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JEROME C. KETTLESON
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December 18, 2008

RECEIVED

DEC 19 2008

PUBLIC SERVICE COMMISSION

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:

Please find enclosed Notice of Entry of Judgment, together with 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

135 PU-08-48 Filed: 12/18/2008 Pages: 8
APPEAL - Notice of Entry of Judgment

Minnkota Power Coop., Inc.

Pearce&Durick, Jerome kettleison

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 ENTRY OF JUDGMENT
OF DISMISSAL

vs.

Public Service Commission and
Minnkota Power Cooperative, Inc.,

Appellees.

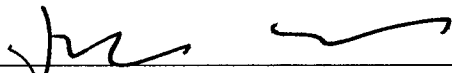
TO: APPELLANTS AND THEIR ATTORNEY OF RECORD.

PLEASE TAKE NOTICE that on December 16, 2008, judgment of dismissal was entered and filed in the above-entitled case. A copy of the Order Granting Appellees' Motion to Dismiss and a copy of the Judgment of Dismissal are attached hereto and served herewith.

Dated this 18 day of December, 2008.

PEARCE & DURICK

By:



JEROME C. KETTLESON, ND # 03095
Individually and as a Member of the Firm
314 East Thayer Avenue
P. O. Box 400
Bismarck, ND 58502-0400
(701) 223-2890

Attorneys for Minnkota Power Cooperative, Inc.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

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

Appellants,)

v)

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

Appellees.)
.....)

ORDER GRANTING APPELLEE'S
MOTION TO DISMISS
Case No. 08-C-1709

THE APPELLEE'S MOTION TO DISMISS IS HEREBY GRANTED.

The Appellant's Notice of Appeal and Specifications of Error refers to only the Order issued by the Public Service Commission dated June 9, 2008, which Order followed a public hearing held in Casselton, North Dakota on May 22, 2008. The Order of June 9, 2008 authorized the issuance of a Certificate of Corridor Compatibility and a Route Permit allowing construction and operation of a transmission line. However, the Public Service Commission (PSC) excepted from the route designation a portion of the proposed route located in Rush River Township. The PSC noticed a supplemental hearing on the issue of the Rush River Township portion of the route in the June 9, 2008 Order. A supplemental hearing was later held, and the PSC issued an order disposing of that issue. An appeal from an administrative agency decision is governed by N.D.C.C. §28-32-42. Said section includes a requirement that only "final orders" are appealable. N.D.C.C. §28-32-42(3)(a). A "final order" is one that "terminates an issue, leaving the agency with nothing more to decide." See, Henry v. Securities Comm'r for State of N.D., 2003 N.D. 62, 659 N.W.2d 869). Here, there was clearly

something left to decide, the Rush River Township portion of the proposed route. The PSC noticed a supplemental hearing, which was in fact held. Even though Minnkota apparently began construction of the transmission line before the resolution of the Rush River Township issue, the fact is that the transmission line would be incomplete without resolution of that issue. The Appellants appealed from an Order that was not a "final order" therefore this Court lacks jurisdiction to hear the appeal.

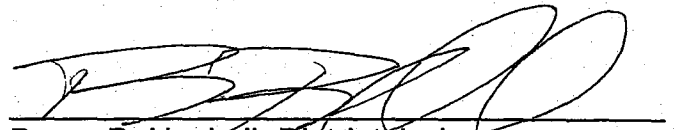
N.D.C.C. 28-32-42(3)(a) governs the venue of appeals from administrative agency decisions. The statute states, in relevant part, that "The appeal of an order may be taken to the district court designated by law, and if none is designated, then to the district court of the county in which the hearing or part thereof was held." The record reveals that a public hearing was held May 22, 2008 in Casselton, North Dakota at which evidence was taken and exhibits received. The only other proceedings in the record at which public input was included were two "public information meetings" held by Minnkota on February 25, 2008 and February 28, 2008 in Page and Mapleton, both in Cass County. The Appellants cite a number of other proceedings connected to the case that occurred in Burleigh County and argue that these proceedings were "part" of a hearing. The Appellants cite the North Dakota Supreme Court's decision in Aggie Investments GP v. Public Service Comm'n of North Dakota, 451 N.W.2d 141 (N.D. 1990), which decision stands for the proposition that a hearing is not necessarily a formal proceeding involving sworn witnesses and exhibits. However, the North Dakota Supreme Court in Aggie Investments suggested that public input was a key factor in determining whether a proceeding is a "hearing." Here, each of the proceedings cited by the Appellants (other than those mentioned above) were procedural matters that did not include public input, nor

an opportunity for public input. While the proceedings were public in the sense that the public was not excluded, there was no public input, therefore there was no hearing nor part of a hearing conducted in Burleigh County.

The proper venue for this appeal is Cass County.

Dated at Bismarck, North Dakota, this 11th day of December, 2008.

BY THE COURT:



Bruce B. Haskell, District Judge
South Central Judicial District

Thomas D. Kelsch
Annette Bendish
Jerome Kettleson

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,

JUDGMENT OF DISMISSAL

vs.

Public Service Commission and
Minnkota Power Cooperative, Inc.,

Appellees.

The Court having entered its order on the 11th day of December, 2008, providing for dismissal of the above-captioned appeal,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the appellants' appeal to the District Court of the South Central Judicial District, pursuant to N.D.C.C. § 28-32-42 of the Order of the Public Service Commission, dated June 9, 2008 (sic), is hereby dismissed.

Dated this 16th day of December, 2008.

BY THE COURT:



Clerk of Court

DEC 2008
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PEARCE & DURICK

RECEIVED & FILED

DEC 16 2008

Clk of Crt. Burleigh Co.

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 18th day of December, 2008, this affiant served a true and correct copy of the following document in the above-entitled action:

- (1) Notice of Entry of Judgment of Dismissal

That copies of the above document were 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
*Attorney for RES Americas Inc., PEAK Wind
Development LLC and Burchill Farms Incorporated*

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

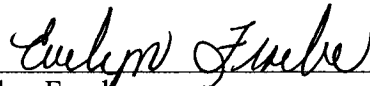
Darrell Nitschke
Executive Director
Public Service Commission
State Capitol Building
600 E. Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

Ilona Jeffcoat Sacco
Public Service Commission
State Capitol
600 E. Boulevard Avenue, Dept. 408
Bismarck, ND 58505

Annette M. Bendish
Public Service Commission
State Capitol
600 E. Boulevard Avenue, Dept. 408
Bismarck, ND 58505

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 documents were duly served in accordance with the provisions of the North Dakota Rules of Civil Procedure.



Evelyn Froebe

Subscribed and sworn to before me this 18th day of December, 2008.



Notary Public

