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STATE OF NORTH DAKOTA

JUN 10 2008

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTHWEST JUDICIAL DISTRICT

PUBLIC SERVICE COMMISSION

RES Americas, Inc. PEAKWIND Development LLC, and Burchill Farms Incorporated,

Appellants,

vs.

Public Service Commission and Minnkota Power Cooperative, Inc.,

Appellees.

AFFIDAVIT OF SERVICE

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 9 day of June, 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:

NOTICE OF APPEAL AND SPECIFICATIONS OF ERROR
UNDERTAKING OF COSTS ON APPEAL TO DISTRICT COURT

That a copy of the above document(s) was securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

WAYNE STENEHJEM
ATTORNEY GENERAL
600 E BOULEVARD AVENUE
DEPARTMENT 125
BISMARCK ND 58505

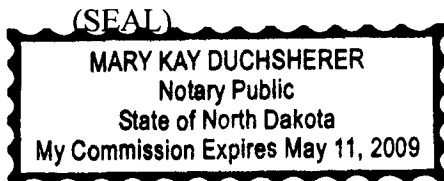
JEROME C KETTLESON
314 E THAYER AVE
BISMARCK ND 58502

ILLONA JEFFCOAT-SACCO
PUBLIC SERVICE COMMISSION
STATE CAPITOL BUILDING
600 E BOULEVARD AVENUE; DEPT 408
BISMARCK ND 58505-0480

Melissa K Schneider
MELISSA K SCHNEIDER

Subscribed and sworn to before me this 9 day of June, 2008.

Mary Kay Duchscherer
Notary Public, State of North Dakota



STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

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

Civil No. _____

Appellants,)

Agency Case No. PU-08-48

vs.)

NOTICE OF APPEAL AND SPECIFICATIONS OF ERROR

Public Service Commission and Minnkota Power Cooperative, Inc.,)

Appellees.)

TO: NORTH DAKOTA PUBLIC SERVICE COMMISSION AND MINNKOTA POWER COOPERATIVES, INC.

PLEASE TAKE NOTICE that the Appellants RES Americas Inc., PEAK Wind Development LLC, and Burchill Farms Incorporated (“Appellants”), pursuant to N.D.C.C. § 28-32-42 and 49-22-19, hereby give notice of appeal from an agency determination of the North Dakota Public Service Commission (“Commission”), and in support thereof state:

PROCEDURAL HISTORY

1. 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 procedure and time schedules, and consolidated application for a certificate of corridor compatibility and a route permit (“Application”) authorizing construction of an electric transmission line located in Cass, Barnes, and possibly Steele Counties of North Dakota, Case No. PU-08-48.

2. On April 9, 2008, RES Americas Inc. (“RES Americas”) and PEAK Wind Development LLC (“PEAK Wind”) filed a petition to intervene.

3. On April 14, 2008, the Commission requested that the Office of Administrative Hearing appoint an Administrative Law Judge to act as a procedural hearing officer only, (“no recommended decision”). This request listed Otter Tail, Minnkota and Appellants RES Americas and PEAK Wind as parties. Administrative law judge Allen C. Hoberg was designated procedural hearing officer in this case.

4. On April 17, 2008, Minnkota, with the concurrence of Otter Tail, filed an Amendment to the Application purportedly removing Otter Tail as an owner of the project.

5. On April 23, 2008, the Commission denied the Appellants’ initial petition to intervene.

6. On May 5, 2008, RES Americas, PEAK Wind, and Burchill Farms Incorporated (“Burchill Farms”) Appellants filed a “Petition... to Intervene and Request for Shortened Notice and Response Periods, Expedited Consideration, and Expedited Discovery” (the “Petition to Intervene”).

7. On May 8, 2008, Minnkota filed another objection to this second petition to intervene.

8. On May 9, 2008, the procedural hearing officer issued an Order Denying Appellants Second Intervention. The hearing officer held that Appellants do not have a sufficient legal interest to require intervention in this adjudicative proceeding and neither do the interests of justice require intervention, even on a limited basis. The denial of Appellant Intervention was based on the rationale that to grant the intervention would unduly broaden the issues or unduly delay the proceeding. The hearing officer’s commented that the Commission’s

rules allow the Appellants to individually or collectively present evidence at the hearing as a protestant of the Application, at which time they may present relevant testimony or other evidence.

9. Appellants Appeal from the May 9, 2008 Order denying their Intervention.

ERRORS OF THE HEARING OFFICER

10. N.D. Admin. Code §69-02-01-07 allows for several types of “Parties” in Commission proceedings, including an “Applicant,” and “Intervenor,” and a “Protestant” N.D. Admin. Code §69-02-01-07(2), (5), and (6). An Intervenor is someone or some entity accorded special party status. N.D. Admin. Code §69-02-01-07(5); *see* N.D. Admin. Code §69-02-02-05. Generally, an intervenor is an interested party who actively and openly participates in the control and conduct of the proceeding, *i.e.*, by offering evidence, questioning witnesses, and making closing argument, although even an intervenor’s participation can be limited and conditioned. *See* N.D. Admin. Code §69-0202-05.

11. Although Appellants were permitted to participate in the hearing in the above case as Protestants and did so, they were not permitted to conduct discovery, to cross examine or call witnesses, or to prepare and file proposed finding of fact and conclusions of law or legal briefs on this action.

12. The PSC and hearing officer erred in finding that Appellants do not have a substantial legal interest that requires intervention.

13. The PSC and hearing officer erred in finding that granting of Appellants Intervention would unduly broaden the issues and would unduly delay the proceeding.

14. The Order denying Appellants' Petition to Intervene is in violation of the North Dakota Energy Conversion and Transmission Siting Act (Siting Act). In enacting the Siting Act, the Legislature declared that the construction of "transmission facilities affects the environment and the welfare of the citizens of this State. To that end, the Siting Act requires that the Commission ensure that "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. In order to comply with the legislative mandate, the Commission must consider several statutory factors set forth in section 49-22-09 of the North Dakota Century Code, including the following, each of which was raised by Appellants in their Petition to Intervene:¹:

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.

¹ In addition, Appellants' Petition to Intervene also noted other statutory factors needed to be considered, including the following:

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.

Minnkota has acknowledged that other wind projects, including that of Appellants, are being developed near the proposed transmission line. Those projects will require construction of additional transmission lines in the same area, which could have adverse environmental effects.

15. The Appellants have existing plans to develop a wind project adjacent to the proposed facility. Minnkota's proposed transmission line. The siting and operation of the proposed line will have both direct and indirect economic impacts on each of the Appellants. Furthermore, the Appellants include more than 80 citizens of North Dakota. They own farmland adjacent to the corridor in which Minnkota proposes to construct and operate a transmission line. In fact, until a startling change first announced in its Objection, Minnkota had always proposed to construct the line through the land owned by Burchill Farms. Burchill Farms has been intimately involved in the process through which Minnkota seeks to construct its transmission line. As landowners, PEAK Wind and Burchill Farms have an interest in the orderly siting of construction lines which impact upon their property.

16. As of May 9, 2008, the date of the hearing officer's Order denying intervention, the route for the proposed Minnkota transmission line as filed with the Commission crossed Appellant Burchill Farms property. The hearing officer erred in determining that the Burchill Farms property was not located on the proposed route.

17. However, even with Minnkota's proposed route variation that was filed with the Commission before the May 22, 2008 hearing, the Burchill Farms property remained located within the 6 mile transmission corridor impacted by the proposed Minnkota transmission line. As long as Burchill Farms lies within the Corridor, Burchill Farms is affected by the proposed Minnkota transmission line and has a legal interest in participating as an intervenor. In addition, if Burchill Farms is not permitted to intervene, there is nothing to stop Minnkota from changing the proposed route back to Burchill Farms property during the proceeding before the Commission, and without notice to Burchill Farms.

18. Moreover, as developers of a wind generation project in the vicinity of the proposed corridor or route of the transmission line, the Appellants have a significant legal interest in a reliable transmission grid. To this end, Appellants question Minnkota's failure to submit any evidence of how its proposed transmission line has been coordinated with Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Mid-Continent Area Power Pool (MAPP) and whether Minnkota's proposed line will, contrary to statutory goal, adversely impact reliability. Similarly, 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." The Commission adopted this rule because it recognized the need to consider the impact on interstate commerce and adjacent states of siting transmission lines. As noted below, Minnkota will not consume all the energy transmitted over proposed line; that is, energy owned by Otter Tail Power Company ("Otter Tail") and FPL Energy ("FPLE") will be transmitted in interstate commerce out of North Dakota. That impact has not been considered. In particular, RES Americas is developing other electric generation projects that are located in areas that could be affected by the siting and operation of Minnkota's proposed transmission line.

19. The Order Denying Appellants Intervention in the above action is an appealable Order under N.D.C.C. § 49-22-19.

20. The Order Denying Appellants Intervention in the above action is final and appealable under N.D.C.C. § 28-32-42.

21. Appellants were not allowed to be parties to the action. The only review available to the Appellants is appeal from the Order Denying Intervention which is a final Order as to Appellants affecting their substantial rights.

22. The hearing officer acted arbitrarily and capriciously in denying the Intervention by the Appellants in the action.

23. The Order of the hearing officer in denying Intervention of Appellants is not in accordance with the law.

24. The Order of the hearing officer in denying Intervention of Appellants is in violation of the constitutional rights of due process of the Appellants.

25. Pursuant to § 28-32-21 N.D.C.C. parties to an adjudication proceeding are afforded the opportunity to present evidence and to examine and cross examine witnesses as presented under § 28-32-24 and § 28-32-35 N.D.C.C. Appellants were not afforded the public rights to conduct discovery or to examine or cross examine witnesses at the hearing.

26. The hearing officer in this case was appointed by the Commission as a procedural hearing officer only. As such, the hearing officer has no legal authority to issue Final Order Denying Intervention by the Appellants under N.D.C.C. Chapter 28-32.

27. In Appellants initial request for Intervention, Appellants argued that a Certification of Public Convenience and Necessity was required because Otter Tail was a proposed owner of the transmission line. After Appellants' initial intervention, Minnkota filed an amendment indicating that Otter Tail is no longer an owner of the transmission line. However, Otter Tail is still constructing the transmission line and is an owner of 98 MW of electricity output from the transmission line and FPLE. FPLE is an owner of 60 MW of this transmission line for distribution on the MISO market.

28. It was error on the part of the Commission to deny Intervention to Appellants to permit Appellants look into the relationship and ownership of the proposed transmission line.

Dated this 9 day of June, 2008.

Respectfully submitted,

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



THOMAS D. KELSCH

State Bar ID No. 03918

KELSCH, KELSCH, RUFF & KRANDA

Counsel for RES Americas Inc., PEAK Wind
Development LLC, and Burchill Farms

Incorporated

103 Collins Avenue, P.O. Box 1266

Mandan, North Dakota 58554-7266

(701) 663-9818

STATE OF NORTH DAKOTA

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SOUTH CENTRAL JUDICIAL DISTRICT

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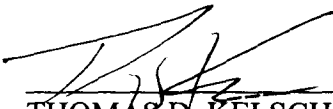
vs.

UNDERTAKING OF COSTS ON APPEAL TO DISTRICT COURT

Public Service Commission and Minnkota Power Cooperative, Inc.,
Appellees.

The Appellants RES Americas Inc., PEAK Wind Development LLC, and Burchill Farms Incorporated (“Appellants”), pursuant to N.D.C.C. § 28-32-42, hereby deposit with the Clerk of Court a check in the amount of Two Hundred and Fifty Dollars (\$250.00) as an undertaking of costs in this appeal, made to the State of North Dakota as obligee.

Dated this 9th day of June, 2008.



THOMAS D. KELSCH
State Bar ID No. 03918
KELSCH, KELSCH, RUFF & KRANDA
Attorneys for
103 Collins Avenue, P.O. Box 1266
Mandan, North Dakota 58554-7266
(701) 663-9818