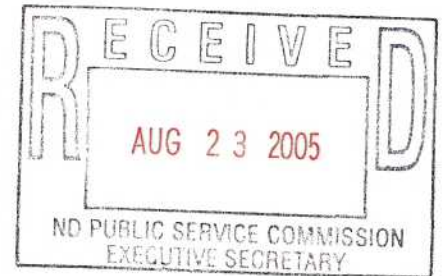


**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**



**PPM Energy, Inc.
Rugby Wind Farm
Pierce County Siting
Application**

Case No. PU-05-47

**PPM Energy, Inc.
230-KV Transmission Line
Application**

Case No. PU-05-305

RESPONSE OF PPM ENERGY, INC. TO PETITION TO INTERVENE OF J.T. MCINTIRE

I. INTRODUCTION

On or about August 2, 2005, proposed Intervener, J. T. McIntire ("McIntire") caused to be delivered to the Administrative Law Judge for the above-references cases (the Honorable Allen C. Hoberg) the following: (i) a handwritten letter dated August 1, 2005 addressed to Judge Hoberg; (ii) a letter dated July 4, 2005 addressed to U.S. Senator Byron Dorgan; (iii) a letter dated July 11, 2005 addressed to U.S. Senator Byron Dorgan; (iv) a letter dated July 31, 2005 addressed to North Dakota Public Service Commission ("Commission") staff member Ms. Annette Bendish; (v) a photocopy of an article which appeared in the Pierce County Tribune on June 25, 2005; (vi) a photocopy of a letter to the editor by McIntire which appeared in the Pierce County Tribune on July 16, 2005; (vii) a photocopy of a letter to the editor by McIntire which appeared in "the Star" on July 18, 2005; (viii) a photocopy of a letter to the editor by McIntire which appeared in the Turtle Mountain Times on July

18, 2005; and, (viii) a photocopy of various photographs personally depicting the residence of McIntire.

On or about August 2, 2004, McIntire also caused to be delivered to the Commission a handwritten letter dated August 1, 2005 addressed to Commissioner Wefald, as well as the documents which were forwarded to Judge Hoberg enumerated as items (ii) through (viii) above.

On or about August 3, 2005 Commissioner Wefald acknowledged receipt of the documents and materials referenced in the paragraphs above and advised McIntire of the following:

You have a right to request formal intervention in this project. Since the hearing has already been held, any request to intervene would have to show good cause for the late intervention. Formal intervention would enable you to receive copies of all formal documents related to this case that are filed by any party or issued by the Commission. If you choose to petition to intervene, please contact Illona A. Jeffcoat-Sacco at our office, at 701-328-2400. You may wish to contact an attorney as you decide how to proceed. At this time, since we know you are interested in this case, you will be placed on our mailing list and receive copies of our orders and other documents we issue which relate to this case.

On or about August 9, 2005, McIntire caused to be delivered to the Commission the following: (i) letter dated August 7, 2005 addressed to Commissioner Wefald; (ii) a photocopy of an article which apparently appeared in the Pierce County Tribune at some unknown date; and, (iii) an article entitled Wind Power: Renewable Energy for Home, Farm and Business, authored by Paul Gipe which contains numerous handwritten annotations presumably written by McIntire.

For the reasons set forth herein, PPM Energy, Inc. ("PPM") requests that McIntire's Petition to Intervene be denied. However, in the event the Commission determines that the Petition to Intervene should be granted, PPM requests that it be granted with such conditions and restrictions so

that the intervention will not result in PPM having to bear the cost and expense of responding to duplicative materials and documents filed with the Commission by McIntire and so that it will not result in delaying the Commission's opportunity to render a decision in these consolidated matters.

II. POINTS AND AUTHORITIES

The North Dakota Administrative Practices Act provides that an administrative agency may grant interventions in adjudicative proceedings under certain circumstances. N.D.C.C. § 28-32-28.

Intervention is appropriate and permissible to promote the interests of justice if:

1. It will not impair the orderly and prompt conduct of the proceedings; and
2. The intervener demonstrates a legal interest may be substantially affected by the proceedings or that a statute confers an unconditional right to intervene.

N.D.C.C. § 28-32-28. In granting a motion to intervene, an administrative agency "may impose conditions and limitations upon intervention." N.D.C.C. § 28-32-28.

Petitions to intervene in matters before the Commission are also governed by the provisions of Chapter 69-02-02 of the North Dakota Administrative Code. The relevant section of Chapter 69-02-02 provides as follows:

Any person with a substantial interest in a proceeding may petition to intervene in that proceeding by complying with this section. An intervention may be granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, and the intervention would not unduly broaden the issues or delay the proceeding. The commission may impose conditions and limitations on an intervention to promote the interests of justice.

N.D. Admin. Code § 69-02-02-05.

In addition to these general requirements, the Commission has promulgated and adopted certain procedural prerequisites for the filing of petitions to intervene. Those procedural requirements are as follows:

1. **Contents of petition to intervene.** A petition to intervene must be in writing and must set forth the grounds for intervention, the position and interest of the petitioner in the proceeding, what the petitioner would contribute to the hearing, and whether the petitioner's position is in support of or in opposition to the relief sought.
2. **When filed.** A petition to intervene in the proceeding must be filed at least ten day prior to the hearing, but not after except for good cause shown.
3. **Number of copies.** The petitioner will serve a copy of the petition on each party to the proceeding and will file with the commission the original and seven copies.
4. **Effect.** Admission as an intervener shall not be construed as recognition by the commission that such intervener might be aggrieved by an order of the commission in such proceeding.

N.D. Admin. Code § 69-02-02-05. These provisions of the Commission's rules make it clear that the standard for intervention in matters before the Commission is a strict one.

III. MCINTIRE'S PETITION TO INTERVENE DOES NOT MEET THE STRICT STANDARDS FOR INTERVENTION AS ESTABLISHED BY THE COMMISSION.

As set forth above, the standards for intervention in matters before the Commission are strict.

To satisfy these standards, a petitioner must demonstrate a statutory right to be a party; or that the

petitioner has a legal interest which may be substantially affected by the proceedings; and that intervention would not unduly broaden the issues or delay the proceedings. N.D.C.C. §28-32-28; N.D. Admin. Code § 69-02-02-05; *see also, Cass County Electric Cooperative, Inc. vs. Northern States Power*, 518 N.W.2d 216 (N.D. 1994).

The stated reason for intervention in McIntire's Petition to Intervene is "ethical grounds because PPM directly lied in court in Rugby on the 29th of July . . . by saying they had contacted all landowners who would be affected by the impact of the project." Petition to Intervene at 1. The Petition to Intervene continues with allegations of "secret meetings" between landowners and representatives of PPM and that PPM somehow conspired with landowners in the area to keep the proposed Ruby Wind Farm secret from McIntire and his wife. In addition, McIntire alleges that PPM's proposed Rugby Wind Farm will destroy his life and demands that PPM buy his farmstead. Petition to Intervene at 2-3.

First, McIntire's allegations of "secret meetings" are unfounded. Petition to Intervene at 1. PPM had two meetings in Rugby relative to this project. In each case, landowners who were directly involved in the project (*i.e.*, they leased or were being approached to lease their property for wind turbines) were invited. At each meeting approximately 75 people attended.

Second, McIntire's demand that PPM buy his farmstead is without any basis. Petition to Intervene at 2. The uncontroverted evidence presented at hearing demonstrates that at 1,000 feet from a wind turbine the noise from the turbine will be 50 dBa or less. As further explained by a PPM witness, that is approximately the level of the background noise (*i.e.*, ventilation and lights) in a typical office. Accordingly, there is simply no basis for the McIntires to argue that noise from a

wind tower at the distance recommended by PPM will force them to move from their home.

Finally, what is clear from all the unsubstantiated allegations contained in the Petition to Intervene is that McIntire has failed to meet the prerequisites for an intervention as established by the North Dakota Administrative Practices Act and the rules of the Commission. All of the allegations articulated by McIntire in his Petition to Intervene do not rise to the level of meeting the criteria established by statute and rule for granting interventions. *See* N.D.C.C. § 28-32-28; N.D. Admin. Code § 69-02-02-05. Granting McIntire's Petition to Intervene would require the Commission to find that McIntire could intervene without satisfying these standards of intervention. Such a determination would not only have a profound impact on this case, but also establish an ill-advised precedent for future matters that come before the Commission.

IV. ALTERNATIVELY, CERTAIN CONDITIONS AND RESTRICTIONS SHOULD BE PLACED UPON MCINTIRE'S PETITION TO INTERVENE.

In the event the Commission demonstrates McIntire's Petition to Intervene should be granted (and it should not), certain conditions and restrictions should be placed upon that intervention. McIntire (by his own admission) first became aware of the fact that the area near his home was being considered as a site of a wind farm in April of 2005. Petition to Intervene at 1. He further admits that he became more aware of PPM's proposed Rugby Wind Farm by listening to a Rugby radio station in mid June of 2005. Petition to Intervene at 1. The materials McIntire submitted to Judge Hoberg and Commissioner Wefald (the June 25, 2005 Pierce County Tribune Article) demonstrate that he was aware that PPM had been granted a conditional use permit for its project by the Pierce

County Zoning and Planning Commission in mid June of 2005. He had sufficient information and knowledge about PPM's project in early July of 2005 to write Senator Dorgan on two separate occasions objecting to the project. In mid July of 2005, McIntire further voiced his objection to the project by writing letters to the editor of the Pierce County Tribune and the Turtle Mountain Times. On July 29, 2005 McIntire and his wife, Roberta McIntire, attended the public hearing held by the Commission to consider the applications of PPM for the proposed Rugby Wind Farm and the 230kV transmission line. Mrs. McIntire testified at length offering her comments about the proposed facilities. Since the hearing, McIntire has forwarded considerable written materials to the Commission which PPM has indicated that it has no objection by having them made a part of the record for the limited purpose of demonstrating McIntire's continued opposition to the project. Now with his Petition to Intervene, McIntire, once again, presents much of the same information and baseless allegations that were contained in previous testimony and filings.

What is clear is that McIntire, even from his own filings, acknowledges that he had actual knowledge of PPM's proposed Rugby Wind Farm and 230kV transmission line more than three months prior to the hearing which was held by the Commission in Rugby on July 29, 2005. It is disingenuous at best for McIntire to now argue that he should be allowed to intervene at this late date because of alleged "secret meetings" between PPM and other landowners and his arguments that he was not given adequate notice of the project.

Because of these uncontroverted facts, if McIntire is allowed to intervene, he should be required to take this proceeding as it stands. McIntire should not be permitted to raise new arguments or issues not previously outlined to the Commission in his filings or in his wife's

testimony at hearing. McIntire has not requested nor offered any justification or basis in his filings or in his Petition to Intervene for having another formal hearing on the two applications of PPM currently pending before the Commission. Accordingly, if the Commission grants the Petition to Intervene, PPM requests that the Commission exercise the authority conferred upon it by statute and rule and limit McIntire's participation in these proceedings. Specifically, McIntire should not be permitted to raise new issues or arguments, nor to submit testimony or other evidence, since the hearing of these consolidated matters has been held and McIntire had every opportunity to participate in that hearing. PPM would otherwise not oppose McIntire's participation in any future informal hearing or work session the Commission may convene, so long as that participation is limited to the issues identified and raised by the Commission for such a proceeding.

In that regard, if the Commission allows limited intervention by McIntire, PPM requests that the Commission give appropriate notice and schedule an informal hearing or work session to consider the recommendations and provide approval for the specific sites and locations of the wind turbines for its proposed Rugby Wind Farm which will be submitted to the Commission on or before August 26, 2005. PPM further requests that the McIntires be provided with personal service of any such scheduled informal hearing or work session by having mailed to them (via U.S. Mail) a copy of the notice. Inasmuch as PPM desires to commence construction operations on or before October 1, 2005, PPM requests that the informal hearing or work session be noticed so that the same can be held during the week of September 19-23, 2005.

V. CONCLUSION

For all the foregoing reasons, PPM requests that McIntire's Petition to Intervene be in all things denied and that the proposed findings of fact, conclusions of law, and order for each of the above-captioned matters previously filed with the Commission be entered and the various certificates and permits be issued without any further hearings. In the alternative, should the Commission determine that McIntire should be allowed to intervene, PPM requests that findings of fact, conclusions of law, and order and all the other certificates and permits required for the project be conditioned upon the Commission considering the recommendations of PPM for the specific locations for the wind turbines and transmission line and the same being finally approved by the Commission at an informal hearing or work session to be held by the Commission sometime during the week of September 19-23, 2005.

Dated this 23rd day of August, 2005.

PEARCE & DURICK

By 

LAWRENCE BENDER

Attorneys for Petitioner, PPM Energy, Inc.

314 East Thayer Avenue

Post Office Box 400

Bismarck, North Dakota 58502

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing document was on the 23rd day of August, 2005 served by placing the same in the United States mail, postage prepaid, properly addressed to the following:

Mr. and Mrs. J. T. McIntire
3520 77th St. NE
Rolette, ND 58366



LAWRENCE BENDER