IBERDROLA RENEWABLES

May 29, 2012

VIA First Class Mail and Email secretary@dps.ny.gov

Hon. Jaclyn A. Brilling
Secretary, New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

RE: Case 12-F-0036 – In the Matter of the Rules and Regulations of the Board on Electric Generation Siting and the Environment, contained in 16 NYCRR, Chapter X, Certification of Major Electric Generating Facilities

Dear Secretary Brilling:

Iberdrola Renewables submits this letter in supplement to its comments dated April 25, 2012. In these previous comments, Iberdrola Renewables suggested modifications to the proposed provisions of 16 NYCRR § 1001.31(e). The proposed modifications establish sensible review standards that would allow the Siting Board to consider New York siting precedent and override unreasonable or belated local requirements.

These suggestions reflect actual experience with the evolving siting challenges in the State. While New York has enacted strong policies favoring development of renewable energy sources (including wind) and numerous projects have been successfully and compatibly constructed, a determined nucleus of opposition to such projects has formed. A strategy which has been increasingly followed by these groups is to focus on key towns, with the aim of revising laws to thwart project development altogether, rather than establishing appropriate guidelines for development. The following are some examples of these efforts, which are cropping up with increasing frequency and which should be quickly rejected in the Article 10 process.

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- Property Value Guarantees. Some jurisdictions have adopted property value guarantee requirements. While there are various permutations of this requirement, it generally applies solely to wind project development (as opposed to other forms of development that are often claimed to devalue nearby properties). The legislation requires the Wind Project developer, presumably over the life of the project, to pay owners for any devaluation in their property value arguably attributable to the project. There is scant support for the "devaluation" argument and the weight of present studies rejects this premise. At best, this unique requirement will invite the sort of claims/litigation exposure that will make a project unfinanceable and unfeasible.

- Required Origin of Project Components. Other proposed provisions require that a certain percentage of Wind Project components (75% in some cases) must be made in the US. This requirement has nothing to do with siting or land use impact considerations. Moreover, in an increasingly global economy, where most every commodity is manufactured or composed of manufactured products, from numerous states and nations, singling out one form of development (wind farms) for a this requirement is of questionable legality, discriminatory and unfair.

- Serial Local Law Modifications. In most upstate communities, Town Board members serve for relatively short terms (most often 2 years). In a number of cases this has meant that zoning and siting requirements for wind projects have been subject to change at each election cycle dependent on the composition of the Board. A number of recent Iberdrola project proposals (which, like most wind projects, have long study and review lead times and do not have "vested rights" regarding existing review standards) have been exposed to potential and repeated revisions to local law siting requirements.

  The potential for constantly shifting review/approval standards and the associated uncertainty effectively stymies any project review or development progress: It makes no sense to incur the significant expense of the application or review process until an applicant can have certainty regarding the finality and longevity of applicable siting requirements. The Article 10 regulations must adopt provisions designed to avoid such debilitating "moving target" requirements.

- Unreasonable Setback Requirements. A sure way to rule out the potential for wind farm development is to establish unfounded, unreasonable setback requirements. A number of communities have proposed or adopted such requirements in various forms, including proposed setbacks measured in miles from major water bodies, 500-foot setbacks from wetlands, 3,000-foot separation from adjacent properties or between wind turbines. These setbacks do not address environmental or safety concerns. Indeed, there is little or no empirical justification for such significant setbacks; such requirements will simply make it impossible to construct a project in New York.

A number of projects have been constructed in New York in accordance with well defined setback requirements (generally 1,000-1,500 feet from Project components and adjacent land uses and 100 feet from DEC wetlands). These projects have a demonstrable history of reliability and compatibility with nearby communities.

- Unreasonable Sound Requirements. Project opponents have urged increasingly low sound thresholds as a means of thwarting potential wind farm development. Sound study is a complex area and in this complexity, opponents have found opportunity – advocating for unworkable background threshold sound levels and modeling protocols which can result in overly conservative sound standards.

  Again, the New York DEC sound guidance, as well as experience with sound standards for successfully operating wind farms is the appropriate touchstone for this evaluation. Local laws that propose more stringent requirements are likely aimed at prohibiting wind farm construction, rather than permitting compatible projects.

Again, thank you for the opportunity to comment on these regulations.

Sincerely,

Eric Thumma
Director, Policy and Regulatory Affairs
Iberdrola Renewables, LLC