNA submitted additional comments.

On May 3, 2019, RES Americas submitted reply comments.

IV. Request to Withdraw the Certificate of Need and Site Permit

On April 4, 2019, Avangrid Renewables, LLC filed a letter informing the Commission and the Office of Administrative Hearings that it had entered into an agreement whereby it obtained the outstanding membership interests in Flying Cow Wind, LLC's Bitter Root Wind Project (Project).

Avangrid requested that the Commission and OAH close OAH Docket No. 8-2500-35843 and MNPUC Docket No. IP-6984/CN-17-676 and MNPUC Docket No. IP-6984/WS-17-749 and indicated that it intends to submit new certificate of need and site permit applications for a project at the site of the proposed Bitter Root Wind Project at a future date. Avangrid asserted that the most appropriate path forward would be to close the current dockets and start a regulatory review process at a later date. As part of the new review process, Avangrid indicated that it will honor the October 30, 2018 Stipulation between Flying Cow Wind, LLC and the Lake Cochrane Improvement Association.

Given these developments, Avangrid requested that the contested case currently pending before ALJ Lipman be cancelled. Avangrid stated they will be reaching out to stakeholders and the Commission as it determines the timing and the next regulatory steps related to this Project.

V. Response to Petition

LIUNA Minnesota

LIUNA Minnesota submitted two sets of comments on Avangrid's request to close the Bitter Root dockets. In its initial comments, submitted on April 12, 2019, LIUNA stated its support for Avangrid's proposal, indicating it has a strong track record as a responsible developer of renewable energy projects in Minnesota. LIUNA asserted that the public interest would be better served by allowing Avangrid to make a fresh start. LIUNA also suggested that the sale of the project should not allow RES Americas to evade previous discovery obligations that were outstanding when the ownership of the project was transferred to Avangrid. LIUNA further suggested that the Commission question RES Americas representatives at the Agenda Meeting to ascertain whether the company continued to pursue a Certificate of Need exemption while aware that there were impending material changes to the Power Purchase Agreement (PPA) that would have resulted in the project clearly being ineligible for an exemption. LIUNA argued that RES Americas should appear before the Commission to explain when it knew that the status of the PPA might change and why it didn't inform the Commission and the Department of the possibility at the time. LIUNA also recommended that the Commission and the Department consider more carefully scrutinizing future requests for IPP exemption.

LIUNA also provided its second and third information requests it made of RES Americas asking for detailed past and current information on the Company's employment practices for the construction of Minnesota wind projects and other U.S. energy projects, including the Company's assessment on the feasibility of employing a majority-local workforce to build the Bitter Root Wind. Specifically, LIUNA requested information on the RES Americas' labor practices on the construction of the Pleasant Valley, and Stoneray projects in Minnesota, and

other projects in the U.S. specifically its workforce efforts to assess the number of hours worked by local construction workers versus workers residing within 150 miles of the project and workers from different states (more than 150 miles).

LIUNA also inquired about the terms of the PPA and whether there had been any material changes to the PPA that could have affected the project's eligibility for the CN exemption it had requested while the project application was pending before the Commission?

LIUNA submitted supplemental comments on April 29, 2019 that reiterated its support for Avangrid's request to close the Certificate of Need and Site Permit dockets. LIUNA stated that its members' interests and the public interest is best served by allowing the withdrawal of the applications which have generated controversy over RES Americas construction-labor practices.

LIUNA also suggested the former owner account for its conduct in the weeks preceding the sale of the project, which LIUNA believes raises concerns over the integrity of the Commission's permitting process. LIUNA renewed its call for RES Americas to appear before the Commission and answer questions regarding what it knew about possible changes to the terms of the PPA and when it knew about them.

Two public comments were received during the comment period. One member of the public from Pennsylvania commented about the need to require Flying Cow Wind, LLC to disclose more information about their workforce plans. The other public comment came from a local resident of Canby that suggested Avangrid should not be allowed to withdraw the Certificate of Need application.

Reply Comments from RES Americas

RES Americas submitted reply comments stating that Flying Cow Wind, LLC is no longer seeking approvals from the Commission for the Bitter Root Wind Project and as a result RES believes the facts of the situation support approval of the withdrawal of both applications without conditions. If approvals for a project at this site are sought from the Commission at a future date, any interested party or person will be able to participate in that proceeding and address any issues that may be relevant to the proceeding at that time.

Similarly, RES no longer has an interest in FCW, and should not be subject to conditions related to the withdrawal. It entered into arms-length negotiations and a commercial transaction which resulted in Avangrid acquiring the membership interests of FCW on March 25, 2019. No binding agreement existed prior to that date, and the Commission was informed of the agreement within a reasonable time. As RES no longer has an interest in FCW, the information requests of the LIUNA are moot. If the information sought by the LIUNA is relevant to a future matter before the Commission, LIUNA will have the opportunity to seek the information as part of that proceeding.

VI. Staff Analysis

Commission staff has reviewed Avangrid's request to close the dockets related to the Bitter Root Wind project, and the initial and reply comments received. Based on the change in the project's ownership staff believes it is appropriate to grant Avangrid's request. Staff recommends that the request for withdrawal be granted without conditions on Flying Cow Wind, LLC or Avangrid. Staff questions the benefit of requiring information from an applicant that no longer has a proposed project in front of the Commission. Staff believes the Commission's limited resources would be better spent on the review and processing of applications for projects that are more likely to be built. LIUNA will be able to participate in those proceedings and to request information on the labor practices of the applicants for those projects.

With regard to any conditions to be placed on Avangrid in granting the withdrawal of the two dockets, staff suggests that the agreement between Flying Cow Wind, LLC and the Lake Cochrane Improvement Association, which Avangrid has indicated it intends to honor, was arrived at outside of the Commission's review process and staff recommends the Commission take no position regarding that agreement.

Commission staff has not, on its own, identified any reason that the withdrawal request should not be granted.

VII. Decision Options

- A. Petition to close the Certificate of Need and Site Permit dockets
 - 1. Grant the petition to withdraw and close the certificate of need and site permit applications for the Bitter Root Wind Project.
 - 2. Grant the petition to close the two dockets referenced above but with conditions.
 - 3. Deny the petition to close the dockets.
 - 4. Take some other action deemed appropriate.
 - 5. Direct staff to communicate with the Office of Administrative Hearings regarding the results of today's decision.

Staff Recommendation: A1 and A5