

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Minnkota Power Cooperative, Inc.
Pillsbury-Fargo 230 kV Transmission Line
Siting Application**

Case No. PU-08-48

ORDER DENYING INTERVENTION

April 23, 2008

Background

On March 18, 2008 Otter Tail Power Company ("Otter Tail") and planned joint partner Minnkota Power Cooperative, Inc. ("Minnkota") filed a joint application for a waiver of procedures and time schedules, and consolidated application for a certificate of corridor compatibility and a route permit ("Application") authorizing construction of approximately 56.6 miles of 230 kV electric transmission line located in Cass, Barnes and possibly Steele Counties of North Dakota, Case NO. PU-08-48.

On April 9, 2008 RES Americas, Inc. ("RES Americas") and Peak Wind Development LLC ("PEAK Wind") also jointly referred to as ("Petitioners") filed a petition to intervene in the captioned proceeding. Petitioners request that the Commission grant their intervention and allow them an opportunity to serve Otter Tail and Minnkota with formal discovery requests. Petitioners estimate that discovery would take no more than 60 days.

Petitioners state they will jointly develop a wind farm on property owned by PEAK Wind members, and that on October 16, 2007, PEAK Wind filed with the Midwest Independent Transmission System Operator, Inc, ("MISO") a request to interconnect to the interstate transmission grid at Otter Tail's Buffalo Substation located in Cass County, North Dakota. Petitioners also state that the proposed transmission line would originate approximately 500 yards away from the PEAK wind property in Barnes County and would be located within close proximity to Peak Wind's requested location of interconnection on Otter Tail's transmission system.

Petitioners state that it is their position that Otter Tail is required to file a petition for a Certificate of Public Convenience and Necessity (CPCN) and that the Commission should hold hearings on the CPCN application for the proposed transmission line before issuing a corridor certificate and route permit.

Petitioners state that they have a direct and substantial interest in this proceeding, and that if they are not permitted to interconnect with the proposed transmission line, they will be adversely affected. Petitioners allege that they cannot be adequately represented by existing parties, that they have a right to intervene, and that their intervention is in the public interest. Petitioners state that their intervention will not unduly burden or unduly delay the proceedings.

Petitioners state that the proposed transmission line is not included in either OTP's or Minnkota's ten year plans. Petitioners urge the Commission to require updated ten year plans be filed before the Commission acts on the application.

Petitioners state that they are not opposed to the construction and siting of the proposed transmission line.

On April 17, 2008, Minnkota, with the concurrence of Otter Tail, filed an Amendment to the Application with a revised corridor and route proposal and with notification that Otter Tail wishes to withdraw as an applicant because it is no longer an owner of the project. The revised project consists of approximately 61.6 miles of proposed 230 kV electric transmission line and associated facilities in Barnes, Cass and possibly Steele Counties of North Dakota.

On April 18, 2008 Minnkota filed its objection to the petition for intervention and a motion to dismiss the petition for intervention or in the alternative a motion for expedited hearing.

Minnkota objects to Petitioners' intervention request for the reason that Petitioners present no valid basis for intervening in the proceeding. Minnkota states that Petitioners' request for intervention raises no issues related to siting, and that to the extent their filing raises any issues, those issues are transmission access issues that need to be properly addressed to the MISO or the Federal Energy Regulatory Commission ("FERC").

Minnkota argues that allowing the intervention would result in the delay of projects for generators of electricity who have made the necessary interconnection requests and initiated transmission studies for such interconnections. Minnkota states that time is of the essence in this proceeding. The transmission facilities for which the certificate and permit are requested are necessary to connect new wind facilities which developers seek to bring on-line by December 31, 2008 in order to benefit from the Federal Production Tax Credit.

Minnkota states that the petition to intervene fails to satisfy the requirements of Chapter 69-02-02-05 of the North Dakota Administrative Code in that the Petitioners have no statutory right to intervene, they have failed to state any basis for intervention, and granting intervention would unduly delay the application pending in this proceeding. Furthermore, the Petitioners state that they are not opposed to the construction and siting of the proposed transmission line.

At a special commission meeting held on April 21, 2008, the Commission acknowledged the withdrawal of Otter Tail as an applicant in this proceeding and issued a Notice of Filing and Notice of Hearing on the Application.

Discussion

Section 69-02-02-05 of the North Dakota Administrative Code provides in part that "[a]ny 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 intervention would not unduly broaden the issues or delay the proceeding."

Subsection 1 of section 69-02-02-05 states in part that the petition to intervene must set forth the grounds for intervention, the position and interest of the petitioner, 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.

The Petitioners fail to satisfy the first requirement of section 69-02-20-05 because they fail to state a substantial interest in the proceeding. The interest that they seek to protect is the right to interconnect to the transmission line. Interconnection is not an issue that can be addressed in a siting application under chapter 49-22.

Likewise, Petitioners have not shown that they have a statutory right to be a party to the proceeding, nor that they have a legal interest which may be substantially affected by the proceeding. The interest that the parties have is for interconnection, and interconnection is not an issue that is determined in a siting proceeding.

Petitioners state that a CPCN is required for construction of the transmission line. Under Chapter 49-03 of the North Dakota Century Code, a CPCN is required before an electric public utility can construct the transmission line. Otter Tail has withdrawn as an applicant in this proceeding. Minnkota is an electric generation and transmission cooperative under Chapter 10-13 of the North Dakota Century Code that does not need a CPCN under Chapter 49-03 to construct an electric transmission line.

The Petitioner's argument concerning the Applicants' failure to update ten-year plans to include the proposed transmission line does not constitute grounds for granting the intervention. The ten year plans are filed annually with the most recent information available. There is no requirement for updating between annual filings.

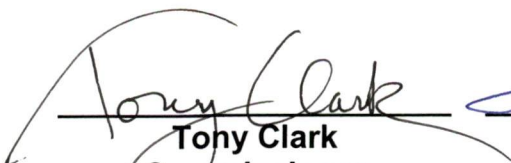
Petitioners state in paragraph 24 of their petition that they "are not opposed to the construction and siting of the Proposed Transmission Line."

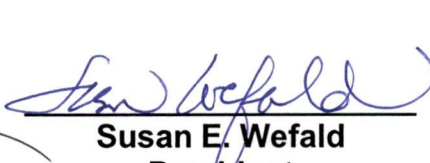
We find that Petitioners' request fails to set forth any grounds for intervention and would likely unduly broaden the issues or delay the proceeding.

Order

The Commission Orders that the request for intervention filed by the Petitioners is DENIED.

PUBLIC SERVICE COMMISSION


Tony Clark
Commissioner


Susan E. Wefald
President


Kevin Cramer
Commissioner