

---

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 Dockets Nos.  
IP-6984/CN-17-676  
IP-6984/WS-17-749

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 DOCKET No.  
8-2500-35843

---

## **LIUNA MINNESOTA COMMENT ON AVANGRID REQUEST TO CLOSE BITTER ROOT DOCKETS**

**APRIL 12, 2019**

LIUNA Minnesota welcomes the notice filed by Avangrid Renewables, LLC ("Avangrid") on April 4, 2019 indicating that the company has acquired RES Americas' interest in Flying Cow, LLC and the associated 152 megawatt Bitter Root wind energy project. We support Avangrid's request to close the Bitter Root Certificate of Need and Site Permit dockets and terminate related contested case proceedings.

Avangrid has a strong track record as a responsible developer of renewable energy projects in Minnesota and the public interest would best be served by allowing Avangrid to make a fresh start. We are confident that the company will address socioeconomic issues of concern to our members, and we look forward to participating in the permitting process when Avangrid is prepared to submit new applications.

In our view, Avangrid's acquisition of the Bitter Root project vindicates the Public Utility Commission's decision not to rubber-stamp RES Americas' application for a Certificate of Need and Site Permit, but instead to order that the record be further developed to better assess the project's socioeconomic impacts. The Commission's action now appears likely to result in a project that delivers the same energy, environmental, lease and tax benefits, while putting many more local residents to work and injecting millions of additional dollars into local economies.

We recommend, however, that as the page is turned on the Bitter Root project, the Commission should take steps to tie up loose ends and to better ensure the integrity of the permitting process. We do not believe that the sale of the project should allow RES Americas to evade previously outstanding discovery obligations, and we think it is important that the Commission question RES Americas representatives to ascertain whether the company pursued a Certificate of Need exemption while failing to inform the Commission or the Department of Commerce of impending material changes to a Power Purchase Agreement ("PPA") that would have made the project ineligible for said exemption.

First, we urge that RES Americas be required to fulfill information requests that were outstanding when ownership of the project was transferred to Avangrid, including data that was originally requested more than six months ago

during the informal hearing process but never produced. The request was filed on March 11 and was overdue when the project was sold to Avangrid. We were informed by RES Americas' counsel that the company was compiling the requested information and that it would be provided before the next PUC meeting on Bitter Root. We would not expect RES Americas to honor any new information requests related to a project that is no longer theirs. But the company should not be allowed to walk away from delinquent obligations incurred prior to the sale, especially when much of the information should have been provided months ago as part of the informal process.

Second, it appears to us that, in the period prior to the sale, RES Americas either misled the Commission and the Department, or allowed the Commission and the Department to be misled, concerning the status of the PPA that provided the entire basis for Applicant's pending motion to withdraw the Certificate of Need ("CN") application for the project. If RES Americas was aware that the PPA was likely or certain to be dissolved, or even subject to termination based on foreseeable circumstances, the company had an obligation to timely inform the Commission and the Department that the project might be ineligible for the Certificate of Need exemption.

LIUNA Minnesota became aware in mid-March of what we believed to be an impending material change to the PPA, and we filed an information request on March 18, 2019 seeking detailed information. RES Americas would presumably have been aware of such a change well before that date, yet the Applicant continued to pursue an exemption based on the company's previous assertion that a qualifying PPA was in place, even as the agreement was evidently headed for dissolution. As far as we know, RES Americas never informed Commission or Department staff that termination of the PPA was possible, much less imminent.

RES Americas should appear before the Commission to explain when the company knew that the status of the PPA might change in a manner that could disqualify the project from an Independent Power Producer exemption, and why the company evidently failed to inform the Commission and the Department at the time. It is conceivable that there are innocent and reasonable explanations for RES Americas' conduct in this regard, and if so, we hope company representatives will be present to provide those explanations and fully answer Commissioners' questions.

We anticipate that RES Americas might argue that they are no longer subject to discovery or to the Commission's jurisdiction in this case since they have sold their interest in the Limited Liability Corporation ("LLC") that is the official applicant. We hope, however, that the Commission would see through such a ruse and recognize that RES Americas has been a party to the Bitter Root dockets, and cannot so easily escape responsibility by selling its interest in Flying Cow, LLC. We can't imagine a pipeline company, for example, being allowed to escape the Commission's jurisdiction and scrutiny by selling off a project-based LLC.

Third, we suggest that the Commission and the Department consider more carefully scrutinizing future requests for IPP exemptions. LIUNA Minnesota noted in our objection to the Applicant's original petition to withdraw the CN application that the Applicant had not provided sufficient information to assess the project's suitability for an IPP exemption. We observed specifically that the Applicant had not given us, and more importantly had evidently not given the Commission or the Department, details concerning the circumstances under which power generated by the project might be sold to Minnesota customers, including but not limited to expiration, early termination, or other circumstances that could make some or all of the power generated available for sales impacting Minnesota ratepayers.

It seems clear in hindsight that the PPA which was to have provided solid assurance that the power would be sold out-of-state is no longer in force, for reasons that remain opaque to us and possibly to the Commission. It troubles us, and it should trouble the Commission, that RES Americas may have come close to securing an exemption from CN requirements based on an agreement that was, as the saying goes, built on sand.

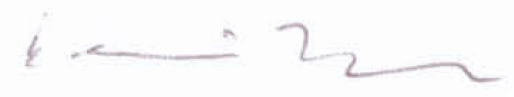
We have enough confidence in the Commission's commitment to transparency to believe that the Applicant's full request to circumvent the previously ordered contested case process would not have been granted. Nonetheless, it concerns us that, had the Commission taken the case up in February as scheduled and followed the staff's then-recommendation to grant the Applicant's request for a CN exemption and Site Permit, RES Americas might have obtained permission to build based on questionable premises.

The Department's review of the Applicant's request for a CN exemption surfaced important information, including the fact that the customer was licensed by FERC to market power. But the review seemingly failed to identify relevant provisions of the agreement allowing it to be terminated. This may be, in part, because to our knowledge no one at the Department or the Commission ever had an opportunity to review the actual terms the agreement. It is unclear when, if ever, the Commission or Department would have learned of a change in the status of the agreement had LIUNA Minnesota not forced the question of disclosure.

Decisions to permit large energy projects are too important to be made based on incomplete information, especially when those decisions may exempt a project from careful consideration and scrutiny under the CN statutes. We hope that the Commission and Department will take a closer look at such projects and requests going forward.

We thank the Commission for its time and careful attention to these issues and look forward to an opportunity to appear before the Commission to speak to our concerns.

Respectfully,

A handwritten signature in blue ink, appearing to read "Kevin Pranis", is written over a light blue horizontal line.

Kevin Pranis, Marketing Manager

Dated: April 12, 2019

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;

MN PUC Docket Nos.  
IP-6984/CN-17-676  
IP-6984/WS-17-749

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;

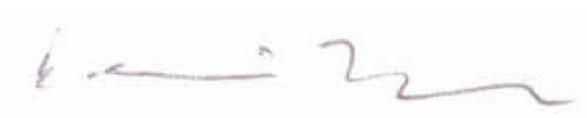
OAH File Nos.  
8-2500-35843

CERTIFICATE OF SERVICE

I, Kevin Pranis, hereby certify that I have this day served a copy of the foregoing comments on the request by Avangrid Renewables, LLC to withdraw Certificate of Need and Site Permit applications for Bitter Root Wind on the attached list of persons in the method and manner indicated on the attached service list and as set forth below:

Via electronic service; or by depositing a true and correct copy in a proper envelope with postage paid, addressed to the person, in the United States Mail at St. Paul, Minnesota, according to the preference each person has indicated on the attached service list.

Dated this 12th day of April, 2019

A handwritten signature in blue ink, appearing to read 'Kevin Pranis', is written over a light blue rectangular background.

---

Kevin Pranis

## 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	Yes
Felix Gerth	Annie	annie.felix-gerth@state.mn.us	N/A	Electronic Service	Yes
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	Yes
Gibbons	Andrew	andrew.gibbons@stinson.com	Stinson Leonard Street	Electronic Service	Yes
Howe	Kari	kari.howe@state.mn.us	DEED	Electronic Service	Yes
Jensen	Linda	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Kirsch	Ray	Raymond.Kirsch@state.mn.us	Department of Commerce	Electronic Service	Yes
Kromar	Karen	karen.kromar@state.mn.us	MN Pollution Control Agency	Electronic Service	Yes
Lipman	Eric	eric.lipman@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes
Medhaug	Susan	Susan.medhaug@state.mn.us	Department of Commerce	Electronic Service	Yes
Moynihan	Debra	debra.moynihan@state.mn.us	MN Department of Transportation	Electronic Service	Yes
Pranis	Kevin	kpranis@liunagroc.com	Laborers' District Council of MN and ND	Electronic Service	Yes
Roos	Stephan	stephan.roos@state.mn.us	MN Department of Agriculture	Electronic Service	Yes
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	Yes
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
Burman	Thomas	Stinson Leonard Street LLP	50 S 6th St Ste 2600, Minneapolis, MN-55402	Paper Service	Yes

---

March 11, 2019

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

RE: DOCKET NO. IP6984/CN17-676

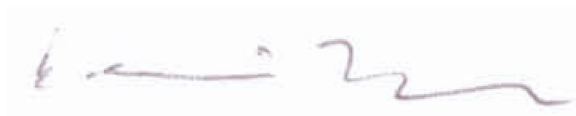
Dear Mr. Gibbons:

Enclosed please find LIUNA Minnesota's second information request in the above cited docket number. Please send all responses in a text searchable PDF format to [kpranis@liunagroc.com](mailto:kpranis@liunagroc.com).

If you have any questions, please feel free to contact me at:

Kevin Pranis  
Marketing Manager – MN/ND  
LIUNA Great Lakes Region  
651.653.9776 (office)  
612.224.6464 (cell)  
[kpranis@liunagroc.com](mailto:kpranis@liunagroc.com)

Sincerely,



Kevin Pranis  
Marketing Manager

**Re: RES Americas use of local labor on wind energy construction projects**

Request: Flying Cow Wind, LLC ("FCW") has applied for a Certificate of Need and Site Permit to build and operate the proposed Bitter Root Wind project. LIUNA Minnesota respectfully requests that the Applicant address the enclosed information request concerning the past and current conduct of FCW parent company RES Americas and all affiliated entities ("the Company") on the construction of Minnesota and other U.S. wind energy projects, as well as Company's assessment of the feasibility of employing a majority-local workforce to build Bitter Root Wind.

- Please address the following requests for information related to construction of the Company's Pleasant Valley Wind (MN), Stoneray Wind (MN), Copenhagen Wind (NY), and Montague Wind (OR) construction projects regarding workforce efforts made by the Company information the company possesses or can reasonably obtain on workforce efforts made by any out-of-state subcontractors employed on the project.
  - Detail steps taken by the Company and its subcontractors to assess the availability of qualified construction craft workforce prior to the start of construction, and include copies of any and all documents summarizing such assessments.
  - List any and all minimum qualifications that the Company's and subcontractors' construction craft employees were required to possess in order to work on the project in question, identifying requirements that applied to all craft employees as well as qualifications that applied to specific job classifications or responsibilities (e.g. crane operator).
  - Provide the number of candidates for construction craft employment opportunities living within 150 miles of the project (or in the same state if specific location is unknown) that were considered for employment during the period of construction or the preceding six months. Of this number, how many received interviews, and how many were hired to work on the project?
  - Indicate whether the Company and subcontractors hosted or participated in job fairs or comparable workforce events that took place within 150 miles of the project during construction or the preceding six months? If yes, please identify the events and the number of inquiries and applications received as a result of the posting (if known). Please provide information on each event.
  - Indicate whether the Company and subcontractors advertised locally for construction craft employment opportunities? If yes, please identify the listing services (e.g. Indeed) and publications where notice of job opportunities was posted, along with the nature, timing and duration of the posting, and the number of inquiries and applications received as a result. Please provide copies of any advertisements or postings.
  - Indicate whether the Company and subcontractors submitted information on construction craft employment opportunities to, or solicited help identifying candidates from, area workforce centers? If so, please identify the workforce centers and provide copies of postings and correspondence to verify said efforts.
  - List and detail any additional efforts the Company and subcontractors undertook to recruit local construction craft workforce.
- Please provide the number of hours worked by the Company's construction craft employees, along with the number of hours worked by employees of subcontractors and temporary employment agencies, on the Company's Pleasant Valley Wind (MN), Stoneray Wind (MN), Copenhagen Wind (NY), and Montague Wind (OR) construction projects. Please provide separate figures for workers residing in the same state as the project, workers residing within 150 miles of the project in a different state, and workers residing in a different state and more than 150 miles from the project.

Please assign resident state and location based on the address used for tax reporting during the calendar year in question. If the Company does not possess, and cannot reasonably obtain, hours worked data for subcontractor and/or temp agency workforce, please provide whatever data can be obtained on the number of employees that fall in each category. If the project is ongoing, please provide data on progress to-date. Please use the following tables to present the requested data for each project.

Pleasant Valley Wind: Hours worked by construction craft workers (or # of employees if hours N/A)			
Residence relative to project	Company employees	Temp employees	Subcontractor employees
Minnesota			
Different state but within 150 miles of project			
Different state (more than 150 miles or unknown)			

Stoneray Wind: Hours worked by construction craft workers (or # of employees if hours N/A)			
Residence relative to project	Company employees	Temp employees	Subcontractor employees
Minnesota			
Different state but within 150 miles of project			
Different state (more than 150 miles or unknown)			

Copenhagen Wind: Hours worked by construction craft workers (or # of employees if hours not N/A)			
Residence relative to project	Company employees	Temp employees	Subcontractor employees
New York			
Different state but within 150 miles of project			

Different state (more than 150 miles or unknown)			
--	--	--	--

Montague Wind: Hours worked by construction craft workers (or # of employees if hours N/A)			
Residence relative to project	Company employees	Temp employees	Subcontractor employees
Montague			
Different state but within 150 miles of project			
Different state (more than 150 miles or unknown)			

- The Company's Vice-President for Development, Mr. Brian Lammers, stated during the public hearing for Bitter Root Wind that the Company did not "know yet what the composition of the workforce is locally." What conclusions has the Company reached regarding the composition of the workforce in Southwest Minnesota based on the Company's experience building Stoneray Wind, and what specific information and experiences support those conclusions.
- The Company's Vice-President for Development, Mr. Brian Lammers, indicated during the public hearing for Bitter Root Wind that the Company was unwilling to commit to a goal of hiring local workers due in part to concerns over the potential impact on the project's competitiveness. Please detail how the Company believes that making such a commitment would negatively impact the project's competitiveness, providing any supporting analysis, data, and evidence that the Company possess or can reasonably obtain.

---

March 18, 2019

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

RE: DOCKET NO. IP6984/CN17-676

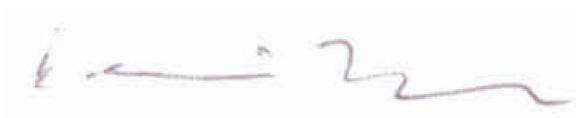
Dear Mr. Gibbons:

Enclosed please find LIUNA Minnesota's third information request in the above cited docket number. Please send all responses in a text searchable PDF format to [kpranis@liunagroc.com](mailto:kpranis@liunagroc.com).

If you have any questions, please feel free to contact me at:

Kevin Pranis  
Marketing Manager – MN/ND  
LIUNA Great Lakes Region  
651.653.9776 (office)  
612.224.6464 (cell)  
[kpranis@liunagroc.com](mailto:kpranis@liunagroc.com)

Sincerely,



Kevin Pranis  
Marketing Manager

**Re: Flying Cow Wind, LLC's Request to Withdraw its Application for a Certificate of Need**

Request: Flying Cow Wind, LLC ("FCW") 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" and therefore qualifies for a statutory exemption to Certificate of Need ("CN") requirements under Minn. Stat. 216B.243, subd. 8(7)." Please address the following queries regarding the status of the PPA and provide any and all documents (including sworn affidavits) that substantiate your answers.

- Have there been any material changes to the status or terms of the Bitter Root PPA since portions of the agreement were filed with the Minnesota Public Utilities Commission ("PUC") on December 28, 2018, including but not limited to changes that could affect the project's qualification for the requested CN exemption? If the answer is yes, please indicate how the status of terms of the agreement have changed, and what impact the change will have on the eligibility of the project for a CN exemption.
- Does FCW believe there is a reasonable likelihood of a change in the status or terms of the Bitter Root PPA prior to the project's anticipated 2020 in-service date, including but not limited to changes that could affect the project's qualification for the requested CN exemption? If the answer is yes, please indicate how and when the status of terms of the agreement might change, and what impact the change will have on the eligibility of the project for a CN exemption.
- If material changes to the status or terms of the Bitter Root PPA that might affect the project's eligibility for a CN exemption have occurred, or are anticipated prior the project's anticipated in-service date, please indicate in each case when the change occurred or is anticipated, and when representatives of FCW and/or FCW parent company RES Americas first became aware that such a change was possible or probable. Please specify, in particular, what was known to representatives of FCW and/or RES Americas about the aforementioned actual or potential material changes on and prior to February 26, 2019.