

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

CASE NO. 00-1209-E-CN

BACKBONE MOUNTAIN WINDPOWER, LLC

Application for a certificate of convenience
and necessity to construct and operate a
wholesale windpower generating facility and related
transmission facilities in Tucker County.

**JOINT MOTION OF BACKBONE MOUNTAIN WINDPOWER, LLC
AND WEST VIRGINIA HIGHLANDS CONSERVANCY TO MODIFY
THE APPLICATION FOR A CERTIFICATE
OF CONVENIENCE AND NECESSITY**

Come now Backbone Mountain Windpower, LLC, (“Applicant”), by its counsel,
and West Virginia Highlands Conservancy (“Intervenor”), by its counsel, and jointly
move the Commission for a revision of the application in this proceeding. The grounds
for such motion are as follows:

1. On August 4, 2000, the Applicant submitted its application for a certificate
of convenience and necessity to construct and operate a wholesale windpower generating
facility (the “Project”) on Backbone Mountain in Tucker County, West Virginia. Said
Project consists of approximately 60 to 79 modern wind turbine generators arrayed along
the crest of the Backbone Mountain ridgeline.

2. On or about November 2, 2000, the Intervenor filed its Motion to Intervene. And, on November 17, 2000, the Intervenor filed a Protest to the Application and the Applicant's request for expedited treatment.

3. On November 20, 2000, an evidentiary hearing was held before the Commission wherein the Applicant, the Intervenor, and the Staff of the Commission ("Staff") presented testimony in support of their positions.

4. On November 29, 2000, the Commission heard oral argument by the Applicant, the Intervenor, and the Staff. At the end of the hearing, the Commission announced that it would leave the record open until December 6, 2000 for the submission of information concerning the adequacy of the avian studies conducted by the Applicant. Thereafter, on December 6, 2000, the Intervenor and the Applicant submitted copies of written communications concerning the adequacy of the avian studies and the Intervenor submitted information concerning the inclusion of the Blackwater Canyon in the National Park system. On December 12, 2000, the Applicant filed its response to the Intervenor's filing of December 6.

5. On December 15, 2000, the parties met to discuss the possible resolution of their differences. As a result of that meeting, the Applicant and the Intervenor have arrived at an Agreement which resolves the differences between the parties thereto. A copy of the December 15, 2000 Agreement ("the Agreement") is attached hereto as Exhibit 1.

6. The principle terms of the Agreement are:
 - a.. The Applicant agrees that it will not construct the two southernmost strings of turbines as reflected in Appendix B of the original application filed with the Commission.
 - b. If the Applicant is able to negotiate suitable lease terms for the area north of the current project area, it reserves the right to relocate as many of the wind turbines from the two southernmost strings of turbines from its original proposal, as the newly leased property will accommodate.
 - c. The Applicant agrees that it will conduct a post-construction monitoring program for a period of one year after commencement of operations of the Project. The purpose of the program will be to assess the impact, if any, upon avian life. The program will be designed by the Applicant's avian consultant consistent with the other provisions of the Agreement.
 - d. The Applicant agrees that it will cooperate with the Intervenor in the formation of a Technical Committee, the purpose of which will be to approve the post-construction monitoring program and to review the results of the monitoring program. Membership on the Technical Committee shall be open to a representative from each of the following: the Applicant, the Intervenor, the Public Service Commission, the United States Fish and Wildlife Service, the West Virginia Division of Natural Resources, a

state-wide avian organization, and a representative from a private or academic institution with a background in avian issues.

e. If, at the end of that one year period, the Applicant's avian consultant and the Technical Committee agree that additional monitoring is justified, the Applicant agrees that it will undertake additional monitoring and actions in accordance with such recommendation.

f. The Applicant agrees that it will work with the Federal Aviation Administration in an effort to minimize the impact that lighting requirements will have upon visibility of the Project.

g. Based upon the commitments of the Applicant set forth in the Agreement, the Intervenor agrees that its siting concerns have been addressed and that it hereby withdraws its opposition to the construction of the Project as originally proposed, and it will not oppose the Project as modified in accordance with the Agreement.

h. The Intervenor further agreed that it will join with the Applicant in seeking the issuance of a certificate of convenience and necessity which adopts the modifications of the Project as agreed to by the parties and which incorporates the provisions relating to the post-construction monitoring program and the formation and operation of the Technical Committee set forth herein.

7. With the execution of the Agreement by the Applicant and the Intervenor, both parties respectfully request that the Commission issue a certificate of convenience

and necessity to the Applicant for the construction and operation of the Project as modified by said Agreement, and that the Order granting such certificate authorize the Applicant, in the exercise of its sound judgment, in accordance with the terms of the Agreement, to relocate as many wind turbines as may be economically feasible, to the site on Backbone Mountain north of the original project area, and incorporate the terms of the Agreement pertaining to the post-construction monitoring program and the Technical Committee.

WHEREFORE, based upon the foregoing, the Applicant and the Intervenor respectfully request that the Commission grant its approval to the Project as modified by the Agreement .

BACKBONE MOUNTAIN WINDPOWER , LLC

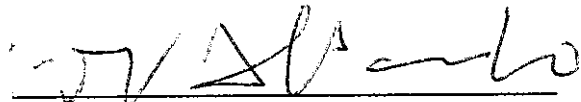
By Counsel



Robert R. Rodecker, Esquire
1210 Bank One Center
Post Office Box 3713
Charleston, WV 25337
State Bar No. 3145

WEST VIRGINIA HIGHLANDS CONSERVANCY

By Counsel



William V. DePaulo, Esquire
Ross & DePaulo
Attorneys at Law
151 Dudding Avenue
Hurricane, WV 25526-1417
State Bar No. 0995

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING between BACKBONE MOUNTAIN WINDPOWER, LLC a Delaware limited liability corporation, ATLANTIC RENEWABLE ENERGY CORPORATION, a Delaware corporation (hereinafter collectively referred to as "Windpower Developer") and the WEST VIRGINIA HIGHLANDS CONSERVANCY, INC. a West Virginia nonprofit corporation (hereinafter referred to as "Conservancy");

WHEREAS, the Windpower Developer has before the Public Service Commission of West Virginia ("Commission") an application for a certificate of convenience and necessity for approval to construct a windpower project on Backbone Mountain in Tucker County, West Virginia (the "Project"), all as more fully set forth in Backbone Mountain Windpower LLC, PSC Case No. 00-1209-E-CN; and

WHEREAS, the Conservancy has intervened in PSC Case No. 00-1209-E-CN, in opposition to the construction of two of the four proposed strings of wind turbines, based upon the Conservancy's concern that construction of those two strings of turbines will have a negative impact upon visitors to Blackwater Falls State Park (the "Park") and the possible inclusion of the Park and adjacent area in the National Park system, and based upon the Conservancy's further concern that the Windpower Developer has not fully considered the impact of the Project upon birds and rare, threatened and endangered species of animal life in the project area; and

WHEREAS, the parties face the prospects of lengthy and costly litigation before the Commission and the West Virginia Supreme Court of Appeals in order to resolve the issues between them and with respect to the right to construct said windpower project on Backbone Mountain; and

WHEREAS, the Windpower Developer and the Conservancy have had discussions about the possibility of resolving their differences and providing for a modification to the Project which would be supported by the Conservancy; and

WHEREAS, the continued disputes between the Windpower Developer and the Conservancy may jeopardize the construction of a new form of alternative energy production for West Virginia in an area of the state which is desirous of increased economic development consistent with responsible environmental stewardship; and

WHEREAS, in order for the Windpower Developer to take advantage of currently available tax credits that will make the development of a windpower project on Backbone Mountain feasible, it is necessary to order equipment and start construction so as to be able to produce electricity from such windpower project before December 31, 2001; and

WHEREAS, the Conservancy has indicated that, if the Windpower Developer would move the two southernmost strings of wind turbines so that the turbines would not affect the Big Run Bog area or be visible from Blackwater Falls State Park Lodge, they would withdraw their opposition to the Project; and

WHEREAS, the Windpower Developer has engaged in discussions with the owners of property on Backbone Mountain north of the currently proposed project area for the possible lease of land which would permit the relocation of the two southernmost strings of wind turbines from the current project design which additional area would accommodate most of the wind turbines that had originally been proposed for the two southernmost strings of wind turbines; and

WHEREAS, the Windpower Developer has expressed its willingness to engage in certain post-construction avian monitoring activities together with representatives of state and federal agencies and other interested parties; and

WHEREAS, both the Windpower Developer and the Conservancy wish to settle their differences and arrive at a mutually agreeable resolution to their respective positions as presented to the Commission.

NOW, THEREFORE, the parties agree as follows:

1. The Windpower Developer agrees that it will not construct the two southernmost strings of turbines as reflected in Appendix B of the original application to the Commission.

2. If the Windpower Developer is able to negotiate suitable lease terms for the area north of the current project area, it reserves the right to relocate as many of the wind turbines from the two southern most strings of turbines from its original proposal, as the newly leased property will accommodate.

3. The Windpower Developer agrees that it will conduct a post-construction monitoring program for a period of one year after commencement of operations of the Project. The purpose of the program will be to assess the impact, if any, upon avian life. The program will be designed by the Windpower Developer's avian consultant consistent with the provisions of paragraph 4 of this Agreement.

4. The Windpower Developer agrees that it will cooperate with the Conservancy in the formation of a Technical Committee, the purpose of which will be to approve the post-construction monitoring program developed by the Windpower Developer's avian consultant, and to review the results of the monitoring program. Membership on the Technical Committee shall be open to a representative from each of the following: the Windpower Developer, the Conservancy, the Public Service Commission, the United States Fish and Wildlife Service, the West Virginia Division of Natural

Resources, a state-wide avian organization, and a representative from a private or academic institution with a background in avian issues.

5. If, at the end of that one year period, the Windpower Developer's avian consultant and the Technical Committee agree that additional monitoring is justified, the Windpower Developer agrees that it will undertake additional monitoring and actions in accordance with such recommendation.


6. The Windpower Developer agrees that it will work with the Federal Aviation Administration in an effort to minimize the impact lighting requirements will have upon visibility of the Project.

7. Based upon the commitments of the Windpower Developer set forth above, the Conservancy agrees that its siting concerns have been addressed and that it will withdraw its opposition to the construction of the Project as originally proposed and will not oppose the Project as modified in accordance with this Agreement.

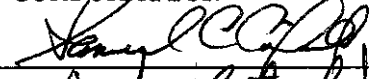
8. The Conservancy further agrees that it will join with the Windpower Developer in seeking the issuance of a certificate of convenience and necessity in PSC Case No. 00-1209-E-CN which adopts the modifications of the Project as agreed to herein and which incorporates the provisions relating to the post-construction monitoring program and the formation and operation of the Technical Committee set forth herein.

Dated: December 15, 2000.

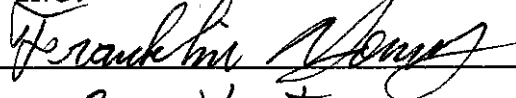
BACKBONE MOUNTAIN WINDPOWER, LLC

By: 
Its: Vice President of Development

ATLANTIC RENEWABLE ENERGY
CORPORATION

By: 
Its: Vice President of Development

WEST VIRGINIA HIGHLANDS CONSERVANCY
INC.

By: 
Its: President

CERTIFICATE OF SERVICE

I, ROBERT R. RODECKER, counsel for Backbone Mountain Windpower, LLC, hereby certify that service of the foregoing Joint Motion to Modify its Application For A Certificate of Convenience and Necessity has been made upon the following parties of record by hand delivery and First Class U.S. Mail, postage prepaid, this 15th day of December, 2000:

VIA HAND DELIVERY:

Caryn W. Short, Esquire
Legal Division
Public Service Commission
Post Office Box 812
Charleston, West Virginia 25323

William V. DePaulo, Esquire
Ross & DePaulo
151 Dudding Avenue
Hurricane, West Virginia 25526-1417



ROBERT R. RODECKER