



ATTORNEYS AT LAW  
314 EAST THAYER AVENUE • P.O. BOX 400 • BISMARCK, ND 58502  
TELEPHONE (701) 223-2890 • FAX (701) 223-7865 • www.pearce-durick.com

RECEIVED

JEROME C. KETTLESON  
jck@pearce-durick.com

OCT 15 2008

October 15, 2008

PUBLIC SERVICE COMMISSION

HAND-DELIVERED

Ms. Debra Simenson  
Clerk of Court  
Burleigh County Courthouse  
P.O. Box 1055  
Bismarck, ND 58502-1055

RE: RES Americas Inc., et al v. Public Service Commission, et al  
Civil No. 08-08-1709

Dear Ms. Simenson:

Enclosed for filing please find Minnkota Power Cooperative, Inc.'s Notice of Motion to Dismiss, Motion to Dismiss Appeal, and Brief in Support of Motion to Dismiss Appeal, together with an Affidavit of Service.

Thank you for your attention to this matter.

Sincerely,

PEARCE & DURICK

By

Jerome C. Kettleison  
Phone: (701) 333-0104

JCK/ef  
Enclosures

cc. (w/encls.) Thomas D. Kelsch  
(w/encls.) Wayne Stenhjem  
(w/encls.) Darrell Nitschke

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. 08-08-C-1709

Appellants, )

NOTICE OF MOTION  
TO DISMISS

vs. )

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

Appellees. )

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**TO: RES AMERICAS INC., PEAK WIND DEVELOPMENT LLC, AND  
BURCHILL FARMS INCORPORATED, BY AND THROUGH THEIR  
ATTORNEY, THOMAS D. KELSCH, 103 COLLINS AVE., PO BOX 1266,  
MANDAN, ND 58554-7266**

PLEASE TAKE NOTICE that Appellee, Minnkota Power Cooperative, Inc., by and through its counsel, submits the attached Notice of Motion to Dismiss pursuant to N.D.R.Civ.P. 12(b)(ii). You shall have ten (10) days after service of the attached motion, plus three (3) days for service by mail within which to serve and file a response. The failure to file a brief may be deemed an admission that, in the opinion of the party or counsel, the motion is meritorious.

Upon the filing of briefs, or upon expiration of the time for filing, the motion is deemed submitted to the court unless counsel for either party requests oral argument on the motion. The party requesting oral argument shall secure a time for the argument and serve notice upon all other parties. A request for oral argument must be made not later than five (5) days after expiration of the time for filing the answer brief.

Dated this 15 day of October, 2008.

**PEARCE & DURICK**



JEROME C. KETTLESON, ND # 03095

ZACHARY E. PELHAM, ND #05904

314 East Thayer Avenue

P. O. Box 400

Bismarck, ND 58502-0400

(701) 223-2890

Attorneys for Appellee Minnkota Power  
Cooperative, Inc.

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,

Appellants,

vs.

Public Service Commission and  
Minnkota Power Cooperative, Inc.,

Appellees.

Civil No. 08-08-C-1709

MOTION TO DISMISS APPEAL

PLEASE TAKE NOTICE that the Appellee, Minnkota Power Cooperative, Inc., by and through its counsel, moves the Court pursuant to N.D.R.Civ.P. 12(b)(ii) for dismissal of the appeal pending before this Court.

This motion is supported by the attached Brief in Support of Motion to dismiss, attached exhibits, and all other pleadings and records on file with the Court in this matter. The motion is made on the grounds that this Court lacks subject matter jurisdiction to entertain this appeal because Appellants failed to file an appeal from a "final order," or, alternatively, failed to appeal to the proper district court.

WHEREFORE, the Appellee, Minnkota Power Cooperative, Inc., requests the Court to grant its Motion to Dismiss, and that the appeal be dismissed.

Dated this 15 day of October, 2008.

**PEARCE & DURICK**



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JEROME C. KETTLESON, ND # 03095  
ZACHARY E. PELHAM, ND #05904  
314 East Thayer Avenue  
P. O. Box 400  
Bismarck, ND 58502-0400  
(701) 223-2890

Attorneys for Appellee Minnkota Power  
Cooperative, Inc.

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,

Appellants,

vs.

Public Service Commission and  
Minnkota Power Cooperative, Inc.,

Appellees.

Civil No. 08-08-C-1709

BRIEF IN SUPPORT OF  
MOTION TO DISMISS APPEAL

Minnkota requests the Court Dismiss the Appeal of the Appellants pending in this Court for lack of Jurisdiction.

**BACKGROUND**

Minnkota Power Cooperative, Inc. (“Minnkota”) applied for a Certificate of Corridor Compatibility and Route Permit for its Pillsbury-Fargo Generation Outlet Project on March 18, 2008. (*See* Findings of Fact, Conclusions of Law, and Order, dated June 6, 2008, at p. 2, attached as Exhibit 1). The North Dakota Public Service Commission (“PSC”) held a hearing on the application in Casselton, ND on May 22, 2008. (*See* Ex. 1, at p. 3). The PSC issued Findings of Fact, Conclusions of Law, and Order on June 6, 2008, approving a portion of the application; on the same day, PSC issued a Notice of Supplemental Hearing relating to an alteration in the route application—Appellants were served with the notice. (*See id.*; Notice of Supplemental Hearing, dated June 6, 2008, attached as Exhibit 2). The PSC issued an Order approving

a *portion* of Minnkota’s application, but, pending a supplemental hearing, did not approve the full application on June 6, 2008. The supplemental hearing was held on July 8, 2008, in Bismarck and the Order issued on July 14, 2008.

On the date the supplemental hearing was held, July 8, 2008, Appellants filed their Notice of Appeal and Specifications of Issue with this Court. (*See* Notice of Appeal and Specifications of Error, attached as Exhibit 3). The appeal was filed prior to the PSC determining whether to approve the complete application of Minnkota. The PSC issued a Supplemental Findings of Fact, Conclusions of Law, and Order on July 14, 2008—6 days after Appellants appealed. (*See* Supplemental Findings of Fact, Conclusions of Law, and Order, dated July 14, 2008, attached as Exhibit 4). Minnkota moves to dismiss the appeal because the Court lacks subject matter jurisdiction.

### ANALYSIS

#### **I. The District Court Lacks Subject Matter Jurisdiction in an Appeal from a Non-final Order.**

Appellants have not appealed from a “final order.” Courts lack jurisdiction unless an appeal is made from a final order or decision. *See Mann v. N.D. State Tax Comm’r*, 2007 ND 119, ¶ 6, 736 N.W.2d 464; *In re A.B.*, 2005 ND 216, ¶ 5, 707 N.W.2d 75. Appeals from administrative agency decisions are governed by North Dakota’s Administrative Agencies Practice Act (“AAPA”). *See* N.D.C.C. ch. 28-32. An appeal from an agency decision must be taken pursuant to N.D.C.C. § 28-32-42. Only “final orders are appealable.” *Id.* at § 28-32-42(3)(a).

North Dakota defines an administrative agency decision as final if it “‘terminates the issue’ which leaves the agency with nothing left to decide.” Charles L. Koch, Jr., Annotation, *Final Agency Action in the States*, 3 ADMINISTRATIVE LAW AND PRACTICE § 13.25 (2d ed.) (citing *Henry v. Securities Comm’r for State of N.D.*, 2003 ND 62, ¶7, 659 N.W.2d 869)). An administrative agency decision is considered final only after it “‘terminate[s] the issue’ leaving the agency with ‘nothing more to decide.’” *Henry*, 2003

ND 62 at ¶ 7 (quoting *Ash v. Traynor*, 2000 ND 75, ¶ 3, 609 N.W.2d 96) (emphasis added). The North Dakota Supreme Court explained as follows: “The [administrative] hearing must proceed to some conclusion in order that the whole of the actions taken on the record accumulated may be reviewed in the course of an appeal.” *Id.* (quoting *Colgate-Palmolive Co. v. Dorgan*, 225 N.W.2d 278, 280 (N.D. 1974)). A “final order,” therefore, is the last order issued to *completely* conclude a matter before an administrative agency. In this case, the PSC did not approve Minnkota’s complete application for a route and corridor for its generation outlet line until July 14, 2008.

The June 6, 2008, PSC Order is an Order. But it is not a “final order” on Minnkota’s application. It is not an order that can be appealed from because the PSC clearly was not finished considering *all* aspects of Minnkota’s application. The PSC explained in the June 6, 2008, Order that the route permit was granted “except that no route is designated within the area of the alternate reroute proposed in the northeastern portion of Rush River Township.” (*See* Exh. 1, at p. 9, ¶ 3) (emphasis added). The PSC further explained that its June 6, 2008, Order issued the Certificate of Corridor Compatibility and Route Permit “except in the area of the alternate reroute proposed in the northeastern portion of Rush River Township. . . .” (*See* Exh. 4, at p. 2). And the PSC also recognized that “[a]dditional time for routing criteria assessment and an opportunity for interested person[s] to be heard [was] needed before designating a route in the area of Minnkota’s alternate reroute proposed in the northeastern portion of Rush River Township.” (*See* Exh. 1, at p. 8, ¶ 11). The PSC noticed a supplemental hearing on the matter on the same day that the first order was issued. (*See* Exh. 2).

Appellants did not appeal from a “final order.” The June 6, 2008, Order clearly indicates that the PSC did not approve Minnkota’s complete application. The June 6, 2008, Notice of Supplemental Hearing, served on Appellants’ counsel, was another clear indicator that the PSC was not finished analyzing Minnkota’s application. Because

Appellants did not appeal from a “final order,” as directed by statute, this Court lacks subject matter jurisdiction and the appeal should be dismissed.

**II. Alternatively, Appellants Failed to Appeal the Matter to the Proper District Court.**

In the alternative, should the Court find that Appellants appealed from a “final order,” then the Court lacks subject matter jurisdiction because Appellants filed their appeal in Burleigh County. Appellants were required to appeal “to the district court of the county in which the hearing or a part thereof was held.” N.D.C.C. § 28-32-42(3)(a).<sup>1</sup> This Court lacks subject matter jurisdiction and the appeal must be dismissed because Appellants failed to file their appeal in Cass County, where the hearing occurred. *Id.*; see also *Happy Day Day Care Ctr. v. Soc. Serv. Bd. of North Dakota*, 313 N.W.2d 768, 771 (N.D. 1981) (holding Burleigh County District Court lacked subject matter jurisdiction for administrative appeal because the administrative hearing was held in Ward County).

Appellants base their appeal on the June 6, 2008, Findings of Fact, Conclusions of Law, and Order. They consider the June 6, 2008 Order concerning the Casselton Hearing to be a “final order.” The notice of appeal from that order was served on the same date the supplemental hearing on Minnkota’s application was held—many days *before* the supplemental findings and order was issued by the PSC on July 14, 2008. Appellants were served Notice of the supplemental hearing, but didn’t await the “final order”. The Appellants attempted an appeal from the partial June 6, 2008 Order.

Appellants cannot argue that a “hearing” took place prior to the May 22, 2008, hearing in Casselton. Appellants seem to make this argument in their Notice of Appeal and Specifications of Error. (See Appellants Notice of Appeal and Specifications of

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<sup>1</sup> The AAPA states that an appeal from an administrative agency should first go to the district court designated by law. N.D.C.C. § 28-32-42(3)(a). But if the law does not designate a specific district court, then the appeal is made to the district court in the county where the administrative hearing took place. *Id.* There is no statutory or administrative regulation stating which district court an appeal from the PSC should be made to—Appellants concur. (See Ex. 3, at pp. 6-7, ¶ 18). Therefore, an appeal from the PSC must be made to the district court in the county where the hearing occurred.

Error, pp. 6-7, at ¶ 18 (stating “hearings in this matter were held in the Commission hearing room at the State Capitol Building, Burleigh County, North Dakota)). Yet no hearing took place prior to the May 22, 2008, hearing in Cass County—the hearing from which the June 6, 2008, Order was issued. The North Dakota Supreme Court has defined what a “hearing” means under the AAPA:

The structure of the administrative agency procedure act and the decision-making process of a particular agency contemplates that the actual rendering of a decision by an agency may be separated from taking testimony and receiving exhibits.

\* \* \*

We believe that the proper statutory construction of the term ‘hearing’ within the framework of the administrative agency procedure act and the agency’s quasi-judicial function is established to include those functions at which evidence is presented and testimony is given. The term ‘hearing,’ within this framework does not necessarily include the presentation of written argument, although written or oral argument may be presented at the same time and place of the presentation of testimony and exhibits.

*Happy Day Day Care Center*, 313 N.W.2d at 771 (emphasis added).

Preliminary arguments and briefs submitted to the PSC prior to the May 22, 2008, hearing, according to the North Dakota Supreme Court, did not constitute a “hearing” under the AAPA. *Id.* Appellant’s petition to intervene prior to the May 22, 2008, hearing did not constitute a “hearing” under the AAPA. And, Appellants cannot argue that the supplemental hearing, which took place in Bismarck on July 8, 2008, was part of what Appellants consider the “final order.” To do so forces the Appellants to concede that the June 6, 2008, Order was not the “final order,” thereby acknowledging that the Court lacks subject matter jurisdiction.


### CONCLUSION

Both of Minnkota’s arguments, in some respects, go hand in hand. The June 6, 2008, Order was not a “final order” because the PSC had not completed considering Minnkota’s application; PSC noticed a supplemental hearing on the same date the Order

was issued. The Court lacks jurisdiction because the June 6, 2008, Order was not a “final order” and could not be appealed from until the matter was closed. But, if the Court rejects this primary argument, then the Court still lacks jurisdiction because the hearing that resulted in the June 6, 2008, Order took place in Cass County, not Burleigh County. In either scenario, the Court lacks subject matter jurisdiction and the appeal must be dismissed.

Dated this 15 day of October, 2008.

**PEARCE & DURICK**



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JEROME C. KETTLESON, ND # 03095  
ZACHARY E. PELHAM, ND #05904  
314 East Thayer Avenue  
P. O. Box 400  
Bismarck, ND 58502-0400  
(701) 223-2890

Attorneys for Minnkota Power Cooperative

4/6/08

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

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

Case No. PU-08-48

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

June 6, 2008

Appearances

Commissioners Susan E. Wefald, Kevin Cramer and Tony Clark.

Jerome C. Kettleson, Attorney at Law, Pearce & Durick 314 East Thayer Avenue, Bismarck, North Dakota 58501, on behalf of the Applicant, Minnkota Power Cooperative.

Gerad Paul, Staff Attorney, Minnkota Power Cooperative, Inc., 1822 Mill Road, P.O. Box 13200, Grand Forks, North Dakota 58501 on behalf of Applicant, Minnkota Power Cooperative.

William W. Binek, Chief Counsel, Public Service Commission, Capitol, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Allen C. Hoberg, Administrative Law Judge and Director, Office of Administrative Hearings, 1701 N. 9 Street, Bismarck, ND 58501-1882, as Procedural Hearing Officer.

Preliminary Statement

On February 5, 2008, Minnkota Power Cooperative, Inc. (Minnkota) with its then-co-partner, Otter Tail Corporation dba Otter Tail Power Company (Otter Tail), filed a Letter of Intent (LOI) to submit siting applications for a proposed 230 kV electric transmission line and associated facilities to be constructed within Griggs, Steele, Barnes and Cass Counties of North Dakota. It was further requested in the LOI that the Commission shorten the one-year waiting period required between the submission of the LOI and the filing of an application.

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.

On February 25 and 26, 2008, Minnkota held public informational meetings for area residents in the early evening at Page, North Dakota and Mapleton, North Dakota. Approximately 60 members of the public attended the meetings.

PU-08-48  
Filed: 6/6/2008  
Pages: 18  
Findings of Fact, Conclusions of Law and Order -  
with Cramer Concurring Opinion & Wefald  
Concurring, Dissent in Part  
Public Service Commission

On March 18, 2008, Minnkota and Otter Tail filed an Application for a Waiver of Procedure and Timelines, and Consolidated Certificate of Corridor Compatibility and Route Permit (Application) authorizing construction of approximately 56.6 miles of 230 kV transmission line and associated new substation referred to as the Pillsbury-Fargo Generation Outlet Project. The Application requested that the Commission waive procedures set forth in N.D.C.C. Sections 49-22-08 and 49-22-08.1 to allow for a single consolidated hearing for Corridor Certificate and Route Permit.

On April 9, 2008, RES Americas Development, Inc. and PEAK Wind Development, LLC filed a Petition to Intervene.

On April 17, 2008, Minnkota filed an amendment to the Application indicating the withdrawal of Otter Tail Power Company as an applicant and as an owner of the line; expanding the proposed transmission facility corridor in the area of Amenia, North Dakota; and increasing the length of the proposed transmission line from approximately 56.6 miles to 61.6 miles.

On April 18, 2008, Minnkota filed its objections to the Petition for Intervention by RES Americas Development, Inc. and PEAK Wind Development, LLC on April 9, 2008.

On, April 21, 2008, the Commission acknowledged the withdrawal of Otter Tail Corporation as an applicant, 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:

1. 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?
2. Is the proposed electric transmission facility compatible with the environmental preservation and the efficient use of resources?
3. 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?

4. 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?

On April 23, 2008, the Commission denied the intervention request of RES Americas Development, Inc. and PEAK Wind Development, LLC, filed April 9, 2008.

On May 5, 2008, RES Americas Development, Inc., PEAK Wind Development, LLC., and Burchill Farms Incorporated filed a Petition to Intervene and Request for Shortened Notice and Response Period Expedited Consideration and Expedited Discovery.

On May 8, 2008, Minnkota Power Cooperative entered its objections to intervention by RES Americas Development, Inc., PEAK Wind Development, LLC and Burchill Farms Incorporated.

On May 9, 2008, the Commission, by Allen C. Hoberg, Administrative Law Judge, entered its Order denying intervention by RES Americas, Inc., PEAK Wind Development, LLC, and Burchill Farms Incorporated, filed May 5, 2008.

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.

A public hearing on Minnkota's amended Application was held as scheduled on May 22, 2008 in Casselton, North Dakota. Having allowed all interested persons an opportunity to be heard and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

#### **Findings of Fact**

1. Minnkota is a generation and transmission cooperative that supplies wholesale electricity to eleven member-owned distribution cooperatives, three in eastern North Dakota and eight in western Minnesota. Minnkota is headquartered in Grand Forks, North Dakota. Minnkota is the operating agent for Northern Municipal Power Agency (NMPA), which serves twelve municipal utilities in the same geographic region. Approximately one-half of Minnkota's electric load is located in North Dakota. Together, the Minnkota/NMPA Joint System currently serves more than 280,000 people.
2. Minnkota proposes to construct approximately 61.6 miles of 230 kV electric transmission line beginning at a new substation to be located in Section 7 of Ellsburly

Township, T143N, R56W, near Pillsbury, North Dakota and extending to the existing Maple River substation near Fargo, North Dakota. The purpose of the transmission line and associated Pillsbury substation is to transmit energy generated by proposed wind farm projects in Barnes, Steele and Griggs Counties to an interconnection with the regional transmission grid at the Maple River substation.

3. Construction and operation of the transmission facilities will conform to requirements of the National Electric Safety Code.

4. The estimated cost for materials and construction is approximately \$36 million.

5. Minnkota's originally proposed corridor and route generally followed an existing Cenex pipeline sited by the Commission in 1991 along railroad right-of-way and then paralleled an existing Minnkota 345 kV transmission line before interconnecting at the Maple River substation.

6. The majority of the proposed transmission line will be constructed using directly embedded mono-pole steel structures except that H-frame structures will be used on much of the east end of the project where the route is located adjacent to the existing 345-kV transmission line. The mono-pole steel structures will be approximately 90-130 feet in height with an average span between each structure of 600 feet and a maximum span of 900 feet under some circumstances. The H frame structures will be approximately 70 feet in height with an average span of approximately 900 feet and a maximum span of 1,000 feet under some circumstances.

7. Minnkota filed a reroute on April 15, 2008, explaining that input from landowners and the Amenia Township Board combined with the presence of airport communication towers, the proximity to the City of Amenia and an analysis of exclusion and avoidance areas caused Minnkota to propose a reroute to the area of the Rush River Watershed Resource District. The Rush River Watershed Resource District provided three and one-half miles of east to west right-of-way on property owned by the District and generally adjacent to a drainage structure. The reroute then turned south at 180<sup>th</sup> Avenue SE before crossing Section 2 of Rush River Township at its midpoint, and then proceeding south on 161<sup>th</sup> Avenue SE.

#### Alternate Rush River Township Reroute

8. During the May 22, 2008 hearing the Commission requested that Minnkota file Late-Filed Exhibit 2 exploring alternative reroutes in the northeast portion of Rush River Township because of landowner concerns regarding potential adverse impacts of electromagnetic fields or stray voltage to cattle in Section 2. Minnkota submitted the late-filed exhibit with a recommendation that the Commission approve an alternate reroute in the northeast portion of Rush River Township described as:

At the northeast corner of Section 4, Rush River Township at Pole No. 358, the transmission line turns south along the easterly section line of Sections 4 and 9; then from the southeast corner of Section 9 into Section 15 and continuing down a westerly section line one-half mile to the center of Section 15. From there the line would proceed on the north side of the center of Section 15 in an easterly direction through Section 14 until it crosses to the western edge of Section 13, where it would then meet with Pole No. 399 on the Line Structure Location Drawings filed on May 15, 2008.

8. Minnkota's recommended alternate reroute presented in Late-Filed Exhibit 2 is contingent upon completing cultural, biological, and wetlands surveys. The Commission finds that additional time for surveys and an opportunity for interested persons to be heard are needed before designating a transmission route within this northeastern portion of Rush River Township.

#### Reed Township Conditional Use Permit

9. At the May 22, 2008 public hearing testimony was received concerning Minnkota's request that the Commission act to supersede a provision in a conditional use permit granted by Reed Township in Cass County, North Dakota. Minnkota's proposed route is to be double circuited with the adjacent 345 kV Minnkota line for the Sheyenne River crossing along the eastern side of section 7 in Reed Township. Reed Township's conditional use permit includes a condition that the proposed transmission line be double circuited an additional  $\frac{3}{4}$  mile across the remainder of section 7. Minnkota contends that the additional double circuiting would be cost prohibitive and result in less system reliability. Minnkota asks that Reed Township's condition to the conditional use be superseded and preempted, pursuant to N.D.C.C. § 49-22-16(2).

10. Minnkota proposes routing the new 230 kV transmission line 173 feet south of the centerline of the existing Minnkota 345 kV transmission line. Transmission structure placements are proposed to generally mirror existing 345 kV structure placements to the extent practicable to minimize potential visual, avian and structural impacts. The new structures would be approximately the same height or shorter than existing structures and placed at the same spacing and parallel to the existing structures so that the lines would be at approximately the same elevation. Minnkota notes that in a few locations it will be necessary for the proposed structure location to deviate from mirroring the placement of existing 345 kV structures, primarily to minimize impacts on wetlands.

11. The Commission directed that Minnkota prepare a late-filed exhibit exploring double circuiting across Section 7 of Reed Township and also across the adjacent Raymond Township. The resulting Late-Filed Exhibit 1 indicates that double circuiting the 345 kV line would require removal and replacement of the 345 kV structures along the double circuited portion of the route, which for Section 7 alone could cost as much as \$2.9 million

in construction costs plus up to \$24 million for replacement power purchases depending in part on how long the 345 kV line would be out of service for construction.

12. The Commission finds that double circuiting across all of Section 7, as required by the Reed Township conditional use permit, would be cost prohibitive and result in somewhat less system reliability.

13. The Commission finds that the condition to the conditional use permit as granted by the Reed Township Supervisors is unreasonably restrictive as it applies to this project because of reliability concerns and because of a significant increase in costs.

#### Evaluation Criteria

14. 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 certificate of corridor compatibility and route permit. The criteria as set forth in Section 69-06-08-02 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 resources; and alternative routes. In accordance with the Commission's Selection Criteria, a transmission facility may be approved if it is demonstrated that no significant adverse impacts will result from the location, construction 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.

15. Minnkota evaluated a corridor width of 6 miles, except in an area near the city of Amenia, where the corridor width was increased to about 7 miles to accommodate a route change. The Commission finds the increased corridor width is reasonable and should be approved.

16. No exclusion areas have been identified along the proposed route.

17. Avoidance areas along the proposed route include ten occupied residences within 500 feet of the route. Minnkota has obtained written waivers from the owners of these residences.

18. Minnkota conducted a Class I Cultural Resources Inventory (CRI) of North Dakota State Historic Preservation Office (SHPO) files within the corridor and route of the transmission facility. A Class III CRI pedestrian survey of transmission structure locations

and the route has been completed and a survey report was filed with the Commission on May 27, 2008. Transmission facility locations will avoid any cultural resources identified during the survey. The Class III CRI of the transmission route determined that no cultural resources are anticipated to be impacted or indirectly impacted by the project.

19. Minnkota submitted substantial evidence to demonstrate that the proposed transmission facility would not have significant impact on the Selection Criteria set forth in Section 69-06-08-01(3) of the North Dakota Administrative Code. The proposed route would result in the loss of a minimal amount of woodlands. Those woodlands primarily consist of field or farmstead windbreaks and river crossings. Minnkota conducted a wetland delineation along the proposed route. There are numerous wetlands within the proposed corridor that are crossed by the proposed route. Two wetlands in Cass County are impacted by structure placement along the proposed route. One of those wetlands is located in section 20 of Reed Township and is a Water of the United States subject to the jurisdiction of the U.S. Army Corps of Engineers ("Corps of Engineers") under Section 404 of the Clean Water Act. The Corps of Engineers has issued Nationwide Permit 12 for the construction of utility line facilities in Waters of the United States and Minnkota will comply with Nationwide Permit 12 conditions. The other impacted wetland is an isolated wetland located in section 17 of Rich Township and is not subject to Corps of Engineers jurisdiction.

20. Minnkota submitted substantial evidence to demonstrate its commitment to maximize the benefits of the proposed transmission facility as far as is possible to meet the Policy Criteria set forth in Section 69-06-08-01(4), N.D. Admin. Code.

21. Temporary impacts to vegetation will occur in the right of way area and around each structure location during construction of the Generation Outlet Line. Permanent impact to vegetation will occur at each structure location.

22. Raptors, waterfowl and other bird species may be affected by the construction and placement of the proposed 230 kV transmission line. Minnkota will use bird-safe designs to help avoid potential impacts to avian species along the proposed route. The mirroring of H-frame structures placed in parallel with existing 345 kV structures will make the conductors of the existing and new lines easier for birds to see and avoid. The proposed H-frame design will also use suspension insulation with a clearance of approximately 84 inches in order to eliminate the potential for electrocution of raptors.

From the foregoing Findings of Fact, the Commission now makes its:

### **Conclusions of Law**

1. The Commission has jurisdiction over this proceeding under Chapter 49-22 of the North Dakota Century Code.

2. The 230 kV transmission line proposed by Minnkota is a transmission facility as defined in Section 49-22-03(12), of the North Dakota Century Code.
3. 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.
4. The Application submitted by Minnkota meets the corridor and route evaluation criteria required by Chapter 49-22 of the North Dakota Century Code.
5. 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.
6. The proposed transmission facility is compatible with the environmental preservation and the efficient use of resources.
7. 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.
8. The proposed transmission facility corridor and route are of such length, design, location and purpose that they will produce minimal adverse affects.
9. 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.
10. The condition to the Conditional Use Permit required by Reed Township, Cass County is unreasonably restrictive as it applies to this case.
11. Additional time for routing criteria assessment and an opportunity for interested persons to be heard are needed before designating a route in the area of Minnkota's alternate reroute proposed in the northeastern portion of Rush River Township.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes its:

## Order

The Commission orders:

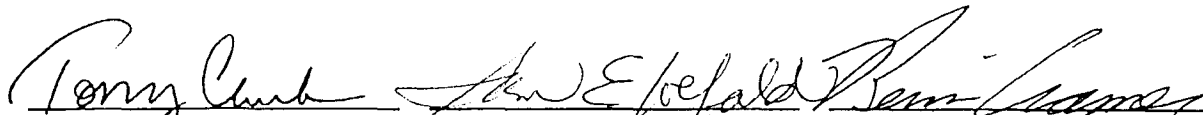
1. Minnkota's application for a waiver of procedures and time schedules is granted.
2. Certificate of Compatibility for a Transmission Facility Corridor No. 105 is issued to Minnkota, designating a corridor for its proposed transmission facility as described in Minnkota's amended application.
3. Route Permit for Construction of a Transmission Facility No. 115 is issued to Minnkota granting authority to construct the proposed transmission line and Pillsbury substation, except that no route is designated within the area of the alternate reroute proposed in the northeastern portion of Rush River Township.
4. Reed Township's condition to its Conditional Use Permit requiring double circuiting across all of section 7 is superseded.
5. Minnkota shall conduct a preconstruction conference prior to commencement of any construction, which must include a Minnkota representative, its construction supervisor, and a representative of Commission staff to ensure that Minnkota fully understands the conditions set forth in this Order.
6. Minnkota shall comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed transmission facility. Prior to commencing construction of any phase of the proposed project, Minnkota shall obtain all other necessary approvals and permits for construction of such phase and provide copies to the Commission prior to the construction of each such phase.
7. Minnkota shall inform the Commission of its intent to start construction on the transmission facility prior to the commencement of construction, and, once construction has started, Minnkota shall keep the Commission updated of construction activities on a weekly basis.
8. Minnkota shall construct and operate the transmission facility in the manner described in its Application and at the hearing, and in accordance with all applicable safety requirements.
9. Minnkota shall promptly report to the Commission the presence in the permit area of any critical habitat of threatened or endangered species, or of bald or golden eagles that Minnkota becomes aware of and that were not previously reported to the Commission.

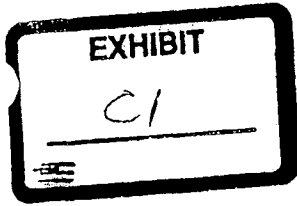
10. If any cultural resource, paleontological, archeological, historical, or grave site is discovered during construction, earth disturbing activities in the immediate vicinity of the discovery must be halted. The resource must be marked, preserved and protected from further disturbances until a professional examination can be made and consultation with the State Historical Preservation Office. A report of such examination must be filed with the Commission, and clearance to proceed must be given by the Commission.
11. All pre-existing roads and lanes used during construction must be restored to a condition that will accommodate their previous use and areas used as temporary roads during construction must be restored to their original condition.
12. Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken.
13. Reclamation along the right-of-way shall be continuous and coordinated with construction.
14. Reclamation, fertilization and reseeding is to be done by Minnkota according to the Natural Resource Conservation Service or USFWS recommendations for CRP, native prairie and other non-cropped lands unless otherwise specified by the landowner and approved by the Commission.
15. Minnkota shall comply with the Commission's Tree and Shrub Mitigation Specifications attached to this Order except that the width of clear cuts through windbreaks, shelterbelts and all other wooded areas shall be limited to 125 feet rather than 50 feet.
16. Minnkota's obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the Transmission facilities.
17. Minnkota shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the path of the transmission line.
18. Minnkota shall repair or replace all fences and gates removed or damaged during all phases construction and operation of the proposed transmission facilities.
19. Minnkota shall obtain approval from the Commission or from Commission staff prior to any changes in structure locations.
20. Minnkota shall provide the Commission with a copy of the facility alignment plan and profile drawings showing the facility as built (hardcopy and electronic versions), and an

electronic version of the as-built facility that can be imported into ESRI GIS mapping software, within 3 months of the completion of the construction.

21. The authorizations granted by the corridor certificate and route permit are subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.

**PUBLIC SERVICE COMMISSION**

  
Tony Clark                      Susan E. Wefald                      Kevin Cramer  
Commissioner                      President                      Commissioner

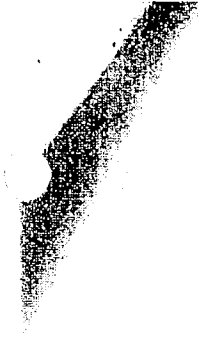


Case No. PU-08-48

### Tree and Shrub Mitigation Specifications

#### Inventory

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (e.g., *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), shall be inventoried before cutting. The inventory shall record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, shall be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1 inch diameter at breast height ("dbh") or greater shall be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way shall be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs shall be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil shall be preserved and replaced after construction. Shrubs shall be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared shall be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by sampling method that will properly represent the woody



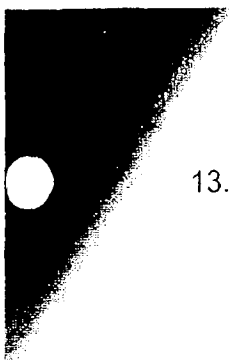
vegetation population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (NDPSC) and approved prior to the start of construction shall define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots shall be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

#### **Clearing for Construction**

7. Trees and shrubs shall be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The width of clear cuts through windbreaks, shelterbelts and all other wooded areas shall be limited to 50 feet or less unless otherwise approved by the NDPSC.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced shall be noted on the inventory.

#### **Replacement**

10. Prior to tree/shrub replacement, documentation identifying the number and variety of trees removed as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings shall be filed with the NSPSC for approval.
11. Tree replacement shall be on a 2 to 1 basis with 2-year-old saplings. Shrub replacement shall be on a 2 to 1 basis with stem cuttings.
12. Trees and shrubs shall be replaced by the same species or similar species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

- 
13. Landowners shall be given the option of having replacement trees/shrubs planted off the right-of-way on the landowner's property or waiving that requirement in writing and allowing those replacement trees/shrubs to be planted at alternative locations.
  14. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings shall be filed with the NDPSC.
  15. Tree/shrub replacements shall be inspected once a year for three years, on about the anniversary of the plantings, and, on or shortly before October 1 of each year, a report shall be submitted to the NDPSC documenting the condition of replacement planting and any woodlands work completed. If after three years from the anniversary of the plantings the survival rate is less than 75%, the NDPSC may order additional planting(s).

**CONCURRING OPINION**  
**Commissioner Kevin Cramer**

June 6, 2008

**Minnkota Power Coop., Inc.**  
**Pillsbury-Fargo 230 kV Transmission Line**  
**Complaint**

Case No. PU-08-48

Electricity generated by renewable fuels is in high demand in our region and nation and North Dakota has what the market wants. The challenge is getting our product to the market and this transmission line is one of many new and proposed vehicles to do just that.

Unfortunately we all find ourselves forced into making major decisions within a very short time frame. The Federal Production Tax Credit (PTC) which creates the incentive for wind development in North Dakota and across the country is scheduled to expire this year. In order to receive the tax credit wind farms must be commissioned this year. That is, they must be generating and transmitting electricity by December 31, 2008 or lose the tax credit.

Congress has failed to renew the PTC which would give companies as well as vendors and suppliers the time to adequately plan for major investment and construction. This government imposed deadline also distorts natural markets, artificially tightening the supply-demand curve resulting in inflated construction costs which must be passed on to consumers.

What America really needs is a long term energy policy that sends signals that will inspire investment. Instead our congress passes short term legislation enhancing uncertainty in the future of energy development in our country.

Today the North Dakota Public Service Commission is voting to certify a corridor and permit a nearly 60 mile route for a 230kv transmission line from Pillsbury to a substation near Fargo. This line is designed to carry electricity generated in Barnes, Griggs and Steele Counties resulting in hundreds of millions of dollars of investment and thousands of dollars of local and state tax revenues.

Wind farms and transmission lines don't get built in a weekend so the clock is ticking while congress does nothing, creating the short timeline we find ourselves in today. In order for the projects to get built the planning and review processes must be shortened. We have done all we can to expedite the regulatory process while not compromising the integrity of our charge to protect the environment, cultural resources and people. We are also charged with continuing service reliability and integrity while ensuring energy needs are met in an orderly and timely fashion.

While I will vote for this order, two issues cause me some apprehension. One is the nagging question; is the line big enough? The applicant provided a thorough analysis comparing a 230kv line and a 345kv line. It is compelling testimony as the cost of a 345kv upgrade is high. Another developer, Peak Wind, testified that they'd be willing to pay the additional costs, but the short time frame seems to make it impossible to change the plans now and still meet congress' deadline for the PTC.

Furthermore, although the argument presented by Peak is compelling, I don't see where the PSC has the authority to order a 345kv capacity to an application for 230kv, especially if such a condition would likely kill the project altogether.

The other issue causing me to pause is the fact that this order supersedes a condition placed on the conditional use permit by a Township Board. Reed Township has conditioned their permit requiring the proposed 230kv line be double circuited with an existing 345kv line through one section. The existing line runs parallel to the proposed route for eight miles. At the request of a single landowner in Reed Township, the zoning board has placed the double circuit condition on the use permit. No other zoning board along the eight miles of parallel routes has imposed such a condition.

The PSC has the authority to issue a permit which supersedes and preempts local zoning conditions upon a finding that such conditions are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers.

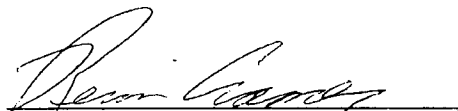
While it would appear this is a reasonable and easy condition to meet, there are complications.

I disagree with the finding in the order that double circuiting in Reed Township would result in "somewhat less reliability." The fact the lines are double circuited to cross the Sheyenne River already exposes the two lines to the consequences of a single catastrophic event. Expanding the double circuited portion by another mile would have a negligible impact on reliability. Clearly the technology is readily available to meet the township's demands.

The only issue that meets the legal standard for superseding local authority is cost. Double circuiting a mile of line requires the existing line be taken out of service during construction. This is a major outage that has not been planned for. It would require a purchase to replace the power unavailable during the outage at an estimated cost of \$24 million to be paid by consumers. The purchase cost of power during the outage combined with the additional costs of equipment and materials for the construction makes the township board's condition unreasonably restrictive in my view.

I believe the big challenges to sighting this and future transmission infrastructure would be met with little to no public opposition if time allowed for more and better planning.

If North Dakota is to realize the potential of being the "Saudi Arabia of Wind" we must facilitate the building of the infrastructure to do it. State officials are doing our part. The companies are doing their part. It would be nice to have a little help from the Washington politicians who seem more enamored with sticking it to baseball players on steroids than finding solutions to America's energy needs.



Kevin Cramer, Commissioner

**CONCURRING OPINION, DISSENT IN PART**  
**Commissioner Susan Wefald**

**June 6, 2008**

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

**Case No. PU-08-48**

I concur with all of the Commission's June 6 order except for paragraphs 12 and 13 in the Findings of Fact, paragraph 10 of the Conclusions of Law, and paragraph 4 of the Order. All of these sections relate to the Reed Township Conditional Use Permit. My fellow commissioners voted to supersede the Reed Township Conditional Use Permit. I disagree. Superseding of local land use planning authority should be reserved only for extraordinary circumstances.

Also, I recommend that the North Dakota Transmission Authority work with the North Dakota Public Service Commission on identifying renewable energy zones in our state, so that more effective and efficient transmission planning for energy development can occur in the coming years. It is unfortunate that the Pillsbury to Fargo 230 kV transmission line will only meet immediate needs, and will not meet the transmission needs that have been identified in the Valley City area even 5 years in the future.

Minnkota first brought the issue of the Reed Township Conditional Use Permit to the Commission's attention at the May 22, 2008 hearing in Casselton. The Commission had no information on this matter prior to the hearing.

At the hearing Minnkota provided testimony on the facts of this matter, which are contained in this order in Findings of Fact, paragraphs 9 and 10.

At the hearing, Minnkota provided testimony, but no specific figures about costs. So the Commission asked that a late filed exhibit be filed stating incremental costs for double circuiting the line in Reed Township, which is adjacent to the double circuited portion of the line crossing the Sheyenne River.

Late filed Exhibit 1 indicated that Reed Township's requirement for double circuiting across section 7 could cost up to \$2.9 million in construction costs, plus up to \$24 million for replacement power purchases depending in part on how long the 345 kV line would be out of service for construction. The Commission had no opportunity to cross-examine Minnkota about the \$24 million figure. Minnkota clarified in a supplement to Late Filed Exhibit 1, that \$24 million for replacement power represents a full four weeks of downtime with full loss of Coyote generating station availability and payment of peak market energy prices for replacement

energy throughout the entire four weeks. It appears that Minnkota's cost estimates are at least worse case and that actual costs of double circuiting are likely to be significantly less.

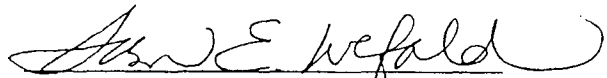
Minnkota raised concerns that double circuiting across the entire section 7 would degrade system reliability largely because of the increased probability that a catastrophic failure event such as weather, etc. could take out both lines if they were on the same structures. This is highly unlikely. The effect the double circuiting would have on reliability would likely be minimal. The proposed 230 kV line would be a radial line with the only purpose being to interconnect an intermittent wind generating resource to the power grid. The loss of that interconnection would have the same effect on system reliability as the wind not blowing.

Also, Minnkota's proposed parallel route across section 7 would significantly increase the amount of land use for transmission right of way in Reed Township. Reed Township made a reasonable condition when it required double circuiting of the lines in its township.

Although I am pleased that Minnkota is building this 230kV transmission line in North Dakota, this project needed more planning time and public input. This line will carry energy from two planned wind developments in the Valley City area; however, there are three planned wind developments in the Valley City area, and we already know that in a few years more transmission capacity may be needed. Developers need to deliver power to market by December 31, 2008 in order to be assured of receiving the Federal Production Tax Credit. Minnkota also announced in the past month that they plan to build a new 345 kV line from Center, North Dakota to the eastern part of the state.

There are ways to accommodate more electric capacity on transmission systems. These include double circuiting (placing two lines on an existing transmission system); building a new transmission system which includes not only the presently needed line, but room for an additional line in the future on the same system; using new technology to create more capacity on existing transmission lines; etc. At the hearing Minnkota testified that they already had ordered materials needed for the proposed 230 kV line, and had timetables in place for its construction. Therefore, although these options were brought up at the hearing, it was really too late in the process for significant changes to be made in the project.

Texas has a system in place where it designates renewable energy zones, and then plans transmission enhancements to these zones. This is working well for Texas - they are the state with the most wind development in the country. In North Dakota the Transmission Authority could work with the Commission on identifying several wind energy zones in North Dakota, and start planning now to make thorough, thoughtful transmission planning a reality in our state as well.

  
Susan E. Wefald, Commissioner

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

**Case No. PU-08-48**

**NOTICE OF SUPPLEMENTAL HEARING**

**June 6, 2008**

On March 18, 2008 Minnkota Power Cooperative, Inc. (Minnkota) and Otter Tail Corporation d/b/a Otter Tail Power Company (Otter Tail) filed an application for waiver of procedures and time schedules, and a consolidated application for a certificate of corridor compatibility and a route permit authorizing construction of a 230,000 volt (230 kV) electric transmission line and associated facilities. On April 17, 2008 the application was amended with a revised corridor and route proposal and with notification that Otter Tail was withdrawing as an applicant.

On April 21, 2008, the Commission issued its Notice of Filing and Notice of Hearing scheduling a public hearing on the application for May 22, 2008. The hearing was held as scheduled.

At the public hearing the Commission requested that Minnkota study an alternative route for a portion of the line located in Rush River Township in Cass County, North Dakota. On May 28, 2008 Minnkota filed Late-Filed Exhibit 2 in which Minnkota proposes an alternative route within the corridor in the northeast portion of Rush River Township.

On June 6, 2008, the Commission issued its Findings of Fact, Conclusions of Law and Order approving the application and issuing Certificate of Compatibility for a Transmission Corridor No. 105, and a Route Permit for Construction of a Transmission Facility No. 115 approving the route for the Transmission facility except for that portion of the line to be located in Rush River Township within Sections 2, 3, 4, 9, 10, 13, 14, 15 and 16 Township 141 North, Range 51 West.

**A public hearing** limited to issues relating to the proposed alternative route located in Rush River Township within or near Sections 3, 4, 9, 10, 13, 14, 15 and 16, Township 141 North, Range 51 West is scheduled to begin **July 8, 2008 at 1:30 p.m. CDT, in the Commission Hearing Room, 12<sup>th</sup> Floor, State Capitol, Bismarck, North Dakota.**

The issues to be considered in this proceeding are:

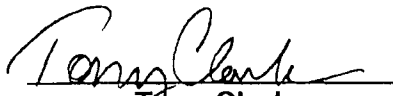
1. Will the location, construction, and operation of the proposed electric transmission line produce minimal adverse effects on

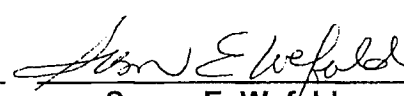
the environment, natural resources, and upon the welfare of the citizens of North Dakota?

2. Is the proposed electric transmission line compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed electric transmission line 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?

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Ilona A. Jeffcoat-Sacco, Executive Secretary at least 24 hours in advance.

**PUBLIC SERVICE COMMISSION**

  
Tony Clark  
Commissioner

  
Susan E. Wefald  
President

  
Kevin Cramer  
Commissioner

RECEIVED

JUN 10 2008

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION

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

Case No. PU-08-48

**AFFIDAVIT OF SERVICE BY CERTIFIED MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Janet Marquart** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **10<sup>th</sup> day of June, 2008**, she deposited in the United States Mail, Bismarck, North Dakota, **four** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

**Notice of Supplemental Hearing**

The envelope was addressed as follows:

Jerome Kettleison, Attorney  
Pearce & Durick  
314 East Thayer Ave  
Bismarck, ND 58501  
**Cert. No. 7008 0150 0003 3556 2308**

Gerad Paul, Attorney  
Minnkota Power Cooperative, Inc.  
PO Box 13200  
Grand Forks, ND 58208-3200  
**Cert. No. 7008 0150 0003 3556 2315**

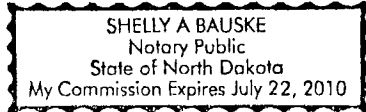
Wally Lang  
Minnkota Power Cooperative, Inc.  
PO Box 13200  
Grand Forks, ND 58208-3200  
**Cert. No. 7008 0150 0003 3556 2322**

Thomas D. Kelsch  
Kelsch Kelsch Ruff & Kranda  
PO Box 1266  
Mandan, ND 58554-1266  
**Cert. No. 7008 0150 0003 3556 2339**

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Janet Marquart

Subscribed and sworn to before me  
this 10<sup>th</sup> day of June, 2008.



SEAL

Shelly A Bauske  
Notary Public

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 9<sup>th</sup> 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.

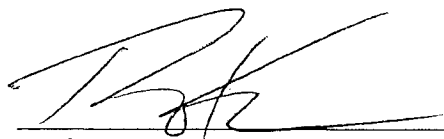
K. Minnkota knew that RES Americas and PEAK Wind were developing a wind generation project. RES Americas and PEAK Wind had asked to interconnect to Minnkota's transmission system and to be a part of the proposed transmission line. Minnkota could have designed the line to have included enough capacity 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

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,

Appellants,

vs.

Public Service Commission and Minnkota Power Cooperative, Inc.,

Appellees.

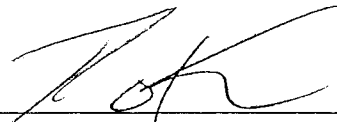
Civil No. \_\_\_\_\_

Agency Case No. PU-08-48

UNDERTAKING OF COSTS ON APPEAL TO DISTRICT COURT

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

SOUTHWEST JUDICIAL DISTRICT

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

vs. )

**AFFIDAVIT OF SERVICE**

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

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 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

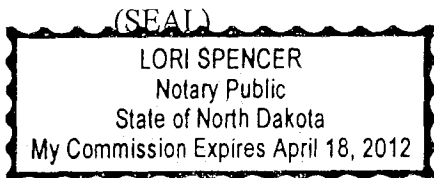
JEROME C KETTLESON  
314 E THAYER AVE  
BISMARCK ND 58502

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



7/17/08

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

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

Case No. PU-08-48

SUPPLEMENTAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

July 14, 2008

Appearances

Commissioners Susan E. Wefald, Kevin Cramer, and Tony Clark.

Jerome C. Kettleson, Attorney at Law, Pearce & Durick 314 East Thayer Avenue, Bismarck, North Dakota 58501, on behalf of the Applicant, Minnkota Power Cooperative.

Gerad Paul, Staff Attorney, Minnkota Power Cooperative, Inc., 1822 Mill Road, P.O. Box 13200, Grand Forks, North Dakota 58501 on behalf of Applicant, Minnkota Power Cooperative.

Annette Bendish, Counsel, Public Service Commission, State Capitol, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Allen C. Hoberg, Administrative Law Judge and Director, Office of Administrative Hearings, 1701 N. 9 Street, Bismarck, ND 58501-1882, as Procedural Hearing Officer.

Preliminary Statement

On May 22, 2008, the Public Service Commission held a public hearing in Casselton, North Dakota to consider Minnkota Power Cooperative, Inc.'s (Minnkota) application for corridor certificate and route permit authorizing construction of a proposed Pillsbury-Fargo 230 kV electric transmission line and associated facilities.

During the May 22, 2008 hearing, the Commission requested that Minnkota file a Late-Filed Exhibit 2 exploring alternative reroutes in the northeast portion of Rush River Township because of landowner concerns regarding potential adverse impacts of electromagnetic fields or stray voltage to cattle in Section 2. On May 28, 2008, Minnkota submitted Late-Filed Exhibit 2 with a recommendation that the Commission approve an alternate reroute in the northeast portion of Rush River Township described as:

Starting at the northeastern corner of the Northeast Quarter of Section 4 and moving south along the eastern section line of Section 4 and Section

9, then crossing over from the southeast corner of the Southeast Quarter of Section 9 into the Northwest Quarter of Section 15 continuing in a southerly fashion down the western section line ½ mile to the center of Section 15. Thence in an easterly direction along the north side of the east/west center line of the Section and continuing through Section 14 until it crosses to the western edge of Section 13.

On May 30, 2008, Minnkota filed Supplement to Late-Filed Exhibit 2. Minnkota recommended the alternate reroute as presented in Late-Filed Exhibit 2 contingent upon completing cultural, biological, and wetlands surveys.

On June 6, 2008, the Commission issued its Findings of Fact, Conclusions of Law and Order issuing Certificate of Corridor Compatibility No. 105 and Route Permit No. 115 designating a route for Minnkota's proposed transmission line except in the area of the alternate reroute proposed in the northeastern portion of Rush River Township, Cass County, North Dakota. The Commission found that additional time for environmental surveys and an opportunity for interested persons to be heard were needed before designating a transmission route within that area.

Also on June 6, 2008, the Commission issued a Notice of Supplemental Hearing scheduling a public hearing limited to issues relating to the proposed alternative route located in Rush River Township to begin on July 8, 2008 at 1:30 p.m., in the Commission Hearing Room, 12<sup>th</sup> Floor, State Capitol, Bismarck, North Dakota. The notice identified the following issues to be considered:

1. 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?
2. Is the proposed electric transmission facility compatible with the environmental preservation and the efficient use of resources?
3. 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?

On July 8, 2008, the Commission held a public hearing on the reroute in the northeast corner of Rush River Township, Cass County, North Dakota as scheduled. Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following:

## Findings of Fact

1. 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 route permit. The criteria as set forth in Section 69-06-08-02 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 resources; and alternative routes. In accordance with the Commission's Selection Criteria, a transmission facility may be approved if it is demonstrated that no significant adverse impacts will result from the location, construction, 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.
2. No exclusion areas have been identified along the proposed alternative reroute.
3. There are no avoidance areas along the proposed alternative reroute.
4. Minnkota conducted a Class I Cultural Resources Inventory (CRI) of North Dakota State Historic Preservation Office files along the alternative reroute in the area of the northeast portion Rush River Township. A Class III CRI pedestrian survey of transmission structure locations and the route has been completed and a survey report was filed with the Commission on July 7, 2008. Transmission facility locations will avoid any cultural resources identified during the survey. The Class III CRI of the transmission route determined that no cultural resources are anticipated to be impacted or indirectly impacted by the project.
5. Minnkota submitted substantial evidence to demonstrate that the proposed transmission facility would not have significant impact on the Selection Criteria set forth in Section 69-06-08-01 (3) of the North Dakota Administrative Code. The proposed route would result in the loss of a minimal amount of woodlands. Those woodlands primarily consist of field or farmstead windbreaks. Minnkota conducted a wetland delineation along the proposed route. There are no impacted wetland identified along the proposed alternate reroute.
6. Minnkota submitted substantial evidence to demonstrate its commitment to maximize the benefits of the proposed transmission facility as far as is possible to meet the Policy Criteria set forth in North Dakota Administrative Code section 69-06-08-01(4).

7. Edward and Jeanne Olson, Argusville, North Dakota, presented public testimony at both the May 22, 2008 public hearing and the July 8, 2008 supplemental public hearing. At the May 22, 2008 hearing, Mr. Olson requested that the Commission ". . . try really hard to figure out a way to run that power line so it's at least at the very minimum one mile and more than likely two miles from our farm." (Transcript of 5/22/08 Public Hearing, Casselton, North Dakota, pg. 207, lines 15-18). As a result, Minnkota developed and proposed the alternate reroute, which was requested during the May 22 hearing and was the subject of the July 8 hearing. Mr. Olson requested at the July 8 hearing that the reroute be rerouted again to a distance of two to five miles from his property due to concerns about potential adverse effects of electromagnetic fields or stray voltages to the Olson's cattle.

8. The alternative reroute being considered in this Supplemental Hearing for the transmission line in the area of the Olson's farm is at least one mile from their property and at least 1.5 miles from their farmstead. Given the time and expense of developing this alternative reroute to accommodate the Olson's original request, the Commission finds that the Olson's July 8 request for additional rerouting is not reasonable.

From the foregoing Findings of Fact, the Commission makes its:

#### **Conclusions of Law**

1. The Commission has jurisdiction over this supplemental proceeding under Chapter 49-22 of the North Dakota Century Code.
2. The 230 kV transmission line to be constructed in Rush River Township, Cass County, North Dakota as proposed by Minnkota, is a transmission facility as defined in Section 49-22-03(12), of the North Dakota Century Code.
3. The reroute in Rush River Township, Cass County, North Dakota, 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.
4. The Amended Application and the proposed reroute in Rush River Township, Cass County, North Dakota, to include the Late-Filed Exhibit 2, meet the route evaluation criteria required by Chapter 49-22 of the North Dakota Century Code.
5. The location, construction, and operation of the proposed reroute of the transmission facility will produce only minimal adverse effects to the environment and upon the welfare of the citizens of North Dakota.
6. The reroute of the proposed transmission facility in Rush River Township, Cass County, North Dakota is compatible with the environmental preservation and the efficient use of resources.
7. The proposed transmission facility reroute in Rush River Township, Cass County,

North Dakota 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.

8. The reroute in Rush River Township, Cass County, North Dakota, is of such a length design, location, and purpose that it will produce minimal adverse affects in the reroute area in Rush River Township, Cass County, North Dakota.

9. Routing criteria assessment has been completed and an opportunity has been given to interested persons to be heard before designating the route in the area of Minnkota's alternate reroute proposed in the northeastern portion of Rush River Township.

From the foregoing Supplemental Findings of Fact and Conclusions of Law, the Commission makes its:

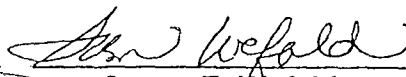
### Order

The Commission orders:

1. First Amended Route Permit for Construction of a Transmission Facility No. 115 is issued to Minnkota granting authority to construct the proposed alternate reroute of the transmission line in the northeastern portion of Rush River Township.
2. This Order is supplemental to the Commission's June 6, 2008 Findings of Fact, Conclusions of Law and Order.

### PUBLIC SERVICE COMMISSION

  
Tony Clark  
Commissioner

  
Susan E. Wefald  
President

  
Kevin Cramer  
Commissioner



STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

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

Case No. PU-08-48

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Janet Marquart** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 17<sup>th</sup> day of **July, 2008**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing original of:

FIRST AMENDED ROUTE PERMIT NO. 115

and a photocopy of:

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The envelope was addressed as follows:

Jerome Kettleon, Attorney  
Pearce & Durick  
314 East Thayer Ave  
Bismarck, ND 58501  
**Cert. No. 7008 0150 0003 3556 3718**

**Janet Marquart** further deposes and says that on the 17<sup>th</sup> day of **July, 2008**, she deposited in the United States Mail, Bismarck, North Dakota, **three** envelopes by certified mail, with postage fully prepaid, securely sealed, each containing a photocopy of each of the same.

The envelopes were addressed as follows:

Gerad Paul, Attorney  
Minnkota Power Cooperative, Inc.  
PO Box 13200  
Grand Forks, ND 58208-3200  
Cert. No. 7008 0150 0003 3556 4951

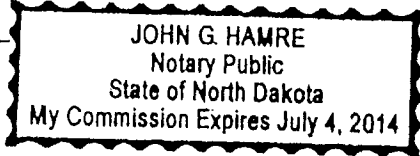
Wally Lang  
Minnkota Power Cooperative, Inc.  
PO Box 13200  
Grand Forks, ND 58208-3200  
Cert. No. 7008 0150 0003 3556 5231

Thomas D. Kelsch  
Kelsch Kelsch Ruff & Kranda  
PO Box 1266  
Mandan, ND 58554-1266  
Cert. No. 7008 0150 0003 3556 4661

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me  
this 17<sup>th</sup> day of July, 2008

SEAL



*Janet Marquat*  
\_\_\_\_\_  
*John G. Hamre*  
\_\_\_\_\_  
Notary Public

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. 08-08-1709

Appellants,

AFFIDAVIT OF SERVICE

Vs.

Public Service Commission and Minnkota Power Cooperative, Inc.,

Appellees.

STATE OF NORTH DAKOTA )  
 ) ss.  
COUNTY OF BURLEIGH )

Evelyn Froebe, being first duly sworn, on oath, deposes and says: That she is over the age of eighteen and not a party to the above-entitled action.

That on the 15<sup>th</sup> day of October, 2008, this affiant served a true and correct copy of the following documents in the above-entitled action:

- (1) Notice of Motion to Dismiss;
- (2) Motion to Dismiss Appeal; and
- (3) Brief in Support of Motion to Dismiss Appeal

That a copy of the above documents was securely enclosed in an envelope addressed as follows:

Thomas D. Kelsch  
Kelsch, Kelsch, Ruff & Kranda  
103 Collins Avenue  
P.O. Box 1266  
Mandan, ND 58554-7266

**HAND-DELIVERED**

Wayne Stenehjem  
Attorney General  
600 E. Boulevard Avenue, Dept. 125  
Bismarck, ND 58505

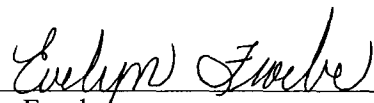
**HAND-DELIVERED**

Darrell Nitschke  
Executive Director  
Public Service Commission  
State Capitol Building  
600 E. Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480

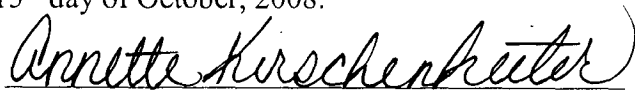
**HAND-DELIVERED**

To the best of affiant's knowledge, information and belief, such address as given above was the actual address of the party intended to be so served.

That the above document was duly served in accordance with the provisions of the North Dakota Rules of Civil Procedure.

  
\_\_\_\_\_  
Evelyn Froebe

Subscribed and sworn to before me this 15<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
Notary Public

