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## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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October 29, 2007

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Re: In the Matter of the Request for a Declaratory Ruling by  
PPM Energy, Inc. Regarding the Siting of Wind Power Facilities  
Docket EL07-018

Dear Mr. Koenecke:

Attached you will find a copy of Staff Brief Regarding Jurisdiction with reference to the above captioned matter. This is intended as service upon you electronically.

Very truly yours,

Karen E. Cremer  
Staff Attorney

Enc.

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

IN THE MATTER OF THE REQUEST FOR A )	STAFF BRIEF REGARDING
DECLARATORY RULING BY PPM ENERGY, )	JURISDICTION
INC. REGARDING THE SITING OF WIND )	
POWER FACILITIES )	EL07-018

COMES NOW Commission Staff (Staff), by and through its attorney, Karen E. Cremer, and hereby responds to PPM Energy, Inc.'s (PPM or Applicant) Petition for Declaratory Ruling and its Brief in Support of Applicant's Position, filed October 5, 2007.

**OVERVIEW**

PPM argues the South Dakota Public Utilities Commission (Commission) lacks jurisdiction in this matter as the two projects under construction, MinnDakota and Buffalo Ridge I, are separate and distinct from each other. If the Commission finds that it lacks any permit authority over the two proposed wind energy facilities because the threshold required for issuance of a permit for construction is not met as required in Chapter SDCL 49-41B, then PPM need not obtain a permit from the Commission prior to construction and operation of its facilities. PPM seeks a Declaratory Ruling from this Commission to affirm such an interpretation of the applicable statutes.

**ARGUMENT AND AUTHORITIES**

Pursuant to SDCL 49-41B-1, the Legislature has found that energy development in South Dakota significantly affects the welfare of the population, the environmental quality, the location and growth of industry, and the use of the natural resources of the state. To ensure that the location, construction, and operation of facilities will produce minimal adverse effects on the environment and its citizens, the Commission was given permitting authority for energy conversion and transmission facilities, among other types of facilities, including wind energy facilities. See SDCL 49-41B-2.

SDCL 49-41B-4 requires all utility companies to first obtain a permit issued by the Commission before it 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" could apply in this situation and could give the Commission regulatory authority over the proposed wind projects.

### TRANSMISSION FACILITY

An electric transmission facility is 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 of the transmission line does not follow section lines, property lines, roads, highways or railroads. The transmission line in the proposed PPM project is a 34.5 kV line. The PPM 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

The definition for a wind energy facility is found in SDCL 49-41B-2 (12).

(12) "Wind energy facility," 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 one hundred megawatts or more of electricity. A wind energy facility expansion includes the addition of new wind turbines, designed for or capable of generating twenty-five megawatts or more of electricity, which are to be managed in common and integrated with existing turbines and the combined megawatt capability of the existing and new

turbines is one hundred megawatts or more of electricity. The number of megawatts generated by a wind energy facility is determined by adding the nameplate power generation capability of each wind turbine.

The projects, as described in the Petition filed by PPM on October 5, 2007, consist of MinnDakota which is a 54 MW project and also Buffalo Ridge I which is a project of 44.1 MWs, for a total of 99.1 MWs. If viewed as two projects, the statute requiring a permit is not triggered. If viewed as one project, the minimum threshold of 100 MWs or more of electricity is still not met. However at some undetermined point in the future, PPM would like to expand the Buffalo Ridge I project by an additional 6.3 MWs making the total megawatts of the Buffalo Ridge I project 50.4. Again the statute is not triggered as an expansion requires a design of 25 MWs or more of electricity (here it is 6.3 MWs) that when it is integrated with the existing Buffalo Ridge I project (44.1 MWs), has to be 100 MWs or more of electricity. Here it would only be 50.4 MWs. It is only if MinnDakota, Buffalo Ridge I, and its eventual expansion of Buffalo Ridge I are viewed as one commonly managed integrated system of towers that the Commission will have jurisdiction of this matter. If MinnDakota and Buffalo Ridge are viewed as separate projects then the statute's minimum requirements are not met.

The language of SDCL 49-41B-2 (12) that is at issue in this matter is "commonly managed integrated system of towers... ." Staff agrees with PPM that the projects are not an integrated system of towers in that neither project needs the services of the other to support the transmission of capacity and energy from resources to loads while maintaining reliable operations, that is, converting wind movement into electricity. Simply put, if MinnDakota were to cease working or cease to exist, Buffalo Ridge I would continue working—they are independently operated for operational purposes.

The more difficult question to resolve in this matter is what constitutes “commonly managed”. PPM points to a number of factors to illustrate that it is not a commonly managed system. Staff agrees that when looked at in its totality, the two projects are not commonly managed as the projects have, among other factors, separate financing, each project is assigned its own costs, the projects use different turbines and contracts, and the power output from each project will be sold under separate contracts.

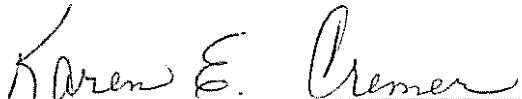
Commission oversight of energy development offers the public many assurances, especially that of notice and adherence to regulatory provisions. In this case Brookings County has afforded the public the ability to have its concerns heard through its public hearings when PPM requested conditional use permits. Further, the Brookings County Zoning Office has a number of ordinances which address issues such as setbacks, noise requirements, decommissioning, soil erosion and sediment control plans, and building permits for each turbine. In its Application for Conditional Use Permits, PPM addressed additional mitigative measures such as the protection of natural resources and cultural resources. These areas were mapped and PPM states it will avoid these known cultural resources and will avoid or minimize disturbance to natural resources.

## CONCLUSION

The orderly development of wind energy in South Dakota is clearly the impetus for SDCL 49-41B-2(12). The need for regulatory oversight of a large wind farm is required so that the public’s interests are protected.

Staff believes that based on the statutory language of SDCL 49-41B-2(12) the Commission should find that the MinnDakota Project and the Buffalo Ridge I Project are two separate projects that do not require a permit for construction. Should the Commission find that MinnDakota and Buffalo Ridge I (including the expansion project) are one project, then the threshold for requiring a permit for construction is met and PPM should file accordingly.


Dated this 29<sup>th</sup> day of October, 2007.

  
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Karen E. Cremer  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of Staff Brief Regarding Jurisdiction was served on the following by sending the same to him electronically on this the 29<sup>th</sup> day of October, 2007.

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