

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

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

On October 26, 2006, the Public Utilities Commission (Commission) received a Petition for Declaratory Ruling from Tatanka Wind Power, L.L.C (Tatanka). In its Petition, Tatanka stated that it is proposing to build “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 1.5 MW generators will be “interconnected by both a fiber communications system and an underground 34.5 kV electrical power collection system within the wind farm.” On November 8, 2006, Tatanka submitted an Amendment to Petition for Declaratory Ruling. The Amendment provided additional information about the proposed project including additional information regarding the 230 kV line which will run 1200 feet within South Dakota.

In its Petition, Tatanka requested that the Commission issue a Declaratory Ruling regarding the following issues:

- 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?

On November 2, 2006, the Commission electronically transmitted notice of the filing and the intervention deadline of November 20, 2006, to interested individuals and entities. No parties filed to intervene.

On November 17, 2006, Tatanka submitted a letter asking that the hearing on the Petition be held at the December 6, 2006, Commission meeting. The Commission had originally intended to consider the Petition at its November 28, 2006, meeting. On November 20, 2006, the Commission Staff filed its Brief Regarding Jurisdiction.

At its December 6, 2006, meeting, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-41B, specifically SDCL 49-41B-1 and SDCL 1-26-15. At the meeting, representatives of Tatanka explained the project and answered questions. Both Tatanka and Commission Staff asserted that the Commission did not have jurisdiction over the project, including the 230 kV transmission line. With respect to the transmission line, Staff noted that the transmission line is less than one mile and therefore does not fall under the Commission's siting jurisdiction over transmission facilities as defined in SDCL 49-41B-2.1(2).

After listening to the arguments presented by Tatanka and Staff, the Commission voted to find that it does not have jurisdiction over the Tatanka Wind Farm based on the description of the project as contained in the Petition and Amendment to Petition. The Commission finds that a wind energy facility as defined by SDCL 49-41B-2(12) is limited to the total megawatts produced as determined by adding the name plate power generation capabilities of each wind turbine located only within the geographic boundaries of South Dakota. Based on the description of the project, only 90 MWs will be generated within South Dakota. In order for the Commission to have siting jurisdiction, a wind energy facility must be "designed for or capable of generation of one hundred megawatts or more of electricity." SDCL 49-41B-1(12). In addition, the Commission finds that it does not have siting jurisdiction over the 230 kV transmission line because it is less than one mile in length. See SDCL 49-41B-2.1(2). It is therefore

ORDERED, that the Commission finds that it does not have siting jurisdiction over the Tatanka Wind Project based on the description of the project contained in the Petition and Amendment to Petition.

Dated at Pierre, South Dakota, this 28th day of December, 2006.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u><i>Delaine Kolbo</i></u>
Date:	<u>12/29/06</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman

Gary Hanson
GARY HANSON, Commissioner

Steve Kolbeck
STEVE KOLBECK, Commissioner