

COMMONWEALTH OF VIRGINIA
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

CLERK'S OFFICE
2009 NOV -6 P 1:03
DOCUMENT CONTROL

HEARING EXAMINER'S RULING

November 6, 2009

On August 19, 2009, the director of the Department of Historic Resources ("DHR" or "Complainant") sent a letter to the State Corporation Commission's general counsel wherein DHR contended that Highland New Wind Development, LLC ("Highland Wind" or "Defendant") has failed to comply with the Commission's Final Order in Case No. PUE-2005-00101.¹ The Commission deemed the letter to be a formal complaint in its Order dated August 26, 2009. Therein, among other things, the Commission docketed the matter, and assigned the matter to a hearing examiner to conduct all further proceedings in this matter.

On September 21, 2009, Highland Wind filed Defendant's Motion in Limine – Viewshed. Based on agreement of the parties, a hearing was convened on September 23, 2009, solely to address the motion. Highland Wind's Motion in Limine – Viewshed was denied, and the evidentiary hearing was rescheduled for Tuesday, October 13, 2009, at 10:00 a. m.

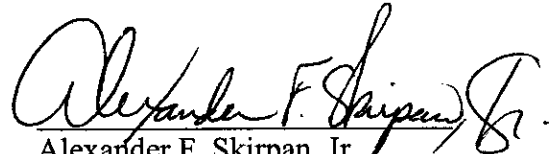
On October 9, 2009, DHR filed a motion in which it asked that the evidentiary hearing scheduled for October 13, 2009, be continued until November 10, 2009, to give DHR time to review information recently provided by Highland Wind. The evidentiary hearing scheduled for October 13, 2009, was continued until November 10, 2009, in a Hearing Examiner's Ruling dated October 9, 2009.

On November 5, 2009, DHR filed its Motion for a Continuance ("Motion"). DHR advised that it is seeking additional information from the National Park Service and will be unable to review, analyze and consult with Highland Wind before the hearing scheduled for November 10, 2009. DHR maintained that after such review, analysis, and consultation DHR would be in a better position to raise substantive issues, promoting judicial efficiency and economy. Therefore, DHR requested that this matter be continued generally. I have been advised that Highland Wind plans no response to the Motion.

¹ *Application of Highland New Wind Development, LLC, For approval to construct, own and operate an electric generation facility in Highland County, Virginia, pursuant to §§ 54-46.1 and 56-580 D of the Code of Virginia, Case No. PUE-2005-00101, 2007 S.C.C. Ann. Rep. 295.*

Based on DHR's pleading, I find that the evidentiary hearing scheduled for November 10, 2009, should be canceled and that this matter should be continued generally. Accordingly,

IT IS DIRECTED that the public hearing scheduled for Tuesday, November 10, 2009, at 10:00 a. m., is hereby canceled and this matter is continued generally.


Alexander F. Skirpan, Jr.
Senior Hearing Examiner

Document Control Center is requested to mail or deliver a copy of this Ruling to: Honorable Kathleen S. Kilpatrick, Director, Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia 23221; Steven O. Owens, Senior Assistant Attorney General, Office of Attorney General, 900 East Main Street, Richmond, Virginia 23219; and John W. Flora, Esquire, and Mark D. Obenshain, Esquire, Lenhart Obenshain, PC, 90 North Main Street, Suite 201, Harrisonburg, Virginia 22802.