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June 16, 2009

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Ky. 40602-0615

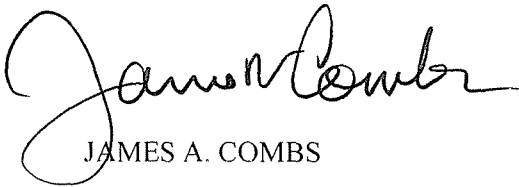
RECEIVED
JUN 17 2009
PUBLIC SERVICE
COMMISSION

RE: Case No.:2009- 00114

Dear Sir/Madam:

Please find enclosed the original and five copies of the status report for CONSOL of Kentucky Inc., in the above styled case.

Very truly yours,


JAMES A. COMBS

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
JUN 17 2009
PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF NEW CINGULAR WIRELESS PCS, LLC)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE) CASE NO.
AND NECESSITY TO CONSTRUCT A WIRELESS COMMUNICATIONS) 2009-00114
FACILITY AT 251 BABE BOLEN DRIVE, GARRETT, KNOTT COUNTY,)
KENTUCKY 41630)
SITE NAME: BOYLN (252GO125))

STATUS REPORT

Pursuant to the Public Service Commission Order dated June 5, 2009, CONSOL of Kentucky Inc., submits the following status report.

The nature of CONSOL's objections or concerns regarding the proposed construction of this wireless communications facility are that it will result in the loss of otherwise mineable coal as explained in our letter to Todd Briggs, Attorney for New Cingular dated May 27, 2009. A copy of this letter is attached to this status report.

New Cingular's position as to the nature of CONSOL's objections are apparently set forth in its status report which contains statements that require a response because it states that CONSOL "made four claims that are either untrue or unproven." First, CONSOL's statement that "Cingular has made no contact with CONSOL concerning the proposed construction..." is true. CONSOL of Kentucky Inc., learned about this proposed tower site by a newspaper notice not by a letter received at its office in Knott County. The certified letter that was delivered on March 30, 2009 according to the status report was not received in Knott County. Also no copy of this certified letter was attached to the copy of the status report sent to the undersigned, therefore we do not know how it was addressed or its contents. The personnel in the Knott County office have not seen this certified letter. The notice in the newspaper resulted in the letter from James O. Childers, Senior Land Agent, to the Public Service Commission dated March 31, 2009. Copies of

the newspaper notice and the letter of March 31, 2009 are enclosed with this status report.

The second objection in New Cingular's status report concerns the claim that the proposed facility will isolate and sterilize coal owned by CONSOL and that the total value of the coal lost is \$546,900.00. This is true as to the value of the coal lost but it is not the amount CONSOL is asking for to settle. The settlement amount is 10% of the total value which is \$ 54,690.00. The documentation as to the location and details of the coal seam have been provided and are in the letter to Todd Briggs dated May 27, 2009. A copy of that letter was apparently not provided to the Public Service Commission with the status report filed by New Cingular but it is being provided with this status report.

The third statement in the New Cingular status report is that our letter of May 27, 2009 relates to the Hazard 4 Coal Seam which has already been mined. Mr. Briggs states "I claim no expertise in the world of coal mining but I fail to see how New Cingular's proposed tower could be located over BOTH mined and reserved coal seams." New Cingular should understand that there are multiple coal seams located under their proposed tower site. One of these coal seams is known as the Hazard 8 or Winifrede Coal Seam which has not been mined. It is at an elevation near the surface and would be affected and become un-mineable as the result of the proposed tower. The Hazard 4 Coal Seam, that has already been mined, is at a much lower elevation. This is explained in the letter of May 27, 2009 and was included in that letter to make New Cingular aware of the possibility of subsidence where it plans to construct its tower.

The fourth statement in the New Cingular status report relates to the ownership of the surface. At the time CONSOL wrote its letter of March 31, 2009, to the Public Service Commission the location of the proposed tower was not known to CONSOL. CONSOL owns most of the surface property in that general area. Until the exact location of the tower was known CONSOL could not know whether or not it was on its property. This is why CONSOL stated "Cingular may be proposing facilities on surface owned by CONSOL." The location of the tower site was not known by CONSOL until after it received the survey that was mailed to it on April 15, 2009. A copy of this letter is enclosed.

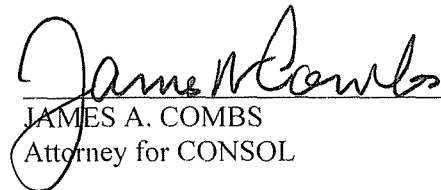
The third item requested in the Commission's Order for a status report is to state if the parties have

met or exchanged information specifically related to the nature of CONSOL's objections or concerns. Once communication had been established between the parties New Cingular provided a copy of a survey showing the location of the proposed tower site. This was provided by a letter from Todd Briggs to James Childers dated April 15, 2009. CONSOL responded with information concerning the coal seam affected by the undersigned's letter to Todd Briggs dated May 27, 2009.

The fourth item in the Commission's Order asks if settlement negotiations are still in progress. In CONSOL's letter of May 27, 2009 it stated that it would withdraw its objection to the application for the tower site in exchange for a payment of \$54,690.00. The basis for this payment is set out in the letter of May 27, 2009. To this date CONSOL has had no response to that letter.

CONSOL does desire to remain as an intervenor in this proceeding.


Respectfully submitted:


JAMES A. COMBS
Attorney for CONSOL

COMBS & ISAAC, PLLC
199 North Lake Drive, Suite 201
Prestonsburg, Ky. 41653
(606) 886-2391
(606) 886-2776 FAX
combsisaac@bellsouth.net

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing status report and enclosures was mailed, postage prepaid, on this the 16th day of June, 2009, to the Hon. Todd Briggs, Attorney at Law, 17300 Polo Fields Lane, Louisville, Ky. 40245


JAMES A. COMBS

CONSOL report (#29 mb)

3-31-09



CONSOL ENERGY

**P. O. Box 130
Mousie, Kentucky 41839**

March 31, 2009

Kentucky Public Service Commission
Executive Director
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602

Re: Case Number 2009-00114
Certified Letter 7099 3400 0006 7041 6927

Dear Director:

I am writing on behalf of CONSOL of Kentucky Inc. (CONSOL) in regards to the above referenced Case Number and Public Notice by New Cingular Wireless PCS, LLC (Cingular) of proposed construction of a 300' tower and related facilities at 251 Babe Bolen Drive. Babe Bolen Drive is located in Sycamore Fork of Rock Fork of Right Beaver Creek in Knott County, Kentucky and CONSOL owns all the coal underlying Sycamore Fork and most of the surface in Sycamore Fork.

CONSOL hereby formally protests the proposed construction and requests an intervention in relation to Cingular's application for a certificate. Cingular has made no contact with CONSOL concerning the proposed construction nor has Cingular requested access to CONSOL's property. CONSOL is concerned that the proposed facility will isolate and sterilize coal reserves owned by CONSOL and may possibly be located over existing underground mine workings that could possibly create a subsidence problem for the tower. Also, CONSOL is concerned that Cingular may be proposing facilities on surface owned by CONSOL.

Please contact me at (606) 946-3119 or the address listed above as to how CONSOL should proceed in regards to this protest.

Sincerely,

James O. Childers
Senior Land Agent

PUBLIC NOTICE

New Cingular Wireless PCS, LLC is applying to the Kentucky Public Service Commission for a Certificate of Public Convenience and Necessity to construct and operate a new facility to provide wireless telecommunications service. The facility will consist of a 300 foot self-support tower plus related ground facilities to be located at 251 Babe Bolen Drive, Garrett, Kentucky 41630. Your comments and any requests for intervention should be addressed to: Kentucky Public Service Commission, Executive Director, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602. Please refer to Case Number 2009-00114 in your correspondence.

054:3/26:1t:b

. 2009 12:26PM

NO. 569 P. 2

4-15-09

BRIGGS LAW OFFICE, PSC

TODD R. BRIGGS

17300 POLO FIELDS LANE

LOUISVILLE, KENTUCKY 40245

TELEPHONE (502) 254-9756

FACSIMILE (502) 254-5717

April 15, 2009

Mr. James Childers
Consol of KY, Inc.
P.O. Box 130
Mousie, KY 41839

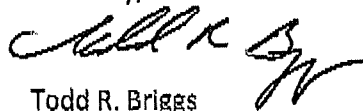
RE: New Cingular Wireless PCS, LLC Public Service Commission Application 2009-00114

Dear Mr. Childers,

Enclosed you will find a copy of the survey we discussed via telephone and also a copy of the foundation drawings for the proposed tower.

Please feel free to contact me with any further questions.

Sincerely,



Todd R. Briggs
Counsel for New Cingular Wireless PCS, LLC

Enclosures

5-27-09

LAW OFFICES
COMBS & ISAAC
199 NORTH LAKE DRIVE
PRESTONSBURG, KENTUCKY 41653

ATTORNEYS
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May 27, 2009

Via Fax (502) 254-5717 and
First class mail

Todd Briggs
Attorney at Law
17300 Polo Fields Lane
Louisville, Ky. 40245

RE: New Cingular Wirelsss PCS, LLC
Tower Site-Bolen Drive, Garrett, Ky.- Knott County, Ky.
Public Service Commission
Case No. 2009-00114

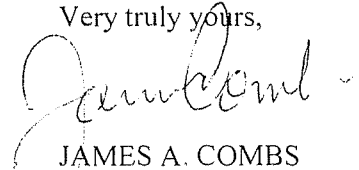
Dear Mr. Briggs

CONSOL of Kentucky Inc. has provided me with the information concerning the coal which will be affected by the tower site shown on the plat you provided to them.

The plat shows the tower will be constructed on a square concrete pad 42 feet on each side. Mining regulations for coal companies require them to stay 300 feet away from any structure in the absence of a wavier. To make the calculations which follow a 330 foot circle was drawn around the center of the concrete pad to establish the area which cannot be mined in the future. The tower will effect the Winifrede (Hazard 8) coal seam which has a total thickness of 2 ½ feet. Using contour and auger mining the company has calculated that it will loose 10,938 tons of clean recoverable coal. This is tonnage for the coal that could actually be mined and does not include that part which would not be mined using contour and auger mining methods. Using a sale price of \$50.00 per clean ton of recoverable coal the total sale price would be \$546,900.00. Ten percent of that sale price is \$54,690. CONSOL of Kentucky Inc. will withdraw its objection to your application for the tower site for \$54,690.00.

Finally, you should know that the Hazard four coal seam has already been mined. This coal seam has a top elevation of 1,103 feet. Your tower site, according to your plat, is 1,610 feet. You should take into consideration the possibility of subsidence where the Hazard four coal seam has already been mined.

Very truly yours,



JAMES A. COMBS
JAC/mb

cc: James Childers

Briggs (let #8 mb)