

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**

**HEARING EXAMINER'S RULING**

**December 17, 2009**

CLERK'S OFFICE  
 2009 DEC 17 A 11:23  
 DOCUMENT CONTROL

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 where in 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.<sup>1</sup> 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, scheduled a hearing for September 23, 2009, 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 a motion in which it requested that this matter be continued generally. The evidentiary hearing scheduled for November 10, 2009, was canceled and the matter continued generally in a Hearing Examiner's Ruling dated November 6, 2009.

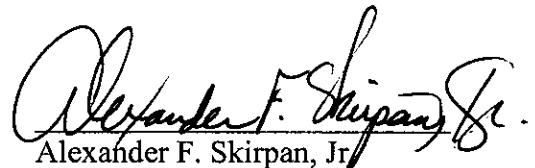
On December 8, 2009, DHR filed its Motion for Hearing in which it stated that the parties had reached an impasse. DHR asked that the matter be set for hearing on December 22, 2009, and indicated that the date and time is amenable to counsel for Highland Wind. An

<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 §§ 54-46.1 and 56-580 D of the Code of Virginia, Case No. PUE-2005-00101, 2007 S.C.C. Ann. Rep. 295.*

evidentiary hearing was scheduled for December 22, 2009, in a Hearing Examiner's Ruling dated December 8, 2009.

On December 14, 2009, Highland Wind filed its Motion for Summary Judgment and an Answer to the Motion for Hearing. On December 16, 2009, Highland Wind filed its Motion to Certify Issues to the Commission and for an *Ore Tenus* Hearing. In order to address Highland Wind's motions efficiently, I find that a telephonic pre-hearing conference for representatives of the parties and Staff should be scheduled for Monday, December 21, 2009, at 10:00 a.m. Accordingly,

**IT IS DIRECTED** that a telephonic pre-hearing conference shall be convened on Monday, December 21, 2009, at 10:00 a.m.

  
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.