

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;

**Request for Contested Case Hearing
Lake Cochrane Improvement Association**

1. Lake Cochrane Improvement Association (LCIA) hereby requests a contested case hearing and in the accompanying petition seeks to intervene as a party with full party rights in the above-captioned dockets for a Certificate of Need and Site Permit for a 150 MW large wind energy conversion system proposed by Flying Cow Wind, LLC ("Applicant") pursuant to Minn. Rules 7854.0900 and Minnesota Rules 1400.6200.
2. The Association's Constitution is attached as Exhibit A to our petition for intervention..
3. LCIA seeks a contested case because the public hearings have disclosed that there are material contested facts that cannot be resolved fairly in public hearings.

Material Disputed Facts

4. **Need:** During these proceedings, Applicant has persistently suggested that it will soon have a Power Purchase Agreement, supporting its contention that there is a need for the power proposed to be produced at the Lake Cochrane site. However,

no Power Purchase Agreement has been forthcoming. LCIA asserts that placement of wind turbines around a major recreational area is inappropriate and significantly damaging to the community that depends upon recreation, tourism, and a community of summer homes.

5. **Planning Issues:** Because this project exceeds project size subject to regulation by local government, the PUC essentially undertakes the planning and zoning function in lieu of local government. On the South Dakota side of the border, that planning and zoning function belongs to Deuel County government. The County has determined that a three mile setback is required to preserve the essential character of the Lake Cochrane area. That decision was the product of numerous hearings and intense review by the government. The product of those hearings is the ordinance attached to this petition. The zoning ordinance provides a factual and legal basis for LCIA's assertion that the project as currently configured is harmful to the community and unnecessarily so.
6. A minor alteration in the project would result in compliance with the Deuel County ordinance. Otherwise, one side of the border will have protections not available to the other. If the PUC is going to consider departing from the Deuel County standards, it should be considered in a contested case.
7. **MERA and MEPA violations.** The application and siting, if approved would significantly 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. Minnesota Statutes Section 116B.04 states:

[W]henever the plaintiff shall have made a prima facie showing that the conduct of the defendant has, or is likely to cause the pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative and the conduct at issue is consistent with and reasonably required for promotion of the public health, safety, and welfare in light of 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 constitute a defense hereunder.

8. Minnesota Statutes Section 116B.09 states:

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.

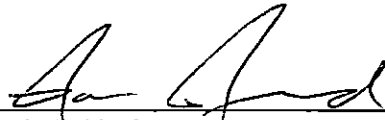
9. **Feasible and prudent alternative:** There are clearly feasible and prudent alternatives to locating this project at Lake Cochrane. Numerous other projects are under way, projects that don't invade a regional recreational area. Moreover, the project could be readily modified to respect the three mile setback, and the costs of making that modification cannot be a reason for not doing so. Where there is an alternative available "economic considerations alone" may not justify refusing to select the alternative.
10. **Impact on View:** There is a factual dispute as to whether the photographs offered by applicant allegedly depicting the appearance of towers presents an accurate impression of the impact on the Lake Cochrane area.
11. **Compatibility with environmental preservation, sustainable development, and the efficient use of resources.** The comments, the ordinance, and the special role of the Lake and its recreational area, present factual issues as to whether the project is compatible with environmental preservation, sustainable development and the efficient use of resources. In this conjunction, the undersigned incorporates by reference the statements from my public comments as well as the allegations in the accompanying intervention petition.

CONCLUSION

12. LCIA accordingly requests that a contested case be granted as described in this petition.

Dated: 7-18-18, 2018

Ron Ruud



On behalf of LAKE COCHRANE
IMPROVEMENT ASSOCIATION

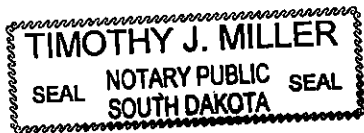
Verification

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.



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

Subscribed and sworn to before me this 18th day of July.


Notary Public