
August 2, 2019

Hon. James Mortenson
Administrative Law Judge
P.O. Box 64620
Saint Paul, MN 55164-0620
james.mortenson@state.mn.us

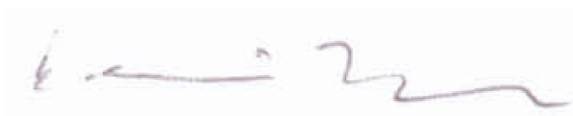
Re: Response to Dodge County Wind, LLC Reply to Motion to Compel Discovery and
Extend Deadlines for Submission of Pre-Filed Testimony

Dear Judge Mortenson:

The Laborers District Council of Minnesota and North Dakota ("LIUNA Minnesota & North Dakota") respectfully submits the attached Response to the Dodge County Wind, LLC Reply to our Motion to Compel Discovery and Extend Deadlines for Submission of Pre-Filed Testimony along with related attachment.

We thank you for your attention to this matter.

Sincerely,



Kevin Pranis
Marketing Manager
(612) 224-6464
kpranis@liunagro.com

OFFICE OF ADMINISTRATIVE HEARINGS / MN PUBLIC UTILITIES COMMISSION

<p>In the Matter Dodge County Wind, LLC's Certificate of Need, LWECS Site Permit, and HVTL Route Permit applications for the Dodge County Wind Project and associated facilities in Steel, Dodge, and Olmstead counties in Minnesota</p> <p>MPUC DOCKETS IP-6981/CN-17-306 IP-6981/WS-17-307 IP-6981/TL-17-308</p> <p>OAH DOCKET 5-2500-35668</p>	<p>Motion of LIUNA Minnesota & North Dakota to Compel Discovery and Extend Deadlines for Submission of Pre-Filed Testimony</p>
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The Laborers District Council of Minnesota and North Dakota (“LIUNA Minnesota & North Dakota”) respectfully reiterates our requests that the Administrative Law Judge (“ALJ”), pursuant to Minnesota Rules 1400.6700, subpart 2, issue an order compelling Dodge County Wind, LLC (“Applicant”) to fully and completely respond to LIUNA Minnesota & North Dakota’s first information request (attached), and to cooperate with subsequent information requests. LIUNA Minnesota & North Dakota further asks that the ALJ extend deadlines for submission of pre-filed written testimony, including rebuttal and surrebuttal testimony, in order to ensure that our opportunity to use information as planned in the development of testimony is not prejudiced by Applicant’s refusal to meet discovery obligations. We enclose the following Response to Applicant’s Reply to our Motion.

Information recently provided by Applicant is a step in the right direction but is not sufficient to meet the need

We appreciate that Applicant has finally made a modest effort to provide an anticipated employment breakdown that is partially responsive to one element of LIUNA Minnesota & North Dakota’s original request. While we intend to use this information in order to model one local impact scenario it is not a substitute for the requested baseline data on past projects which are needed to help establish the range of scenarios on factors such as workforce recruitment plan that we intend to develop in our case.

As Applicant cautions, we cannot rely on the anticipated breakdown that they have provided, which is not based on “any specific data or information”, and therefore need the requested data to perform our own analysis. Further, while the information provided brings us one step closer to addressing

anticipated construction employment patterns, it does nothing to fill gaps in Applicant's answers related to other elements of our request as described below.

Applicant fails to refute the need for requested information to prepare LIUNA Minnesota & North Dakota's case

LIUNA Minnesota & North Dakota cited three elements of our case for which requested information is needed: "feasibility of reliance on local labor"; "Applicant's plan to recruit local workforce;" and "the likely local socioeconomic impacts of the project... [using] baseline data on the employment of local workers on similar wind energy projects built by NextEra in our area." In our motion, we observed that each element is not only integral to our case, but also directly responsive to claims made by Applicant's chief witness, Mr. Mike Weich, regarding construction workforce plans and the local benefits of construction jobs associated with the project.

Applicant ignores the first two categories of information entirely, and responds to the last by asserting that the requested information is not needed to assess the project's local socioeconomic impacts because Mr. Jeff Plewes, a consultant who has analyzed the socioeconomic impact of large energy projects, says so. Mr. Plewes does not, unfortunately, provide any evidence or rationale to support his conclusion, nor does he demonstrate sufficient familiarity with the type of analysis that LIUNA Minnesota & North Dakota's expert witness has prepared, and is preparing in this case, to have an informed opinion.

Applicant may question the credibility of LIUNA Minnesota & North Dakota's expert witness and challenge his methodology in rebuttal testimony, information requests, or cross-examination. But Applicant jumps the gun by attempting to insert anticipated objections over methodology into the discovery process. LIUNA Minnesota & North Dakota should have reasonable latitude to make our case which will then be tested through the contested case process, and we are not obligated to prove our entire case each time we request information from Applicant.

LIUNA Minnesota & North Dakota seeks to *avoid* delay by compelling timely discovery.

LIUNA Minnesota & North Dakota's motion seeks not to delay the proceedings but to compel Applicant to make good-faith efforts to meet discovery obligations, and only requests schedule adjustments sufficient to make up for time lost due to Applicant's non-compliance. Further, no delay will, in fact, occur unless we meet our burden to show that Applicant failed to make a good-faith effort to fill a reasonable request for necessary information. In the event that we have made a showing, a schedule adjustment would ensure that LIUNA Minnesota & North Dakota is not penalized, and Applicant is not rewarded, for Applicant's unreasonable conduct.

It is LIUNA Minnesota & North Dakota which has sought to keep the process on track by seeking timely fulfillment of discovery obligations. Our decision to immediately file a motion to compel and our

warning to Applicant, which was creatively reinterpreted as a “threat,” were intended not to delay the proceedings but to avoid much longer potential delays that could occur due to Applicant’s non-compliance.

Applicant provides no basis for allegations that the request serves “commercial” interests.

Applicant asserts that “any reasonable reading of the information requests reveals that LIUNA is seeking information to serve its commercial interests, not information needed to conduct a socioeconomic impact assessment.” As evidence to support this bold claim, Applicant cites passages from our motion, including “our organization’s interest in construction jobs”; a misleading juxtaposition of “a clear commitment” and “to local hiring”; and, for no discernible reason, our observation that “any competent developer should be able to describe typical labor and subcontracting arrangements”.

But LIUNA Minnesota & North Dakota has no commercial interests. We are a democratically-governed nonprofit organization dedicated to protecting and furthering the interests of construction laborers and workers generally in Minnesota and North Dakota. LIUNA Minnesota & North Dakota is not a competitive business, and the interest we represent is public rather than commercial, not unlike the interest of environmental and other citizen groups that regularly participate in Commission proceedings. We have earned a reputation in Minnesota as an advocate for the public interest in the areas of clean energy progress, and -- especially relevant to these proceedings -- the maximization employment of local construction workers including workers that are not LIUNA members.

LIUNA Minnesota & North Dakota’s noted interest in maximizing local employment on wind energy construction projects on behalf of “hundreds of members who live in Southeast Minnesota... together with their families and communities” should come as no surprise to Applicant since it is, in part, the basis of our petition for intervention -- a petition that was accepted without objection by all parties when it was filed. Applicant fails to make the case that this interest is either commercial or competitive, much less to explain how the requested information would advance such alleged interests.

Applicant’s other citations are even more inapt. The full version of the second passage is clearly not a demand for local hiring commitments, but an explanation of why baseline local hiring data are needed. “Finally, it will be difficult to assess the likely local socioeconomic impacts of the project absent either a clear commitment on the part of the Applicant to local hiring or baseline data on the employment of local workers on similar wind energy projects built by NextEra in our area.” In the last instance, we merely observed that a leading developer such as NextEra should be capable of providing basic questions such as a breakdown of construction workforce by job classification -- a correct observation based on the fact that such information, which Applicant asserted could not reasonably be produced and did not exist, had already been provided to the Department of Commerce.

The cited Maryland Public Service Commission decision is irrelevant to the current case.

Last, Applicant cites a decision by the Maryland Public Service Commission (MPSC) on a contested information request submitted by the Baltimore Washington Construction and Public Employees Laborer's District Council - a sister organization that represents construction laborers in the District of Columbia, Maryland and Virginia. We appreciate Applicant's recognition that what happens in another jurisdiction can have relevance to a Minnesota Public Utilities Commission proceeding, an argument we have made throughout this dispute, but contend that the case has little relevance to the question at hand for several reasons.

First, contrary to Applicant's claim, our information request bears very little similarity to the request that was rejected by MPSC. The union's request in the MPSC case seeks detailed information on utility's decision to utilize outside contractors, contractor selection process, names of prequalified contractors, and contractor evaluation metrics.

We cannot speak to the union's request in Maryland, but ours is not a fishing expedition for useful or interesting information, but a narrowly-tailored search for information on local construction hiring efforts and projected impacts. Our first information request asked only for general information on any minimum qualifications that Applicant or Applicant's General Contractor might have established for subcontractors and workforce; and aggregated information on the use of local and non-local construction workforce, where contractor names were suggested only as a potential proxy for local hiring where requested data are unavailable.

A subsequent request sought very general information on the selection of a General Contractor for Dodge County Wind, and aggregated information on the General Contractor's wind energy workload leading up to and during construction of the project. None of the requested information could reasonably be understood to be commercially sensitive, nor is there any argument put forth regarding how it could be used for commercial purposes.

Second, Minnesota's Commission has already determined the specific local construction hiring issue that LIUNA Minnesota & North Dakota's information request is designed to illuminate to be relevant to Certificate of Need and Site Permit proceedings for LWECs projects. By contrast, MPSC specifically found that the union had "not shown the relevance of the disputed data requests" to the matter in question, which was a rate case rather than a decision to grant or deny permission to develop a large energy facility.

Applicant is correct in observing that Minnesota's Commission has not issued "a blanket approval of all the detailed information that LIUNA seeks". The Commission did, however, order contested case proceedings covering both Certificate of Need and Site Permit applications for the Bitter Root Wind project for the *sole purpose* of examining local socioeconomic impacts related to the employment of local and non-local construction labor under very similar circumstances. The Commission determined

that LIUNA Minnesota & North Dakota's advocacy and pursuit of information through contested case hearings served the *public* interest.

Further, in oral argument and discussion preceding the Commission's decision specifically referenced the applicant's failure to provide requested information that was nearly identical to the labor statistics sought in this case. The request at issue was for local and non-local construction employment data for *past projects* built or developed by affiliates of the applicant's parent company that were also "not the subject of... the instant proceedings" in a format that was nearly identical to the request in this case. Applicant fails to explain why such data would have been relevant to the Bitter Root Wind case but not to the instant case.

Third, MPSC's decisions regarding what constitutes an "improper purpose" for purposes of discovery and the relevance of contractor information do not bind the Minnesota Public Utilities Commission, which operates under its own statutes and rules. Applicant does not establish that Minnesota's Commission would have come to the same conclusion in similar circumstances, let alone that the Maryland decision should be a guidepost to Minnesota decision-makers in a dissimilar and completely unrelated case.

It is notable in this context that Applicant wishes the ALJ to apply Commission precedent from another state to a Minnesota case while arguing that requesting *information* on projects built in other states would constitute "an attempt to circumvent the regulatory bodies of North Dakota, Iowa, and Michigan". If there is any question about the Minnesota Public Utilities Commission's view of this matter, we would urge that the question be certified to the Commission for clarification.

LIUNA Minnesota & North Dakota has not threatened Applicant

Applicant's hysteria reaches fever pitch when it is alleged that LIUNA Minnesota & North Dakota engaged in "an intentional attempt to leverage the threat of delay" and made "threats of delay and a demise of the proposed project". While not serious in its substance, Applicant's allegation wades far enough into ugly stereotypes about labor unions that it requires a clear response. LIUNA Minnesota & North Dakota has not threatened Applicant in any way. The cited email passage does not "threaten" Applicant with any action on the part of our organization or any of our members based on actions taken or not taken by Applicant.

LIUNA Minnesota & North Dakota's statement is, rather, akin to saying that if Applicant walks out in the rain without an umbrella or raincoat, Applicant is likely to get wet. Similarly, if we suggest that walking into a brick wall might get Applicant's glasses broken, that is not tantamount to a threat to break Applicant's glasses. Applicant is welcome to exercise the God-given right to ignore reasonable advice, but not to suggest that any consequences of its own mistakes are proof of union thuggery.

Applicant has failed to make good-faith efforts and substantiate assertions that requested information cannot reasonably be obtained

LIUNA Minnesota & North Dakota recognizes that there may be limits to Applicant's ability to provide information on past projects that may be held by unrelated third parties or not exist in an easily accessible format. All that we expect is that Applicant make reasonable efforts to obtain and provide what information it can, and identify the obstacles encountered along the way. For example, where Applicant found determining the distance of a residence to the project to be unduly burdensome, an objection not specifically raised in Applicant's initial response, Applicant could simply have provided data for in-state and out-of-state residence.

Unfortunately, reasonable effort is where Applicant has fallen far short. The Applicant has failed to produce responsive information in its possession before being called out for said failure; failed to answer straightforward questions about planned and completed activities related to workforce assessment and recruitment; and failed to provide any evidence of any effort to obtain or assess the feasibility of obtaining requested labor statistics.

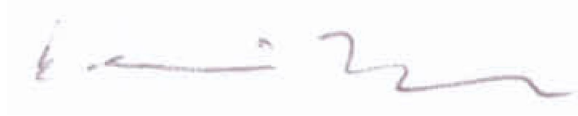
LIUNA Minnesota & North Dakota submitted a second information request after receiving Applicant's response to the first request in order to determine what efforts had been made, and to assess the basis for Applicant's objections regarding the feasibility of meeting the request. The attached response to our second and third information requests, which was provided yesterday (Aug. 1) confirms our suspicion that Applicant made little if any attempt to meet the request and asserted or implied logistical hurdles that Applicant made no effort to confirm presented real impediments.

For example, Applicant's response to LIUNA Minnesota & North Dakota's first request asserts that providing labor statistics for past projects would be "unduly burdensome" and "would require development of information from confidential personal information regarding individuals held by third parties not party to these proceedings." In response to a request for information on communications regarding the request between Applicant or NextEra and the EPC contractors responsible for construction of the projects in question, however, Applicant admits that it "did not take steps to provide a response". In other words, Applicant made no effort to verify with the "third parties" in question whether the request would be unduly burdensome, what information could reasonably be provided without compromising confidential personal information, or if the EPC contractors would be willing to share the requested information.

Similarly, despite Mr. Weich's statement from October 2018 indicating that Applicant was already in discussions with a "Minnesota-based General Contractor" regarding workforce and subcontracting needs and recruitment efforts that would continue through 2018 and in to 2019, Applicant admits that its efforts were limited to communication with NextEra's Engineer & Construction Department which confirmed -- inaccurately as it turned out -- that "the information did not exist", apparently without consulting said General Contractor.

Dated: 8/2/19

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read 'Kevin Pranis', is centered on the page. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

By: Kevin Pranis, Marketing Manager
LIUNA Minnesota & North Dakota
81 East Little Canada Road
St. Paul, MN 55117

In the Matter Dodge County Wind, LLC's
Certificate of Need, LWECS Site Permit, and
HVTL Route Permit applications for the
Dodge County Wind Project and associated
facilities in Steel, Dodge, and Olmstead
counties in Minnesota

MPUC DOCKETS IP-6981/CN-17-306
WS-17-307/TL-17-308

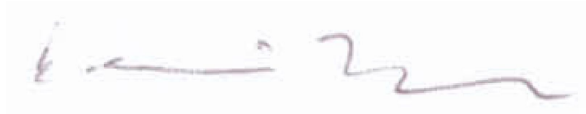
OAH DOCKET 5-2500-35668

CERTIFICATE OF SERVICE

I, Kevin Pranis, hereby certify that I have this day served copies of the foregoing Motion to Compel Discovery and Extend Deadlines for Submission of Pre-Filed Testimony and related attachments 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 2nd day of August, 2019



Kevin Pranis

Electronic Service Member(s)

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