SUMMARY OF WIND ENERGY DEVELOPMENT
NOTICE OF INQUIRY

TO:       Chairman Bob Anthony
           Vice Chair Patrice Douglas
           Commissioner Dana Murphy

DATE:     December 30, 2014

SUBJECT:  Wind Energy Development Notice of Inquiry; Cause No. PUD 201400232

On May 20, 2014, Senate President Pro Tempore Brian Bingman requested that the Oklahoma Corporation Commission (“Commission” or “OCC”) conduct a Notice of Inquiry (“NOI”) into issues related to wind energy development including: an examination of whether there is a need to place the siting of new wind energy facilities under the oversight of the Commission or other agency and, if so, the factors to be considered; the development of guidelines for proper decommissioning of wind energy facilities under 17 O.S. §160.11 et seq., along with the possible costs and enforcement mechanisms for failure to complete the decommissioning; and whether procedures should be required for notification to landowners.

On July 9, 2014, and July 11, 2014, the Director of the Public Utility Division (“PUD”) held informal meetings with various stakeholders that are impacted by wind energy development and who would be interested in the forthcoming NOI. During these stakeholders’ meetings, discussions addressed siting, notification and decommissioning, which were the topics referenced in Senator Bingman’s letter. PUD staff then compiled comments and questions raised during those discussions, and those comments and/or questions were the basis for questions posed in the Wind Energy Development NOI filed by PUD on August 12, 2014, under Cause No. PUD 201400232.
Shortly after initiating the NOI, PUD hosted two Technical Conferences, which were held at the Commission on September 11, 2014, and October 15, 2014, with all interested individuals invited to attend and make comments. Interested individuals (“Commenters”) filed written comments that were made part of the record in this cause. All comments filed may be viewed at www.OCCeweb.com, under Hot Topics, Wind Power Notice of Inquiry. Over 350 written comments were filed during the inquiry. After the Technical Conferences, PUD continued to gather information on wind energy development and held further meetings. One meeting was held with a wind company, and a second meeting was with experts from the Oklahoma Department of Commerce and from Oklahoma State University. The Commission en banc conducted a public hearing on December 2, 2014, wherein PUD presented its recommendation and additional comments were offered.

The following is a summary of the overall comments received on each of the topics and the recommendation of the Director of PUD.

SITING:

With regard to siting, the NOI examined whether there is a need to place the siting of new wind energy facilities under the oversight of the Commission or some other agency and, if so, the attendant factors to be considered. The NOI requested that comments be filed concerning the agencies currently involved in approval of siting, best practices, interconnection issues, impacts on health, and dispute resolution. PUD also solicited input on the siting policies and practices of other states, impact on property values, concerns about existing structures, and conflicts amongst wind project developers, host landowners, neighboring landowners or mineral rights owners.

COMMENTS:

Statements supporting oversight by the Oklahoma Corporation Commission

Many Commenters desired a central authority for ease of conflict resolution concerning the location and/or placement of wind farms or turbines near their properties. Many felt that the costs associated with pursuing legal action to resolve siting disputes is prohibitive and leaves landowners with little recourse. Many stated that it was not an efficient process to have multiple forums for addressing concerns, with each forum having its own laws or rules regulating the industry.
There were numerous other siting considerations that various parties believed should be a part of any siting regulation undertaken. These areas include, but are not limited to the following:

- Set backs from non-participating properties
- Wildlife impact considerations
- Potential limitations for siting near or on lands considered sacred
- Scenic highway byway impacts
- Setbacks related to safety for roadways, properties, homes, etc.
- Flicker
- Impact to mineral rights owners for potential damages to properties as well as between participating and non-participating landowners

The Commission received several comments specifically related to the lack of siting regulation in Osage County. This lack of regulation provides no protection to the adjoining landowners' property and does not consider the environmental impact of wind development. The installation of wind turbines threatens the health of Osage County residents and impacts the wildlife, including some protected species, such as the greater prairie chicken and the bald eagle, as well as scenic and historical resources. More specifically, Commenters stated that wind turbines kill bald eagles which are sacred to the members of the Osage Nation, and that deaths of these eagles have occurred within the borders of Osage County upon sacred land where prayers are held. Therefore, many find the placement of wind turbines to be offensive to the religious beliefs of the Osage Nation. Other Commenters pointed to both the aesthetic deterioration and real property devaluation caused by the installation of wind turbines.

Commenters also mentioned health concerns related to flicker and other possible health risks associated with living in close proximity to wind turbines. Many Commenters responded that wind turbines can be hazardous to the health of those residing within a three mile radius. Others pointed out the adverse effects on animals which can be caused by the sounds made by wind turbines.
Comments opposing Commission siting regulation

Those opposing Commission regulation of siting stated that sufficient protections are already in place and that over regulation would deter investment in Oklahoma. Furthermore, Commenters stated that wind represents the strengths of Oklahoma and over regulation and excessive bureaucracy would have a long lasting, negative impact on the State. Commenters stated that wind is vital to Oklahoma energy, and wind development is good for Oklahoma. Commenters noted that wind has been an economic boon for Oklahoma and is good for property owners, communities and schools.

The Commission received comments suggesting that OCC be the central authority for resolving disputes among private property owners or other citizens impacted by wind energy development. Those opposing OCC authority responded by stating that property owners may find recourse in state courts. Through private and/or public nuisance actions, there are common laws available to those negatively impacted by wind turbine deployment. Commenters also pointed out that while no state agency plays a role directly in siting decisions, wind farm developers must meet the requirements set out in the Oklahoma Wind Energy Development Act, 17 O. S. §§ 160.11-160.19.

Commenters were asked to identify entities already involved in the siting of proposed wind energy development. The following list was compiled from the filed responses:

- County Commissioners/local government
- Oklahoma Water Resources Board
- District Courts
- Federal Aviation Administration
- Oklahoma Department of Environmental Quality
- Oklahoma Aeronautics Commission
- Oklahoma Department of Wildlife Conservation
- Oklahoma Department of Transportation
- Oklahoma Corporation Commission
- Department of Defense
- Environmental Protection Agency
- National Telecommunications & Information Administration
- U.S. Fish and Wildlife Service
- Southwest Power Pool
- Private landowners
Commenters were also asked to identify “best practices” for siting recognized by the wind industry. The following resources were provided:


PUBLIC UTILITY DIVISION RECOMMENDATION:

PUD does not recommend that any siting authority be placed within the Commission’s jurisdiction because of the involvement of multiple regulatory agencies in the siting process. The siting process for wind energy development is already regulated in many respects, and additional regulation where much already exists could be superfluous.

PUD recognizes that each potential site and the surrounding community bear unique characteristics. As such, and to the extent possible, deference should be extended to local governance by those who are most familiar with these communities and their individualized concerns. There is not a one-size-fits-all siting template that would be applicable and/or appropriate across the entire state. Therefore, localized authority is the most appropriate based on the findings of this inquiry.

PUD also recognizes that appropriate technical knowledge is demanded for proper regulatory siting. Such expertise includes wildlife management, environmental, electric grid protection, and knowledge of individual community preferences and/or considerations. It is important to note that should siting oversight be added to any state agency’s responsibilities, the appropriate funding would be necessary and required to process the volumes of filings and submissions received by the newly-authorized agency. Currently, the Oklahoma Corporation Commission would not be able to undertake the increased workflow considering the current caseload already being processed.

Additionally, PUD recommends that the Secretary of Energy, the OCC, and other impacted agencies work with the legislature to seek funding to prepare a “Landowner Rights” informational packet that would assist landowners in maneuvering through the existing siting
processes. This would require funding for personnel to prepare the packet, as well as funding to accommodate a website and/or printing of the informational packets and for distribution of the packets to the public. This packet could be included in any notice requirements to be developed by the OCC’s rulemaking in 2015.

DECOMMISSIONING:

The Commission was also asked to examine the possible development of guidelines for proper decommissioning of wind energy facilities under 17 O.S. §160.11 et seq. and the possible costs and enforcement mechanisms for failure to complete the decommissioning. To this end, the NOI requested that Commenters address the role of the OCC in decommissioning. Specifically, the NOI asked whether decommissioning guidelines should be similar to those for transmission facilities and whether filing of decommissioning plans should be required. The NOI also solicited thoughts on the proper accounting method to be applied to facility retirement and adequate proof of financial security to cover decommissioning costs.

COMMENTS:

The responses provided stated that the OCC treatment of decommissioning should be similar to that of the oil and gas industry. Some Commenters stated that wind energy decommissioning is adequately addressed in the Oklahoma Wind Energy Development Act. Other Commenters believed that a decommissioning plan should be filed with the OCC, and some Commenters indicated a performance and/or surety bond should be established. Many suggested that a qualified independent engineer should determine the cost of removal. Some Commenters stated that a wind developer should provide 150 percent of the cost of removal determined at the time siting permits are granted. Other Commenters responded that the Oklahoma Wind Energy Development Act’s existing financial security requirements for decommissioning are sufficient.

PUD RECOMMENDATION:

While the Oklahoma Wind Energy Development Act provides the Commission some regulatory oversight of decommissioning, PUD recommends the Commission develop decommissioning rules to supplement these statutory provisions in the near future. PUD will
endeavor to file the associated Notice of Proposed Rulemaking on or before January 30, 2015. This rulemaking would extend throughout 2015 to accommodate robust discussions and input from all interested stakeholders. The rulemaking would consider turbine removal, site reclamation, reasonableness of surety bonds, decommissioning plan reporting, and other associated topics.

NOTIFICATION:

The NOI also examined the need for development of landowner notification requirements. Commenters addressed the current notification practices and which governing body enforces the requirements, the current industry “best practices” for notice, whether local authorities should be involved in the notification practices, and the notice requirements of surrounding states. Also examined was the information that notices might include, who should receive notice, and how far in advance notice should be provided.

COMMENTS:

Many Commenters stated that there are few, if any, local officials involved in any notification practices, while also urging that these officials be invited to participate in the planning process. Commenters many times stated that currently there are no notification requirements to owners of property situated in or adjacent to a potential project site. Commenters stated that all notification should be delivered in writing to all land and mineral rights owners located within a three mile radius. Commenters believed this notification should include, at minimum, the developer’s intentions, identification of the planned project area, the number of facilities, and the projected construction timeline. They also asserted that notice should be provided at least one hundred eighty (180) days prior to the start of development.

Some Commenters suggested that no notice should be required. Other Commenters stated they do not believe any notice should be required beyond the contractual notice commitments to landowners participating in projects. Reference was made to the Oklahoma Exploration Rights Act of 2011 to suggest that notification should occur on or before the date in which the first lease is fully executed but shall be no less than one year from commencement of construction. In addition, there was discussion during the technical conferences that onerous notification requirements could inhibit the ability of facility owners and developers to compete
on a fair and economic basis and that this could hinder or discourage Oklahoma development.

Commenters noted that while some states, such as Ohio and Pennsylvania, have best notice practices, Oklahoma does not. Other Commenters referenced the National Association of Regulatory Utility Commissioners (NARUC) “Wind Energy & Wind Park Siting and Zoning Best Practices and Guidance for States” (2012) as a resource for notification standards.

PUD RECOMMENDATION:

PUD encourages the provision of as much notice as possible to property owners and local officials in a manner that does not impede the development of wind energy resources. The wind industry has developed several notice practices over time, and PUD encourages wind energy developers to continue following the current industry practices. While PUD does not believe that Commission directives would provide any enhancement to industry practices, PUD does recommend that it be informed of any deviations from industry standards. PUD recommends a future rulemaking to address reporting of such deviations and any other notice issues. PUD will address notice in the same Notice of Proposed Rulemaking as decommissioning. This rulemaking will address the form and timing of notice, as well as any required reporting to the OCC.

CONCLUSION:

The Commission’s Public Utility Division believes the wind energy NOI was very productive and beneficial to the decision making process. The inquiry process was inclusive of all interested persons and facilitated well-rounded discussion and opportunity for consideration of diverse perspectives.

The ultimate goal of the NOI was not to identify solutions for all issues related to wind energy development, but rather to examine those issues in a transparent setting and to gather information from stakeholders. PUD believes the latter has been accomplished, but also recognizes that the discussions and efforts must continue. As outlined above, PUD recommends future rulemakings to address some decommissioning and notification concerns as a supplement to existing statutory provisions and industry practices. PUD appreciates the opportunity to conduct this NOI and views it as a positive step towards responsible resolution of some of the challenges related to wind energy development in the State of Oklahoma.