



STATE OF MARYLAND
December 6, 2002

The Honorable Catherine I. Riley
Chairman
Public Service Commission
6 St. Paul Center
Baltimore, Maryland 21202

Re: Case No. 8938


Dear Chairman Riley:

In accordance with Section 3-306(b) of the Natural Resources Article and the process described in Section 7-207 and 7-208 of the Public Utility Companies Article, we are enclosing our preliminary recommendation in Case Number 8938 on behalf of the Departments of Natural Resources, Environment, Agriculture, Transportation, Business and Economic Development, and Planning, the Maryland Energy Administration and the Office of Smart Growth. Our recommendation and proposed conditions relate to the application for a Certificate of Public Convenience and Necessity (CPCN) for Clipper Windpower Inc. (Clipper) to build a windpower facility with a generation capacity up to 101 megawatts in the Allegheny Heights area of Garrett County, Maryland.

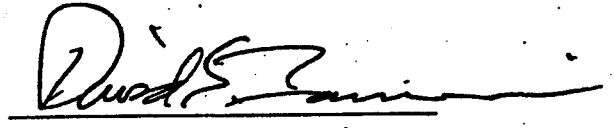
As set forth more fully in Clipper's application, the project is possible due to the favorable wind conditions in the area of the proposed project and the efficiency of the current generation of wind turbines. Up to sixty seven turbines will be installed to provide the generation capacity. The electricity generated from the turbines will be delivered to the PJM system. Potential buyers of the project output include energy marketing firms and electric utilities. The project provides a significant source of renewable electricity generation.

Based on our review of the application and associated environmental information available to date, we have concluded that the site is suitable and that the plant can be constructed and operated in accordance with all applicable environmental regulations provided the Certificate incorporates the attached recommendations as conditions to the CPCN. Our preliminary evaluation of the environmental impacts associated with the proposed facility is summarized in the document titled "Environmental Review Report for the Allegheny Heights Windpower Facility" which has been supplied as an exhibit in this proceeding. At the conclusion of the hearing process and close of the record, should these recommendations need to be modified, we will provide our final recommendation and conditions for the project.

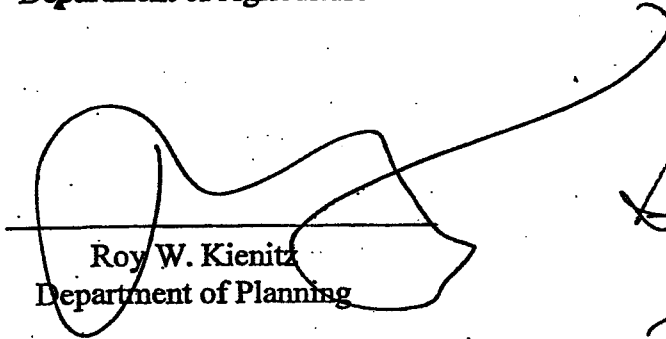
Sincerely,



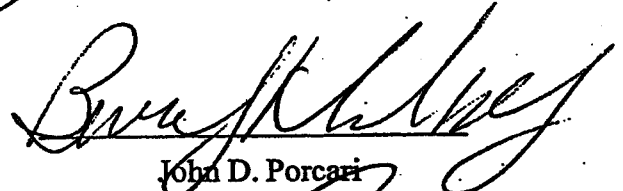
Wagner R. Mister
Department of Agriculture



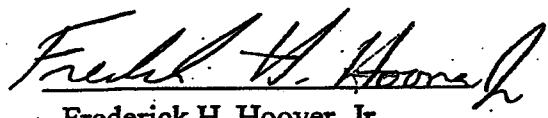
David S. Iannucci
Department of Business and
Economic Development



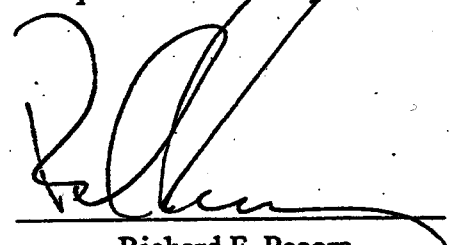
Roy W. Kienitz
Department of Planning



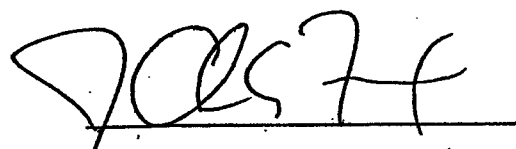
John D. Porcari
Department of Transportation



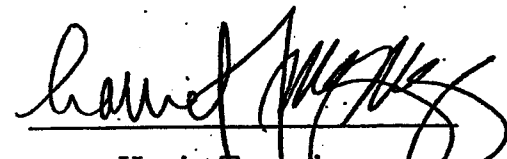
Frederick H. Hoover, Jr.
Maryland Energy Administration



Richard F. Pecora
Department of the Environment



J Charles Fox
Department of Natural Resources



Harriet Tregoning
Office of Smart Growth

INITIAL RECOMMENDED CONDITIONS - PSC Case No. 8938
Clipper Windpower, Allegheny Heights Project

1. Except as otherwise provided for in the following provisions, the Clipper Windpower, Inc. (Applicant) application for the Certificate of Public Convenience and Necessity (CPCN or certificate) filed with the Maryland Public Service Commission (PSC) on August 26, 2002, together with any supplemental information submitted to the PSC (cumulatively, the Application) is considered to be part of this CPCN for the Clipper Wind Energy Project (Project). Construction and operation of the Project shall be undertaken in accordance with these conditions. The wind turbines which form part of the Project (Turbines) shall be constructed within the numerical parameters as to the number of Turbines, dimensions of Turbines, and total acreage of the Project site found in the Application and amendments thereto incorporated in the CPCN. Changes to these specifications are not covered by the CPCN and must be reviewed and approved by the PSC and the Power Plant Research Program (PPRP). If there are any inconsistencies between the certificate conditions specified below and the application, the conditions in this certificate shall take precedence.
2. If any provision of this certificate shall be held invalid for any reason, the remaining provisions shall remain in full force and effect, and such invalid provision shall be considered severed and deleted from this certificate.
3. Construction and operation of the Turbines and all associated facilities shall be undertaken in accordance with this certificate and shall comply with all applicable local, State, and Federal regulations, including but not limited to the following:
 - Nontidal Wetlands - to the extent any nontidal wetlands exist on the Project site, and will be impacted by Project construction, COMAR 26.23.01 through 26.23.06 will apply to activities conducted in those areas.
 - Water Quality and Water Pollution Control - COMAR 26.08.01 through COMAR 26.08.04 applies to discharges to surface water and maintenance of surface water quality.
 - Erosion and Sediment Control - COMAR 26.17.01 applies to the preparation, submittal, review, approval, and enforcement of erosion and sediment control plans.

4. Construction of the Turbines must be completed within five years of issuance of this CPCN.
5. Applicant shall provide as-built details on the following to PPRP, the Maryland Department of the Environment (MDE) and the PSC in accordance with COMAR 20.80.04: engineering and construction plans for the Turbines including total acreage of the Project site; Turbine structure and foundation type, dimensions, and locations; and distance between Turbines. Where the as-built details are identical to those submitted with the certificate application, Applicant should provide a statement to this effect and not resubmit the information.
6. Prior to construction of the Project, Applicant will identify any off-site roads, road expansions, right-of-way use, or access points that will need to be built for construction or operation of the Project and will work with the State Highway Administration and the Garrett County Roads Department to develop a plan to govern any such improvements. Applicant will obtain all permits required for such improvements. In addition, prior to construction, Applicant shall work with the above agencies to plan the routes and appropriate safety and traffic-flow measures, and obtain permits for delivery of large-load equipment to the Project site. Applicant shall also provide advance notification to these agencies of the actual deliveries.
7. All portions of the Project site disturbed during construction shall be stabilized immediately after the cessation of construction activities within that portion of the Project site, followed by seed application, except in actively cultivated lands, in accordance with the best management practices presented in the MDE document 1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control, and as approved by Garrett County.
8. If there are adverse visual effects from turbine structures on potential historic properties identified by the Applicant, the Applicant shall complete formal determinations of eligibility for the properties. The Maryland Historical Trust (MHT) shall review and determine concurrence with the eligibility determinations and assess the effect. The Applicant, in consultation with and as approved by MHT, shall develop and implement a plan for mitigating or minimizing the effects on properties adversely affected by the project.
9. Prior to construction, the Applicant will submit to MHT the Phase I archeological investigation of sites that will be disturbed by project construction of the southern portion of the project site for review and approval. If the Phase I or additional archeological investigations result in

the identification of significant archeological properties, the Applicant, in consultation with and as approved by MHT, shall develop and implement a plan for avoidance and protection, data recover, or destruction without recovery of any properties adversely affected by the project.

10. Prior to construction, Applicant shall submit to MHT a copy of training programs, or guidelines provided to Applicant inspectors or contractors, to identify and/or protect unforeseen archeological sites that may be revealed during construction of the project. If such relics are identified in the project area, Applicant, in consultation with and as approved by MHT, shall develop and implement a plan for avoidance and protection, data recovery, or destruction without recovery of the properties adversely affected by the project.
11. Applicant shall submit a Project-specific sedimentation and erosion control plan to the Garrett County Soil Conservation District. Sediment control during construction of all aspects of the Project will include some or all of the following best management practices: construction of earth dikes in appropriate locations, sediment traps, use of silt fences, stabilizing disturbed areas as quickly as possible, and converting silt traps to permanent features as soon as practicable. The Plan will be developed consistent with Garrett County requirements. The plan shall also be provided to the PSC and PPRP prior to construction. The plan must be on site during all phases of construction.
12. Representatives of the Department of Natural Resources (DNR), MDE and the PSC shall be afforded access to the property at any reasonable time to conduct inspections and evaluations necessary to ensure compliance with the CPCN. Applicant shall provide such assistance as may be necessary to conduct these inspections and evaluations effectively and safely, which may include but need not be limited to the following:
 - inspecting construction authorized by this CPCN;
 - having access to or copying any records required to be kept by Applicant pursuant to this CPCN or applicable regulations;
 - obtaining any photographic documentation and evidence; and
 - determining compliance with the conditions and regulations specified in the CPCN.
13. Applicant shall construct and operate the project in compliance with all applicable State and local noise regulations.

14. Prior to putting the Project in service, Applicant shall file with the Commission a listing of the interconnection requirements imposed by the interconnecting transmission owner or regional transmission organization, as may be the case, in the Facilities Study, and certification that these interconnection requirements have been met.
15. Decommissioning of Turbines will be undertaken by the Applicant at private expense. The Applicant will establish a bond or similar mechanism to ensure that future funds are available to support decommissioning. In the event that any Turbine does not operate for a period of one year, the Applicant shall remove that Turbine assembly unless the Applicant obtains an extension from the PSC. If the Applicant requests an extension of the one-year period, the request must be in the form of a written motion to the PSC describing the operational difficulty and describing the steps that the Applicant is taking to resolve it.
16. To reduce the potential for avian and visual impacts, and only as consistent with the lighting and other safety requirements imposed on the Project by the Federal Aviation Administration (FAA), lighting on the turbines shall be minimized by (a) installing lighting on the fewest possible number of turbines; and (b) installing red strobes, as opposed to white strobes, with frequency cycles no shorter than 24 per minute. In the event the FAA requirements conflict with the avian and visual impact-related requirements imposed by this condition, the FAA requirements shall govern.
17. The Applicant shall undertake a post-construction study of bird and bat mortality associated with the operation of the turbines. The study protocol shall be submitted to the DNR Natural Heritage Program for approval, and to PPRP for informational purposes, no later than 30 days after issuance of the CPCN, which approval shall be forthcoming within 30 days of receipt so long as the Applicant substantially and in good faith complies with the following minimum requirements:
 - (a) At a minimum, monitoring shall be conducted for three years and cover three each of spring and fall migration periods.
 - (b) More intense monitoring will be required during the spring and fall migration periods.
 - (c) Monitoring data shall be reported to the Natural Heritage Program, PPRP and the PSC on a quarterly basis and shall include both observed and estimated mortality by observation date and turbine.
 - (d) Species impacted and weather conditions should also be reported.

In the event that a catastrophic mortality event occurs, the Applicant shall notify the DNR Natural Heritage Program and PPRP within one working day. For the purpose of this condition, a catastrophic mortality event is one in which more than 200 birds or bats of any combination of species are killed in a 24-hour period at a single turbine.

18. DNR, based on monitoring and other scientific information, and after consultation with the Applicant and other interested parties, may make a determination that one or more wind turbines are collectively causing significant bird or bat mortalities. DNR shall submit any such determination to the PSC. The PSC shall direct the Applicant to prepare and submit to DNR for approval a plan for reducing the mortality to an acceptable level. The plan may include such actions as moving or curtailing the operation of one or more towers. The level of curtailment will not exceed 3600 turbine-hours per year (or 54 times the number of turbines constructed, if the Project consists of fewer than 67 turbines). The plan may also include provisions for a period, not to exceed two years, during which tests may be conducted, such as varying the operating parameters of one or more towers, changing the tower lighting scheme, or other measures, to determine how best to reduce the mortality. Following approval of the plan by DNR, the PSC shall direct the company to implement the plan. For purposes of this condition, the term "significant mortalities" means a number or rate of mortalities that could result in an ecologically significant population decline in federal or state rare, threatened or endangered species, or bird or bat species protected by the Migratory Bird Treaty Act.

19. Construction may not proceed until the DNR Natural Heritage Program has determined that there will be no take of species as defined in Annotated Code of Maryland §10-2A-01 through §10-2A-09. The Applicant shall submit site plans to PPRP and to the Natural Heritage Program illustrating the final placement of all turbines and associated equipment, access roads, construction laydown areas and any other areas directly affected by construction activities. Site plans may be submitted in phases to match construction, and each submittal will be subject to a separate review by the Natural Heritage Program. Upon receipt of the site plan, the Natural Heritage Program will conduct an environmental review analysis in accordance with established procedures and determine if any proposed activities will impact rare, threatened, or endangered species. A full review will be completed no later than 60 days after the receipt of the site plan. The Natural Heritage Program review will provide specific guidelines for siting at any location where a potential take is identified. Construction at the location in question may proceed when the Applicant has demonstrated to the Natural Heritage Program that the guidelines

have been met. This condition will affect only those locations that have not received prior approval from the Natural Heritage Program.

20. The Applicant shall submit a site plan to the Garrett County Planning and Zoning Office and obtain a building permit from that office prior to the start of construction.
21. The Applicant shall design and construct the Project in such a way as to maintain a minimum buffer distance to nearby residences of two times the height of the turbine tower. The distance between any turbine and any residential structure must be at least two times the height of that turbine tower, measured from ground level to the top of the nacelle.
22. All towers constructed on the property, to include meteorological data collection towers as well as wind turbines, shall be free-standing structures with no guy wires or similar supports.
23. Except as otherwise provided herein, the Applicant shall not transfer ownership or control of the Project so as to divest the Applicant of its ability to control the construction or operation of the Project without the written consent of the PSC. In the event of any such proposed transfer, the Applicant shall notify the proposed successor of the existence of the requirements of this CPCN by letter and shall send a copy of that letter to the Secretary of the PSC and the Director of PPRP. Any such successor shall be subject to the CPCN and all applicable requirements and obligations therein. Prior to the commencement of its operations of the Project, any such successor shall provide any assurances required by the PSC that the Project will be operated in compliance with this CPCN and its conditions. The approval of the PSC shall not be required if (i) the Applicant transfers a collateral security interest in the Project, or (ii) the Applicant sells its interest in the Project to a person or entity that becomes a passive owner of the facility solely for financing purposes, nor shall such transferee or purchaser be subject to the CPCN and the requirements and obligations therein solely by virtue of acquiring and holding such interests. In the event that an entity holding a collateral security interest in the Project or passive ownership for financing purposes acquires ownership or control of the Project so as to divest the Applicant of its ability to control the construction or operation of the Project, such entity shall be subject to this CPCN and its conditions.