



Honorable Senator Phil Williams
Room 733
State House
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Montgomery, Alabama 36130
(334) 242-7857

January 15, 2014

To the Honorable Senator Williams,

We hope this letter finds you well. We would like to take this opportunity to provide comments to your proposed legislation: SB12 "Alabama Wind Energy Conversion Systems Act of 2014."

As we have discussed in prior meetings and discussions with you, Pioneer Green is concerned that, as written, SB12 will not be effective in regulating wind projects and encouraging a new and thriving industry to Alabama. In fact, we expect that unless substantial changes are made, the bill will ensure that very little or no wind energy projects are constructed in the state.

Pioneer Green suggests the bill be revised to adopt ways of regulating wind energy development in Alabama that conform to wind energy standards commonly accepted and practiced throughout the country. As you know, Pioneer Green is not opposed to regulation of wind energy project development, and we certainly agree that wind energy development thrives in many highly regulated markets across the country such as California, New York and Oregon. If it is your judgment to pursue this same path for Alabama, we believe it can be successful, provided it is done with sensible regulation that utilizes the successful approaches already proven in these states. We would recommend your office review the legislation that has been enacted in these states (and others with similar regulatory policies) if you would like to adopt this approach.

We have outlined below several provisions included in SB12 that we believe to be unreasonable and that, if passed into law, would not only terminate the wind projects we are currently developing, but would also prevent nearly all future wind energy development in Alabama, and thus preclude the creation of new jobs and millions of dollars in economic development benefits at the state and local level.

- **Section 5. "It shall be unlawful to construct, erect, install, alter, operate, or locate a wind energy conversion system in this state without first obtaining permits from the Alabama Department of Environmental Management pursuant to this act."**
 - We note that other states that have used a state-wide permitting body have created a new board or committee of appointed, neutral energy experts. This puts SB12's approach of using an environmental agency with no wind energy expertise or prior experience at odds with proven and successful approaches. As written, we oppose this provision.

- We would support legislation that ensured that a permitting body like ADEM would be required to create a new division that was devoted to wind energy project development (or renewable energy development) and staffed by appointed, neutral energy experts.
- **Section 7 (a). “An applicant shall maintain financial assurance in an amount equal to the costs associated with the reclamation plan and the removal of abandoned or unused wind energy conversion systems.”**
- **Section 7 (b). “In addition to the financial assurance required in subsection (a), an applicant shall maintain financial assurance in the amount of one million dollars (\$1,000,000) to cover any liability for damages to adjoining property and any other damages under law. The financial assurance mechanism shall remain in full force and effect during the construction phase of any and all systems covered under the permit and shall be maintained for the life of the system.”**
 - We are opposed to language included in 7 (a) and 7 (b) because these requirements are not in line with most other ordinances across the U.S. and because the provisions would unfairly regulate wind energy generation compared to other forms of electric generation (i.e. coal, nuclear, natural gas, hydro, etc.) in Alabama that are not faced with this requirement.
 - We recommend a comparison of other state-wide ordinances that allow for responsible wind energy development and contain relevant provisions that are less burdensome on projects while ensuring responsible outcomes.
- **Section 8 (i). “The noise levels measured at the property line of the property on which the system has been installed shall not exceed 40 decibels.”**
 - Measuring sound at a receptor (a residence, business, or occupied structure), as opposed to a property boundary, is sensible as that is where people are generally found. Furthermore, given the size and proximity of real property parcels in Alabama, setbacks from property boundaries can easily result in a complete prohibition on wind energy development, even in areas where there are no homes or occupied structures at all.
 - We would support a 50 dba noise setback from a turbine to the nearest receptor.
- **Section 8 (j). “A wind energy conversion system may not encroach upon adjacent properties as determined by a measure of 2,500 feet from the center-mass base of the system to the nearest edge of the adjacent property.”**
 - If passed into law, this 2,500 feet (nearly a half-mile) setback would effectively create a moratorium for all but a small number of future wind energy project developments in Alabama. Furthermore, many wind energy ordinances refer to a sound setback (rather than a linear distance setback as highlighted in Section 8 (j)), but such setbacks are typically measured from a turbine to a receptor and not to a property boundary. Section 8 (j) would create a much greater setback distance than is found in most state/local ordinances, and one that is out of line with peer-reviewed, scientific

findings that typically recommend a minimum decibel level that should not be exceeded as measured from the exterior of a receptor.

- We are unaware of any other industries, much less any operating electric generating facilities/power plants, in the state of Alabama that must adhere to such a strict setback ordinance. For example, in-state operating coal mines, which generate ample levels of noise and pollution, must be 300 feet from a residence and 100 feet to the nearest property boundary.
 - We would support a 1,500 foot setback from a turbine to the nearest receptor.
- **Landowner Waiver Option**
 - Absent from SB12 is the option for both participating and non-participating landowners to waive any setback requirement. Should SB12 pass without this option, landowners would be completely stripped of their right to pursue wind energy development opportunities on their own property in instances where their land holdings are not large enough to avoid the property boundary setbacks as written in Section 8 (j). That is, a private citizen could be prevented from making an investment on his own land, merely due to the shape and size of his property boundary.
 - We recommend that any regulation of wind energy in the state of Alabama should include an option for participating and non-participating landowners to waive wind energy setback requirements.

It is critical to look at how different states across the country regulate the development, construction and operations of wind projects. Some states have created state-wide wind energy development requirements, while others follow a small-government approach authorizing counties to regulate development if they so choose. Both approaches have seen responsible wind project development.

There are currently over 45,000 wind energy turbines in operation across the country, accounting for over 60,000 megawatts (MWs) of generating capacity and supplying anywhere from 3-6% of our nation's electricity demands on any given day. The industry has witnessed a 30% annual growth rate over the past five years with an injection of \$18 billion in private investment per year over that same period. This has resulted in an influx of homegrown jobs and economic development in many communities across dozens of states.

Some of this growth has occurred in more liberal states, such as California, Oregon and New York, which typically regulate wind energy both at the state and local level by enforcing guidelines established by environmental quality standards (for example the California Environmental Quality Act). On the other hand, a large portion of this growth has occurred in more conservative states such as Texas, Iowa, Kansas, and New Mexico, which depend on either a free-market approach or provide voluntary wind energy development guidelines that counties, cities, towns and/or municipalities can adopt. In these states, it is the local governing authority that can establish zoning restrictions to regulate wind energy development. This approach allows landowners the ability to pursue different ways of profiting from their land in concert with local approvals, without depending on state agencies to determine how private property be utilized. And in many such instances, the local governing authorities choose to



refrain from passing any zoning regulations because they prefer to leave the land rights of private citizens intact. In fact, Texas, which has an unregulated market, has emerged as the leading wind energy producing state in the nation with more than 116 operating projects, totaling over 12,000 MWs of generating capacity and representing over \$20 billion in capital investment.

We welcome further discussion on the subject of wind energy and determining an appropriate regulatory framework for wind energy development in Alabama by examining successful approaches adopted in other markets that already host large amounts of wind energy generation.

Sincerely,

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