

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

RECEIVED
SOUTHWEST JUDICIAL DISTRICT

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

Appellants,

vs.

Public Service Commission and
Minnkota Power Cooperative, Inc.,

Appellees.

JUL 09 2008

PUBLIC SERVICE COMMISSION

AFFIDAVIT OF SERVICE

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF MORTON)

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 8 day of July, 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

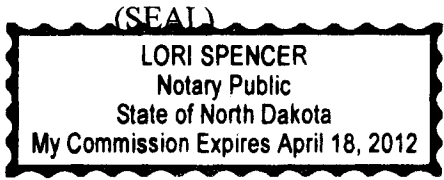
JEROME C KETTLESON
314 E THAYER AVE
BISMARCK ND 58502

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 8 day of July, 2008.

Lori Spencer
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.)

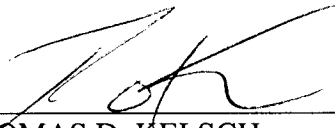
UNDERTAKING OF COSTS ON APPEAL TO DISTRICT COURT

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 8 day of July, 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

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. (RES Americas), PEAK Wind Development LLC (PEAK Wind), and Burchill Farms Incorporated (Burchill Farms) [together 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 February 5, 2008, Minnkota Power Cooperative, Inc. (Minnkota) and Otter Tail Corporation d.b.a. Otter Tail Power Company (Otter Tail), filed a Letter of Intent (LOI) to submit siting applications for a proposed 230kV electric transmission line and associated facilities to be constructed within Griggs, Steele, Barnes and Cass Counties of North Dakota. In the LOI, Minnkota

and Otter Tail also requested that the Commission shorten the one-year waiting period required between the submission of the LOI and the filing of an application.

2. On February 13, 2008, the Commission acknowledged the Letter of Intent, shortened the one-year waiting period between filing a letter of intent and a siting application to one day, and assessed a filing fee of \$100,000 due upon the filing of an application.

3. On March 18, 2008, Otter Tail and 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 a 56.6 mile, 230 kV electric transmission line located in Cass, Barnes, and possibly Steele Counties of North Dakota, Case No. PU-08-48.

4. In a timely petition to intervene filed on April 9, 2008, RES Americas and PEAK Wind stated that they were developing a wind generation project approximately 500 yards away from where the proposed transmission would originate and, as such, had previously filed with the Midwest Independent Transmission System Operator a request to interconnect with the electric transmission system owned by Otter Tail. Noting that Otter Tail was required to file an application requesting an application for public convenience and necessity (PCN), RES Americas and PEAK Wind suggested that the Commission hold hearings on the PCN before addressing the corridor certificate and route permit requested by Otter Tail and Minnkota.

5. 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.

6. On April 17, 2008, Minnkota, with the concurrence of Otter Tail, filed an Amendment to the Application which made several material modifications, including (i) purportedly removing Otter Tail as an owner of the project and (ii) changing the route of the high voltage transmission by increasing the length of the line to 61.6 miles and crossing 13.5 miles more of “green field” areas. than the March 18 Application

7. On April 21, 2008, the Commission acknowledged the withdrawal of Otter Tail Corporation as an applicant, and deemed the application complete, conditioned upon the filing of a map showing proposed final transmission line structure locations with said map filed by Minnkota on or before May 15, 2008. The Commission issued a Notice of Filing and Notice of Hearing, scheduling a public hearing to begin May 22, 2008 at 10 a.m. CDT at the City Auditorium in Casselton, North Dakota. The notice identified the following issues to be considered:

- A. Will the location, construction, and operation of the proposed electric transmission facility produce minimal adverse effects on the environment, natural resources, and upon the welfare of the citizens of North Dakota?
- B. Is the proposed transmission facility compatible with the environmental preservation and the efficient use of resources?
- C. Will the proposed electric transmission facility corridor and route 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?
- D. Is it appropriate for the Commission to waive the procedures as requested in the application including the request for a single consolidated application for Corridor Certificate and Route Permit?

8. On April 23, 2008, the Commission denied the petition to intervene of RES Americas and PEAK Wind.

9. In response to the amended application on May 5, 2008, RES Americas, PEAK Wind, and Burchill Farms filed a “Petition to Intervene and Request for Shortened Notice and Response Periods, Expedited Consideration, and Expedited Discovery” (the Petition to Intervene).

10. On May 8, 2008, Minnkota filed an objection to the Petition to Intervene recognizing corridor and route of the proposed transmission line (as identified in amended Application) would cut through land owned by Burchill Farms, but that the proposed route would be changed once again at the public hearing, this time detouring around the land owned by Burchill Farms.

11. On May 9, 2008, before the Appellants could respond to Minnkota’s objection, 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 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.

12. On June 9, 2008, Appellants filed a Notice of Appeal and Specifications of Error from the May 9, 2008 Order denying their Intervention. This Appeal was filed in Burleigh County as Civil No. 08-08-C-01474/001.

13. On May 15, 2008, Minnkota filed a map showing proposed final transmission line structure locations. The total distance of the line as determined in the final structure placement was found to be 61.1 miles.

14. A public hearing on Minnkota's amended Application was held as scheduled on May 22, 2008 in Casselton, North Dakota.

15. At the public hearing, Appellants appeared and offered testimony as follows:

A. PEAK Wind 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 and RES are developing a wind project that is located adjacent to the Proposed Transmission Line.

B. The Proposed Transmission Line would not 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. Granting Minnkota's Application would not result in routing transmission facilities in an orderly manner as required by statute, but rather would create a hodge-podge of multiple high voltage transmission lines criss-crossing farm land. Multiple transmission lines will have multiple impacts on the environment.

C. PEAK Wind and RES Americas encouraged the Commission to urge Minnkota to consider the 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 the many customers and needs.

D. As landowners and farmers, PEAK Wind (including Burchill Farms) had a significant concern regarding the siting of multiple, unnecessary transmission lines.

E. PEAK Wind and RES Americas are not opposed to the construction of transmission lines, but simply desire that Minnkota's proposed transmission line be constructed with sufficient capacity for the energy generated from the area including the wind generation project being developed by PEAK Wind and RES Americas.

- F. If Minnkota's proposed transmission line is constructed with sufficient capacity for the energy generated from the area, it will prevent the additional and unnecessary environmental impact when subsequent transmission lines are required running from the same place of origin to the same end point.
- G. Minnkota did not include the proposed transmission line in its 10 year plan, nor did it include the PEAK Wind farm.
- H. Any delay caused by the proper construction of the transmission line to the proper capacity is not the fault of the Commission, or of the Appellants, but is the fault of Minnkota, for not properly considering the PEAK Wind farm in its planning.
- I. Minnkota could build the line for double circuit to allow for an additional line to be put in place on the same towers when PEAK Wind comes on line in either 2009 or 2010.

16. The Commission entered its Findings of Fact, Conclusions of Law, and Order for Judgment in the Minnkota Power Cooperative, Inc. Pillsbury-Fargo 230 kV Transmission Line Siting Application Case No. PU-08-48 on June 9, 2008. Pursuant to the Order, the Commission issued No. 105 Minnkota Certificate of Corridor Compatibility and Route Permit No. 115 to construct and operate the transmission line from Pillsbury to Fargo with the exception of a portion of Bush River Township.

17. The Appellants Appeal from the June 9, 2008 Order, and request that the Court consolidate this appeal with Appellants' previous appeal of the May 9th Order denying intervention, Civil Case No. 08-08-C-01474/001.

18. Venue lies with this Court pursuant to N.D.C.C. § 38-32-42(3) (a), which provides that the appeal of an agency determination may be taken to the district court designated by law, and if none is designated, to the district court of the county in which the hearing or a part thereof was held.

No other district court is designated by law for this appeal, and hearings in this matter were held in the Commission hearing room at the State Capitol Building, Burleigh County, North Dakota.

SPECIFICATIONS OF ERROR

19. The Order of the Commission is not in accordance with the law pursuant to N.D.C.C.

§ 28-32-46(1), to wit:

- A. The Order does not comply with the statement of legislative policy and declared requirements for the siting of transmission facilities pursuant to N.D.C.C. § 49-22-02.
- B. The Order does not properly consider adverse direct and indirect environmental effects of the proposed route pursuant to N.D.C.C. § 49-22-09(4).
- C. The Order does not properly consider the existing plans of private entities, *i.e.*, Appellants, for the developments at or in the vicinity of the proposed site, corridor or route.
- D. The Order down not properly consider problems raised by federal agencies or local entities.
- E. The Order does not properly consider the irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.
- F. The Order does not properly consider the site selection criteria of section 69-06-08-02(3) of the Commission's rules, including the impact on agriculture and the visual effect of the adjacent area.
- G. The Order does not properly consider the policy criteria of section 69-06-08-02(4) of the Commission's rules, including the maximization of interstate benefits, the location and design, the economies of construction and operation, and the coordination of facilities.
- H. The Order does not reflect that the Commission had considered, much less required, Minnkota to justify any deviations from the most recent Ten-Year Plan which the proposed facility may present, as required by the Application Guidelines for a Certificate of Site Compatibility.

20. The Commission failed to make any Findings of Fact concerning the following issues as required by North Dakota siting laws and as published in its Notice of Hearing:

- A. Will the location, construction, and operation of the proposed electric transmission facility produce minimal adverse effects on the environment, natural resources, and upon the welfare of the citizens of North Dakota?
- B. Is the proposed transmission facility compatible with the environmental preservation and the efficient use of resources?
- C. Will the proposed electric transmission facility corridor and route 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?
- D. Is it appropriate for the Commission to waive the procedures as requested in the application including the request for a single consolidated application for Corridor Certificate and Route Permit?

21. The following findings of fact made by the Commission are not supported by a preponderance of the evidence pursuant to N.D.C.C. § 28-32-46(5).

- A. The Commission's Findings of Fact No. 14 that "North Dakota Administrative Code Chapter 69-06-08 sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for a certificated of corridor compatibility and route permit. The criteria as set forth in Section 69-06-08-025 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria. A transmission facility route must not be sited within an Exclusion Area. A transmission facility route must not be sited within an Avoidance Area unless the applicant shows under the circumstances there are no reasonable alternatives. In determining whether an Avoidance Area should be designated for a facility, the Commission may consider, among other things, the proposed management of adverse impacts, the orderly siting of facilities; system reliability and integrity; the efficient use of resource; and alternative routes. In accordance with the Commission's Selection Criteria, a transmission facility may be approved if it is demonstrated that not significant adverse impacts will result from the location, constructions and maintenance of the transmission facility. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility.

22. The following conclusions of law and order of the Commission are not supported by its findings of fact pursuant to N.D.C.C. § 28-32-46(6), to wit:

- A. The Commission's Conclusion of Law No. 3 that "the proposed project is of such length, design, location and purpose that it will produce minimal adverse effects, as defined under Section 49-22-05.2, of the North Dakota Century Code."
- B. The Commission's Conclusion of Law No.4 that "the Application submitted by Minnkota meets the corridor and route evaluation criteria required by Chapter 49-22 of the North Dakota Century Code."
- C. The Commission's Conclusion of Law No. 5 that "the location, construction, and operation of the proposed transmission facility will produce only minimal adverse effects of the environment and upon the welfare of the citizens of North Dakota."
- D. The Commission's Conclusion of Law No. 6 that "the proposed transmission facility is compatible with the environmental preservation and the efficient use of resources."
- E. The Commission's Conclusion of Law No. 7 that "the proposed transmission facility corridor and route will 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."
- F. The Commission's Conclusion of Law No. 8 that "the proposed transmission facility corridor and route are of such length, design, location, and purpose that they will produce minimal adverse affects."
- G. The Commission's Conclusion of Law No. 9 that "the requested waivers of procedures and time schedules are justified based upon: the minimal impacts on the environment and the welfare of the citizens of North Dakota; the lack of objection to the proposed transmission facility by federal, state, and local government bodies and agencies or by the vast majority of landowners along the route; and the objective to have area wind generation projects in operation by December 31, 2008."

23. The findings of fact made by the agency do not sufficiently address the following evidence presented to the agency by the Appellants pursuant to N.D.C.C. § 28-32-46(7), to wit:

- A. PEAK Wind 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 and RES are developing a wind project that is located adjacent to the Proposed Transmission Line.

- B. Land owned by Burchill Farms (a PEAK Wind member) is located within the transmission corridor proposed by Minnkota and authorized by the Commission.
- C. PEAK WIND had met with Minnkota and had advised Minnkota of PEAK WIND's plans to develop a wind project and expressed its desire to connect to Minnkota's transmission lines.
- D. Though Minnkota knew of PEAK WIND's plans, 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. Granting Minnkota's 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. Multiple transmission lines will have multiple impacts on the environment.
- E. PEAK Wind and RES Americas encourage the Commission to urge Minnkota to consider the 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 the many customers and needs.
- F. As a group consisting of local landowners and farmers, PEAK Wind have a significant concern regarding the siting of multiple, unnecessary transmission lines.
- G. PEAK Wind and RES Americas are not opposed to the construction of transmission lines. They just want the Proposed Minnkota Transmission Line to be constructed with sufficient capacity for the energy generated from the area including the wind generation project being developed by PEAK Wind and RES Americas.
- H. If the proposed Minnkota transmission line is constructed with sufficient capacity for the energy generated from the area, it will prevent the additional and unnecessary environmental impact when subsequent transmission lines are required running from the same place of origin to the same end point.
- I. Minnkota did not include the proposed transmission line in its Ten-Year Plan nor did it justify the deviation from the plan, (nor did it include the PEAK Wind farm).

- J. Any delay caused by the proper construction of the transmission line to the proper capacity is not the fault of the Commission, or of the Appellants, but is the fault of Minnkota, for not properly considering the PEAK Wind farm in its planning.
- K. Minnkota knew that RES Americas and PEAK Wind were developing a wind generation project. RES Americas and PEAK Wind had asked to interconnect to Minnkota's transmission system and to be a part of the proposed transmission line. Minnkota could have designed the line to have included enough capacity for the RES Americas/PEAK Wind project by building the line for double circuit to allow for an additional line to be put in place on the same towers.

24. The Appellants request the Court review the Commission's determination pursuant to the specifications of error and reverse and vacate the Commission's June 9, 2008 Order, and remand the case to the Commission with instructions to permit the Intervention of the Appellants, to hold a new hearing and to correct the errors specified by Appellants. The Appellants also request any such further relief as the Court may deem appropriate, including the assessment of costs to the Commission.

Dated this 8 day of July, 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