

STATE OF NORTH CAROLINA
COUNTY OF PERQUIMANS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 EHR 07012

STEPHEN OWENS and JILLANNE BADAWI,)
)
Petitioners,)
)
v.)
)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENTAL QUALITY AND)
NATURAL RESOURCES,)
)
Respondent.)
)
and)
)
WEYERHAEUSER COMPANY,)
)
Respondent-Intervenor,)
)
and)
)
PASQUOTANK COUNTY,)
)
Respondent-Intervenor.)

PETITIONERS' MOTION
FOR SUMMARY
JUDGMENT

NOW COME Petitioners, Stephen Owens and Jillanne Badawi, by and through the undersigned counsel, pursuant to 26 N.C.A.C. 03.0101 and Rule 56 of the North Carolina Rules of Civil Procedure, and, for the reasons stated in this motion and the Memorandum of Law filed contemporaneously with this motion, move for summary judgment in their favor. In support of the motion, Petitioners show the Court as follows:

1. This action is a challenge to Respondent's April 29, 2015 letter to Iberdrola Renewables informing that corporation that its Desert Wind Project was not subject to the permitting provisions of Session Law 2013-51. *See An Act to Establish a Permitting Program for the*

Siting and Operation of Wind Energy Facilities, ch. 51, 2013 N.C. Sess. Laws 51 (codified at N.C.G.S. §§ 143-215.115, et seq.). Hereinafter, Petitions refer to this law as the “Wind Energy Act.”

2. This action is further a challenge to Respondent DEQ’s failure to submit Iberdrola’s Desert Wind Project to the provisions of the Wind Energy Act.
3. Petitions timely file this motion and memorandum in compliance with the January 14, 2016 scheduling order of this Court.
4. There are no material facts in dispute, and the only issues to be determined by the Court are matters of law.
5. The undisputed material facts are:
 - a. On June 29, 2011, the Federal Aviation Administration (“FAA”) issued 166 “Determinations of No Hazard to Air Navigation” (“DNHs”) for Iberdrola’s Desert Wind Project. *See, e.g.*, the FAA DNH Issued on June 29, 2011, attached hereto as Exhibit A.
 - b. Iberdrola did not construct the towers or turbines for which it obtained DNHs in 2011.
 - c. On May 17, 2013, the North Carolina General Assembly enacted the aforementioned Wind Energy Act, which applies only to wind energy facilities that have not received a written DNH issued by the FAA on or before that date. N.C.G.S. §§ 143-215.115, et seq.
 - d. The Wind Energy Act does not require the FAA determinations to be active or unexpired, but simply to have been received prior to the Act’s effective date of May 17, 2013.

- e. In 2014, Iberdrola submitted a different set of DNH applications to the FAA. *See, e.g.,* the Application for FAA DNH Submitted to the FAA by Iberdrola on June 27, 2014, attached hereto as Exhibit B.
- f. The turbines at issue in the 2014 applications were of different sizes, constructed in different locations, and use different turbine technology than those that received DNHs from the FAA in 2011. *See* Exhibits C, D, and E, and F, as well as pp. 3-4 of Mem. Supp. Pet'rs' Mot. Summ. J.
- g. On March 3, 2015, Mr. Craig Poff of Iberdrola Renewables wrote to Respondent DEQ that Iberdrola's Desert Wind Project was not subject to the provisions of the Wind Energy Act because "[Iberdrola] received Determinations of No Hazard ("DNHs") from the FAA for the project on June 29, 2011, nearly two years before the effective date of the Permitting Statute." *See* E-mail from Mr. Craig Poff of Iberdrola Renewables to Respondent DEQ, attached hereto as Exhibit G.
- h. On March 18, 2015, Respondent issued a letter stating that because the turbines in the 2014 version of the Desert Wind Project had not received FAA DNHs prior to the effective date of the Wind Energy Act, the Desert Wind Project was subject to the requirements of the Act. *See* Respondent DEQ's March 18, 2015 letter to Mr. Craig Poff of Iberdrola Renewables, attached hereto as Exhibit H.
- i. Between March 18 and March 29, Respondent DEQ met with Mr. Craig Poff of Iberdrola Renewables. After this meeting, Respondent wrote to Mr. Poff stating that "at this time, we find the Desert Wind Project is subject to the state permitting requirements," but that Respondent was "willing to reconsider permit

applicability.” *See* Respondent DEQ’s March 26, 2015 letter to Mr. Craig Poff of Iberdrola Renewables, attached hereto as Exhibit I.

- j. On April 29, 2015, Respondent DEQ issued a second letter that contradicted its statements from March of 2015. In this letter, Respondent DEQ stated that Iberdrola’s 2014 Desert Wind Project does *not* fall within the purview of the Wind Energy Act despite the fact that “individual turbines within the Desert Wind Project have both increased in height and changed coordinate locations from Iberdrola’s June 2011 FAA issued determinations.” *See* Respondent DEQ’s April 29, 2015 Letter to Mr. Craig Poff of Iberdrola Renewables, attached hereto as Exhibit J.
 - k. Iberdrola has begun construction of the Desert Wind Project, and Respondent DEQ has not submitted the project to the permitting requirements of the Wind Energy Act.
- 6. By issuing its April 29, 2015 letter and failing to subject Iberdrola’s Desert Wind Project to the provisions of the Wind Energy Act, Respondent DEQ exceeded its authority or jurisdiction, acted erroneously, failed to act as required by law or rule, failed to use proper procedure, and acted arbitrarily or capriciously for the purposes of N.C.G.S. § 150B-23(a).
 - 7. By issuing its April 29, 2015 letter and failing to subject Iberdrola’s Desert Wind Project to the provisions of the Wind Energy Act, Respondent DEQ substantially prejudiced Petitioners’ rights and deprived Petitioners of property for the purposes of N.C.G.S. § 150B-23(a).

Accordingly, Plaintiffs move that the Court:

1. Grant summary judgment in their favor;
2. Order Respondent DEQ to act as required by law; and
3. Grant such other and further relief as necessary and appropriate.

A memorandum in support of Petitioners' motion for summary judgment has been filed contemporaneously with this motion.

Respectfully submitted this the 24th day of March 2016.

For the Petitioners:



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CERTIFICATE OF SERVICE

I certify that the attached MOTION FOR SUMMARY JUDGMENT has been served by depositing a copy with the United States Postal Service with sufficient postage addressed to:

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This the 24th day of March, 2016.

By: 

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STATE OF NORTH CAROLINA
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BADAWI,

Petitioners,

v.

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Respondent,

and

WEYERHAEUSER COMPANY,

Respondent-Intervenor,

and

PASQUOTANK COUNTY,

Respondent-Intervenor.

MEMORANDUM IN SUPPORT OF
PETITIONERS' MOTION FOR
SUMMARY JUDGMENT

NOW COME Petitioners, Stephen E. Owens and Jillanne G. Badawi, by and through the undersigned counsel, and file this Memorandum of Law in Support of Petitioners' Motion for Summary Judgment.

PROCEDURAL HISTORY

On September 25, 2015, Stephen Owens and Jillanne Badawi – husband and wife – filed a petition for a contested case hearing with the Office of Administrative Hearings. In their petition, they alleged that they were aggrieved by Respondent's April 29, 2015 letter to Iberdrola Renewables. Specifically, Petitioners alleged that this letter constituted an *ultra vires* act and deprived Petitioners of the protections of the legislatively enacted wind permitting process of

Session Law 2013-51. *See* An Act to Establish a Permitting Program for the Siting and Operation of Wind Energy Facilities, ch. 51, 2013 N.C. Sess. Laws 51 (codified at N.C.G.S. §§ 143-215.115, et seq.). Hereinafter, Petitioners refer to this law as the “Wind Energy Act.”

On November 3, 2015, Respondent DEQ moved to dismiss the petition for lack of standing and failure to state a claim pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure. The parties filed their respective memoranda, and on December 14, 2015, this Court denied Respondent’s motion to dismiss. The Court then issued a scheduling order setting March 24 as the deadline for dispositive motions and April 12-13 as the date of the contested case hearing. On February 22, 2016, both Weyerhaeuser Company and Pasquotank County moved to intervene. This Court granted both interventions on March 11, 2016.

Petitioners seek (1) a ruling from this Court finding Respondent DEQ’s April 29, 2015 letter in error and not in accordance with the law such that it aggrieves Petitioners and (2) an order from this Court requiring Respondent to comply with the Administrative Procedure Act and Wind Energy Act. In pursuit of this ruling and order, Petitioners submit this memorandum.

STATEMENT OF FACTS

Petitioners’ case centers on what was originally called the “Desert Wind Project,” and is now called the “Amazon Wind Farm East.” This development is a product of Atlantic Wind, LLC, a subsidiary of Iberdrola Renewables. Under federal law, and for each of the 166 tall structures that made up its original plan for the Desert Wind Project, Iberdrola was required to obtain Federal Aviation Administration (“FAA”) determinations that the tall structures posed no hazard to civil aviation. On June 29, 2011, the FAA issued 166 “Determinations of No Hazard to Air Navigation” (“DNHs”) for Iberdrola’s original Desert Wind Project plan. *See, e.g.* the FAA

DNH Issued on June 29, 2011, attached hereto as Exhibit A. Iberdrola did not construct and does not intend to construct the wind towers for which it obtained DNHs in 2011.

On May 17, 2013, the North Carolina General Assembly enacted the aforementioned Wind Energy Act. The Act, by its own terms, applies only to wind energy facilities that have not received a written DNH issued by the FAA on or before its effective date. If Iberdrola had then constructed the facilities for which it had received no hazard determinations in 2012, the project would unquestionably not fall within the purview of the Wind Energy Act, as the towers in that project had received the requisite DNHs from the FAA. The Wind Energy Act does not require the FAA determinations to be active or unexpired, but simply to have been received prior to the Wind Energy Act's effective date of May 17, 2013.

But Iberdrola abandoned construction of the facilities for which it had previously received "no hazard" determinations. Instead, it is currently constructing a different set of facilities, as evidenced by the 2014 DNH applications that the corporation submitted to the FAA. *See, e.g.*, the Application for FAA DNH Submitted to the FAA by Iberdrola on June 27, 2014, attached hereto as Exhibit B. The turbines at issue in the 2014 applications were of different sizes, constructed in different locations, and use different turbine technology altogether. The difference in locations is evidenced by the FAA's list of all towers in the 2014 iteration of the project, which does not include the tower for which the FAA granted a DNH in Exhibit A. *See* List of All 2014 Wind Tower Locations by Longitude and Latitude, attached hereto as Exhibit C. This difference in height is evidenced by the FAA's 2014 DNH letters. *See, e.g.*, 2014 DNH Letter from the FAA to Iberdrola Renewables, attached hereto as Exhibit D. Iberdrola further changed the planned turbine model to use atop the towers from the Gamesa G97 Model to the Gamesa G114 model. In its application for a conditional use permit to Pasquotank County,

Iberdrola stated that its project would use Gamesa G97 wind turbine generators. *See* Iberdrola's 2011 Conditional Use Permit Application to Pasquotank County, attached hereto as Exhibit E. But in 2014 Iberdrola changed the turbine model that it would use to the Gamesa G114 model. *See* Agreement Between Department of Defense; Department of the Navy; Iberdrola Renewables, LLC; and Atlantic Wind, LLC, attached hereto as Exhibit F.

On March 3, 2015, Mr. Craig Poff, Director of Business Development for Iberdrola Renewables, wrote to Respondent DEQ regarding the applicability of the Wind Energy Act to the Desert Wind Project. Mr. Poff wrote in part:

"We received Determinations of No Hazard ("DNHs") from the FAA for the project on June 29, 2011, nearly two years before the effective date of the Permitting Statute. I have attached one of those DNHs provided by the FAA on June 29, 2011 and am happy to provide the others if you would like. So, the Project had received DNHs well before the effective date of the Permitting State. The plain language of Section 2 of the Permitting Statute makes it clear that the Permitting Statute does not apply to the Desert Wind project." *See* March 3, 2015 E-Mail from Mr. Craig Poff of Iberdrola Renewables to Respondent DEQ, attached hereto as Exhibit G.

Respondent reviewed this information — including the communication from Mr. Poff. — and decided that the Desert Wind Facility, in its 2014 form, was clearly subject to the requirements of the Wind Energy Act, including but not limited to a permitting process, an environmental impact assessment, and opportunities for members of the community, like Petitioners, to be involved in the permitting and siting process. On March 18, 2015, Respondent issued a letter stating that because the turbines in the 2014 version of the Desert Wind Project had not received FAA "no hazard" determinations prior to the effective date of the Wind Energy Act, the Desert Wind Project was subject to the requirements of the Act. *See* Respondent DEQ's March 18, 2015 letter to Mr. Craig Poff of Iberdrola Renewables, attached hereto as Exhibit H.

Between March 18 and March 29, Respondent DEQ met with Mr. Craig Poff of Iberdrola Renewables. After this meeting, Respondent DEQ wrote to Mr. Poff stating that “at this time, we find the Desert Wind Project is subject to the state permitting requirements,” but that it was “willing to reconsider permit applicability.” *See* Respondent DEQ’s March 26, 2015 letter to Mr. Craig Poff of Iberdrola Renewables, attached hereto as Exhibit I.

On April 29, 2015, little more than a month after issuing its original letter, Respondent issued a second letter that contradicted its statements from March of 2015. *See* Respondent’s April 29, 2015 Letter to Mr. Craig Poff of Iberdrola Renewables, attached hereto as Exhibit J. Rather than being subject to the requirements of the Wind Energy Act, Respondent stated that Iberdrola’s 2014 Desert Wind Project does *not* fall within the purview of the Act. Respondent made an affirmative statement of law that the Wind Energy Act does not apply to Iberdrola, and went so far as to say that “the fact that individual turbines within the Desert Wind Project have both increased in height and changed coordinate locations from Iberdrola’s June 2011 FAA issued determinations does not bring the Desert Wind Project within the requirements of the Act.” It is logically impossible that both Respondent’s March 18 and April 29 letters contain correct statements of law, and it is clear on the face of the law that the second letter is in error.

LAW AND ARGUMENT

I. RESPONDENT EXCEEDED ITS AUTHORITY OR JURISDICTION, FAILED TO ACT AS REQUIRED BY LAW OR RULE, ACTED ERRONEOUSLY, FAILED TO USE PROPER PROCEDURE, AND ACTED ARBITRARILY OR CAPRICIOUSLY.

A. Respondent failed to act as required by law or rule.

“The...public laws of [North Carolina] shall be interpreted and administered in accordance with the policies set forth in” the North Carolina Environmental Policy Act (NCEPA). N.C.G.S. § 113A-4(1). Among the policies declared in the NCEPA are “to seek, for

all [North Carolinians], safe, healthful, productive and aesthetically pleasing surroundings,” and “to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety.” N.C.G.S. § 113A-3.

N.C.G.S. § 143-215.116 provides that “No person shall undertake construction, operation, or expansion activities associated with a wind energy facility in this State without first obtaining a permit from the Department.” N.C.G.S. § 143-215.116. The effective date of this statute is May 17, 2013. *See* 2013 North Carolina Laws S.L. 2013-51 (H.B. 484). N.C.G.S. § 143-215.115 provides the relevant definitions:

(2) “Wind energy facility” means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of one megawatt or more of energy.

(3) “Wind energy facility expansion” means any activity that (i) adds or *substantially modifies turbines* or transmission facilities, *including increasing the height of such equipment*, over that which was initially permitted or (ii) increases the footprint of the wind energy facility over that which was initially permitted. N.C.G.S. § 143-215.115. (Emphasis added.)

Thus, new wind energy facilities or wind energy facility expansions undertaken after the effective date of the Act – May 17, 2013 – are subject to the permitting process enacted by the General Assembly.

On March 18, 2015, Respondent informed Iberdrola Renewables that the corporation’s Desert Wind Project “is subject to the State’s wind energy facility permitting process.” This was, because, in the words of Respondent:

“Pursuant to the Act, no person shall undertake construction, operation, or expansion activities associated with a wind energy facility in North Carolina

without first obtaining a permit from the Department of Environment and Natural Resources (DENR). A wind energy facility and wind energy facility expansion which has not received a written FAA determination, as described above, prior to May 17, 2013 is subject to the wind energy facility permitting process codified under North Carolina General Statutes § 143-215.115 et al.” See Exhibit H.

On April 29, 2015, Respondent reversed this determination.

Respondent’s April 29 letter is clearly a “failure to act as required by law or rule.” N.C.G.S. § 150B-23(a)(5). Respondent admits in its April 29 letter that “individual turbines within the Desert Wind Project have both increased in height and changed coordinate locations from Iberdrola’s June 2011 FAA issued determinations.” See Exhibit G. The Wind Energy Act applies to (1) new wind energy facilities and (2) wind energy facility expansions. The Wind Energy Act is either a new wind energy facility or a wind energy facility expansion, and for this reason Respondent DEQ’s letter violates N.C.G.S. § 150B-23.

1. The 2014 Desert Wind Project is not “grandfathered in” under the Wind Energy Act, but instead is a new “wind energy facility,” and therefore is subject to the requirements of the Act as a matter of law.

The 2011 Project contemplated construction of 166 tall structures. 165 would be wind towers, atop of which would sit Gamesa G97 2.0 MW (megawatt) wind turbines. These towers would rise to 486 feet above ground level. Iberdrola asked for, and the FAA granted, an extension of DNHs for 150 of the 165 wind towers. The DNHs for these towers expired May 21, 2014. Iberdrola never built these towers.

Instead, on June 27, 2014, 13 months after enactment of the Wind Energy Act, Iberdrola filed with the FAA a new request for DNHs for 150 wind facilities that expanded the wind towers’ vertical height from 486 feet above ground level (“AGL”) to 499 feet AGL, reflecting a shift to use of Gamesa G114 wind turbines that accommodate an expanded 2.5 MW capacity. Not only were these towers taller and capable of greater generating capacity, but they were in

different locations. On December 2, 2014, one year and seven months after enactment of the Wind Act, Iberdrola received DNHs from the FAA for 104 of the 150 wind facilities. Iberdrola also intends to construct an additional forty-six wind facilities on the Desert Wind site, but it has not yet received FAA DNHs for those towers.

The 2014 Project is simply not the 2011 Project contemplated by Iberdrola and which was before the General Assembly when it enacted the Wind Energy Act. It is a newly designed project that did not have FAA DNH approvals at the time the Wind Energy Act became law. When Iberdrola abandoned its 2011 Project, it abandoned its opportunity to construct wind facilities without first obtaining a permit. This is a plain reading of the law, as understood by Respondent in its March 18, 2015 letter to Iberdrola. For this reason, the Wind Energy Act is a “new wind energy facility,” and Respondent “failed to act as required by law or rule” when it informed Iberdrola otherwise.

2. Alternatively, the 2014 Desert Wind Project is a “wind energy facility expansion,” and therefore must be submitted to the requirements of the Wind Energy Act.

If the Court discounts Petitioners’ argument that the Desert Wind Project, in its 2014 form, is a new wind facility, it must still conclude in the alternative that the Project is subject to the Wind Energy Act as a “wind energy facility expansion.” The law clearly states that “[a]ny activity that (i) adds or substantially modifies turbines or transmission facilities, including increasing the height of such equipment, over that which was initially permitted” is subject to permitting under the Wind Act as an expanded facility. N.C.G.S. § 143-215.1 15(3) (emphasis added).

Iberdrola changed the locations, increased the height, and changed the turbine model to be used atop its wind towers after the enactment of the Wind Energy Act. It therefore has both

“substantially modified” the wind turbines in its project and “increase[ed] the height of” those turbines since the enactment of the Wind Energy Act. While the DNHs received prior to May 13, 2013 were sufficient to stand in the shoes of the Act’s permitting provisions, DNHs received after this date cannot do so. As the expanded facilities received no DNHs prior to the Act’s effective date, the Desert Wind Project is, as a matter of law, a “wind energy facility expansion.” Therefore, Respondent must submit these expanded facilities to the requirements of the Wind Energy Act. Respondent DEQ’s letter informing Iberdrola to the contrary was therefore a “failure to act as required by law or rule” for the purposes of N.C.G.S. § 150B-23(a)(5).

B. Respondent exceeded its authority or jurisdiction.

Respondent DEQ is an executive agency created by the legislature, and has only those powers granted to it by that elected body. *See* Article 7 of the Executive Organization Act of 1973, codified in N.C.G.S. §§ 143B-275 thru 344.60. Among the statutory duties of DEQ are to “provide for the protection of the environment” and “provide for the...public health through...the administration of environmental health programs.” N.C.G.S. § 143B-279(1), (1b). In issuing its letter of April 29, 2015, Respondent DEQ exceeded its authority, contravened its legislative mandate, and unconstitutionally acted in a legislative capacity by refusing to implement the Wind Energy Act with respect to the 2014 Desert Wind Project.

The Executive Organization Act of 1973 charges Respondent DEQ with the duty to “provide for the protection of the environment and public health through...the administration of environmental health programs.” N.C.G.S. § 143B-279.2(1b). Were Respondent DEQ’s interpretation of the Wind Energy Act as being discretionary to be adopted by this Court, both N.C.G.S. § 143B-279.2(1b) and the provisions of the Wind Energy Act – in addition to an untold number of environmental regulations – would be rendered essentially meaningless. Legislative

intent must be ascertained by “such *indicia* as the purposes appearing from the statute taken as a whole, the phraseology, the words ordinary or technical, the law as it prevailed before the statute, the mischief to be remedied, the remedy, the end to be accomplished...and other like means.” State v. Louali, 215 N.C. App. 176, 180 (2011).

Under Respondent DEQ’s preferred interpretation of the Wind Energy Act, Respondent has no duty to *ever* implement its provisions – not just in Petitioners’ case, but in any case past, present, or future. This despite the fact that the General Assembly enacted the Wind Energy Act “to establish a permitting program for the siting and operation of wind energy facilities.” 2013 North Carolina Laws S.L. 2013-51 (H.B. 484). The purpose of the statute is to “establish a permitting program” for wind energy facilities. But “the law as it prevailed before the statute” would be essentially unchanged by the Wind Energy Act under Respondent’s preferred interpretation of the Act. Further, where “the end to be accomplished” is the increased regulation of wind energy facilities, the most plain and logical reading of the Wind Energy Act is that it charges Respondent with a duty to implement its provisions.

Put simply, Respondent DEQ made a choice that was not its choice to make. It swept legislative protections for Petitioners under the rug, and by so doing overreached. For this reason, it has “exceeded its authority or jurisdiction” for the purposes of N.C.G.S § 150B-23.

C. Respondent acted erroneously.

For the reasons that Respondent failed to act “as required by law or rule” stated in subpart (a), Respondent DEQ also acted erroneously for the purposes of N.C.G.S § 150B-23(a)(2).

D. Respondent failed to use proper procedure.

As discussed above, the Desert Wind Project is subject to the requirements of the Wind Energy Act as either a new “wind energy facility” or, alternatively, as a “wind energy facility

expansion.” Because of this, Respondent DEQ failed to use proper procedure in allowing Iberdrola to continue constructing its Desert Wind Project, as “no person” may construct, operate, or expand a wind energy facility “without first obtaining a permit from [Respondent DEQ].” N.C.G.S. § 143-215.116.

Respondent DEQ does not have “carte blanche” authority to grant or deny such permits on a whim. Rather, the Act proscribes procedures that must be followed before such a permit may be issued. First, there must be a “permit preapplication site evaluation meeting,” to which “interested parties” must be sent “an invitation.” N.C.G.S. § 143-215.117(c). Next, there must be a “a scoping meeting,” of which Respondent DEQ must send “written notice” including “an invitation to participate” to several parties, including “the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or proposed wind energy facility expansion is proposed to be located.” N.C.G.S. §143-215.118.

Further – and most critically – Respondent is required to “hold a public hearing in each county in which the wind energy facility or wind energy facility expansion is proposed to be located within 75 days of receipt of a completed permit application.” N.C.G.S. § 143-215.119(f). By refusing to implement the provisions of the Act to the Desert Wind Project, Respondent DEQ single-handedly eliminated this public hearing, in which Petitioners would have been able to participate. As discussed below, this failure to use proper procedure substantially infringed upon Petitioners’ rights.

E. Respondent acted arbitrarily or capriciously.

“Administrative agency decisions may be reversed as arbitrary and or capricious if they are ‘patently in bad faith,’ or ‘whimsical’ in the sense that ‘they indicate a lack of fair and careful consideration’ or ‘fail to indicate “any course of reasoning and the exercise of judgment.””

Rector v. N. Carolina Sheriffs' Educ. & Training Standards Comm, 103 N.C.App. 527, at 532 (1991) (*quoting* Lewis v. North Carolina Dep't of Human Resources, 92 N.C.App. 737, 740 (1989)).

Respondent's April 29, 2015 letter incorporated the reading of the act proposed by Mr. Poff in his March 3, 2015 email. Respondent had already considered this potential reading of the Act before making its initial decision on March 18 that the Act applied to the Desert Wind Project. While it requested additional information from Iberdrola on March 26, 2015, it did so in order to compare "descriptions of the current 'wind energy facility' and descriptions of the 'wind energy facility' at the time of the initial FAA determination." *See* Exhibit I. Nonetheless, when it wrote on April 29 that the Desert Wind Project was not subject to the Wind Energy Act, it did so because "the FAA issued determinations to Iberdrola...on June 29, 2011, prior to the Act becoming law." *See* Exhibit J.

Respondent received no new information regarding the 2011 FAA determinations between the issuance of its March 18 and April 29 letters. On March 18, it had decided that the existence of the 2011 DNHs did *not* exempt the Desert Wind Project from the requirements of the Act, even though Iberdrola had previously made this case to Respondent on March 3. So, on April 29, without receiving any materially different information about the 2011 FAA determinations, Respondent nonetheless used those determinations as its basis for reversing its March 18 decision. This clearly exhibits a "whimsical" decision without "any course of reason and the exercise of judgment." Rector v. N. Carolina Sheriffs' Educ. & Training Standards Comm, 103 N.C.App. 527, at 532 (1991). Even worse, Respondent *admits* that its April 29 letter "reflected Atlantic Wind's desired reading of the [Wind Energy Act]." Resp't.'s Mem. Supp. Mot. Dismiss 5.

The permitting provisions of the Wind Energy Act specifically apply to “[a]ny activity that...adds or substantially modifies turbines or transmission facilities, including increasing the height of such equipment. *See* An Act to Establish a Permitting Program for the Siting and Operation of Wind Energy Facilities, ch. 51, 2013 N.C. Sess. Laws 51 (codified at N.C.G.S. §§ 143-215.115, et seq.). Respondent DEQ admits in its April 29 letter that “individual turbines within the Desert Wind Project have both increased in height and changed coordinate locations from Iberdrola’s June 2011 FAA issued determinations.” *See* Exhibit J.

Respond DEQ admitted that the Desert Wind Project falls squarely within the provisions of the Act when it said that “turbines...have both increased in height and changed coordinate locations.” *See* Exhibit J. It then decided to simply not submit Iberdrola to the requirements of the law, despite receiving no material information about the 2011 FAA determinations on which its decision was based. This is clearly an “arbitrary and capricious” act for the purposes of N.C.G.S. § 150B-23(a)(4).

II. RESPONDENT SUBSTANTIALLY PREJUDICED PETITIONERS’ RIGHTS AND DEPRIVED PETITIONERS OF PROPERTY

The harm required to establish “substantial prejudice” of a petitioner’s rights must be concrete, particularized, and “actual” or “imminent.” *See Ridge Care, Inc. v. N.C. Dep’t of Health & Human Servs.*, 214 N.C.App. 498, 506 (2011), *Surgical Care Affiliates, LLC v. N.C. Dep’t of Health & Human Servs., Div. of Health Serv. Regulation, Certificate of Need Section*, 762 S.E.2d 468, 476 (N.C. Ct. App. 2014).

The harm to Petitioners is not only “actual” or “imminent,” it is happening right now. Access roads have been built. White towers are being erected. Turbines are going up. All the while, Petitioners are suffering the current harm of the deprivation of their legal and procedural

rights, and face the future harm of the environmental impact of industrial wind turbines. For numerous reasons, Petitioners' rights have been substantially infringed.

A. Respondent substantially prejudiced Petitioners' rights under the Wind Energy Act.

Under the Administrative Procedure Act, a person's "procedural rights" are infringed upon when the petitioner has a sufficient "geographical nexus" to the challenged action. *See Orange County v. Dept. of Transportation*, 46 N.C. App. 350, 360-62, *disc. rev. denied*, 301 N.C. 94 (1980). In *Orange County*, the Court of Appeals held that a "'procedural injury' implicit in agency failure to prepare an environmental impact statement" may be found if the plaintiffs are close enough to the challenged project that "he may be expected to suffer whatever environmental consequences the project may have." *Orange County*, 46 N.C. at 360-62, *citing City of David v. Coleman*, 521 F.2d 661, 671 (1975). In *City of David*, the United States Court of Appeals for the Ninth Circuit held that a plaintiff satisfies the "geographic nexus" test when he or she "may be expected to suffer a wide variety of environmental consequences that [he or she] alleges will result from the [challenged project]." *City of David*, 521 F.2d at 671.

There are two reasons that Petitioners are within the "geographical nexus" of the Desert Wind Project wherein their procedural rights, such as their right to participate in public hearings, are subject to infringement. First, Petitioners own property at 1015 Swamp Road, Hertford, North Carolina, 27944, lying in Perquimans County. Pet'rs' Pet. Contested Case Hr'g (8). This is as close as one could possibly be to the Desert Wind Project without being directly in its shadow. Second, the legislature has defined "each applicable county" as the area within which Respondent DEQ would have been required to "provide notice...of the public hearing in a newspaper of general circulation" had it not failed to implement the Wind Energy Act to the Desert Wind Project. N.C.G.S. § 143-215.119(f). The General Assembly therefore contemplated

that anyone within a county containing a new or expanded wind energy facility would have a “sufficient geographic nexus to the site of the challenged project that he may be expected to suffer whatever environmental consequences the project may have.” Orange Cty. v. N. Carolina Dep’t of Transp., 46 N.C. App. 350, 361 (1980). Therefore, even if this Court determines that the harm to Petitioners’ is a “procedural injury,” this is still an “injury in fact.” Id.

It is clear that Petitioners have suffered a violation of their procedural rights. This is evidenced by the change in their circumstances as a result of Respondent DEQ’s issuance of its April 29, 2015 letter. Had that letter not been issued, Petitioners would be in a very different situation than they are today. The rights and duties of the parties would be as they were in March of 2015, with Iberdrola having to go through the statutorily-enacted permitting process. Petitioners would have been able to participate in the “permit preapplication site evaluation meeting” required by N.C.G.S. § 143-215.117(c). Petitioners further would have been able to participate in the scoping meeting required by N.C.G.S. § 143-215.118. Finally, Petitioners could have participated in the public hearing mandated by N.C.G.S. § 143-215.119(f). These are real, concrete benefits which Petitioners have been denied by an action of Respondent. Petitioners seek nothing more than the enjoyment of rights conferred upon them by the legislature. Respondent has stripped Petitioners of these rights, and in the process has “substantially prejudiced” the procedural rights of people who are clearly within the sufficient “geographical nexus” of the Desert Wind Project.

B. Respondent Deprived Petitioners of Property

Petitioners contend that the actions taken by Respondent DEQ have and will negatively affect the value of their property, resulting in a deprivation of property for the purposes of N.C.G.S. § 150B-23(a). However, as the facts surrounding this deprivation are not undisputed,

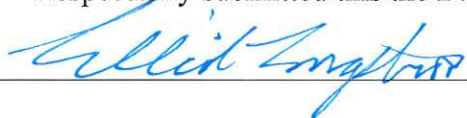
Petitioners reserve this contention for argument at hearing if this case is not dealt with on summary judgment.

CONCLUSION

For the foregoing reasons, Petitioners' motion for summary judgment should be granted in its entirety.

Respectfully submitted this the 24th day of March, 2016.

By: _____



Elliot Engstrom
Lead Counsel
Center for Law and Freedom
Civitas Institute
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N.C. State Bar No. 46003
Counsel for Petitioners

By: /s/ David Schnare

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Va. Bar No. 44522
Pro Hac Vice¹ Counsel for Petitioners

¹Admitted to practice in this case by the Oct. 28, 2015 order of this Court granting *pro hac vice* admission.

CERTIFICATE OF SERVICE

I certify that the attached MEMORANDUM IN SUPPORT OF PETITIONERS' MOTION FOR SUMMARY JUDGMENT has been served by depositing a copy with the United States Postal Service with sufficient postage addressed to:

Asher Spiller
North Carolina Department of Justice
Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001
Counsel for Respondent

Todd Roessler
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Raleigh, NC 27601
Counsel for Respondent-Intervenor Pasquotank County

This the 24th day of March, 2016.

By: 

Elliot Engstrom
Lead Counsel
Center for Law and Freedom
Civitas Institute
100 S. Harrington Street
Raleigh, NC 27603
N.C. State Bar No. 46003
Counsel for Petitioners

EXHIBIT A:
*FAA DNH Issued on
June 29, 2011*



Mail Processing Center
 Federal Aviation Administration
 Southwest Regional Office
 Obstruction Evaluation Group
 2601 Meacham Boulevard
 Fort Worth, TX 76137

Aeronautical Study No.
 2011-WTE-2312-OE

Issued Date: 06/29/2011

Tina Bartunek
 IBERDROLA RENEWABLES
 1125 NW Couch St
 Portland, OR 97209

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure: Wind Turbine A2
 Location: Windfall, NC
 Latitude: 36-17-05.45N NAD 83
 Longitude: 76-29-21.68W
 Heights: 486 feet above ground level (AGL)
 498 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

As a condition to this Determination, the structure is marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, white paint/synchronized red lights - Chapters 4,12&13(Turbines).

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be completed and returned to this office any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part I)
- Within 5 days after the construction reaches its greatest height (7460-2, Part II)

See attachment for additional condition(s) or information.

This determination expires on 12/29/2012 unless:

- (a) extended, revised or terminated by the issuing office.
- (b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION

OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

Additional wind turbines or met towers proposed in the future may cause a cumulative effect on the national airspace system. This determination is based, in part, on the foregoing description which includes specific coordinates and heights . Any changes in coordinates will void this determination. Any future construction or alteration requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

If we can be of further assistance, please contact our office at (404) 305-7081. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2011-WTE-2312-OE.

Signature Control No: 137915776-145372207

(DNE -WT)

Michael Blaich
Specialist

Attachment(s)
Additional Information

A Department of the Navy (DON) evaluation determined the structure would not have an adverse aeronautical effect on flight operations, flight procedures, and safety of flight and as such the DON is providing a No Objection. While the evaluation determined the structure would not have an adverse aeronautical effect, construction of wind turbines may have an adverse impact on DON receiver subsystem site at the Naval Support Activity, Northwest in Chesapeake, Virginia. The FAA requires the Proponent, prior to construction, to contact:

Director, Forces Surveillance Support Center, 1298 Olympic Boulevard, Chesapeake, Virginia 23322

EXHIBIT B:

*Application for FAA
DNIH Submitted on
June 27, 2014*



Federal Aviation
Administration

The system will be going offline from 9 pm to 10 pm US/Eastern on Wed, August 5, 2015 for upgrades. We apologize for any inconvenience.

« OE/AAA

Circle Search for Cases Results: Form 7460-1 for ASN 2014-WTE-3611-OE

Overview		Received Date: 06/27/2014				
Study (ASN):	2014-WTE-3611-OE	Entered Date:	06/27/2014			
Prior Study:	2014-WTE-1025-OE	Completion Date:	12/02/2014			
Status:	Determined	Expiration Date:	06/02/2016			
Letters:	Determination	Map:	View Map			
Supplemental Form 7460-2: Please login to add a Supplemental Form 7460-2.						
Sponsor Information		Sponsor's Representative Information				
Sponsor:	Desert Wind LLC	Representative:				
Attention Of:	Michael Clayton	Attention Of:	Jamie Boyd			
Address:	2 Radnor Corp Center Suite 200	Address:	2 Radnor Corp Center, Suite 200			
Address2:	100 Matsonford Rd	Address2:	100 Matsonford Rd			
City:	Radnor	City:	Radnor			
State:	PA	State:	PA			
Postal Code:	19087	Postal Code:	19087			
Country:	US	Country:	US			
Phone:	484-868-3747	Phone:	484-654-1874			
Fax:		Fax:				
Construction Info		Structure Summary				
Notice Of:	CONSTR	Structure Type:	Wind Turbine			
Duration:	PERM (Months: 0 Days: 0)	Structure Name:	A2			
Work Schedule:	03/01/2015 to 03/01/2017	FCC Number:				
Date Built:						
Structure Details		Height and Elevation				
Latitude (NAD 83):	36° 17' 12.18" N	Proposed DNE DET				
Longitude (NAD 83):	76° 29' 29.20" W	Site Elevation:	10			
Horizontal Datum:	NAD 83	Structure Height:	499 0 499			
Survey Accuracy:	4D	Total Height (AMSL):	509 0 509			
Marking/Lighting:	White Paint/Synchronized Red Lights					
Other Description:						
Current Marking/Lighting:	N/A Proposed Structure	Frequencies				
Current Marking/Lighting Other Description:		Low Freq	High Freq	Unit	ERP	Unit
Name:						
City:	Windfall					
State:	NC					
Nearest County:	Perquimans					
Nearest Airport:	NC01					
Distance to Structure:	84632.29 feet					
On Airport:	No					
Direction to Structure:	325.19°					
Description of Location:	Appx 3 miles from Windfall and 10 miles from Elizabeth City CG Air Station Municipal					
Description of Proposal:	Refilling for turbine height, no change in turbine locations of 150 turbines and 1 met tower for Desert Wind Project					

← Previous [Back to Search Result](#) Next →



Circle Search for Cases Results: Form 7460-1 for ASN 2014-WTE-3664-OE

Overview		Received Date: 06/27/2014	
Study (ASN):	2014-WTE-3664-OE	Entered Date:	06/27/2014
Prior Study:	2014-WTE-1078-OE	Completion Date:	12/02/2014
Status:	Determined	Expiration Date:	06/02/2016
Letters:	Determination	Map:	View Map
Supplemental Form 7460-2: Please login to add a Supplemental Form 7460-2.			
Sponsor Information		Sponsor's Representative Information	
Sponsor:	Desert Wind LLC	Representative:	
Attention Of:	Michael Clayton	Attention Of:	Jamie Boyd
Address:	2 Radnor Corp Center Suite 200	Address:	2 Radnor Corp Center, Suite 200
Address2:	100 Matsonford Rd	Address2:	100 Matsonford Rd
City:	Radnor	City:	Radnor
State:	PA	State:	PA
Postal Code:	19087	Postal Code:	19087
Country:	US	Country:	US
Phone:	484-868-3747	Phone:	484-654-1874
Fax:		Fax:	
Construction Info		Structure Summary	
Notice Of:	CONSTR	Structure Type:	Wind Turbine
Duration:	PERM (Months: 0 Days: 0)	Structure Name:	W21
Work Schedule:	03/01/2015 to 03/01/2017	PCC Number:	
Date Built:			
Structure Details		Height and Elevation	
Latitude (NAD 83):	36° 19' 22.71" N		Proposed DNE DET
Longitude (NAD 83):	76° 28' 10.10" W	Site Elevation:	14
Horizontal Datum:	NAD 83	Structure Height:	499 0 499
Survey Accuracy:	4D	Total Height (AMSL):	513 0 513
Marking/Lighting:	White Paint/Synchronized Red Lights		
Other Description:		Frequencies	
Current Marking/Lighting:	N/A Proposed Structure	Low Freq High Freq Unit	ERP Unit
Current Marking/Lighting Other Description:			
Name:			
City:	Windfall		
State:	NC		
Nearest County:	Perquimans		
Nearest Airport:	ECG		
Distance to Structure:	89831.95 feet		
On Airport:	No		
Direction to Structure:	284.8°		
Description of Location:	Appx 3 miles from Windfall and 10 miles from Elizabeth City CG Air Station Municipal		
Description of Proposal:	Refilling for turbine height, no change in turbine locations of 150 turbines and 1 met tower for Desert Wind Project		

Previous [Back to Search Result](#) [Next](#)

EXHIBIT C:

*List of all 2014 Wind
Tower Locations by
Longitude and Latitude*



Circle Search for Cases Results

Records 1 to 200 of 263

Page 1 of 2
Next page →

Case Number	City	State	Latitude	Longitude	Site Elevation	Structure Height	Total Height
2014-WTE-3763-OE	Windfall	NC	36° 19' 48.94" N	76° 28' 46.24" W	10	404	414
2014-WTE-3759-OE	Windfall	NC	36° 17' 02.75" N	76° 26' 18.08" W	13	499	512
2014-WTE-3758-OE	Windfall	NC	36° 17' 37.95" N	76° 27' 21.64" W	13	499	512
2014-WTE-3757-OE	Windfall	NC	36° 17' 20.90" N	76° 27' 10.90" W	15	499	514
2014-WTE-3756-OE	Windfall	NC	36° 17' 06.57" N	76° 27' 02.11" W	14	499	513
2014-WTE-3755-OE	Windfall	NC	36° 17' 14.44" N	76° 27' 45.08" W	13	499	512
2014-WTE-3754-OE	Windfall	NC	36° 17' 00.01" N	76° 27' 34.37" W	14	499	513
2014-WTE-3753-OE	Windfall	NC	36° 17' 45.57" N	76° 25' 21.59" W	13	499	512
2014-WTE-3752-OE	Windfall	NC	36° 17' 32.62" N	76° 25' 17.46" W	13	499	512
2014-WTE-3751-OE	Windfall	NC	36° 18' 14.93" N	76° 26' 23.16" W	14	499	513
2014-WTE-3750-OE	Windfall	NC	36° 16' 45.10" N	76° 27' 24.42" W	15	499	514
2014-WTE-3749-OE	Windfall	NC	36° 17' 44.76" N	76° 26' 08.21" W	14	499	513
2014-WTE-3748-OE	Windfall	NC	36° 17' 31.13" N	76° 25' 58.82" W	14	499	513
2014-WTE-3747-OE	Windfall	NC	36° 17' 20.41" N	76° 25' 46.78" W	14	499	513
2014-WTE-3746-OE	Windfall	NC	36° 17' 50.77" N	76° 26' 47.46" W	14	499	513
2014-WTE-3745-OE	Windfall	NC	36° 17' 34.54" N	76° 26' 37.27" W	13	499	512
2014-WTE-3744-OE	Windfall	NC	36° 17' 19.67" N	76° 26' 30.84" W	12	499	511
2014-WTE-3743-OE	Windfall	NC	36° 16' 48.06" N	76° 28' 01.83" W	14	499	513
2014-WTE-3742-OE	Windfall	NC	36° 20' 13.65" N	76° 24' 35.72" W	13	499	512
2014-WTE-3741-OE	Windfall	NC	36° 18' 35.89" N	76° 24' 18.06" W	14	499	513
2014-WTE-3740-OE	Windfall	NC	36° 18' 52.55" N	76° 24' 27.54" W	17	499	516
2014-WTE-3739-OE	Windfall	NC	36° 19' 03.75" N	76° 24' 38.04" W	11	499	510
2014-WTE-3738-OE	Windfall	NC	36° 22' 02.21" N	76° 22' 33.03" W	15	499	514
2014-WTE-3737-OE	Windfall	NC	36° 22' 21.24" N	76° 22' 40.13" W	13	499	512
2014-WTE-3736-OE	Windfall	NC	36° 22' 35.00" N	76° 22' 48.72" W	14	499	513
2014-WTE-3735-OE	Windfall	NC	36° 19' 19.88" N	76° 24' 44.19" W	15	499	514
2014-WTE-3734-OE	Windfall	NC	36° 22' 15.93" N	76° 23' 17.56" W	15	499	514
2014-WTE-3733-OE	Windfall	NC	36° 22' 31.44" N	76° 23' 24.07" W	13	499	512
2014-WTE-3732-OE	Windfall	NC	36° 20' 15.30" N	76° 22' 58.12" W	11	499	510
2014-WTE-3731-OE	Windfall	NC	36° 20' 27.84" N	76° 23' 09.46" W	10	499	509
2014-WTE-3730-OE	Windfall	NC	36° 19' 38.03" N	76° 24' 53.92" W	9	499	508
2014-WTE-3729-OE	Windfall	NC	36° 20' 43.17" N	76° 23' 17.75" W	14	499	513
2014-WTE-3728-OE	Windfall	NC	36° 20' 56.89" N	76° 23' 26.67" W	12	499	511
2014-WTE-3727-OE	Windfall	NC	36° 21' 09.61" N	76° 23' 37.08" W	14	499	513
2014-WTE-3726-OE	Windfall	NC	36° 21' 22.72" N	76° 23' 49.22" W	15	499	514
2014-WTE-3725-OE	Windfall	NC	36° 19' 04.18" N	76° 23' 00.64" W	13	499	512
2014-WTE-3724-OE	Windfall	NC	36° 19' 17.02" N	76° 23' 12.33" W	14	499	513
2014-WTE-3723-OE	Windfall	NC	36° 19' 30.95" N	76° 23' 20.88" W	13	499	512
2014-WTE-3722-OE	Windfall	NC	36° 19' 46.16" N	76° 23' 27.19" W	10	499	509
2014-WTE-3721-OE	Windfall	NC	36° 20' 02.33" N	76° 23' 34.43" W	12	499	511
2014-WTE-3720-OE	Windfall	NC	36° 20' 14.65" N	76° 23' 41.97" W	11	499	510
2014-WTE-3719-OE	Windfall	NC	36° 18' 26.51" N	76° 25' 11.70" W	14	499	513
2014-WTE-3718-OE	Windfall	NC	36° 20' 31.60" N	76° 23' 50.88" W	12	499	511
2014-WTE-3717-OE	Windfall	NC	36° 21' 03.17" N	76° 24' 13.74" W	13	499	512
2014-WTE-3716-OE	Windfall	NC	36° 18' 27.19" N	76° 23' 46.43" W	13	499	512

2014-WTE-3715-OE	Windfall	NC	36° 18' 40.41" N	76° 23' 20.05" W	11	499	510
2014-WTE-3714-OE	Windfall	NC	36° 18' 53.01" N	76° 23' 32.36" W	10	499	509
2014-WTE-3713-OE	Windfall	NC	36° 19' 03.90" N	76° 23' 44.66" W	14	499	513
2014-WTE-3712-OE	Windfall	NC	36° 19' 19.53" N	76° 23' 54.44" W	13	499	512
2014-WTE-3711-OE	Windfall	NC	36° 19' 50.42" N	76° 24' 12.53" W	13	499	512
2014-WTE-3710-OE	Windfall	NC	36° 20' 02.49" N	76° 24' 26.27" W	11	499	510
2014-WTE-3709-OE	Windfall	NC	36° 18' 42.26" N	76° 25' 18.33" W	10	499	509
2014-WTE-3708-OE	Windfall	NC	36° 22' 48.62" N	76° 25' 11.20" W	14	499	513
2014-WTE-3707-OE	Windfall	NC	36° 23' 08.20" N	76° 25' 25.01" W	13	499	512
2014-WTE-3706-OE	Windfall	NC	36° 22' 30.99" N	76° 25' 37.23" W	13	499	512
2014-WTE-3705-OE	Windfall	NC	36° 22' 45.93" N	76° 25' 47.80" W	13	499	512
2014-WTE-3704-OE	Windfall	NC	36° 21' 56.87" N	76° 25' 58.91" W	13	499	512
2014-WTE-3703-OE	Windfall	NC	36° 22' 51.57" N	76° 24' 37.17" W	13	499	512
2014-WTE-3702-OE	Windfall	NC	36° 22' 13.61" N	76° 26' 13.18" W	12	499	511
2014-WTE-3701-OE	Windfall	NC	36° 22' 15.12" N	76° 24' 48.43" W	12	499	511
2014-WTE-3700-OE	Windfall	NC	36° 21' 16.04" N	76° 24' 49.93" W	14	499	513
2014-WTE-3699-OE	Windfall	NC	36° 21' 30.90" N	76° 24' 59.15" W	14	499	513
2014-WTE-3698-OE	Windfall	NC	36° 21' 13.11" N	76° 25' 26.41" W	14	499	513
2014-WTE-3697-OE	Windfall	NC	36° 21' 27.74" N	76° 25' 32.37" W	15	499	514
2014-WTE-3696-OE	Windfall	NC	36° 21' 25.18" N	76° 24' 21.47" W	14	499	513
2014-WTE-3695-OE	Windfall	NC	36° 22' 26.83" N	76° 21' 49.61" W	16	499	515
2014-WTE-3694-OE	Windfall	NC	36° 21' 39.04" N	76° 21' 45.07" W	13	499	512
2014-WTE-3693-OE	Windfall	NC	36° 21' 52.14" N	76° 21' 53.33" W	13	499	512
2014-WTE-3692-OE	Windfall	NC	36° 22' 03.98" N	76° 22' 03.70" W	15	499	514
2014-WTE-3691-OE	Windfall	NC	36° 21' 47.64" N	76° 23' 43.00" W	14	499	513
2014-WTE-3690-OE	Windfall	NC	36° 21' 58.32" N	76° 23' 54.59" W	14	499	513
2014-WTE-3689-OE	Windfall	NC	36° 19' 59.51" N	76° 25' 16.14" W	15	499	514
2014-WTE-3688-OE	Windfall	NC	36° 19' 58.05" N	76° 26' 21.22" W	13	499	512
2014-WTE-3687-OE	Windfall	NC	36° 19' 36.92" N	76° 25' 44.47" W	13	499	512
2014-WTE-3686-OE	Windfall	NC	36° 19' 01.11" N	76° 25' 29.44" W	12	499	511
2014-WTE-3685-OE	Windfall	NC	36° 19' 17.19" N	76° 25' 56.81" W	13	499	512
2014-WTE-3684-OE	Windfall	NC	36° 19' 32.52" N	76° 26' 25.41" W	13	499	512
2014-WTE-3683-OE	Windfall	NC	36° 19' 46.46" N	76° 26' 45.99" W	13	499	512
2014-WTE-3682-OE	Windfall	NC	36° 18' 38.99" N	76° 25' 48.09" W	12	499	511
2014-WTE-3681-OE	Windfall	NC	36° 18' 55.67" N	76° 26' 15.36" W	12	499	511
2014-WTE-3680-OE	Windfall	NC	36° 19' 11.12" N	76° 26' 42.31" W	12	499	511
2014-WTE-3679-OE	Windfall	NC	36° 19' 26.04" N	76° 27' 08.69" W	13	499	512
2014-WTE-3678-OE	Windfall	NC	36° 19' 49.64" N	76° 27' 20.08" W	12	499	511
2014-WTE-3677-OE	Windfall	NC	36° 16' 31.54" N	76° 27' 54.83" W	15	499	514
2014-WTE-3676-OE	Windfall	NC	36° 15' 58.75" N	76° 26' 07.80" W	13	499	512
2014-WTE-3675-OE	Windfall	NC	36° 16' 10.00" N	76° 26' 33.55" W	13	499	512
2014-WTE-3674-OE	Windfall	NC	36° 15' 19.20" N	76° 27' 09.60" W	13	499	512
2014-WTE-3673-OE	Windfall	NC	36° 15' 30.39" N	76° 27' 21.79" W	13	499	512
2014-WTE-3672-OE	Windfall	NC	36° 15' 46.53" N	76° 27' 24.18" W	15	499	514
2014-WTE-3671-OE	Windfall	NC	36° 17' 33.18" N	76° 27' 55.59" W	13	499	512
2014-WTE-3670-OE	Windfall	NC	36° 17' 03.23" N	76° 28' 15.50" W	12	499	511
2014-WTE-3669-OE	Windfall	NC	36° 17' 14.55" N	76° 28' 22.00" W	12	499	511
2014-WTE-3668-OE	Windfall	NC	36° 17' 26.95" N	76° 28' 27.74" W	12	499	511
2014-WTE-3667-OE	Windfall	NC	36° 16' 52.88" N	76° 26' 50.12" W	14	499	513
2014-WTE-3666-OE	Windfall	NC	36° 19' 10.20" N	76° 27' 46.27" W	14	499	513
2014-WTE-3665-OE	Windfall	NC	36° 18' 09.19" N	76° 25' 36.07" W	13	499	512
2014-WTE-3664-OE	Windfall	NC	36° 19' 22.71" N	76° 28' 10.10" W	14	499	513
2014-WTE-3663-OE	Windfall	NC	36° 18' 54.43" N	76° 27' 32.48" W	14	499	513
2014-WTE-3662-OE	Windfall	NC	36° 18' 54.76" N	76° 27' 03.00" W	13	499	512

2014-WTE-3660-OE	Windfall	NC	36° 18' 01.00" N	76° 26' 13.87" W	14	499	513
2014-WTE-3659-OE	Windfall	NC	36° 17' 00.53" N	76° 25' 39.59" W	14	499	513
2014-WTE-3658-OE	Windfall	NC	36° 18' 17.83" N	76° 27' 04.16" W	15	499	514
2014-WTE-3657-OE	Windfall	NC	36° 18' 03.81" N	76° 26' 52.08" W	15	499	514
2014-WTE-3656-OE	Windfall	NC	36° 19' 31.48" N	76° 21' 36.38" W	12	499	511
2014-WTE-3655-OE	Windfall	NC	36° 19' 45.30" N	76° 21' 40.38" W	15	499	514
2014-WTE-3654-OE	Windfall	NC	36° 19' 31.22" N	76° 22' 12.00" W	13	499	512
2014-WTE-3653-OE	Windfall	NC	36° 20' 05.38" N	76° 19' 40.64" W	14	499	513
2014-WTE-3652-OE	Windfall	NC	36° 20' 15.46" N	76° 19' 51.78" W	13	499	512
2014-WTE-3651-OE	Windfall	NC	36° 20' 09.98" N	76° 20' 10.26" W	12	499	511
2014-WTE-3650-OE	Windfall	NC	36° 20' 05.92" N	76° 20' 27.21" W	12	499	511
2014-WTE-3649-OE	Windfall	NC	36° 20' 18.39" N	76° 20' 48.97" W	12	499	511
2014-WTE-3648-OE	Windfall	NC	36° 20' 33.70" N	76° 20' 52.32" W	13	499	512
2014-WTE-3647-OE	Windfall	NC	36° 20' 01.83" N	76° 20' 45.79" W	11	499	510
2014-WTE-3646-OE	Windfall	NC	36° 20' 16.75" N	76° 21' 16.31" W	13	499	512
2014-WTE-3645-OE	Windfall	NC	36° 20' 30.57" N	76° 21' 20.44" W	14	499	513
2014-WTE-3644-OE	Windfall	NC	36° 20' 00.45" N	76° 21' 13.13" W	12	499	511
2014-WTE-3643-OE	Windfall	NC	36° 19' 46.80" N	76° 22' 16.26" W	14	499	513
2014-WTE-3642-OE	Windfall	NC	36° 21' 02.37" N	76° 22' 59.91" W	13	499	512
2014-WTE-3641-OE	Windfall	NC	36° 21' 23.06" N	76° 22' 39.25" W	12	499	511
2014-WTE-3640-OE	Windfall	NC	36° 21' 36.97" N	76° 22' 58.19" W	14	499	513
2014-WTE-3639-OE	Windfall	NC	36° 21' 56.18" N	76° 23' 14.20" W	14	499	513
2014-WTE-3638-OE	Windfall	NC	36° 20' 34.39" N	76° 22' 43.12" W	12	499	511
2014-WTE-3637-OE	Windfall	NC	36° 20' 48.70" N	76° 22' 51.81" W	11	499	510
2014-WTE-3636-OE	Windfall	NC	36° 19' 32.40" N	76° 22' 50.41" W	13	499	512
2014-WTE-3635-OE	Windfall	NC	36° 20' 49.99" N	76° 24' 02.08" W	13	499	512
2014-WTE-3634-OE	Windfall	NC	36° 23' 04.45" N	76° 24' 48.65" W	17	499	516
2014-WTE-3633-OE	Windfall	NC	36° 22' 31.33" N	76° 24' 58.17" W	14	499	513
2014-WTE-3632-OE	Windfall	NC	36° 22' 15.23" N	76° 25' 28.80" W	14	499	513
2014-WTE-3631-OE	Windfall	NC	36° 22' 35.94" N	76° 22' 01.02" W	17	499	516
2014-WTE-3630-OE	Windfall	NC	36° 21' 42.10" N	76° 22' 17.31" W	14	499	513
2014-WTE-3629-OE	Windfall	NC	36° 20' 25.74" N	76° 26' 37.87" W	12	499	511
2014-WTE-3628-OE	Windfall	NC	36° 20' 22.80" N	76° 24' 50.89" W	16	499	515
2014-WTE-3627-OE	Windfall	NC	36° 20' 21.70" N	76° 25' 25.84" W	13	499	512
2014-WTE-3626-OE	Windfall	NC	36° 20' 20.75" N	76° 25' 55.90" W	12	499	511
2014-WTE-3625-OE	Windfall	NC	36° 20' 12.17" N	76° 26' 30.28" W	11	499	510
2014-WTE-3624-OE	Windfall	NC	36° 19' 57.59" N	76° 25' 48.54" W	13	499	512
2014-WTE-3623-OE	Windfall	NC	36° 20' 38.37" N	76° 24' 59.56" W	15	499	514
2014-WTE-3622-OE	Windfall	NC	36° 15' 57.39" N	76° 25' 27.46" W	13	499	512
2014-WTE-3621-OE	Windfall	NC	36° 16' 36.07" N	76° 26' 26.15" W	15	499	514
2014-WTE-3620-OE	Windfall	NC	36° 15' 42.72" N	76° 25' 52.65" W	13	499	512
2014-WTE-3619-OE	Windfall	NC	36° 16' 30.10" N	76° 27' 03.55" W	11	499	510
2014-WTE-3618-OE	Windfall	NC	36° 15' 33.76" N	76° 26' 48.88" W	14	499	513
2014-WTE-3617-OE	Windfall	NC	36° 17' 50.04" N	76° 28' 00.75" W	14	499	513
2014-WTE-3616-OE	Windfall	NC	36° 17' 58.81" N	76° 28' 25.23" W	12	499	511
2014-WTE-3615-OE	Windfall	NC	36° 17' 12.87" N	76° 28' 55.16" W	9	499	508
2014-WTE-3614-OE	Windfall	NC	36° 17' 24.73" N	76° 29' 02.88" W	10	499	509
2014-WTE-3613-OE	Windfall	NC	36° 17' 43.87" N	76° 29' 12.98" W	9	499	508
2014-WTE-3612-OE	Windfall	NC	36° 17' 56.48" N	76° 29' 19.77" W	10	499	509
2014-WTE-3611-OE	Windfall	NC	36° 17' 12.18" N	76° 29' 29.20" W	10	499	509
2014-WTE-3610-OE	Windfall	NC	36° 16' 51.45" N	76° 29' 41.05" W	10	499	509
2014-WTE-3328-OE	Hertford	NC	36° 08' 24.48" N	76° 32' 53.17" W	16	394	410
2014-WTE-1925-OE	Hertford	NC	36° 07' 23.62" N	76° 31' 59.94" W	17	497	514
2014-WTE-1924-OE	Hertford	NC	36° 07' 29.03" N	76° 32' 23.65" W	17	497	514

2014-WTE-1922-OE	Hertford	NC	36° 07' 34.53" N	76° 32' 55.04" W	17	497	514
2014-WTE-1920-OE	Hertford	NC	36° 07' 45.40" N	76° 30' 58.60" W	17	497	514
2014-WTE-1918-OE	Hertford	NC	36° 07' 45.90" N	76° 33' 13.78" W	17	497	514
2014-WTE-1915-OE	Hertford	NC	36° 07' 57.39" N	76° 31' 17.95" W	15	497	512
2014-WTE-1913-OE	Hertford	NC	36° 08' 05.41" N	76° 32' 15.84" W	16	497	513
2014-WTE-1912-OE	Hertford	NC	36° 08' 06.29" N	76° 31' 40.05" W	16	497	513
2014-WTE-1911-OE	Hertford	NC	36° 08' 06.82" N	76° 33' 22.68" W	18	497	515
2014-WTE-1907-OE	Hertford	NC	36° 08' 19.19" N	76° 32' 34.55" W	16	497	513
2014-WTE-1905-OE	Hertford	NC	36° 08' 21.99" N	76° 33' 36.70" W	17	497	514
2014-WTE-1903-OE	Hertford	NC	36° 08' 34.57" N	76° 33' 57.52" W	17	497	514
2014-WTE-1902-OE	Hertford	NC	36° 08' 41.42" N	76° 29' 38.01" W	15	497	512
2014-WTE-1900-OE	Hertford	NC	36° 08' 41.23" N	76° 32' 47.27" W	17	497	514
2014-WTE-1899-OE	Hertford	NC	36° 08' 45.55" N	76° 34' 18.82" W	17	497	514
2014-WTE-1898-OE	Hertford	NC	36° 08' 48.57" N	76° 31' 53.15" W	15	497	512
2014-WTE-1897-OE	Hertford	NC	36° 08' 51.59" N	76° 29' 58.21" W	16	497	513
2014-WTE-1896-OE	Hertford	NC	36° 08' 53.90" N	76° 34' 40.16" W	17	497	514
2014-WTE-1894-OE	Hertford	NC	36° 08' 59.54" N	76° 30' 19.01" W	16	497	513
2014-WTE-1893-OE	Hertford	NC	36° 08' 57.84" N	76° 33' 05.04" W	17	497	514
2014-WTE-1892-OE	Hertford	NC	36° 09' 02.43" N	76° 35' 02.97" W	17	497	514
2014-WTE-1891-OE	Hertford	NC	36° 09' 06.96" N	76° 30' 40.68" W	16	497	513
2014-WTE-1889-OE	Hertford	NC	36° 09' 09.63" N	76° 31' 56.40" W	16	497	513
2014-WTE-1888-OE	Hertford	NC	36° 09' 10.47" N	76° 35' 25.83" W	17	497	514
2014-WTE-1887-OE	Hertford	NC	36° 09' 12.37" N	76° 33' 20.21" W	18	497	515
2014-WTE-1886-OE	Hertford	NC	36° 09' 16.79" N	76° 31' 00.76" W	16	497	513
2014-WTE-1884-OE	Hertford	NC	36° 09' 20.83" N	76° 32' 23.71" W	16	497	513
2014-WTE-1883-OE	Hertford	NC	36° 09' 20.39" N	76° 33' 44.98" W	17	497	514
2014-WTE-1882-OE	Hertford	NC	36° 09' 18.98" N	76° 35' 46.92" W	18	497	515
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2014-WTE-1880-OE	Hertford	NC	36° 09' 26.24" N	76° 36' 09.00" W	16	497	513
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2014-WTE-1878-OE	Hertford	NC	36° 09' 32.44" N	76° 31' 13.23" W	16	497	513
2014-WTE-1877-OE	Hertford	NC	36° 09' 36.86" N	76° 29' 37.50" W	15	497	512
2014-WTE-1876-OE	Hertford	NC	36° 09' 37.55" N	76° 32' 35.73" W	16	497	513
2014-WTE-1875-OE	Hertford	NC	36° 09' 37.36" N	76° 34' 29.58" W	19	497	516
2014-WTE-1874-OE	Hertford	NC	36° 09' 37.75" N	76° 36' 26.92" W	16	497	513
2014-WTE-1873-OE	Hertford	NC	36° 09' 43.61" N	76° 31' 30.73" W	17	497	514
2014-WTE-1872-OE	Hertford	NC	36° 09' 49.88" N	76° 29' 52.24" W	16	497	513
2014-WTE-1871-OE	Hertford	NC	36° 09' 48.82" N	76° 34' 46.66" W	17	497	514
2014-WTE-1870-OE	Hertford	NC	36° 09' 47.69" N	76° 36' 45.62" W	16	497	513
2014-WTE-1869-OE	Hertford	NC	36° 09' 55.21" N	76° 31' 52.09" W	17	497	514
2014-WTE-1868-OE	Hertford	NC	36° 09' 56.34" N	76° 35' 09.74" W	18	497	515
2014-WTE-1867-OE	Hertford	NC	36° 10' 00.70" N	76° 30' 09.77" W	15	497	512
2014-WTE-1866-OE	Hertford	NC	36° 09' 58.73" N	76° 37' 04.54" W	15	497	512
2014-WTE-1865-OE	Hertford	NC	36° 10' 02.62" N	76° 32' 52.07" W	16	497	513
2014-WTE-1864-OE	Hertford	NC	36° 10' 06.08" N	76° 30' 33.13" W	16	497	513

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EXHIBIT D:
*2014 DNH Letter from
the FAA to Iberdrola
Renewables*



Mail Processing Center
 Federal Aviation Administration
 Southwest Regional Office
 Obstruction Evaluation Group
 2601 Meacham Boulevard
 Fort Worth, TX 76193

Aeronautical Study No.
 2014-WTE-3664-OE
 Prior Study No.
 2014-WTE-1078-OE

Issued Date: 12/02/2014

Michael Clayton
 Desert Wind LLC
 2 Radnor Corp Center Suite 200
 100 Matsonford Rd
 Radnor, PA 19087

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure: Wind Turbine W24
 Location: Windfall, NC
 Latitude: 36-19-22.71N NAD 83
 Longitude: 76-28-10.10W
 Heights: 14 feet site elevation.(SE)
 499 feet above ground level (AGL)
 513 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

As a condition to this Determination, the structure is marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, white paint/synchronized red lights - Chapters 4,12&13(Turbines).

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)
- Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

See attachment for additional condition(s) or information.

Any height exceeding 499 feet above ground level (513 feet above mean sea level), will result in a substantial adverse effect and would warrant a Determination of Hazard to Air Navigation.

This determination expires on 06/02/2016 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

Additional wind turbines or met towers proposed in the future may cause a cumulative effect on the national airspace system. This determination is based, in part, on the foregoing description which includes specific coordinates and heights . Any changes in coordinates will void this determination. Any future construction or alteration requires separate notice to the FAA.

Obstruction marking and lighting recommendations for wind turbine farms are based on the scheme for the entire project. ANY change to the height, location or number of turbines within this project will require a reanalysis of the marking and lighting recommendation for the entire project. In particular, the removal of previously planned or built turbines/turbine locations from the project will often result in a change in the marking/lighting recommendation for other turbines within the project. It is the proponent's responsibility to contact the FAA to discuss the process for developing a revised obstruction marking and lighting plan should this occur.

In order to ensure proper conspicuity of turbines at night during construction, all turbines should be lit with temporary lighting once they reach a height of 200 feet or greater until such time the permanent lighting configuration is turned on. As the height of the structure continues to increase, the temporary lighting should be relocated to the uppermost part of the structure. The temporary lighting may be turned off for periods when they would interfere with construction personnel. If practical, permanent obstruction lights should be installed and operated at each level as construction progresses. An FAA Type L-810 steady red light fixture shall be used to light the structure during the construction phase. If power is not available, turbines shall be lit with self-contained, solar powered LED steady red light fixture that meets the photometric requirements of an FAA Type L-810 lighting system. The lights should be positioned to ensure that a pilot has an unobstructed view of at least one light at each level. The use of a NOTAM (D) to not light turbines within a project until the entire project has been completed is prohibited.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

This determination cancels and supersedes prior determinations issued for this structure.

If we can be of further assistance, please contact our office at (816) 329-2528. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2014-WTE-3664-OE.

Signature Control No: 222254341-235793590
Cindy Whitten
Specialist

(DNE -WT)

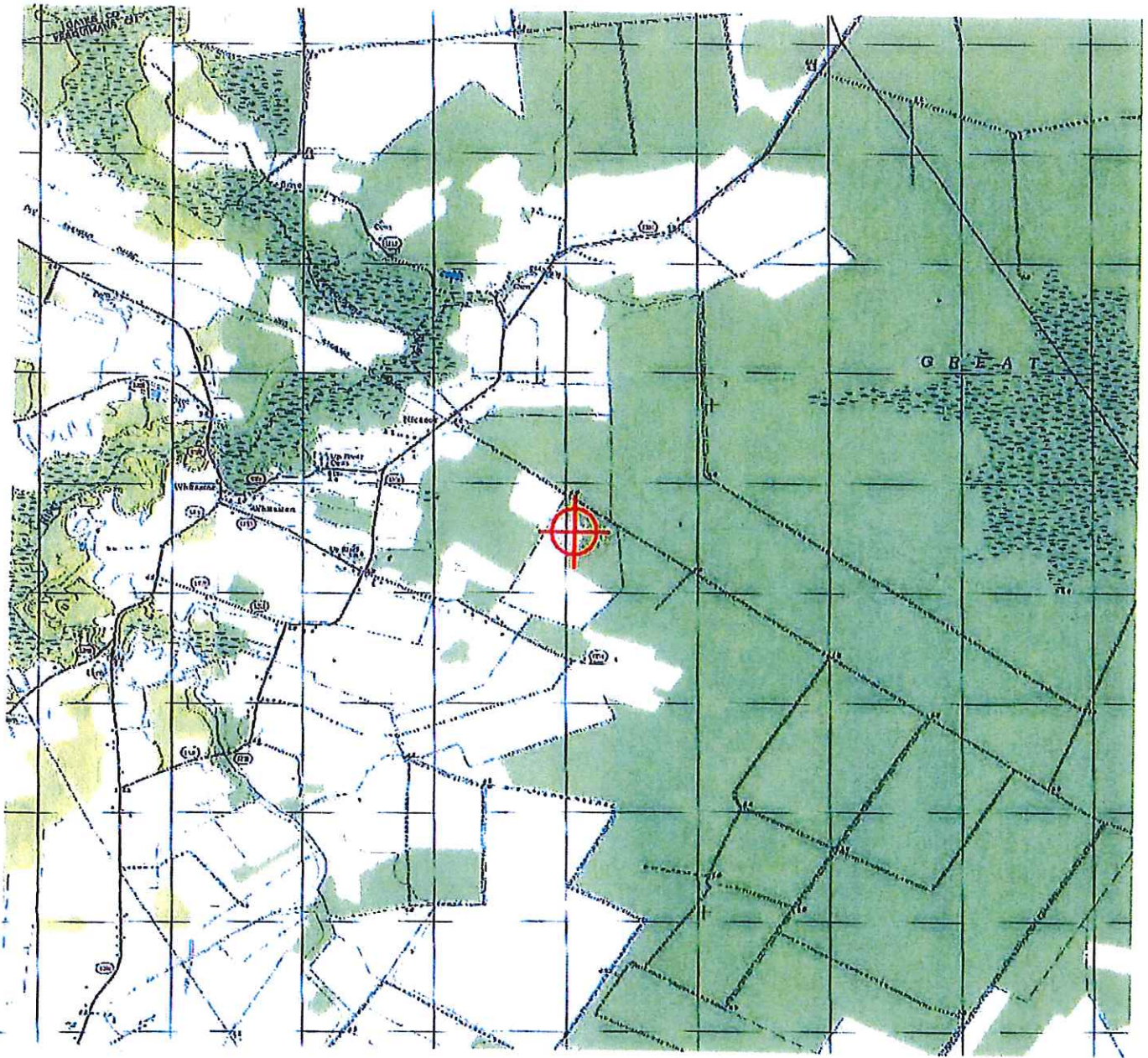
Attachment(s)
Additional Information
Map(s)

Additional information for ASN 2014-WTE-3664-OE

This determination is for 1 of 104 wind turbines approved by the Department of Defense Siting Clearinghouse. The remaining 46 wind turbines will be held in WORK status by the FAA until the clearinghouse releases and approves them in accordance with your written agreement. Any further questions reference the remaining 46 wind turbines in the project should be directed to Mr. Steven Sample, Mission Evaluation Branch, Department of Defense Siting Clearinghouse by email at osd.dod-siting-clearinghouse@mail.mil or by phone at 703-571-0076.

NOTE:

When you know for sure what your final layout plan will be for the entire project (once the DoD Siting Clearing House has released all 150 wind turbines), please notify me at 816-329-2528 or at cindy.whitten@faa.gov and then I will go back and update the marking and lighting requirement for the entire project to reduce the number of wind turbines with the red light requirement.



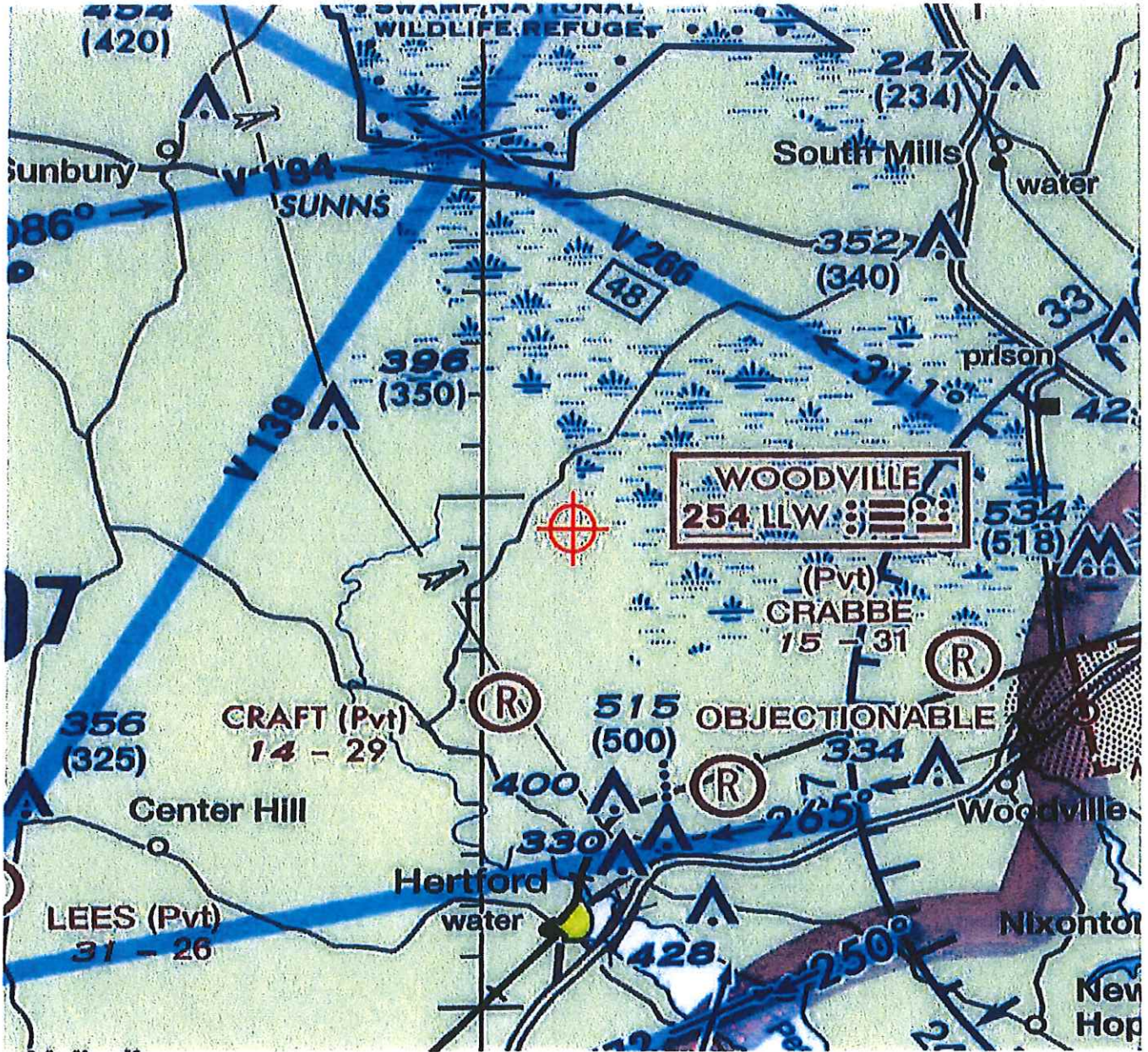


EXHIBIT E:
*Iberdrola's 2011
Conditional Use
Permit Application to
Pasquotank County*



**IBERDROLA
RENEWABLES**

DESERT WIND POWER PROJECT

PROJECT NARRATIVE

A. THE APPLICANT

(i) The Applicant's full and correct name, business address, and business telephone number are:

Atlantic Wind, LLC
c/o Iberdrola Renewables, Inc.
1125 NW Couch Street, # 700
Portland, OR 97209-4129
503.796.7000

(ii) Atlantic Wind, LLC ("Atlantic Wind") is an Oregon Limited Liability Company with its principal place of business in Portland, Oregon. Atlantic Wind is 100% owned by and sole-member managed by Iberdrola Renewables, Inc. ("IRI"). IRI's parent company is Iberdrola Renovables, S.A., a publicly traded company on the Madrid stock exchange. With more than 12,000 MWs of installed renewable capacity worldwide, Iberdrola Renovables is the largest owner and operator of renewable energy projects in the world. Iberdrola Renovables is 80% owned by Iberderola, S.A., the second largest integrated utility company in Spain engaged in the generation, transmission, distribution and marketing of electricity and natural gas. Iberdrola Renovables also maintains the world's largest development pipeline, with more than 62,000 MWs of sites in various stages of development.

IRI has successfully financed, constructed and operated more than 40 wind energy facilities and has more than 4,300 MWs of installed wind power capacity in the

**Exhibit
E**

United States as of September, 2010. This extensive experience in wind energy ownership, construction, operation and management will allow it to provide superior financial, managerial and technical capabilities to assure construction and operation of the Facility.

Atlantic Wind has obtained a Certificate of Authority from the North Carolina Secretary of State to conduct business in North Carolina. As a limited liability company, sole-member managed by Iberdrola Renewables, Inc., Atlantic Wind does not have officers and directors.

It is IRI's corporate policy to create new special purpose entities to own and operate each wind facility it develops, but not to do so until the facility has been fully permitted. After the Project is fully permitted and before construction begins, a new special purpose entity, wholly owned by Atlantic Wind, will be formed to own and operate the Project described in this application.

Correspondence, documents, and filings regarding this application should be sent as follows:

Craig Poff
Senior Business Developer
Iberdrola Renewables, Inc.
201 King of Prussia Road, Suite 500
Radnor, PA 19087
cpoff@iberdrolaREN.com

with copies to:

Henry C. Campen, Jr.
Parker Poe Adams & Bernstein LLP
150 Fayetteville Street, Suite 1400
Raleigh, North Carolina 27601
henrycampen@parkerpoe.com

B. THE PROJECT

(i) The Project will be situated on approximately 20,000 acres, spanning Pasquotank and Perquimans counties in an area known locally as the "Desert" and will consist of up to 150 modern Gamesa turbines, each with a nameplate capacity of 2.0 MW, for a total maximum installed capacity of 300 MWs. The portion of the Project situated in Pasquotank County will consist of:

- Up to 82 2.0 MW Gamesa G97 wind turbine generators on 90M towers;
- Access roads and crane paths to each turbine;
- Underground and overhead 34.5 kilovolt ("kV") electrical collector lines connecting the turbines to the Collection Substation;

Turbines:

Each wind turbine consists of three major components: the tower, the nacelle and the rotor. These components are mounted on a foundation to provide structural support to the assembled turbine. The height of the tower, or "hub height" (height from the base of the tower to the center of the rotor hub on top of the tower), will be dependent on the final turbine selection and design, but will have a maximum height of 100 meters or 330 feet. The nacelle sits atop the tower, and the rotor hub is mounted on a drive shaft that is connected to the gearbox and generator contained within the nacelle. The total turbine height (the height at the highest blade tip position) will have a maximum height of 475 feet.

Tower – The tubular towers proposed for the Project will be conical steel structures or a combination of steel and concrete, depending on final turbine selection. Each tower has a lockable access door, internal lighting and an internal

ladder and lift to access the nacelle. The towers will be painted off-white to make the structure less visually obtrusive, and in accordance with FAA regulations.

Nacelle – The main mechanical and electrical components of the wind turbine are housed in the nacelle. The nacelle is mounted on a sliding ring that allows it to rotate or "yaw" into the wind to maximize energy capture. The nacelle components include the drive train, gearbox, generator, and generator step-up transformer. The nacelle is housed in a steel reinforced fiberglass shell that protects internal machinery from the environment. The housing is designed to allow for adequate ventilation to cool internal machinery. It is externally equipped with an anemometer and a wind vane to measure wind speed and direction. The generated electricity is conducted through cables within the tower to a switch enclosure mounted at the base of the turbine tower. Attached to the top of selected nacelles, per specifications of the FAA, will be a single, medium intensity aviation warning light. These will be red flashing lights and operated only at night. The FAA determines lighting specification and determines which turbines must be equipped with lights.

Rotor – A rotor assembly is mounted on the drive shaft, and operates upwind of the tower. Electric motors within the rotor hub vary the pitch of each blade according to wind conditions to maximize turbine efficiency at varying wind speeds.

Access Roads:

Existing roads and field paths will be utilized to the extent possible to access Project facilities. The existing roads may require improvements before, during, or following construction. Where necessary, new access roads will be

constructed between existing roadways and the Project facilities. The new and improved access roads will be all-weather, gravel surfaced, and generally sixteen feet in width. During construction, some of the access roads will be widened to accommodate movement of the turbine erection crane.

The cranes used to erect the wind turbines will rarely follow an existing field path or road. In these cases a crane path will be constructed between turbine locations. The crane path will have sufficient bearing capacity to support the crane.

Underground and Overhead Electrical Collector Lines:

The electrical collector lines will consist of an underground cable system between the main-line collection circuits and the individual turbine locations. The cable system will be designed for operation at 34.5 kV. The collection system will generally be routed to follow the access roads developed for the Facility. The cables will be installed in a trench at a depth sufficient to avoid potential impact from the existing land uses. The cable will be installed 2-3' below the bottom elevation of existing ditches and canals in order to allow for the landowners' routine maintenance of the ditches and canals. The cable will be accompanied by a fiber-optic cable which is used for telemetry, control and communication purposes. Junction boxes will be installed to connect portions of the electrical collection system.

The main-line collection circuits will be higher capacity, underground, 34.5 kV cables that connect the electrical collection system to either the Collector Substation or overhead collector lines which transport larger amounts of electricity to the Collector Substation. These higher capacity, underground cables, along

with fiber optic communication cables, will be installed in trenches as described above. The overhead collector lines will be installed on wood or metal poles within easements.

Collector Substation:

The Collector Substation will be situated in Perquimans County and will consist of main transformers, circuit breakers, switching devices, auxiliary equipment, and a control enclosure containing equipment for proper control, protection, monitoring, and communications. The principal function of the substation is to increase the voltage from the collector circuits (34.5 kV) to that of the Sub-Transmission Line (115 kV) which will transport the generated electricity of the entire Facility to the vicinity of the regional transmission system. The collector substation will be located within a fenced area. The fence will be designed in accordance with industry standards to provide safety and security.

Sub-Transmission Line:

In order to transmit the electrical output of the Project to the location where it will be connected to the regional transmission system, a 115 kV Sub-Transmission Line will be constructed on easements between the Collector Substation and the Transmission Voltage Step-up Substation. The Sub-Transmission line will traverse properties in Perquimans

Transmission Voltage Step-up Substation:

The Transmission Voltage Step-up Station ("Step-up Substation") will be situated in Perquimans County and will consist of a main transformer, circuit breakers, switching devices, auxiliary equipment, and a control enclosure

containing equipment for proper control, protection, monitoring, and communications. The principal function of the Step-up Substation is to increase the voltage from the Sub-Transmission Line (115 kV) to that of the transmission line (230 kV) to which the Project will interconnect with the regional transmission system. The Step-up Substation will be located within a fenced area. The fence will be designed in accordance with industry standards to provide safety and security.

Interconnection Switching Station:

Associated with the Project, but owned and operated by Virginia Electric and Power Company (doing business as Dominion North Carolina Power and herein after referred to as "VEPCO"), will be an Interconnection Switching Station ("Switching Station"). This Switching Station will be situated in Perquimans County adjacent to an existing VEPCO 230 kV transmission line. The Switching Station will serve as the electrical interconnection between the Project and the regional transmission system. The Switching Station will consist of 230 kV circuit breakers, disconnect switches, bus conductors, auxiliary equipment, and a control enclosure containing equipment for proper control, protection, monitoring, and communications. The Switching Station will be located within a fenced area. The fence will be designed in accordance with industry standards to provide safety and security.

Meteorological Tower:

One permanent meteorological tower will be installed near Turnpike Road in Perquimans County. The permanent met tower is used to obtain clean and unobstructed wind data for performance management. These towers will be self-

supporting and not taller than 100 meters (328 feet) in height. The tower will be lighted as specified by the FAA.

Operations and Maintenance Facility:

An O&M facility will be constructed in Perquimans County, central to the Project and well suited for access to the turbines as well as the substations. The facility will be comprised of a single story, 4,000 to 6,000 square foot building which will house operating personnel, offices, operations and communication equipment, parts storage and maintenance activities, and a vehicle parking area. An area for outdoor storage of larger equipment and materials will also be included within a fenced area for safety and security.

The Facility will be operated by a team of approximately fifteen to twenty full time, locally based O&M personnel who will operate and maintain the Project during normal working hours. The Facility's central Supervisory Control and Data Acquisition system provides capability for remote operation of the wind turbines and collects operating and performance data 24 hours per day. In addition to local staff, the project will be remotely monitored and controlled by the IRI control center located in Portland, Oregon. The control center is staffed 24 hours a day, 7 days a week and is responsible for monitoring the project outside of normal working hours of the on-site O&M personnel.

EXHIBIT F:

*Agreement Between
Department of
Defense; Department
of Navy; Iberdrola
Renewables, LLC; and
Atlantic Wind, LLC*

**AGREEMENT BETWEEN
DEPARTMENT OF DEFENSE; DEPARTMENT OF THE NAVY;
IBERDROLA RENEWABLES, LLC; AND ATLANTIC WIND, LLC**

Subject: MITIGATION OF DEVELOPMENT IMPACTS OF A WIND TURBINE ENERGY PROJECT IN PERQUIMANS AND PASQUOTANK COUNTIES, NORTH CAROLINA, FAA ASN 2014-WTE-3610-OE AND ALL AFFILIATED FILINGS

Parties: Department of Defense (DoD)
Department of the Navy (Navy)
Iberdrola Renewables, LLC (Iberdrola Renewables)
Atlantic Wind, LLC (Atlantic Wind)

References: (a) Section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as amended by Section 331 of Public Law 112-81
(b) 32 Code of Federal Regulations (CFR) Part 211

Attachment: (A) *Federal Aviation Administration Filings: Desert Wind- 104 Wind Turbines + 1 Permanent Meteorological Tower for ROTHR*

Section 1. Preamble and Purpose

A. Pursuant to references (a) and (b), it is an objective of the DoD to ensure that the robust development of renewable energy sources and the increased resiliency of the commercial electrical grid may move forward in the United States, while minimizing or mitigating any adverse impacts on military operations and readiness. Atlantic Wind, owned by Iberdrola Renewables, proposes to construct and operate one hundred and four (104) wind turbines and one (1) or more meteorological tower(s), as described in FAA ASN 2014-WTE-3610-OE and affiliated filings listed in Attachment (A) to the Agreement, along with the balance of plant facilities and equipment located in Perquimans and Pasquotank counties in eastern North Carolina (hereinafter "Wind Project"). An additional forty-six (46) turbines may be developed in association with the Wind Project but are not within the scope of this Agreement. In order to mitigate the potential adverse impact of the Wind Project upon the Navy's operation by the Forces Surveillance Support Center (FSSC) of the Re-locatable Over-the-Horizon Radar (ROTHR) at Naval Support Activity Hampton Roads Northwest Annex, Chesapeake, Virginia, in support of the requirement to provide wide area surveillance to the United States Southern Command (SOUTHCOM) counter-drug detection and monitoring mission under 10 U.S.C. § 124, the Parties have worked cooperatively to meet the desired goals of supporting military operations and readiness simultaneously with the production of renewable energy.

- B. Modeling suggests that a potential conflict may exist between the Navy's operation of the ROTHHR and spinning wind turbines associated with the Wind Project. The Parties agree that the degree of potential conflict is dependent upon the proximity of the wind turbines to the ROTHHR, the overall spatial distribution of the Wind Project layout, the wind turbine model, yaw angle, the prevailing wind direction, and other factors which may or may not be known or understood as of the date of this Agreement. The Parties have focused on de-conflicting these activities and agree that the terms below will allow the mutual goals of the Parties to be met.

Section 2. Terms and Provisions

- A. This Agreement is structured to enable Iberdrola Renewables and Atlantic Wind to proceed immediately with the construction and operation of the Wind Project. Iberdrola Renewables and Atlantic Wind agree to restrict the construction of the Wind Project turbines to the specific geographic coordinates, to an accuracy of +/- 100 feet, listed in Attachment (A) to this Agreement.
- B. **The Wind Project: The 104 Approved Gamesa G114 Wind Turbines Listed in Attachment (A)**
1. Within five (5) days of the Effective Date of this Agreement, the DoD and the Navy (acting through the Navy Airspace Office) agree to transmit "No Objections" to the aeronautical study numbers corresponding to the wind turbine locations listed on Attachment A to this Agreement. Further, the DoD and the Navy agree not to posit any objection to the construction and operation of the Wind Project under the Federal Aviation Administration (FAA) Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) system or other federal, state, or local regulatory entity with jurisdiction over the Wind Project, provided that Iberdrola Renewables or Atlantic Wind carry out the terms of this Agreement. The phrase "agree not to posit any objection" above does not limit the regulatory authority of the U.S. Army Corps of Engineers to issue, condition, or deny a permit for the Wind Project pursuant to the Federal Clean Water Pollution Control Act or the Rivers and Harbors Act of 1899.
 2. The design of the Wind Project with respect to turbine locations is final and Iberdrola Renewables and Atlantic Wind agree to limit the placement of the Wind Project turbines to only those locations listed in Attachment (A) to this Agreement.

3. No changes greater than 100 feet in any cardinal direction are permitted to the location of the wind turbines listed in Attachment (A) to the Agreement without prior written agreement from the DoD and the Navy.
4. **Analysis of Impact during Wind Project Test Energy Phase**
 - a. Following the installation of each wind turbine, Iberdrola Renewables and Atlantic Wind will conduct testing of the wind turbine and associated equipment and its ability to generate power and deliver power to the transmission system. This testing and commissioning process will occur for each wind turbine (individually, a "Test Energy Procedure," and collectively, the "Test Energy Phase"). During the Test Energy Phase, Iberdrola Renewables will send to the Navy a daily electronic communication (an e-mail addressed to: James.porter1@navy.mil and Jack.buckingham@navy.mil) that outlines in advance the planned Test Energy Procedure for that day.
 - b. The Navy agrees to determine the need for and conduct measurements and analysis regarding any impact on the operation of the ROTHr caused by the Test Energy Procedure of various wind turbines, and agrees to share with Iberdrola Renewable and Atlantic Wind any results. The Parties will work cooperatively/collaboratively during the "Test Energy Phase" similar to that which occurred during the ground wave path propagation study of May 2014 in support of the Wind Project. The analysis conducted by the Navy during this "Test Energy Phase" will occur on a not to interfere basis. Iberdrola Renewables and Atlantic Wind agree to provide support to this analysis that may include on/off intervals, and turbine rotation rates and pointing directions during on intervals during the Test Energy Procedures. If the results indicate a demonstrable adverse impact would be caused by the simultaneous operation of all turbines in the Wind Project) on operation of the ROTHr, the Parties will immediately confer with the assistance of a mutually acceptable technical expert and discuss how the impact was determined, investigate what factors might be contributing to the impact on the operation of the ROTHr, and discuss strategies which will likely prevent a reoccurrence of the impact. The Navy's ROTHr Program Office would be responsible to first rule out space weather events, i.e., geomagnetic, solar radiation storms and radio blackouts caused by the sun.
5. **Commencement of Operations Notice.** Within thirty (30) days of completion of construction of the 104 Gamesa G114 wind turbines in Attachment (A) to this Agreement, Iberdrola Renewables and Atlantic Wind will provide the Navy copies of the FAA form 7460-2, including the final coordinates for each turbine

erected. Atlantic Wind will notify the Navy of the electricity generation commencement date, also known as the Commencement of Operations Notice.

6. Confidence Building Measures - Establishment of a Baseline- Monitoring Protocol. Each month during the first (1st) year following the Commencement of Operations Notice, Iberdrola Renewables or Atlantic Wind will provide 10-minute wind direction and revolutions (RPM) readings from each wind turbine in Attachment (A) to the ROTHr Program Office to assist in establishing a radar noise (and wind turbine clutter interference) baseline. The baseline is the interference (generated noise) of the Wind Project as measured at the ROTHr location. If the Wind Project is determined to cause a demonstrable adverse impact, the Parties will confer with the assistance of a mutually acceptable technical expert to establish the noise level baseline and the Monitoring Protocol. The Monitoring Protocol shall determine which factors are adversely impacting the operation of ROTHr by exceeding the -76 dB sub-clutter threshold and discuss strategies under the control of Iberdrola Renewables or Atlantic Wind which will likely prevent a reoccurrence of the impact while generating the maximum amount of energy and also optimizing SOUTHCOM mission detection requirements on the ROTHr system. Notwithstanding the foregoing, participation by Iberdrola Renewables and Atlantic Wind in the discussion and conference shall not obligate Iberdrola Renewables or Atlantic Wind to undertake any measures that Iberdrola Renewables, in its sole discretion, deems infeasible for any reason or no reason.

7. Following Commencement of Operation Notice. In the event that the operation of the wind turbines repeatedly and steadily causes the ROTHr to exceed the -76 dB sub-clutter threshold used by the Parties in determining the acceptable level of degradation to the operation of the ROTHr caused by the operation of the 104 wind turbines listed in Attachment (A) to this Agreement, despite the best efforts of the Parties in implementing the Monitoring Protocol in subsection (6) above, and if there is an adverse impact to Navy's operations, the Parties will immediately confer with the assistance of a mutually agreeable technical expert.

Section 3. Curtailment for National Security or Defense Purposes

A. The Parties acknowledge that curtailment of the Wind Project outside of national security or defense purposes as discussed in this Section of this Agreement is not required for the Wind Project.

- B. "National security or defense purposes" are defined as those emergency circumstances where the President of the United States, the Secretary of Defense, or a combatant commander under 10 U.S.C § 164 directs a change to the mission of the ROTHHR in support of emergency circumstances. National security or defense purposes do not include directed routine or non-routine service changes to the mission of the ROTHHR. The Navy may request and Iberdrola Renewables and Atlantic Wind agree to immediately curtail wind turbine operations for a national security or defense purpose. Curtailment may not be requested except for a national security or defense purpose. Curtailment for national security or defense purposes will be temporary in nature and extend only so long as is absolutely necessary to meet the discrete, temporary and stated national security or defense purpose. This Agreement in no way precludes Iberdrola Renewables and Atlantic Wind from seeking any and all legal or equitable remedies for any curtailment associated with a national security emergency. Any request for curtailment under this paragraph will be communicated between the Parties, via the Points of Contact listed in Section 7, and will include the releasable portions of the President's, the Secretary's, or the combatant commander's mission order.
- C. "Curtailment" means the temporary cessation of wind turbine operations when the wind turbine blades are in a fully feathered position, because the Navy has notified either Iberdrola Renewables or Atlantic Wind that a national security or defense purpose is in effect. The nature of such curtailment requires that all rotor blades be completely restricted to incidental rotation by placing the turbines in pause or stop mode and removing the turbines from service.
- D. Curtailment begins when wind turbine blade pitch is in a fully feathered position. Curtailment ends after the Navy provides notification to either Iberdrola Renewables or Atlantic Wind that cessation of operations is no longer required.
- E. It is a priority for the Navy to protect national defense capabilities and military operations, including military installations, research, development, test and evaluation activities; and military readiness activities from compromise and exploitation which may occur due to an activity under foreign control operating in the vicinity of those national defense capabilities and military operations.
1. Iberdrola Renewables and Atlantic Wind acknowledge that there may be national security considerations associated with any request by the Navy for curtailment in accordance with the terms of this Agreement and any curtailment resulting therefrom. Iberdrola Renewables and Atlantic Wind therefore agree not to disclose any such request or any curtailment resulting therefrom without the prior consent of the Navy, and the Navy agrees that consent to disclose to a business

counterparty with which a non-disclosure agreement is in place will not be unreasonably withheld.

2. Iberdrola Renewables and Atlantic Wind have provided advance written notice to the Navy of:
 - a. The names of business entities having a direct ownership interest in the Wind Project.
 - b. The business entity name of material vendors with which Iberdrola Renewables and Atlantic Wind will potentially execute a contract to perform construction, supply turbines or conduct operations activities at the location of the Wind Project.
3. Navy agrees to identify any vendor posing a potential risk to national security to Iberdrola Renewables and Atlantic Wind no later than November 28, 2014. Iberdrola Renewables and Atlantic Wind agree to enter into negotiations in order to mitigate any threat to national security identified by November 28, 2014 that arises as a result of the proximity of a foreign national or foreign owned or controlled business entity to sensitive military activities. Resolution of the national security threat must be resolved prior to allowing access to the site by representatives of a foreign national or foreign owned or controlled business entity or the use of wind turbines or other permanent on-site equipment manufactured by a foreign national or foreign owned or controlled business entity.
4. Iberdrola Renewables and Atlantic Wind agree to provide advance written notice to the Navy of any material vendor not previously screened pursuant Section 3, paragraph E, subparagraph 3, above. The term "material" used in this paragraph means "significant, influential or relevant." Iberdrola Renewables or Atlantic Wind shall provide the Navy 15 days following a notice containing the name of a potential new material vendor sent to: Readiness Sustainment & Compatibility (OPNAV N453), Chief of Naval Operations (N45), 2000 Navy Pentagon (RM 2D253), Washington, DC, 20350-2000, to conduct a security review and assess national security impacts. In the event of an emergency, Iberdrola Renewables or Atlantic Wind will provide advanced written notice of a potential new material vendor, but need not wait fifteen (15) days if an unexpected situation arises for which employing services or vendors immediately is prudent for the operation of the Wind Project.
5. In any case in which an assessment of risk to national security is identified, the Parties agree to enter into negotiations in order to mitigate any threat to national

security that arises as a result of the proximity of a foreign national or foreign owned or controlled business entity to sensitive military activities. Resolution of the national security threat must be resolved prior to allowing access to the site by representatives of a foreign national or foreign owned or controlled business entity or the use of wind turbines or other permanent on-site equipment manufactured by a foreign national or foreign owned or controlled business entity.

Section 4. Disclosure. The Parties may freely share this Agreement with any person or entity.

Section 5. Assignment

- A. This Agreement shall be binding upon the successors and assigns of Iberdrola Renewables and Atlantic Wind. Iberdrola Renewable and Atlantic Wind, its successors or assigns (Assignors) have the right to sell, convey, mortgage, assign, or otherwise transfer all or any part of its interests and obligations in the assets comprising the Wind Project (Assignment) to any third party (Assignee), without the prior consent of the DoD or Navy, provided that such Assignment expressly acknowledges the existence of this Agreement and a copy of this Agreement is provided to the Assignee.
- B. If the prospective Assignee is a foreign national or foreign owned or controlled business entity, Iberdrola Renewables or Atlantic Wind and the proposed Assignee shall jointly provide notice of the proposed transaction to the Committee on Foreign Investment in the United States (CFIUS) in accordance with the applicable regulations (Subpart D of 31 CFR Part 800) and provide a copy of the notice to the Navy. Nothing in this agreement shall prohibit or limit DoD, on behalf of and in consultation with the Navy, from objecting to the transaction before CFIUS, nor limit communications with CFIUS during national security reviews and investigations, and, should mitigation result, during mitigation, tracking, and post-consummation monitoring and enforcement, pursuant to 50 U.S.C. § 2170. Moreover, this Agreement shall not prevent or limit the DoD or any of its components, to include the Navy, from communicating in any form with any other regulatory body or agency with jurisdiction or possible jurisdiction over matters impacting the ROTH.
- C. Upon such Assignment, Iberdrola Renewables and Atlantic Wind shall be relieved of any obligations or liabilities under this Agreement to the extent that the Assignee has assumed in writing such obligations or liabilities and provided that Iberdrola Renewables and Atlantic Wind, have given written notice of the Assignment to the DoD and the Navy.

Section 6. Effective Date and Expiration

- A. This Agreement will be effective on the date that the final Party signs this Agreement.
- B. This Agreement shall expire, and have no further force and effect upon the occurrence of:
 - 1. Construction of the Wind Project has not commenced within the time prescribed under 14 CFR §§ 77.33 and 77.35 unless Iberdrola Renewables or Atlantic Wind promptly refiles with the FAA for the wind turbine locations in Attachment (A) to this Agreement;
 - 2. The Wind Project is decommissioned;
 - 3. The ROTHr ceases operations; or
 - 4. Termination by written mutual agreement of the Parties.

Section 7. Points of Contact and Notification. The following persons shall be the primary points of contact (Point of Contact) for the Parties for purposes of this Agreement. Any Party may change its Point of Contact provided that written notification of any such change must be provided to the other Parties at least thirty (30) days in advance.

- A. DoD – Executive Director, DoD Siting Clearinghouse, 3400 Defense Pentagon, Room 5C646, Washington, DC 20301-3400
- B. Navy – Director, Forces Surveillance Support Center (FSSC), 1298 Olympic Avenue, Chesapeake, VA 23322-7930, Telephone: (757) 421-8400
- C. Iberdrola Renewables, LLC, ATTN: Kit Blair, Manager Generation Dispatch, 1125 NW Couch, Suite 700, Portland, OR 97209, Telephone: 503-241-3207; E-mail: kit.blair@iberdrolaren.com

Section 8. Breach. If a Party believes that another Party has breached this Agreement, it must provide notice of the breach to the breaching party and provide an opportunity to cure the breach. If there is a dispute between the involved Parties as to whether a breach occurred, the involved Parties agree to attempt to resolve the dispute beginning with Iberdrola Renewables, Atlantic Wind, and representatives of the Navy at Forces Surveillance Support Center (FSSC). Disputes may be elevated, on the part of the Navy/DoD, to the Director for Energy and Environmental Readiness, Office of the Chief of Naval Operations, and then to the Executive Director of the

(23 Oct 2014, 1030)

DoD Siting Clearinghouse, as required. If the breach is not cured or resolved after this initial dispute resolution process, any Party may seek to enforce this Agreement. Each Party specifically reserves any and all rights or causes of action it may have both at law and in equity to require compliance with any provision of this Agreement. Each Party reserves the right to enforce or refrain from enforcing against another Party the terms of this Agreement as it sees fit under applicable state or federal law.

Section 9. Amendments. Any Party to this Agreement may request that it be amended, whereupon the Parties agree to consult to consider such amendments. Any amendment to this Agreement shall be effective if executed in writing and signed by the Parties.

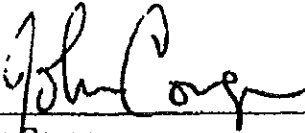
Section 10. Signature/Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, all of which shall constitute but one and the same instrument. The following signatures pages are part of this Agreement.

**[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK:
SIGNATURE PAGES FOLLOW]**

**AGREEMENT BETWEEN
DEPARTMENT OF DEFENSE; DEPARTMENT OF THE NAVY;
IBERDROLA RENEWABLES, LLC; AND ATLANTIC WIND, LLC**

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

U.S. DEPARTMENT OF DEFENSE



John Conger
Acting Deputy Under Secretary of Defense
Installations and Environment

11/5/14

Date

**AGREEMENT BETWEEN
DEPARTMENT OF DEFENSE; DEPARTMENT OF THE NAVY;
IBERDROLA RENEWABLES, LLC; AND ATLANTIC WIND, LLC**

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

U.S. DEPARTMENT OF THE NAVY:



Steven Iselin
Principal Deputy Assistant Secretary of the Navy
Energy, Installations and Environment

11/5/2014

Date

(23 Oct 2014, 1030)

**AGREEMENT BETWEEN
DEPARTMENT OF DEFENSE; DEPARTMENT OF THE NAVY;
IBERDROLA RENEWABLES, LLC; AND ATLANTIC WIND, LLC**

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

IBERDROLA RENEWABLES, LLC:



Authorized Representative

10-23-14
Date

LEGAL




Authorized Representative

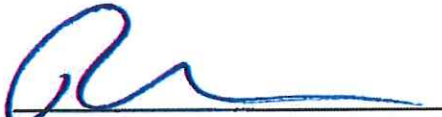
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Date

(23 Oct 2014, 1030)

**AGREEMENT BETWEEN
DEPARTMENT OF DEFENSE; DEPARTMENT OF THE NAVY;
IBERDROLA RENEWABLES, LLC; AND ATLANTIC WIND, LLC**

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

Atlantic Wind, LLC:



Authorized Representative

10.23.14

Date

LEGAL




Authorized Representative

10-23-14

Date

Attachment A

Agreement Between Department of Defense; Department of the Navy; Iberdrola Renewables, LLC; and Atlantic Wind LLC

Desert Wind - 104 Wind Turbines + 1 Permanent MET Cleared for ROTHR

Sorted by AHW

Structure/NAAP ID	Contract AHW ID (NAAP ID)	Easting	Northing	Longitude		Latitude		Easting		Elev	GDA
				Deg	Min	Deg	Min	Deg	Min		
A1	2014-WTE-3610-OE	36.280959	-76.494735	36	18	51.45	76	29	41.03	x	
A2	2014-WTE-3611-OE	36.286716	-76.491443	36	17	12.18	76	29	29.20	x	
B1	2014-WTE-3612-OE	36.299022	-76.488824	36	17	56.48	76	29	19.77	x	
B2	2014-WTE-3613-OE	36.295320	-76.486939	36	17	43.87	76	29	12.98	x	
B3	2014-WTE-3614-OE	36.290202	-76.484133	36	17	24.73	76	29	2.88	x	
B4	2014-WTE-3615-OE	36.286909	-76.481989	36	17	12.87	76	28	55.16	x	
C1	2014-WTE-3616-OE	36.299670	-76.479675	36	17	58.81	76	28	25.23	x	
D1	2014-WTE-3617-OE	36.297233	-76.466876	36	17	50.04	76	28	0.75	x	
G1	2014-WTE-3619-OE	36.275029	-76.450865	36	16	30.10	76	27	3.59	x	
G6	2014-WTE-3620-OE	36.261867	-76.431293	36	15	42.72	76	25	52.65	x	
G7	2014-WTE-3621-OE	36.276685	-76.440597	36	16	56.07	76	26	26.15	x	
G9	2014-WTE-3622-OE	36.265242	-76.424284	36	15	57.39	76	25	27.46	x	
H10	2014-WTE-3623-OE	36.349391	-76.416343	36	20	38.57	76	24	59.56	x	
H3	2014-WTE-3624-OE	36.332748	-76.430151	36	19	57.89	76	25	48.54	x	
H5	2014-WTE-3625-OE	36.336723	-76.441743	36	20	12.17	76	26	30.28	x	
H6	2014-WTE-3626-OE	36.339098	-76.432193	36	20	20.75	76	25	53.90	x	
H7	2014-WTE-3627-OE	36.339360	-76.433444	36	20	21.70	76	25	25.84	x	
H8	2014-WTE-3628-OE	36.339645	-76.434136	36	20	22.80	76	24	50.89	x	
H9	2014-WTE-3629-OE	36.340484	-76.443854	36	20	25.74	76	26	37.87	x	
S18	2014-WTE-3635-OE	36.347219	-76.400577	36	20	49.99	76	24	2.08	x	
S32	2014-WTE-3636-OE	36.325658	-76.380868	36	19	32.40	76	22	50.41	x	
S33	2014-WTE-3637-OE	36.346861	-76.381059	36	20	48.70	76	22	51.81	x	
S34	2014-WTE-3638-OE	36.342885	-76.378643	36	20	14.39	76	22	43.22	x	
S43	2014-WTE-3642-OE	36.350659	-76.383310	36	21	2.37	76	22	59.91	x	
T1	2014-WTE-3643-OE	36.329646	-76.371183	36	19	46.80	76	22	16.26	x	
T14	2014-WTE-3644-OE	36.339458	-76.353647	36	20	0.45	76	21	13.23	x	
T17	2014-WTE-3645-OE	36.341825	-76.355679	36	20	30.57	76	21	20.44	x	
T18	2014-WTE-3646-OE	36.337346	-76.354530	36	20	16.75	76	21	16.31	x	
T19	2014-WTE-3647-OE	36.333841	-76.346053	36	20	1.83	76	20	45.79	x	
T20	2014-WTE-3648-OE	36.342896	-76.347867	36	20	33.70	76	20	52.32	x	
T21	2014-WTE-3649-OE	36.338441	-76.346935	36	20	18.39	76	20	48.97	x	
T22	2014-WTE-3650-OE	36.334979	-76.340892	36	20	5.92	76	20	27.21	x	
T23	2014-WTE-3651-OE	36.336107	-76.336184	36	20	9.98	76	20	10.26	x	
T24	2014-WTE-3652-OE	36.337627	-76.331051	36	20	15.46	76	19	51.78	x	
T25	2014-WTE-3653-OE	36.334828	-76.327955	36	20	9.58	76	19	40.84	x	
T5	2014-WTE-3654-OE	36.325340	-76.370001	36	19	31.22	76	22	12.00	x	
T6	2014-WTE-3655-OE	36.329251	-76.361218	36	19	45.30	76	21	40.38	x	
T7	2014-WTE-3656-OE	36.325410	-76.360106	36	19	31.48	76	21	36.38	x	
W15	2014-WTE-3659-OE	36.283481	-76.427663	36	17	0.55	76	25	39.59	x	
W19	2014-WTE-3660-OE	36.300079	-76.437186	36	18	1.00	76	26	13.87	x	
W21	2014-WTE-3661-OE	36.310902	-76.446508	36	18	37.09	76	26	47.43	x	
W22	2014-WTE-3662-OE	36.315212	-76.450833	36	18	54.76	76	27	3.00	x	
W23	2014-WTE-3663-OE	36.315120	-76.459023	36	18	54.43	76	27	32.48	x	
W24	2014-WTE-3664-OE	36.322976	-76.469472	36	19	22.71	76	28	10.10	x	
W27	2014-WTE-3665-OE	36.302451	-76.425683	36	18	9.19	76	25	36.07	x	
W28	2014-WTE-3666-OE	36.319499	-76.462852	36	19	20.20	76	27	46.27	x	
W5	2014-WTE-3667-OE	36.281356	-76.447257	36	16	52.88	76	26	50.12	x	
C4	2014-WTE-3668-OE	36.29081835	-76.47437297	36	17	26.95	76	28	27.74	x	
C5	2014-WTE-3669-OE	36.28737576	-76.47277896	36	17	14.55	76	28	22.00	x	
D2	2014-WTE-3671-OE	36.29255068	-76.46544263	36	17	33.18	76	27	55.59	x	
G2	2014-WTE-3675-OE	36.26944421	-76.44265403	36	16	10.00	76	26	33.55	x	
G3	2014-WTE-3676-OE	36.26631882	-76.4335	36	15	58.75	76	26	7.80	x	
H1	2014-WTE-3677-OE	36.27542832	-76.46523148	36	16	31.54	76	27	54.83	x	
L1	2014-WTE-3678-OE	36.33043595	-76.45537862	36	19	49.04	76	27	20.06	x	

Agreement Between Department of Defense; Department of the Navy; Iberdrola Renewables, LLC; and Atlantic Wind LLC
Desert Wind - 104 Wind Turbines + 1 Permanent MET Cleared for ROTH

Sorted by AZN

Structure Name ID	Contract AZN	Latitude		Longitude		Elevation		Area		Type
		DD	MM	DD	MM	DD	MM	DD	MM	
L2	2014-WTE-3679-OE	36.32412125	-76.45241495	36	19	26.84	76	27	8.69	x
L3	2014-WTE-3680-OE	36.31975609	-76.44508727	36	19	11.12	76	26	42.31	x
L5	2014-WTE-3682-OE	36.31082932	-76.43002576	36	18	38.99	76	25	48.09	x
M1	2014-WTE-3683-OE	36.32857188	-76.44610848	36	19	44.48	76	26	45.99	x
M2	2014-WTE-3684-OE	36.3257006	-76.44089237	36	19	32.52	76	26	25.41	x
M3	2014-WTE-3685-OE	36.32144236	-76.43244807	36	19	17.19	76	25	56.83	x
M4	2014-WTE-3686-OE	36.31697807	-76.42484636	36	19	1.11	76	25	29.44	x
N1	2014-WTE-3687-OE	36.32692312	-76.42901936	36	19	36.92	76	25	44.47	x
N2	2014-WTE-3688-OE	36.33179076	-76.43922849	36	19	58.05	76	26	21.22	x
N4	2014-WTE-3689-OE	36.33319669	-76.42115095	36	19	59.51	76	25	16.14	x
Q2	2014-WTE-3697-OE	36.35770488	-76.42563941	36	21	27.74	76	25	52.37	x
Q3	2014-WTE-3698-OE	36.35364044	-76.42480328	36	21	13.11	76	25	26.41	x
Q6	2014-WTE-3699-OE	36.35858352	-76.41543068	36	21	30.90	76	24	59.15	x
Q7	2014-WTE-3700-OE	36.35445609	-76.4136701	36	21	16.04	76	24	49.93	x
S1	2014-WTE-3709-OE	36.31179785	-76.42175722	36	18	42.26	76	25	18.33	x
S10	2014-WTE-3710-OE	36.33402546	-76.40729814	36	20	2.49	76	24	26.27	x
S11	2014-WTE-3711-OE	36.33067109	-76.40348059	36	19	50.42	76	24	12.53	x
S12	2014-WTE-3712-OE	36.32209271	-76.39845674	36	19	19.53	76	23	54.44	x
S13	2014-WTE-3713-OE	36.31775075	-76.39574024	36	19	3.90	76	23	44.66	x
S14	2014-WTE-3714-OE	36.314724	-76.39232143	36	18	53.04	76	23	32.36	x
S15	2014-WTE-3715-OE	36.311225	-76.38890232	36	18	40.41	76	23	20.05	x
S16	2014-WTE-3716-OE	36.30755245	-76.38623026	36	18	27.19	76	23	46.43	x
S17	2014-WTE-3717-OE	36.35089037	-76.4038168	36	21	3.17	76	24	13.74	x
S19	2014-WTE-3718-OE	36.34211233	-76.39744899	36	20	31.80	76	23	50.88	x
S2	2014-WTE-3719-OE	36.30736461	-76.4199161	36	18	26.51	76	25	13.70	x
S20	2014-WTE-3720-OE	36.33740258	-76.3949925	36	20	24.65	76	23	41.97	x
S21	2014-WTE-3721-OE	36.33398075	-76.3928961	36	20	2.33	76	23	34.43	x
S22	2014-WTE-3722-OE	36.32948846	-76.39088589	36	19	46.16	76	23	27.19	x
S23	2014-WTE-3723-OE	36.32526488	-76.38913279	36	19	30.95	76	23	20.88	x
S24	2014-WTE-3724-OE	36.32139445	-76.38675924	36	19	17.03	76	23	12.33	x
S25	2014-WTE-3725-OE	36.31782693	-76.38331123	36	19	4.18	76	23	0.64	x
S28	2014-WTE-3728-OE	36.34532599	-76.38826471	36	20	43.17	76	23	17.75	x
S3	2014-WTE-3730-OE	36.32723068	-76.41497668	36	19	38.03	76	24	53.92	x
S30	2014-WTE-3731-OE	36.34106687	-76.34596176	36	20	27.84	76	23	9.46	x
S31	2014-WTE-3732-OE	36.33758362	-76.34281063	36	20	15.36	76	22	58.12	x
S4	2014-WTE-3735-OE	36.32218984	-76.41227386	36	19	19.88	76	24	44.19	x
S5	2014-WTE-3739-OE	36.31770729	-76.41056692	36	19	3.75	76	24	38.04	x
S7	2014-WTE-3741-OE	36.30996808	-76.40301797	36	18	35.89	76	24	18.06	x
S9	2014-WTE-3742-OE	36.33712365	-76.40992257	36	20	13.65	76	24	35.72	x
W1	2014-WTE-3743-OE	36.28001545	-76.46717428	36	15	48.06	76	28	1.83	x
W12	2014-WTE-3746-OE	36.29743549	-76.44651685	36	17	50.77	76	26	47.48	x
W16	2014-WTE-3747-OE	36.28900143	-76.42966096	36	17	20.41	76	25	46.78	x
W17	2014-WTE-3748-OE	36.29188028	-76.43300439	36	17	31.13	76	25	58.82	x
W18	2014-WTE-3749-OE	36.29576771	-76.43561176	36	17	44.76	76	25	8.21	x
W2	2014-WTE-3750-OE	36.27919492	-76.45878364	36	16	45.10	76	27	24.42	x
W20	2014-WTE-3751-OE	36.30414794	-76.43976689	36	18	14.93	76	26	23.16	x
W4	2014-WTE-3753-OE	36.28734427	-76.46252197	36	17	14.44	76	27	45.08	x
W6	2014-WTE-3756-OE	36.28515695	-76.45058694	36	17	6.57	76	27	2.11	x
W7	2014-WTE-3757-OE	36.28913969	-76.4330266	36	17	20.90	76	27	10.90	x
W8	2014-WTE-3758-OE	36.29387505	-76.43600889	36	17	37.95	76	27	21.64	x
PM1 (Met Tower)	2014-WTE-3763-OE	36.330260	-76.479310	36	19	48.94	76	28	46.24	x

Total 104

EXHIBIT G:

March 3, 2015 E-mail

From Mr. Craig Poff

of Iberdrola

Renewables to

Respondent DEQ

From: [Atkinson, Brad](#)
To: [Leker, Bob](#)
Subject: RE: Iberdrola - Desert Wind Winds project
Date: Friday, March 06, 2015 10:58:46 AM

Thanks Bob. This notice has a statement that the Navy has evaluated this request. Why isn't there a similar evaluation from the Air Force on the document as well?

Brad Atkinson
Energy Section Chief
NCDENR - Division of Energy, Minerals and Land Resources
ph: 919-707-9235 fax: 919-715-8801
brad.atkinson@ncdenr.gov
<http://portal.ncdenr.org/web/tr/energy-home-new>

E-Mail correspondence to and from this address may be subject to the NC Public Records Law and may be disclosed to third parties.

From: Leker, Bob
Sent: Thursday, March 05, 2015 11:34 AM
To: Atkinson, Brad
Cc: Davis, Tracy; Hodge, Starlette; Leker, Bob
Subject: FW: Iberdrola - Desert Wind Winds project

Brad,

To follow-up on our brief discussion this morning, I am forwarding the historical FAA clearance and email message from Craig Poff (Iberdrola contact) regarding the question of FAA determination of no hazard (DNH) status related to the NC Wind Permitting rules. You will also see Jenny Kelvington's email request.

Note I have bolded an area in the message from Craig.

We may need to gather additional information including the additional turbine determinations. Henry Campen is a local legal consultant that helped Iberdrola with various permitting requirements.

I will be working on this issue when I return from leave – I am out till Mar 17th.

- Bob

Bob Leker
Renewable Energy Program Manager

Exhibit
G

State Energy Program

Division of Energy, Mineral and Land Resources

NC Department of Environment and Natural Resources

Physical Address: Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604

Mailing Address: 1612 Mail Service Center, Raleigh, NC 27699-1612

7th Floor Archdale Building, Room 719

919-707-9247 bob.leker@ncdenr.gov

Email correspondence to and from this address may be subject to the NC Public Records Law "NCGS.Ch. 132" and may be disclosed to third parties.

From: Poff, Craig [<mailto:cpoff@iberdrolaren.com>]

Sent: Tuesday, March 03, 2015 10:25 AM

To: Leker, Bob

Subject: FW: Desert Wind

Bob,

Along with your request, I received an inquiry from Jenny Kelvington too. I responded to her email this morning. Please see attached and below. And let me know if there's anything further you may need.

Best regards,



Craig Poff
Director, Business Development

www.iberdrolarenewables.us

100 Matsonford Rd, Two Radnor Corporate Center, Suite 200, Radnor PA 19087

Telephone: Main (610) 230-0332; NC Office (252) 565-4700 x1; Mobile: (484) 678-2702; Fax (610) 654-1069



In the interests of the environment, please print only if necessary and recycle

From: Poff, Craig

Sent: Tuesday, March 03, 2015 08:43

To: 'Kelvington, Jenny'

Subject: RE: Desert Wind

Good morning Jenny,

I'm responding to your email below and your phone call yesterday. Sorry for the delay. Your email has to do with the status of the Desert Wind project with respect to Session Law 2013-51, which I

will refer to as the "Permitting Statute". Section 2 of the Permitting Statute provides that it "is effective when it becomes law and applies only to those wind energy facilities or wind energy facility expansions that have not received a written 'Determination of No Hazard' issued by the Federal Aviation Administration on or before that date." The Permitting Statute was signed by the Governor on May 17, 2013. You may or may not be aware that Section 2 of the Permitting Statute was included by the legislature to specifically grandfather the Desert Wind project.

We received Determinations of No Hazard ("DNHs") from the FAA for the project on June 29, 2011, nearly two years before the effective date of the Permitting Statute. **I have attached one of the DNHs provided by the FAA on June 29, 2011 and am happy to provide the others if you would like.** So, the Project had received DNHs well before the effective date of the Permitting Statute. The plain language of Section 2 of the Permitting Statute makes it clear that the Permitting Statute does not apply to the Desert Wind project.

The fact that the Permitting Statute does not apply to the Project may resolve your additional questions. If not, I will be glad to talk with you at your convenience. Insofar as the inquiries from county commissioners you mentioned, I would suggest you refer them to their respective planning departments as we are in close contact with staff with regard to permits (local, state and Federal).

Best regards,



Craig Poff
Director, Business Development

www.iberdrolarenewables.us

100 Matsonford Rd, Two Radnor Corporate Center, Suite 200, Radnor PA 19087

Telephone: Main (610) 230-0332; NC Office (252) 565-4700 x1; Mobile: (484) 678-2702; Fax (610) 654-1069



In the interests of the environment, please print only if necessary and recycle

From: Kelvington, Jenny [<mailto:jenny.kelvington@ncdenr.gov>]

Sent: Thursday, February 26, 2015 17:34

To: Poff, Craig

Subject: Desert Wind

Dear Mr. Poff,

We are pleased to hear that you are finalizing plans for the Desert Wind facility and that North Carolina may soon have its first wind farm. There were a couple of issues that I was hoping to get some clarification on:

1) When I told my supervisor that there was renewed activity related to Desert Wind he asked me whether this project was subject to wind permitting procedures contained in Session Law 2013-51. Can you confirm what your status is relative to the Session Law? If the project is subject we have some excellent resources that we can share and will assist in anyway we can, as we do with all applicants, to get through the process.

2) Have there been any changes (locations, number of units, size, etc...) in the project since it was last proposed and if so can you describe?

3) Probably related to the news that there is renewed activity for the Desert Wind process, I had two county commissioners serving the counties in which the Desert Wind facility is to be located contact me. One specific question that came up was whether each wind turbine has a written "Determination of No Hazard to Air Navigation." If you have a determination, even an expired determination, it may be useful in evaluating whether or not the project is subject to the permitting procedures.

I look forward to hearing back from you.

Sincerely,

Jenny

Jenny Kelvington
NCDENR - Energy Policy
217 West Jones Street
1601 Mail Service Center, Raleigh, NC 27699-1601
919-707-8481
jenny.kelvington@ncdenr.gov

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EXHIBIT H:

*Respondent DEQ's
March 18, 2015 Letter
to Mr. Craig Poff of
Iberdrola Renewables*



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

Donald R. van der Vaart
Secretary

March 18, 2015

Mr. Craig Poff
Director, Business Development
Iberdrola Renewables
Two Radnor Corporate Center
100 Matsonford Road, Suite 200
Radnor, Pennsylvania 19087

Re: Applicability of Session Law 2013-51 - Permitting of Wind Energy Facilities

Dear Mr. Poff:

N.C. Session Law 2013-51, An Act to Establish a Permitting Program for the Siting and Operation of Wind Energy Facilities, (the Act) was signed into law on May 17, 2013. The Act became effective when it became law on May 17, 2013 and applies only to those wind energy facilities or wind energy facility expansions that have not received a written "Determination of No Hazard to Air Navigation" (a determination) issued by the Federal Aviation Administration (FAA) on or before that date.

Pursuant to the Act, no person shall undertake construction, operation, or expansion activities associated with a wind energy facility in North Carolina without first obtaining a permit from the Department of Environment and Natural Resources (DENR). A wind energy facility and wind energy facility expansion which has not received a written FAA determination, as described above, prior to May 17, 2013 is subject to the wind energy facility permitting process codified under North Carolina General Statutes § 143-215.115 et al.

Based on the information you provided and the provisions of the Act, DENR has determined that Iberdrola's Desert Winds Project is subject to the State's wind energy facility permitting process. DENR welcomes the opportunity to assist Iberdrola during the wind permitting application process.

DENR is committed to protecting North Carolina's environment and natural resources. It strives to foster a collaborate stewardship among the citizens, regulators and the business community with the goal of maintaining and enhancing North Carolina's environment and natural resources for the benefit and enjoyment of everyone living in or visiting our great state.

Please contact me if you have any additional questions regarding this matter.

Sincerely,

Brad Atkinson
Energy Section Chief

1601 Mail Service Center, Raleigh, North Carolina 27699-1601
Phone: 919-707-8600 \ Internet: www.ncdenr.gov

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Exhibit
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EXHIBIT I:

*Respondent DEQ's
March 26, 2015 Letter
to Mr. Craig Poff of
Iberdrola Renewables*



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

Donald R. van der Vaart
Secretary

March 26, 2015

Mr. Craig Poff
Director, Business Development
Iberdrola Renewables
Two Radnor Corporate Center
100 Matsonford Road, Suite 200
Radnor, Pennsylvania 19087

Re: Applicability of Session Law 2013-51 - Permitting of Wind Energy Facilities

Dear Mr. Poff:

It was a pleasure speaking with you this Monday regarding the Desert Wind Project. We understand that you believe the proposed project is "grandfathered" from the state wind energy facility permitting process because, at the time of Session Law 2013-51, Iberdrola had written Determinations of No Hazard to Air Navigation (FAA determinations) issued by the Federal Aviation Administration (FAA) for each of the 166 originally planned turbines.

At this time, we find the Desert Wind Project is subject to the state permitting requirements. However, we are willing to reconsider permit applicability should we receive sufficient information to demonstrate that a state wind energy permit is not required. The information needed includes the following (1) descriptions of the current "wind energy facility" and descriptions of the "wind energy facility" at the time of the initial FAA determinations; and, if applicable, descriptions of the "wind energy facility expansion" in accordance with the definitions under North Carolina General Statutes § 143-215.115¹; (2) the issuance, renewal, and/or reissuance dates for each FAA determination; and (3) all periods of time since May 17, 2013 in which FAA determinations may have lapsed.

Once your response is received, we will expeditiously reevaluate the permit applicability. Should we continue to find that a permit is required, we would be happy to assist Iberdrola during the wind energy facility permit application process. Please contact me if you have any questions regarding this matter.

Sincerely,

Brad Atkinson
Energy Section Chief

¹ A "wind energy facility" means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of one megawatt or more of energy. A "wind energy facility expansion" means any activity that adds or substantially modifies turbines or transmission facilities, including increasing the height of such equipment, over that which was initially permitted or increases the footprint of the wind energy facility over that which was initially permitted.

Exhibit
I

EXHIBIT J:

*Respondent DEQ's
April 29, 2015 Letter
to Mr. Craig Poff of
Iberdrola Renewables*



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

Donald R. van der Vaart
Secretary

April 29, 2015

Mr. Craig Poff
Director, Business Development
Iberdrola Renewables
Two Radnor Corporate Center
100 Matsonford Road, Suite 200
Radnor, Pennsylvania 19087

Re: Applicability of Session Law 2013-51 - Permitting of Wind Energy Facilities

Dear Mr. Poff:

N.C. Session Law 2013-51, An Act to Establish a Permitting Program for the Siting and Operation of Wind Energy Facilities, (the Act) was signed into law on May 17, 2013. The Act became effective when it became law on May 17, 2013 and applies only to those wind energy facilities or wind energy facility expansions that have not received a written "Determination of No Hazard to Air Navigation" (a determination) issued by the Federal Aviation Administration (FAA) on or before that date.

Pursuant to the Act, no person shall undertake construction, operation, or expansion activities associated with a wind energy facility in North Carolina without first obtaining a permit from the Department of Environment and Natural Resources (DENR). A wind energy facility or wind energy facility expansion which has not received a written FAA determination, as described above, prior to May 17, 2013 is subject to the wind energy facility permitting process codified under North Carolina General Statutes § 143-215.115 et al.

DENR has renewed its review of the Act and has determined that Iberdrola's Desert Wind Project is not subject to permitting provisions of the Act based on a plain reading of the Act. This is true because the FAA issued determinations to Iberdrola, for its Desert Wind Project, on June 29, 2011, prior to the Act becoming law, despite the fact that these FAA issued determinations subsequently expired on May 21, 2014. Likewise, the fact that individual turbines within the Desert Wind Project have both increased in height and changed coordinate locations from Iberdrola's June 2011 FAA issued determinations does not implicate the permitting provisions of the Act.

DENR strongly advises Iberdrola to keep federal, state and local government agencies and the military apprised of any further changes in the Desert Wind project.

DENR is committed to protecting North Carolina's environment and natural resources. It strives to foster a collaborate stewardship among the citizens, regulators and the business community with the goal of maintaining and enhancing North Carolina's environment and natural resources for the benefit and enjoyment of everyone living in or visiting our great state.

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