



STATE OF MINNESOTA

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February 1, 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 152 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:

This letter concerns the Applicant's request to withdraw its Application for a certificate of need in above-referenced Docket No. 17-676, and is a follow up to the Department's prior letter comment of January 11, 2019 in these dockets.

To determine whether grounds for withdrawal exist, the Department issued information requests (IRs) to the Applicant. The Applicant's response to the last IR, Department IR No. 3, was received on February 1, 2019; a copy of the Applicant's public response is attached.

The response includes a spreadsheet that appears to show that the PPA purchasers' *past* wholesale sales (not involving output from the Applicant's facility) were made into wholesale markets. The response also states Flying Cow's "understanding"¹ that the purchaser's website says its general "business model" involves "selling energy back into the competitive wholesale market." The Applicant did not include any documentation that would obligate the purchaser to use the electric output of the Bitter Root Wind project as the Applicant surmises it might be used. The Applicant has not provided, for example, a commitment from the purchaser that electric

¹ Attachment 2 to the response to Department IR No. 3 specifically disavows that the Applicant speaks for the purchaser.

output of the Bitter Root Wind project will not be sold to an entity “that provides ... wholesale electric service to another entity in Minnesota.”²

The Department concludes that the Applicant has not shown that grounds for withdrawal exist, and recommends that the Commission deny the request for withdrawal of the application for a certificate of need.

Sincerely,

/s/ Linda S. Jensen

Linda S. Jensen

Assistant Attorney General

445 Minnesota Street, Suite 1800

St. Paul, MN 55101-2134

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Linda.S.Jensen@ag.state.mn.us

Attorney for Minnesota Department of
Commerce, Division of Energy Resources

cc: Service List

Enclosure

² 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”

**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
Fairman	Kate	kate.frantz@state.mn.us	Department of Natural Resources	Electronic Service	No
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
Gibbons	Andrew	andrew.gibbons@stinson.com	Stinson Leonard Street	Electronic Service	No
Howe	Kari	kari.howe@state.mn.us	DEED	Electronic Service	No
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)

Last Name	First Name	Company Name	Address	Delivery Method	View Trade Secret
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)

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
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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Last Name	First Name	Company Name	Address	Delivery Method	View Trade Secret
Pollock	Bob	N/A	1785 96th Street E, Inver Grove Hgts, MN-55077	Paper Service	No

Minnesota Department of Commerce
Division of Energy Resources
Information Request

Docket Number: IP6984/CN-17-676 Nonpublic Public
OAH Docket Number: 60-2500-35035; 08-2500-35843 Date of Request: January 15, 2019
Requested From: Flying Cow Wind, LLC Response Due: January 25, 2019
Type of Inquiry: General

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: 3
Topic: Sale of electric 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 in its Response to IR 2 that it has entered into a long-term Power Purchase Agreement ("PPA") with a "Purchaser [who] *does not* provide wholesale electric service to another entity in Minnesota other than MISO." (Emphasis added).

Please provide all documents that demonstrate that *none of the electric output of the system* shall be sold to an entity that provides retail 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 during the full term of the PPA.

Response:

Flying Cow Wind, LLC ("Flying Cow Wind") entered into a long-term Power Purchase Agreement ("PPA") with the Purchaser. Pursuant to that PPA, the Purchaser will purchase all of the electric output from Flying Cow Wind's Bitter Root Wind project for the term of the PPA. As provided in Flying Cow Wind's Response to IR 2, the Purchaser has certified in public filings that it does not have a franchise service area and it does not own or control any transmission assets.¹ Based on these facts, the Purchaser is not an entity that provides retail service in Minnesota or wholesale electric service to another entity in Minnesota. As

¹ See Response to IR 2 at FN 1-2.

To be completed by responder

Response Date: February 1, 2019
Response by: Andrew J. Gibbons on behalf of Flying Cow Wind, LLC
Email Address: Andrew.gibbons@stinson.com
Phone Number: 612-432-7252
CORE/2064365.0060/150452694.2

Minnesota Department of Commerce
Division of Energy Resources
Information Request

Docket Number: IP6984/CN-17-676 Nonpublic Public
OAH Docket Number: 60-2500-35035; 08-2500-35843 Date of Request: January 15, 2019
Requested From: Flying Cow Wind, LLC Response Due: January 25, 2019
Type of Inquiry: General

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

Purchaser is not such an entity, for the term of the PPA, all of the electric output from the project will not be sold to an entity that provides retail 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.

To the extent DOC-DER interprets Minn. Stat. §216B.243, subd. 8(7) to require commitments regarding how the electric output will be used by the Purchaser,² Flying Cow Wind understands that the Purchaser will sell the electric output purchased under the PPA into the Mid-Continent Independent System Operator ("MISO") wholesale energy market. The Purchaser publicly describes that its business model is to buy renewable energy and renewable energy credits ("RECs") from a wind or solar project under a power purchase agreement, to sell energy back into the competitive wholesale market, and keep the RECs.³ This practice is further substantiated by the Purchaser's reporting of wholesale sales of electricity in its Electric Quarterly Reports to the Federal Energy Regulatory Commission, in which Purchaser reports that all of its wholesale sales were made into wholesale markets.⁴ Flying Cow Wind understands that, consistent with its practices for other power purchase agreements, the Purchaser will sell the electric output purchased under the PPA into the MISO wholesale energy market.⁵ MISO is a federally-recognized regional transmission organization.

² Flying Cow Wind does not agree with such an interpretation and reserves the right to challenge any such application of the statute.

³ See, e.g., [TRADE SECRET BEGINS

TRADE SECRET ENDS].

⁴ See Response to IR 2 at 2; see also, Electric Quarterly Report excerpts attached as Attachment 1 (marked as Trade Secret in its entirety).

⁵ Affidavit of Shalini Ramanathan, attached as Attachment 2.

To be completed by responder

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Finally, any sales of electric output from the facility that are made following the PPA term will also qualify for the exemption. Following the PPA term, Flying Cow Wind plans to sell all of the electric output from the project into the Mid-Continent Independent System Operator ("MISO") wholesale energy market. Accordingly, the electric output from the project following the PPA term will not be sold to an entity that provides retail 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.

To be completed by responder

Response Date: February 1, 2019
Response by: Andrew J. Gibbons on behalf of Flying Cow Wind, LLC
Email Address: Andrew.gibbons@stinson.com
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CORE/2064365.0060/150452694.2

[TRADE SECRET BEGINS

TRADE SECRET ENDS]

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

<i>In the Matter of the Applications of</i>)	
<i>Flying Cow Wind, LLC for a Certificate</i>)	MPUC Docket No. IP-6984/CN-17-676
<i>of Need and Site Permit for the up to</i>)	OAH Docket No. 8-2500-35843
<i>152 MW Large Wind Energy</i>)	
<i>Conversion System in Yellow Medicine</i>)	RESPONSE TO THIRD INFORMATION
<i>County, Minnesota</i>)	REQUEST OF THE DEPARTMENT OF
)	COMMERCE, DIVISION OF ENERGY
)	RESOURCES
)	

AFFIDAVIT OF
SHALINI RAMANATHAN

STATE OF TEXAS)
) ss
COUNTY OF TRAVIS)

I, Shalini Ramanathan, after being duly sworn, state as follows:

1. I am the Senior Vice President of Origination for Renewable Energy Systems Americas Inc. ("RES"). RES is an affiliate of Flying Cow Wind, LLC ("Flying Cow Wind"). My business address is 9050 N. Cap. of TX Hwy., Suite 390, Austin, TX 78759.
2. I submit this affidavit in support of Flying Cow Wind's Response to the Third Information Request of the Minnesota Department of Commerce, Division of Energy Resources regarding Flying Cow Wind's December 28, 2018 Request to Withdraw Its Application for a Certificate of Need. Specifically, my affidavit provides additional support for the qualification of Flying Cow Wind for the statutory exemption under Minn. Stat. § 216B.243, subd. 8(7).
3. As Senior Vice President of Origination for RES, I was the primary business contact for Flying Cow Wind in the negotiation of the Power Purchase Agreement between [TRADE


SECRET BEGINS

TRADE SECRET ENDS] ("Purchaser") and

Flying Cow Wind dated September 6, 2018 ("PPA").

4. I have no authority to speak on behalf of the Purchaser. However, based on publicly-available information, my understanding is that the Purchaser enters into agreements like the PPA for the purchase of renewable energy and renewable energy credits ("RECs"), that the Purchaser then sells the energy back into wholesale electric markets, and that the Purchaser keeps the RECs to offset non-renewable electric consumption at its facilities.
5. Furthermore, during the course of negotiations with Purchaser regarding the PPA, Purchaser did not indicate that it has any plans to sell any electric output purchased under the PPA other than into the Mid-Continent Independent System Operator, Inc. wholesale market.
6. The above information is true, accurate, correct, and complete to the best of my knowledge, information, and belief.

This concludes my affidavit.


Shafni Ramanathan

Subscribed and sworn to before me
this 14 day of February, 2019.


Notary Public

