

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Dodge County Wind LLC for a Certificate of Need and Site Permit for the Dodge County Wind Project and Associated Facilities in Dodge, Steele, and Olmsted Counties, Minnesota, and a Route Permit for the 345 kV High-Voltage Transmission Line Associated with the Dodge County Wind Project in Dodge and Olmsted Counties

**ORDER ON MOTION TO  
COMPEL**

On July 22, 2019, the Laborer’s International Union of North America Minnesota & North Dakota (LIUNA Minnesota) filed a Motion to Compel Discovery and to Extend Deadlines for Submission of Pre-Filed Testimony (Motion).<sup>1</sup> Dodge County Wind LLC (Applicant) filed a reply to the Motion on July 26, 2019. The record on the Motion closed that day.

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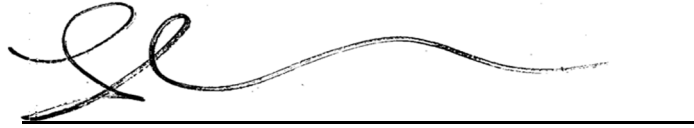
<sup>1</sup> According to LIUNA Minnesota’s cover letter, the organization is not represented by counsel. Pursuant to the Public Utilities Commission’s (PUC) Notice and Order for Hearing (Order) at 5 (Nov. 1, 2018), “In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless *otherwise prohibited as the unauthorized practice of law.*” (emphasis added.) Minn. Stat. § 481.02 (2018) addresses the unauthorized practice of law in Minnesota. That law prohibits a person who is an unlicensed member of the Minnesota bar “to appear as attorney or counselor at law in any action or proceeding in any court in this state to maintain, conduct, or defend the same . . . or to prepare legal documents” unless an exception applies. Minn. Stat. § 481.02, subd. 1. None of the exceptions proscribed under Minn. Stat. § 481.02, subd. 3, apply. (A “bona fide labor organization” may give “legal advice to its members in matters arising out of their employment,” but appearing on behalf of the organization in an administrative court proceeding is not that.) See also *Nicollet Restoration, Inc. v. Turham*, 486 N.W.2d 753, 754 (Minn. 1992), “To permit a lay individual to appear on behalf of a corporation would be to permit that individual to practice law without a license.” While Applicant has not specifically objected to the representation of LIUNA Minnesota by a nonattorney, the Administrative Law Judge hereby puts the organization on notice that such nonattorney may run afoul of Minn. Stat. § 481.02, which makes the unauthorized practice of law a misdemeanor. LIUNA Minnesota’s Motion is considered, but it may not be represented in these proceedings by a nonattorney.

Based on the filings, law, and administrative record,

**IT IS HEREBY ORDERED:**

The Motion is **DENIED**.

Dated: August 7, 2019



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JIM MORTENSON  
Administrative Law Judge

## MEMORANDUM

### I. Background

On July 5, 2019, LIUNA Minnesota sent Applicant a discovery request. LIUNA Minnesota sought “additional information on three subjects directly related to [the] organization’s interest in the construction jobs expected to be created by the project.”<sup>2</sup> The three subjects were:

- 1) Applicant’s anticipated construction and subcontracting requirements;
- 2) Applicant’s completed and planned efforts to recruit a local construction workforce; and
- 3) Applicant’s parent company’s (NextEra) use of construction labor or recent wind-energy projects in the upper Midwest.<sup>3</sup>

On July 17, 2019, Applicant responded to LIUNA Minnesota’s discovery request.<sup>4</sup> LIUNA Minnesota was unsatisfied with Applicant’s responses. Applicant stated that some requested information did not exist and would require too much effort to generate, and asserted some of the requested information was irrelevant.<sup>5</sup> Some questions were answered, while Applicant refused to provide some requested information because it concerned “the development of information from confidential personal information regarding individuals held by third parties not party to” the proceedings.<sup>6</sup> LIUNA Minnesota now seeks an order requiring additional responses to its requests, as well as possible additional requests it may make, and that it be given additional time to prepare and file its own prefiled testimony.<sup>7</sup>

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<sup>2</sup> Motion at 2 (July 22, 2019) (eDocket No. 20197-154551-02).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Motion at Letter from Andrew Gibbons to Kevin Pranis (July 17, 2019).

<sup>6</sup> *Id.*

<sup>7</sup> Motion at 9.

## II. Discovery Disputes

Discovery is the process by which information held by an opposing party and necessary for the presentation of the requesting party's case is requested and obtained. Cases are driven by the defined issues. The following issues are to be determined after the hearing in this matter:

- (1) Does the Applicant's proposal meet the requirements for a certificate of need for the wind farm, pursuant to Minn. R. 7849.0120 (2017)?
  - (a) Is the size of the wind farm too large?
  - (b) If a certificate of need should be granted, what contingencies, if any, should the PUC require?
- (2) If a certificate of need should be granted for the wind farm, should the PUC also grant a site permit for the wind farm?
- (3) Does the Applicant's proposal meet the requirements for a certificate of need for the large high-voltage transmission line (LHVTL), pursuant to Minn. R. 7849.0120?
- (4) If a certificate of need should be granted for the LHVTL, should the PUC also grant a route permit for the LHVTL?
  - (a) If a route permit should be granted, where should the route be located?<sup>8</sup>

LIUNA Minnesota is a party to the contested case because it seeks to protect the rights and welfare of its members, their families, and their communities. LIUNA Minnesota also seeks to ensure that the project benefits the skilled construction workers it represents.<sup>9</sup> LIUNA Minnesota wants to show that the local socioeconomic impacts of the project "could vary substantially" depending on the labor force Applicant relies on: local versus nonlocal.<sup>10</sup> LIUNA Minnesota also intends to show that the project should be "built by a largely local" workforce.<sup>11</sup>

When a party objects to a discovery request, the party making the request may move for an order compelling discovery.<sup>12</sup> The movant must demonstrate that the discovery is needed for the proper presentation of the movant's case.<sup>13</sup> Pursuant to the First Prehearing Order,

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<sup>8</sup> First Prehearing Order at 1-2 (Dec. 7, 2018) (eDocket No. 201812-148321-01).

<sup>9</sup> Order Granting Petition to Intervene by LIUNA Minnesota at 3 (Jan. 10, 2019) (eDocket No. 20191-149032-02).

<sup>10</sup> Motion at 3.

<sup>11</sup> *Id.*

<sup>12</sup> Minn. R. 1400.6700, subp. 2 (2017).

<sup>13</sup> *Id.*

The Administrative Law Judge will resolve all disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses upon written motion of a party.<sup>14</sup>

### **III. LIUNA Minnesota has not demonstrated that its discovery requests are needed for the proper presentation of its case**

LIUNA Minnesota claims it must “marry [its] expert knowledge of the availability of skilled labor and qualified subcontractors to information” about Applicant’s labor and subcontracting requirements.<sup>15</sup> LIUNA wants to “evaluate and suggest improvements to Applicant’s plans to recruit local workforce. . . .”<sup>16</sup> Further, LIUNA Minnesota claims “it will be difficult to assess the likely socioeconomic impacts of the project” without more-complete responses from Applicant.<sup>17</sup> According to LIUNA Minnesota, it cannot accomplish these things without Applicant’s full responses to its prior and future discovery requests.

LIUNA Minnesota has not shown why it cannot make its case without the information it has requested from Applicant. LIUNA Minnesota provides no explanation why any information Applicant possesses, and LIUNA Minnesota does not have, will limit or prevent LIUNA Minnesota from sharing its own “expertise” with the Judge. LIUNA Minnesota presents nothing to show that there is anything particularly complicated about comparing the use of local labor with the use of nonlocal labor.

Further, Applicant has shared, as is required by the regulations, the estimated workforce. Applicant has estimated the project will require 230 to 240 temporary employees for construction and five full-time employees for operation and maintenance of the completed facilities.<sup>18</sup> Given LIUNA Minnesota’s professed expertise on the local workforce where the project is intended to be built, it should be more than able to provide input into the record about the availability and effects of using that local labor.

LIUNA Minnesota also argues that the PUC has determined in other cases that the subject matter of LIUNA Minnesota’s case is relevant to the site permit. This argument is unpersuasive.

On November 1, 2018, the PUC issued an Order in this matter.<sup>19</sup> The Order does not specifically address labor use or issues. Rather, the PUC ordered the Administrative Law Judge to “prepare a report setting forth findings of fact, conclusions of law, and a recommendation on the merits of the proposed project, as well as on permit conditions, *considering the applicable statutory and rule criteria.*”<sup>20</sup>

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<sup>14</sup> First Prehearing Order at 4.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Application for Certificate of Need at 56 (June 29, 2018) (eDocket No. 20186-144410-03).

<sup>19</sup> Order (Nov. 1, 2019) (eDocket No. 201811-147516-03).

<sup>20</sup> *Id.* at 7 (emphasis added).

PUC determinations or orders in other cases have little bearing here. There may be any number of reasons why the PUC seeks to develop the record on a particular issue not specifically designated in rule or statute in a particular case. It is not appropriate or efficient to make assumptions about the importance of nonstatutory or regulatory issues that the PUC has not specified in the present case. Rather, the Administrative Law Judge will rely on the PUC's Order in this case—and the law—to direct how he manages the process, including this discovery motion.

There are, however, labor considerations that must be addressed under the law. Applicant must estimate the workforce required for construction, operation, and maintenance of the proposed electric facilities, and it has done so.<sup>21</sup> There are no statutory or regulatory provisions requiring Applicant to address who will be doing the work.<sup>22</sup> Nevertheless, as noted above, LIUNA Minnesota purports to have information about the desirability of employing local workers for the construction of the project, and it will have the opportunity to share that information. It has not shown why it needs additional information from Applicant to present its own information on this topic.

#### **IV. Conclusion**

LIUNA Minnesota has not shown its discovery requests are necessary to the presentation of its case. Therefore, the Motion is denied.

**J. R. M.**

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<sup>21</sup> Minn. R. 7849.0320(J), .0330(F) (2017).

<sup>22</sup> “[A]nalysis of the direct and indirect economic impact of proposed sites and routes including, but not limited to, productive agricultural land lost or impaired” is not specific to who the construction workers will be, although a party or the PUC may make that an issue in a case. Minn. Stat. § 216E.03, subd. 7(b)(5) (2018).

August 7, 2019

See Attached Service List

**Re: In the Matter of Dodge County Wind, LLC IP-6981/CN-17-306; IP-6981/WS-17-307; IP-6981/TL-17-308**

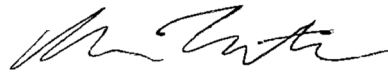
**OAH 5-2500-35668  
MPUC IP6981/TL-17-306, 307, 308**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **ORDER ON MOTION TO COMPEL** in the above-entitled matter.

If you have any questions, please contact me at (651) 361-7857, [ian.lewenstein@state.mn.us](mailto:ian.lewenstein@state.mn.us), or via facsimile at (651) 539-0310.

Sincerely,



IAN LEWENSTEIN  
Legal Assistant

Enclosure

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
PO BOX 64620  
600 NORTH ROBERT STREET  
ST. PAUL, MINNESOTA 55164

**CERTIFICATE OF SERVICE**

In the Matter of Dodge County Wind, LLC IP-6981/CN-17-306; IP-6981/WS-17-307; IP-6981/TL-17-308	OAH Docket No.: 5-2500-35668
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Ian Lewenstein certifies that on August 7, 2019, he served the true and correct **ORDER ON MOTION TO COMPEL** 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
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James	Mortenson	james.mortenson@state.mn.us	Office of Administrative Hearings	PO BOX 64620 St. Paul, MN 55164-0620	Electronic Service	No
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			Resources, LLC	LAW-JB Juno Beach, FL 33408	Service	
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