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## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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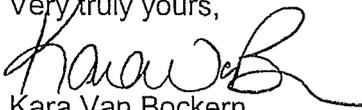
November 20, 2006

Mr. William M. Van Camp, Jr.  
Attorney at Law  
Olinger, Lovald, McCahren & Reimers, P.C.  
P. O. Box 66  
Pierre, SD 57501-0066

Re: In the Matter of Petition for Declaratory Ruling of Tatanka  
Wind Power, L.L.C. Regarding a Proposed Wind Power  
Facility in McPherson County, South Dakota  
Docket EL06-027

Enclosed each of you will find a copy of Staff's Brief Regarding Jurisdiction in the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

  
Kara Van Bockern  
Staff Attorney

Enc.

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION FOR )	STAFF'S BRIEF
DECLARATORY RULING OF TATANKA WIND )	REGARDING JURISDICTION
POWER, L.L.C. REGARDING A PROPOSED )	
WIND POWER FACILITY IN MCPHERSON )	EL06-027
COUNTY, SOUTH DAKOTA )	

COMES NOW Commission Staff ("Staff"), by and through, Kara Van Bockern, Staff Attorney, and hereby responds to Tatanka Wind Power, LLC's ("Tatanka") Petition for Declaratory Ruling.

Petitioner argues that the South Dakota Public Utilities Commission ("Commission") lacks jurisdiction in this matter. As a result, the argument follows that the Commission lacks any permit authority over the proposed wind energy facility as Chapter SDCL 49-41B requires in particular circumstances.

The Legislature found the Commission has significant interest over energy development in South Dakota. The Commission was, therefore, given authority to regulate particular types of energy conversion and transmission facilities. Part of the regulation process involves the issuance of a permit prior to construction of such a "facility." Based on its statutory interpretation, Tatanka does not believe it must obtain a permit from the Commission prior to construction and operation of its facilities. It now seeks a Declaratory Ruling from this Commission to affirm such an interpretation of the applicable statutes.

SUMMARY OF ARGUMENT

SDCL 49-41B-4 requires all utility companies first obtain a permit issued by the Public Utilities Commission before they may begin construction of a facility in South Dakota on or after July 1, 1979. The definition of "facility" includes among other things, both transmission facilities and wind energy facilities. Either the definition of a "transmission facility" or "wind energy facility" arguably could apply in this situation and could give the Commission regulatory authority over the proposed wind facility.

## TRANSMISSION FACILITY

An electric transmission facility is further defined by SDCL 49-41B-2.1(1) and (2). The statute defines a transmission facility as either (1) an electric transmission line and associated facilities with a design of two hundred fifty kilovolts or more or (2) an electric transmission line and associated facilities with a design of one hundred fifteen to two hundred fifty kilovolts, if more than one mile in length if the transmission line does not follow section lines, property lines, roads, highways or railroads. The transmission line in the proposed Tatanka project is a 230 kV line. Subpart one of the statute above is therefore eliminated.

The Amendment to Petition filed on November 8, 2006, indicates a transmission line of 230 kV will run from the South Dakota transmission facility into North Dakota. The line will extend a mere 1200 feet before crossing the North Dakota border. The one mile threshold requirement in subpart two is also clearly not met. The Tatanka transmission facility does not meet the statutory definition and, therefore, does not fall within the Commission's jurisdiction regarding transmission lines. Consequently, a permit is not required to build the transmission facility.

## WIND ENERGY

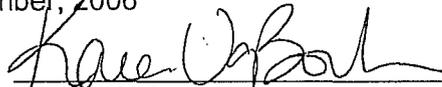
"Wind Energy" is further defined in SDCL 49-41B-2(12). The definition requires the facility (i) consist of a commonly managed integrated system of towers, wind turbine generators with blades, power collection systems, and electric interconnection systems and (ii) that is designed for or capable of generating one hundred megawatts or more of electricity. The system described in the original Petition filed by Tatanka clearly indicates the towers are part of a commonly managed integrated system. Further, the proposed wind facility will extend into North Dakota and will yield a net capacity, including all South Dakota and North Dakota towers, of approximately 180 megawatts of electricity. The South Dakota portion, however, is not designed for nor will it generate the statutory threshold of one hundred megawatts or more of electricity. Rather, the South Dakota portion of the commonly managed integrated system will consist of approximately 90 MWs of generating capacity.

It seems, therefore, the more specific question before the Commission with this Petition is whether the Commission has jurisdiction over the entire Tatanka project, or only the South Dakota portion of the whole. Staff argues this Commission does not have jurisdiction over North Dakota wind facilities and presumes North Dakota has its own set of statutes and rules to best suit the people of its state and address their concerns. Further, practically speaking, Staff does not believe it is in the best interest of this Commission or this State to regulate and monitor facilities in North Dakota. Staff is not familiar with the land or people where the facility is proposed and cannot justify interference with the same.

### CONCLUSION

Staff does not believe this Commission has jurisdiction over the proposed Tatanka wind power facility. The project portion located in South Dakota does not meet statutory threshold requirements. Neither the transmission facility nor the wind energy facilities are, therefore, of the type this Commission has authority over as the proposed Tatanka facility is built.

Dated this 20th day of November, 2006

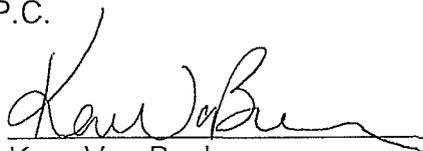


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### CERTIFICATE OF SERVICE

I hereby certify that a copy of Staff's Brief Regarding Jurisdiction was served on the following by mailing the same to him by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 20th day of November, 2006.

Mr. William M. Van Camp, Jr.  
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