

INTERNAL STAFF MEMORANDUM

NEW CASE INITIATED
on May 4, 2006:

Case No. 06-0573-CS-GI

**General Investigation Initiating a proceeding to
consider the Noise Rules Task Force Report**

Date: January 12, 2006

To: Sandra Squire, Executive Secretary

From: James W. Ellars, P.E., Chief Utilities Manager
Engineering Division

Subject: ~~General Order 255-1~~ **EWG Siting – Noise Rules Task Force**

06-0573-CS-GI

On July 12, 2005 the Commission issued an Order in the above-named proceeding establishing a Task Force to address siting rules relating to noise for Exempt Wholesale Generators (EWGs). In August 2005 the Commission Staff designated a Chairman to head the Task Force in accordance with the Commission's Order. In August 2005 The Task Force was assembled, and its first meeting was held on November 10, 2005.

The Order requires the Task Force to file a report with the Commission within 180 days. The purpose of this filing is to meet this requirement as well as provide the Commission with an update of the Task Force's efforts.

The members who have chosen to participate in the Commission's Task Force are as follows:

Honorable Alan Mollohan, US House of Representatives
Honorable Virginia Mahan – West Virginia House of Delegates
Citizens for Responsible Developments, Inc.
PPM Atlantic Renewable
Forks of Cheat Forest Property Owners Association
West Virginia Highlands Conservancy
US Wind Force
Jarrett Jamison & Son
Consumer Advocate Division
Friends of Blackwater
Mt Storm Wind Force, LLC and GenPower
Linda Cooper – Citizens for Responsible Windpower
Maryanne Maul
Patrick Mann – West Virginia University
Robert Hurley
Robert Tower

As clearly stated in the Commission Order dated July 12, 2005 the scope of the Task Force's efforts involves reviewing the current rules regarding noise requirements for exempt wholesale generators. As can be seen from the aforementioned list, participants in these proceedings are diverse and include environmental advocates, consumer advocates, the generating industry, and the Commission Staff. It is noted that representatives from the State Legislature and the United States Congress have taken an active interest in the outcome of these proceedings, namely Congressman Alan Mollohan and Delegate Virginia Mahan (representing Speaker Robert Kiss).

ISSUES

The Task Force had its first meeting on November 10, 2005. The goal of this initial meeting was to identify issues and the positions of the parties on each issue. A synopsis of the issues identified during our first meeting follows:

Issue #1: Should the Commission's siting rules contain known, quantifiable standards for noise, or should they simply be a list of informational requirements?

The predominant view among the public and environmental members is that the Commission should have known and measurable standards codified in its siting rules. Conversely, many generator members disagreed with this point, with some of the generator members' legal counsel opining that it would in fact be legally discriminatory for the Commission to place such requirements upon wholesale generators and not upon applicants filing for a Certificate of Convenience and Necessity under WV Code §24-2-11.

It is noted that all of the attorneys present during the first meeting were representatives of generating companies except for the attorney from the Consumer Advocate Division. None of the public members including the Commission Staff were represented by counsel in this initial meeting. Therefore, this issue was not discussed to a conclusion at that time. It is also noted that Commission Staff legal counsel made it clear to the Task Force Chairman that it does not agree with assertions made by the generator members on this topic. *In any event, this issue seems to be a "critical path" in reaching a consensus within the group.*

Issue #2: Should outside noise experts be employed to support the Task Force's decisions and recommendations?

A majority of members feel that the Task Force should employ noise experts for this purpose. There were no arguments presented against employing noise experts. Most, if not all members, agreed that such input is greatly needed.

Moreover, Congressman Mollohan made it clear in his statement to the Task Force that he feels expert consultation is needed to support decisions and recommendations made in these proceedings.

Issue #3: Day/Night Sound Levels

- Public/environmental members expressed concern that DNL levels should take into account varying weather conditions, namely temperature and humidity;
- Public/environmental members feel that maximum noise levels should be considered in addition to average levels;
- Some generator members warned against being more restrictive than other surrounding states;
- Public/environmental members questioned whether standards should go beyond A-weighted values that affect humans and consider other frequency weightings that could affect animals;
- Relating to wind turbines – public members pointed out that noise levels for wind turbines vary based on their mode of operation, i.e., blade angle and speed;

Issue #4: Predictive Noise Studies

- Discussion took place regarding what constitutes a complete noise study;
- Impacts of local zoning laws were discussed as well as what is deemed to be reasonable noise levels;

Issue #5: Noise Contours/Graphical Representations

- Inclusion of current ambient noise levels was discussed;
- Concern was expressed whether existing ambient levels could be easily included given current analysis software and technology;

Issue #6: Definitions

- Public members feel that metrics for sound levels need to be more clearly defined;
- Public members feel that the definition for “Noise Sensitive Area” should be reviewed and possibly expanded;

Issue #7: Monitoring and Compliance

- Public members feel that Commission should have an active compliance program during generator operation;
- Generator members stated that Commission's enforcement capabilities extend only to the terms and conditions of its Orders;

Additional Issues:

- Public members feel that truck noise should not be limited to construction period only;
- Public members feel that requirements for construction phase can be standardized; However, operational requirements should differ based on generator technology;
- Congressman Mollohan submitted written correspondence to the Task Force Chairman on November 9, 2005 in which he expressed concern that impacts by wind turbine projects may have been underestimated in past Commission filings.

SUMMARY

As can be seen from the above discussion, disagreements exist on several key issues. However, one item agreed upon by all members was the need to have expert consultation on acoustics (noise) in order for the Task Force to make informed recommendations to the Commission. The area of acoustics is greatly specialized, technical, and complex. Therefore, it is the collective recommendation of the Task Force that an acoustics consultant be obtained to advise the group on such matters.