

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 26, 2009

CLERK'S OFFICE

COMMONWEALTH OF VIRGINIA, ex rel.  
DEPARTMENT OF HISTORIC RESOURCES

2009 AUG 26 P 2: 54

DOCUMENT CONTROL

Complainant

v.

CASE NO. PUE-2009-00092

HIGHLAND NEW WIND DEVELOPMENT, LLC

Defendant

ORDER

On November 8, 2005, Highland New Wind Development, LLC, ("HNWD") filed an application with the State Corporation Commission ("Commission") for approval to construct, own and operate a wind energy electric generating facility in Highland County, Virginia, near the West Virginia border, on parts of Allegheny Mountain known as Red Oak Knob and Tamarack Ridge.<sup>1</sup> The proposed facility would consist of up to 20 wind turbines, mounted on free-standing tubular towers with rotors reaching up to a height of approximately 400 feet.

By Final Order dated December 20, 2007, the Commission approved the application, together with a number of conditions, based upon recommendations the Commission received, pursuant to § 56-46.1 of the Code of Virginia, from various state environmental agencies and other departments,<sup>2</sup> with which HNWD was directed to comply.<sup>3</sup> These conditions included:

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<sup>1</sup> *Application of 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.*

<sup>2</sup> These agencies included the Department of Historic Resources ("DHR" or "Department"), Department of Environmental Quality ("DEQ"), the Department of Conservation and Recreation, Department of Game and Inland Fisheries, Department of Agriculture and Consumer Services, Department of Health, Department of Aviation, Department of Forestry, Department of Transportation, Marine Resources Commission, Department of Mines, Minerals and Energy, Central Shenandoah Planning District Commission and the Highland County Board of Supervisors (collectively, the "reviewing agencies"). In addition, we directed HNWD to "work closely" with the U.S. Department of Interior, Fish and Wildlife Service, whose recommendations were included in DEQ's report to the Commission, to "ensure that threatened and endangered species are adequately protected."

<sup>3</sup> Final Order, 2007 S.C.C. Ann. Rept. 295 (December 20, 2007).

2. Conduct Archeological and Architectural Surveys if Necessary – 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.

The Commission's Final Order was not appealed by HNWD or any other participant in that proceeding.

On August 19, 2009, the Director of DHR caused the attached letter to be transmitted to the Commission's General Counsel. The letter asserts the Department's belief "that ... HNWD has failed to comply with either the letter or the spirit of the [above condition as set forth in the Final] Order." The letter further requested "expedited review and response." The Commission regards this communication as an allegation from a reviewing agency that HNWD has failed to comply with a condition of our Final Order and will treat it as such. Accordingly, we deem the letter to constitute a formal complaint and will docket this proceeding and convene a hearing wherein DHR and HNWD may provide evidence and testimony pertinent to the question whether HNWD is in compliance with the requirements of the above condition as set forth in the Final Order.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to 5 VAC 5-20-100 B of the Commission's Rules of Practice and Procedure, this matter shall be docketed and assigned Case No. PUE-2009-00092.

(2) Pursuant to 5 VAC 5-20-120 A of the Commission's Rules of Practice and Procedure, a Hearing Examiner is appointed to conduct all further proceedings in this matter.

(3) HNWD shall file an original and fifteen (15) copies of its answer or other responsive pleading with the Clerk of the Commission c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, on or before September 14, 2009, and shall simultaneously serve a copy of such pleading on the Department.

(4) A public hearing shall be convened on September 23, 2009, at 10:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive evidence from the Department and from HNWD related to the matters identified herein.

(5) Pursuant to 5 VAC 5-20-80 D, the Commission's Staff ("Staff") may appear and participate at the public hearing in order to see that pertinent issues on behalf of the general public interest are clearly presented. The Staff shall not appear on behalf of either the Department or HNWD.

(6) This matter is continued for further orders of the Commission.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission 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; John W. Flora, Esquire, Lenhart Obenshain, PC, 90 North Main Street, Suite 201, Harrisonburg, Virginia 22802; and to the Commission's Office of General Counsel and Division of Energy Regulation.

A True Copy  
Teste:

  
Clerk of the  
State Corporation Commission



# COMMONWEALTH of VIRGINIA

L. Preston Bryant, Jr.  
Secretary of Natural Resources

**Department of Historic Resources**  
2801 Kensington Avenue, Richmond, Virginia 23221

Kathleen S. Kilpatrick  
Director

Tel: (804) 367-2323  
Fax: (804) 367-2391  
TDD: (804) 367-2386  
[www.dhr.virginia.gov](http://www.dhr.virginia.gov)

August 19, 2009

William H. Chambliss, Esq.  
General Counsel – State Corporation Commission  
Tyler Building, 11<sup>th</sup> Floor  
1300 East Main Street  
Richmond, VA 23219

Re: Highland New Wind Development, LLC  
SCC Case No. PUE-2005-00101; DHR File No. 2003-1027; DEQ Project # 06-011S

Dear Mr. Chambliss:

The Department of Historic Resources (DHR) requests the assistance of the State Corporation Commission (SCC) regarding Highland New Wind Development's (HNWD) compliance with the SCC's Final Order authorizing this project.

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. While HNWD has consulted with DHR, it has not undertaken identification studies to the standards recommended as appropriate, and we do not believe that HNWD's efforts have been sufficient to comply with the Order. Furthermore, we believe that the Order assumes that if adverse effects are identified, reasonable efforts will be undertaken to address them. To our knowledge, HNWD has made no efforts to minimize effects, and has instead terminated consultation with this agency. Accordingly, we believe that the HNWD has failed to comply with either the letter or the spirit of the Order.

DHR has independently sought the comments of Shenandoah Valley Battlefields Foundation, NPS American Battlefield Protection Program, Monongahela National Forest, and the West Virginia Division of Culture and History. We are in agreement that this project will likely have a negative impact on the pristine historic setting of Camp Allegheny, a National Register-listed Civil War battlefield. HNWD has not demonstrated a willingness to consider and minimize the impacts of the project on this significant battlefield.

Administrative Services  
10 Courthouse Ave.  
Petersburg, VA 23803  
Tel: (804) 862-6416  
Fax: (804) 862-6196

Capital Region Office  
2801 Kensington Office  
Richmond, VA 23221  
Tel: (804) 367-2323  
Fax: (804) 367-2391

Tidewater Region Office  
14415 Old Courthouse Way  
2<sup>nd</sup> Floor  
Newport News, VA 23608  
Tel: (757) 886-2807  
Fax: (757) 886-2808

Roanoke Region Office  
1030 Penmar Avenue, SE  
Roanoke, VA 24013  
Tel: (540) 857-7585  
Fax: (540) 857-7588

Northern Region  
Preservation Office  
P.O. Box 519  
Stephens City, VA 22655  
Tel: (540) 868-7029  
Fax: (540) 868-7033



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