

*Public Service Commission
Of West Virginia*

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March 28, 2012

Richard L. Braithwaite
Rt. 4, Box 511A
Keyser, WV 26726

James M. Davis, Esq.
Counsel, Pinnacle Wind, LLC
Jackson Kelly PLLC
PO Box 553
Charleston, WV 25322

RE: Case No. 12-0251-E-C
Richard L. Braithwaite
v.
Pinnacle Wind, LLC

Gentlemen:

Pursuant to Rule 2 of the Commission's Rules of Practice and Procedure, we are enclosing a copy of the Staff memorandum in this matter. If you wish to respond to the enclosed Staff memorandum, you may do so in writing, within 10 days, unless directed otherwise, of this date.

Your failure to respond in writing to the utility's answer, Staff's recommendations, or other documents may result in a decision in your case based on your original filing and the other documents in the case file, without further hearing or notice.

If you have provided an email address you will automatically receive notifications as documents are filed in this proceeding. The email notifications allow recipients to view a document within an hour from the time the filing is processed. If you have not provided your email address, please send an email to caseinfo@psc.state.wv.us and state the case number in the email subject field.

General reminder - if you submit any additional documents - in addition to filing an original and 12 copies of all documents with the Commission, you are required to **mail** a copy to all other parties of record. Please note - the Public Service Commission does not accept electronic filings.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Squire/cg".

Sandra Squire, Director
Executive Secretary Division

SS/cg
Enc.- Memo

INITIAL JOINT STAFF MEMORANDUM

TO: SANDRA SQUIRE
Executive Secretary

DATE: March 28, 2012

FROM: JOHN AUVILLE
Staff Attorney

03:51 PM MAR 28 2012 PSC EXEC SEC DIV

RE: CASE NO. 12-0251-E-C
RICHARD BRAITHWAITE
v.
PINNACLE WIND, LLC

On February 22, 2012, Richard Braithwaite (Complainant) filed a formal complaint against Pinnacle Wind, LLC (Pinnacle). The Complainant states the constant noise from Pinnacle's wind turbines make it impossible for him to rest or sleep. He states the noise in his home frequently exceeds 60 dBA day or night. The noise outside his home exceeds 80 dBA. Also, the sunlight flickering through the moving blades gives him migraines. Attached to his complaint are copies of a petition the Complainant submitted to the Mineral County Commission and the State Delegation serving Mineral County. The petitions were signed by several residents. Along with the noise complaint, there is also an allegation that Pinnacle did not properly repair the roads damaged during construction of the project. The Complainant requests Pinnacle shut its turbines down during the night until they fix the noise problem.

Pinnacle submitted its answer on March 7, 2012. Pinnacle argues the Complainant does not allege that it has violated any of the material terms and conditions set forth in the Certification Order that granted Pinnacle permission to construct this project (See Order dated January 11, 2010 in Case No. 09-0360-E-CS). Under W. Va. Code §23-1-11c, the Legislature limited the Commission's jurisdiction over siting certificates to: (a) future requests by the certificate holder to modify or amend the siting certificate; (b) complaints related to whether the certificate holder is complying with the material terms and conditions of the Commission Order granting the certificate; (c) enforcing the material terms and conditions of a Certificate Order. Since the Complainant does not allege a violation of a material term or condition, this case should be dismissed with prejudice. See, e.g., David R. Webber v. NedPower Mount Storm, LLC, Case No. 07-1574-E-C. Further, the Complainant's request the facility not be run at night amounts to an improper attempt to have the Commission impose new and costly operating restrictions in violation of W. Va. Code §24-2-11c.

The Engineering Division submitted its initial recommendations through the attached memorandum from Donald Walker, Technical Analyst. Mr. Walker spoke with Karen House, Vice President of Edison Mission Energy (owner of the project) on March 23, 2012. Ms. House stated Pinnacle has been investigating this noise complaint. They believe the excessive noise is emanating from the cooling system that is an integral

part of the turbines. Pinnacle has taken preliminary sound measurements and recognizes this is an issue that needs to be addressed. The turbine manufacturer, Mitsubishi, has designed a muffling system for these turbines and a prototype has been installed for testing. The results of that testing will determine the next step to be taken. Pinnacle did install the turbines it told the Commission it would install in its application and they are operating in two other locations without incident.

Based upon his preliminary investigation, Mr. Walker requests Pinnacle submit the results of any studies that have been conducted related to this complaint. He also notes the Company did not address the issue of the road damage. Upon completion of his review, Mr. Walker will submit a timely final recommendation.

Legal Staff asserts that while the complaint does not allege a violation of one of the terms and conditions in the Ordering Paragraphs of the Certificate Order, the complaint does allege violations of representations made by Pinnacle in its application and violations of Findings of Facts and Conclusions of Law contained in the Certificate Order. Staff argues those types of violations are within the Commission's discretion to review and this case should be permitted to continue for further investigation of those potential violations.

While not alleged in the main part of the complaint, there are allegations in the attachments to the complaint that Pinnacle did not properly repair the roads that were damaged during construction of the project. In the original application, Pinnacle committed to restoring the roads to their pre-construction condition (Application filed on March 13, 2009, Volume 1 of 3, page 91). This issue has not been addressed by Pinnacle up until this point and Staff believes Pinnacle should supply the Commission with a description of the road restoration to date and any further planned restoration.

In regards to the noise portion of the complaint, once again, there is no direct term or condition in the Ordering Paragraphs that have alleged to be violated, but both Findings of Fact and Conclusions of Law are contradicted by the complaint. Finding of Fact 52 from the January 11, 2010 Order states the maximum operational noise level for the most affected landowner is 56 dBA, all other residences are below 55 dBA. Finding of Fact 54 states: "To both protect public health and welfare and provide a safety margin, the United States Environmental Protection Agency recommends an outdoor noise level of no higher than 55 dBA DNL for any residential areas, farms or areas where people spend time outdoors." From those Findings of Fact, the Commission made the following conclusion in Conclusion of Law 15:

The Pinnacle noise study complied with Commission requirements, accurately portrayed ambient sound levels that are typical for a rural community, and employed a variety of conservative assumptions to allow the Commission to assess the "worst case" scenario for the

Project's sound impacts. Based upon the totality of the evidence presented to us, the Commission concludes that the Project will emit some noise, but the operational sound levels are expected to be similar to existing ambient sound levels and noise impacts are not expected to be objectionable because of the Project. The Commission also concludes that, to the extent that operational noise results in negative impacts, those negative impacts are expected to be as minimally disruptive to existing property uses as is reasonably possible.

The Complainant states noise levels of over 60 dBA are frequent in his home and levels often exceed 80 dBA outside his home. Based upon the upon the above mentioned Findings of Fact and Conclusions of Law, Pinnacle nor the Commission expected noise levels of this magnitude. If noise levels are actually as high as the Complainant alleges, Pinnacle is exceeding the noise levels **inside** a person's home that the US EPA believes is safe in the areas **outside** a person's home. Had the Commission had this information before it when deciding whether to issue this certificate or not, the Commission very well may have placed further conditions on this certificate to avoid exceeding the EPA's noise guidelines for residential areas. The Commission mostly likely would not have been able to draw Conclusion of Law 15 either. It is ludicrous to argue that because the Commission possibly had incorrect information before it when it made its decision, it cannot now review that decision. Therefore, Staff believes Pinnacle's argument that this issue is beyond Commission review should be rejected.

Staff understands Pinnacle has conducted its own noise studies to verify the allegations of the Complainant. Pinnacle should file the result of those studies and any other studies that have been conducted in regards to this complaint. Pinnacle should also inform the Commission of any efforts that have been undertaken to resolve the noise complaints, the result of those efforts and any future planned efforts. Additionally, Pinnacle should be required to file a description of the road restoration completed to date and planned restoration.

Upon completion of its review of the additional information Staff has requested, Staff will file further recommendations. This case should be retained by the Commission for processing.

JRA/s

Attachment

CWS CWS

Initial Engineering Memorandum

To: John Auville
Staff Attorney

Date: March 27, 2012

From: Donald E. Walker
Technical Analyst

DZW

RE: CASE NO. 12-0251-E-C
Richard L. Braithwaite
v.
Pinnacle Wind, LLC

09:09 AM MAR 28 2012 PSC LEGAL DIV

The Complaint

On February 23, 2012, Richard L. Braithwaite (Complainant) filed a complaint against Pinnacle Wind, LLC (Company). In this filing, Mr. Braithwaite indicates that the operating wind turbines generate an intolerable noise which makes it impossible for him to rest or sleep at night. The Complainant also indicates that "flicker" produced by the shadows of the turbine blades during daylight hours causes him to have migraine headaches. Mr. Braithwaite included with his complaint a record of sound levels he took with his personal sound level meter both inside and outside his home.

It appears that Mr. Braithwaite has attempted to work with the Company since November 4, 2011, when the facility started coming online, to find an acceptable solution to noise issues; however has not been successful. He stated the Company indicated that they could shut down the offending turbine(s) at night, or place mufflers on them to reduce the generated sound. Mr. Braithwaite has also contacted the County Commission and the local Health Department for direction which indicated they were unable to help him. The Complainant provided copies of a petition he submitted to the Mineral County Commission and the State Delegation serving Mineral County outlining concerns of the residents. There are approximately 75 unverified signatures of residents who supported the petition. The Complainant also included several published research articles supporting his assertion of the effects of low frequency noise from wind farms.

Mr. Braithwaite requested that the wind turbines be shut down during nighttime hours (between 10:00 p.m. and 7:00 a.m.) until the noise from the operating turbines can be mitigated to a reasonable level. The Complainant also indicated that the roads used during the construction of the wind facility were badly damaged and needed repaired by the Company.

Company Answer

The Company filed an answer to the complaint on March 7, 2012 requesting the dismissal of this case. Several legal arguments were presented in this filing which will be addressed by the Staff Attorney. The Company did not provide any technical information

regarding the actual turbine installation, any characteristics regarding the sound levels or unexpected issues that may have initiated the filing of this complaint. The concerns of the Complainant were not address.

Current Status of Sound Issue

I contacted Karen House, Vice President of Edison Mission Energy on March 23, 2012 regarding this complaint case. Ms. House explained that the offensive noise emanating from the machinery is caused by a cooling system that is an integral part of the wind turbines. The company has taken preliminary sound level measurements, and recognizes that there is an issue which is being addressed with the manufacturer of the machines, Mitsubishii which is located in Japan. Mitsubishii has designed a muffling system which will hopefully mitigate the sound problem. The company has installed the prototype on one of the turbines which is currently being tested. The pending results will determine the next step in resolving the noise-related issue of this complaint. The turbines installed in the Pinnacle Wind Farm have not changed from those which were reviewed during the siting case. These same machines are currently operating in two different locations and are operating without incident. It appears that the mountainous terrain of the Pinnacle Wind Farm may be part of several factors causing this phenomenon.

Summary and Recommendation

The Complainant has indicated that he is experiencing the effects of low frequency noise resulting from the operation of wind turbines installed on Green Mountain, near Keyser, West Virginia in Mineral County. The Complainant also indicated that construction-related road damage has not been repaired.

Edison Mission Energy was contacted on March 23, 2012 in which they acknowledged that there is a sound issue and that they were working with the turbine manufacturer to mitigate the concern. The Company indicated that in its preliminary investigation resulting from this complaint, sound levels were taken in the areas where the initial sound receptors were placed for the siting case. Staff would like to review those results and any other studies relative to this case and will submit a Data Request in that regard. The issue of road repair has not been addressed.

The Engineering Division Staff recommends further investigation of this case for additional detail regarding the issues concerning the Complainant which will be completed within the prescribed timeframe of the Public Service Commission of West Virginia.

DEW/s