

**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;

LIUNA Minnesota Objection to Petition of Flying Cow Wind, LLC to Withdraw Certificate of Need Application for Proposed Bitter Root Wind Project

INTRODUCTION

The Laborers District Council of Minnesota and North Dakota (“LIUNA Minnesota”) objects to the petition by Flying Cow Wind, LLC (FCW), a subsidiary of RES Americas, to withdraw the company’s application for a Certificate of Need (“CN”) for the Bitter Root wind energy project. We further object to the trade secret designation of documents submitted in the company’s petition to withdraw the petition and request that the Commission make the documents available to the public.

First, FCW has not demonstrated that Bitter Root Wind meets the Independent Power Provider exemption established in Minn. Stat. § 216B.243, subd. 8(7) because the company has not shown that the power produced by the project will not be sold to “an entity that provides retail electric service in Minnesota or wholesale electric service to another entity in Minnesota”.

LIUNA Minnesota has requested but not yet been afforded an opportunity to view the portions of FCW’s filing that the company has designated as trade secret. However, it is our understanding that the documents do not describe the relevant provisions of the Power Purchase Agreement (“PPA”) that serves as the basis of FCW’s petition to withdraw the CN application for Bitter Root Wind. Specifically, we understand that the documents do not specify the duration of the PPA nor the circumstances under which the PPA could be

terminated or modified. In our view, the requirements of the Independent Power Producer exemption are not met if there is meaningful potential for the operational life of Bitter Root Wind to exceed the duration of the PPA, or for the PPA to be terminated or modified before its expiration in a manner that could make some or all of the energy produced by the facility available for sale to a Minnesota utility or wholesale power provider.

We have submitted a formal discovery request to FCW (attached), and look forward to receiving information from FCW to allay our concern that power generated by Bitter Root could ultimately end up being sold to Minnesota ratepayers. However, at this point it seems to us that the legal and factual questions raised by FCW's petition would best be addressed in the context of the contested case proceeding previously ordered by the Commission.

Second, we believe that FCW's petition to withdraw the CN application for Bitter Root Wind is a transparent attempt to avoid precisely the scrutiny of the socioeconomic impacts of the project that LIUNA Minnesota has sought, and that the Commission has ordered. Just weeks ago, FCW argued that the project met the applicable CN criteria. Yet once the matter was referred to a contested case hearing, the company changed its mind and determined that a CN was not required, in the absence of any change in the underlying facts. In this respect, the circumstances of the Bitter Root Wind case are unlike those of the Red Pine, which was cited as precedent, because Red Pine was neither contested nor referred for a contested case hearing.

LIUNA Minnesota has consistently argued that the socioeconomic issues of concern to our organization are equally relevant to the application for a Site Permit for Bitter Root Wind. But we also contend that allowing FCW to withdraw the CN petition at this late date would unduly prejudice the interests of our members by preventing us from exploring issues that could be relevant to the Commission's ultimate decision in the case. While socioeconomic issues are pertinent both to the CN and the Site Permit, the relevant statutory language and criteria are not identical, and the loss of the opportunity to pursue lines of inquiry specific to the CN would undermine our full participation in the case. For this reason, as well, we believe that the suitability of the project for a CN exemption is best assessed in a contested case proceeding.

Finally, LIUNA Minnesota finds no rationale in FCW's filing for the company's assertion that the identity of the power purchaser should be treated as a trade secret to be withheld from the public. FCW asserts that, but does not explain why, the information "derives independent economic value, from being known or accessible to the public".

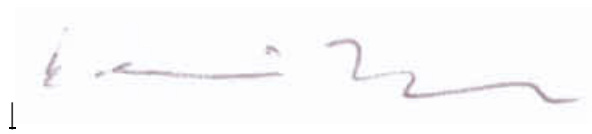
If, as is implied by FCW's petition, the entire output of Bitter Root Wind is already contracted to a single purchaser, it is difficult to understand how disclosing the identity of the customer could compromise FCW's commercial interests, except inasmuch as the customer seeks anonymity. And even if power purchaser seeks anonymity, FCW has not demonstrated that granting such anonymity is consistent with the Commission's mandate to protect the public interest and to facilitate the transparent and orderly development of energy infrastructure.

The Fortune 500 companies such as Google, Facebook and Walmart that have the resources to commission their own large energy facilities have no right under Minnesota law to anonymity, nor should the Commission allow them to develop energy facilities in our state free from scrutiny. The state legislature has provided a limited exemption from CN requirements for projects that serve out-of-state entities, but nowhere has the legislature indicated that the public should be kept in the dark.

LIUNA Minnesota requests that the Commission determine that the data submitted by FCW in its petition to withdraw the CN application for Bitter Root Wind are not eligible for trade secret protection, and that the Commission make the documents available to the public. While we anticipate that FCW may object that publication of the data could violate the terms of the agreement between FCW and the purchaser, we note that the Commission's primary obligation is to the public and not to FCW or the purchaser. We further note that the confidentiality agreement between FCW and the purchaser has already apparently been modified to facilitate the withdrawal petition and could presumably be modified again if FCW and the purchaser wish to avail themselves of the relief available under Minn. Stat. § 216B.243, subd. 8(7).

We appreciate the Commission's attention to the issues brought forth by LIUNA Minnesota and the procedural rights of our members in this proceeding, and ask the Commission to continue to prioritize transparency and full development of the evidentiary record in these decisions.

Dated: January 10, 2019



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