



STATE OF MINNESOTA

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January 11, 2019

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place E, Ste. 350
St. Paul, MN 55101

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

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
OAH 60-2500-35035, MPUC IP-6984/WS-17-749

Dear Mr. Wolf:

The Minnesota Department of Commerce, Division of Energy Resources (DOC DER) is in receipt of the Applicant's Request to Withdraw Application for a Certificate of Need dated December 28, 2018, (the Withdrawal Request) and submits this letter brief in response to the request.

The Applicant's Withdrawal Request states that a certificate of need is no longer required for the Project and grounds for withdrawal exist 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*, a criteria under Minn. Stat. § 216B.243, subd. 8 (a) (7).

The criteria for exemption, however, is not whether the contracting entity presently provides retail or wholesale service in Minnesota, but rather, whether the future *electric output*, once the facility is in place and operating, is to be sold to an entity that provides retail electric service or wholesale electric service to another entity in Minnesota.¹ The Department is aware

¹ Minn. Stat. § 216B.243, subd. 8 (a) (7) exempts from the CN approval process wind energy conversion systems 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 ... wholesale electric service to another entity in Minnesota*"

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that the buyer under the PPA, identified to be the sole off-taker for the output of the Bitter Root project, sought and received approval from the Federal Energy Regulatory Commission (FERC) to operate as a wholesale power supplier. The Department issued one information request (attached) and has received some information that is helpful for the Department's evaluation and is sending a further information request to determine whether grounds for withdrawal exist.²

The Department expects to be able to file the Department's assessment of whether the Project qualifies for the statutory exemption of Minn. Stat. § 216B.243, subd. 8 (a) (7), shortly after receipt of the discovery response that will be due later in January, 2019. For this reason, the Department requests that the Commission defer any decision on the Applicant's Withdrawal Request, to allow for further comment.

Sincerely,

/s/ Linda S. Jensen

Linda S. Jensen
Assistant Attorney General
Atty. Reg. No. 0189030

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Attorney for Minnesota Department of
Commerce, Division of Energy Resources

cc: Service List
Enclosure

² The response to date does not address whether the future *electric output* of the system (including the output during the term of the contract) is to be sold to an entity that provides wholesale electric service to another entity in Minnesota.



January 8, 2019

Andrew J. Gibbons
Stinson Leonard Street
150 South 5th Street, Suite 2300
Minneapolis, MN 55402

RE: DOCKET NO. IP6984/CN17-676

NATURE OF DOCKET: Application of Flying Cow Wind, LLC for a Certificate of Need for the 150 MW Large Wind Energy Conversion System in Yellow Medicine County, MN

Dear Mr. Gibbons:

Enclosed please find the Department of Commerce information request number(s) **2** in the above cited docket number. Please send me and the requesting analyst(s) all responses in a text searchable PDF format. My email address is utility.discovery@state.mn.us. The appropriate analyst is listed on the questions page below and will be CC'd on this information request. If responding to more than one question, please make each response a separate file. If requested by the analyst to send something by CD-ROM please send it to me at the following address:

Connor Boler
Department of Commerce
85 7th Place East Suite 280
St. Paul, MN 55101-2198

Please indicate the above cited docket number, the corresponding request number, the requesting analyst, and the respondent's name and title on your response. If your response contains Trade Secret data, please include a public copy

Respectfully submitted,

/s/Sharon Ferguson for Connor Boler
Regulatory Information Center

**Minnesota Department of Commerce
Division of Energy Resources
Information Request**

Docket Number: IP6984/CN-17-676, OAH Docket #60-2500-35035 Nonpublic Public
Requested From: Flying Cow Wind, LLC Date of Request: January 8, 2019
Type of Inquiry: General Response Due: January 18, 2019

Requested by: Susan Medhaug, Kate O'Connell
Email Address(es): susan.medhaug@state.mn.us, kate.oconnell@state.mn.us
Phone Number(s): 651-539-1817, 651-539-1815

Request Number: 2
Topic: Sale of output of Bitter Root Wind Project
Reference(s): Flying Cow Wind, LLC's Request to Withdraw its Application for a Certificate of Need

Request: Flying Cow Wind, LLC indicated that it "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."

It is the Department's understanding that the Purchaser under the PPA that would be the off-taker for the output of the Bitter Root project sought and received approval from FERC to operate as a wholesale power supplier. Please confirm or refute the Department's understanding on this point.

If the Purchaser does have such wholesale power sales authority, can Flying Cow Wind, LLC demonstrate that the Purchaser will refrain from selling the output to an entity that provides or intends to provide retail service in Minnesota or wholesale electric service to an entity in Minnesota? Please provide all documents (including sworn affidavits) that are related to your response to this information request, including any and all documents demonstrating that Flying Cow Wind, LLC (the CN applicant) qualifies for the statutory exemption of Minn. Stat. 216B.243, subd. 8(7).

To be completed by responder

Response Date:
Response by:
Email Address:
Phone Number:

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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	OFF_SL_17-676_Official List
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	OFF_SL_17-676_Official List
Kate	Fairman	kate.frantz@state.mn.us	Department of Natural Resources	Box 32 500 Lafayette Rd St. Paul, MN 551554032	Electronic Service	No	OFF_SL_17-676_Official List
Annie	Felix Gerth	annie.felix-gerth@state.mn.us		Board of Water & Soil Resources 520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_17-676_Official List
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_17-676_Official List
Andrew	Gibbons	andrew.gibbons@stinson.com	Stinson Leonard Street	50 S 6th St Ste 2600 Minneapolis, MN 54002	Electronic Service	No	OFF_SL_17-676_Official List
Kari	Howe	kari.howe@state.mn.us	DEED	332 Minnesota St, #E200 1ST National Bank Bldg St. Paul, MN 55101	Electronic Service	No	OFF_SL_17-676_Official List
Ray	Kirsch	Raymond.Kirsch@state.mn.us	Department of Commerce	85 7th Place E Ste 500 St. Paul, MN 55101	Electronic Service	No	OFF_SL_17-676_Official List
Karen	Kromar	karen.kromar@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_17-676_Official List
James	LaFave	james.lafave@state.mn.us	Office of Administrative Hearings	600 N Robert Street St. Paul, MINNESOTA 55164	Electronic Service	Yes	OFF_SL_17-676_Official List

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Susan	Medhaug	Susan.medhaug@state.mn.us	Department of Commerce	Suite 280, 85 Seventh Place East St. Paul, MN 551012198	Electronic Service	No	OFF_SL_17-676_Official List
Debra	Moynihan	debra.moynihan@state.mn.us	MN Department of Transportation	395 John Ireland Blvd MS 620 St. Paul, MN 55155-1899	Electronic Service	No	OFF_SL_17-676_Official List
Bob	Patton	bob.patton@state.mn.us	MN Department of Agriculture	625 Robert St N Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_17-676_Official List
Bob	Pollock	N/A		1785 96th Street E Inver Grove Hgts, MN 55077	Paper Service	No	OFF_SL_17-676_Official List
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190 Richfield, MN 55423	Electronic Service	Yes	OFF_SL_17-676_Official List
Cynthia	Warzecha	cynthia.warzecha@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road Box 25 St. Paul, Minnesota 55155-4040	Electronic Service	No	OFF_SL_17-676_Official List
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_17-676_Official List

**SERVICE LIST for
OAH 60-2500-35035 MPUC IP-6984/WS-17-676**

Electronic Service Member(s)

Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
Commerce Attorneys	Generic Notice	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Dobson	Ian	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
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Felix Gerth	Annie	annie.felix-gerth@state.mn.us	N/A	Electronic Service	No
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	No
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Kirsch	Ray	Raymond.Kirsch@state.mn.us	Department of Commerce	Electronic Service	No
Kromar	Karen	karen.kromar@state.mn.us	MN Pollution Control Agency	Electronic Service	No
LaFave	James	james.lafave@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes
Medhaug	Susan	Susan.medhaug@state.mn.us	Department of Commerce	Electronic Service	No
Moynihan	Debra	debra.moynihan@state.mn.us	MN Department of Transportation	Electronic Service	No
Patton	Bob	bob.patton@state.mn.us	MN Department of Agriculture	Electronic Service	No
Shaddix Elling	Janet	jshaddix@janetshaddix.com	Shaddix And Associates	Electronic Service	Yes
Warzecha	Cynthia	cynthia.warzecha@state.mn.us	Minnesota Department of Natural Resources	Electronic Service	No
Wolf	Daniel P	dan.wolf@state.mn.us	Public Utilities Commission	Electronic Service	Yes

Paper Service Member(s)

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Pollock	Bob	N/A	1785 96th Street E, Inver Grove Hgts, MN-55077	Paper Service	No

SERVICE LIST for OAH 60-2500-35035 MPUC IP-6984/CN-17-749

Electronic Service Member(s)

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Commerce Attorneys	Generic Notice	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
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Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	No
Flannery	Sean	sean.flannery@res-americas.com	Renewable Energy Systems Americas Inc.	Electronic Service	No
Gibbons	Andrew	andrew.gibbons@stinson.com	Stinson Leonard Street	Electronic Service	No
Griger	Anne Marie	anne-marie.griger@res-group.com	Flying Cow Wind, LLC	Electronic Service	No
LaFave	James	james.lafave@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes
Matthews	Michelle	Michelle.Matthews@res-group.com	Renewable Energy Systems	Electronic Service	No
Shaddix Elling	Janet	jshaddix@janetshaddix.com	Shaddix And Associates	Electronic Service	Yes
Wolf	Daniel P	dan.wolf@state.mn.us	Public Utilities Commission	Electronic Service	Yes

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