

MEMORANDUM

TO: Commissioners Clark, Wefald and Cramer
Illona A. Jeffcoat-Sacco

FROM: Bill Binek, Annette Bendish, Pat Fahn and Jerry Lein

DATE: August 25, 2005

RE: PPM Energy, Inc., Case Nos. PU-05-47 and PU-05-305 – J T McIntire
Petition to Intervene

On June 16, 2005, PPM Energy, Inc. (PPM) filed an application for a Certificate of Site Compatibility for the Rugby Wind Farm and an Application for a Certificate of Corridor Compatibility and Route Permit for the Rugby Wind Farm Transmission Line. On June 29, 2005 the Commission issued its Notice of Filing and Notice of Hearing scheduling a public hearing on the applications for July 29, 2005 beginning at 9:00 a.m. in Rugby. The Notice of Filing and Notice of Hearing and map were published in the Pierce County Tribune as required by law on July 9 and July 23, 2005.

At the hearing on July 29, Roberta McIntire, wife of J T McIntire, testified regarding concerns that she and her husband had regarding the potential location of wind turbines near their residence and the adverse effects of the placement of wind turbines close to their property.

On August 2 and 9, 2005, the Commission received letters from J T McIntire with photographs and other materials. Mr. McIntire was advised by letter dated August 3, 2005 that he had a right to request formal intervention. Copies of letters and materials received by the Commission from J T McIntire were served by the Commission via fax on PPM's counsel.

On August 17, 2005, the Commission received a Petition to Intervene from J T McIntire. Mr. McIntire states that he is petitioning for intervention on ethical grounds because he claims that PPM lied at the July 29 hearing by stating that they had contacted all landowners who would be affected by the project. He asserts that PPM plans to place a wind turbine 1400 feet from his house. He claims that PPM conspired with poor farmers to keep the project secret. He contends that he is the only landowner who will be adversely affected by the project. He asserts that his life will be destroyed, and that PPM should buy his farmstead immediately for the pain and suffering they have caused him.

On August 17, 2005, PPM's counsel filed a letter response to the August 2 and 9 letters and materials submitted by J T McIntire. PPM agreed that the material does not fall neatly into a category of "public input" but stated that it also does not fall neatly into the category of information or evidence the Commission is authorized to consider under the provisions of Section 28-32-25 of the North Dakota Century Code. PPM stated that

although the provisions of Section 28-32-25 are probably not applicable, PPM has no objection to the documents being made a part of the record for the limited purpose of demonstrating that the McIntires continue to object to PPM's applications.

On August 23, 2005, PPM filed a Response to the Petition to Intervene. PPM requests that the Petition to Intervene be denied. However, if the Commission allows the McIntires to intervene, PPM requests that the Commission limit the McIntires' participation only to subsequent work session or informal hearing proceedings dealing with approval for the specific sites and locations of wind turbines. PPM requests that the McIntires' participation in those proceedings be limited to the issues identified and raised by the Commission for such proceedings, and that the McIntires not be permitted to raise new issues or arguments nor submit testimony or evidence relating to the formal hearing that has already been held on the two applications pending before the Commission.

North Dakota law provides authority for granting interventions and for imposing conditions and limitations upon intervention. N.D.C.C. § 28-32-28 provides that "[a]n administrative agency may grant intervention in an adjudicative proceeding to promote the interests of justice if intervention will not impair the orderly and prompt conduct of the proceeding and if the petitioning intervenor demonstrates that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of statute or rule. The agency may impose conditions and limitations upon intervention."

N.D. Admin. Code § 69-02-02-05 provides that "[a]ny person with a substantial interest in a proceeding may petition to intervene in that proceeding. . . ." The rule provides that an intervention may be granted if the person has a legal interest which may be substantially affected by the proceeding and if the intervention would not unduly broaden the issues or delay the proceeding. Subsection 2 provides that "[a] petition to intervene in any proceeding must be filed at least ten days prior to the hearing, but not after except for good cause."

The McIntires own a small parcel of property within the area of the wind farm and, according to their statements, a wind turbine is proposed to be located within 1400 feet of their residence. The McIntires have met the requirement of N.D.C.C. § 28-32-28 by demonstrating that their legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding.

The McIntires have not met the requirement under N.D. Admin. Code § 69-02-02-05 of filing the petition to intervene at least ten days prior to the hearing. Under the rule, a petition to intervene may not be filed after the hearing except for good cause.

The Commission has the authority under N.D. Admin. Code § 69-02-02-05(2) to grant a petition filed after the hearing upon good cause and has the authority under both N.D.C.C. § 28-32-28 and N.D. Admin. Code § 69-02-02-05 to impose conditions

and limitations upon intervention. The McIntires did appear and Roberta McIntire did testify at the hearing in Rugby on July 29, 2005. The McIntires have expressed specific concerns relating to the placement of a wind turbine near their property. The exact turbine locations have not been identified, and some further proceeding before the Commission will be required to approve the turbine locations.

Staff recommends that the Commission grant the Petition to Intervene, but that the intervention be limited to participation in the future proceeding or proceedings that will be scheduled by the Commission for approval of turbine site locations, and that participation be limited to the issues identified and raised by the Commission for those proceedings.

cc: J T McIntire and Roberta McIntire
Lawrence Bender