PIONEER
GREEN ENERGY

Sen. Phil Williams
Room 733, State House
11 South Union Street
Montgomery, Alabama 36130
Via email: philw.williams@alsenate.gov

February 24, 2014

Subject: Senate Bill 12

Dear Senator Williams,

We appreciate the opportunity to provide input to you on this bill, both in writing and in person. As you know Pioneer is greatly concerned that **SB 12 amounts to a moratorium on wind energy development in Alabama, and we remain very concerned that if important changes are not made to this bill it will cost Alabama critical jobs, investment and tax base, particularly in rural areas most in need of new economic activity**.

The following points in SB 12 are the ones that we have the most concern about. We have incorporated these points (in yellow) into the most recently amended version of SB 12, attached hereto. Should you be accepting of these changes, we would support SB 12's subsequent vote and passage.

- Noise Setbacks / Section 7(m): Noise levels of 50 decibels average are acceptable, but noise should be measured at any "Receptor," where "receptor" is defined as "any occupied residence, place of business, school, house of worship or other regularly occupied building or structure," instead of at the property line. Given the size of most real property parcels in Alabama, requiring the 50 decibel average limit to be measured at "the property line of the property on which the system has been installed" will create a new group of persons with private property veto rights over any project. This will also make most wind projects in Alabama unable to be permitted except for those few cases where large property owners own multiple sections of contiguous acreage. The language also subjects wind projects to state regulation and private property veto rights that no other industries have been subjected to (for example, the shooting range in Cherokee County or coal mines, which both operate under no sound restrictions whatsoever other than nuisance law). Finally, seldom do we see projects across the country and/or globe that are regulated by such strict sound restrictions. Certainly there are outlier jurisdictions that have passed regulation requiring such noise limitations to a property boundary line, but those are few and far between and rarely allow for wind development. Our suggested change would still apply a strict litmus test to future wind development in Alabama and adheres to more reasonable standards seen across our country that have allowed for substantial and responsible development.
- Encroachment Setbacks / Section 7(n)(1): Encroachment setbacks should be 5 times the height of the tower from any receptor, where "receptor" means "any occupied residence, place of

business, school, house of worship or other regularly occupied building or structure." The current language requiring setbacks from "residential or commercial structures or public use areas" is too vague and could be interpreted to include things like deer blinds, RV/hunting areas and farmed tracts.

- Airport Hazards / Section 8: This section should be revised to require applicant to obtain written approval from the Alabama Department of Transportation only if the applicant has not already obtained "Determinations of No Hazard to Air Navigation or equivalent designation" for each turbine location from the FAA pursuant to 14 CFR Part 77, since the FAA wind turbine review process includes circularization to all airports and air regulatory interests. The FAA is very experienced at assessing wind turbine locations and air safety and has a very rigorous public review process in place.
- Rulemaking Scope / Section 5(a): The sentence "At a minimum, the rules shall address the following:" should be revised to read "The rules shall address only the following:". The statute should not allow the PSC to legislate its own view, but rather only to develop rules implementing what is required by the statute.
- Rulemaking Timeline / Section 5(a): SB 12 should require the PSC to adopt regulations for the permit application process within 90 days, not 180 days, of the bill becoming law. The application requirements are straightforward and it should not take 180 days to create the process.
- TVA NEPA Approval / Section 5(e): Wind projects that have been subject to NEPA review by TVA, or any other federal agency, should not be required to have the PSC reproduce the same process for a state permit. A new section should be added at 5(e) specifying that the PSC will approve or waive any application from a project for which Tennessee Valley Authority (TVA), or any federal agency, has issued a "Finding of No Significant Impact" in accordance with the "National Environmental Policy Act."
- Ex post facto / Section 5(e): The bill should clarify regarding ex post facto issues its treatment of projects which have spent substantial funds in reliance on existing Alabama law prior to the bill taking effect. SB 12 should clearly provide that projects which have already 1) entered into the generation interconnection queue with Alabama Power Company or TVA, or any other utility, 2) started construction and/or 3) received approval under NEPA should be exempted from the application requirements.
- Double Coverage on Financial Assurance / Section 6: The bill should clarify that the PSC will require no double-coverage of financial assurance where the applicant has provided such assurance already to the landowners, not just to local government entities.

We appreciate your consideration of our suggestions and look forward to continuing to work with you to ensure responsible wind development and bringing all the benefit of clean energy jobs, investment and tax base to your districts and elsewhere in Alabama.

Best,

Andrew Bowman
President, Pioneer Green Energy, LLC

cc: Members of the Alabama Legislature