

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA

IN THE MATTER OF OTTER TAIL)
CORPORATION/MINNKOTA POWER)
COOPERATION LUVERNE TO MAPLE)
RIVER ELECTRIC TRANSMISSION)
LINE APPLICATION)

Docket No. PU-08-48

STATE OF NORTH DAKOTA)
COUNTY OF MORTON) ss.

MELISSA K SCHNEIDER, being first duly sworn, on oath, deposes and says: That she is a citizen of the United States, over the age of eighteen and not a party to the above-entitled action.

That on the 5 day of May, 2008, this affiant deposited in the United States Post Office at Mandan, North Dakota, a true and correct copy of the following document(s) in the above captioned action:

Petition of RES Americas Inc, Peak Wind Development LLC, and Burchill Farms Incorporation to Intervene and Requests for Shortened Notice and Response Periods, Expedited Consideration, and Expedited Discovery.

That a copy of the above document(s) was either electronically mailed or hand-delivered, as specified, and addressed as follows:

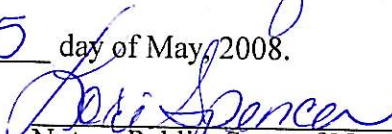
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MELISSA K SCHNEIDER

Subscribed and sworn to before me this 5 day of May, 2008.


Notary Public, State of North Dakota



**BEFORE THE PUBLIC SERVICE COMMISSION
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COOPERATION LUVERNE TO MAPLE)	Docket No. PU-08-48
RIVER ELECTRIC TRANSMISSION)	
LINE APPLICATION)	

**PETITION OF RES AMERICA INC,
PEAK WIND DEVELOPMENT LLC, AND BURCHILL FARMS INCORPORATED
TO INTERVENE AND REQUESTS FOR SHORTENED NOTICE AND RESPONSE
PERIODS, EXPEDITED CONSIDERATION, AND EXPEDITED DISCOVERY**

1. RES America Developments Inc. (RES America), PEAK Wind Development LLC (PEAK Wind), and Burchill Farms Incorporated (Burchill Farms) [each a Petitioner and together Petitioners], pursuant to Section 69-02-02-05 of the North Dakota Administrative Code (N.D. Admin. Code) Title 69, hereby petition to intervene in the above-captioned proceeding in which Minnkota Power Cooperative (Minnkota) filed on April 17, 2008 an amended application that requests authorization under the North Dakota Energy Conversion and Transmission Siting Act (Siting Act), Chapter 42 of the North Dakota Century Code (N.D. Cent. Code), for, among other things, a change in ownership and a revised corridor and route proposal for a high voltage transmission line that would be constructed in Barnes, Cass, and possibly Steele Counties in North Dakota (April 17 Amended Application).¹

¹ As discussed more fully below, on March 18, 2008, Otter Tail Corporation (Otter Tail) and Minnkota filed in Docket No. PU-08-48 an application for authorization regarding a proposed electric transmission line. The April 17 Amended Application reflects that Otter Tail is no longer a project sponsor and owner, but will likely contract with Minnkota to provide some services.

2. In addition, the Petitioners also request that the North Dakota Public Service Commission (Commission) (1) establish a shortened notice and comment period with any answer to this Petition be filed within three business days and (2) expeditiously consider this request and, to the extent necessary, schedule an expedited hearing in which this Petition can be acted on by May 9, 2008. Furthermore, the Petitioners request that the Commission expeditiously establish, under Rule 69-20-03 of the N.D. Admin. Code, a scheduling conference to provide for a discovery schedule and resolve any other preliminary matters, so that the Petitioners will be able to participate meaningfully in and yet not delay the hearing currently scheduled for May 22, 2008.

In support of the above, Petitioners respectfully show the following:

Communications

3. Names, titles and mailing addresses of the persons who should be served with communications concerning this motion are:

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PEAK Wind

4. PEAK Wind is a North Dakota limited liability company [?] that is comprised of eighty (80) citizens and landowners holding approximately 30,000 acres of land spanning 20 miles and including parcels in six townships in Barnes County, North Dakota. Many of the PEAK Wind members are customers of Minnkota. PEAK Wind, which was formed to develop renewable and ecologically-friendly wind energy, hired Jay Haley, President of EAPC Architect Engineers, Grand Forks, North Dakota to do a wind study concerning the feasibility of developing a wind farm on the land owned by PEAK Wind. The results of the study were very favorable.

RES America

5. RES America develops, constructs, owns, and operates wind farms throughout the United States. With corporate headquarters in Broomfield, CO and regional offices in Austin, TX, Portland, OR, and Minneapolis, MN, RES America employs more than 150 full time employees; it is one of the fastest growing wind energy development companies in the world. Over the last ten years, RES America has grown into one of the country's leading developers of wind generation projects, actively participated in the development of more than 12% of the installed wind power capacity in the United States. Specifically, RES America has developed or

constructed more than 3,400 megawatts of wind energy in six different states and has more than 14,000 megawatts under development throughout the country. As a result, on a total megawatt basis, RES America constructed more wind projects in North America than anyone else except M.A. Mortenson Company.

6. RES America and PEAK Wind are jointly developing a wind generation project with a maximum generating capacity of 400 MW. The project will be located on property owned by PEAK Wind members adjacent to Minnkota's proposed transmission line.

Burchill Farms

7. Burchill Farms, a North Dakota Family Farm Corporation owned and operated by the Nyle Burchill Family, is one of the land owners and members of PEAK Wind. Burchill Farms is the owner of the following described property which is located within the corridor and on the proposed route of Minnkota's proposed transmission line:

Township 143N, Range 56W

Section 9: SE ¼, Ellsburry Township, Barnes County.

Background

8. On March 18, 2008, Otter Tail and Minnkota filed with the Commission an Application for a Waiver of Procedures and Time Schedules and Consolidated Application for a Certificate of Corridor Compatibility and Route Permit for a 56.6-mile, 230 kV electric transmission line to be constructed from a proposed substation (to be located in Ellsburry Township, Barnes County, North Dakota) to the existing Maple River substation, near Fargo, Cass County, North Dakota.

9. The April 17 Amended Application makes several material modifications to the March 18 application. First, Minnkota proposes a 61.6 mile 230 kV electric transmission line

with a revised route that is 5.1 miles longer and crosses 13.5 miles more acres of Greenfield than the original route (Proposed Transmission Line). Second, “Otter Tail is no longer an owner of the project, but will likely contract with Minnkota Power Cooperative to provide some services.”²

10. On April 21, 2008, the Commission issued a notice of the April 17 Amended Application and established a public hearing to commence on May 22, 2008 in Casselton, North Dakota.³

The Commission Should Grant the Petitioners’ Request for Intervention

11. The Petitioners’ requests to intervene are supported by both applicable law and compelling facts. Under section 69-02-02-05 of the North Dakota Administrative Code, a petition to intervene should be granted if “the petition has a legal interest which may be substantially affected by the proceeding, and the intervention would not unduly broaden the issues or delay the proceeding.” As discussed more fully below, the Petitioners satisfy each element of the standard for intervention. First, each of the Petitioners has a legal interest which may be substantially affected by Minnkota’s April 17 Amended Application: PEAK Wind is

² Transmittal Letter for April 17 Amended Application.

³ On April 9, 2005, PEAK Wind and RES America filed a petition to intervene in the proceeding initiated by the application filed by Otter Tail and Minnkota. On April 25, the Commission denied the petition and explained: “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.” April 25 Order at 3. The April 25 Order is wrong. However, in response to the new April 17 Amended Application, which materially modified the original application by significantly changing the ownership and proposed route of the Proposed Transmission Line, a new group of Petitioners now seek to intervene in the amended proceeding. It is hornbook law that an amended application requires notice and an opportunity for additional parties to intervene. *See, e.g., DTE Energy Company et al.*, 97 FERC ¶ 61,330, P 62,573 (2001) (“After the amended application is noticed and identifies the Winning Bidder, other entities will have the opportunity to intervene and raise any regulatory concerns.”). As evinced by the instant Petition, the legal interests of the Petitioners are significant. The instant Petitioners do not request the Commission protect any right to interconnect, but instead desire only that the Commission thoughtfully consider, during its decision-making process, each of the elements identified and required by the Legislature (and highlighted by the Petitioners).

comprised of North Dakota citizens and landowners, who (together with RES America, a leading wind developer) are developing an wind generation project near the Proposed Transmission Line. In fact, the Proposed Transmission Line would be located on the land owned by Burchill Farms. Second, the Petitioners will not unduly broaden the issues. Instead, the Petitioners seek only to address issues that are required by statute to be considered by Commission when reviewing an application under the Siting Act. Third, the Petitioners are not seeking to extend or delay the hearing already scheduled for May 22, 2008.

12. In enacting the Siting Act, the Legislature declared:

The legislative assembly finds that the construction . . . 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 . . . transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of this state by providing that no . . . transmission facility shall be located, constructed, and operated within this state without . . . a route permit acquired pursuant to this chapter. The legislative assembly hereby declares it to be the policy of this state to site . . . and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy sites and routes shall be chosen which 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.

N.D. Cent. Code § 49-22-02.

13. Peak Wind is comprised of North Dakota citizens. Peak Wind is comprised of North Dakota landowners. Peak Wind and RES are developing a wind project that is located adjacent to the Proposed Transmission Line. The Proposed Transmission Line would be located on and cut across property owned by Burchill Farms. As a result, the Proposed Transmission Line will impact the welfare of the Petitioners.

14. The State's official policy to ensure that the proposed transmission facilities are "located, constructed, and operated" to produce minimal adverse effects on the welfare of the environment and its citizens. Minnkota acknowledges that multiple wind farms are being developed in and around the area of the proposed transmission route.⁴ It does not appear that the Proposed Transmission Line (which would be capable of transmitting 400 MW or less) will be built large enough to accommodate the wind project being constructed by PEAK Wind and RES America, much less all the wind projects in the area. As such, additional transmission lines will need to be constructed to accommodate other wind projects. Accordingly, contrary to the declared policy of the state, granting the authorizations requested by Minnkota's April 17 Amended Application would not result in routing transmission facilities in an orderly manner, but rather would create a hodge-podge of multiple high voltage transmission lines criss-crossing farm land (some of which are owned by the Petitioners). Multiple transmission lines will have multiple impacts on the environment.

15. The Legislature requires the Commission to explore how the Proposed Transmission Line would impact the reliability and integrity of the interstate transmission grid.⁵ Minnkota has provided no evidence concerning the Proposed Transmission Line's impact on either (i) reliability in and around North Dakota or (ii) the integrity of the interstate transmission grid. As North Dakota customers and ratepayers, these are significant issues for the Petitioners.

16. In addition to the policies outlined above, Section 49-22-09 of the North Dakota Century Code, in pertinent part, provides:

⁴ See, e.g., April 17 Amended Application § 2.0

⁵ CITE

The commission shall be guided by, but is not limited to the following considerations, where applicable, to aid the evaluation and designation of sites, corridors, and routes:

* * *

4. Adverse direct and indirect environmental effects which cannot be avoided should the proposed site or route be designated.

* * *

6. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.

7. The direct and indirect economic impacts of the proposed facility.

8. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.

* * *

11. Problems raised by federal agencies, other state agencies, and local entities.

17. Minnkota's April 17 Amended Application raises significant concerns with the five criteria set forth above. To begin, there will likely be adverse direct and indirect environmental effects which cannot be avoided should the proposed site or route be designated. Those effects include requiring electric transmission providers to construct multiple high voltage transmission lines, instead of a single line that can accommodate many customers and needs. As landowners and farmers, PEAK Wind and Burchill Farms have a significant concern regarding the siting of multiple, unnecessary transmission lines.

18. Additionally, granting Minnkota's requested authorization will likely result in irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated. Once the siting is authorized for the Proposed Transmission

Line, it can be constructed. Certain wind generators directly connected to the Proposed Transmission line will likely benefit, while other projects (such as that being developed by PEAK Wind and RES America) may be harmed, possibly fatally. Notwithstanding the above, integration of the wind energy into the interstate transmission grid (which is comprised in part by Minnkota's facilities) and the impact on the local balancing authority (Otter Tail) may well require different uses of existing dispatchable generation resources or even the construction of additional generation resources. Minnkota's Amended Application is silent on these issues. As customers of Minnkota, the members of PEAK Wind and Burchill Farms have a significant interest in Minnkota's Proposed Transmission Line.

19. As noted above, Minnkota's Proposed Transmission Line will likely result in some generation projects becoming "winners" and others "losers." More specifically, the construction and operation of the Proposed Transmission Line and the resulting power flows may adversely impact adjacent balancing authority areas or impede the development of other electric generation projects in the region. It is unclear how much power to be transmitted over the Proposed Transmission Line is needed or will be utilized by Minnkota to satisfy its own customers' needs, how much of the power will ultimately be transmitted out of Minnkota's service territory, and how much will be needed to satisfy Otter Tail load in and out of North Dakota.

20. Minnkota has acknowledged that other wind projects are being developed in the area of its Proposed Transmission Line. Specifically, PEAK Wind and RES America (not to mention other wind developers) have existing plans in the vicinity of the proposed site, corridor, or route.

21. Moreover, the Proposed Transmission Line raises a myriad of issues, including generation and transmission access regulated by the Federal Energy Regulatory Commission,⁶ coordination and reliability issues that are addressed by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Mid-Continent Area Power Pool (MAPP). Section 69-06-08-02(4) of the North Dakota Administrative Code provides that the “commission may also give preference to an applicant that will maximize interstate benefits.” Here, however, there is no showing that Minnkota will maximize interstate benefits. In fact, quite the opposite may be true – granting the authorization requested by the April 17 Amended Application may maximize interstate problems.

22. Furthermore, section 69-06-1-01 of the N.D. Admin. Code requires that any applicant seeking siting authorization file ten copies of its Ten-Year Plan with the Commission and one copy of each report with the county auditor of each county in which any part of a site or corridor is to be located. Minnkota’s April 17 Amended Application with the Commission did not include any copies of Minnkota’s Ten-Year Plan. The April 17 Amended Application does not indicate whether, as required, the Ten-Year Plan was filed with the county auditors of Barnes, Cass, and Steele Counties. In its original application, Minnkota proposed to file its Ten-Year Plan by July 2008, well after the requested authorization date of May 2008. The April 21 Notice did not address the Ten-Year Plan.

23. Minnkota admits that the Proposed Transmission Line is not included in its Ten-Year Plan on file with the Commission. The Commission and the public should know why the

⁶ On October 16, 2007, PEAK Wind filed with the Midwest Independent Transmission System Operator, Inc. a request to interconnect to the interstate electric transmission grid at Otter Tail’s Buffalo Substation, located in Cass County, North Dakota. Otter Tail was previously a project sponsor and owner of the Proposed Transmission Line. Otter Tail will likely contract with Minnkota to provide some undisclosed services rather than own the line.

Proposed Transmission Line is not included in Minnkota's Ten-Year-Plan, and how the Proposed Transmission Line fits within Minnkota's Ten-Year-Plan. Minnkota should provide this information before, not after, the Commission issues an order on the April 17 Amended Application.

24. Absent a Ten-Year Plan showing how the Proposed Transmission Line will impact the existing facilities and future plans of Minnkota (not to mention coordination with neighboring utilities and cooperatives), Minnkota is preventing the Commission from undertaking the kind of examination required by law. There is, quite simply, no evidence establishing that the Proposed Transmission Line comports with Minnkota's existing Ten-Year Plan. Furthermore, in a year or two, Minnkota (or another transmission provider) may very well seek authorization under the Siting Act for another transmission line in the same area. It bears repeating. The Legislature has declared that the policy of the State is to "route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources." There is no valid reason for the Commission to proceed in any other manner.

25. Finally, section 49-22-08(c) provides that the application contain "a statement explaining the need for the facility." In purported compliance, section 2.0 of Minnkota's April 17 Amended Application simply provides: "The purpose and need for the facilities remains to serve as a generation outlet for wind development projects in Barnes, Griggs, and Steel counties." That lone sentence is a slender reed insufficient to support the weight of the required finding. Minnkota neglects to include (1) any analysis of its present or projected demand for the product transmitted by the facility; (2) any description of feasible alternatives to serving the alleged need; or (3) a statement justifying any deviation from its most recent Ten-Year Plan. No

where does Minnkota indicate that it has entered into a power purchase agreement with any wind developer. There is no support for the proposition that Minnkota needs the proposed transmission line.

Petitioners' Legal Interests

26. The Proposed Transmission Line would not only originate approximately 500 yards away from the PEAK Wind property in Barnes County (on which PEAK Wind and RES America will develop a wind generation projection, but also be located in part on land owned by Burchill Farms. RES America, PEAK Wind, and Burchill Farms have a significant financial interest as well as a legal interest which may be substantially affected by the siting of the Proposed Transmission Line.

27. The Petitioners will not unduly broaden or unduly delay the proceedings. Instead, the Petitioners only seek to address certain concerns required by statute to be considered by the Commission in response to an application under the Siting Act. The Petitioners are not requesting that the established hearing date be delayed or postponed.

28. By notice issued April 21, the Commission established a public hearing to be convened in Casselton, ND on May 22, 2008. Section 49-22-13, in pertinent part, provides: "At the public hearing, any person may present testimony or evidence relating to the information provided in the application, the criteria developed pursuant to section 49-22-05, and the factor to be considered pursuant to section 49-22-09." In other words, the Petitioners are entitled to participate at the hearing and, in fact, do intend to present testimony and offer evidence concerning the criteria set forth in section 49-22-09 of the N.D. Cent. Code

29. The Petitioners, individually and jointly, have an interest regarding the Proposed Transmission Line described more fully in the April 17 Amended Application in Docket No. PU-08-48.

30. The Petitioners, individually and jointly, have a direct and substantial interest in this proceeding, which may be adversely affected by the Commission's findings and conclusions in this matter. Each of the 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.

31. The Petitioners are not generally opposed to the construction of transmission lines. However, if the Proposed Transmission Line is not constructed with sufficient capacity for the energy generated from the area including the wind generation project being developed by Peak Wind and RES America, the Petitioners will be forced to oppose the construction of the Proposed Transmission Line because it will cause additional and unnecessary environmental impact when subsequent transmission lines are required.

32. Burchill Farms recognizes that transmission lines are necessary to transmit energy from electric generation projects to load centers. However, the State recognizes that these transmission lines should be kept to a minimum, especially to minimize the impact on agriculture production, family farms, and the visual effect on adjacent areas. *See, e.g.*, N.D. Admin. Code § 69-06-08-02(3).⁷ So too, Burchill Farms wants to minimize the construction of multiple transmission lines that criss-cross farmland owned by Burchill Farms or its neighbors. Simply put, Burchill Farms is opposed to the Minnkota's Proposed Transmission Line crossing its

property, if the line is not constructed with sufficient capacity to include transmission of the energy generated by the wind project being developed by PEAK Wind and RES America.

WHEREFORE, RES America, PEAK Wind, and Burchill Farms request that they each be permitted to intervene in the above-referenced proceeding.

Respectfully submitted,

RES America Inc., PEAK Wind
Development LLC, and Burchill Farms
Incorporated

By



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Dated: May 5, 2008

⁷ See also N.D. Admin. Code § 69-06-08-02(4) (the commission should consider policy criteria, including economies of construction and operation and coordination of facilities.). Minnkota's April 17 Amended Application is not supported by either policy criteria.