

Feeling Snookered in Wind Energy Deal, City of San Angelo Heads to Court

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The Hirschfeld-Martifer facility built on the Old Ballinger Highway. (LIVE! Photo/Joe Hyde)

By Joe Hyde | Mar. 12, 2015 8:30 am

In a series of two announcements following executive sessions by the City of San Angelo Development Corporation (COSA-DC) and the City of San Angelo council Wednesday, the City announced it is suing a division of San Angelo's storied local steel manufacturer, Hirschfeld Industries, for breach of contract in a 2009 economic development agreement.

The exact entity that the City lawyers are after is confusing. In 2009, Martifer Energy Systems, a subsidiary of Portugal-based Martifer Group, and Hirschfeld Wind Energy Solutions, a subsidiary of San Angelo, Texas-based Hirschfeld Industries, formed a new company that would set up shop in San Angelo to build wind turbines and supplies. The combined entity was called Martifer-Hirschfeld Energy Systems, LLC. It was with this combined entity that the economic development agreement was made in 2009.

The city and COSA-DC made much fanfare of the pending economic boom for the city, as the joint venture, shared equally between the two large, industrial companies, was to create 225 new jobs manufacturing 400 wind energy towers per year by 2013 by way of economic development subsidies from COSA-DC.

But before there was the joint venture, the city was already courting the Portuguese partner-to-be, Martifer Group Energy Systems. Then, West Texas Organizing Strategy's community organizer Jerry Sea was excited, taking to the public comments section of a May 20, 2008 city council meeting to commend city Business Relations Officer Kathy Keane's "efforts with the project and the concessions and considerations of local residents." Sea also applauded COSA-DC for their efforts "on how the project was conducted," council minutes report.

With a unanimous vote in 2008, council approved COSA-DC's pre-negotiated initial economic development incentives package to just Martifer.

The next year, in 2009, the city revised the economic development package for the joint venture, as Hirschfeld had joined with Martifer in partnership. The city agreed to provide \$2.3 million in real money via

tax incentives, land and rebates. The wind energy company was to build a two-phase, \$40 million operational plant on Old Ballinger Highway and add 225 workers to its payroll.

Also that year, the Martifer-Hirschfeld partnership was a beneficiary of President Obama's 2009 stimulus package, getting promises of a \$3.5 million infusion of federal money via tax credits for their plan to promote and provision alternative energy. Governor Rick Perry's Texas Enterprise Fund pitched in \$500,000 hoping to realize a boon of 93 new west Texas jobs.

In 2010, U.S. Senator John Cornyn visited the then-built steel structure that would house the wind energy plant to celebrate bringing stimulus money to Texas on Old Ballinger Highway. At that visit, San Angelo Chamber of Commerce President Phil Neighbors told the San Angelo Standard-Times that part of the stimulus money will be spent upgrading a railroad bridge in Ballinger, on the state-owned railroad tracks where the Texas-Pacifico line operated, to handle the large payloads of wind turbines being transported to market. The building Cornyn visited was 170,000 square feet and the length of five football fields, the paper reported.

But not all was going well with the partnership shortly thereafter. Uncertainty that congress would not renew the wind energy subsidy called the Production Tax Credit, or PTC, saw investors pulling out of wind energy. The Wall Street Journal opined that the PTC was a cash cow for wind farmers. It subsidized electricity generated by wind turbines to the tune of \$56.29 in taxpayer dollars per megawatt-hour. Nuclear power, in comparison received only \$3.14/MWh and natural gas \$0.64/MWh. The PTC was making rich people richer, and not making a lot of sense for the rest of us. In 2014, U.S. News and World Report quoted Warren Buffet on wind farming, "For example, on wind energy, we get a tax credit if we build a lot of wind farms. That's the only reason to build them. They don't make sense without the tax credit."

In April 2012, Hirschfeld lost its Portuguese partner and purchased Martifer's 50 percent stake in the joint venture. The new entity was renamed Hirschfeld Energy Systems. By July, COSA-DC announced in a Standard-Times article that the new arrangement was allowed within the agreement with COSA-DC. Further, the article reported that the venture had already invested between \$20 million and \$28 million locally in infrastructure and employed 125 people. The railroad bridge in Ballinger was already widened and awaiting the first shipments, the article reported.

After 2012, not much was reported about the giant facility built on the Old Ballinger Highway. Congress allowed the PTC to expire at the end of 2013.

In Sept. 2013, the Texas Enterprise Fund was scheduled for an audit, and Matthew Waller at the Standard-Times reported that Hirschfeld filed a report to the state revealing that it had only created 37 of the 225 jobs promised. Hirschfeld had paid the state \$264,000 in damages, Waller reported.

A few months later, on April 15, 2014, Councilwoman Charlotte Farmer sounded the alarm in council chambers that Hirschfeld had not lived up to its obligations to COSA-DC. According to the minutes of that meeting, Councilman Marty Self requested that the discussion be taken into executive session. Council concurred, the minutes read.

Mayor Dwain Morrison recused himself from the discussions then and thereafter. According to Morrison in a phone call Wednesday morning, he has been a contractor for Hirschfeld on several occasions. Generally his work involved running documents between San Angelo and College Station where Hirschfeld is the steel contractor for the new Kyle Field at Texas A&M. "I don't want there to be a hint of impropriety," Morrison said.

From April last year until now, the Hirschfeld issue dragged on behind closed doors until Wednesday morning when COSA-DC and the council both met in subsequent sessions and voted to pursue a lawsuit against Hirschfeld.

The city retained the legal services of attorney **Todd Harlow of Cowles and Thompson in Dallas** to file the lawsuit. It was filed Wednesday afternoon in Tom Green County. The complaint was not available Wednesday, but **Harlow** said in a telephone interview Wednesday that the lawsuit is requesting "specific performance" from Hirschfeld Wind Energy Solutions (et. al.) to complete the agreement with COSA-DC.

Harlow said specific performance entails completing phase II of the project which will mean adding to its employment rolls all of the 225 jobs promised and to finish the promised \$40 million investment. Altogether, Harlow said, the taxpayers in San Angelo have invested \$2.3 million into the agreement. This was taxpayer money spent, Harlow said, including land, rebates and tax incentives.

“The City does value Hirschfeld’s efforts over the years to foster a better business climate in San Angelo, but Hirschfeld has also benefitted from the dedicated efforts of the City and COSA-DC, and we want them to continue to see this agreement through,” he said.

Harlow said that the City has attempted to resolve this issue “over the course of several months” without legal action. “The City and COSA-DC worked very hard to rescue this without a lawsuit,” he said.

We did not make contact with a spokesperson from Hirschfeld before the end of business hours Wednesday.

When asked why it took the City so long to move on Hirschfeld over the COSA-DC agreement, Councilwoman Farmer said, “I am asking the city manager the same question... When you give out tax dollars we must make certain those who receive them meet each and every guideline as set forth in the contract. It is not a gift.”

Farmer hinted that she and council are on to other recipients of COSA-DC incentives that aren’t performing. “Please believe it is not a witch hunt. It is a simple matter of compliance. If we have rules for our citizens to abide by, then the City’s own house must be in order as well,” she said.

Wednesday’s resolution names the defendant as Martifer-Hirschfeld Energy Systems, LLC; Hirschfeld Energy Solutions; Hirschfeld Holdings Management, LLC; Hirschfeld Wind Energy Solutions II, LLC; “and other parties in control of said entities.”

(eds. note. City of San Angelo Development Corporation is abbreviated usually as COSADC. However, it is pronounced "Co-Sa-Dee-See". We believe that the proper use of the abbreviation is with the added hyphen to simulate the popular enunciation, or COSA-DC. Therefore, we are leading the way to make this the accepted abbreviation.)

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