

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA

APPLICATION TO THE NORTH DAKOTA )  
PUBLIC SERVICE COMMISSION FOR A )  
WAIVER OF PROCEDURES AND TIMELINES, )  
AND CONSOLIDATED CERTIFICATE OF )  
CORRIDOR COMPATIBILITY AND ROUTE )  
PERMIT, PILLSBURY-FARGO GENERATION )  
OUTLET PROJECT )

Docket No. PU-08-48

OBJECTION BY MINNKOTA POWER COOPERATIVE, INC.  
TO INTERVENTION BY RES AMERICAS DEVELOPMENT  
INC. AND PEAK WIND DEVELOPMENT LLC

MOTION TO DISMISS PETITION FOR INTERVENTION  
FOR FAILURE TO STATE A CLAIM, OR IN THE ALTERNATIVE,  
MOTION FOR EXPEDITED HEARING AND REQUEST FOR  
EXPEDITED PREHEARING CONFERENCE

Minnkota Power Cooperative (“Minnkota”) objects to the petition to intervene made by RES Americas Development Inc. (“RES Americas”) and PEAK Wind Development LLC (“PEAK Wind”), which is dated April 9, 2008. RES Americas Development Inc. and PEAK Wind Development LLC seek to intervene in Docket No. PU-08-48, which is a proceeding before the Public Service Commission of North Dakota (“Commission”). For all the reason discussed herein, RES Americas and PEAK Wind present no valid basis for intervening in this docket. To the contrary, their request for intervention raises no issues related to siting whatsoever, and to the extent their filing raises any issues at all, those issues are transmission access questions properly addressed to the Midwest Independent System Operator, Inc. (“MISO”) or the Federal Energy Regulatory Commission (“FERC”). Allowing their intervention here would result in the delay of projects for generators of electricity who have made the necessary interconnection requests and initiated the transmission studies for such

interconnections. The transmission facilities for which the certificate and permit are requested are necessary to connect new wind facilities,<sup>1</sup> which the developers seek to bring on-line by December 31, 2008 in order to benefit from the Federal Production Tax Credit.<sup>2</sup>

In this docket, Minnkota is an applicant requesting that this Commission issue a Certificate of Corridor Compatibility and issue a Route Permit for a Generation Outlet across part of Barnes County and Cass County, North Dakota, pursuant to the Energy Conversion and Transmission Facilities Siting Act, NDCC 49-22. Any material delay in this docket will necessarily delay the in-service date of the wind project.

The petition to intervene fails to satisfy this Commission's express requirements for intervention. Chapter 69-02-02-05 of the North Dakota Administrative Code provides in part:

Intervention may be granted if petitioner has a statutory right to be a party to a 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 proceedings. NDAC 62-02-02-05

The petition to intervene establishes neither basis for intervention, and thus must be denied.

The petition to intervene by RES Americas and PEAK Wind should not be granted for the following reasons:

1. Neither PEAK Wind Development LLC nor RES Americas has any statutory right to be a party to this application proceeding under NDCC 49-22, nor do they allege any such statutory right.

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<sup>1</sup> i.e. Ashtabula Wind LLC ; PU 08-32. M-Power LLC; PU 8-34.

<sup>2</sup> In the interest of full disclosure, Minnkota is in discussions with the developers regarding purchase power agreements with Otter Tail Power Company and Otter Tail Power Company is currently negotiating purchasing a portion of the generating facilities from the developers as well.

2. RES Americas and PEAK Wind have failed to state any basis for intervention. They allege that they have a “significant” financial and legal interests in this matter because the proposed line originates “in close proximity” to their proposed wind development. Nowhere, however, do they spell out what those financial and legal interests might be, and this lack of meaningful or explanatory detail leaves Minnkota guessing as to what those interests might be. RES Americas and PEAK Wind indicate in their petition that they “are not opposed to the construction and siting of the proposed Generation Outlet.” The subject of this proceeding is construction and siting of the proposed line, not whether other potential generators may interconnect their facilities with the proposed line. Interconnection to the proposed Generation Outlet line should be made to Minnkota which to date the petitioners have not done.
3. To allow RES Americas and PEAK Wind to participate and pursue issues beyond the scope of those presented by the Application in this case would run counter to both the Commission’s intervention rules and the public interest. The petition for intervention, if granted, would unduly delay the application proceeding in PU-08-48. Petitioners request 60 days in which to complete “formal discovery.” The Commission should be aware that time is of the essence in this application, and that any delay will result in significant financial hardship and the possibility that the transmission project and underlying wind projects will have to be terminated and not built. Thus, the formal discovery sought – which is never defined - would undoubtedly delay the outcome of this proceeding, would not produce any

information germane to any issue properly in this proceeding, and would delay or terminate a project in the public interest.

4. RES Americas and PEAK Wind do not require any relief in this proceeding to pursue interconnection of their project to the transmission grid. The Application in this docket raises siting matters pursuant to NDCC 49-22 related to a single line. In their petition, nothing that occurs in this docket relates in any way to any need for or request by RES Americas or PEAK Wind for transmission interconnection or service. RES Americas and PEAK Wind acknowledge in their petition that the only request for interconnection they have made is to the MISO, which is a provider of interstate transmission service regulated by the FERC pursuant to the Federal Power Act, 16 U.S.C. 791a(1920). MISO has adopted the standard large generator interconnection procedures pursuant to FERC's Order No. 2003 and those procedures exclusively govern the existing interconnection requests of the RES Americas and PEAK Wind proposed generating facility. MISO, pursuant to those procedures, is required to perform system impact studies and facility studies to determine the facilities which will be required to interconnect the RES and PEAK generating facilities to the MISO transmission system. MISO has not identified the proposed transmission line as a facility which will be required in order to interconnect the proposed intervenor generating facility with the MISO transmission grid, and, in any event, intervenors make any claim that they have been denied access to the proposed transmission line. Simply put, RES and PEAK have not identified any existing interconnection issues, and even if they had, such issues would be subject to resolution by the

FERC, not the PSC. Interconnection issues are not part of nor relevant to this application procedure.

Furthermore, Petitioners' contention that no application for public convenience and necessity has been filed in relation to this matter is no longer relevant. Otter Tail Power Company withdrew as an applicant in this filing as indicated in an Amendment to Application, dated April 16, 2008. Minnkota is not a public utility; rather, it is an electric cooperative under North Dakota law and is not required to file a petition for public convenience and necessity with the PSC.

#### CONCLUSION

The intervenors have no substantial, cognizable interest in this proceeding. They indicate in their filing they have no objection to the construction and siting of the line, which are the sole issues before the Commission in this proceeding, and are concerned instead about matters outside the jurisdiction of this Commission and beyond the application as submitted pursuant to NDCC 49-22. Accordingly, intervention should be immediately dismissed. This matter should be dismissed for failure to state a claim on which relief may be granted, or in the alternative, Minnkota requests an expedited hearing of this matter and an expedited prehearing conference.

Dated this 18 day of April, 2008.

PEARCE & DURICK

By



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CHI-1643799v1

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AFFIDAVIT OF SERVICE

STATE OF NORTH DAKOTA )  
 ) ss.  
COUNTY OF BURLEIGH )

Belinda Dickson, being first duly sworn on oath, does depose and say: That she is over the age of eighteen years, and not a party to the above-entitled matter;

That on the 18th day of April, 2008, this affiant served a true and correct copy of the following document in the above-captioned action:

1. Objection by Minnkota Power Cooperative, Inc. to Intervention by Res Americas Development Inc. and Peak Wind Development LLC

Motion to Dismiss Petition for Intervention for Failure to State a Claim, or in the Alternative, Motion for Expedited Hearing and Request for Expedited Prehearing Conference

That the copy of the above document was enclosed and secured in an envelope and addressed as follows:

Thomas D. Kelsch  
Attorney at Law  
103 Collins Avenue  
P.O. Box 1266  
Mandan, ND 58554-7266  
*Counsel for RES Americas Development Inc.  
and PEAK Wind Development LLC*

Hand-Delivered

William W. Binek  
Special Assistant Attorney General  
Public Service Commission  
State Capitol  
Bismarck, ND 58505-0480  
*Counsel for The Public Service Commission of North Dakota*

Hand-Delivered

Public Service Commission  
State Capitol Building  
600 E. Boulevard Avenue; Dept. 408  
Bismarck, ND 58505-0480

Hand-Delivered

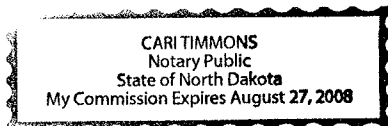
To the best of affiant's knowledge, information and belief, such address as given above was the actual post office address of the party intended to be so served.

That the above document was duly served in accordance with the provisions of the North Dakota Rules of Civil Procedure.

*Belinda Dickson*

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Belinda Dickson

Subscribed and sworn to before me this 18th day of April, 2008.



*Cari Timmons*

\_\_\_\_\_  
Notary Public