



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

January 23, 2012

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JAN 23 2012

Clerk's Office
N.C. Utilities Commission

Ms. Renné C. Vance
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325

OFFICIAL COPY

Re: Docket No. EMP-61, Sub 0
Pantego Wind Energy LLC

Dear Ms. Vance:

Enclosed for filing in the above-referenced docket are eighteen (18) copies of the Joint Proposed Order of Pantego Wind Energy LLC, the North Carolina Sustainable Energy Association, and the Public Staff.

By copy of this letter, I am forwarding a copy to all parties of record.

Sincerely,

Tim R. Dodge
Staff Attorney
tim.dodge@psncuc.nc.gov

Enclosure

TRD/cia

Executive Director
733-2435

Communications
733-2810

Economic Research
733-2902

Legal
733-6110

Transportation
733-7766

Accounting
733-4279

Consumer Services
733-9277

Electric
733-2267

Natural Gas
733-4326

Water
733-5610

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

FILED

JAN 23 2012

Clerk's Office
N.C. Utilities Commission

DOCKET NO. EMP-61, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

OFFICIAL COPY

In the Matter of

Application of Pantego Wind Energy LLC For a)
Certificate of Public Convenience and Necessity)
to Construct a Wind Facility of up to 80 MW in)
Beaufort County and Registration as a New)
Renewable Energy Facility)

JOINT PROPOSED ORDER
GRANTING CERTIFICATE
AND ACCEPTING
REGISTRATION
STATEMENT

HEARD: Thursday, November 17, 2011 at 7:00 p.m. in District Courtroom 211,
Beaufort County Courthouse, 112 West Second Street, Washington, North
Carolina

Tuesday, December 6, 2011, in Room 2115, Dobbs Building, 430 North
Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioners William T. Culpepper, presiding, Susan W. Rabon and
Lucy T. Allen

APPEARANCES:

For Pantego Wind Energy LLC:

Henry C. Campen, Jr.
Thomas N. Griffin, III
Katherine E. Ross
Parker Poe Adams & Bernstein LLP
Wells Fargo Capital Center
150 Fayetteville Street, Suite 1400
Raleigh, North Carolina 27601

For the North Carolina Sustainable Energy Association:

Kurt J. Olson
Michael Youth
Post Office Box 6465
Raleigh, North Carolina 27628

For the Using and Consuming Public:

Tim Dodge, Staff Attorney
Dianna Downey, Staff Attorney
Public Staff – North Carolina Utilities Commission
4326 Mail Service Center
Raleigh, North Carolina 27699

BY THE COMMISSION: On September 2, 2011, Pantego Wind Energy LLC (Pantego Wind or the Applicant) filed an application with the Commission seeking a Certificate of Public Convenience and Necessity (Certificate) pursuant G.S. 62-110.1(a) and Commission Rule R8-63 to construct a wind turbine electric generating facility (Facility) of up to 80 megawatts (MW) in Beaufort County, North Carolina. On the same date, Pantego Wind prefiled the direct testimony of David Groberg and Steven Ryder in support of the application. Pantego Wind contemporaneously filed its registration as a new renewable energy facility in accordance with Commission Rule R8-66.

On September 7, 2011, the Public Staff filed a Notice of Completeness indicating that Pantego Wind's application met the requirements of Commission Rule R8-63 and recommending that the application be set for hearing. On September 13, 2011, the Commission issued an Order setting the application for hearing, requiring Pantego Wind to provide public notice, and establishing deadlines for the filing of petitions to intervene, intervenor testimony and rebuttal testimony.

On October 21, 2011, the North Carolina Department of Administration filed comments through the State Clearinghouse stating that it had determined that pursuant to 1 NCAC 25.0506(c), a supplemental document addressing concerns of the Department of Environment and Natural Resources (DENR) should be submitted to the Clearinghouse for further review and comment.

On October 27, 2011, Pantego Wind filed an affidavit of publication as required by the Commission in its September 13 Order.

On November 4, 2011, the North Carolina Sustainable Energy Association (NCSEA) filed a Petition to Intervene, which was granted by the Commission on November 10, 2011.

On November 17, 2011, the Commission conducted a hearing in Washington, North Carolina for the purpose of receiving public witness testimony. The following public witnesses appeared and gave testimony at this hearing: Larry C. Hodges, Tom G. Thompson, Heidi Jernigan Smith, John Michael Chrystal, Frances Armstrong, O.C. Jones, Jennifer Alligood, Derb Carter, Dorris Morris, Mark Buckler, Buster Manning, Maurice Manning, Leaman Allen, Tom Richter, Dianne Bowen, Vann Rogerson, and Robert Scull.

On November 18, 2011, the Public Staff filed a Motion for Extension of Time to File Testimony, which was granted on November 22, 2011.

On November 21, 2011, Pantego Wind filed the supplemental testimony of David Groberg and Karyn Coppinger.

On November 23, 2011, NCSEA prefiled the direct testimony of Paul Quinlan, Managing Director. On the same date, the Public Staff prefiled the direct testimony of Kennie D. Ellis, Engineer with the Public Staff Electric Division, a Notice of Affidavit, and the affidavit of Calvin C. Craig, III, Financial Analyst with the Public Staff Economic Research Division.

On November 30, 2011, Pantego Wind filed a Motion to Excuse Steven Ryder, which was granted on December 1, 2011.

On November 30, 2011, the Public Staff filed the recommendation required by Commission Rule 8-66(e) indicating that Pantego Wind's registration statement was complete and recommending that the Facility be considered a new renewable energy facility.

On December 2, 2011, Pantego Wind filed a copy of a letter to Melba McGee, Environmental Review Coordinator for DENR providing the supplemental testimony of David Groberg and Karyn Coppinger.

On December 5, 2011, additional comments of DENR with two recommendations were filed by the State Clearinghouse.

On December 6, 2011, the Commission conducted a hearing in Raleigh as scheduled to receive additional public witness testimony. The following public witnesses appeared and gave testimony at this hearing: Larry Hodges, Lena Gallitano, Lisa Morris, Doris Morris, Frances Armstrong, Marvin Woll, Dick Hamilton, John R. Spruill, Derb Carter, Heather Starck, Tom Thompson, Franklin E. Bell, Randell Woodruff, Dan Richter, Joe Albea, and Dianne Laughinghouse Bowen.

The case then came on for an evidentiary hearing. Pantego Wind presented the direct and supplemental testimony and an exhibit of David Groberg and the supplemental testimony of Karyn Coppinger. The direct testimony of Steven Ryder, previously stipulated to by all parties, was entered into evidence without objection. NCSEA presented the direct testimony of Paul Quinlan, Managing Director. The Public Staff presented the direct testimony of Kennie D. Ellis, Engineer, Public Staff Electric Division. The affidavit of Calvin C. Craig III, Financial Analyst, Public Staff Economic Research Division, was entered into evidence without objection.

On December 15, 2011, Pantego Wind filed a letter with the Commission stating that it did not object to the entry into evidence of a DVD segment "Birds of Winter" offered by public witness Albea during the December 6 hearing. On December 22, 2011, the Commission entered an order admitting the exhibit into evidence.

On January 23, 2012, a joint proposed order was filed by Pantego Wind, NCSEA, and the Public Staff.

Based on the foregoing, the evidence presented at the hearing, and the entire record in this matter, the Commission makes the following:

FINDINGS OF FACT

1. Pantego Wind is a limited liability company registered to do business in the State of North Carolina. Pantego Wind is a subsidiary of Invenergy Wind North America LLC (IWNA). IWNA is an affiliate of Invenergy LLC (Invenergy).

2. In compliance with G.S. 62-110.1 and Commission Rule R8-63, Pantego Wind filed with the Commission an application for a Certificate authorizing the construction of a wind turbine electric generating facility of up to 80 MW (Facility) to be located on approximately 11,000 acres in Beaufort, North Carolina (Project Area). Contemporaneous with the application, Pantego Wind filed its registration as a new renewable energy facility pursuant to Commission Rule R8-66.

3. The Facility will consist of wind turbine generators, underground electrical collection and communications systems, a collection substation with a 34.5 kV/115 kV transformer, an operations and maintenance building, access roads, and a permanent meteorological tower. The Facility will interconnect with the Virginia Electric and Power Company, d/b/a Dominion North Carolina Power (Dominion), Pantego Substation. The expected commercial operation date for the Facility is fourth quarter 2012.

4. Pantego Wind is in discussions with North Carolina electric power suppliers for the sale of the power and renewable energy certificates (RECs) generated by the Facility.

5. Pantego Wind provided sufficient information to support the operational viability of the Facility. The Facility's net capacity factor is expected to be between 25% - 36%, and the estimated net production is 174,000 - 250,000 megawatt-hours (MWh) per year.

6. Pantego Wind is financially fit and operationally able to undertake the construction and operation of the Facility.

7. Pantego Wind has been in communication with a number of State and federal agencies, including the United States Army Corps of Engineers (Corps), the United States Fish and Wildlife Service (USFWS), DENR, and the North Carolina Wildlife Resources Commission (NCWRC) concerning the Facility.

8. The Facility was reviewed through the State Clearinghouse, and additional information was requested by DENR. The Applicant filed supplemental testimony of David Groberg and Karyn Coppinger, which included information in response to DENR. The Applicant has been providing and will continue to provide information to State and federal agencies regarding potential environmental impacts associated with the Facility. The Facility shall only be built and operated after Pantego Wind receives all necessary environmental or other permits and approvals.

9. The Facility is subject to federal, State and local laws and regulations related to the construction and operation of the Facility, including the federal Clean Water Act, Migratory Bird Treaty Act (MBTA), Endangered Species Act (ESA), Bald and Golden Eagle Protection Act (BGEPA) and the state Coastal Area Management Act (CAMA). The USFWS has regulatory and enforcement authority for the federal laws protecting wildlife.

10. The Certificate should be conditioned upon: (a) Pantego Wind abstaining from attempting to exercise any power of eminent domain under North Carolina law as it relates to the Facility; (b) The Facility being constructed and operated in accordance with applicable laws and regulations, including any environmental permitting requirements; (c) Pantego Wind, no less than 45 days prior to erecting turbines, meeting certain preconstruction conditions as prescribed in this Order; (d) the Commission finding that the preconstruction conditions have been satisfied; (e) Pantego Wind filing annually with the Commission updated information on its monitoring and management activities at the Facility; and (f) other applicable conditions in Commission orders, rules and regulations as are or may hereafter be lawfully made by the Commission.

11. During the 2007 Session, the North Carolina General Assembly enacted S.L. 2007-397 (Senate Bill 3). In that legislation, the General Assembly declared it to be the public policy of the State to promote the development of renewable energy through the implementation of a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) and to encourage private investment in renewable energy.

12. Pantego Wind has made a sufficient showing of need for the Facility based on the public benefits of wind-powered generation and the public policy of this State, as prescribed in Senate Bill 3, of promoting the development of renewable energy resources in this State.

13. It is reasonable and appropriate to grant the Certificate as conditioned herein.

14. It is reasonable and appropriate to accept registration of the Facility as a new renewable energy facility.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 – 2

These findings of fact are essentially informational, procedural and jurisdictional in nature and are not in dispute. These findings are supported by the application and the testimony of Pantego Wind witnesses Groberg and Ryder. A copy of the Certificate of Authority issued by the Secretary of State of North Carolina establishing the authority of Pantego Wind to do business in this State was attached as an exhibit to the application.

An examination of the application and testimony and exhibits of Pantego Wind's witnesses confirms that the Applicant has complied with all filing requirements of the law and Commission rules associated with applying for a certificate to construct a merchant plant in North Carolina.

Commission Rule R8-66 requires the owner, including an electric power supplier, of each renewable energy facility that intends for RECs it earns to be eligible for use by an electric power supplier to comply with G.S. 62-133.8 to register the facility with the Commission. Pantego Wind's filing includes certified attestations that: (1) the Facility is in substantial compliance with all federal and State laws, regulations and rules for the protection of the environment and conservation of natural resources; (2) the Facility will be operated as a new renewable energy facility; (3) Pantego Wind will not remarket or otherwise resell any RECS sold to an electric power supplier to comply with G.S. 62-133.8; and (4) Pantego Wind consents to the auditing of its books and records by the Public Staff insofar as those records relate to transactions with North Carolina electric power suppliers.

As recommended by the Public Staff, the Commission concludes that Pantego Wind has complied with the Commission's rules for registration as a new renewable energy facility.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 – 5

The evidence supporting these findings of fact may be found in the application and the testimony of Pantego Wind witness Groberg.

According to the application, and as Pantego Wind witness Groberg testified, the Facility will be constructed on approximately 11,000 acres in Beaufort County, North Carolina, near the communities of Pantego and Terra Ceia. The Project Area is located between SR 1612 (Terra Ceia Road) and SR 1619 (Christian School Road) to the southwest, extends north along SR 1261 (Old 97 Road) and continues east of Pantego along SR 1700 (Beech Ridge Road). A map of the proposed Project Area was included as an exhibit with the application.

Pantego Wind witness Groberg testified that the Facility will interconnect with the Dominion Pantego Substation through a generator lead line. The interconnection facilities will be located within the boundaries of property under the control of Pantego Wind. Invenergy is in discussions with North Carolina investor-owned utilities, electric cooperatives and municipal electric suppliers about the sale of the power and RECs generated by the Facility.

Construction of the Facility is expected to occur throughout 2012, with a projected commercial operation date in fourth quarter 2012. The expected service life of the Facility is 25 years. However, the Facility may be upgraded with more efficient equipment to extend the service life of the Facility to 30 years or longer.

Pantego Wind witness Groberg testified that the maximum capacity of the Facility will be 74 MW when taking into account losses in the collection system and the Facility's monitoring system. On-site wind data indicates the Facility's capacity factor will be 25% - 36% and that the estimated net production will be 174,000 - 250,000 MWh per year.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

This finding is supported by the application, the testimony of Pantego Wind witnesses Groberg and Ryder, the testimony of NCSEA witness Quinlan and the testimony of Public Staff witnesses Craig and Ellis. This finding is not disputed by any party.

Pantego Wind is a subsidiary of IWNA. IWNA is an affiliate of Invenergy. Pantego Wind was organized to develop the Facility. According to Pantego Wind witness Ryder, Invenergy will arrange the financing of the Facility, which will include a construction loan plus equity provided by Invenergy. Third-party tax investors will provide tax-equity financing once the Facility achieves commercial operation. According to Public Staff witness Craig, Invenergy has sufficient assets to attract the necessary capital to fund the Facility, and the company's ratio of debt to equity is reasonable. During his investigation, witness Craig learned that Invenergy has financed more than 20 wind generating facilities in Europe and North America. He testified that the parent company has extensive experience in funding similar projects and believes that the plan they have submitted to finance the Facility is viable. In addition, witness Craig stated that the projected financial statements for Pantego Wind are sound and reasonable. Witness Craig concluded that Pantego Wind is financially viable to construct the proposed Facility.

Pantego Wind witness Groberg testified concerning the managerial and technical capability of Invenergy. He testified that as an Invenergy subsidiary, Pantego Wind will have full access to the managerial and technical capabilities of Invenergy to construct and operate the Facility. Invenergy's business model is to operate the wind farms it builds. Invenergy currently manages over 1,200 operating wind turbines. Public Staff witness Ellis agreed that Pantego Wind and Invenergy have the managerial and technical capability to build and operate the Facility.

NCSEA witness Quinlan testified that Invenergy has demonstrated experience at developing, owning, and operating wind generation facilities and that Invenergy's managerial, technical and financial expertise makes the company well suited to develop, own and operate the Facility. Invenergy has placed into service 26 wind facilities totaling over 2,000 MW of capacity. Since 2001, Invenergy reports it has raised more than \$7 billion in financing and worked with more than 60 financial institutions worldwide.

Based on the foregoing, the Commission concludes that the extensive experience in the construction and operational control of wind energy facilities by Invenergy demonstrates that Pantego Wind has access to the financial and operational capability to successfully construct and operate the Facility.

EVIDENCE AND CONCLUSION FOR FINDINGS OF FACT NOS. 7 - 9

The evidence supporting these findings of fact is found in the application, the testimony and exhibit of Pantego Wind witnesses Groberg and Coppinger, the testimony of NCSEA witness Quinlan, the agency letters submitted independently and as a result of the State Clearinghouse review process, and the testimony of Public Staff witness Ellis.

Pantego Wind witness Groberg testified that Invenergy held a scoping meeting to get input and guidance from State and federal regulatory agencies about potential sites in April 2010. Representatives from USFWS, the Corps, NCWRC and multiple branches of DENR were in attendance. In July 2011, Invenergy held a second meeting with multiple State and federal agencies to update the agencies and to solicit feedback on an initial layout for the Facility. This meeting was attended by the Corps, branches of DENR, including the Division of Coastal Management (DCM), the Division of Water Quality (DWQ) and the Division of Marine Fisheries (DMF), as well as NCWRC and representatives of the Marine Corps and the Navy.

Pantego Wind witness Groberg testified that, in June 2011, Invenergy had a pre-application meeting with the Corps. Invenergy has completed its wetland delineations for impacts anticipated on land it has under lease or easement. The Corps will confirm Invenergy's wetland delineations. Invenergy will have to obtain a permit under Section 404 of the Clean Water Act from the Corps for the Facility. The Corps will determine the type of permit (individual or nationwide) that is appropriate for the Facility.

Pantego Wind witness Groberg testified Invenergy is working with DWQ to determine the need for additional permits or authorizations from DWQ. Invenergy submitted a request for jurisdictional determination of Coastal Area Management Act (CAMA) resources to DCM. In a letter dated August 29, 2011, DCM stated there was one crossing that would require a CAMA General Permit. Invenergy continues to discuss with DENR other permits, approvals and determinations that may be required for the Facility.

Pantego Wind witness Coppinger testified that the tiered approach Invenergy uses to develop its projects is designed to develop a body of information about a site. She testified that the combined use of multiple data sources creates a scientifically valid baseline from which to evaluate risk, determine if additional studies are needed, develop avoidance and minimization measures and, if warranted identify off-site mitigation to compensate for unavoidable impacts. Witness Coppinger testified that Invenergy is using the tiered approach recommended by the USFWS and has been in consultation with USFWS since April 2010. In February 2011, Invenergy completed a desktop analysis of the Project Area. From February 2011 through November 2011 Invenergy conducted a multi-season bird survey to develop a species list and to collect bird abundance data for the Project Area. Invenergy initiated additional bird studies beginning in November 2011, which are continuing through March 2012. The studies include an avian point count study, a tundra swan use study, aerial surveys, and a red-cockaded woodpecker habitat assessment. The studies are designed to describe the temporal and spatial use of the study area by birds; determine locations in and around the Project Area of tundra swan roosts, foraging habitat and daily flight routes used between the roosts and foraging grounds; verify the presence and status of previously identified bald eagle nests; locate new bald eagle nests or nest building activities; identify the species of raptors nesting and the nest density occurring within the Project Area; identify locations and estimate sizes of tundra swan and other waterfowl flocks; and document other wildlife observed in the Project Area through incidental observations. Invenergy has also reviewed environmental studies of portions of Beaufort County previously completed by the Navy, in connection with the proposed outlying landing field.

According to witness Coppinger, based on all of the study data, and in consultation with wildlife agencies, Invenergy will determine if additional studies will be needed. Invenergy will also undertake steps to avoid, minimize and, if necessary, mitigate impacts to birds and bats. Post-construction monitoring for birds and bats will be conducted and a post-construction monitoring and adaptive management plan will be developed in consultation with the USFWS. Invenergy will also develop an avian and bat protection plan in consultation with the USFWS.

Pantego Wind witness Groberg testified that the USFWS enforces federal laws that protect avian species, including the ESA, the BGEPA, and the MBTA. Pantego Wind witnesses Groberg and Coppinger testified that Invenergy is developing the Facility in consultation with USFWS, including consultation on site selection, bird study protocols, the avian and bat protection plan, and the post-construction monitoring and adaptive management plan. Witness Groberg and witness Coppinger testified that there are no identified endangered species in the Project Area, and further studies will be conducted to confirm the absence of habitat for ESA protected species. With respect to the BGEPA, Invenergy is conducting further studies and is in ongoing discussions with USFWS to determine the potential for impacts to bald eagles. There are voluntary "incidental take" permits under the BGEPA which are authorized by rule, see 50 CFR 22.26, and Invenergy's studies will help determine whether a voluntary permit under the BGEPA is warranted. With respect to the MBTA, Invenergy is

conducting further studies to evaluate for impacts to migratory birds. There is no incidental take permit under the MBTA for which Invenergy can apply.

While the permits under the ESA and BGEPA are voluntary, compliance with the law is not, and Pantego Wind witnesses Groberg and Coppinger testified that Invenergy will comply with all federal and State laws, rules and regulations in the construction and operation of the Facility. The ESA and BGEPA provide for criminal and civil penalties for violation of the law, and the MBTA provides for criminal penalties. Public Staff witness Ellis testified that neither the Public Staff nor the Commission has the expertise to resolve the environmental issues raised regarding the Facility and that the Commission traditionally leaves these matters to the State and federal agencies that have been given statutory responsibility for such issues. Witness Ellis also testified that the Public Staff is satisfied with the dialogue underway between the Applicant and environmental agencies, and that if the issues cannot be resolved to the satisfaction of the agencies, the agencies will take appropriate action within their statutory authority.

The Commission has received numerous public comments in this proceeding from members of the general public, as well as statements from State and federal agencies. While many of the public comments have been filed in support of the project, other comments point out that significant environmental concerns exist regarding the construction and operation of the Facility. At its November 17 and December 6 hearings, the Commission heard testimony from members of the public, including Audubon North Carolina, Friends of Pocosin Lakes National Wildlife Refuge, and the Southern Environmental Law Center, about the possible environmental impacts of the Facility. Specifically, the northwestern 70% of the Project Area lies within the Pungo-Pocosin Lakes Important Bird Area (IBA), as identified by Audubon North Carolina. This IBA identifies wintering waterfowl habitat, which includes both the Pungo and Phelps lakes and a large area of surrounding fields that are used for foraging. Tens of thousands of Tundra Swans and several thousands of Snow Geese roost on Pungo Lake and forage in the fields. Concerns were expressed that given the numbers of birds that use the Project Area, significant migratory bird mortality will likely occur unless avoidance and other mitigation measures are developed and implemented. A number of people urged the Commission to delay the issuance of a Certificate until bird and bat studies are completed and the full possible impact of the Facility known.

The Commission appreciates the public participation in this matter and recognizes the unique nature and resources of the Albemarle-Pamlico Peninsula. The Commission concludes, however, that these issues will be better addressed by agencies with sufficient expertise and regulatory authority in the areas of environmental and natural resource protection, including, but not limited to, the USFWS, the Corps, and DENR. To ensure that the potential environmental issues are thoroughly addressed, the Commission has conditioned the certificate to keep the Commission, other agencies, and the public fully informed on the efforts being taken to minimize any potential environmental impacts resulting from the Facility.

EVIDENCE AND CONCLUSION FOR FINDINGS OF FACT NO. 10

The evidence supporting these findings of fact is found in the application, the testimony of NCSEA witness Quinlan, the testimony of Public Staff witness Ellis, and the agency letters submitted independently and as a result of the State Clearinghouse review process.

Public Staff witness Ellis recommended that the application be approved subject to the condition that Pantego Wind will not assert that issuance of the Certificate in any way constitutes authority to exercise any power of eminent domain and that Pantego Wind will abstain from attempting to exercise such power. He also recommended that the Certificate be subject to Commission Rule R8-63(e) and (f) and all orders, rules and regulations as are now or may hereafter be lawfully made by the Commission. The Commission concludes that this condition is appropriate and should be adopted. The Commission also concludes that in its annual reports filed under Rule R8-63(f), the Applicant shall identify the number and location of turbines installed during the applicable year and the cumulative nameplate capacity of all such turbines. The Applicant's compliance with the conditions of the Certificate is subject to the Commission's continuing jurisdiction.

Agencies within DENR requested additional information on the environmental impacts of the Facility. Although obtaining all environmental approvals and permits is not necessary prior to Commission issuance of a Certificate, Public Staff witness Ellis and NCSEA witness Quinlan recommended, and the Commission so concludes, that issuance of the Certificate will be conditioned on compliance with all applicable laws and regulations, including the Endangered Species Act (16 USC § 1531 et seq.), the Migratory Bird Treaty Act (16 USC § 70-1 et seq.), the Bald and Golden Eagle Protection Act (16 USC § 1531 et seq.), and any environmental permitting requirements.

Public Staff witness Ellis recommended that plans related to wildlife be filed with the Commission, and that the Applicant file an updated site layout. Ongoing environmental studies and consultation with environmental agencies, and final turbine selection may alter the layout of the Facility. The Commission concludes that issuance of the Certificate will be conditioned on the Applicant, no less than 45 days prior to erecting turbines at the Facility, filing the following items with the Commission:

- (i) An avian and bat protection plan, prepared in consultation with the USFWS, which shall include summary data and an analysis of the pre-construction bird and bat surveys conducted by the Applicant and a history of the consultation between the USFWS and the Applicant.
- (ii) A post-construction monitoring and adaptive management plan prepared in consultation with the USFWS.

(iii) A letter summarizing the Applicant's ongoing consultation with wildlife agencies and attaching the letter correspondence between the Applicant and the USFWS concerning both the avian and bat protection plan and the post-construction monitoring and adaptive management plan.

(iv) An updated site layout.

The Applicant shall not commence erection of turbines until the Commission has completed its review of items (i) through (iv) above and issued an order finding that these conditions have been satisfied. If the Commission has not issued such an order within 30 days of the filing of all four of the documents required above, the conditions shall be deemed to have been satisfied.

The Commission further concludes that issuance of the Certificate will be conditioned on Pantego Wind filing with the Commission, on an annual basis, a letter describing the progress of any post-construction monitoring and any adaptive management strategies implemented as called for in the post-construction monitoring and adaptive management plan developed in consultation with the USFWS. The Applicant shall include with this letter a copy of its annual report to the USFWS describing the results of each year of post-construction monitoring called for in the post-construction monitoring and adaptive management plan.

EVIDENCE AND CONCLUSION FOR FINDINGS OF FACT NOS. 11-12.

The evidence supporting these findings of fact is found in the application, the testimony and exhibit of Pantego Wind witness Groberg, the testimony of NCSEA witness Quinlan and the testimony of Pubic Staff witness Ellis.

Pantego Wind witness Groberg testified that the REPS was intended to diversify the resources used to reliably meet the energy needs of consumers in the State, provide greater energy security through the use of indigenous energy resources available within the State, encourage private investment in renewable energy and energy efficiency and provide improved air quality and other benefits to energy consumers and citizens of the State. The Facility will help achieve all four of these goals. Approving construction of the Facility will enable a new, clean, renewable energy resource with significant economic benefits to meet the growing demand for electricity in the State and in the region.

Pantego Wind witness Groberg also testified that the estimated net production of energy from the Facility will be 174,000 – 250,000 MWh per year and that the Facility will earn RECs that may be sold to the electric power suppliers to comply with the REPS requirements. Pantego Wind witness Groberg testified that Invenergy is in discussions with North Carolina electric power suppliers regarding the sale of the power and the RECs generated by the Facility.

NCSEA witness Quinlan testified that the development of the Facility clearly meets many of the objectives established by the REPS. The Facility will diversify North Carolina's energy resources as the State currently lacks a completed utility-scale wind generation facility. Witness Quinlan further testified that with no air emissions, wind turbines contribute to improved air quality.

Public Staff witness Ellis testified that the Facility is needed to provide renewable energy that will help electric power suppliers in North Carolina meet the requirements of Senate Bill 3. Witness Ellis testified that energy generated by the Facility would displace energy generated with fossil fuels such as coal, oil and natural gas, which are a source of air pollutants such as SO₂, NO_x, mercury, fine particulates, as well as carbon dioxide, a major contributor to greenhouse gases. Witness Ellis also testified that North Carolina currently has no deliverable supply of indigenous fossil fuels and that 100% of these energy sources are currently imported into the State. Development of the Facility would keep money in the State that would otherwise be used to pay for the importation of these fossil fuels. If approved and built, the Facility will be North Carolina's first or second largest wind generator in the State.

The Commission concludes that there has been a sufficient showing of need for the Facility based on the public benefits of wind-powered generation and the public policy of this State, as prescribed in Senate Bill 3, of promoting the development of renewable energy resources in this State.

EVIDENCE AND CONCLUSION FOR FINDINGS OF FACT NO. 13 - 14

Commission Rule R8-63(e) and (f) set forth a number of additional conditions to be imposed on a certificate granted by the Commission, including that:

(1) The certificate shall be subject to revocation if (a) any of the federal, State, or local licenses of permits required for construction and operation of the generating facility is not obtained or, having been obtained, is revoked pursuant to a final, non-appealable order; (b) required reports or fees are not filed with or paid to the Commission; and/or (c) the Commission concludes that the certificate holder filed with the Commission information of a material nature that was inaccurate and/or misleading at the time it was filed; provided that, prior to revocation pursuant to any of the foregoing provisions, the certificate holder shall be given thirty (30) days' written notice and opportunity to cure.

(2) The certificate must be renewed if the Applicant does not begin construction within two years after the date of the Commission Order granting the certificate.

(3) A certificate holder must notify the Commission in writing of any plans to sell, transfer or assign the certificate and the generating facility.

(4) Progress reports, including any revisions in cost estimates, shall be submitted on an annual basis until construction is completed. The first annual progress report shall be due one year from the date of this Order.

For all of the reasons explained in this Order and subject to the conditions imposed herein, the Commission finds that the construction of the Facility is in the public interest and justified by the public convenience and necessity as required by G.S. 62-110.1. The Commission further finds good cause to accept registration of the Facility as a new renewable energy facility. Pantego Wind shall annually file the information required by Commission Rule R8-66 on or before April 1 of each year. To the extent that Pantego Wind is not otherwise participating in a REC tracking system, it will be required to participate in the NC-RETS REC tracking system in order to facilitate the issuance of RECs.

IT IS, THEREFORE, ORDERED as follows:

1. That a Certificate of Public Convenience and Necessity should be, and is hereby, granted to Pantego Wind for the construction of a wind turbine electric generating facility of up to 80 MW, consisting of wind turbines and associated equipment, in the Project Area, which is located in Beaufort County, North Carolina. This Order shall constitute the Certificate. This Certificate is subject to the following conditions:

(a) The Certificate is not intended to confer the power of eminent domain under North Carolina law for the construction of Facility certificated herein, and Pantego Wind and its successors shall abstain from attempting to exercise any power of eminent domain under North Carolina law to construct the Facility authorized by the Certificate.

(b) The Facility shall be constructed and operated in accordance with applicable laws and regulations, including the Endangered Species Act (16 USC § 1531 et seq.), the Migratory Bird Treaty Act (16 USC § 70-1 et seq.), the Bald and Golden Eagle Protection Act (16 USC § 1531 et seq.), and any environmental permitting requirements.

(c) No less than 45 days prior to erecting turbines at the facility, the Applicant shall:

(i) prepare, in consultation with the USFWS, an avian and bat protection plan, which shall include summary data and an analysis of the pre-construction bird and bat surveys conducted by the Applicant and a history of the consultation between the USFWS and the Applicant, and file the plan with the Commission;

(ii) prepare, in consultation with the USFWS, a post-construction monitoring and adaptive management plan and file the plan with the Commission;

(iii) file with the Commission a letter summarizing the Applicant's ongoing consultation with wildlife agencies and attaching the letter correspondence between the Applicant and the USFWS concerning both the avian and bat protection plan and the post-construction monitoring and adaptive management plan; and

(iv) file with the Commission an updated site layout.

(d) The Applicant shall not commence erection of turbines until the Commission has completed its review of items (i) through (iv) of condition 1(c) above and issued an order finding that these conditions have been satisfied. If the Commission has not issued such an order within 30 days of the filing of all four of the documents required in condition 1(c) above, the conditions shall be deemed to have been satisfied.

(e) The Applicant shall file with the Commission, on an annual basis, a letter describing the progress of any post-construction monitoring and any adaptive management strategies implemented as called for in the post-construction monitoring and adaptive management plan developed in consultation with the USFWS. The Applicant shall include with this letter a copy of its annual report to the USFWS describing the results of each year of post-construction monitoring called for in the post-construction monitoring and adaptive management plan.

2. The Certificate is subject to the conditions of Commission Rule R8-63(e) and (f) and all orders, rules and regulations as are or may hereafter be lawfully made by the Commission. In its annual reports filed under Rule R8-63(f), the Applicant shall identify the number and location of turbines installed during the applicable year and the cumulative nameplate capacity of all such turbines. The Applicant's compliance with the conditions of the Certificate is subject to the Commission's continuing jurisdiction.

3. That the registration by Pantego Wind of the Facility, a wind turbine electric generating facility of up to 80 MW in Beaufort County, North Carolina, as a new renewable energy facility shall be, and hereby is, accepted.

4. That Pantego Wind shall annually file the information required by Commission Rule R8-66 on or before April 1 of each year.

ISSUED BY ORDER OF THE COMMISSION.

This the _____ day of _____, 2012.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount, Deputy Clerk