

OAH Docket Number: 60-2500-35035
MPUC IP-6984/CN-17-676
MPUC IP-6987/WS-17-749

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

In the Matter of the Applications of Flying Cow Wind, LLC for a Certificate of Need and Site Permit for the up to 152 MW Large Wind Energy Conversion System in Yellow Medicine County, Minnesota.

**FLYING COW WIND, LLC'S
REQUEST TO WITHDRAW ITS
APPLICATION FOR A
CERTIFICATE OF NEED**

Flying Cow Wind, LLC respectfully submits this request to withdraw its application for a certificate of need ("CON") for the proposed 152 MW Bitter Root Wind Farm in Yellow Medicine County, Minnesota ("Project"). Per Minn. Stat. § 216B.243, subd. 8(7), a certificate of need is no longer required for the Project because Flying Cow Wind, an independent power producer ("IPP"), has entered into a long-term Power Purchase Agreement ("PPA") with an entity that does not provide retail service in Minnesota or wholesale electric service to another entity in Minnesota. Accordingly, Flying Cow Wind requests that the Executive Secretary approve this withdrawal pursuant to his delegated authority under Minn. R. 7829.0430.

BACKGROUND

Flying Cow Wind filed a CON application for the Project on October 19, 2017. At that time, Flying Cow Wind had not secured a PPA. On October 23, 2018, Flying Cow Wind provided notice to the Public Utilities Commission ("Commission") that it had entered into a long-term PPA for the Project. The purchaser under the PPA is **[BEGIN TRADE SECRET INFORMATION**

END TRADE SECRET INFORMATION] ("Purchaser"). The Purchaser does not provide retail service in Minnesota or wholesale electric service to another entity in Minnesota. Under the terms of the PPA, the Purchaser has agreed to purchase all of the energy and renewable attributes for the Project for the entire PPA term.

When Flying Cow Wind provided notice of the PPA to the Commission, Flying Cow Wind's obligations under the PPA precluded it from disclosing further information about the PPA or the counterparty at that time. Out of a concern for those confidentiality obligations, and because of the late stage of the CON proceedings, Flying Cow Wind did not seek to withdraw its application at that time. Seemingly, the benefits of withdrawal outweighed the risks of disclosure. In light of the additional proceedings ordered, however, that balance has now shifted, and Flying Cow Wind accordingly addressed the confidentiality issues with the Purchaser such that Flying Cow Wind can now make this filing to assert the exemption. Although no statute or rule requires disclosures or supporting documentation to qualify for the exemption, Flying Cow Wind has identified the Purchaser to the Commission and further provides the cover and signature pages of the PPA, which are attached as Exhibit A.

ARGUMENT

I. The Project Qualifies for the Statutory IPP Exemption.

Flying Cow Wind is requesting to withdraw its CON application due to the execution of the PPA. Because Flying Cow Wind is an IPP, and the Purchaser does not provide retail service in Minnesota or wholesale electric service to another entity in Minnesota, the Project qualifies for the statutory exemption applicable to:

a wind energy conversion system or solar electric generation facility if the system or facility is owned and operated by an independent power producer and the electric output of the system or facility is not sold to an entity that provides retail electric service in Minnesota or wholesale electric service to another entity in Minnesota other than an entity that is a federally recognized regional transmission organization or independent system operator.

Minn. Stat. § 216B.243, subd. 8(7) ("IPP Exemption"); *see also* Minn. R. 7849.0030, subp. 2 ("[A] certificate of need is not required for a facility exempted by Minnesota Statutes, section 216B.243, subdivision 8.").

The Executive Secretary has approved the withdrawal of a CON application where the applicant subsequently executed a PPA that triggered this IPP Exemption.¹ As the applicant for that project explained, the purpose of the CON process is to protect Minnesota ratepayers by reducing wasteful and duplicative spending on energy infrastructure.² The IPP Exemption, adopted in 2014, simply recognizes that a wind energy conversion system that is owned by an IPP and that does not sell to a provider of retail electricity in Minnesota has no impact on Minnesota ratepayers. Accordingly, the Commission need not assess whether to issue a CON for the Project.

II. The Executive Secretary Has Delegated Authority to Approve This Withdrawal.

An uncontested withdrawal is appropriate. Pursuant to Minn. R. 7829.0430, subp. 1, the Commission has delegated to the Executive Secretary the authority to approve the withdrawal of a filing if the following conditions are met:

- A. the party that submitted the filing has requested that the filing be withdrawn and has served notice on the persons listed on the official service list;
- B. no person has expressed opposition to the withdrawal of the filing within 14 days of service of the notice; and
- C. no commissioner or commission staff person has identified a reason that the matter should not be withdrawn.

Through this filing, Flying Cow Wind serves notice of its request to withdraw on all persons listed on the official service list. Withdrawal is warranted if no opposition is noted within the next fourteen days, and if no commissioner or commission staff has identified a reason that the matter should not

¹ See Notice and Order Approving Petition to Withdraw Filing, *In the Matter of the Application of Red Pine Wind, LLC for a Certificate of Need for the up to 200.1 megawatt Red Pine Wind Project in Lincoln County, Minnesota*, PUC Docket No. IP-6959/CN-16-140 (Nov. 3, 2016), eDocket ID 201610-125780-02.

² See Request to Withdraw Application for Certificate of Need, *In the Matter of the Application of Red Pine Wind, LLC for a Certificate of Need for the up to 200.1 megawatt Red Pine Wind Project in Lincoln County, Minnesota*, PUC Docket No. IP-6959/CN-16-140 (Oct. 17, 2016), eDocket ID 201610-125780-02 (citing Hearing on H.F. 2666 Before the House Energy Policy Committee, 88th Legislature (Mar. 18, 2014) (statement of Rep. Pat Garofalo)).

be withdrawn. Although the rules allow for a different procedure where the withdrawal is contested,³ there is no legitimate basis on which to contest or refuse Flying Cow Wind's withdrawal. The Project qualifies for the IPP Exemption under Minn. Stat. § 216B.243, subd. 8(7), and therefore it is unnecessary for Flying Cow Wind to obtain a CON for the Project.

CONCLUSION

For the reasons discussed above, Flying Cow Wind respectfully requests that the Executive Secretary grant its Request to Withdraw Its Application for a Certificate of Need. As a result, the issue of whether local labor usage should be part of the evaluation of socioeconomic impacts under the certificate of need criteria is moot. Flying Cow Wind does, however, intend to request reconsideration on the issue of whether a contested case on local labor usage is necessary or within the scope of the Commission's siting criteria, and will do so within the appropriate time period following the Commission's order.

Dated: December 28, 2018

STINSON LEONARD STREET LLP

/s/ **Andrew J. Gibbons**

Andrew J. Gibbons (#0389692)
Thomas Burman (#0396406)
50 South Sixth Street, Suite 2600
Minneapolis, Minnesota 55402
Telephone: (612) 335-1500
Facsimile: (612) 335-1657
andrew.gibbons@stinson.com
thomas.burman@stinson.com

Attorneys for Flying Cow Wind, LLC

³ Minn. R. 7829.0430, subp. 2.

POWER PURCHASE AGREEMENT

between

[Trade Secret Begins Trade Secret Ends]

and

FLYING COW WIND, LLC

September 5, 2018

[Trade Secret Begins

Trade Secret Ends]

EXHIBIT A

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

[Trade Secret Begins

By: _____

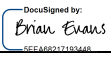
Name: _____

Title: _____ **Trade Secret Ends]**

Date: 9/6/2018

FLYING COW WIND, LLC

By: Roaring Fork Wind, LLC
its Manager

By:  _____

Name: Brian Evans

Title: Chief Development officer

Date: 9/6/2018