At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 19th day of November 2019.

CASE NO. 19-0483-E-CS

BLACK ROCK WIND FORCE, LLC,
a limited liability company.
Application for a Siting Certificate to authorize the construction and operation of an electric wholesale generating facility and related transmission support line of less than 200 kV and associated interconnection facilities in Grant and Mineral Counties.

COMMISSION ORDER GRANTING A SITING CERTIFICATE FOR A WHOLESALE ELECTRIC GENERATING FACILITY IN GRANT AND MINERAL COUNTIES, WEST VIRGINIA

November 19, 2019
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At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 19th day of November 2019.

CASE NO. 19-0483-E-CS

BLACK ROCK WIND FORCE, LLC, a limited liability company,

Application for a Siting Certificate to authorize the construction and operation of an electric wholesale generating facility and related transmission support line of less than 200 kV and associated interconnection facilities in Grant and Mineral Counties.

COMMISSION ORDER GRANTING A SITING CERTIFICATE FOR A WHOLESALE ELECTRIC GENERATING FACILITY IN GRANT AND MINERAL COUNTIES, WEST VIRGINIA

Based on the evidence and the benefits that the project will provide to the State and Grant and Mineral Counties, the Commission approves the application filed by Black Rock Wind Force, LLC (Black Rock) for a siting certificate to construct and operate a wholesale electric generating facility of approximately 110 megawatts (MW) in Grant and Mineral Counties, West Virginia.

I. PROJECT DESCRIPTION

On May 10, 2019, Black Rock filed an application for a Siting Certificate pursuant to W. Va. Code §24-2-11c to authorize the construction and operation of a wholesale electric generating facility and other necessary appurtenances in Grant and Mineral Counties, West Virginia (Project). As initially proposed, the Project would have consisted of up to twenty-nine wind turbines, each with a nameplate capacity of between 3.6 MW and 5.8 MW. At the time of the application, the targeted megawatt capacity was 110 MW with a possible increase to 170 MW. Application at 1. The construction phase of the Project was estimated to cost between $146 and $165.6 million. Application at 79.

The type and size of wind turbine and the noise study were supplemented on August 27, 2019, once Black Rock determined the appropriate wind turbines to use for this location. Black Rock officials testified during the evidentiary hearing that the Project was modified through the course of this case. The Project presented at the evidentiary hearing consisted of twenty-three SiemensGamesa (SG) model 145/4.8 wind turbines to
be placed on twenty-three of twenty-nine possible sites. Each wind turbine would have a nameplate capacity of 4.8 MW, be mounted at a hub height of 107.5 meters (352.6 feet), and have a rotor diameter of 145 meters (475.6 feet). The Project will have an interconnection limit of 110 MW. The six additional sites would serve as alternate locations if an engineering or construction fatal flaw was identified or if additional interconnect capacity became available. If the additional interconnect capacity became available, Black Rock would request to utilize all twenty-nine turbine positions with the SG 145/4.8 turbines for a total nameplate capacity of up to 140 MW. Mr. LaPierre testified that Black Rock is seeking siting certificate authority for twenty-nine 4.8 MW wind turbines and a total Project capacity of up to 140 MW in case Black Rock decides to seek additional interconnection capacity from PJM. Transcript of Evidentiary Hearing held on September 11, 2019 (Tr.) at 21-22; BR Ex. NL-R at 2.

Black Rock proposed to construct the wind turbines and associated equipment along the Allegheny Front, centered around Skyline, West Virginia, eleven and one-half miles southwest of Keyser in Grant and Mineral Counties, West Virginia. In addition to the wind turbines, Black Rock proposed to construct access roads, an electric collection system, transmission line, substation and interconnection switchyard, and an operations and maintenance building. The wind turbines are located mostly on the primary ridge, the Allegheny Front, perpendicular to the prevailing wind, in the area both north and south of the intersection of Route 50 and Route 42 north at Skyline, West Virginia. The Project will be situated in select portions of privately-owned mountaintop land generally composed of uninhabitable forested or timbered areas. Parts of the Project are located on properties that were previously strip mined and some that are actively farmed. Application at 1.

Black Rock selected the Project site (Site) because of its ridgeline location that is oriented perpendicular to the prevailing wind. Black Rock asserted that this wind resource is among the best in West Virginia. Application at 4. Other factors in favor of the Site include, but are not limited to (i) the availability of privately-owned land with current land uses that are compatible with wind power development, (ii) favorable transmission access into the PJM transmission grid system, (iii) reasonable highway access, (iv) relative scarcity of nearby residential dwellings, and (v) proximity to existing projects owned by Clearway. Application at 4. Black Rock was awarded and entered into exclusive negotiations for a Virtual Power Purchase Agreement with an in-state manufacturer for the sale of energy from the Project. Black Rock will be the first wind project in the state to enter into such an agreement with an in-state manufacturer. Application at 2.

Black Rock is a wholly-owned subsidiary of Clearway Energy Group LLC (Clearway). Clearway purchased the Project from Laurel Renewable Partners, LLC (Laurel) in early 2018. Since that time, Laurel and Clearway have developed the Project together under a joint development arrangement. Clearway owns 2.8 GW of the wind
power projects in the United States including the Pinnacle Wind Farm in Mineral County, West Virginia and two projects in Somerset County, Pennsylvania. Application at 19.

The Project was designed to avoid or minimize impact to (i) federal and state listed wildlife species, including birds and bats, and their habitats, (ii) sensitive plant species, (iii) wetlands and waterways, (iv) state or county roads, and (v) occupied residential structures. Application at 4-5.

According to Black Rock, the Project would provide many benefits to the local economy including (i) lease or royalty revenue to some landowners, (ii) the creation of jobs both during construction of the Project and its subsequent operation, (iii) an enhanced potential for economic development, (iv) ancillary business activity, (v) tax revenues, (vi) a Community Benefit Fund, and (vii) energy price certainty through the production of energy without fuel price risk. Application at 5. The Community Benefit Fund, mentioned above, would be established by Black Rock to make an investment in the future of the communities surrounding the Project. The Community Benefit Fund would help to develop the area and would provide funding to directly benefit residents within the Project area. Black Rock anticipates making contributions to the Community Benefit Fund of $40,000 per year over the life of the Project. Application at 2.

II. PROCEDURAL BACKGROUND

A. Initial Public Notice and Comment Letters

Black Rock published the Notice of Filing of its Application on May 23, 2019 in the News Tribune (Mineral County), May 28, 2019 in the Grant County Press (Grant County), and May 30, 2019, in the Charleston Gazette-Mail (Kanawha County). Affidavits of Publication, June 10 and 21, 2019.

On June 10, 2019, Black Rock filed a copy of letters to the Keyser-Mineral County Public Library and the Moomau-Grant County Public Library, dated June 7, 2019, providing a copy of the Application for interested persons to review.

The Commission received 223 letters in support of the Project and 66 letters in opposition of the Project.

B. Waiver of Certain Filing Requirements

On September 6, 2019, the Commission granted a request by Black Rock to waive certain filing requirements including the utility service rendered, proposed rates, project costs, project financing, estimates of operating revenue and expenses, and Rule 42 requirements. Black Rock further requested waivers of all Commission filing and reporting, metering, customer relations, inspections, tests, standards, quality of service,
promotional practices, consumer reimbursement programs, and uniform accounting requirements, as well as the inspection of books, papers, reports, and statements that are specific to regulated utilities whose practices impact captive ratepayers.

Because Commission jurisdiction, particularly as it relates to rates, is limited regarding the operations of the Project, the Commission did not require Black Rock to file information that relates to the traditional public utility model under which the Commission examines extensive financial information to establish rates for service based on the cost to the utility to provide the service.

C. Interventions

On July 2, 2019, the Commission granted the Petition to Intervene filed by the West Virginia State Building and Construction Trades Council, AFL-CIO (Council). On that same date, the Commission denied the Petition to Intervene filed by the Consumer Advocate Division (CAD) because this case does not address rates to be charged by a public utility. The Commission determined that the potential for an incremental impact on wholesale market costs that would affect West Virginia ratepayers was too attenuated to support CAD intervention in this case.

On August 15, 2019, the Commission granted the Petition to Intervene filed by individuals Jarrel and Lauren Price. The Prices own property approximately .85 miles from the proposed project. The Prices expressed concern with several aspects of the Black Rock application that they deem as shortcomings. The Prices specifically stated that the Wildlife Risk Assessment for the project was faulty because it was based on outdated and incomplete comparison data from nearby farms with regard to eagle fatalities.

D. Motion for Protective Treatment

Rule 3.1.1.2. of the Commission Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. 30 (Siting Rules) requires applicants to file certain financial statements for each year of the start-up phase and for the first five years of operation. These financial statements must disclose all assumptions. With the Application filed on May 10, 2019, Black Rock filed a confidential version of the financial statements at Appendix M.

Black Rock filed a Motion for Protective Treatment on July 8, 2019, and a supporting affidavit on July 12, 2019, relating to the previously noted items. No party objected to the Motion for Protective Treatment.

E. Motion to Dismiss

Intervenors Mr. and Mrs. Price filed a Motion to Dismiss on August 14, 2019, arguing that Black Rock’s Application was deficient. Intervenor the Council and Black Rock filed oppositions to the Motion to Dismiss on August 19 and 26, 2019, respectively. By Commission Order entered September 6, 2019, the Commission denied the Motion to Dismiss.

F. View by the Commission

On July 26, 2019, the Commission conducted a tour (View) of the Project area with representatives of Commission Staff, Black Rock, and the Council. Members of the public attended the initial two stops of the View and then elected not to complete the View. Mr. and Mrs. Price had not yet intervened in the case and did not attend the View.

The View began at approximately 1:00 p.m. at the Saddle Mountain scenic overlook at the Park-and-Ride lot at the intersection of WV Route 42 and US Route 50 in Skyline, West Virginia. The View lasted approximately three hours with stops at the following View points:

1. Saddle Mountain Scenic Overlook
2. Sulphur City Church
3. Proposed Substation and Switchyard for the Project to be located at the current Storm Mountain Training Center
4. Pinnacle Wind Farm
5. Heskett Bridge/New Memorial Bridge near Keyser, WV
6. Timberlake Estates
7. Mineral/Grant County Line
8. Corridor H Overlook

At each viewpoint, Black Rock officials briefly described the viewpoint, the relative elevations of the viewing location and the Project, and where the Project would be located in relation to the viewing location. At the proposed substation and switchyard site, Black Rock officials described generally where the facilities would be located. The Commission and others present asked clarifying questions about the Viewpoints, but none of the questions addressed the merits of the Project. A court reporter was not present during the View. The Commission traveled separately from the parties from viewpoint to viewpoint.
G. Public Comment Hearing

Black Rock published notice of the public comment hearing in the Grant County Press on July 9, 2019, and in the News-Tribune (Mineral County) on July 11, 2019. Affidavits of Publication, July 17, 2019. The public comment hearing was held on July 26, 2019, at 6:00 p.m. at the Grant County Courthouse in Petersburg, West Virginia. Seventeen people spoke in favor of the Project, two expressed concerns, and five spoke against it.

Dr. Richard Lechliter, a Mineral County Commissioner, spoke in favor of the Project because of the economic benefits to Mineral County, including employment, spending in the community, tax revenue, charitable donations by Black Rock, and lease payments to landowners. Mr. Charles Wilson, President of the Grant County Commission spoke in favor of the Project and discussed misconceptions regarding decommissioning of the Project. Mr. Randy Crane, spoke on behalf of the Mineral County Chamber of Commerce in favor of the Project. Mr. Crane noted that, in his experience, Clearwater and its affiliates have always followed through with promises to the community. Mr. Crane also commented that the tax revenue and charitable donations received from Black Rock would be a benefit to the community. Mr. Eric Putze is a full time wind energy instructor at Eastern West Virginia Community and Technical College who spoke on behalf of his employer. The Technical College offers an Associate degree in Wind Energy Technology. Mr. Putze believes that the Project will provide additional opportunities for wind energy internships and job opportunities.

Mr. John Lecky, a landowner of the property at the summit of Black Rock, spoke in favor of the Project because West Virginia needs to expand upon its strengths, including energy production and tourism. Mr. Lecky spoke about his plan with Black Rock to build a platform at the summit and a road to the summit so that others may enjoy the views from the summit. He stated that, as an individual, he had been unable to build at the summit by himself. Mr. James Adkins and Mr. Jacob Trivillian both spoke on behalf of the windfarm as employees of current wind farms. Mr. Adkins spoke about increased wildlife in the area of wind farms and the fact that he could hear birds and crickets chirping at the wind farms. Mr. Trivillian spoke about his joy when providing tours to school groups and teaching the children about renewable, sustainable energy.

Mr. Cliff Woodricks spoke as a property owner in Grant and Mineral Counties and a representative of iron workers who would benefit from the construction of the Project. As a property owner, he has been able to sell one piece of property and have an access road to another piece of property because of wind farm projects in the area. Another landowner, Mr. Brian Tephabock, spoke of his satisfaction in dealing with Black Rock.

Mr. Jeff Berg, a Grant County Commissioner, spoke in favor of the Project because it would bring needed construction jobs and money for schools. Mr. Matt
Brewer, managing partner of a consulting and engineering firm in Frostburg, Maryland, spoke in favor of the jobs that the Project would bring, particularly in light of the recent closing of the Verso paper mill in nearby Luke, Maryland. He stated that a project of this size would create one year of work for his entire firm. Mr. Scott Smith, representing A.L.L. Construction, and Mr. Travis Hendrickson, an iron worker, spoke in favor of the Project. Ms. Natalie Stone, representing Northcentral Building Trades, also spoke in favor of the Project and had numerous people from the Building Trades stand in support of the Project.

Mr. Bolarinwa Hjanaku, a doctoral student in Natural Resources Economics from West Virginia University spoke of the benefits of a wind farm to the environment and to the economy in the area.

Mr. Kenny Shillingburg did not state whether he supported the Project or was opposed to it, but expressed concern that the counties would not see the benefits that were being discussed, particularly the amounts of money projected to benefit the area. Ms. Jane Keeling, a former Grant County Commissioner and English teacher expressed concern with the lack of information on the future decommissioning of the Project.

Ms. Julie Brehm spoke in opposition to the Project stating that her quality of life would be disturbed. She also questioned the adverse health effects of the wind turbines, the effect of lights and noise from the wind turbines, and the safety of the eagle’s nest located slightly more than a mile from the Project. Mr. Richard Fiedler stated that he would have a decreased quality of life if the Project was approved and would receive no benefit, financial or otherwise, from the Project. Mr. Charlie Winfree, a realtor and developer of the Preserve at New Creek Lake expressed doubt that he would be able to sell the remaining lots in the development or sell any homes in the area if the Project was built. Mr. Winfree also commented that the lack of sales would affect tax revenues, builders, and others. Mr. Winfree noted that he would not be as opposed to the Project if the wind turbines to be installed would be the same size as existing wind turbines in the area.

Ms. Donnalie Hope, a widow, property owner, and appraiser, spoke against the Project because it would decrease her property value, disturb the peace with the noise of the turbines, and kill birds. She expressed concern that she would not be able to sell her property. Despite the fact that his salvage yards and trucking businesses profit from wind farms in the area, Mr. Thomas Dale, another property owner on the Allegheny front, expressed concern that the wind farm would affect a sleep disorder that he has and decrease his property values. He disputed that the wind farms are good for schools in the area. He noted that money from previous wind farms had not improved Union High School which has no central air conditioning and windows that cannot be opened for safety reasons. He noted that smaller schools such as Elkhorn and Mt. Storm also had not seen any benefit from the wind farms.
The public comments may be reviewed in the transcript of the Public Comment Hearing filed in this case on August 6, 2019.

H. Pre-Filed Testimony

On July 9, 2019, Black Rock pre-filed the direct testimony of its witnesses:

1. David K. Friend, Managing Partner, Laurel Renewable Partners, LLC – introducing of other witnesses and providing description of the Project (BR Ex. DKF-D);
2. Brian Biddle, Vice President, Lenhart Traffic Consulting, Inc. – traffic impact analysis for the Project (BR Ex. BB-D);
3. JoAnne Blank, Senior Scientist and Project Manager, Stantec Consulting Services, Inc. – explaining Shadow Flicker Analysis and Acoustic Sound Study Report (BR Ex. JB-D1 and JB-D2);
4. Ellen M. Brady, Cultural Resources Practice Leader, Stantec Consulting Services, Inc. – describing the nature of Stantec’s involvement in the Project and explaining specifically the methods and results of the Architectural Investigation (BR Ex. EMB-D);
5. Joshua Hohn, Visual Resources Specialist, Stantec Consulting Services, Inc. – explaining the Visual Resources Technical Report (BR Ex. JH-D);
6. Paul P. Kreisa, Senior Archeologist and Principal Investigator, Stantec Consulting Services, Inc. – explaining the Phase I Archeological Investigation (BR Ex. PPK-D);
7. Fletcher Mangum, CEO, Magnum Economics, LLC – explaining the economic and fiscal impact of the Project (BR Ex. AFM-D);
8. Robert Roy, Certified Wildlife Biologist, Stantec Consulting Services, Inc. – explaining the Habitat Assessment Report (BR Ex. RR-D); and

On August 14, 2019 the Council pre-filed the following Direct Testimony:

1. Christine Risch, Director of Resources & Energy Economics for the Center for Business and Economic Research, Marshall University – discussing the economic impact of labor income for the on-site construction phase of the Project (Council Ex. BTCR-D); and
2. Steve White – Director, Affiliated Construction Trades Foundation – discussing the Memorandum of Agreement with Black Rock regarding the use of local workers in the construction of the Project (Council Ex. BTSW-D).
On August 15, 2019, Staff pre-filed the following Direct Testimony:

1. Nathan R. Mills, Utilities Analyst II, Utilities Division – addressing whether Black Rock fulfilled the requirements of Rule 3.1.1. of the Siting Rules (Staff Ex. NRM-D); and
2. Donald E. Walker, Technical Analyst, Engineering Division – discussing the technical review of the siting certificate (Staff Ex. DEW-D).

On August 16, 2019, Mr. and Mrs. Price pre-filed the Direct Testimony of Jarrel Price. Mr. Price's testimony addressed issues relating to inadequacies in the Application, particularly the Acoustic Sound Study and Wildlife Risk Assessment (Price Ex. JAP-D).

On August 28, 2019, Black Rock provided the following pre-filed rebuttal testimony:

1. Nate Lapierre, Manager of Project Development for Clearway Energy – responding to issues raised by Staff and Intervenors regarding turbine model and capacity (BR Ex. NL-R);
2. Matthew Brewer, Chief Project Manager and Designer, Bennett Brewer & Associates – discussing issues raised by other witnesses regarding water wells (BR Ex. MSB-R);
3. Benjamin Fairbanks, Senior Director of Wind Development and Strategy, Clearway Energy Group – providing summary of Clearway's development objectives and partnership with Laurel Renewable Partners, LLC and, additionally, discussing decommissioning fund and local economic impact (BR Ex. BF-R);
4. Michael Hankard, owner and principal acoustical consultant, Hankard Environmental, Inc. – discussion of noise assessment (BR Ex. MH-R);
5. Joanne Blank, Senior Scientist and Project Manager, Stantec Consulting Services, Inc. – responding to concerns raised by Staff and Mr. Price regarding the noise assessment (BR Ex. JB-R);
6. David K. Friend, Managing Partner, Laurel Renewable Partners, LLC – responding to certain conditions proposed by Mr. Walker and addressing the testimony of Mr. Price (BR Ex. DKF-R);
7. Joshua Hohn, Visual Resources Specialist, Stantec Consulting Services, Inc. – responding to the visual impact assessment testimony of Mr. Walker and Mr. Price (BR Ex. JH-R);
8. Fletcher Mangum, CEO, Magnum Economics, LLC – responding to the economic assessment testimony of Mr. Price (BR Ex. AFM-R); and
9. Robert Roy, Certified Wildlife Biologist, Stantec Consulting Services, Inc. – responding to wildlife assessment testimony by Mr. Walker and Mr. Price (BR Ex. RR-R).
I. Evidentiary Hearing

Black Rock published notice of the evidentiary hearing on July 9, 2019, in the Grant County Press (Grant County) and July 11, 2019, in the News Tribune (Mineral County). Affidavits of Publication filed on July 19, 2019.

The evidentiary hearing was held on September 11, 2019. The parties were directed to file initial briefs two weeks after the transcript of the evidentiary hearing was filed and reply briefs ten days after initial briefs were filed. All parties filed initial and reply briefs. Filings of September 27, 2019; October 2-3 and 15, 2019.

J. Post-Hearing Filings

On September 30, 2019, Black Rock filed post-hearing exhibits requested by the Commission during the evidentiary hearing on September 11, 2019. Black Rock filed Black Rock Exhibit 7, the decommissioning agreements with the Grant and Mineral County Commissions. Additionally, Black Rock filed Commission Request Exhibit 1, some of the information requested by Chairman Lane at the evidentiary hearing. Tr. at 103. Black Rock provided the number of structures within a one-mile radius of the Project, the number of dwellings contained within that number, the number of those dwellings with project agreements, and the status of project agreements for the remaining dwellings. Black Rock stated that it was unable to identify how many of the 193 dwellings within a one-mile radius are occupied on a full-time or part-time basis. Additionally, Black Rock stated that it could not provide the number of dwellings between a one and five-mile radius of the Project without performing a substantial amount of additional investigation and field work.

III. DISCUSSION OF ISSUES AND EVIDENCE

A. Statutory and Regulatory Tests

West Virginia Code §24-2-11c(c) provides:

In deciding whether to issue, refuse to issue, or issue in part or refuse to issue in part a siting certificate, the commission shall appraise and balance the interests of the public, the general interests of the state and local economy, and the interests of the applicant. The commission may issue a siting certificate only if it determines that the terms and conditions of any public funding or any agreement relating to the abatement of property taxes do not offend the public interest, and the construction of the facility or material modification of the facility will result in a substantial positive impact on the local economy and local employment. The commission shall issue an order that includes appropriate findings of fact and conclusions of
law that address each factor specified in this subsection. All material terms, conditions and limitations applicable to the construction and operation of the proposed facility or material modification of the facility shall be specifically set forth in the commission order.

The Commission has held that the statute sets forth a two-part test that has been established over the years. The West Virginia Supreme Court of Appeals has recognized that this analysis demonstrates a balancing of interests as required by law and properly weighs the various interests involved. Mountain Communities for Responsible Energy v. Public Serv. Comm’n of WV, 222 W. Va. 481, 665 S.E.2d 315, 328-330 (2008).

In Part One of the analysis, the Commission performs its duty to appraise and balance: (a) an applicant’s interest to construct an electric wholesale generation facility; (b) the State’s and region’s need for new electrical generating plants; and (c) the economic gain to the State and the local economy, against: (i) community residents’ interest in living separate and apart from such facility; (ii) a community’s interest that a facility’s negative impacts be as minimally disruptive to existing property uses as is reasonably possible; and (iii) the social and environmental impacts of the proposed facility on the local vicinity, the surrounding region, and the State.

The Commission performs Part Two of its analysis only if it determines in Part One that, taken as a whole, positive impacts relating to the various interests outweigh the negative impacts on the various interests. (See W.Va. Code §24-2-11c(c)) In Part Two the Commission decides whether a project’s public funding, if any, and property tax abatement, if any, offends the public interest. (See West Virginia Code §24-2-11c(c)).

Longview Power, LLC, Case Nos. 03-1860-E-CS & 05-1467-E-CN (Commission Order at 102, June 26, 2006) (granting final approval of electric wholesale generating facility and transmission line, with conditions); see also, Beech Ridge Energy II LLC, Case No. 05-1590-E-CS (Commission Order at 75, August 28, 2006) (granting approval of electric wholesale generating facility and transmission line, with conditions); Beech Ridge Energy II LLC, Case No. 12-1196-E-CS (Commission Order at 10-11, June 19, 2013) (granting approval of electric wholesale generating facility, with conditions).

Within the second half of Part One, the Commission considers issues such as the project’s impacts on viewshed, wildlife, ambient sound levels, and water resources. AES Laurel Mountain LLC, Case No. 08-0109-E-CS (Commission Order at 9, November 26, 2008); AES New Creek LLC, Case No. 08-2105-E-CS (Commission Order at 9, September 30, 2009); Harrison County Power, LLC, Case No. 17-0036-C-CS (Commission Order at 11, October 17, 2017).
B. The Application of Part One of the Balancing Test

1. The Interests of Black Rock to Construct the Project.

Black Rock assembled a team of experienced and diverse professionals to thoroughly study and develop the Project. Black Rock secured an appropriate site for the Project on select portions of privately-owned mountain top land generally composed of wooded ridgeline, farmland, and reclaimed strip mines. The site is approximately 9.5 miles to fifteen miles southwest of Keyser, West Virginia. The area disturbed for the Project will be approximately 649 acres, but the operational land requirements will be much smaller because the access road width will be reduced from fifty feet to approximately twenty feet and turbine clearings and laydown areas will be allowed to revegetate. BR Ex. DKF-D at 9; Application at §6.

The Project is located in an area with a proven wind resource. The nearby Pinnacle wind project was developed by Laurel and is currently owned by Clearway. Tr. at 18. The proximity of an existing transmission line located near the Project site will allow for interconnection and for output from the Project to market without the construction of any significant new transmission lines. Black Rock Initial Brief at 5.


The current Interconnection filing request is for a 110 MW facility. Tr. at 21 (LaPierre testimony). Mr. LaPierre testified that Black Rock is considering adding additional capacity to the interconnection to potentially utilize the 4.8 MW wind turbines at all twenty-nine sites. Black Rock has not yet initiated that process. Tr. at 22. To request the additional thirty MW, Black Rock would have to begin another Interconnection filing that could take up to one and one-half years. The current Interconnection filing for 110 MW would continue to be processed and would not be affected by the potential second filing. Tr. at 22. Black Rock argued in its reply brief that the Commission should approve 140 MW of capacity and not the 110 MW recommended by Staff and currently being studied by PJM because Black Rock has presented evidence on twenty-nine turbines and no further information should be needed. Black Rock Reply Brief, October 15, 2019, at 3.

Although Black Rock is seeking only 110 MW from PJM at this time, meaning that it can only install twenty-three of the 4.8 MW wind turbines it has selected, Mr. LaPierre testified that Black Rock would not consider moving, at this time, the six wind turbines that most impact the homes that would receive 50 dBM or greater sound or 30 or
more hours of shadow flicker per year. Tr. at 25. Black Rock wants the flexibility to add six wind turbines to its Project. Black Rock, however, offered information in its Initial Brief in which it stated that the six additional sites would serve as alternate locations if an engineering or construction fatal flaw was identified or if additional interconnect capacity became available. Black Rock Initial Brief, October 2, 2019, at 4.

Staff argued that the Project should be limited to twenty-three wind turbines on twenty-three of the twenty-nine sites selected by Black Rock in order to provide flexibility to address some of the wind and shadow flicker concerns discussed below. Staff Initial Brief, October 2, 2019, at 8.

The Staff position is reasonable. Black Rock cannot add an additional six wind turbines of the selected model without prior approval from PJM. The PJM approval process could take up to one and one-half years. Much could change in this Project during that time. Black Rock should have the studies completed to determine which of the twenty-nine sites should be used for the initial twenty-three wind turbines. It should also consider the noise and shadow flicker concerns in that determination.

Black Rock is working on or has completed permitting and consultation with the following entities:

1. United States Fish and Wildlife Service (USFWS) – Concurrence with studies of projected wildlife impact

2. West Virginia Division of Natural Resources (WVDNR) – Concurrence with studies of projected wildlife impact

3. United States Army Corps of Engineers – Approval of wetlands delineation, and, if necessary, Section 404 Dredge and Fill Permit for stream or wetland activities or disturbances

4. West Virginia Department of Health and Human Resources – Permit for individual sewer system if necessary

5. West Virginia Division of Environmental Protection – Registration under NPDES Construction Stormwater general permit, NPDES permit for individual sewer system (if necessary), and Section 401 Water Quality Certification (if necessary)

6. West Virginia Division of Culture and History – Approval of studies of potential impact on historic structures and archeology

7. Federal Aviation Administration – Form 7640 Notice of Proposed Structures
8. PJM – Completion of Interconnection Planning Process

9. WV DNR, Office of Land and Streams – Stream Activity Authorization, if necessary

10. WV Division of Highways – Permit to enter upon, under, over, or across the State roads

11. Mineral County and/or Grant County Health Departments – Well Drilling Certification Permit for potable water, if necessary

12. Mineral County and/or Grant County Assessor Offices – Building permits, as necessary.

To supplement the filing requirements of the Siting Rules, on June 10, 2019, Black Rock filed the Final Archaeological Report and Final version of Phase I Architectural Investigation Report in furtherance of its permitting process. On August 9, 2019, Black Rock filed the Rusty Patched Bumble Bee Survey Report, Interim Summary of Rare Bat Mist-Netting Surveys, and Eagle Nest Survey Report. On August 27, 2019, Black Rock filed the following documents to reflect its decision to use the SG 145/4.8 wind turbines: (i) Acoustic Sound Study, Revision 1-SG 145; (ii) Shadow Flicker Study, Revision 1-SG-145; (iii) Map 1d – Visibility of Blade Tip with Vegetation; (iv) Map 1e – Visibility of Hub Height with Vegetation; (v) Map 1f – Comparative Visibility of Blade Tip with Vegetation; and (vi) Map 1g – Comparative Visibility of Hub Height with Vegetation.

Black Rock entered into decommissioning agreements with the County Commissions of Grant and Mineral Counties. The decommissioning agreements were provided to the Commission as a post-evidentiary hearing exhibit. BR Exh. 7.

In this part of the analysis, the Commission considers whether the applicant has the resources, technical expertise, and commitment to complete the Project. ESC Brook County Power I, LLC, Case No. 17-0521-E-CS, (Commission Order at 16, February 20, 2018). It is evident that Black Rock is interested in and has the ability and resources to complete the Project and to be a positive contributor to the economies of the State, Mineral and Grant Counties, and the local community. Based on the evidence presented, the Commission concludes that Black Rock has demonstrated a sufficient interest in undertaking the Project. Black Rock has expended substantial time and economic resources to apply for a siting certificate, to pursue various other permits, and to obtain the real property interests necessary for the Project.
2. The need for New Generating Plants in the State and Region

Black Rock asserted that it will provide needed capacity and energy to the electric power system to serve load and maintain overall system reliability. Black Rock also noted the benefits to the State and region of providing capacity and energy from a renewable resource. Application at 11-16.

a. Generation Fueled by Renewable Resources

Although West Virginia does not have renewable energy generation requirements since the repeal of the majority of the West Virginia Alternative and Renewable Portfolio Act in 2015, the market for voluntary renewable energy is growing. Application at 16. Individuals and companies buy renewable energy from power marketers who, in turn, purchase the renewable energy. Id.

Black Rock argued that recent trends suggest that corporate and other customers are setting ambitions targets for renewable energy procurement and are choosing wind more than other sources. Application at 12. Over 100 companies have committed to 100 percent renewable energy targets. Id. The low cost of wind power and stable prices helps companies meet their sustainability goals.

Clearway has a strong track record of contracting power purchase agreements (PPAs) with commercial and industrial corporate entities. It has executed PPAs with companies such as MGM Resorts, Ecolab, Cisco, Macy’s, Raytheon, Land O’Lakes, Red Wing Shoes, Whole Food Markets, and Safeway. Application at 12.

b. Capacity to Meet the Needs of the Region.

Black Rock noted in its Application a surge in retirements of coal and nuclear power plants in the PJM Market. In 2018, more than 3,600 MW of power generation was scheduled to be taken offline in the PJM region. Application at 11. Early in 2018, FirstEnergy, the parent of Monongahela Power Company and The Potomac Edison Company announced the planned closure of four nuclear units in the PJM region by 2021. Id.

The 2018 PJM Load Forecast Report predicted an average summer peak load growth for PJM of .4 percent per year over the next ten years, making the summer peak reach 157,635 MW in 2028 – a ten year increase of 5,527 MW. Winter peak load growth is projected to average .4 percent over ten years. The PJM winter peak load is projected to be 136,702 in 2028 – a ten year increase of 5,239 MW.
The Project will provide needed capacity and energy to the ReliabilityFirst Corporation (RFC)\(^1\) region and the PJM Interconnection LLC (PJM) control area which will improve overall system reliability and serve the growing demand for electric energy. Application at 13.

As the Commission has stated in prior cases, West Virginia is part of a regional integrated electricity grid:

\[\text{It is not in the public interest for this Commission to isolate West Virginia from the region. The power grid is interconnected, and to safeguard the availability of productive, well-maintained grid resources to our state’s residents, West Virginia must participate in the interconnected electric system.}\]


3. **The Economic Gain to the State and Local Economy**

The Project costs are expected to be privately funded by equity and/or debt contributions secured by Black Rock. Application at 77. Black Rock has no agreement with any public entities, no economic assistance has been promised to Black Rock by state, federal, or local governments, and there are no agreements contemplated that would provide any property tax abatement for the Project. *Id.*

Black Rock retained Mangum Economics, LLC (Mangum) to perform an analysis of the Project’s impact on the State and local economy. Application at 78. Mangum found that the Project would have a significant economic impact to both Grant and Mineral Counties as well as the State. The construction cost of the Project is expected to be between $146 and $165.6 million. Many businesses and employees within the counties and State will be providing goods and services or labor during construction. These businesses and employees will, in turn, spend money buying goods and services, creating a multiplier effect which will benefit commercial business activity and household incomes in Grant and Mineral Counties. Application at 79.

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\(^1\) RFC is one of the seven approved Regional Entities in North America under North American Electric Reliability Corporation (NERC). West Virginia is a part of the RFC region.
Based on an IMPLAN economic impact model, the increased business volume during Project construction is estimated to be between $52.4 and $64.2 million in Mineral and Grant Counties, and between $58.9 and $72.3 million in West Virginia. Application at 79. During operation, the Project is estimated to annually contribute approximately $4.1 million in increased business volume to Mineral and Grant Counties and approximately $5.4 million to West Virginia. These figures include the direct, indirect, and induced economic impact of the Project. Id.

Construction of the Project is estimated to support up to 376 jobs in Mineral and Grant Counties. The increased employment compensation (wages, salaries, and benefits) associated with these jobs is estimated to be up to $17.2 million including direct, indirect, and induced jobs. Application at 79. During commercial operation, the Project is expected to directly employ six people and support a total of approximately sixteen new jobs in Mineral and Grant Counties and twenty-five new jobs in West Virginia. The additional wages, salaries, and benefits associated with these jobs are estimated at approximately $0.7 million in Mineral County and $1.2 million in West Virginia. Id.

Christina Risch, Director of Resource and Energy Economics at the Center for Business and Economic Research at Marshall University testified for the Council that construction of the Project would result in total impacts of 162 construction worker jobs, $8.5 million in labor income, $13.5 million in value added, and $16.4 million in output. BT Exh. CR-D at 6. Steve White, Director of the Affiliated Construction Trades Foundation, determined that nearly 176,000 craft worker hours will be needed for Project construction. BT Exh. SW-D at 2. Ms. Risch testified that construction of the Project would have a substantial positive impact on the local economy and local employment with the number of construction jobs increasing by twenty-one percent and construction wages increasing by twenty-six percent in the two counties affected. BT Exh. CR-D at 7. Black Rock has executed a Memorandum Agreement with the North Central West Virginia Building Construction Trades Council, AFL-CIO and the Council that provides reasonable assurances that the workers used in the construction of the Project will be local workers. BT Exh. SW-D at 2 and attachment.

The Project is estimated to provide approximately $4.8 million to $5.9 million in increased state and local taxes during construction. Application at 79. During commercial operation, the Project is estimated to provide between $200,000 and $220,000 annually in local tax revenue to Grant County and between $146,000 and $162,000 annually in local tax revenue to Mineral County. Id.

The Project is estimated to have minimal impact on the value of properties within its viewshed. Black Rock stated that numerous studies have been performed in an effort to determine the effect of wind development on local property values. The majority of these studies have found little to no impact on property values. Application at 79. Landowners who have signed leases with Black Rock will benefit from the lease
payments. Id. Black Rock notes that property values are also affected by property tax rates, services available in the area, and quality of schools in the area. The Project will be among the largest taxpayers in Grant and Mineral Counties. Black Rock opines that the steady influx of taxes from it will allow the counties to add services or control property tax rates – either of these may have a positive impact on property values over the long term. Application at 79-80.

The Project is unlikely to have a negative impact on tourism. The Mountaineer wind farm in Tucker County, West Virginia has been used to promote tourism in that area, including a roadside stop for vehicles to stop and observe the wind farm. Application at 80. The nearby Laurel Highlands, Pennsylvania region routinely shows wind farms in their promotional materials. Application at 80.

The impact to existing infrastructure is expected to be minimal and limited. The impact on lost opportunity regarding alternate land use is also expected to be minimal because the Project area is composed of rural terrain used primarily for timber management and harvesting, farming, and hunting. The land can continue to be used as it is now once operation begins. Application at 81.

A Virtual Purchase Power Agreement (VPPA) with a non-utility customer in West Virginia can also support jobs and economic growth in the State. Black Rock has entered into such an agreement. Application at 13.

4. Community Residents’ Interest in Living Separate and Apart from the Project; The Project’s Negative Impacts Be Minimally Disruptive to Existing Uses; and The Project’s Social and Environmental Impacts

Parties in siting certificate cases frequently have differing opinions as to viewsheid, noise, wildlife, traffic and water impacts of a facility and whether those impacts will result in negative social and environmental impacts and/or be disruptive to local residents. While the Commission weighs each of the three considerations listed above when assessing the community concerns, an overall analysis is more helpful and is reflective of the approach used in previous siting certificate Orders. In the present case, the Commission will take the approach used in prior siting certificate orders to evaluate the social and environmental impacts on the Project. The Commission analysis, therefore, will be presented in a comprehensive fashion.

Black Rock identified 409 structures as being within a one-mile radius of the Project. Approximately 193 of those structures are dwellings that are occupied on either a full-time or part-time basis. Of the 193 occupied dwellings, twenty-eight currently
have Neighbor Agreements\(^2\), twenty-four have been offered Neighbor Agreements and are in various stages of negotiations, and five are dwellings for which Black Rock intends to offer Neighbor Agreements. Comm’n Request Exh. 1. The Prices argue that the lack of Neighbor Agreements, only twenty-eight out of 193 occupied dwellings, indicates a lack of support for the Project. Price Initial Brief, October 3, 2019, at 4. The Prices’ argument is misleading. Black Rock stated in its exhibit that it only offered Neighbor Agreements to fifty-seven dwellings. Black Rock did not indicate that any of the fifty-seven had turned down the Neighbor Agreement. Comm’n Request Exh. 1 at 2. This information does not provide evidence of a lack of support of the Project.

The Prices also argued that the Project would negatively impact the community because the number of homes within a one-mile radius is greater than some other wind turbine siting certificates approved by the Commission. The Prices cited two cases in which the Commission had noted, while approving siting certificates, that less than ten homes were located less than a mile from the Project. AES Laurel Mountain, LLC, Case No. 08-0109-E-CS, (Commissions Orders, November 26, 2008 and September 30, 2009), and AES New Creek, LLC, Case No. 08-2105-E-CS, (Commission Order, September 30, 2009). The dwellings that will be most affected by the wind turbines, those affected by louder than 50 dBA and/or thirty hours of shadow flicker, have been or will be offered Neighbor Agreements. Comm’n Request Exh. 1 at 2.

With regard to the Community’s interest in living separate and apart from the Project, the Commission received sixty-six letters of protest and five people spoke against the Project at the public comment hearing with two additional people expressing concern. The Commission, however, received 223 letters of support for the Project and seventeen people spoke in favor of the Project. While the Commission does not consider the comment letters dispositive of the case, each letter is read and considered as a part of the totality of the balancing test. Staff argued that the number of protest and support letters received was neutral at best and should not offset Black Rock’s interest to construct the Project, the State and region’s need for new electrical generating plants, and the economic gain to the State and counties from the Project. Staff Initial Brief, October 2, 219, at 5.

Staff found that negative impacts to existing property uses can come in many forms, but are generally caused by viewshed degradation, noise, and shadow flicker in wind farm cases. Id. The Staff recommendation to limit the Project to 23 wind turbines or 110 MW but approve twenty-nine building sites could provide some flexibility on the issues of noise and shadow flicker amelioration to the residences affected by these issues. Staff Initial Brief, October 2, 2019, at 8.

\(^2\) Neighbor Agreements are agreements offered by Black Rock to owners of properties near the Project site that may experience noise, shadow flicker or other concerns attributed to the Project. These owners may be impacted by the Project more than other property owners. Tr. at 27, 60-62.
With regard to the social and environmental aspects of the test, the Commission generally considers wildlife studies, architectural and archeological studies, and impacts to water. Id. The Commission will consider each of these below.

a. Viewshed

Black Rock proposes to build twenty-three model SG 145/4.8 wind turbines to be placed on twenty-three of twenty-nine possible sites. Each wind turbine will have a nameplate capacity of 4.8 MW, will be mounted at a hub height of 107.5 meters (352.6 feet), and will have a rotor diameter of 145 meters (475.6 feet). The Project will have an interconnection limit of 110 MW. The six additional sites would serve as alternate locations if an engineering or construction fatal flaw was identified or if additional interconnect capacity became available. Black Rock Initial Brief, October 2, 2019, at 4; BR Exh. NL-R at 2. The Project will be built on the Allegheny Front in Mineral and Grant Counties. The area disturbed for the Project will be approximately 649 acres but Black Rock reports that the final land use, after construction, will be less than that.

As the Commission has noted in previous cases, it is virtually impossible to hide wind turbines and “to some degree visual impact of wind turbines is a subject of personal opinion; in other words ‘beauty’ truly is in the eye of the beholder and seems to be (again understandably) a function of proximity to and to some extent an economic interest in the project.” Beech Ridge Energy II LLC, Case No. 12-1196-E-CS, Commission Order June 19, 2013, at 18 (quoting Laurel Mountain LLC, Case No. 08-0109-E-CS, Commission Order November 26, 2008, at 9).

Black Rock retained Stantec Consulting Services, Inc. (Stantec) to conduct a Visual Impact Assessment of the Project. The report was prepared by Joshua Hohn. Stantec visual resource specialists conducted a review of the Project and its setting, consulted local plans and policies in pertinent aerial imagery and maps, and then conducted a viewshed analysis to identify where the Project might be visible from eye-level vantage points within a ten-mile radius of the wind turbines. Application at Appendix J. Stantec visual resources specialists collected photographs of views toward the Project site from publicly accessible locations throughout the surrounding landscape and identified nine viewpoints for use in the analysis of the Project’s potential visual effects. Application at 64-5. These sites were the basis for the View undertaken by the Commission and described earlier in this Order. Visualization specialists developed visual simulations that placed a photo-realistic model of the Project into views from the key observation points and then evaluated the difference in visual quality between existing and proposed conditions. Application at 64 and Appendices J and K. Figures were prepared to illustrate the visibility of wind turbines from any given point, based on the screening effect of topography only and taking into account the effect of forest vegetation. BR Exh. JH-D at 3-6.
While the initial viewshed analysis was based on the taller 5.8 MW wind turbine design, the SG 145/4.8 turbine yielded less visual impact due to its reduced size. Mr. Hohn concluded that the SG 145/4.8 turbines would not result in any substantially new areas being included in the Project viewshed and there was little substantive difference in terms of potential visibility between the two viewshed presentations. BR Exh. JH-R at 2-3; BR Exh. 5.

Black Rock provided the 5-mile radius, 1-mile radius, and pre-construction maps as required by Siting Rule 3.1.h. As a part of Appendix J, Black Rock provided maps of the viewshed analysis from 20 mile and 10 mile radiiuses, and where FAA lighting would be mounted, as well as other visual aspects. Application at Appendix J, at 5.

Stantec’s analysis concluded that visual quality would be reduced in the majority of views from each of the landscape types, but that the reduction would not be substantial and would not be in every view. Stantec also noted the presence of other wind farms in the area. The most notable reductions in visual quality reflected instances where Project turbines would appear on top of currently uninterrupted ridge skylines or where they would disrupt existing conditions by becoming the view’s dominant feature and substantially alter the visual coherence observed under current conditions. Stantec noted that existing wind turbines are visible in five of the nine views evaluated for this Project. Application at 64. The Commission View in July 2019, observed the visibility of existing wind turbines in these locations as well.

Stantec also considered the possible shadow flicker that would be caused by the Project. Application at Appendix K. A supplemental Shadow Flicker study was filed on August 27, 2019, studying the SG 145/4.8 wind turbines. Shadow flicker describes the intermittent change in the intensity of light cast on an area resulting from the rotation of an operating wind turbine’s blades. BR Exh. JB-D1 at 3. Shadow flicker will only occur during daytime, during low angle sunlight conditions typically during sunrise and sunset, when skies are not obscured by fog or clouds, and when the wind turbines are operational. Id. Shadow flicker is not regulated by state or federal entities. Id.

There are sixteen residences that would receive more than thirty hours of shadow flicker per year. Tr. at 98. Joanne Blank who performed the shadow flicker study opined that if a residence receives more than thirty hours of shadow flicker per year Black Rock should enter into a Neighbor Agreement with that residence to ameliorate the shadow flicker or that further studies should be completed to ascertain whether thirty hours of shadow flicker per year truly occurs. Id. Shadow flicker amelioration may include the installation of blinds, vegetation planted in front of windows, or operations may be halted when conditions are conducive to producing shadow flicker. Tr. at 97-8. David Friend also testified that Black Rock would consider entering into a Neighbor Agreement if someone experienced thirty hours of shadow flicker per year or 50 dBA noise. Tr. at 61.
Mr. Price argued that the viewshed would be marred permanently by the Project. He notes that in contrast to the present case, past wind farms approved by the Commission have had fewer homes close to smaller wind turbines. AES Laurel Mountain, LLC, Case No. 08-0109-E-CS (Commission Order, November 26, 2008), Finding of Fact 3 at 49 (four homes within one-half mile with the nearest residence 2,000 feet from the nearest turbine); AES New Creek, LLC, Case No. 08-2105-E-CS (Commission Order, September 30, 2009) Finding of Fact 6 at 32 (nine residences within 4,000 feet of the Project); and Pinnacle Wind Force, LLC, Case No. 09-0360-E-CS (Commission Order, January 11, 2010) Finding of Fact 5 at 41 (only a few homes and cabins were present in the vicinity of the project site, and that homes closest to the turbines were occupied by project participants).

Mr. Price further argued that the use of the SG 145/4.8 wind turbines at a height of 590.4 feet when the turbine blade is at its highest position would mean that Black Rock's wind turbines would be at an unprecedented height in West Virginia and result in profoundly adverse impact on the viewshed in surrounding communities and from nearby public viewpoints. Price Initial Brief, October 3, 2019, at 8. Black Rock counters that the expected impact on the Project using the SG 145/4.8 will range from minimal to negligible. Black Rock Reply Brief at 14; Black Rock Initial Brief at 13-14; BR Exh. JH-R at 2-3; and BR Exh. 5.

Staff recommended that the wind turbines be located 1.5 times the total wind turbine height from residences, roads, and power lines. Staff Exh. DEW-D at 19; Staff Reply Brief at 3. Black Rock accepted a setback of 1.5 times for dwellings that did not enter into a Neighbor Agreement. The Commission will require a setback of 1.5 times for dwellings that did not enter into a Neighbor Agreement but declines to adopt the same requirement for all residences because Staff did not present evidence of the need for this setback and residences with a Neighbor Agreement have had the opportunity to negotiate their own terms with Black Rock.

b. Archaeological and Architectural Resources

Stantec prepared archeological and architectural investigations for the Project and coordinated with the West Virginia Division of Culture and History, State Historic Preservation Office (WVSHPO) regarding the investigations of the impact of the Project on archaeological and architectural resources. The studies may be found at Appendices Y and X of the Application. Final Phase I Reports in both areas were filed with the Commission on June 10, 2019. BR Exh. 2. WVSHPO issued a letter on September 3, 2019, concurring with Black Rock that the Project would have no impact on potentially eligible archaeological resources and determining that no further consultation was necessary regarding archaeological resources. Within the architectural investigation, four resources were recommended eligible for listing on the National Register of Historic Places. Stantec concluded that these four resources may be within viewing distance of
the nearest proposed wind turbine and analysis suggested that it is unlikely the views would detract from the characteristics qualifying the resources for eligibility. BR Exh. EB-D at 3-7. WVSHPO agreed with Black Rock regarding these four resources, but identified three additional resources eligible for inclusion. BR Exh. 6. Black Rock continues to work with WVSHPO on the potential indirect impacts to historic structures as a result of the Project. Id.

c. Sound

Black Rock retained Stantec and Hankard Environmental, Inc. (HEI) to conduct an acoustical study to determine potential effects on residences located near the Project. Application at 91. HEI installed three long-term acoustic monitors between December 17, 2018, and January 8, 2019, and conducted short-term acoustic measurements at three other locations to collect information on ambient sound levels in the vicinity of the Project. Stantec analyzed existing sound and conducted predictive modeling of the noise that could be present during construction and operation of the Project. Application at 91 and Appendix U.

The Prices argue that the noise impact of the Project would significantly degrade the quality of life in the local vicinity. The Prices argue also that Black Rock inflated the ambient sound levels by deviating from generally accepted engineering standards and contamination from wind noise artifact. Price Initial Brief, October 3, 2019, at 5. The Prices took issue with the fact that no individual conducting the ambient sound monitoring onsite was available for cross-examination at the evidentiary hearing. Furthermore, the Prices argued that Mr. Hankard did not disregard noise levels taken above five meters per second as required by ANSI §12.9-2013, part three. As evidence, the Prices site to figures C-1 and C-3 of the Noise Study report. BR Exh. 1 at Appendix U of the Application, pages 067-069. The Prices also argue that Table 5-1 of the same report illustrates a stark contrast at location ST01 between times when wind-induced noise was present or not present. The Prices argue that the Commission has no clear picture of the current actual background sound level in the area surrounding the Project. Price Initial Brief, October 3, 2019, at 6. Black Rock counters that the data from the ambient sound study stands on its own and does not inform the operational predictive noise study. Tr. at 83 and 127-28.

(1) Pre-Construction Noise

HEI conducted two types of testing to determine ambient noise levels – short-term and long-term testing. The short-term testing consisted of an additional three representative locations in the project area with measurements and observations made throughout day and night. The long-term testing consisted of continuous monitoring for twenty-three days at three representative locations within the Project area. Short-term measurements ranged from twenty-seven dBA on calm nights to sixty-three dBA during
the daytime. On average, nighttime measurements were about ten dBA lower than daytime hours. Application at 92.

Long-term testing considered meteorological factors measured by the nearest tower to the Project area and ranged from forty to sixty-nine dBA averaging fifty-four dBA. Application at 92.

(2) Construction Noise

During the construction phase, daytime noise levels from equipment expected to be present at the various segments of the Project area will vary from approximately 79 dBA to 94 dBA at fifty feet. Application at 93. Black Rock stated that, at times, construction activity would be audible to nearby sensitive receptors, but not all equipment would be operating at the same time and activities will be spread throughout the Project and are temporary in duration. Id. If construction is planned to occur at night, between the hours of 10:00 p.m. and 7:00 a.m., noise levels are expected to be less than fifty-five dBA if the ambient sound is fifty-five dBA or 10 dBA higher than the ambient levels if ambient noise is greater than fifty-five dBA. Application at 93.

Black Rock identified the following noise mitigation measures that it would undertake during construction:

1. Construction vehicles and equipment will be maintained in proper operating condition and equipped with manufacturers’ standard noise control devices. Defective exhaust mufflers will be promptly replaced. Access roads will be constructed wide enough to allow construction equipment to avoid backing up;

2. Contractors will be required to comply with federal limits on truck and equipment noise;

3. Contractors and their staff will be required to drive delivery vehicles responsibly;

4. If nighttime construction work is required, it will generally be limited to activities that are quieter in nature, such as welding and equipment and cable installation; and

5. If blasting is required, communities and nearby receptors will be notified.

The sound from construction activity may be heard off-site, but the sound will vary over time and be temporary in nature. Application at 93. Construction will occur mostly in the daytime and will generate sounds that are familiar to residents because of other construction, industrial, and agricultural activities in the area. The overall noise impact
during construction of the Project is not expected to be significant.  Id.; BR Exh. 5, Acoustic Sound Study at 4.

(3) Operational Noise and Noise Mitigation Measures

Stantec created a modeling analysis using the SG 4.8-145 turbines. Potential turbine sites were chosen based on factors including, but not limited to, wind resources, environmental impacts, constructability, and sound impacts. BR Exh. 5 at Acoustic Sound Study at 6. A total of 329 potential receptors were identified by Black Rock and Stantec within approximately 1.25 miles of proposed turbine locations utilizing aerial imagery and on-site reconnaissance. 302 of those receptors were identified as occupied dwellings. Nineteen were identified as seasonal dwellings, such as hunting cabins or other structures used on a seasonal basis. Eight receptors represent sites considered sensitive, such as schools, churches, or other public locations. Id. at 7. Sound was studied during the day and at night.

The results indicate that forty-four occupied dwellings within 1.25 miles of the proposed twenty-nine Project wind turbines would have a maximum sound level between 50.1 dBA and 55 dBA. Additionally, the maximum sound levels at two private cemeteries would be between 55.1 and 55.4 dBA. BR Exh. 5, Acoustic Sound Study at 8. David Friend testified that Black Rock considers offering Neighbor Agreements to those who may experience 50 dBA of noise. Tr. at 61. Joanne Blank testified for Black Rock that the only way to mitigate noise on wind turbines that may become an issue is to use noise dampening blades and make operational changes that reduce electrical output. Tr. at 101-02. Ms. Blank testified that Black Rock has indicated it is willing to curtail the wind turbines at the two cemeteries if there is a burial. Tr. at 104-05. Staff recommended that Black Rock be required to coordinate with the owners of the two cemeteries to ensure noise and shadow flicker are not an issue during any services that may take place at those cemeteries. Staff Initial Brief, October 2, 2019, at 9.

Mr. Price testified that he can hear the wind turbines from the existing Mount Storm and New Creek wind farms every time that he is outside his home and he considers them to be a nuisance. Tr. at 172-73. In high winds, he hears a constant, distant, rumbling sound that is similar to the sound one might hear when approaching a waterfall or near an airport. When the wind is lower, he hears clanking and thumping noises. Finally, he hears a low hum in a variety of different conditions. Tr. at 173-74. Mr. Price testified that if the Project is approved, he anticipates that the closer and much larger wind turbines at Black Rock will make more sound than existing wind farms, particularly because some of the turbines are expected to be located directly above a funnel-shaped valley in which his house is located. Tr. at 175.

The Prices argue that at least forty-four occupied dwellings would experience a noise level in excess of 50 dB. Price Initial Brief, October 3, 2019, at 6. Black Rock
counters that the Prices overlook the fact that the noise standard the Commission has applied in previous cases is 55 dBA. Black Rock Reply Brief, October 15, 2019, at 12.

d. U.S. Fish and Wildlife Service and West Virginia Department of Natural Resources

Bob Roy, a wildlife scientist and consultant for Stantec prepared the (i) Habitat Assessment Report to assess the existence of potential habitat of any rare, threatened, and endangered (RTE) species within the Project footprint and (ii) Wildlife Risk Assessment investigating the potential impact of the Project on RTE species including bats and birds. Application at Appendices R and S. Separate wildlife surveys were conducted at various times in 2018 and 2019 depending on time constraints for the species reviewed. These surveys included: (i) 2018-2019 Game Camera Survey for rare terrestrial mammals, (ii) Eagle Nest Survey Report, (iii) Eagle Point Count Survey Report, (iv) Common Nighthawk Survey Report, (v) Acoustic Bat Monitoring Report, (vi) Interim Summary of Rare Bat Mist-Netting Surveys, and (vii) 2019 Rusty Patched Bumble Bee Survey Report. Br. Exhs. 3 and 4.

While the Commission considers the information filed in the Wildlife Risk Assessment, it also relies on the expertise of the West Virginia Division of Natural Resources (WVDNR) and the United States Fish and Wildlife Service (USFWS) to determine whether the proposed wind turbines will detrimentally affect the wildlife in the area. In past cases, when the Commission has issued siting certificates, those siting certificates have been contingent on an applicant meeting the requirements of those and other agencies.

Mr. Roy testified that Black Rock committed to USFWS and WV DNR to prepare a Bird and Bat Conservation Strategy (BBCS) including a curtailment program that follows USFWS recommendations for avoiding the take of the Indiana bat. Additionally, a three-year post-construction monitoring plan would be implemented to study the effectiveness of the curtailment program. If the post-construction monitoring results are inconclusive or fail to demonstrate that smart curtailment can adequately avoid the risk to species listed in the Endangered Species Act, Black Rock would continue to implement a curtailment program. The Project’s impacts to RTE species habitat are expected to be relatively limited in nature and minimized to the extent practicable by employing best management practices during Project construction and operation. BR Exh. BR-D at 16-18.

Black Rock also retained Stantec to conduct a delineation of wetlands in the Project area. Bret Schrader, a Project Manager/Environmental Scientist for Stantec, prepared the wetlands investigation report found at Appendix O of the Application. Over 685 acres potentially affected by the Project, twenty-six streams and fifty-three wetland systems were identified and delineated. Eleven of the wetland systems are wholly
located within the limits of the Project disturbance and each one included less than 2,600 square feet of permanent wetlands impacts. Seven of the delineated streams are located within the limits of Project disturbance, each of which includes less than 210 linear feet of permanent impact. BR Exh. BS-D at 4-8. In compliance with the United States Army Corps of Engineers (USACE) Nationwide Permit Program, Black Rock designed the Project to minimize the impacts to wetlands and streams during Project construction. Id. at 8. No impacts are anticipated during operation of the Project. Mr. Schrader testified that Black Rock would follow all conditions of the relevant USACE nationwide permits during construction of the Project. Id.

The Prices asserted that operation of the Project “will certainly kill substantial numbers of bats and birds, including members of bat species protected under federal law.” Price Initial Brief at 7 (citing BR Exh. 4 at 094-096). The Prices also noted that golden eagles are present at the proposed Project site. Tr. at 209-211. The Prices contend that a lack of correspondence between Black Rock and USFWS or WV DNR and the lack of a Technical Assistance Letter from USFWS should cause the Commission to deny the siting certificate. Price Initial Brief at 7. Black Rock counters that the Prices ignored Black Rock’s ongoing collaboration with the USFWS including the development of the BBCS. Black Rock Reply Brief at 14. Staff recognized that Black Rock had begun to develop post-construction and adaptive management studies in conjunction with USFWS and WV DNR, including the BBCS, in accordance with USFWS 2012 Land Based Wind Energy Guidelines. Staff Reply Brief, October 15, 2019, at 2 (citing BR Exh. DF-R at 11-12. Staff ultimately stated that it would defer to the USFWS as to the terms of any avoidance plan and development of adaptive management strategies. Staff Reply Brief at 2.

USFWS recommends, but does not require, two years of eagle studies prior to applying for a siting certificate. Tr. at 51-52. Black Rock is in the process of completing a second year of studies. Tr. at 197-98. USFWS has not given Black Rock a date of issuance of a Technical Assistance Letter. Tr. at 185-86. The evidence in the case indicates that Black Rock has been working with the USFWS and WV DNR throughout the Project and continues to work with those agencies to obtain the necessary permits and/or letters related to bats and birds. Tr. at 178-223.

e. Traffic

Brian Biddle of Lenhart Traffic Consulting, Inc. prepared a traffic impact analysis that reviewed the key roads and intersections within a one-mile and five-mile radius of the Project site that would be most affected by vehicular traffic. Application at Appendix V. Mr. Biddle found that increased traffic involving construction workers traveling in personal vehicles was likely during the approximately twelve-month construction phase with an estimated peak maximum number of 275 workers at any one time using one of the four identified main routes. BR Exh. BB-D at 3-4. Mr. Biddle
concluded that traffic movements on the main highways and at each of the key intersections would include a maximum increase in delay for any of the turning movements at key intersections during peak hours of no more than 2.1 seconds which would not significantly affect traffic. Id. at 7.

5. Project Conditions

Staff recommended that the Commission issue a siting certificate to Black Rock, with certain conditions. Black Rock agreed to many of the proposed conditions.

Staff proposed the following preconstruction conditions, except the underlined language. The Commission recognizes that many of these conditions are common in some form, in prior Commission wind farm orders. Black Rock accepted conditions one through six, eight, and ten without change. Black Rock corrected a typographical error and proposed one change to condition seven. The Commission does not find that this change will affect the required permission that Black Rock must obtain from other governmental agencies or the requirement to file evidence with the Commission of the permission that has been obtained from these other agencies. Item nine included significant changes to the proposed language by Black Rock. The Commission finds that the proposed changes are reasonable and will aid Black Rock in maintaining a site preparation and construction schedule that assist Black Rock in obtaining federal renewable electricity production tax credits. Item eleven also included significant changes by Black Rock. The Commission finds that these changes are reasonable and will assist in maintaining safety at the job site.

Preconstruction Certificate Issues

1. Prior to commencing construction, the Applicant must file a verified statement indicating that all pre-construction conditions and requirements of the Certificate have been met.

2. The Applicant must not dispose of excavated rock and/or any bedding material during or following the construction of the facility by spreading the material on agricultural land.

3. The Applicant must dispose of all contaminated soil and construction debris in approved landfills in accordance with the appropriate environmental regulations.

4. The Applicant must design and install any needed fire protection systems in accordance with the National Fire Protection Association or other accepted standards.
5. The Applicant must coordinate with appropriate fire safety and emergency personnel during the pre-construction stage of the Project and promote efficient and timely emergency preparedness and response.

6. The Siting Certificate shall become invalid if the Applicant has not commenced a continuous course of construction within five years of the date the final certificate is granted or has not completed construction by the tenth year without petitioning the Commission for approval to expand these time frames.

7. The Applicant must file evidence that it has obtained any necessary environmental permits and/or certificates completed any necessary consultations prior to commencing construction (including, but not limited to letters from the United States Fish and Wildlife Service, the West Virginia Division of Natural Resources, the West Virginia Division of Cultural; Culture and History and the West Virginia State Historic Preservation Office; any local governmental agency requiring permits for construction/operation of this project) indicating that either the Applicant does not need to take further action or outlining what action the Applicant needs to take to be in compliance with that agency’s rules or laws prior to grading, soil excavation and/or habitat removal or causing a similar action by others.

8. The Applicant must file a copy of the Wetlands Survey and Delineation, evidence of approval and/or acceptance of the wetlands delineation, final endangered species study with any required mitigation plans, and historical/archaeological significant study with any required mitigation plans prior to commencing construction.

9. The Applicant must receive a Determinations of No Hazard from the Federal Aviation Administration for any structure requiring such a determination prior to commencement of construction turbine erection.

10. The Applicant must comply with the Endangered Species Act (16 U.S.C. 5 FERC 1531 et seq.), the Migratory Bird Treaty Act (16 U.S.C. 5 701 et seq.), and, if applicable, the National Environmental Policy Act of 1969 (42 U.S.C. 5 4231 et seq.) in both the construction and operation of the Project. If any authorized governmental agency or court with competent jurisdiction finds that the Applicant is not complying with any one of the above three acts in either the construction or the operation of the Project, then the Applicant must notify the Commission in writing in this case of any such finding within ten (10) days of any such finding being made. Furthermore, the Commission may seek any legal remedies it has jurisdiction to seek, including injunctive relief, to address any such findings.
11. The Applicant must A) construct a fence around the substation and switchyard consistent with good utility practice; B) lock all turbine tower doors unless except when access is needed for maintenance purposes; and C) for the life of the project, install and maintain safety hazard signs at appropriate intervals around the project’s perimeter, at the O&M building, substation, turbine towers and any other location(s), where required by code or where safety hazards are of particular concern.

**General Construction and Operational Phase Certificate Conditions**

1. During construction, the Applicant shall:
   a. Require contractors to use standard noise mufflers on all construction equipment and trucks;
   b. Require contractors to use pile driving equipment which have having the least noise impact using commercially reasonable efforts;
   c. Perform construction activities mostly during the daylight hours;
   d. Avoid noise impact that impacts at certain noise sensitive locations, such as a church, during the weekend church activities and services and during other normally scheduled weekday activities;
   e. Limit any dynamiting to daylight hours and follow State and Federal rules, regulations and/or laws.

2. The Applicant must coordinate with appropriate fire safety and emergency personnel during all other stages of the Project, including Construction and Operations, to promote efficient and timely emergency preparedness and response.

3. The Applicant must file evidence of its EWG status from FERC prior to commencing operation.

4. If the Applicant seeks to transfer its Certificate, the Applicant is required, pursuant to Siting Rule 7.1, to notify the Commission in writing of the identity of the transferee and submit an affidavit from the transferee attesting to the transferees willingness to abide by the terms of the Siting Certificate, as issued. This condition applies anytime – not just in the operational stage.

5. Black Rock will implement a Bird and Bat Conservation Strategy (BBCS). It will consult with the U.S. Fish and Wildlife Service and the West Virginia Division of Natural Resources (collectively, the “Technical Advisory Committee”) on the scope, development and implementation of the BBCS. The BBCS will include Black Rock’s avoidance strategy to minimize impacts to avian and bat species, post-construction monitoring, and adaptive management. The BBCS will be implemented for the life of the Project. Black Rock will file copies of each Study
6. The Applicant will minimize the visibility of the Project by only using project lighting in the presence of the Project’s personnel and any other persons authorized to be in the area except that the Applicant may use project lighting as required by Federal Aviation Administration and any applicable fire or safety code, regulation, or accepted good utility practice.

7. In the unlikely event that blasting associated with construction activities negatively affects the groundwater aquifer on or around the Project, the applicant will take immediate steps to resolve such negative effects.

8. The Applicant must file copies of the remaining interconnection studies and final interconnection agreements prior to commencing operation.

9. Tower setbacks from residences, roads and power lines will be imposed to equal at least 1.5 times the total combined height of the tower, turbine and maximum blade height. It is understood that participants (residents) who have a legal agreement with Black Rock and reside in the project area are exempt from this condition. Turbine tower setbacks from paved public roads and overhead transmission lines (115 kV or above) in existence as of the date the siting certificate application was filed will be imposed to equal at least 1.1 times the total combined height of the tower, turbine and maximum blade height (Tip Height). A 1.5 times Tip Height setback will be imposed to all non-participating residential structures that are occupied full-time as of the date the siting certificate application was filed.

10. The Project is limited to 23 turbines, with a total nameplate capacity of 110 MW, unless and until an additional interconnect study is submitted to and approved by the PJM.

11. Prior to the commencement of operations, the Applicant shall offer project participant agreements to all the owners of all full-time occupied houses, as determined at the time of Application submittal, that are projected to experience 50 dBAleur of noise or 30+ hours of shadow flicker a year from this Project. If all those houses agree to be project participants, no further action is needed. If some of those houses do not wish to sign on to be a project participant, further study should be conducted post-construction to verify that those houses do indeed experience either 59 dBA of noise or 30+ hours of shadow flicker in a year. If those houses experience either of those levels post-construction, Black Rock should use all possible techniques available to mitigate those impacts. Black Rock should update the Commission immediately on the status of these agreements for the houses thusly impacted. Black Rock should continue to update the
12. The Applicant should coordinate with the owners of the two private cemeteries that could potentially be impacted by noise and shadow flicker from this Project to ensure noise and shadow flicker are not issues during times of services at the cemeteries.

Black Rock accepted General Construction and Operational Phase Certificate Condition one with minimal edits that are reasonable and will be accepted by the Commission. Black Rock accepted conditions two through four, six through eight, and twelve.

Condition five, pertaining to wildlife, was modified by Staff in its Reply Brief. The above condition five reflects that modification. While Black Rock did not comment on the modification, the Commission finds it to be reasonable as it will allow the Commission to remain informed of wildlife monitoring at the Site but understands that USFWS and WV DNR will apply their expertise to regulate Black Rock’s actions regarding wildlife.

Black Rock modified condition nine, including only requiring a 1.1 times setback from paved public roads and overhead transmission lines. The 1.5 times the Tip Height requested by Staff is preserved for residences that have not entered into a Neighbor Agreement with Black Rock.

Condition 10 recommended by Staff was rejected by Black Rock. Given Black Rock’s declaration that it will be using SG 145/4.8 wind turbines and its testimony that it has only applied for a 110 MW facility from PJM, it is reasonable to limit Black Rock’s siting certificate to 23 wind turbines. If Black Rock decides to apply to PJM for a 140 MW facility, other regulatory permits and information may need to be updated. Additionally, Black Rock’s current plan allows it six additional turbine sites to work with residents that may suffer from shadow flicker or noise concerns as discussed above. The Commission should review the facts of the case at the time a modification is requested to determine whether additional turbines should be approved.

Black Rock recommended removing the Commission updates from Condition 11 proposed by Staff. Because those affected by the Project have outlets to pursue any possible complaints against Black Rock, including circuit court and/or a complaint at the Commission, we will accept the modifications of Black Rock.

Neither Staff nor Black Rock proposed any conditions pertaining to decommissioning. Black Rock entered into Decommissioning Fund and Escrow
Agreements (Decommissioning Agreements) with the County Commissions of Mineral and Grant Counties on June 25 and 28, 2019, respectively. The Decommissioning Agreements require Black Rock to establish and fund a decommissioning fund, arrange for a consultant to determine the net decommissioning costs, and post security in that amount. BR Exh. 7. The Decommissioning Agreements require the consultant to review the decommissioning funds every five years and require Black Rock to adjust the funds based on the current review and report.

The Decommissioning Agreements do not require Black Rock to file a copy of any consultant’s report referenced in section three of those agreements with the Commission as has been common in previous wind farm siting certificate cases. BR Exh. 7. The Decommissioning Agreements also do not reserve the right for the Commission to hire its own evaluative expert to evaluate any of the periodic reports. The Commission will require that both of these conditions be met.

6. Memorandum Agreement

Black Rock entered into a Memorandum Agreement with the North Central West Virginia Building and Construction Trades Council, AFL-CIO and the West Virginia State Building and Construction Trades Council, AFL-CIO to ensure that local workers paid union wages and fringe benefits will be used in the construction of the Project. BT Exh. SW-D at 2 and attached Memorandum Agreement. The Commission has approved a Memorandum Agreement in previous siting certificate cases and ordered that “all representation and commitments made by the parties therein be kept by the parties.” Mount Storm Windforce, LLC, Case No. 01-1664-E-CN, Commission Order, August 29, 2002, at 31. We see no reason to depart from this approach. We note, as we have in the past, that approval of the Memorandum Agreement by the Commission does not mean the Commission is the proper forum to resolve any disputes that may arise from operating under the Agreement.

C. Application of Part Two of the Balancing Test

Based on the evidence in this case and particularly the evidence highlighted in Part One of the balancing test discussed above, the Commission concludes that taken as a whole, the positive impacts relating to the various interests outweigh the negative impacts on the various interests in this matter. See W. Va. Code §24-2-11c(c). In Part Two of the balancing test, the Commission decides whether a project’s public funding, if any, and property tax abatement, if any, offends the public interest.

Black Rock provided documentation that no public funding or property tax abatement is involved with this Project. Application at 77. Because there is neither public funding nor planned property tax abatement. Part Two of the balancing test is
inapplicable in this case. Based on the record, Black Rock should be issued a siting certificate for this Project, subject to the conditions in this Order.

D. **Motion for Protective Treatment**

Siting Rule 3.1.1.2. requires applicants to file certain financial statements for each year of the start-up phase and for the first five years of operation. These financial statements must disclose all assumptions. With the Application filed on May 10, 2019, Black Rock filed a confidential version of the financial statements at Appendix M. Black Rock did not file a redacted version of the financial statements as required by Rule 4.15 of the Commission Rules of Practice and Procedure. Black Rock should file a redacted version of the financial statements.


Because no request under WV Freedom of Information Act (FOIA) has been filed for the information filed under seal, the Commission will defer ruling on the Motion for Protective Treatment. The Executive Secretary will hold the unredacted version of the confidential filings in a sealed condition separate and apart from the remainder of the case file until the Commission receives and reviews a request for the information pursuant to WV FOIA. By deferring consideration of the protective treatment request, the Commission is not taking a final position on the application of the WV FOIA to the information filed under seal.

**IV. FINDINGS OF FACT**

1. Black Rock is a limited liability company licensed to do business in West Virginia. Black Rock is a wholly owned subsidiary of Clearway. Application at 19.

2. On May 10, 2019, Black Rock filed an Application for a siting certificate pursuant to W. Va. Code §24-2-11c and the Siting Rules, to authorize the construction and operation of an electric wholesale generating facility in Mineral and Grant Counties, West Virginia. As a part of the Application, Black Rock filed several maps pursuant to Siting Rule 3.1.h. including a one-mile radius map, a five-mile radius map, and a pre-construction map. The one- and five-mile radius maps provided the locations of the proposed wind turbines.
3. The Project will provide wholesale electric service, and there will be no direct financial impact to West Virginia ratepayers.

4. Black Rock proposed to construct a wind turbine electric generating facility of between 110 MW and 140 MW using up to twenty-nine SG 145/4.8 wind turbines. Tr. at 21-22.

5. The studies submitted by Black Rock were conducted as if all twenty-nine sites were being used.

6. Black Rock has filed an application for an Interconnection Agreement with PJM for a 110 MW EWG facility but may file a new application for a 140 MW EWG facility.

7. If Black Rock files an application for an Interconnection Agreement with PJM for a 140 MW EWG facility, that application would be separate from the initial application for 110 MW. If the 110 MW EWG facility is approved by PJM, Black Rock could begin construction on that facility while the second application is being processed.

8. The proposed wind turbines would be placed along the Allegheny Front, centered around Skyline, West Virginia, eleven and one-half miles southwest of Keyser, West Virginia in Grant and Mineral Counties, West Virginia. Application at 1.

9. The Project will be located on select portions of privately-owned mountaintop land generally composed of uninhabitable forested or timbered areas. Parts of the Project are located on properties that were previously strip mined and some that are actively farmed. Application at 1.

10. To build the 110 MW EWG facility, Black Rock would use twenty-three of the twenty-nine possible sites with each wind turbine being a SG 145/4.8 turbine with a rotor diameter of 145 meters (475.6 feet) and a hub height of 107.5 meters (352.6 feet).

11. The Project will be funded by debt and/or equity secured by Black Rock. Black Rock has no agreements in place for public funding or property tax abatement and does not anticipate any such agreements for this Project. Application at 77.

12. Black Rock estimates that the Project will cost between $146 and $165.6 million to construct. Application at 79.

13. The Project will not be a utility providing services to the public and there will be no impact to West Virginia ratepayers. Rates charged for electricity sold by Black Rock will be subject to regulation by FERC. Notice of Filing.
14. Black Rock published the Notice of Filing of its Application on May 23, 2019 in the News Tribune (Mineral County), May 28, 2019 in the Grant County Press (Grant County), and May 30, 2019, in the Charleston Gazette-Mail (Kanawha County). Affidavits of Publication, June 10 and 21, 2019.


16. The Commission held a public comment hearing on July 26, 2019, in Petersburg, West Virginia. Seventeen people spoke in favor of the Project, two expressed concern, and five people spoke against the Project. See generally, Transcript of Public Comment Hearing, July 26, 2019.

17. The Commission received 223 letters in support of the Project and sixty-six letters in opposition to the Project.

18. On July 26, 2019, the Commission conducted a View under the guidelines established by the Commission and to which the parties agreed, and visited eight sites in or near the Project area.


21. West Virginia participates in the interconnected electric system to safeguard the availability of productive, well-maintained resources to our State’s residents.

22. The Project will provide needed energy and capacity to the electric system, help to serve load and maintain overall system reliability, and provide generation from a renewable resource. Application at §2.

23. The 2018 PJM Load Forecast Report predicted load growth for PJM in both the summer peak and winter peak of .4 percent over ten years.

24. Black Rock’s study of the economic impact of the Project used an IMPLAN model to estimate the jobs and economic impact associated with constructing and operating the Project. Application at 79.
25. Increased business volume in Mineral and Grant Counties during construction is estimated to be between $52.4 and $64.2 million and between $58.9 and $72.3 million in West Virginia. Application at 79.

26. Increased business volume during operation of the Project is estimated to be approximately $4.1 million in Mineral and Grant Counties and $5.4 million in West Virginia. Application at 79.

27. Construction of the Project is estimated to support up to 376 jobs in Mineral and Grant Counties with increased employment compensation associated with the jobs of up to $17.2 million including direct, indirect, and induced jobs. Application at 79.

28. During commercial operation, the Project is expected to directly employ six people and support a total of sixteen new jobs in Grant and Mineral Counties and twenty-five new jobs in the State. The projected new jobs will provide wages, salaries, and benefits of approximately $7 million in Mineral County and $1.2 million in West Virginia. Application at 79.

29. Black Rock entered into a Memorandum Agreement with the North Central West Virginia Building Construction Trades Council, AFL-CIO and the Council relating to construction of the Project. BT Exh. SW-D at 2 and Attachment.

30. The Project is estimated to provide between $4.8 million and $5.9 Million in increased state and local taxes during construction; between $200,000 and $220,000 in local taxes during operation in Grant County; and between $146,000 and $162,000 during operation in Mineral County. Application at 79.

31. Construction of the Project would increase the number of construction jobs increasing by twenty-one percent and increase construction wages increasing by twenty-six percent in the two counties affected. BT Exh. CR-D at 7.

32. Black Rock has entered into a VPPA with a non-utility customer in West Virginia. Application at 13.

33. Black Rock identified 409 structures being within a one-mile radius of the Project. Approximately 193 of those structures are dwellings occupied on a full or part-time basis. Comm'n Request Exh. 1.

34. Of the 193 occupied dwellings, twenty-eight have Neighbor Agreements, twenty-four have been offered Neighbor Agreements and are in various stages of negotiations, and five will be offered Neighbor Agreements. Comm'n Request Exh. 1.
35. Black Rock seeks protective treatment for certain information filed under seal. Motion for Protective Treatment, July 8, 2019.

36. Joshua Hohn of Stantec conducted a Visual Impact Assessment of the Project for Black Rock.

37. Stantec identified nine viewpoints for use in the analysis of the Project’s potential visual effects.

38. The initial viewshed analysis was based on 5.8 MW wind turbines. The SG 145/4.8 yielded less visual impact because of its reduced size.

39. Mr. Hohn concluded that the SG 145/4.8 wind turbines would not result in any substantially new areas being included in the Project viewshed and there was little substantive difference in terms of potential visibility between the two viewshed presentations. BR Exh. JH-R at 2-3; BR Exh. 5.

40. The visual quality would be reduced in the majority of views from each of the landscape types, but the reduction would not be substantial and would not be in every view.

41. Existing wind turbines are visible in five of the nine views.

42. Shadow flicker was studied. Application at Appendix K; BR Exh. 5.

43. Shadow flicker will only occur during daytime, during low angle sunlight conditions typically during sunrise and sunset, when skies are not obscured by fog or clouds, and when the wind turbines are operational. BR Ex. JB-D1 at 3.

44. Shadow flicker is not regulated by state or federal agencies. BR Ex. JB-D1 at 3.

45. Stantec prepared archeological and architectural investigations for the Project and coordinated with WVSHPO regarding investigations of the impact of the Project on archaeological and architectural resources. Application at Appendices Y and X; Br. Exh. 2.

46. WVSHPO issued a letter on September 3, 2019, concurring with Black Rock that the Project would have no impact on potentially eligible archaeological resources and determining that no further consultation was necessary regarding archaeological resources.

47. Black Rock continues to work with WVSHPO on the potential indirect impacts to historic structures as a result of the Project. BR Exh. EB-D at 3-7.

48. Black Rock retained Stantec and HEI to conduct acoustical studies to determine the potential effects on residences located near the Project.
49. At times, construction activity will be audible to nearby sensitive receptors, but not all equipment would be operating at the same time and activities will be spread throughout the Project and are temporary in duration.

50. The overall noise impact during construction of the Project is not expected to be significant. BR Exh. 5, Acoustical Sound Study at 4.

51. Forty-four occupied dwellings within 1.25 miles of the proposed twenty-nine Project wind turbines would have a maximum sound level between 50.1 dBA and 55 dBA. BR Exh. 5, Acoustical Sound Study at 8.

52. The maximum sound levels at two private cemeteries would be between 55.1 dBA and 55.4 dBA. BR Exh. 5, Acoustical Sound Study at 8.

53. Black Rock committed to curtail the wind turbines at the two cemeteries if there is a burial. Tr. at 104-05.

54. Stantec prepared the following wildlife studies for Black Rock:

(i) Habitat Assessment Report
(ii) Wildlife Risk Assessment
(iii) 2018-19 Game Camera Survey for rare terrestrial mammals
(iv) Eagle Nest Survey Report
(v) Eagle Point Count Survey Report
(vi) Common Nighthawk Survey Report
(vii) Acoustic Bat Monitoring Report
(viii) Interim Summary of Rare Bat Mist-Netting Surveys, and
(ix) 2019 Rusty Patched Bumble Bee Survey Report

Application at Appendices R and S; Br. Exhs. 3 and 4.

55. Black Rock prepared the BBCS including a curtailment program that follows USFWS recommendations for avoiding the take of the Indiana bat, a three-year post-construction monitoring plan to study the effectiveness of the curtailment plan, and a continuation of the curtailment program if necessary.

56. USFWS does not require two years of eagle studies prior to applying for a siting certificate. Tr. at 197-98.

57. USFWS has not yet issued a Technical Assistance Letter. Tr. at 185-86.

58. Stantec prepared for Black Rock a delineation of wetlands. Eleven of the wetland systems are wholly located within the limits of the Project disturbance and each one includes less than 2,600 square feet of permanent wetlands impacts. Seven of the delineated streams are located within the limits of Project disturbance, each including less than 210 linear feet of permanent impact. BR Exh. BS-D at 4-8.
59. Increased traffic involving construction workers traveling in personal vehicles is likely during the twelve-month construction phase of the Project with an estimated peak maximum number of 275 workers at any one time using one of the four identified main routes. BR Exh. BB-D at 3-4.

60. The maximum increase in delay for any turning movements at key intersections during peak hours is expected to be no more than 2.1 seconds and would not significantly affect traffic. BR Exh. BB-D at 7.

61. Black Rock has not yet received FAA approval for the Project. Tr. at 66.

62. Staff proposed and Black Rock countered with numerous conditions for the pre-construction and construction/operation phases of the Project. Black Rock and Staff agreed on preconstruction conditions one through six, eight, and ten enumerated in the ordering paragraphs below. Black Rock corrected a typographical error and made one minor change before accepting pre-construction condition seven. Pre-conditions nine and eleven were edited by Black Rock. The Commission accepts the edits.

63. Black Rock accepted, with minor typographical edits, Construction/Operation phase conditions one, two through four, six through eight, and twelve. Staff modified Condition five in its Reply Brief. Black Rock and Staff did not agree on conditions nine, ten, and eleven.

64. Black Rock entered into Decommissioning Agreements with the County Commissions of Mineral and Grant Counties. BR Exh. 7.

65. The Decommissioning Agreements did not require Black Rock to file a copy of any consultant's report referenced in Section 3 of those agreements with this Commission.

66. The Commission's right to hire its own evaluative expert to evaluate any of the periodic reports created by the decommissioning consultant is not specifically stated in the Decommissioning Agreements.

V. CONCLUSIONS OF LAW

1. In determining whether to issue a siting certificate under this statute, the Commission applies a two-part balancing test. As Part One of the balancing test, the Commission appraises and balances the interests of the public, state, and local economy, and the applicant. In part two of the balancing test, the Commission must consider whether the terms and conditions of any public funding or any agreement relating to the abatement of property taxes does not offend the public interest. W. Va. Code §24-2-11c(c).
2. The Commission has held that the statute sets forth a two-part test that has been established over the years. The West Virginia Supreme Court of Appeals has recognized that this analysis demonstrates a balancing of interests as required by law and properly weighs the various interests involved. *Mountain Communities for Responsible Energy v. Public Serv. Comm’n of WV*, 222 W. Va. 481, 665 S.E.2d 315, 328-330 (2008).

In applying part one of the balancing test, the Commission appraises and balances:

a. an applicant’s interest to construct an electric wholesale generation facility;
b. the State’s and region’s need for new electrical generating plants; and
c. the economic gain to the State and the local economy, against:

(i) community residents’ interest in living separate and apart from such facility;
(ii) a community’s interest that a facility’s negative impacts be as minimally disruptive to existing property uses as is reasonably possible; and
(iii) the social and environmental impacts of the proposed facility on the local vicinity, the surrounding region, and the State.

*Longview Power, LLC*, Case Nos. 03-1860-E-CS & 05-1467-E-CN (Commission Order at 102, June 26, 2006) (granting final approval of electric wholesale generating facility and transmission line, with conditions); see also, *Beech Ridge Energy LLC*, Case No. 05-1590-E-CS (Commission Order at 75, Aug. 28, 2006) (granting approval of electric wholesale generating facility and transmission line, with conditions); *Beech Ridge Energy II LLC*, Case No. 12-1196-E-CS (Commission Order at 10-11, June 19, 2013) (granting approval of electric wholesale generating facility, with conditions).

3. If the Commission determines under Part One that, taken as a whole, positive impacts relating to the various interests outweigh the negative impacts on the various interests, then in Part Two the Commission must determine whether “the terms and conditions of any public funding or agreement relating to the abatement of property taxes do not offend the public interest, and the construction of the facility . . . will result in a substantial positive impact on the local economy and local employment.” W. Va. Code §24-2-11c(c).

4. The Application and supplemental filings throughout the case satisfied the requirements of the Siting Rules.

5. Black Rock demonstrated a sufficient interest in constructing the Project through its retention of various management and technical experts, development of
information in support of the Application, investment of substantial time and economic resources to apply for a siting certificate, obtaining and pursuing the various required permits, obtaining the real property interests and entering into the various agreements necessary to construct and operate the Project.

6. The public interest in diversified sources of fuel to generate electricity, the growing market for renewable energy, generation retirements in the PJM grid, and the substantial benefits to the State and local economy including the VPPA, increased employment, and increased taxes establish that there is a need for this Project.

7. The viewshed of a wind turbine project is the most subjective issue in a siting certificate application. There is no “bright line” test for viewshed. The physical presence of the Project and views of the Project will be as minimally disruptive to the community as reasonably possible.

8. Noise, like view, is another elusive and to some extent subjective factor in the deliberative process of the Commission. Numerous factors affect the noise levels from wind turbine projects, including the type of turbine, weather, ground cover, distance, ambient noise, leaf and foliage cover, elevation, wind direction, and the state of technology as applied to wind turbines and the detection of sound from wind turbine projects.

9. The Black Rock noise studies complied with Commission requirements and accurately portrayed ambient sound levels that would be typical for the area in question. The Project’s construction and operational sound levels will be as minimally disruptive to the community as reasonably possible.

10. Black Rock’s development of a BBCS with USFWS and WV DNR, including a curtailment program that follows USFWS recommendations for avoiding the take of the Indiana bat and a three-year post-construction monitoring plan to study the effectiveness of the curtailment program, and its second year of eagle studies is credible evidence that Black Rock is working with these agencies to obtain the necessary approval complies with the requirements of the Siting Rules.

11. The Project will not cause substantial problems or difficulties with respect to existing traffic patterns during construction.

12. Black Rock has or is continuing to satisfy the obligations relating to consultation with WVSHPO on the impact of the Project on archeological and architectural resources.

13. Because there is neither public funding nor property tax abatement associated with the Project, analysis under Part Two of balancing test is not necessary.
14. Based on the entire record and the analysis contained in this Order, the Commission concludes that Black Rock should be issued a siting certificate for this Project with the conditions adopted in this decision.

15. Because no party has objected to the request for protective treatment and no request has been filed pursuant to WV FOIA, it is reasonable for the Commission to defer ruling on the Motion for Protective Treatment.

VI. ORDER

IT IS THEREFORE ORDERED that the Black Rock Wind Force, LLC is granted a siting certificate pursuant to W. Va. Code §24-2-11c for the construction and operation of a wholesale electric generating facility and other necessary appurtenances in Grant and Mineral Counties, West Virginia as more fully described in the Application, testimony in the evidentiary hearing, and this Order, subject to the following conditions:

Preconstruction Certificate Issues

1. Prior to commencing construction, the Applicant must file a verified statement indicating that all pre-construction conditions and requirements of the Certificate have been met.

2. The Applicant must not dispose of excavated rock and/or any bedding material during or following the construction of the facility by spreading the material on agricultural land.

3. The Applicant must dispose of all contaminated soil and construction debris in approved landfills in accordance with the appropriate environmental regulations.

4. The Applicant must design and install any needed fire protection systems in accordance with the National Fire Protection Association or other accepted standards.

5. The Applicant must coordinate with appropriate fire safety and emergency personnel during the pre-construction stage of the Project and promote efficient and timely emergency preparedness and response.

6. The Siting Certificate shall become invalid if the Applicant has not commenced a continuous course of construction within five years of the date the final certificate is granted or has not completed construction by the tenth year without petitioning the Commission for approval to expand these time frames.
7. The Applicant must file evidence that it has obtained any necessary environmental permits and/or completed any necessary consultations prior to commencing construction (including, but not limited to letters from the United States Fish and Wildlife Service, the West Virginia Division of Natural Resources, the West Virginia Division of Culture and History and the West Virginia State Historic Preservation Office; any local governmental agency requiring permits for construction/operation of this project) indicating that either the Applicant does not need to take further action or outlining what action the Applicant needs to take to be in compliance with that agency’s rules or laws prior to grading, soil excavation and/or habitat removal or causing a similar action by others.

8. The Applicant must file a copy of the Wetlands Survey and Delineation, evidence of approval and/or acceptance of the wetlands delineation, final endangered species study with any required mitigation plans, and historical/archaeological significant study with any required mitigation plans prior to commencing construction.

9. The Applicant must receive a Determination of No Hazard from the Federal Aviation Administration for any structure requiring such a determination prior to turbine erection.

10. The Applicant must comply with the Endangered Species Act (16 U.S.C. §§ 1531 et seq.), the Migratory Bird Treaty Act (16 U.S.C. §§ 703 et seq.), and, if applicable, the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4231 et seq.) in both the construction and operation of the Project. If any authorized governmental agency or court with competent jurisdiction finds that the Applicant is not complying with any one of the above three acts in either the construction or the operation of the Project, then the Applicant must notify the Commission in writing in this case of any such finding within ten days of any such finding being made. Furthermore, the Commission may seek any legal remedies it has jurisdiction to seek, including injunctive relief, to address any such findings.

11. The Applicant must a) construct a fence around the substation and switchyard consistent with good utility practice; b) lock all turbine tower doors except when access is needed for maintenance purposes; and c) for the life of the Project, install and maintain safety hazard signs where required by code or where safety hazards are of particular concern.
General Construction and Operational Phase Certificate Conditions

1. During construction, the Applicant shall:
   a. Require contractors to use standard noise mufflers on all construction equipment and trucks;
   b. Require contractors to use pile driving equipment having the least noise impact using commercially reasonable efforts;
   c. Perform construction activities mostly during the daylight hours;
   d. Avoid noise impacts at certain noise sensitive locations, such as a church, during the weekend church activities and services and during other normally scheduled weekday activities;
   e. Limit any dynamiting to daylight hours and follow State and Federal rules, regulations and/or laws.

2. The Applicant must coordinate with appropriate fire safety and emergency personnel during all other stages of the Project, including Construction and Operations, to promote efficient and timely emergency preparedness and response.

3. The Applicant must file evidence of its EWG status from FERC prior to commencing operation.

4. If the Applicant seeks to transfer its Certificate, the Applicant is required, pursuant to Siting Rule 7.1, to notify the Commission in writing of the identity of the transferee and submit an affidavit from the transferee attesting to the transferee’s willingness to abide by the terms of the Siting Certificate, as issued. This condition applies anytime – not just in the operational stage.

5. Black Rock will implement a Bird and Bat Conservation Strategy (BBCS). It will consult with the U.S. Fish and Wildlife Service and the West Virginia Division of Natural Resources (collectively, the “Technical Advisory Committee”) on the scope, development and implementation of the BBCS. The BBCS will include Black Rock’s avoidance strategy to minimize impacts to avian and bat species, post-construction monitoring, and adaptive management. The BBCS will be implemented for the life of the Project. Black Rock will file copies of each Study with the Commission and provide copies to each member of the Technical Advisory Committee within thirty days of its completion.

6. The Applicant will minimize the visibility of the Project by only using project lighting in the presence of the Project’s personnel and any other persons authorized to be in the area except that the Applicant may use project lighting as required by Federal Aviation Administration and any applicable fire or safety code, regulation, or accepted good utility practice.
7. In the unlikely event that blasting associated with construction activities negatively affects the groundwater aquifer on or around the Project, the applicant will take immediate steps to resolve such negative effects.

8. The Applicant must file copies of the remaining interconnection studies and final interconnection agreements prior to commencing operation.

9. Turbine tower setbacks from paved public roads and overhead transmission lines (115 kV or above) in existence as of the date the siting certificate application was filed will be imposed to equal at least 1.1 times the total combined height of the tower, turbine and maximum blade height (Tip Height). A 1.5 times Tip Height setback will be imposed to all non-participating residential structures that are occupied full-time as of the date the siting certificate application was filed.

10. The Project is limited to twenty-three turbines, with a total nameplate capacity of 110 MW, unless and until an additional interconnect study is submitted to and approved by the PJM. The twenty-three wind turbines may sit on any of the twenty-nine sites described in the Application. The Applicant shall take into consideration noise levels above 50 dBA and shadow flicker of 30 or more hours per year to any affected structure when determining which of the twenty-nine sites will be used.

11. Prior to the commencement of operations, the Applicant shall offer project participant agreements to the owners of all full-time occupied houses, as determined at the time of application submittal, that are projected to experience 50 dBA\textsubscript{LEQ} of noise or 30+ hours of shadow flicker a year from this Project. If the owners of some of the full-time occupied houses do not wish to sign an agreement to become a project participant, further study shall be conducted post construction to verify that those houses do indeed experience either 50 dBA of noise or 30+ hours of shadow flicker in a year. If those houses experience either of those levels post-construction, Black Rock shall update the Commission immediately on the status of the agreements for the houses impacted. If houses remain unsigned at that point, Black Rock shall update the Commission every three months on the studies undertaken and the mitigation techniques employed.

12. The Applicant shall coordinate with the owners of the two private cemeteries that could potentially be impacted by noise and shadow flicker from this Project to ensure noise and shadow flicker are not issues during times of services at the cemeteries.

IT IS FURTHER ORDERED that the Memorandum Agreement dated January 17, 2019, between Black Rock Wind Force, LLC, the North Central West Virginia Building Construction Trades Council, AFL-CIO, and the West Virginia State Building and
Construction Trades Council, AFL-CIO is approved in relation to the Project. The Commission anticipates that all representations and commitments made by the parties therein will be kept by the parties. Approval of the Memorandum Agreement by the Commission does not mean the Commission is the proper forum to resolve any disputes that may arise under the Agreement.

IT IS FURTHER ORDERED that Black Rock Wind Force, LLC shall comply with the conditions of the Decommissioning Agreements entered into with the County Commission of Grant County and the County Commission of Mineral County entered into the evidence in this case as BR Exh. 7.

IT IS FURTHER ORDERED that Black Rock Wind Force, LLC shall file as closed entries in this case each of the reports generated by the consultant referenced in section three of the Decommissioning Agreements.

IT IS FURTHER ORDERED that the Commission shall reserve the right to hire its own evaluative expert to evaluate any of the periodic reports referenced in section three of the Decommissioning Agreements.

IT IS FURTHER ORDERED that any owner or operator of the Project shall file with the Commission for prior approval before making any modifications to the Project as set forth in Rule 6.1 of the Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. 30.

IT IS FURTHER ORDERED that if Black Rock Wind Force, LLC receives any public funding for this Project, then it shall inform the Commission and petition to reopen this proceeding within thirty days so that the Commission can perform the analysis required by W. Va. Code §24-2-11c(c).

IT IS FURTHER ORDERED that a ruling on the request for permanent protective treatment filed on July 8, 2019, is deferred until the filing and review of a request pursuant to the West Virginia Freedom of Information Act, W. Va. Code §29B-1-1 et seq. The Executive Secretary shall maintain the unredacted version of the sealed filings in their current condition, separate and apart from the rest of the file pending further order.

IT IS FURTHER ORDERED that Black Rock Wind Force, LLC shall file a redacted version of the pro forma financial statements filed as confidential Appendix M to the Application as a closed entry in this case within ten days of the date of this Order.

IT IS FURTHER ORDERED that upon entry of this Order, this matter is removed from the Commission docket of open cases.
IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, Teste,

Connie Graley, Executive Secretary

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