

COMMONWEALTH OF VIRGINIA
BEFORE THE
STATE CORPORATION COMMISSION

APPLICATION OF

CASE NO. PUE-2005-00101

HIGHLAND NEW WIND DEVELOPMENT, LLC
For Approval to Construct, Own and
Operate an Electric Generation
Facility in Highland County,
Virginia pursuant to § 56-46.1 and
56-580 D of the Code of Virginia

COMMISSION STAFF
POST-HEARING MEMORANDUM

b06 V b1 10/1/07

As provided by Hearing Examiner's Ruling of December 20, 2006, entered in this proceeding, the Commission Staff files and serves this post-hearing memorandum. As the basis for its investigation and its testimony and exhibits presented at the hearing, the Staff relied on § 56-580 D of the Code of Virginia (hereinafter Code), which directs the Commission to permit the construction and operation of electrical generating facilities if there will be no adverse effect upon reliability of service provided by another electric utility and if the facilities are not contrary to the public interest. This provision of the Code also directs consideration of the environmental impact of the proposed generating facility. The Commission is also directed by § 56-596 A of the Code to consider the goals of advancement of competition and economic development. In a frequently cited discussion of these Code provisions, the Commission identified six general criteria, or areas of analysis, that apply to electric generating plant applications. The six general criteria are as follows: (1) reliability; (2) competition; (3) rates; (4) environment; (5) economic development; and (6) public interest. Order of January 16, 2002, in Tenaska Virginia Partners, L.P., Case No. PUE-2001-00039, 2002 S.C.C. Ann. Rep. 370, 373-75 (order remanding application for further hearing).

The Staff readily acknowledges that numerous questions about the environmental impact of the project, the fourth criteria listed, have been raised. The Staff recognizes that these environmental issues are significant, and they must be addressed by the Commission. To this end, the Staff requested a coordinated review of the project as provided by the Department of Environmental Quality-State Corporation Commission Memorandum of Agreement Regarding Coordination of Reviews of the Environmental Impacts of Proposed Electric Generating Plants and Associated Facilities (August 14, 2002). The report on the coordinated review was sponsored by Michael P. Murphy of the Department of Environmental Quality and admitted as Exhibit 29. In addition, representatives of agencies that participated in the coordinated review also appeared as public witnesses at the Commission's hearing. The Staff will, with one exception, defer to Highland New Wind Development, LLC ("the Company") and the respondents to address these matters.

The Staff supports restoration of the turbine sites. Staff witness Gregory L. Abbott attached to his testimony and exhibits a copy of the Highland County Board of Supervisors' resolution granting Highland a conditional use permit. (Ex. 38, Attach. A.) The conditional use permit included three conditions, o, p, and q, which provide for removal of the turbines if or when abandoned. There was no opposition to these conditions raised on the record. If the Commission determines to permit the construction and operation of the Company's facility, compliance with these conditions in the conditional use permit should also be a condition of the Commission's approval.

As Mr. Abbott and Staff Witness Lawrence T. Oliver noted, their investigation considered the technical competency and the financial capacity required for the project. (Ex. 38 at 6-7, 10; Ex. 39 at 1, 3.) Both Staff witnesses concluded that the Company and its contractors could construct and operate the facility. Mr. Abbott determined that the project would enter in the competitive

power market and that no impact on reliability or rates would be anticipated. (Ex. 38 at 3, 8-9.)¹

There was no evidence to the contrary on any of these Staff conclusions.

Staff witness Mark K. Carsley addressed the potential economic benefit of the project. (Ex. 41.) Mr. Carsley concluded that the primary benefit would be the additional tax revenue for Highland County. He also considered the economic benefits of project construction and the potential, moderate benefits of future operation of Highland's facility. (*Id.* at 12.) In addition to Mr. Carsley's testimony, numerous public witnesses addressed the impact of the project on tourism and other development in Highland County. The Staff would note that these issues were considered by the Highland County Board of Supervisors before it granted the conditional use permit. (Ex. 38, Attach. A, Attach. B.)

Va. Code § 56-580 D requires the Commission to permit the construction of any generating facility that will have no material adverse affect upon the reliability of electric service provided by any utility and is "not otherwise contrary to the public interest." Staff has concluded that the wind facility meets these conditions and, if the Commission agrees, then it is bound by law to approve the facility.

The record indicates that power from the facility will likely be used out of state, and the "green credits" produced by the facility will most probably be purchased by out of state interests also. (Tr. 1048, 1066-67.) The record further indicates that if the facility was located in Maryland, it would generate greater environmental benefits than at its proposed location in Highland County. (Tr. 1714.) Given these circumstances, Staff does not believe the cord herein necessarily supports a

¹ Mr. Abbott testified that Highland's business plan relied upon a federal production tax credit, which would expire at the end of 2007. (Ex. 38 at 8 & n.3.) Since the hearing concluded, this credit has been extended to January 1, 2009. IRC § 45, as amended by the Tax Relief and Health Care Act of 2006, Sec. 201, Pub. L. No. 109- ____, 120 Stat. ____ (Dec. 20, 2006).

finding that the wind facility is in the public interest, only that it is "not contrary" to the public interest.

In conclusion, the Staff will simply offer Mr. Abbott's concluding statement in his testimony:

Aside from environmental issues, the Staff believes that the HNWD project generally meets the criteria delineated in §56-580 D of the Code of Virginia. Consequently, the Staff recommends approval of HNWD's request for a CPCN. However, Staff's recommendation is conditioned upon the Commission's final disposition of the environmental issues raised in this case.

(Id. at 10.)

Respectfully submitted.

THE STAFF OF THE STATE
CORPORATION COMMISSION

By Wayne N. Smith
Counsel

William H. Chambliss, General Counsel
Wayne N. Smith, Senior Counsel
Office of General Counsel
State Corporation Commission
P.O. Box 1197
Richmond, Virginia 23218-1197
Telephone: (804) 371-9671
Telefax: (804) 371-9240

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January, 2007, a true copy of the foregoing Commission Staff Post-Hearing Memorandum was mailed, postage prepaid, to: John W. Flora, Esquire, Lenhart Obenshain PC, P.O. Box 1287, Harrisonburg, Virginia 22803; Anthony J. Gambardella, Esquire, Woods Rogers PLC, Suite 1200, 823 East Main Street, Richmond, Virginia 23219; Richard D. Gary, Esquire, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219-4074; David S. Bailey, 16397 Triple Creek Lane, Beaverdam, Virginia 23015; Wiley F. Mitchell, Jr., Esquire, Wilcox & Savage, P.C., One Commercial Place, Suite 1800, Norfolk, Virginia, 23510; Michel A. King, President, Old Mill Power Company, 2530 Wyngate Rd Charlottesville VA 22901-8927; and Melissa Dowd, Esquire, P.O. Box 309, Monterey, Virginia 24465.


