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October 26, 2006

Patty Van Gerpen
Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre SD 57501

RECEIVED
OCT 27 2006
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

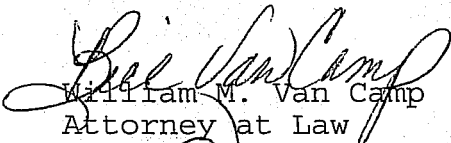
Re: In Matter of Tatanka Wind Power, L.L.C. a proposed wind power
facility in McPherson County, South Dakota.

Dear Ms. Van Gerpen:

Enclosed is the original and ten (10) copies of a Petition for
Declaratory Ruling. Please file and distribute them accordingly.

If you have any questions or concerns on this matter at this point,
please feel free to contact me at your convenience.

Sincerely,


William M. Van Camp
Attorney at Law

WVC:lrd

enclosures

cc: Marcus V. da Cunha

RECEIVED

OCT 26 2006

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

IN THE MATTER OF TATANKA)
WIND POWER, L.L.C. , and a proposed wind)
power facility in McPherson County, South)
Dakota,)

Docket _____

Petition for Declaratory Ruling

Tatanka Wind Power, L.L.C., “Tatanka” petitions the Commission as follows:

**I. Introduction
The Project**

Tatanka Wind Power, L.L.C., and its parent company Acciona Wind Energy USA, L.L.C., have proposed the Tatanka Wind Farm, which will consist of up to 120 wind-powered generators to yield a net capacity of up to 180 MWs. As presently envisioned, the South Dakota portion of the project will consist of approximately 90 MWs of generating capacity with approximately 60 turbine sites within the state. The generator will be the Acciona Wind Power 1.5MW machine, with three blades, each 123 feet long, and revolving at up to 19 revolutions per minute. Each generator is mounted on a single steel tower secured to a concrete foundation and accessible via all-weather gravel roads providing access from existing public roads. Access roads will follow fence lines to the extent possible. Each tower will be lighted to comply with Federal Aviation Administration requirements and United States Fish and Wildlife Service guidelines. The generators are interconnected by both a fiber communication system and an underground 34.5kV electrical power collection system within the wind farm. A proposed 230kV transmission line will interconnect the Tatanka Wind Farm to the Montana-Dakota Utilities 230kV system, 12 miles north of the center of the wind farm in McPherson County, South Dakota. A proposed substation will be built within the wind farm to step up the 34.5kV voltage of the underground electrical power collection system to that of the proposed 230kV transmission line. This collector station in McPherson County would not meet the definition of a “transmission facility” under SDCL §49-41B-2.1(2).

Acciona has site control on land for over 180 MWs. The proposed generators and associated facilities will be sited on portions of Wacker Township in McPherson County, South Dakota, and Albertha Township in Dickey County, North Dakota. Acciona is evaluating various layouts to optimize wind and land resources at the site, while minimizing project impacts in the area. The final layout is contingent on the completion of the studies of wind and land resources and voluntary setbacks from the residences, public roads and existing transmission lines.

The Tatanka Wind Farm will enhance the economy of this rural community, providing steady income through lease payments to farmers and other landowners. Farmers can grow crops or raise cattle next to the towers. While Tatanka Wind Farm extends over a large geographical area, its actual footprint covers only a very small portion of the land, making wind development an ideal way for farmers to earn additional income.

Additional income is generated from one-time payments to construction contractors and suppliers during installation, and from payments to turbine maintenance personnel on a long-term basis. The Tatanka Wind Farm will create over 100 temporary construction jobs and an estimated 10 permanent operation and maintenance jobs; ad valorem revenue to counties and its school districts; sales taxes revenues; and direct lease payment to landowners. Acciona would be responsible for the operation and maintenance of the wind farm for the life of the project, which is anticipated to be a minimum of 20 years. Acciona plans to construct a maintenance facility as part of the project. Acciona would self-perform, or as Acciona has other wind farms in the region, contract with the most appropriate supplier of operations and maintenance services at the time of operation.

In connection with this contemplated project, a question has arisen as to whether this Commission has jurisdiction over the project under SDCL §49-41B-2(12) subjecting the project to the permit requirements of SDCL §49-41B and ARSD 20:10:22. Thus, Tatanka petitions for a declaratory ruling pursuant to SDCL §1-26-15 and ARSD 20:10:01:34.

II. Request Declaratory Ruling Jurisdiction

1. SDCL §49-41B states "...that a facility may not be constructed or operated in the state without first obtaining a permit from the Commission."

2. SDCL §49-41B-2(6) defines a facility as: "any energy conversion facility, AC/DC conversion facility, transmission facility, or wind energy facility and associated facilities."

3. SDCL §49-41B-2(12) defines a "wind energy facility" as follows:

...a new facility, or facility expansion, consisting of a commonly managed integrated system of towers, wind turbine generators with blades, power collection systems, and electric interconnection systems, that converts wind movement into electricity and that is designed for or capable of generation of 100 MW or more of electricity. A wind energy facility expansion includes the addition of new wind turbines, designed for or capable of generating 25 MW or more of electricity, which are to be managed in common and integrated with existing turbines and the combined MW capability of the existing a new turbines is 100 MW or

more of electricity. The number of MW generated by wind energy facilities determined by adding the name plate power generation capability of each wind turbine.

4. The aforementioned statutes pose several questions in this matter. First, it appears that the South Dakota Public Utilities Commission does not have jurisdiction under the aforementioned statutes and foreign sovereignty concerns as to the estimated 90 MW wind energy facility within the State of North Dakota and the related transmission facilities and substations within that state. Were the South Dakota portion of this overall project in excess of 100 MW, Tatanka would be required to meet the permit requirements as detailed in SDCL §49-41B and ARSD 20:10:22. So while SDCL 49-41B and ARSD 20:10:22 require that facilities of certain size within the State of South Dakota must file and complete the aforementioned permit requirements before the South Dakota Public Utilities Commission, the definition of a facility, and by an extension a wind energy facility under 49-41B-2(6) and (12) respectively, does not state clearly that said facility and/or its associated facilities as further defined under SDCL §49-41B-2(1) must reside or be found within the territorial boundaries of the State of South Dakota in order for jurisdiction of Commission to exist:

5. Clearly the North Dakota portion of this project is subject to the laws of the State of North Dakota and the North Dakota Public Service Commission both as to the proposed wind energy facility and its associated transmission facilities residing or being set within North Dakota. It is the position of Tatanka that the State of North Dakota does not have jurisdiction in reviewing the South Dakota portion of the overall project and its related facilities.

6. In compliance with ARSD 20:10:01:34 applicant suggests that the precise issues to be answered by the Commission's declaratory ruling are:

a. Does a wind energy facility, as defined by SDCL §49-41B-2(12) subjecting the facility to overall permit requirements of SDCL §49-41B and ARSD 20:10:22, require only consideration by the South Dakota Public Utilities Commission of the total MW produced as determined by adding the name plate power generation capabilities of each wind turbine located only within the geographic boundaries of the State of South Dakota?

b. Does the term facility, as defined in SDCL §49-41B-2(6), include only such facilities located within the geographic boundaries of the State of South Dakota?

c. Does the Commission have jurisdiction over the South Dakota portion of the project as presented here by Tatanka?

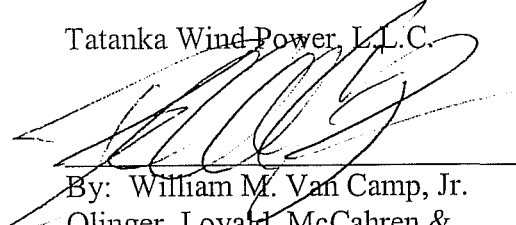
III. CONCLUSION

Applicant requests that the Commission determine whether it has jurisdiction based upon the request for declaratory rulings.

WHEREFORE, applicant prays that the Commission render its declaratory ruling in this requested matter.

Dated this 26th day of October, 2006.

Tatanka Wind Power, L.L.C.



By: William M. Van Camp, Jr.
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