



COMMONWEALTH of VIRGINIA

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November 5, 2009

BY HAND DELIVERY

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CLERK'S OFFICE

Mr. Joel H. Peck
Clerk of the Commission
State Corporation Commission
c/o Document Control Center
The Tyler Building
1300 E. Main Street
Richmond, Virginia 23219

Re: Commonwealth of Virginia, ex rel
Department of Historic Resources v. Highland New Wind Development, LLC
Case No. PUE-2009-00092

Dear Mr. Peck:

Please find enclosed for filing an original and 15 copies of the Complainant's Motion for a Continuance.

Should you have any questions, please do not hesitate to call me. Thank you for your assistance.

Very truly yours,

R. Earl Mims
for Steven O. Owens
Steven O. Owens

Enclosures

cc: John W. Flora, Esquire
Kathleen S. Kilpatrick, Director, DHR
William H. Chambliss, General Counsel
Commissioner's Office of General Counsel
State Corporation Commission
William F. Stephens, Director
Division of Energy Regulation
State Corporation Commission
Mr. Henry T. McBride, Manager
Highland New Wind Development, LLC

COMMONWEALTH OF VIRGINIA
BEFORE THE
STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA, *ex rel*
DEPARTMENT OF HISTORIC RESOURCES

Complainant

v.

CASE NO PUE-2009-00092

HIGHLAND NEW WIND DEVELOPMENT, LLC

Defendant

MOTION FOR A CONTINUANCE

Complainant Department of Historic Resources (“DHR”) respectfully requests a continuance of this matter from its scheduled hearing date on November 10, 2009, generally, and in support of this Motion asserts as follows:

1. The State Corporation Commission (“SCC”) issued a Final Order on December 20, 2007, approving the Defendant’s wind turbine project in Highland County subject to certain terms and conditions spelled out in the Order. Among those requirements was the obligation to “Coordinate with DHR for guidance regarding the potential need for archaeological and architectural surveys, recommended studies and field surveys to evaluate the project’s impacts to historic resources...”
2. In the letter that serves as the basis of this action, the Director of DHR stated that, “It is our reading of the December 20, 2007 Final Order that HNWD has

been directed to enter into constructive consultation with DHR concerning the necessary studies to identify historic resources and the evaluation of the project's effects...this project will likely have a negative impact on the pristine historic setting of Camp Allegheny...HNWD has not demonstrated a willingness to consider and minimize the impacts of the project on this significant battlefield."

3. On Tuesday, October 27, 2009, DHR advised Defendant Highland New Wind that the two reports it submitted would be accepted as archeological and visual impact reports, thus continuing the constructive consultation as requested by DHR. The parties agreed that DHR would seek additional information from the National Park Service, and, once that information was received and analyzed, provide Defendant with its comments regarding the reports Highland New Wind submitted in addition to the information from the Parks Service. *DHR still has not received the information requested from the Parks Service, and thus has not been able to draft its comments to Defendant and determine if the parties can resolve the issues of minimizing impacts to the historic battlefield resources likely to result from the Defendant's proposed development. Since a constructive consultation is what DHR sought when it filed its complaint, it does not seem appropriate to proceed with a hearing on the complaint before it has had a chance to provide its comments to Defendant and engage in dialogue in seeking resolution of the issues.*

4. It is not possible for DHR to review, analyze and consult with Highland New Wind about these reports and additional information before the hearing date on November 10, 2009.
5. After appropriate review, analysis and consultation, DHR would be in a better position to raise any substantive issues that may present themselves as a result of these studies and further dialogue with Defendant, thus promoting judicial efficiency and economy in this proceeding.

Consequently, DHR moves that the Hearing be continued generally or such date certain as may be determined by the Commission. Counsel for Defendant has been directly contacted by counsel for DHR.

Respectfully submitted,
Complainant:

COMMONWEALTH OF VIRGINIA,
ex rel the Department of Historic Resources

By Counsel



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Counsel for Complainant

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of November, 2009, a true copy of the foregoing Motion for a Continuance was hand-delivered or mailed, postage prepaid, to:

John W. Flora, Esquire
Keeler Obenshain PC
90 N. Main Street, Suite 201
P O. Box 1287
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Counsel for the Commonwealth of Virginia
ex rel the Department of Historic Resources