

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Tatanka Wind Power, LLC
230 kV Transmission Line/Dickey & McIntosh
Counties
Siting Application

Case No. PU-06-443

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

March 21, 2007

Appearances

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

John W. Morrison, Attorney-at-Law, Fleck, Mather & Strutz, Ltd., 400 East Broadway, Suite 600, Bismarck, North Dakota 58502, on behalf of Tatanka Wind Power, LLC.

Annette Bendish, Public Service Commission, State Capitol, 600 E Boulevard Ave., 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 Ninth Street, Bismarck, North Dakota 58501-1882.

Preliminary Statement

On October 13, 2006, Tatanka Wind Power, LLC ("Tatanka") filed a letter of intent indicating its intention to construct a transmission line to connect a wind project straddling the North Dakota/South Dakota border in Dickey County, North Dakota and McPherson County, South Dakota, known as the Tatanka Wind Farm, to an existing 230kV transmission line in Dickey County, North Dakota. Tatanka requested a waiver of the requirement that a letter of intent be filed one-year in advance of an application. By motion dated October 25, 2006, the Commission acknowledged receipt of the letter of intent, granted the waiver from the one-year filing requirement, and assessed an application fee of \$36,500.00.

On November 2, 2006, Tatanka 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 12 miles of 230 kV transmission line from a point on the South Dakota border in Section 31, Township 129 North, Range 66 West, Dickey County to a proposed interconnection with an existing Montana-Dakota Utilities 230kV transmission line in Dickey County, North Dakota. The proposed route is located primarily in Dickey near the McIntosh County border, but crosses into McIntosh County for a portion of the route.

Tatanka requested the Commission waive procedures to allow for a single consolidated application for corridor certificate and route permit and waive the requirement that the width of the corridor be 10% of the length of the route.

On November 22, 2006 the Commission deemed the application complete and issued a Notice of Filing and Notice of Hearing scheduling a public hearing in McIntosh County for January 18, 2007.

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 Ashley, North Dakota, on January 18, 2007 at 11:00 a.m. CDT. Numerous members of the public attended both hearings, but none entered appearances, presented testimony or comments, or asked any questions of Tatanka's witnesses. At the conclusion of the hearing the Commission determined to leave the record open for certain late filed exhibits, and also determined that additional public comment may be received on late filed exhibits.

Subsequent to the hearing, the Commission received correspondence from two interested parties. Mr. Gary Hoffman, from Ashley, North Dakota, raised a concern that the transmission line was in close proximity to two cemeteries and that any noise generated by the transmission line would affect the cemeteries. Mr. Nick E. Davis, a resident of Rochester, Minnesota, indicated that he owned a "residence" in the vicinity of the transmission line at which he intended to retire and that he was concerned about the noise. Neither Mr. Hoffman nor Mr. Davis formally intervened as parties in this proceeding.

Tatanka supplemented the record with late filed exhibits responding to questions raised by the Commission at the hearings. Tatanka also supplemented the record with late filed exhibits responding to the questions raised by the correspondence identified above.

The Commission held an informal hearing on March 7, 2007 at 1:30 p.m. in the Commission hearing room in Bismarck. The informal hearing was attended by Tatanka's counsel and several witnesses.

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. Tatanka is a Delaware Limited Liability Company headquartered in Schenectady, New York. Tatanka is currently jointly owned by Acciona Wind Energy USA, LLC and Global Winds Harvest, Inc., although Acciona is in the process of acquiring the interest of Global Winds in Tatanka.

2. Tatanka plans to construct its Tatanka Wind Farm at a location straddling the North Dakota/South Dakota border in Dickey County, North Dakota and McPherson County, South Dakota. The portion of the Wind Farm located within the state of North Dakota will be capable of generating less than 100 megawatts of electricity. By letter dated November 8, 2006, the Commission determined that such a project was not subject to the Commission's siting jurisdiction under Chapter 49-22 of the North Dakota Century Code. The transmission line and interconnection tap which are the subject of this application are necessary in order to transmit the power produced at the Wind Farm to Montana-Dakota's transmission line. Tatanka plans to sell the electricity on the regional grid operated by the Midwest Independent System Operator ("MISO").

3. Electricity generated at the Wind Farm will be collected by a series of 34.5 kV lines to a collection point in McPherson County, South Dakota. The proposed transmission line will extend approximately 1200 feet in South Dakota to the North Dakota border and then will run principally along the Dickey/McIntosh County border approximately 12 miles to an interconnection tap Tatanka plans to construct adjacent to the existing Montana-Dakota transmission line. More specifically, the line will enter North Dakota at a location near the southwest corner of Section 31, Township 129 North, Range 66 West and then proceed approximately 10 miles in a northerly fashion several feet outside the 33-foot section line right-of-way along the boundary between Range 66 and Range 67, which is also the boundary between Dickey and McIntosh counties. The line will be located primarily on the east side of the boundary in Dickey County, but will cross over into McIntosh County for a portion of the route to accommodate a surface owner on the Dickey County side who chose not to grant an easement for the transmission line to Tatanka. In Section 18, Township 130 North, Range 66 West, the transmission line will jog approximately 1 ½ miles to a point in the NW/4 of Section 17 or the same township, then proceed northerly for several additional miles to a point in Section 5 of the same township where Tatanka plans to construct the interconnection tap.

4. The transmission line will be constructed using H-frame tangent variety structures with an average height of 70 feet. The average span between poles will be approximately 700 feet, or approximately 7.5 structures per mile. The interconnection tap will be a fenced yard, approximately 300 feet by 600 feet, containing power circuit breakers and associated switches and transformers.

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

6. There are several wetlands within the corridor but none of them will be impacted by construction of the transmission line along the proposed route. The U.S. Army Corps of

Engineers has determined that a Section 404 permit will not be required for the transmission line.

7. Tatanka has caused to be completed both a Class I files and record search, and a Class III pedestrian survey of the entire proposed route and interconnection tap 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; several small sites were identified by the Class III survey within the corridor but they will not be impacted by construction along the proposed route. Tatanka received conditional approval from the North Dakota State Historic Preservation Office (SHPO) and is awaiting final approval from SHPO.

8. There are no permanently-occupied residences located within 500 feet of the proposed line. There is a house located in the SE 1/4 SE 1/4 of Section 12, Township 129 North, Range 67 West which was at one time a permanently-occupied residence. The house is now owned by Mr. Nick Davis, who resides in Rochester, Minnesota. As originally planned, the transmission line would have been located approximately 460 feet from the house. Tatanka tried, but was unable to obtain a waiver from Mr. Davis. At the informal hearing, Tatanka presented testimony and exhibits indicating that a tree row was located slightly more than 500 feet east of the Davis house. In order to locate the transmission line at least 500 feet from the house, Tatanka would be required to locate the line, including several poles, in a corn field owned by Mr. Barry Holmes. Mr. Holmes told Tatanka that he would personally remove the tree row to prevent the line being placed in his corn field. Tatanka presented additional testimony which indicated that it could move the line east of the original location to a point where, subject to any construction conditions, the center line of the transmission line would be 500 feet from the Davis house. Such relocation would require the use of a single-pole structure with all of the wires and conductors placed on one side of the structure. The actual wires would be approximately 7 feet closer than 500 feet, or 493 feet, from the house. Tatanka indicated that the actual location might move due to conditions encountered during construction activities.

Tatanka has asserted that the Davis house is not a "residence" within the meaning of Section 69-06-08-02 of the North Dakota Administrative Code. Because of the way the Commission is resolving this issue, the Commission has determined that it is not necessary to determine whether the house is or is not a residence. The Commission finds that any intrusion into the 500-foot setback which would be required by Section 69-06-08-02 if the house is a "residence" is *de minimis*, particularly in light of Tatanka's willingness to move the transmission line as close to the west side of the tree row as possible and use single-pole structures for this portion of the line. The Commission further finds that there is no reasonable alternative to such a location, since moving the transmission line to the east of the tree row would interfere with Mr. Holmes' farming operation or result in the loss of a tree row.

9. With the exception of the intention of Mr. Holmes to personally remove trees to prevent locating the line in his corn field, there is no anticipated significant tree removal as a result of the line. Tatanka may need to remove and/or trim trees and limbs after the line is installed to prevent damage to the lines from wind and ice and ensure reliable operation. Tatanka does not object to replacing any trees that are removed on a ratio of two to one.

10. Tatanka provided the Commission with information indicating that the noise generated from the transmission would be noise generated from corona discharge, which is generally a hissing or crackling sound that, under certain circumstances, may be accompanied by a hum. The noise is most noticeable when the conductors are wet. Other siting agencies in the United

States have found that the audible noise from a 230 kV line would be between 17 and 45 dBA. The sound level in a bedroom at night is approximately 25 dBA and the sound level of a refrigerator is approximately 40 dBA.

11. The cemeteries referred to in Mr. Hoffman's letter are the Cemetery of Salem, located in the southeast corner of Section 36, Township 130 North, Range 66 West, and the St. Peter's Cemetery located in the SE 1/4 of Section 30, Township 129 North, Range 66 West. The Cemetery of Salem is bounded by County Road 9A on the east and State Highway 11 on the south. It is across the road from a current substation for an existing power line, and an existing power line runs through the cemetery. The proposed transmission line will be located on the east side of County Road 9A. The St. Peters Cemetery is located approximately 1500 feet from the proposed location of the transmission line. Under these circumstances, the Commission finds that the noise generated by the transmission line will not have any significant adverse human or environmental impact.

12. Tatanka has obtained all easements necessary for construction of the transmission line and interconnection tap.

13. Tatanka has contacted all county and township governing boards and has been assured that no additional local permits or approvals will be required for construction or operation of the transmission line and interconnection tap.

14. The estimated cost of the transmission line and related facilities is \$6,000,000.00; and the estimated cost of the interconnection with Montana-Dakota is \$1 million.

15. Prior to filing its application, Tatanka contacted all of the state and federal agencies required by the Commission's rules. Tatanka has addressed the concerns raised by the state and federal agencies. Tatanka is still waiting to receive final clearances from the United States Fish and Wildlife Service and the State Historic Preservation Office, but neither of those agencies has raised any concerns to date with the transmission line or the Montana-Dakota interconnection, which are the subject of this hearing.

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

17. H-frame tangent structures will be used for construction of the transmission line, with the exception of the single-pole structures in the vicinity of the tree row discussed above. .

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

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under North Dakota Century Code Chapter 49-22.

2. The transmission line and interconnection facility proposed by Tatanka are transmission facilities as defined in North Dakota Century Code Section 49-22-03(11).

3. The proposed project is of such design, location and purpose that it will produce minimal adverse effects, as defined under North Dakota Century Code Section 49-22-05.2.

4. The Application submitted by Tatanka meets the corridor and route evaluation criteria required by North Dakota Century Code Chapter 49-22.
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 line 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 line corridor and route will allow for the transmission of environmentally friendly wind power.
9. The proposed transmission line 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 by federal, state and local governmental bodies and agencies or by area landowners.

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

Order

The Commission orders:

1. Tatanka's Application for Waiver of Procedures and Time Schedules is granted.
2. Certificate of Site Compatibility Certificate Number 96 designating a transmission facility corridor is issued to Tatanka.
3. Route Permit Certificate Number 106 designating a transmission facility route is issued to Tatanka.
4. Tatanka Power shall conduct a preconstruction conference prior to commencement of any construction, and must include a Tatanka representative, its construction supervisor, and a representative of the Commission staff in order to ensure that Tatanka fully understands the conditions set forth in this Order.
5. Tatanka shall comply with the rules and regulations of all of their agencies having jurisdiction over any phase of its proposed transmission line, and it shall obtain all other necessary licenses and permits; and shall provide copies of all licenses and permits to the Commission which were not included in its application or which have not otherwise been provided to the Commission as of the date of this order prior to the construction of the transmission line.

6. Tatanka shall inform the Commission of its intent to start construction on the transmission line and associated collection substation prior to the commencement of construction, and, once construction has started, Tatanka shall keep the Commission updated of construction activities on a weekly basis. Tatanka shall also inform the Commission if the location of the line in the vicinity of the Davis house is moved west of its anticipated reroute as a result of any conditions encountered during construction.
7. Tatanka shall construct and operate the transmission line in the manner described in its Application and at the hearing, and in accordance with all applicable safety requirements.
8. Tatanka 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 Tatanka becomes aware of and which were not previously reported to the Commission.
9. If any cultural resource, paleontological site, archeological site, historical site, or gravesite is 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.
10. 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.
11. 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.
12. Reclamation along the right-of-way shall be continuous and coordinated with construction.
13. Reclamation, fertilization and reseeding is to be done by Tatanka 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.
14. Tatanka's obligations for reclamation and maintenance of the right-of-way shall continue throughout the life of the transmission line.
15. 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 Tatanka to plant replacement trees/shrubs elsewhere. Tatanka shall inspect tree replacements once a year for three years and send a report on or shortly before October 1 of 2008, 2009 and 2010 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.

16. Tatanka shall provide the Commission with copies of design specifications for construction of the transmission line and associated collection substation showing the location as built.

17. Tatanka shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the transmission line.

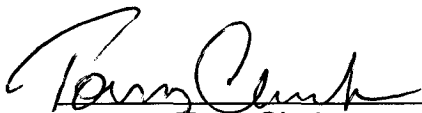
18. Tatanka shall work with landowners to determine and implement appropriate damage mitigation measures.

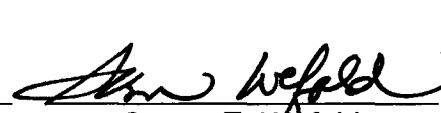
19. Tatanka shall obtain approval from the Commission or Commission staff prior to any changes in structure locations.

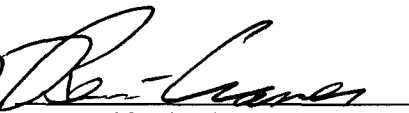
20. The authorizations granted by the corridor certificate and route permit are subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.

21. After the corridor and route certificates have been issued and all costs of hearings, publication, and any other related expense have been paid from the application fee, the Commission shall refund all but \$5,000.00 of the remaining application fee. If the balance of the application fee at that time is less than \$5,000.00 the Commission shall retain the entire amount. When construction and reclamation are complete and when the Commission has concluded that Tatanka's tree mitigation project is satisfactory, the remaining balance of the application fee shall be refunded.

PUBLIC SERVICE COMMISSION


Tony Clark
Commissioner


Susan E. Wefald
President


Kevin Cramer
Commissioner

CONCURRING OPINION
Commissioner Susan E. Wefald

March 21, 2007

**Tatanka Wind Power, LLC
223 kV Transmission Line/Dickey &
McIntosh Counties
Siting Application**

Case No. PU-06-443

I concur with this order, except that an important safety issue has not been addressed by the Commission in this order. This is the issue of Tatanka placing safety “markers” on transmission structure guy wires.

Markers are “plastic sleeves” which are placed on transmission structure guy wires to make them visible to the public. The plastic sleeves are about 6 feet long and are placed at ground level. These markers make it easier for pilots doing crop spraying to identify guy wires. Also, the markers make it easier for the ground traveling public, including snowmobile riders and farm equipment operators to spot the lines. The markers are **very** inexpensive to purchase and install, if they are put in place at the time of construction.

My fellow commissioners did not want to require Tatanka to put these markers in place, since the National Electric Safety Code only requires them in *areas exposed to pedestrian traffic and established parking areas*. I disagree with this decision. Other utilities in the state are putting them in place on transmission structures in rural as well as urban areas to enhance safety of the lines.

I encourage Tatanka, even though this issue is not addressed in the Commission Order, to voluntarily put markers on all guy wires as they construct this transmission line and supporting facilities. As the first independent power producer to be building a transmission line in this state, it would set good precedent for Tatanka to address this safety issue.


Susan E. Wefald, Commissioner

CONCURRING OPINION
Commissioner Tony Clark

March 21, 2007

**Tatanka Wind Power, LLC
230 kV Transmission Line
Dickey – McIntosh Counties
Siting Application**

Case No. PU-06-443

I had not intended to write this concurring opinion, so I did not state my intentions to do so in accordance with Public Service Commission Policy 1-23-98(0). If need be, I will move that the policy be waived in this instance so that my thoughts can be recorded.

The reason I only now feel compelled to write this is in response to Commissioner Wefald's significant misrepresentation of my rationale for deciding to not include the following language in the order:

Tatanka shall mark all the guy wires on structures unless Tatanka receives a signed waiver from the owner of the property on which the structure will be placed."

Commissioner Wefald states in her concurring opinion filed after the commission meeting that, "My fellow commissioners did not want to require Tatanka to put these markers in place, since the National Electric Safety Code only requires them in *areas exposed to pedestrian traffic and established parking areas.*"

This is an interesting, though incorrect, bit of mind-reading considering I have never said that in any setting. While written opinions attached to orders can provide insight into a commissioner's own decision making process, they are a wholly inappropriate vehicle for speaking on behalf of others. In the future I would hope all commissioners would refrain from speculatively assigning motives or rationale to his or her colleagues via any venue, but especially through formal concurrences or dissents.

So I submit the following solely to correct the public record. I will confine my comments to my own thoughts in relation to the proposed language.

It should go without having to note, but perhaps it bears repeating in light of the discussion on this matter: The Public Service Commission must issue its decisions based on the record before it. In this case, the record contains a lack of reference to interveners, landowners, affected citizens, regulatory agencies, public interest groups or other entities demonstrating that guy lines for this transmission project should be marked in a manner inconsistent with existing safety regulations or existing siting orders.

Rather, the proposal to add a separate and new marking regulation to this order was presented to me less than an hour before our business meeting.

In the few minutes I had to consider the proposal, some substantial questions about the language struck me. As written, it contains no guidance to the applicant on what type of markers should be installed. Should they be ground markers? Should they be aerial markers? Maybe both? To what standards and specifications should they be built and installed?

Commission orders already require the applicant to meet all safety regulations (ordering clause no. 7), so how would this requirement differ? How many guy lines are there in total that would be affected by the proposed language?

One particularly vexing question for me is what impact this proposal could have on landowner liability. For example, let us suppose a landowner wishes to waive the marking of the line on his property for purely aesthetic reasons, as would be allowed under the proposal. Now let us suppose that a snowmobile operator chooses to trespass on that landowners' property without permission. The snowmobile operator proceeds to cause bodily injury to him or her self and property damage to a guy wire. Despite the fact the snowmobile operator was there without permission, I can imagine a plausible scenario wherein an attempt would be made to hold the landowner liable for injuries or damage due to the landowner exercising his or her option to waive the guy line marker requirement. Such could be an unintended consequence of this proposed regulation.

There can be no doubt that the reason these questions are left unanswered is because such information was not discussed in any detail in our public hearing or in other public meetings associated with this case. Proposing new, rather vaguely defined regulations literally minutes before a commission meeting without a thorough vetting of the issue is no way to handle regulatory policy. The Commission needs to gather testimony and hold discussions on such scenarios through a public, deliberative process. Parties need to be given an opportunity to respond. This has not been done in this instance, and absent such due process and deliberation I am unwilling to depart from past commission precedent or existing safety regulations regarding requirements for guy line marking.



Tony Clark, Commissioner