

Virginians for Responsible Energy

April 4, 2016

June M. Jennings
Inspector General
Office of the State Inspector General
P.O. Box 1151
Richmond, VA 23218

SENT VIA U.S. MAIL AND EMAIL TO: june.jennings@osig.state.va.us and
osig@osig.state.va.us

RE: Request for an Investigation into the Actions of the Secretary of Natural Resources, Molly Ward

Dear Inspector General Jennings:

We are writing to request that your office initiate an investigation into the actions of the Secretary of Natural Resources for the Commonwealth of Virginia, Molly Ward. Specifically, we are requesting that you investigate Secretary Ward's actions with regard to a proposed industrial wind facility in Botetourt County, known as Rocky Forge, pursuant to Virginia Code section 2.2-309.

On January 21, 2016, Secretary Ward, in her capacity as Secretary of Natural Resources, wrote a letter on government letterhead to the Botetourt County Board of Supervisors supporting the application for a permit and special exception permit for the Rocky Forge wind facility. The permits were sought by a company called Apex Clean Energy, LLC ("Apex"), which is led by a significant donor to Governor Terry McAuliffe. Secretary Ward's letter in support of Apex was written and submitted during the Botetourt County review process, prior to the county's final vote, and prior to the review of the proposed project by state agencies under her authority, such as the Department of Environmental Quality.

The fact that a high-ranking political appointee of Governor McAuliffe, with authority over state agencies involved in the state approval process, interjected herself into the county approval process for the benefit of a private company raises legal and ethical issues. It is also concerning that any of Governor McAuliffe's appointees would provide state support for a private business given the recent fiasco surrounding the Governor's Opportunity Fund in Appomattox, Virginia. The failure of state agencies to vet or review the history of Lindenburg Industry, LLC, cost Virginia taxpayers over \$1 million.

Ms. Ward's job is to protect the interests of the residents of Virginia, the natural beauty of the state, and the integrity of the processes overseen by the agencies that report to her. As detailed below, Apex, the company Ms. Ward is supporting, has an extensive history of litigation with the residents of states where it has done business. The project at issue has undergone no independent analysis to verify any of Apex's claims about its economic viability and the impact of industrial wind turbines on the environment. Apex's CEO, Sandy Reisky, has made significant donations to Governor McAuliffe and to organizations that support the Governor. Those donations total at least \$25,000.

We are asking your office to review and investigate the propriety and legality of Secretary Ward's actions as it relates to two specific issues:

- 1) The potential and actual impact of Secretary Ward's influence on state agencies under her authority, prior to their review of the Rocky Forge wind facility; and
- 2) Secretary Ward's involvement in the Botetourt County review of the proposed Rocky Forge project, and her influence on the county's process.

THE IMPACT ON STATE AGENCIES UNDER SECRETARY WARD'S AUTHORITY

As Secretary of Natural Resources, Molly Ward oversees six agencies responsible for protecting Virginia's natural resources, including the Department of Environmental Quality, the Department of Conservation and Recreation, the Department of Game and Inland Fisheries, and the Department of Historic Resources. Those agencies also happen to be the agencies that Apex must work with to gain approval of the project from the state.

Given the potential environmental impact of this project, it would be expected that Apex would face rigorous scrutiny in gaining approval from the state before erecting 25 industrial wind turbines, each 550 feet tall, on a mountain ridgeline in Botetourt County, which will be visible across surrounding counties. However, in order to obtain approval to build the proposed facility at Rocky Forge, Apex is utilizing a process known as "permit by rule." As a result, the normal scrutiny for a project as massive as the Rocky Forge wind facility is significantly diminished. Apex needs only to address a few specific issues in order to receive state permission. The role of agencies, such as the Department of Environmental Quality, is limited to making sure those specific issues are properly addressed prior to approving the project.

Because the role of state agencies is limited in the permit by rule process, the importance of the oversight provided by those agencies is magnified. It is critical that the statute and regulations be followed during the process. Secretary Ward's action has undermined and circumvented the process. Because Secretary Ward has already indicated her support for the project, in writing, any objective analysis or scrutiny by the Department of Environmental Quality or other agencies has been compromised. The concern here is that a political appointee

has used her position to circumvent the work of agencies statutorily created to protect Virginia's natural resources.

We already have documentation that the process has been compromised. Attachment 1 is copy of an email demonstrating that the Department of Environmental Quality has altered the process for Apex in order to make the process faster and minimize public input and scrutiny.

On March 18, 2016, an Apex representative, L. Preston Bryant, Jr., wrote the Director of the Department of Environmental Quality, David Paylor (also an appointee of Governor McAuliffe), to notify Director Paylor that a Department of Environmental Quality staff member might potentially raise a concern about how the normal permit process had been modified for Apex. Director Paylor responded that he had already informed the staff that the process would be modified for Apex (see Attachment 1).

There are two major concerns raised by the email. First, the email demonstrates that the process has been modified for Apex. The modified process does not meet the requirements of the regulations under the permit by rule process. Second, the individual responsible for administrating the process and apparently deciding how the process will be conducted, Director Paylor, is communicating directly with an applicant. Further, the applicant apparently had influence on the process and how it was to be conducted. Apart from learning about this email, how was the public going to find out that the process had secretly been altered? Also, what other portions of the process have been manipulated to favor Apex, at the expense of the residents of five counties?

The impact of Secretary Ward's letter has not been limited to agencies under her control. Another Virginia agency originally had declined to review and comment on the project because of Secretary Ward's letter. The Virginia Outdoor Foundation (VOF) is charged with promoting the preservation of open-space land and preserving the natural and scenic beauty of Virginia. The Rocky Forge wind facility is a massive project that, according to Apex, will impact the viewshed and scenic background of rural Virginia across many of miles surrounding the affected mountaintop. Such a project would normally be of interest to VOF given its statutory mission. However, at its March 24, 2016 Board of Trustees meeting, VOF announced that it had determined that it could not even comment on the impact of the project because the project had already been approved by Secretary Ward.

The Board made that determination based on Secretary Ward's January 21, 2016 letter to the Botetourt County Board of Supervisors. (See, Attachment 2.) Due to concerns raised by members of the public at that meeting, VOF has agreed to reevaluate the effect of Secretary Ward's letter on VOF's ability to comment at this stage; however, VOF's lack of involvement in the Botetourt County approval process (see below) is an irreparable harm.

SECRETARY WARD'S INVOLVEMENT WITH THE BOTETOURT COUNTY APPROVAL PROCESS

As discussed below, Secretary Ward's actions with regard to Botetourt County were the use of a public office to influence a government process for the benefit of a significant political donor to Governor McAuliffe.

Apex has a well-documented history nationwide of going into states, starting the process of building industrial wind facilities, even when localities oppose such facilities, and then selling the projects to third parties, leaving behind a trail of lawsuits, and economic problems.¹ In the case of the proposed Rocky Forge wind facility, the facility will not be economically viable because of the lack of consistent wind in the area – but the existence of tax credits and depreciation make such a project potentially profitable for Apex regardless of its true economic performance and the long term impact on the state and its residents.

In the case of the Rocky Forge wind facility, Apex's representatives spent months "working with" county leaders while the company's permit application was pending. There was no independent analysis done of the impacts on nearby residents, the potential harm to adjoining areas, or the actual viability of the project from an energy-producing perspective so that costs and benefits could be accurately weighed. Instead, all of the studies were done by companies and consultants hired by Apex in an effort to facilitate the approval of the project.

Botetourt County's only effort to obtain an independent review of Apex's assertions about the project was flawed from the start – because the "independent" consultant that recommended that Botetourt proceed with issuing a permit was not independent. One of the criteria used by Botetourt County to hire the independent company was that it not have any connection with Apex. The night before the Botetourt County Board of Supervisors was set to vote on the project, it was disclosed that the supposedly independent review of the project was authored by a former employee of the owner of Apex. This fact was only disclosed to the public after a Rockbridge County resident discovered the connection and brought it to the attention of Rockbridge government officials. At the meeting of the Botetourt County Board of Supervisors, the author of the report acknowledged that she had in fact worked for Apex's CEO in the past,

¹ See, e.g.: **Oklahoma**, <http://newsok.com/article/5336432>, <http://newsok.com/article/3678347>, <http://newsok.com/article/5402630>, and <http://newsok.com/article/5387024>; **New York**, <http://wivb.com/2015/04/02/residents-speak-out-against-clean-energy-project/>, <http://www.twcnews.com/nys/buffalo/news/2015/12/9/barker-wind-turbine-meeting.html>, <http://www.oreanshub.com/news2015/Lighthouse-Wind-detractors-stay-committed-to-fighting-turbines-by-lakeshore.htm>, and <http://www.buffalonews.com/city-region/all-niagara-county/foes-cite-wind-power-firms-failure-to-agree-to-state-mandated-code-of-conduct-for-somerset-project-20160306>; and **Illinois**, <http://www.newsgazette.com/news/local/2014-04-12/ikea-purchase-wind-farm-wont-delay-construction.html>, <http://www.windaction.org/posts/42013-ikea-apex-wind-farm-non-payment-causes-liens-filed-against-localfarmers#.VqTI3RYo41t>, and <http://edgarcountywatchdogs.com/2015/06/more-liens-against-hoopeston-wind-apex/>. ² http://www.botetourtva.gov/government/documents/bos/bos_minutes_012616.pdf.

but provided no explanation as to why that information was not disclosed to Botetourt County or its residents.²

At that meeting, Secretary Ward's letter was not only useful in assisting Apex to gain county approval for the proposed project, it was used to dissuade citizens from speaking against the project. In its presentation before the Botetourt County Board of Supervisors to secure approval for the permit, one of Apex's centerpieces was the letter from Secretary Ward. The letter, supporting Apex on government letterhead, was put on an overhead screen during Apex's presentation. The letter not only helped Apex secure approval, it caused individuals signed up to speak against the project at the meeting to decline to speak or to leave. They did so because they believed the project was already approved by the state and, therefore, there was no point to objecting to it at the county level.

After Botetourt County approved the permit for Apex, third party analyses were done, revealing that the proposed wind facility will not produce anywhere near the output promised by Apex. The third-party analyses are based on Apex's own numbers. (The analysis was done by poring over presentations made by Apex in its application - despite the fact that Apex has refused to release the raw data on which it based those numbers, in response to a formal request from our group.) The data shows that the facility at full capacity will produce less than 13% of the capacity claimed. (PJM, the infrastructure entity that is responsible for the project connecting to the power grid, has authorized the building of a facility that can transmit a maximum of 10.1 MW. Apex asserted to Botetourt County that the facility would have a capacity of 75 MW.) (See, Attachment 3.)

CONCLUSION

If allowed to proceed, the Rocky Forge wind facility will have enormous actual and potential impacts on the environment, watersheds, wildlife, and viewsheds in five Virginia counties – many of which are the most scenic in the state. The construction impacts of a project of this scale alone are massive. The long-term impacts will be felt for decades. To date, there has been no independent analysis of any of those risks, and because of Secretary Ward's actions, the ability of the state agencies to perform an objective analysis is at question. A private company, owned by an individual that provided Governor McAuliffe tens of thousands of dollars, is going to be allowed to permanently alter the Virginia landscape across hundreds of miles, without proper scrutiny and without oversight.

After the Lindenburg Industry matter, one would expect that Governor McAuliffe's administration would carefully vet and research any private company that it intends to support. Instead, Secretary Ward used her government position to advantage a company with a troubling history that is building a facility that cannot and will not produce enough energy to justify its existence once it is built.

Secretary Ward's actions have undermined two separate processes designed to protect the public and to protect Virginia – the county permitting process and the state permit by rule process. We are asking that your office investigate this matter and take appropriate action. Please afford us the courtesy of a reply.

Sincerely,

A handwritten signature in black ink that reads "Denise M. Neas". The signature is written in a cursive style with a large initial 'D'.

Denise M. Neas on behalf of Virginians for Responsible Energy