

SCC rules on wind project's application deadlines

BY ANNE ADAMS • STAFF WRITER

RICHMOND — The State Corporation Commission's hearing examiner ruled Monday to set respondent testimony on Highland New Wind Development's application for a wind utility at 30 days, after responses from SCC staff and respondents in the case.

Feb. 14, HNWD filed a motion for a new scheduling order that asked for respondents' testimony to be due 14 days after DEQ filed a report on the application. That report had been expected on or before March 17, but DEQ has since suspended its review after several state agencies requested more information from the developer.

SCC staff had responded to that motion, objecting to the 14-day timeline, contending that since the application was the first of its kind in Virginia, the staff would be considering a host of novel environmental issues. SCC staff asked for 30 days to respond instead.

The Nature Conservancy, a formal respondent in the case, said it would need at least 60 days after the DEQ to file a response.

Highland citizens (seven residents and landowners near the proposed wind utility site) contended the motion should be denied altogether, saying no ruling should be given until the SCC rules on its original motion to dismiss the application. Highland citizens also asserted no respondent should be required to file before May 15.

HNWD replied to all the respondents, restating its need for expedited treatment so construction could begin by Dec. 31, 2007, to preserve federal tax credits it hopes to secure with the project.

The hearing examiner, Alexander Skirpan Jr., made his ruling Monday, saying, "I agree with (SCC) staff that HNWD's application is the first of its kind in the commonwealth, with novel environmental issues for consideration. Consequently, I believe staff and the parties will require more time than proposed by HNWD. However, I am not convinced that respondents require as much additional time as requested."

Skirpan said the DEQ report, which has now been postponed, will serve "to define the scope" of the SCC's review. "That is, the DEQ report will limit the commission's environmental inquiry to those items not otherwise addressed in the DEQ report."

Therefore, he said, respondents don't need to wait until DEQ issues its report before they prepare their testimony and exhibits. SCC

staff, though, can't address issues raised by the respondents until after those exhibits are filed.

Skirpan concluded the respondents' testimony should be filed 30 days after the DEQ report is filed, and SCC staff testimony should be filed 30 days after that.

Finally, he said, because of scheduling conflicts and the possible delay in the DEQ report, the date for an evidentiary hearing should not be set until the DEQ report is filed.

As to the motion from Highland citizens to dismiss the application altogether, the SCC staff urged Skirpan to dismiss it.

"There can be tension between an applicant for approval of a utility facility and respondents over whether an application is complete," the SCC staff said Monday. "In this case, as in many others, the commission addressed the concerns of the applicant and respondents by entry of its order for notice and hearing of Dec. 28, 2005. The commission determined HNWD's application provided sufficient information to commence the process."

Further, the report said, "The staff anticipates that any concern raised in the motion to dismiss application can be explored in the process."

SCC staff said it will address Highland citizens' concerns about violating federal statutes that protect endangered species, and referred to a letter from the U.S. Fish and Wildlife Service the citizens included. "The (SCC) staff is unaware of the circumstances that prompted such a strongly worded letter. The conclusions drawn from the letter by Highland citizens, however, are unwarranted and do a disservice to the commission."

SCC staff said there is no reason to believe HNWD would not comply with state and federal laws. Staff points to all the state and federal agencies that will be consulted during the application review. "As the reports filed in previous cases demonstrate, these agencies are well versed in endangered species protected under both state and federal law."

By press time this week, the SCC hearing officer had not ruled on the motion to dismiss the application.