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Case Name (if known)	Commonwealth of Virginia, ex rel. Department of Historic Resources v. Highland New Wind Development, LLC
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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

DEFENDANT'S ANSWER TO THE MOTION FOR HEARING

Highland New Wind Development, LLC ("HNWD"), respectfully submits this Answer to the corresponding paragraphs of the Motion for Hearing filed by the Complainant, the Department of Historic Resources ("Complainant" or "DHR").

1. Admitted that the Commission issued a Final Order of December 20, 2007, approving HNWD's wind project in Highland County. The Final Order speaks for itself.

2. HNWD denies that the Director of DHR has accurately interpreted the Final Order, which speaks for itself. Moreover, the Director of DHR has exceeded her jurisdiction by assessing and seeking monetary compensation from HNWD for the alleged visual impact of the project. The Director of DHR has also exceeded her authority by seeking compensation from HNWD for the impact of its project on a site in another state.

HNWD has consistently denied herein that it has any continuing obligation to address viewshed issues or otherwise mitigate the alleged visual impact of its project since the Highland County Board of Supervisors addressed these issues in the issuance of a conditional use permit

after consideration of the project's visual impact on nearby property owners and the natural environment. The Final Order specifically and expressly declined to impose further conditions or requirements on HNWD related to issues considered by Highland County, including the visual impact of the project. (12/20/07 Final Order, 6-7). HNWD has prepared and submitted to DHR every study or report it requested, including "archaeological and architectural surveys, recommended studies and field surveys to determine the project's impacts on historic resources." DHR accepted as adequate each such survey and report. DHR concluded that the project would have no impact on any archaeological resources. DHR concluded that the project would have no impact on any historic resources located in the Commonwealth of Virginia. DHR did conclude that the project will have an impact on one historical resource in West Virginia; however, that impact was determined to be visual. After consideration of the surveys and studies submitted by HNWD, the Director of DHR made no requests or recommendations relating to the location, design or construction of the project.

3. HNWD admits that, without waiving its objections to the authority and jurisdiction of DHR, in an effort to resolve this dispute, it asked DHR what "mitigation efforts" it proposed in relation to its concerns. DHR proposed only a substantial monetary commitment by HNWD. In reviewing the surveys and studies submitted by HNWD, DHR did discuss with HNWD its overall efforts to minimize the project's impacts on historic resources. HNWD denies the remaining allegations contained in paragraph 3.

4. Admitted.

5. DHR has failed to assert a claim for which the requested relief, or any relief, is available.

6. DHR lacks standing to seek the requested relief.

WHEREFORE, the Defendant, HNWD, respectfully requests that the Motion for Summary Judgment be granted, that this proceeding be dismissed with prejudice, and for the award of such further and other relief as may be appropriate.

Respectfully submitted,
Defendant:

HENRY T. MCBRIDE, JR.

Title:

MANAGER, HIGHLAND NEW
WIND DEVELOPMENT, LLC

By Counsel

/s/ Mark D. Obenshain

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2009, a true copy of the foregoing Defendant's Motion was emailed, faxed or mailed, postage prepaid, to:

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/s/ Mark D. Obenshain
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