

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**FPL Energy Burleigh County Wind, LLC
230 kV Transmission Line—Burleigh County
Siting Application**

Case No. PU-05-205

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

August 10, 2005

Appearances

Commissioners Tony Clark, Susan E. Wefald and Kevin Cramer.

Brian R. Bjella, Attorney-at-Law, Fleck, Mather & Strutz, Ltd., 400 East Broadway, Ste 600, Bismarck, North Dakota 58502, on behalf of FPL Energy Burleigh County Wind, LLC.

Don Negaard, Attorney-at-Law, Pringle & Herigstad, PC, 2525 Elk Dr., P.O. Box 1000, Minot, North Dakota 58702, on behalf of Central Power Electric Cooperative, Inc.

William W. Binek, Chief Counsel, Public Service Commission, State Capitol, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Allen C. Hoberg, Administrative Law Judge and Director, Office of Administrative Hearings, 1701 North 9th Street, Bismarck, North Dakota 58501-1882.

Preliminary Statement

On April 21, 2005, FPL Energy Burleigh County Wind, LLC (FPL) filed an application for a waiver of procedures and time schedules, and consolidated applications for a certificate of corridor compatibility and a route permit authorizing construction of approximately 28 miles of 230 kV, three-phase alternating current electric transmission system from the Square Butte Cooperative's Center Substation to the proposed Burleigh County Wind Energy Center located approximately 15 miles east of the Missouri River in Burleigh County, North Dakota.

FPL requested the Commission waive procedures to allow for a single consolidated application for corridor certificate and route permit, waive procedures and time schedules to allow for a single consolidated hearing on the waiver request and the consolidated applications for Corridor Certificate and Route Permit, waive or shorten the three-month period specified in North Dakota Century Code § 49-22-08(5) and the six-

month period specified in North Dakota Century Code § 49-22-08.1(5) and that the Commission waive requirements for mylar maps and aerial photographs.

On April 25, 2005, the Commission deemed the application complete and issued a Notice of Filing and Notice of Hearing scheduling public hearings in both Oliver and Burleigh Counties for May 23, 2005.

The Notice of Hearing identified the following issues to be considered:

1. Will the location, construction and operation of the proposed electric transmission line produce minimal adverse affects on the environment, natural resources, and upon the welfare of the citizens of North Dakota:
2. Is the proposed electric transmission line compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed electric transmission line corridor and route minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?
4. Is it appropriate for the Commission to waive the procedures as requested in the Application, including the request for a single consolidated application for corridor certificate and route permit?

A public hearing was held in Center, North Dakota, on Monday, May 23, 2005, at 9 a.m. CDT (8 a.m. MDT). The hearing was continued in Wilton, North Dakota, also on Monday, May 23, 2005, at 3 p.m. CDT. Numerous members of the public attended both hearings, several of whom asked questions of FPL. At the hearing in Wilton, the Commission determined to leave the record open for any late filed exhibits, and also determined that the hearing shall be continued at a later date.

By Motion, dated May 24, 2005, the Commission assessed a filing fee of \$25,000.00 in this matter.

Subsequent to the hearing on May 23, 2005, FPL determined that a much shorter transmission line alternative was available, being only approximately five miles of the eastern most portion of the original proposed 28-mile transmission line. In addition, it was determined that Central Power Electric Cooperative, Inc. (Central Power) would join in the filing of an amended application, as FPL and Central Power agreed that Central Power would own and operate the transmission line. The transmission line will now be 4.4 miles in length connecting to the Western Area Power Administration (WAPA) transmission system within Burleigh County, North Dakota. In addition, FPL would own and operate an associated collection substation where the transmission line would interconnect with a wind farm to be constructed by FPL.

As a result, FPL and Central Power jointly filed on June 24, 2005, an amended application for a certificate of corridor compatibility and a route permit seeking authorization to construct a collection substation and 4.4 miles of 230 kV, three-phase alternating current electric transmission line to interconnect with the WAPA transmission system. The corridor for the amended route remains substantially the same, with the amended route being entirely within Burleigh County, North Dakota.

On June 29, 2005, the Commission issued a Notice of Amended Application and Notice of Hearing, scheduling a public hearing for Thursday, July 28, 2005, at 1:30 p.m. CDT in the Commission Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota. The issues to be considered in this proceeding are identical to those set forth in the original Notice of Hearing.

By Motion, dated June 29, 2005, the Commission assessed a filing fee of \$16,000.00 due July 15, 2005, for the amended consolidated application, instead of the \$25,000.00 filing fee assessed on May 24, 2005.

A public hearing on the Amended Application was held as scheduled on July 28, 2005, in Bismarck, North Dakota. Following the hearing the Commission received certain late filed exhibits as ordered at the hearing.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed and considered all testimony and evidenced presented, the Commission makes the following:

Findings of Fact

1. FPL is a Delaware limited liability company headquartered in Juno Beach, Florida. FPL is a subsidiary of FPL Energy, LLC of Juno Beach, Florida, which is a national leader in producing electricity from clean and renewable fuels. A different subsidiary of FPL Energy, LLC currently operates a wind farm near Edgeley, North Dakota.
2. Central Power is an electric generation and transmission cooperative headquartered in Minot, North Dakota. Central Power owns significant transmission assets throughout a multi-county region in North Dakota.
3. FPL plans to construct its proposed Burleigh County Wind Energy Center near the City of Wilton, North Dakota. The collection substation and transmission line which are the subject of this application are necessary in order to transmit the power produced at the wind center to WAPA's transmission system.
4. The collection substation is to be located on approximately 17 acres in the SE $\frac{1}{4}$ of Section 17, Township 142 North, Range 79 West, Burleigh County, North Dakota. The proposed route for the transmission travels west from the collection substation on

the north side of Burleigh County Highway #279 for approximately one mile, from there it will make a diagonal road crossing to the south side of the road and will then travel approximately 3.4 miles to Section 22, Township 142 North, Range 80 West, where it will interconnect with the WAPA transmission system. The only significant jog in the route will be to stay at a 250 foot distance from a residence located at the southwest corner of Highway #279 and U.S. Highway #83.

5. No transmission facility exclusion areas have been identified within the proposed route.

6. One small wetland will be slightly impacted by one transmission line tower. Central Power is seeking a nationwide permit from the U.S. Army Corps of Engineers for impacts to this wetland. The actual wetland itself will not be impacted, only lands immediately adjacent thereto. The Commission finds no reasonable alternative that would avoid further wetland impact.

7. The U.S. Fish and Wildlife Service recommends construction in or near wetlands be deferred until after July 15 so as not to disrupt waterfowl or other wildlife during the nesting season.

8. FPL and Central Power are working with WAPA to obtain an Environmental Assessment (EA) for approval of WAPA's activities as mandated by the National Environmental Policy Act (NEPA).

9. FPL has caused to be completed both Class I files and record search, and also a Class III pedestrian survey of the entire proposed route and collection substation for archeological and cultural resources. In addition, consultation was made with Indian tribes located within the State of North Dakota. Neither the Class I nor Class III searches revealed any protected sites along the proposed route. FPL has received conditional approval from the North Dakota State Historic Preservation Office (SHPO).

10. Two occupied residences are located within 500 feet of the proposed line. FPL has obtained written waivers from owners of the residences.

11. Central Power will have to remove approximately 150 trees for construction of the transmission line. Central Power has committed to replanting of trees on a minimum ratio of two to one. The Commission finds no reasonable alternative that would further avoid impacts to these woodlands.

12. FPL has obtained all easements necessary for construction of the collection station and transmission line. It is anticipated that FPL will assign the transmission line easements to Central Power at a later date.

13. FPL has contacted all affected road authorities and the one railroad proposed to be crossed. All road authorities and the railroad company have indicated preliminary approval to granting crossing permits.

14. The estimated cost of the transmission line is \$900,000 and the estimated cost of the collection substation is \$2.3 million.

15. The construction and operation of the transmission system will conform to the requirements of the National Electric Safety Code.

16. Single pole, steel structures will be used for construction of the transmission line.

17. Central Power's final proposed route includes one shift in alignment from the route proposed in the amended application because Central Power was able to obtain an easement allowing the route to remain south of County Highway #279.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under Chapter 49-22, NDCC.

2. The transmission line proposed by Central Power and the associated collection substation proposed by FPL are transmission facilities as defined in § 49-22-03(11), NDCC.

3. The proposed project is of such design, location and purpose that it will produce minimal adverse effects, as defined under § 49-22-05.2, NDCC.

4. The application submitted by FPL and Central Power, as amended, meets the corridor and route evaluation criteria required by Chapter 49-22, NDCC.

5. The location, construction and operation of the proposed transmission line and collection substation will produce only minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

6. The proposed transmission line and collection substation is compatible with the environmental preservation and the efficient use of resources.

7. The proposed transmission corridor and route will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

8. The proposed transmission corridor and route will allow for the transmission of environmentally friendly wind power.

9. The proposed transmission corridor and route are of such length, design, location and purpose that they will produce minimal adverse effects.

10. The requested waivers of procedures and time schedules are justified based upon: the minimal length of the transmission line; minimal impacts on the environment and the welfare of the citizens of North Dakota; the lack of objection to the proposed route and collection substation by federal, state and local governmental bodies and agencies or by area landowners; and the objective to have the project in operation by December 31, 2005.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes it:

Order

The Commission orders:

1. FPL and Central Power's Amended Application for Waiver of Procedures and Time Schedules is granted.
2. Certificate of Corridor Compatibility for Transmission Facility Corridor No. 87 is issued to Central Power Electric Cooperative, Inc.
3. Certificate of Corridor Compatibility for Transmission Facility Corridor No. 88 is issued to FPL Energy Burleigh County Wind, LLC.
4. Route Permit for Construction of a Transmission Facility No. 97 is issued to Central Power Electric Cooperative, Inc., granting authority to construct the proposed transmission line.
5. Route Permit for Construction of a Transmission Facility No. 98 is issued to FPL Energy Burleigh County Wind, LLC, granting authority to construct the associated collection substation.
6. FPL and Central Power shall conduct preconstruction conferences prior to commencement of any construction, which must include a company representative, construction supervisor, and a representative of the Commission staff in order to ensure that FPL and Central Power fully understand the conditions set forth in this Order.
7. FPL and Central Power shall comply with the rules and regulations of all agencies having jurisdiction over any phase of the proposed transmission line and associated collection substation, and shall obtain all other necessary licenses and permits; and shall provide copies of all licenses and permits to the Commission prior to the construction of the transmission line and associated collection substation. These submittals must include any environmental assessment prepared by WAPA and any findings made by WAPA with regard to the environmental assessment. If FPL/Central Power have obtained all other necessary licenses and permits except for road or railroad crossing permits then they may commence construction, but shall not construct

such road or railroad crossing until the necessary permit have been acquired and copies filed with the Commission.

8. FPL and Central Power shall inform the Commission of their intent to start construction on the transmission line and associated collection substation prior to the commencement of construction, and, once construction has started, FPL and Central Power shall keep the Commission updated of construction activities on a weekly basis.

9. FPL and Central Power shall construct and operate the transmission line and associated collection substation in the manner described in their Amended Application and at the hearing, and in accordance with all applicable safety requirements.

10. FPL/Central Power shall promptly report to the Commission the presence in the permit area of any critical habitat of threatened or endangered species, or of bald or golden eagles that FPL/Central Power becomes aware of and were not previously reported to the Commission.

11. If any cultural resource, paleontological, archeological, historical, or gravesite as discovered during construction, it shall be marked, preserved and protected from any further disturbance until a professional examination can be made by the State Historical Society, a report of such examination is filed with the Commission, and clearance to proceed is given by the Commission.

12. All pre-existing roads and lanes used during construction must be restored to a condition that will accommodate their previous use, and areas used as temporary roads during construction must be restored to their original condition.

13. Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken.

14. Reclamation along the right-of-way shall be continuous and coordinated with construction.

15. Reclamation, fertilization and reseeding is to be done according to the Natural Resource Conservation Service and County Farm Service Agency recommendations for CRP, native prairie and other lands unless otherwise specified by the landowner and approved by the Commission.

16. FPL's and Central Power's obligations for reclamation and maintenance of the right-of-way shall continue throughout the life of the transmission system.

17. Trees and other wooded vegetation must be replaced at a rate of two for every one removed along the route. Landowners shall be given the option of having replacement trees/shrubs planted off the right-of-way on the landowners property or waiving that requirement in writing and allowing replacement plantings of trees/shrubs

elsewhere. FPL/Central Power shall inspect tree replacements once a year for three years and send a report on or shortly before October 1 of 2006, 2007 and 2008 to the Commission documenting work completion and condition of woodlands planting. The Commission may order additional plantings if survival rates are less than 75% of the required ratio of two for one.

18. FPL and Central Power shall provide the Commission with copies of design specifications for construction of the transmission line and associated collection substation showing the location as built.

19. FPL/Central Power shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the transmission system.

20. FPL/Central Power shall work with landowners to determine and implement appropriate damage mitigation measures.

21. FPL/Central Power shall obtain approval from the Commission or Commission staff prior to any changes in structure locations.

22. The authorizations granted by the corridor certificate and route permit are subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.

PUBLIC SERVICE COMMISSION

		
Susan E. Wefald Commissioner	Tony Clark President	Kevin Cramer Commissioner