

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Flying Cow Wind, LLC for a Certificate of Need for the 150 MW Large Wind Energy Conversion System in Yellow Medicine County, Minnesota

**AMENDED ORDER DENYING THE
SECOND REQUEST FOR A
CONTESTED CASE HEARING BY THE
LABORERS DISTRICT COUNCIL OF
MINNESOTA AND NORTH DAKOTA**

In the Matter of the Application of Flying Cow Wind, LLC for a Site Permit for the up to 150 MW Large Wind Energy Conversion System in Yellow Medicine County

The Laborers District Council of Minnesota and North Dakota (LDC) filed its second Request for Contested Case Hearing on July 18, 2018. Flying Cow Wind, LLC (Flying Cow) filed a response on July 27, 2018, opposing LDC's renewed request for a contested case hearing. The Minnesota Department of Commerce Division of Energy Resources (DOC-DER) did not file a response to the Request.

Based on all of the files and proceedings of the matter, the Administrative Law Judge makes the following:

ORDER

LDC's second Request for a Contested Case Hearing is **DENIED**.

Dated: August 14, 2018


JAMES E. LAFAVE
Administrative Law Judge

MEMORANDUM

I. Background

On October 19, 2017, Flying Cow filed an application for a certificate of need with the Commission for an up to 152 megawatt (MW) large wind energy conversion system (LWECS) known as the Bitter Root Wind project, to be located in Yellow Medicine County, Minnesota (the Project).¹ LDC filed its first Request for Contested Case Hearing on March 14, 2018, and that request was denied in its entirety.² Now, three weeks after completion of the joint public hearing on the certificate of need and site permit applications, and on the final day of the public comment period, LDC again files a request for a contested case hearing.³

LDC's second request asserts there are three areas which contain issues of material fact that require a contested case hearing. First, LDC argues there are fact issues surrounding the need for the Project. LDC notes Flying Cow has not secured a power purchase agreement and that Flying Cow has not demonstrated that the renewable energy produced by the Project is needed to meet the State's renewable energy goals.⁴ Second, LDC asserts there are fact issues on the socio-economic impact of the project on local communities.⁵ And finally, LDC claims there are fact issues because of the existence of "feasible and prudent alternatives" to the propose Project.⁶

The law allows any person to request a contested case hearing be held on an application for a site permit of a proposed LWECS project.⁷ The burden is on LDC "to demonstrate the existence of material facts" that would aid the Commission in making its decision.⁸ "It is not enough to raise issues without some showing that evidence can be produced."⁹ LDC failed to identify any new evidence or information could be developed in a contested case hearing that would help the Commission make its decision.

¹ Certificate of Need Application (Oct 19, 2017) (eDocket No. 201710-136649-02).

² Order on the Request for Contested Case Hearing and Petition for Intervention by Laborers District Council of Minnesota and North Dakota (May 7, 2018) (eDocket No. 20185-142799-01).

³ Request for Contested Case Hearing Laborers District Council of Minnesota & North Dakota (July 18, 2018) (eDocket No. 20187-145016-03).

⁴ *Id.* at 1-2.

⁵ *Id.* at 2.

⁶ *Id.* at 3.

⁷ Minn. R. 7854.0900, subp. 5(A) (2017). The Administrative Law Judge notes LDC's arguments relate to the certificate of need docket, but that LDC's renewed requested for a contested case hearing is grounded in the rules governing the site permit. *See Id.* ("Any person may request in writing that a contested case hearing be held on an application for a **site permit** for a proposed LWECS project.") (emphasis added).

⁸ *In re Northern States Power*, 674 N.W.2d 326, 335 (Minn. Ct. App. 2004).

⁹ *Modification of Indirect Source Permit 96-5*, No. C0-00-1539, 2011 WL 316174, at *4 (Minn. Ct. App., Apr. 3, 2001).

II. Analysis

LDC's second request for a contested case hearing, in part, raises the same claims which were denied its previous request. To the extent LDC's renewed request restates claims that have previously been address and dismissed, they will not be analyzed in any detail.

A. Need

LDC states because Flying Cow has not secured a power purchase agreement and that Flying Cow has not demonstrated that the renewable energy produced by the project is needed to meet the State's renewable energy goals a hearing is required.¹⁰ These assertions are not a basis for a contested case hearing.

First, the argument that the absence of a power purchase agreement is a fact issue that requires a hearing was already considered and rejected.¹¹ Second, the claim Flying Cow has not demonstrated that the renewable energy produced by the project is needed to meet the State's renewable energy goals is a legal question not a fact question. LDC failed to identify what questions of fact a contested case hearing would resolve that would help the Commission address that issue.

B. Local Socioeconomic Impacts

LDC notes that one of the criteria the Commission must examine is whether the "consequences to society of grating the certificate of need are more favorable than the consequences of denying the certificate."¹² LDC states that is "has disputed the applicant's claim by providing evidence that job-related benefits are minimized by applicant's reliance on non-local labor."¹³

This is closely related to the claim LDC made in its initial request that there was a fact issue in the number of construction jobs to be filled by Minnesota workers.¹⁴ That argument was rejected because, as LDC concedes, there is no requirement that Flying Cow hire local workers and that there was no factual dispute as to how many jobs would

¹⁰ Request for Contested Case Hearing Laborers District Council of Minnesota & North Dakota at 1-2 (July 18, 2018) (eDocket No. 20187-145016-03).

¹¹ See Order on Request for Contested Case Hearing and Petition for Intervention by Laborers District Council of Minnesota and North Dakota at 4 (May 7, 2018) (eDocket No. 20185-142799-01). ("The absence of a power purchase agreement at this stage does not create a fact issue that necessitates a hearing").

¹² Minn. R. 7853.0130 (C) (2017). The Administrative Law Judge notes this argument relates to the certificate of need, but that LDC's renewed requested for a contested case hearing is grounded in the rules governing the site permit. See Minn. R. 7854.0900, subp. 5 (2017) ("Any person may request in writing that a contested case hearing be held on an application for a **site permit** for a proposed LWECs project.") (emphasis added).

¹³ Request for Contested Case Hearing Laborers District Council of Minnesota & North Dakota at 2 (July 18, 2018) (eDocket No. 20187-145016-03).

¹⁴ Request for Contested Case Hearing and Petition for Intervention at 3 (Mar. 14, 2018) (eDocket No. 20183-141004-04); (eDocket No. 20183-141004-01).

likely result from the project.¹⁵ More important, LDC affirms, it has provided evidence regarding the job related benefits. LDC failed to identify what additional information could be developed in a contested case hearing. LDC also failed to demonstrate the informal process has been inadequate to fully develop the record for the Commission's consideration.

C. Feasible and Prudent Alternatives

LDC argues there are feasible and prudent alternatives to the approval of this Project. Also, that the Flying Cow has not demonstrated that one or more of these proposed projects could not provide an adequate if not preferable substitute for the project.

The informal process in this matter has addressed the issue of feasible and prudent alternatives to the Project. The EERA's Environmental Report analyzes the available and feasible alternatives to the Project.¹⁶ A public hearing was held in Canby, Minnesota to receive comments on the scope of the environmental report.¹⁷ 100 people attended the meeting, 17 spoke and the EERA receive 42 written comments in the subsequent comment period.¹⁸ "No member of the public or any state agency recommended system or project alternatives to be considered in the environmental report."¹⁹ LDC has not identified what facts would be developed in a contested case hearing or how the informal process has been inadequate addressing this issue.

III. Conclusion

LDC's second request for a contested case hearing was filed so late in the process as to raise questions as to its timeliness and the possible prejudice to Flying Cow. More importantly, LDC failed to show there were any issues of material fact requiring an evidentiary hearing to resolve that would aid the Commission in making its decision. The LDC's Request for a Contested Case Hearing must therefore be denied.

J. E. L.

¹⁵ See Order on Request for Contested Case Hearing and Petition for Intervention by Laborers District Council of Minnesota and North Dakota at 4 (May 7, 2018) (eDocket No. 20185-142799-01).

¹⁶ Environmental Report at 82-87 (May 4, 2018) (eDocket No. 20185-142751-01).

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ *Id.* at 4.

August 14, 2018

See Attached Service List

Re: *In the Matter of the Application of Flying Cow Wind, LLC for a Certificate of Need for the 150 MW Large Wind Energy Conversion System in Yellow Medicine County, Minnesota*

In the Matter of the Application of Flying Cow Wind, LLC for a Site Permit for the up to 150 MW Large Wind Energy Conversion System in Yellow Medicine County, Minnesota

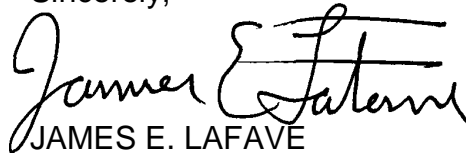
**OAH 60-2500-35035
MPUC IP-6984/CN-17-676
MPUC IP-6984/WS-17-749**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **AMENDED ORDER DENYING THE SECOND REQUEST FOR A CONTESTED CASE HEARING BY THE LABORERS DISTRICT COUNCIL OF MINNESOTA AND NORTH DAKOTA** in the above-entitled matter.

If you have any questions, please contact my legal assistant Sheena Denny at (651) 361-7881 or sheena.denny@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,



JAMES E. LAFAVE
Administrative Law Judge

JEL:sd

Enclosure

cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

<p>In the Matter of the Application of Flying Cow Wind, LLC for a Certificate of Need for the 150 MW Large Wind Energy Conversion System in Yellow Medicine County, Minnesota</p> <p>In the Matter of the Application of Flying Cow Wind, LLC for a Site Permit for the up to 150 MW Large Wind Energy Conversion System in Yellow Medicine County, Minnesota</p>	<p>OAH 60-2500-35035 MPUC IP-6984/CN-17-676 MPUC IP-6984/WS-17-749</p>
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Sheena Denny certifies that on August 14, 2018, she served the true and correct **AMENDED ORDER DENYING THE SECOND REQUEST FOR A CONTESTED CASE HEARING BY THE LABORERS DISTRICT COUNCIL OF MINNESOTA AND NORTH DAKOTA** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes
Ian	Dobson	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No
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James	LaFave	james.lafave@state.mn.us	Office of Administrative Hearings	PO Box 64620 St. Paul, MN 55164-0620	Electronic Service	No
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Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190 Richfield, MN 55423	Electronic Service	No
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes