

August 1, 2019

Kevin Pranis  
Marketing Manager – MN/ND  
LIUNA Great Lakes Region  
81 E Little Canada Road  
St. Paul, MN 55117

Re: Responses to LIUNA Information Request #2 and #3  
MPUC Dockets IP-6981/CN-17-306, WS-17-307, TL-308  
OAH Docket 5-2500-35669

Dear Mr. Pranis:

Enclosed please find the response of Dodge County Wind, LLC to LIUNA Minnesota & North Dakota's Second and Third Information Requests in the above-referenced docket numbers. As requested, the response is provided in searchable PDF format.

Please feel free to contact me with any questions.

Sincerely,

**Stinson LLP**



Andrew Gibbons

AJG:

## **Dodge County Wind, LLC (IP-6981/CN-17-306/307/308; OAH 5-2500-35668) Request #2**

Re: Efforts by Dodge County Wind, LLC to assess feasibility of fulfilling LIUNA Minnesota & North Dakota's first information request

Dodge County Wind, LLC ("Applicant") has applied for a Certificate of Need and Site Permit and Route Permit to build and operate the proposed Dodge County Wind project and associated transmission line ("the Project"). On July 5, 2019, LIUNA Minnesota & North Dakota, a party to the case, submitted a discovery request to Applicant seeking additional information on Applicant's anticipated construction labor and subcontracting requirements; efforts to recruit local construction workforce; and the past use of local and non-local construction labor on several recent Upper Midwest wind energy projects developed and built by Applicant's parent company NextEra. On July 17, 2019, Applicant responded to LIUNA Minnesota & North Dakota's first information request by asserting, in part, that elements of the request were "overly broad, unduly burdensome, call[ed] for speculation, assum[ed] facts not in the record... [and] "would require the development of information from confidential personal information." Applicant further asserted that information requested in three of four queries "does not exist." Please address the following queries regarding the status of the PPA and provide any and all documents (including sworn affidavits) that substantiate your answers.

### **Request LIUNA 2-1**

Please detail the steps Applicant and parent company NextEra took between July 5 and July 17, 2019, to determine whether information sought regarding the Project's labor and subcontracting requirements existed or could reasonably be obtained.

**Response to 2-1:** Dodge County Wind objects to Request LIUNA 2-1 as calling for attorney-client privileged communications, assuming facts not in the record, and requesting information not reasonably calculated to lead to the discovery of evidence that is relevant to the above-referenced dockets. To the extent the request calls for information related to communications with attorneys, such communications are privileged. The request assumes that the factual information sought in Requests LIUNA 1-1 and 1-2 exists, which is an incorrect assumption. The steps taken to respond to an information request are not relevant to the merits of the applications in the above-referenced dockets. Subject to and without waiving these objections, Dodge County Wind provides the following response:

As Dodge County Wind set forth in response to Requests LIUNA 1-1 and 1-2 the requested information does not exist. Dodge County Wind is not at a point in its development that the information would exist. Therefore, the only step taken was Dodge County Wind's in-house attorney confirming with the Engineer & Construction department that the information did not exist, which was confirmed.

### **Request LIUNA 2-2**

Please detail the steps Applicant and parent company NextEra took between July 5 and July 17, 2019, to determine whether information sought regarding efforts to recruit local construction workforce and assess the feasibility of local construction hiring existed or could reasonably be obtained.

**Response to 2-2:** Dodge County Wind objects to Request LIUNA 2-2 as calling for attorney-client privileged communications, assuming facts not in the record, and requesting information not reasonably calculated to lead to the discovery of evidence that is relevant to the above-referenced dockets. To the extent the request calls for information related to communications with attorneys, such communications are privileged. The request assumes that additional information exists beyond that in the response to Requests LIUNA 1-3 (A-C), which is an incorrect assumption. The steps taken to respond to an information request are not relevant to the merits of the applications in the above-referenced dockets. Subject to and without waiving these objections, Dodge County Wind provides the following response:

As Dodge County Wind set forth in response to Requests LIUNA 1-3 (A-C), Dodge County Wind provided the following response

“DCW will competitively source General Contractor services and is in negotiation with a Minnesota based General Contractor who is expected to use existing employees, existing labor affiliations, local subcontractors and suppliers. Any needs for additional labor resources will likely be sourced by the General Contractor through a combination of their existing labor affiliations or direct hire through local job fairs, advertising or walk-ins during construction.”

No additional information exists beyond this response. Dodge County Wind is not at a point in its development that additional information would exist. Therefore, the only step taken was Dodge County Wind’s in-house attorney confirming with the Engineer & Construction department that no additional information did exist, which was confirmed.

### **Request LIUNA 2-3**

Please detail the steps Applicant and parent company NextEra took between July 5 and July 17, 2019, to determine whether information sought regarding past or current use of local construction hiring requirements, goals, or performance-based targets for EPC contractors existed or could reasonably be obtained.

**Response to 2-3:** Dodge County Wind objects to Request LIUNA 2-3 as calling for attorney-client privileged communications, assuming facts not in the record, and information not reasonably calculated to lead to the discovery of evidence that is relevant to the above-referenced dockets. To the extent the request calls for information related to communications with attorneys, such communications are privileged. The request assumes that the factual information sought in Request LIUNA 1-3(D) exists, which is an incorrect assumption. The steps taken to respond to an information request are not relevant to the merits of the applications in the above-

referenced dockets.

Further, Dodge County Wind objected to Requests LIUNA 1-3(E) as:

“... overly broad, unduly burdensome, requesting confidential information, and not reasonably calculated to lead to the discovery or evidence relevant to the above-referenced dockets, as it requests information about the confidential provisions of past agreements of NextEra and affiliated entities in all jurisdictions, across all types of projects, and without any time limit, which would require the review of a large number of agreements.”

Dodge County Wind stands by this objection, and elaborated on the merits of the objection in its July 26, 2019 Reply to LIUNA’s Motion to Compel. Therefore, Dodge County Wind did not take steps to provide a response to LIUNA 1-3(E), as it objects as a matter of law that any response is required.

Subject to and without waiving these objections, Dodge County Wind provides the following response:

As Dodge County Wind set forth in response to Requests LIUNA 1-3(D) the requested information does not exist. Dodge County Wind is not at a point in its development that the information would exist. Therefore, the only step taken was Dodge County Wind’s in-house attorney confirming with the Engineer & Construction department that the information did not exist, which was confirmed.

#### **Request LIUNA 2-4**

Please detail all communications between Applicant, parent company NextEra, and parties affiliated with NextEra and the EPC contractors responsible for construction of the five completed projects listed in our information request between July 5 and July 17, 2019 regarding the feasibility of the EPC contractor providing requested information on work performed by local and non-local construction and/or the EPC contractor’s willingness to do so. Please provide copies of any and all such communications that exist in an electronic or print format, as well as any and all existing electronic or printed notes summarizing communications that took place in person or by telephone.

**Response to 2-4:** Dodge County Wind objected to LIUNA 1-4 as:

“... overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of evidence related to the above-reference dockets. The request seeks information regarding the hiring practices of EPC contractors for projects in other jurisdictions which are not the subject of, or relevant to, the instant proceedings. Providing the information requested would require the development of information from confidential personal information regarding individuals held by third parties not party to these proceedings. The requested information will not

be provided.”

Dodge County Wind stands by this objection, and elaborated on the merits of the objection in its July 26, 2019 Reply to LIUNA’s Motion to Compel. Therefore, Dodge County Wind did not take steps to provide a response to LIUNA 1-4, as it objects as a matter of law that any response is required.

**Dodge County Wind, LLC (IP-6981/CN-17-306/307/308; OAH 5-2500-35668) Request #3**

Re: Dodge County Wind project and contractor selection process and criteria

Dodge County Wind, LLC (“Applicant”) has applied for a Certificate of Need and Site Permit and Route Permit to build and operate the proposed Dodge County Wind project and associated transmission line (“the Project”). Applicant has indicated that Applicant is currently in negotiations with an unnamed “Minnesota based General Contractor” to build the Project.

**Request LIUNA 3-1**

A. Please provide information on the process used to select a General Contractor to build the Project and estimated volume of wind energy capacity that the contractor has installed in recent years, and is expected to install while the Project is under construction.

B. Further, please provide information on the process through which Applicant secured a power purchase agreement for the Project and indicate whether the process incorporated a requirement or preference for the Project’s location. Please address the following queries regarding the status of the PPA and provide any and all documents (including sworn affidavits) that substantiate your answers.

C. Did Applicant select the “Minnesota based General Contractor” with which Applicant is currently negotiating to build the Project through a Request for Proposal (“RFP”) or other competitive solicitation process in which multiple bidders submitted competing proposals to construct the Project? If yes, please indicate how many bidders participated in the process and explain whether and how General Contractor’s plan and demonstrated ability to recruit local construction workforce factored into the evaluation process.

**Response to 3-1 (A and C):**

Dodge County Wind objects to Request LIUNA 3-1 as calling for speculation, overly broad, unduly burdensome, assuming facts not in the record, and information not reasonably calculated to lead to the discovery of evidence that is relevant to the above-referenced dockets. The request calls for speculation and is overly broad and unduly burdensome in that it does not specify the particular information sought, and requests estimates of past and projected construction activities of third parties. The request assumes that a general contractor has been selected, which is an incorrect assumption. The requested information regarding the process of selecting a general contractor is not relevant to the proceedings. Subject to and without waiving these objections, Dodge County Wind provides the following response:

Dodge County Wind issued a RFP to a select group of qualified and experienced General Contractors. The responses to the RFP were evaluated on multiple criteria, including but not limited to, costs, schedule, safety record, experience with specific technology or location, clarifications/exclusions conditioned to their proposal, value engineering, etc. Six (6) Contractors were invited to participate and the RFP. The RFP did not require the contractors to

submit a detailed labor plan. Dodge County Wind will not speculate on the “estimated volume of wind energy capacity that the contractor has installed in recent years, and is expected to install while the Project is under construction.”

**Response to 3-1 (B):** Please see pages 2, 8, 9, 21, and 24, of the Certificate of Need Application that explain the process by which Dodge County Wind entered into a Power Purchase Agreement with the Minnesota Municipal Power Agency (MMPA).

### **Request LIUNA 3-2**

How many megawatts of wind energy capacity did the “Minnesota based General Contractor” with which Applicant is currently in negotiations to build the Project complete in each of the past five calendar years, based on information supplied by the contractor and Applicant’s best estimates?

**Response 3-2:** Dodge County Wind objects to Request LIUNA 3-2 as calling for information not reasonably calculated to lead to the discovery of evidence that is relevant to the above-referenced dockets. Subject to and without waiving these objections, Dodge County Wind provides the following response:

Dodge County Wind will not provide the information, because disclosure of the requested information is not relevant to the proceeding as the capacity of wind energy projects constructed by a construction contractor is not relevant to the merits of the certificate of need or site permit applications. The requested information is intended to reveal the identity of the Minnesota based General Contractor with which the Applicant is currently engaged in negotiations with, which, in turn, could harm the negotiations and adversely impact Dodge County Wind’s cost of doing business.

### **Request LIUNA 3-3**

How many megawatts of wind energy capacity is the “Minnesota based General Contractor” with which Applicant is currently in negotiations to build the Project expected to complete during the calendar year/s in which the Project is expected to be built, based on information supplied by the contractor and Applicant’s best estimates?

**Response 3-3:** Dodge County Wind objects to Request LIUNA 3-3 as calling for speculation and for information not reasonably calculated to lead to the discovery of evidence that is relevant to the above-referenced dockets. Subject to and without waiving these objections, Dodge County Wind provides the following response:

Dodge County Wind will not provide the information, because disclosure of the requested information is not relevant to the proceeding and the requested information is intended to reveal the identity of the General Contract with which the Applicant is currently engaged in negotiations with, which, in turn, could harm the negotiations and adversely impact Dodge

County Wind's cost of doing business.

**Request LIUNA 3-4**

Did Southern Minnesota Municipal Power Agency (“SMMPA”) select Applicant’s proposed Project through an RFP or other competitive solicitation process in which multiple bidders submitted competing proposals to meet the agency’s power needs?

**Response to 3-4:** Dodge County Wind interprets this request as asking about Minnesota Municipal Power Agency (MPPA), as MPPA is the off-taker, not SMMPA. The response is: no.

**Request LIUNA 3-5**

Please detail any geographic requirement or preference established by SMMPA regarding the location of the project in the solicitation and negotiation process through which the Dodge County Wind Power Purchase Agreement was developed (e.g. a requirement that the project must be located in Minnesota or within MISO).

**Response 3-5:** Dodge County Wind interprets this request as asking about Minnesota Municipal Power Agency (MPPA), as MPPA is the off-taker, not SMMPA. The response is MPPA sought a project in Minnesota which would be geographically situated to support its members as part of MPPA’s resource planning efforts.