

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

**ORDER DENYING THE JOINT MOTION
FOR CERTIFICATION OF REQUEST
FOR CONTESTED CASE HEARING AND
INTERVENTION TO PUBLIC UTILITIES
COMMISSION**

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

This matter is pending before Administrative Law Judge James E. LaFave.

On July 18, 2018, the Lake Cochrane Improvement Association (LCIA) filed a Request for a Contested Case Hearing¹ and a Petition to Intervene.² On the same day, the Laborers District Council of Minnesota and North Dakota (LDC) filed its second request for a contested case hearing.³ Both requests for a contested case hearing and the Petition to Intervene were denied.⁴ On August 21, 2018, LCIA and the LDC filed a Joint Motion for Certification of Request for Contested Case Hearing and Intervention to Public Utilities Commission (Motion for Certification).⁵ Neither Flying Cow Wind LLC (Flying Cow Wind) nor the Minnesota Department of Commerce Division of Energy Resources (DOC-DER) filed a response to the Motion for Certification.

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

¹ Request for Contested Case Hearing (July 18, 2018) (eDocket No. 20187-145009-01).

² Petition to Intervene (July 18, 2018) (eDocket No. 20187-145008-01).

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


⁴ See Order on the Request for Contested Case Hearing and Petition for Intervention (Aug. 10, 2018) (eDockets 20188-145760-01.); Amended Order Denying the Second Request for Contested Case Hearing (Aug. 14, 2018) (eDockets 20188-145537-02).

⁵ Joint Motion for Certification of Request for Contested Case Hearing and Intervention to Public Utilities Commission (Aug. 21, 2018) (eDockets 20188-145911-01).

ORDER

The Joint Motion for Certification of Request for Contested Case Hearing and Intervention to Public Utilities Commission is **DENIED**.

Dated: August 30, 2018



JAMES E. LAFAVE
Administrative Law Judge

MEMORANDUM

The LCIA and LDC (collectively “Petitioners”) respectfully request that the Administrative Law Judge certify the Orders denying their motions for a contested case hearing and LCIA’s Petition to Intervene to the Minnesota Public Utilities Commission (Commission) to determine if the denial of the motions and the Petition to Intervene was warranted and, if not, what process should be followed going forward.

The rules of the Office of Administrative Hearings govern the certification of motions to agencies. Minn. R. 1400.7600 (2017) provides:

No motions shall be made directly to or be decided by the agency subsequent to the assignment of a judge and prior to the completion and filing of the judge's report unless the motion is certified to the agency by the judge. . . . Uncertified motions shall be made to and decided by the judge and considered by the agency in its consideration of the record as a whole subsequent to the filing of the judge’s report. Any party may request that a pending motion or a motion decided adversely to that party by the judge before or during the course of the hearing . . . be certified by the judge to the agency. In deciding what motions should be certified, the judge shall consider the following:

- A. whether the motion involves a controlling question of law as to which there is substantial ground for a difference of opinion; or
- B. whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing; or
- C. whether or not the delay between the ruling and the motion to certify would adversely affect the prevailing party; or
- D. whether to wait until after the hearing would render the matter moot and impossible for the agency to reverse or for a reversal to have any meaning; or

E. whether it is necessary to promote the development of the full record and avoid remanding; or

F. whether the issues are solely within the expertise of the agency.

The factor that predominates in deciding this Motion for Certification is “whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing.”⁶ The Petitioners argue that the informal review process ordered by the Commission has been inadequate to fully develop the record necessary for the Commission to make a determination regarding the Certificate of Need and Site Permit. They maintain that, if the Commission agrees a contested case hearing is necessary, the opportunity to make that determination now would save months of delay.⁷ The Administrative Law Judge disagrees.

This case is near its end. When the Orders were issued On August 10 and August 14, 2018, denying Petitioners’ motions requesting a contested case hearing and LCIA’s Petition to Intervene, proceedings involving the parties and the public had been completed: more specifically, the public hearing had been held, the comment period had closed, the reply period had closed, Flying Cow Wind had filed its proposed Findings of Facts, Conclusions of Law and Recommendations, and the Petitioners had both filed exceptions to Flying Cow Wind’s proposed findings. The next milestone on the schedule is the filing of the Administrative Law Judge’s final report on September 5, 2018.⁸

Contrary to Petitioners’ assertion, granting the Motion for Certification would not save time but rather would cause an inordinate and unjustified delay in these proceedings. If granted, the issuance of the Administrative Law Judge’s report would be delayed pending a ruling by the Commission. If the Commission then determines a contested case proceeding is not necessary, Flying Cow Wind has been harmed by the delay.⁹ If the Motion for Certification is denied, however, the Administrative Law Judge’s final report will be issued as scheduled. The Commission will consider the Petitioner’s motions for contested case hearing and LCIA’s Petition to Intervene “in its consideration of the record as a whole subsequent to the filing of the judge’s report.”¹⁰ If the Commission ultimately decides a contested case hearing is necessary the matter can be remanded to the Administrative Law Judge and no one is harmed.

In summary, given the ruling on the Motion for Certification and the Administrative Law Judge’s final report in this matter will issue within days of each other, granting the Motion for Certification would not “materially advance the ultimate termination of the hearing.”¹¹ Also, as noted above, “the delay between the ruling and

⁶ Minn. R. 1400.7600 (B)(2017).

⁷ Joint Motion for Certification of Request for Contested Case Hearing and Intervention to Public Utilities Commission at 11 (Aug. 21, 2018) (eDockets 20188-145911-01).

⁸ See Order Granting Flying Cow Wind’s Second Motion to Amend the Scheduling Order (July 18, 2018) (eDockets 20188-144984-01).

⁹ See Minn. R. 1400.7600 (C) (2017).

¹⁰ Minn. R. 1400.7600 (B).

¹¹ *Id.*

the motion to certify would adversely affect the prevailing party (Flying Cow Wind).¹²
For these reasons the Motion for Certification must be denied.

J. E. L.

¹² Minn. R. 1400.7600 (C).

August 30, 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

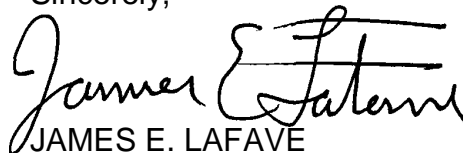
**OAH 60-2500-35035
MPUC IP-6984/CN-17-676
MPUC IP-6984/WS-17-749**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **ORDER DENYING THE JOINT MOTION FOR CERTIFICATION OF REQUEST FOR CONTESTED CASE HEARING AND INTERVENTION TO PUBLIC UTILITIES COMMISSION** 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 30, 2018, she served the true and correct **ORDER DENYING THE JOINT MOTION FOR CERTIFICATION OF REQUEST FOR CONTESTED CASE HEARING AND INTERVENTION TO PUBLIC UTILITIES COMMISSION** 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
Sean	Flannery	sean.flannery@res-americas.com	Renewable Energy Systems Americas Inc.	12 South 6th Street Suite 930 Minneapolis, MN 55402	Electronic Service	No
Andrew	Gibbons	andrew.gibbons@stinson.com	Stinson Leonard Street	50 S 6th St Ste 2600 Minneapolis, MN 54002	Electronic Service	No
Anne Marie	Griger	anne-marie.griger@res-group.com	Flying Cow Wind, LLC	11101 W 120th Ave Broomfield, Colorado 80021	Electronic Service	No
James	LaFave	james.lafave@state.mn.us	Office of Administrative Hearings	PO Box 64620 St. Paul, MN 55164-0620	Electronic Service	No
Michelle	Matthews	Michelle.Matthews@res-group.com	Renewable Energy Systems	330 2nd Ave S Ste 820 Minneapolis, MN 55401	Electronic Service	No
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