

DIVIDER

STATE OF NORTH DAKOTA

INFORMATION TECHNOLOGY DEPARTMENT

SFN 2053 (4-2002)

PU-06-442

Tatanka Wind Power, LLC

Tatanka Wind Farm - Dickey County

Jurisdictional Determination

Filed 10/13/2006

Closed 1/29/2007

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LAW OFFICES OF
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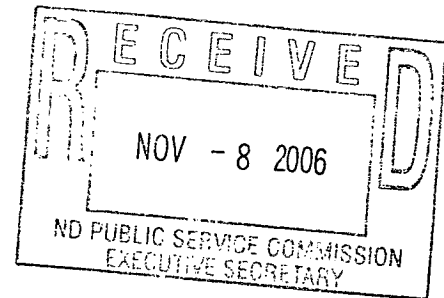
ERNEST R. FLECK
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(RETIRED)

November 8, 2006

Ms. Illona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue
Dept. 408
Bismarck, ND 58505-0480

In re: Tatanka Wind Power, LLC
Tatanka Wind Farm

Dear Ms. Jeffcoat-Sacco:



On October 13, 2006, we filed a letter of intent and request for non-jurisdictional status for the Tatanka Wind Farm in Dickey County, North Dakota and McPherson County, South Dakota.

It has recently come to my attention that the description of the ownership of Tatanka Wind Power, LLC, in that letter of intent was inaccurate. We stated that Tatanka is a wholly owned subsidiary of Acciona Wind Energy USA LLC ("AWE"), when in fact it is an indirect subsidiary of AWE and a joint venture partner, Global Winds Harvest, Inc. ("Global Winds"). AWE is in the process of acquiring Global Winds' equity interest in Tatanka and, in a brief period of time, Tatanka will be a 100% subsidiary of AWE. In the meantime, AWE and its representatives control the development of the Tatanka Wind Project and are authorized to make filings on behalf of Tatanka.

Additionally, the letter indicated that no more than 60 wind generators, capable of yielding up to 90 megawatts in the aggregate, will be located in North Dakota. Recent engineering studies have required moving at least one of the generators originally anticipated to be located in South Dakota to the North Dakota side. Barring any additional unforeseen events, we do not anticipate that more than 61 of the generators will be located in North Dakota.

If you have any questions concerning the foregoing, please let me know.

Very truly yours,

John W. Morrison JK13

JOHN W. MORRISON



Public Service Commission

State of North Dakota

COMMISSIONERS

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Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

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November 8, 2006

John W. Morrison
Fleck, Mather & Strutz, Ltd.
400 East Broadway, Suite 600
P.O.Box 2798
Bismarck, ND 58502

Re: Opinion Regarding Wind Energy Development-Tatanka Wind Power, LLC
Case No. PU-06-442

Dear Mr. Morrison:

The Commission has asked me to respond to your October 13, 2006 request on behalf of Tatanka Wind Power, LLC, (Tatanka) for a jurisdictional determination regarding siting wind generation facilities in North Dakota. Tatanka is a wind energy developer working on projects in North Dakota and South Dakota. Tatanka is a wholly owned subsidiary of Acciona Wind Energy USA LLC. Takanka intends to construct a wind energy facility at a location straddling the North Dakota/South Dakota border in Dickey County, North Dakota and McPherson County, South Dakota. The wind farm will consist of up to 120 Acciona Wind Power 1.5MW generators, but no more than 60 generators (90 MW) will be located in North Dakota.

The Commission concurs with my opinion that the portion of the wind generation facility that will be located in North Dakota is not subject to the Energy and Transmission Facility Siting Act (Siting Act). N.D.C.C. § 49-22-07 prohibits a utility from beginning construction of an energy conversion facility without first obtaining a certificate of site compatibility from the Commission. "Energy conversion facility", as defined in N.D.C.C. § 49-22-03(5), includes any plant, addition, or combination of plant and addition, designed for or capable of generation of one hundred thousand kilowatts of more of electricity. The term "utility," as defined in N.D.C.C. § 49-22-03(13) means any person engaged in or controlling the generation of electric energy.

The wind energy project described in your letter that will be built in North Dakota is designed for and is capable of generating a total of ninety thousand kilowatts of electricity. Since the total nameplate capacity of the facility that will be built in North Dakota is under one hundred thousand kilowatts, it is not subject to the Siting Act.

It is my opinion that only the portion of the facility being constructed in North Dakota may be considered in determining jurisdiction. In determining whether or not a

project is subject to the Siting Act, the Commission must consider the legislative purpose for enacting the Siting Act. The Legislature adopted a statement of policy in N.D.C.C. § 49-22-02 in which it specifically stated:

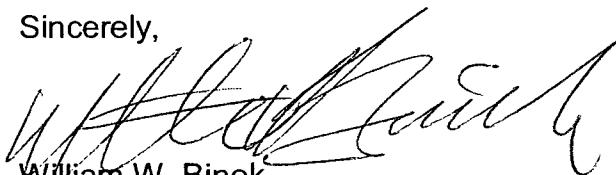
The legislative assembly finds that the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this state.” Therefore, it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse affects on the environment and upon the welfare of the citizens of this state by providing that no energy conversion facility or transmission facility shall be located, constructed, and operated within this state without a certificate of site compatibility or route permit acquired pursuant to this chapter. (emphasis added).

Clearly the legislative intent focused on facilities that are “located, constructed, and operated” in North Dakota.

I should point out that in the event the generation facility in North Dakota is expanded in the future so that the total nameplate capacity exceeds one hundred thousand kilowatts, the entire facility may be subject to the Siting Act. Under the definition in N.D.C.C. § 49-22-03(5), “energy conversion facility” includes any “plant, addition, or combination of plant and addition” that is designed for or capable of generation of one hundred thousand kilowatts or more of electricity. I believe a strong case could be made for siting of the entire project at the point a project reaches the 100 megawatt level. That is because the Commission would not be dealing with a “grandfather” situation where the first part of the project was built prior to the siting act being enacted, and the addition being added after the law became effective. The developers are aware of and are subject to the laws at the time of the initial construction, so if they subsequently increase the size of the project to trigger the siting obligation under the law, they potentially subject themselves to siting for the entire project.

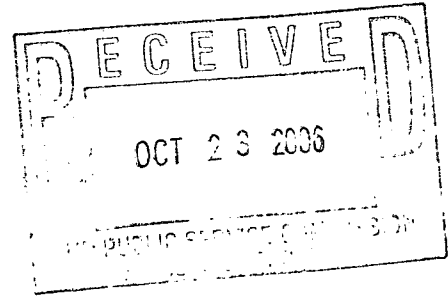
If you have any questions, please call me at 701-328-4088.

Sincerely,



William W. Binek
Chief Counsel

MEMORANDUM



TO: Commissioners Clark, Wefald and Cramer
PUD
Legal

FROM: Bill Binek

DATE: October 23, 2006

RE: Opinion Regarding Wind Energy Development-Tatanka Wind Power, LLC
Case No. PU-06-442

On October 13, 2006, the Commission received a request for jurisdictional determination from Tatanka Wind Power, LLC, (Tatanka) a wind energy developer working on projects in North Dakota and South Dakota. Tatanka is a wholly owned subsidiary of Acciona Wind Energy USA LLC. Takanka intends to construct a wind energy facility at a location straddling the North Dakota/South Dakota border in Dickey County, North Dakota and McPherson County, South Dakota. Tatanka states that the wind farm will consist of up to 120 Acciona Wind Power 1.5MW generators. Tatanka states that nor more than 60 generators (90 MW) will be located in North Dakota.

It is my opinion that the portion of the wind generation facility located in North Dakota is not subject to the Energy and Transmission Facility Siting Act (Siting Act). N.D.C.C. § 49-22-07 prohibits a utility from beginning construction of an energy conversion facility without first obtaining a certificate of site compatibility from the Commission. "Energy conversion facility", as defined in N.D.C.C. § 49-22-03(5), includes any plant, addition, or combination of plant and addition, designed for or capable of generation of one hundred thousand kilowatts of more of electricity. The term "utility," as defined in N.D.C.C. § 49-22-03(13) means any person engaged in or controlling the generation of electric energy.

The wind energy project described in Tatanka's letter that will be built in North Dakota is designed for and is capable of generating a total of ninety thousand kilowatts of electricity. Since the total nameplate capacity of the facility that will be built in North Dakota is under one hundred thousand kilowatts, it is not subject to the Siting Act.

It is my opinion that only the portion of the facility being constructed in North Dakota may be considered in determining jurisdiction. In determining whether or not a project is subject to the Siting Act, the Commission must consider the legislative purpose for enacting the Siting Act. The Legislature adopted a statement of policy in N.D.C.C. § 49-22-02 in which it found specifically stated:

The legislative assembly finds that the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this state." Therefore, it is necessary to ensure that the location, construction, and operation of energy conversion

facilities and transmission facilities will produce minimal adverse affects on the environment and upon the welfare of the citizens of this state by providing that no energy conversion facility or transmission facility shall be located, constructed, and operated within this state without a certificate of site compatibility or route permit acquired pursuant to this chapter. (emphasis added).

Clearly the legislative intent focused on facilities that are “located, constructed, and operated” in North Dakota.

I should point out that in the event the generation facility in North Dakota in North Dakota is expanded in the future so that the total nameplate capacity exceeds one hundred thousand kilowatts, the entire facility may be subject to the Siting Act. Under the definition in N.D.C.C. § 49-22-03(5), “energy conversion facility” includes any “plant, addition, or combination of plant and addition” that is designed for or capable of generation of one hundred thousand kilowatts or more of electricity. I believe a strong case could be made for siting of the entire project at the point a project reaches the 100 megawatt level. That is because we would not be dealing with a “grandfather” situation where the first part of the project was built prior to the siting act being enacted, and the addition being added after the law became effective. The developers would be aware of and are subject to the laws at the time of the initial construction, so if they subsequently increase the size of the project to trigger the siting obligation under the law, they potentially subject themselves to siting for the entire project.

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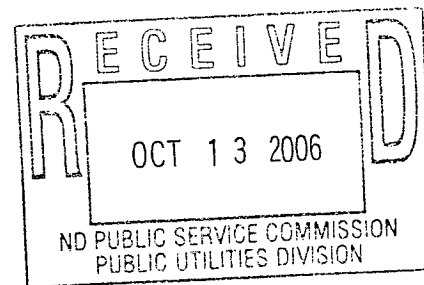
CURTIS L. WIKE**
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PETRA H. MANDIGO□

ERNEST R. FLECK
(1921-1995)
RUSSELL R. MATHER
(RETIRED)
WILLIAM A. STRUTZ
(RETIRED)

October 13, 2006

Hand Delivered

Ms. Illona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue
Dept. 408
Bismarck, ND 58505-0480



In re: Tatanka Wind Power, LLC
Tatanka Wind Farm

Dear Ms. Jeffcoat-Sacco:

Tatanka Wind Power, LLC ("Tatanka"), a wholly owned subsidiary of Acciona Wind Energy USA LLC, intends to construct a wind generation facility known as the Tatanka Wind Farm (the "Wind Farm") at a location straddling the North Dakota/South Dakota border in Dickey County, North Dakota and McPherson County, South Dakota. For the reasons set forth in this letter, Tatanka does not believe the Wind Farm constitutes an "energy conversion facility" within the meaning of Section 49-22-03(5) of the North Dakota Century Code and is therefore not subject to siting or other regulation by the North Dakota Public Service Commission (the "Commission"). Pursuant to Section 69-06-03-01 this letter of intent is filed for the sole purpose of seeking a determination whether the Commission has jurisdiction over the facility.

In this case, the Wind Farm will consist of up to 120 Acciona Wind Power 1.5MW generators, each capable of yielding up to 1500 kilowatts (1.5 MW), to be located in portions of Wacker Township in McPerson County, South Dakota, and Albertha Township in Dickey County, North Dakota. No more than sixty of the generators, capable of yielding up to 90 megawatts in the aggregate will be located within Albertha Township in North Dakota. The remaining generators will all be located in South Dakota. The generators will be interconnected by both a fiber communication system and an underground 34.5kV line, which in turn will be connected to a substation where the voltage will be increased to 230kV. A separate 230kV transmission line


approximately 10 miles in length will be constructed from the substation to an existing 230kV line owned and operated by Montana-Dakota Utilities.¹

Section 49-22-07 of the North Dakota Century Code requires every utility intending to construct an “energy conversion facility ... in the state” (emphasis added) to obtain a certificate of site compatibility from the Commission. The definition of “energy conversion facility” in Section 49-22-03(5) includes any plant, addition, or combination of plant and addition, designed or capable of “generation of one hundred thousand kilowatts of electricity.” Since Tatanka does not intend to construct a plant capable of generation of one hundred thousand kilowatts of electricity within the state of North Dakota, we believe Section 49-22-07 does not require a certificate of site compatibility for the Wind Farm.

Tatanka anticipates commencing construction of the Wind Farm in the spring of 2007, completing construction by the fall of 2007, and delivering electricity into the transmission line no later than December 1, 2007. A map of the project area, showing both the project area for the Wind Farm and for the related transmission line, is attached. The estimated cost of the Wind Farm is \$200,000,000.00.

Accordingly, we request the Commission make a determination it does not have jurisdiction under Chapter 49-22 of the North Dakota Century Code over the Wind Farm. If you have any questions or need any additional information, please contact the undersigned at your earliest convenience.

Very truly yours,
FLECK, MATHER & STRUTZ, LTD.
Counsel for Tatanka Wind Power, LLC


By: John W. Morrison

cc: Marcus da Cunha

¹ Tatanka recognizes the transmission line will require a certificate of corridor compatibility and a route permit pursuant to Chapter 49-22 of the North Dakota Century Code and is contemporaneously with the filing of this letter of intent filing a separate letter of intent covering that transmission line.