

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS**

**600 North Robert Street**

**St. Paul, MN 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

**121 Seventh Place East Suite 350**

**St. Paul, MN 55101**

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 Docket No. IP-6984/CN-17-676  
MPUC Docket No. IP-6984/WS-17-749  
OAH Docket No. 60-2500-35035

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;

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**PETITION TO INTERVENE**

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1. Lake Cochrane Improvement Association (LCIA) was formed to encourage all persons owning property around the lake to maintain their premises in a clean, orderly and decent appearance; to take all such action as is necessary to preserve and improve the condition of the water in the lake; to take all such steps as are necessary to prevent the pollution of the lake; to encourage the development of the area around the lake in such a way as to make it an attractive and desirable environment for the enjoyment of the great outdoors; and to assure the continuation of Lake Cochrane and its environs for the benefit of future generations.
2. The Association's Constitution is attached as Exhibit A.
3. Lake Cochrane is located in Deuel County South Dakota less than a half-mile from the Minnesota-South Dakota state line. Unlike other lakes in the area it is spring fed with the deepest point of 28 feet and a mean depth of 13 feet.
4. LCIA has a special relationship to the Lake Cochrane area, and the lake has a

special relationship with this region. Other than West Lake Okoboji, there is no Midwest lake south of Lake Cochrane with our water and quality of life. In that respect we are truly a regional lake with property owners from South Dakota, Minnesota, Iowa and Nebraska. People in the area look to LCIA to advocate for preservation of this important resource.

5. LCIA's members include dozens of members whose residence in Minnesota and who own Minnesota properties that will be negatively impacted by the project.
6. The environmental impacts from the project will include noise, modification of view, impact on wildlife and a negative impact on the ability of the area to support tourism and recreation. Deuel County has zoning and planning authority over the South Dakota side of the border. Deuel County conducted extensive hearings and concluded that locating wind towers would be unduly harmful unless a three mile setback is observed. That finding is persuasive and compelling evidence.

### **GROUNDS FOR INTERVENTION**

7. LCIA and its members are impacted directly by wind towers in the vicinity of the lake. The organization and its members have compiled information on the impacts on the environment, on commerce. Members participated actively in the zoning work conducted by Deuel County, which has zoning powers for much of the recreation area. As a result of extensive study, the County established a three mile setback for towers, and that setback reflects the level of protection necessary to provide adequate protection compatible with environmental preservation, sustainable development, and the efficient use of resources.
8. Some of the towers proposed by applicant are substantially closer than that setback applicable to the South Dakota side, if the application is approved with its current siting.
9. A copy of the Deuel County ordinance is attached as Exhibit B.
10. The application and siting, if approved would significant affect the quality of the environment; it would permit for natural resources management and development. Minn Stat § 116D.04 subdivision 6. Approval of the project as configured would cause or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state.
11. There is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount

concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Alternatives would include relocating towers away from the Lake Cochrane area entirely, or implementing a setback requirement, and imposing suitable conditions to protect the environment.

12. The applicant has not demonstrate a need to locate this project at the proposed location.
13. No other current party represents this interest, and LCIA is uniquely qualified to advocate for preservation of the area. The Minnesota Environmental Rights Act, further grants to LCIA and its members the right to participate and advocate that environmental impacts be minimized.

14. Minnesota Statutes Section 116B,09 states that

in any administrative, licensing, or other similar proceeding any natural person residing within the state, the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, or **any partnership, corporation, association, organization or other legal entity having shareholders, members, partners, or employees residing within the state shall be permitted to intervene as a party** upon the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct that has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state.

15. The Association is an association having members residing in the state. The association asserts that this proceeding involves conduct that is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources within the state.

16. Section 116B.09 further provides:

In any such administrative, licensing, or other similar proceedings, the agency shall consider the alleged impairment, pollution, or destruction of the air, water, land, or other natural resources located within the state and no conduct shall be authorized or approved which does, or is likely to have such effect so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land, and other natural resources from pollution, impairment,

or destruction. Economic considerations alone shall not justify such conduct.

17. The project is not compatible with environmental preservation, sustainable development, and the efficient use of resources.

### CONCLUSION

As the foregoing demonstrates, the Lake Cochrane Improvement Association has shown the grounds for intervention and respectfully requests approval to intervene as a party in the above described dockets.


Dated: July 17, 2018

Ron Ruud

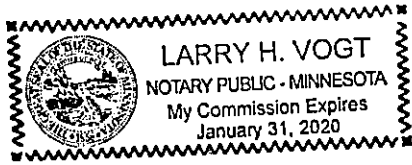
  
\_\_\_\_\_  
On behalf of LAKE COCHRANE  
IMPROVEMENT ASSOCIATION

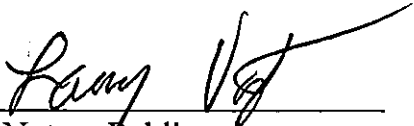
### Verification

I, Ron Ruud, being first duly sworn upon oath and state that the above petition truly and accurately represents the facts and correctly states the status and position of the Lake Cochrane Improvement Association. I am a member of the board of the association and have the authority to represent the Association's position in these proceedings.

  
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Ron Ruud  
3270 Edgewater Drive  
Gary SD 57237  
Email: ronor52@gmail.com

Subscribed and sworn to before me this 17 day of July 2018



  
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Notary Public

# LAKE COCHRANE IMPROVEMENT ASSOCIATION

## CONSTITUTION as amended in July 2003

### ARTICLE I

#### NAME AND OBJECT:

**Section 1.** This association shall be called "LAKE COCHRANE IMPROVEMENT ASSOCIATION."

**Section 2.** To encourage all persons owning property around the lake to maintain their premises in a clean, orderly and decent appearance; to take all such action as is necessary to preserve and improve the condition of the water in the lake; to take all such steps as are necessary to prevent the pollution of the lake; to encourage the development of the area around the lake in such a way as to make it an attractive and desirable environment for the enjoyment of the great outdoors; and to assure the continuation of Lake Cochrane and its environs for the benefit of future generations.

### ARTICLE II

#### GOVERNMENT:

The government of the association shall be vested in a Board of Directors consisting of 12 members, elected as provided by the By-Laws together with the immediate past president of the association, Ex officio.

### ARTICLE III

#### MEMBERSHIP:

**Section 1.** Membership in the association shall be limited to a person or persons owning property in the Lake Park District.

**Section 2.** Where property is owned by more than one person either jointly or in common all of such persons having an interest in the real estate in the Lake Park District shall be entitled to membership. (membership entitles each household to a maximum of two votes)

**Section 3.** Notwithstanding the foregoing, no person shall be entitled to membership or privileges of membership unless he or she has paid the membership fee as set forth in the By-Laws.

### ARTICLE IV

#### AMENDMENTS:

This constitution may be amended by three-fourths affirmative vote of all of the members of the association expressed orally or in writing at the annual meeting of the association, provided that a notice setting forth the proposed amendment or amendments with the reasons shall have been sent to each member at least ten days prior to said annual meeting.

## BY-LAWS

### I

#### BOARD OF DIRECTORS:

**Section 1.** Board of Directors of this association shall consist of 12 directors who shall serve for a period of three years each. No member of the Board of Directors shall be eligible for reelection more than once unless and until one year shall have expired after his last term of office.

**Section 2.** Elections to the Board of Directors shall be by the members either by voice vote or ballot as determined at the meeting at which the election is held. A plurality of votes cast shall be required to elect. Vacancies occurring on the Board of Directors shall be filled, until the next annual election, by the remaining members of the Board of Directors.

**Section 3.** Any member of the Board of Directors who shall have absent himself from three consecutive meetings thereof, unless satisfactory excuses have been presented, shall be deemed to have resigned as a member of the Board of Directors and shall cease to be a director.

**Section 4.** In May or June of each year the Board of Directors shall meet and appoint a nominating committee to consist of three members of the association who are not members of the Board of Directors. At least six weeks before the annual meeting such committee shall advise the secretary of its nominations of candidates for the vacancies on the Board of Directors to be filled at the next annual meeting. These nominations shall be distributed by the secretary to the members of the association at the annual meeting.

**Section 5.** The Board of Directors shall not incur any debt or liability exceeding the assets of the association without prior approval of all of the members of the association.

### II

#### OFFICERS:

**Section 1.** The officers of the association shall be a president, vice-president, secretary and treasurer. The officers shall be elected annually by the directors from among the director holding office until their successors have been elected.

**Section 2.** The president, or in his absence, the vice-president, shall preside over all meetings of the association and the Board of Directors. The president shall appoint all committees of the association and shall exercise general supervision over all of the affairs of the association.

**Section 3.** The vice-president shall be in all instances in the absence of the president have the same powers and carry out the same duties as the president.

**Section 4.** The secretary shall keep a complete record of all proceedings and correspondence of the association. He or she shall send notices of meetings by mail to members of the association or Board of Directors.

**Section 5.** The treasurer shall perform the duties usually assigned to this officer and shall make payment only for bills properly approved by the Board of Directors. The annual fiscal year shall run from January 1 of each year until December 31 of the same year. After December 31 the books and records of the treasurer shall be audited by at least two non-board members and be completed no later than March 1 of the year following the fiscal year. This audit committee shall provide the president of the board with a written report as to the audit findings. This report shall become a permanent record of the board proceedings.

**Section 6.** These By-Laws provide for no regular committees but such committees as may from time to time be deemed to be necessary either by the membership or the Board of Directors may be appointed by the president as the need arises.

### III

**Section 1.** The qualifications for membership are defined in the constitution.

**Section 2.** In addition to the qualifications set forth in the constitution the annual membership fee (as determined by the Board of Directors) must be paid in order to entitle any household to be and remain a member of this association. The annual membership fee shall be paid on or before January 1 of each year for the following year.

### IV

#### MEETINGS OF THE ASSOCIATION:

**Section 1.** The date for the annual meeting of the association from the election of members of the Board of Directors and the transaction of the business of the association shall be set at the discretion of the board of directors.

**Section 2.** Special meetings of the association may be called at any time by the president, or in his absence, by the vice-president. Ten days' notice of a special meeting must be given to the members of the association and the notice must state the object of the meeting. In the event that the Board of Directors deems it necessary to call a special meeting a majority of the Board of Directors may, in the event that the president does not call a meeting, give ten days' notice of such special meeting, stating the object thereof.

**Section 3.** Fifty members shall constitute a quorum at meetings of the association.

### V

#### MEETINGS OF THE BOARD OF DIRECTORS:

**Section 1.** The Board of Directors shall meet at least three times a year, at such times and places selected by the president.

**Section 2.** The president may call a special meeting of the Board of Directors at any time. A special meeting must be called upon the written request of any three members of the Board of Directors. At least one day notice by mail or telephone of such meeting must be given to the members of the Board of Directors and stating the object or purpose of the meeting.

**Section 3.** Five members shall constitute a quorum at a meeting of the Board of Directors.

### VI

At the annual association meeting the following shall be the minimum order of business:

1. Roll call
2. Report of president
3. Election of directors
4. Such business as may be proper

### VII

#### AMENDMENTS:

**Section 1.** These By-Laws may be amended by the affirmative vote of a majority of the members voting at a regular or special meeting of the association, provided notice of such an amendment and the nature thereof has been given to the members of the association at least ten days prior to the date of the meeting at which said amendment is to be presented for consideration. Members not present may vote by letter addressed to the secretary.



## **Ordinance B2004-01-23B**

AN ORDINANCE ENTITLED, An Ordinance to Amend Section 1215 Wind Energy System (WES) Requirements Adopted by Ordinance B2004-01, July 6, 2004, as amended, of the Zoning Ordinance of Deuel County.

Be it ordained by the Board of County Commissioners of Deuel County, South Dakota: that section 1215 Adopted by Ordinance B2004-01 July 6, 2004, as amended, of the Zoning Ordinance of Deuel County be amended to change Section 1215 Wind Energy System Requirements as follows: (Changes are printed with those parts in bold as additions and those parts with a line through as deletions to the ordinance.)

### Section 1215. Wind Energy System (Wes) Requirements

#### Section 1215.01 Applicability

The requirements of these regulations shall apply to all WES facilities except private non-commercial facilities with a single tower height of less than one-hundred forty (140) feet and used primarily for on-site consumption of power.

#### Section 1215.02 Federal and State Requirements

All WESs shall meet or exceed standards and regulations of the Federal Aviation Administration and South Dakota State Statutes and any other agency of federal or state government with the authority to regulate WESs.

#### Section 1215.03 General Provisions

##### 1. Mitigation Measures

a. **Site Clearance.** The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the WES.

b. **Topsoil Protection.** The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.

c. **Compaction.** The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.

d. **Livestock Protection.** The permittees shall take precautions to protect livestock during all phases of the project's life.

e. **Fences.** The permittees shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner.

##### f. Roads

i. **Public Roads.** Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WES. Where practical, all-weather roads shall be used to deliver cement, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.

## EXHIBIT B

ii. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the County of such arrangements upon request of the County.

iii. Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainageways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.

iv. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.

v. Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust.

vi. Soil Erosion and Sediment control Plan. The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

## 2. Setbacks

Wind turbines shall meet the following minimum spacing requirements.

**a. Distance from existing Non-Participating residences and businesses shall be not less than four times the height of the wind turbine. Distance from existing Participating residences, business and public buildings shall be not less than fifteen hundred feet. Non-Participating property owners shall have the right to waive the respective setback requirements.**

~~Distance from existing off-site residences, business and public buildings shall be not less than one thousand (1,000) feet. Distance from on-site or lessor's residence shall be not less than five hundred (500) feet or one hundred and ten percent (110%) of the wind turbine height, whichever is greater.~~ For purposes of this section only, the term "business" does not include agricultural uses.

b. Distance from public right-of-way shall be one hundred and ten percent (110%) the height of the wind turbines, measured from the ground surface to the tip of the blade when in a fully vertical position.

c. Distance from any property line shall be one hundred and ten percent (110%) the height of the wind turbine, measured from the ground surface to the tip of the blade when in a fully vertical position unless wind easement has been obtained from adjoining property owner.

**d. Distance from the Lake Park District located at Lake Cochrane 3 miles, Lake Alice 2 miles and 1 mile from the Lake Park District at Bullhead Lake.**

**e. Distance from the municipalities of Altamont, Astoria, Brandt and Goodwin of 1 mile from the nearest residence and 1 1/2 miles from the city limits of the towns of Gary, Toronto and Clear Lake, except the area of Clear Lake located in sections 11, 12 and 14.**

3. Electromagnetic Interference. The permittees shall not operate the WES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications

Commission (FCC) regulations or other law. In the event such interference is caused by the WES or its operation, the permittees shall take the measures necessary to correct the problem.

4. Lighting. Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment. Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.

5. Turbine Spacing. The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.

6. Footprint Minimization. The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.

7. Electrical Cables. The permittees shall place electrical lines, known as collectors, and communication cables underground when located on private property except when total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation. Collectors and cables shall also be placed within or immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.

8. Feeder Lines. The permittees shall place overhead electric lines, known as feeders, on public rights-of-way if a public right-of-way exists. Changes in routes may be made as long as feeders remain on public rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction.

9. Decommissioning/Restoration/Abandonment

a. Decommissioning Plan. Within 120 days of completion of construction, the permittees shall submit to the County a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. **The decommissioning plan shall include the requirement that Permittee post a bond or other adequate security sufficient to pay the entire cost of the decommission process.**

b. Site Restoration. Upon expiration of this permit, or upon earlier termination of operation of the WES, the permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of forty two (42) inches. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner

EXHIBIT B

shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen months after expiration.

10. Abandoned Turbines. The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the permittees to decommission any abandoned turbine.

11. Height from Ground Surface. The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.

12. Towers.

a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-glass.

b. All towers shall be singular tubular design. With the exception of those towers identified in Section 12.15.01.

13. Noise & **Shadow Flicker**.

a. ~~Noise level shall not exceed 50 dBA average A-Weighted Sound pressure at the perimeter of existing residences. Noise level shall not exceed 45 dBA average A-Weighted Sound pressure at the perimeter of existing residences, for non-participating residences.~~

b. **Limit for allowable shadow flicker at existing residences to no more than 30 hours annually.**

14. Permit Expiration. The permit shall become void if no substantial construction has been completed within three (3) years of issuance.

15. Required Information for Permit.

a. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map as appropriate.

b. Map of easements for WES.

c. Copy of easement agreements with landowners.

d. Map of occupied residential structures, businesses and public buildings.


e. Map of sites for WES, access roads and utility lines.

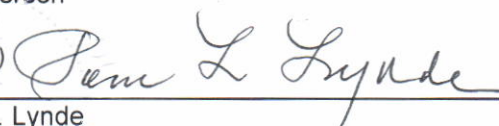
f. Proof of utility right-of-way easement for access to transmission lines.

g. Location of other WES in general area.

h. Project schedule.

Passed and adopted this 23rd day of May, 2017.

  
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Gary Jaeger  
Chairperson

(SEAL)   
\_\_\_\_\_  
Pam L. Lynde  
Auditor

## EXHIBIT B

Petition to Intervene by Lake Cochrane Improvement Association

First Reading May 16, 2017  
Second May 23, 2017  
Approved & Adopted May 23, 2017  
Notice of Adoption Published May 31, 2017

Effective Date June 20, 2017

This ordinance shall become effective 20 days after publication of this notice in the official newspaper, thereby repealing all ordinances or parts thereof in conflict herewith unless a referendum is timely involved prior thereto.