

Kelsch Kelsch Ruff & Kranda

C.F. Kelsch
1890-1987

Attorneys at Law
Mandan, North Dakota

William C. Kelsch
Retired

THOMAS F. KELSCH
ARLEN M. RUFF, P.C.
THOMAS D. KELSCH, P.C.
TODD D. KRANDA, P.C.*
WILLIAM J. DELMORE
DANIEL NAGLE

*Also Licensed in Minnesota

 MERITAS LAW FIRMS WORLDWIDE

103 Collins Avenue
P.O. Box 1266
Mandan, ND 58554-7266
Phone (701) 663-9818
1-888-663-9818
Fax (701) 663-9810
Website www.kelschlaw.com

May 23, 2008

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PUBLIC SERVICE COMMISSION

COMMISSIONER SUSAN WEFALD
PUBLIC SERVICE COMMISSION
600 E BOULEVARD AVENUE DEPT 408
12TH & 13TH FLOOR
BISMARCK ND 58505-0480

RE: Case No. PU-08-48
Minnkota Power Cooperative Review
Pillsbury to Fargo - Electric Transmission Line Siting Application

Dear Commissioner Wefald:

At the public hearing held in Casselton, North Dakota on May 22, 2008, you requested a statement of legal authority for the Commission to do as Res America and PEAK WIND were requesting that the Commission order Minnkota to build the transmission line right. To either build the transmission line with enough capacity (i.e., a 345-kV line) to include the PEAK WIND farm energy production that would come on line in 2009 or 2010, or to build the towers to add a second conductor or double circuit in 2009 or 2010 when PEAK WIND power would come on line.

As identified at yesterday's hearing by the Administrative Law Judge, the Commissioners' Statement of Issues to be considered in this proceeding both issues (1) that the line produce minimum adverse effects on the environment and welfare of citizens of North Dakota; and (2) will transmission line ensure energy needs are met in an orderly and timely fashion, give the Commission authority to act as requested by Res America and PEAK WIND.

NDCC §49-22-02 states that it is the "policy of the State to site . . . route transmission facilities in an orderly manner comparable with environmental preservation and the efficient use of resources."

The Commission, The uncontradicted testimony yesterday is that PEAK WIND and Res Americas will have its up to 400 MW wind farm constructed in either 2009 or 2010. The Commission will then have to site another transmission lien from Pillsbury to Fargo within the next two years, at the same location. Based on these facts and the above cited legal authority the Commission the following two options:



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Letter to Commissioner Wefald re Minnkota
Building the Transmission Line Right

RES Americas Development Inc., Peak Wind Development, LLC
Kelsch, Kelsch, Ruff & Kranda, Thomas Kelsch

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1. Deny the proposed minimal transmission line because it is not adequately sized for the known energy production in the area. Permitting a known undersized line will not minimize adverse human or environmental impact; as required by law, or
2. Condition the permit on Minnkota's building the transmission line with either sufficient capacity for the known PEAK WIND Project, i.e., a 345-kV line, or constructing it with a bundled conductor, or constructing the poles so that a double circuit could be installed in 2009 or 2010 when PEAK WIND comes on line, without the necessity of siting and constructing a separate transmission line..

The Commission has legal authority under NDCC §49-22-08.1(5) to issue the permit "with such terms, conditions, or modifications deemed necessary." North Dakota Administrative Rule 69-06-04-02 also provides that (1) "any modifications or special conditions required by the Commission shall be deemed accepted unless the Applicant petitions for a rehearing".

Minnkota is urging the Commission to waive time lines in this case to construct the line in 2008. This is an ambitious time line and one that is not the problem of the Commission, nor of Res America, PEAK WIND, or the citizens of North Dakota.

Administrative Rule 60-06-03.01 requires that a letter of intent be filed with the Commission at least one year prior to the application for a certificate. While the Commission granted a waiver to this one-year requirement,, this extra time would have given the Commission and the public additional time to ensure the transmission line was done right the first time.

Minnkota has also sought a waiver of procedures to consider a single consolidated application for corridor certificate and route permit.

The Commission has, by statute, six months from the filing of a completed application for certificate of corridor compatibility, to issue its order. And if the Commission does not approve the single consolidated application, the Commission will have another six months for approval of the route permit. These six month periods may be extended by the Commission for just cause.

The Commission found Minnkota's application for Corridor Compatibility and application for Route permit to be complete on April 21, 2008. The Commission has by law until October 21, 2008, before it must issue its order, absent showing of good cause.

It was not reasonable for Minnkota to rely on the Commission waiving all of these time lines and procedures and approving the order, in time for Minnkota to complete construction in 2008, when the application was not complete until April 21, 2008. The fact that Minnkota may have order some of the towers based on this unreasonable time line should not be a factor in pushing through the approval of an undersized transmission line.

The stated reason for this rush for approval of the order is that the federal Production Tax Credits for wind farms may expire at the end of 2008. It is highly unlikely that congress will allow these tax credits to expire, or that the wind farms will not be able to cover their risks in ways other than the construction of the Minnkota transmission line in 2008.

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RES America and PEAK WIND encourage the Commission to condition Minnkota's transmission line to include capacity for, or the ability to add capacity for the PEAK WIND farm wind production.

Given the opposition to this line by a number of property owners as well as concern over duplication of towers expressed by Reed Township, RES America, PEAK WIND, and the Commission do not want to have to go through another transmission siting in the exact same area, and across the same property in the next year or two. If this happens, what will be the Commission's answer to the public when they ask why wasn't the PEAK WIND project considered in the Minnkota line approved last year?

Thank you for your request for additional information..

Sincerely,

A handwritten signature in black ink, appearing to read 'TKelsch', with a long horizontal flourish extending to the right.

Thomas D. Kelsch

c: ALJ Allan Hoberg (w/Cert. of Service)
Jerome C. Kettleon, Minnkota (w/Cert. of Service)
Commissioner Tony Clark
Commissioner Kevin Cramer

