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17-F-0182 - 1-23-2018 - Canajoharie, NY

NEW YORK STATE

DEPARTMENT OF PUBLIC SERVICE

17-F-0182 APPLICATION OF MOHAWK SOLAR LLC FOR A  
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND  
PUBLIC NEED PURSUANT TO ARTICLE 10 OF THE  
PUBLIC SERVICE LAW FOR CONSTRUCTION OF A SOLAR  
ELECTRIC GENERATING FACILITY IN THE TOWNS OF  
CANAJOHARIE AND MINDEN, MONTGOMERY COUNTY

PROCEDURAL CONFERENCE  
Tuesday, January 23, 2018  
5:30 p.m.  
Canajoharie Town Hall  
Canajoharie, New York

A.L.J. SEAN MULLANY  
Department of Public Service  
A.L.J. ERIKA BERGEN  
Department of Public Service  
A.L.J. MOLLY MCBRIDE  
Department of Environmental Conservation

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2 FOR MOHAWK SOLAR:  
3       HARRIS BEACH  
4       BY: STEVEN D. WILSON  
5       677 Broadway  
6       Albany, New York

7 FOR DEPARTMENT OF PUBLIC SERVICE  
8       BY: GRAHAM JESMER  
9       Three Empire State Plaza  
10      Albany, New York

11 FOR DEPARTMENT OF ENVIRONMENTAL CONSERVATION:  
12      BY: JONATHAN BINDER  
13      625 Broadway, 14<sup>th</sup> Floor  
14      Albany, New York

15 FOR DEPARTMENT OF AGRICULTURE AND MARKETS:  
16      BY: TARA WELLS  
17      10B Airline Drive  
18      Albany, New York

19 FOR THE TOWN OF MINDEN AND CANAJOHARIE:  
20      WHITEMAN OSTERMAN AND HANNA  
21      BY: TERRESA BAKNER  
22      One Commerce Plaza  
23      Albany, New York

24                   BARTON AND LOQUIDICE, Engineering Firm  
25      BY: STEVEN LE FEVRE  
              RYAN WEITZ  
              10 Airline Drive, Suite 200  
              Albany, New York

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2 A.L.J. SEAN MULLANY: Call to order case  
3 17-F-0182. This is the application of Mohawk Solar LLC  
4 for a Certificate of Environmental Compatibility and  
5 public need pursuant to Article Ten Of The Public Service  
6 Law For Construction Of A Solar Electric Generated  
7 Facility In The Towns Of Canajoharie And Minden,  
8 Montgomery County.

9 This procedural conference is being  
10 convened pursuant to a notice that was issued on December  
11 28, 2017 and I am Sean Mullany, the presiding examiner in  
12 this case, with me is my co-presiding examiner, Judge  
13 Erika Bergen from the Department of Public Service and the  
14 associate examiner, Judge Molly McBride, from the  
15 Department of Environmental Conservation.

16 The original purpose for this conference  
17 was to discuss the funding request that had been submitted  
18 by the towns and also commence the stipulations process.  
19 That original conference was scheduled for December 12th  
20 and it was cancelled due to inclement weather out of  
21 concern for public safety.

22 Thereafter, the town requested a ruling on  
23 the funding request that was jointly filed by the towns  
24 and a funding ruling was issued on January 8, 2018 in this  
25 proceeding.

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2 We elected to go ahead with this procedural  
3 conference nonetheless in part because Article Ten being  
4 the relevant regulations do call for a conference and we  
5 thought it was a good opportunity to assemble the parties  
6 in a room, put a face to the names of the examiners, and  
7 basically see if anybody involved had any questions up to  
8 this point about the Article Ten process and the -- the  
9 funding ruling and how the intervenor funding will  
10 proceed. And I know that the -- the company has commenced  
11 the stipulations process after requesting an opportunity  
12 to do so and has filed a notice pursuant to Section 3.9 of  
13 the Commission's Regulations, so that process is moving  
14 forward, so I guess for the -- to begin with after that  
15 brief summary, I'd ask for appearances for the record  
16 starting with the company please?

17 MR. STEVEN WILSON: Steven Wilson, Law Firm  
18 of Harris Beach for Mohawk Solar.

19 MR. GRAHAM JESMER: Graham Jesmer on behalf  
20 of the Department of Public Service staff.

21 MR. JONATHAN BINDER: Jonathan Binder on  
22 behalf of the Department of Environmental Conservation.

23 MS. TARA WELLS: Tara Wells on behalf of  
24 New York State Department of Agriculture and Markets,  
25 counsel's office.

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2 MS. TERRESA BAKNER: Teresa Bakner,  
3 Whiteman, Osterman, and Hanna on behalf of the towns of  
4 Minden and Canajoharie.

5 MR. STEVEN LE FEVRE: Steve Le Fevre with  
6 the engineering firm Barton and Loguidice on behalf of the  
7 towns of Minden and Canajoharie.

8 MR. RYAN WEITZ: Ryan Weitz with the firm  
9 Barton and Loguidice on behalf of the towns of Canajoharie  
10 and Minden.

11 A.L.J. MULLANY: Do we have anybody else  
12 who'd like to state an appearance for the record? No?  
13 Okay. Does -- first off, does anybody have any questions  
14 at all about what's happened in the case thus far  
15 procedurally or otherwise? Okay. And Mr. Wilson, the  
16 company -- can you just tell me what steps have been  
17 taken, if any, beyond the Notice of Commencement and  
18 stipulations process?

19 MR. WILSON: Well, Your Honor, the --  
20 nothing since then has happened. That was approximately  
21 ten days ago that the -- that the notice was filed with  
22 the Commission. On the day that we filed -- well,  
23 actually, I'm sorry. We filed the notice on the following  
24 business day. The stipulations were circulated that  
25 Friday with the request to the recipients, the active

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2 parties, that we receive a first round of comments within  
3 twenty-one days of circulation of the draft stipulations  
4 and then pursuant to your email on the next business day,  
5 I think that was a Tuesday because Monday was the holiday,  
6 we filed the notice with the Affidavit of Service and  
7 service list.

8                   Since that time, we haven't had any  
9 communications with any of the active parties or any  
10 discussions regarding the stipulations.

11                  A.L.J. MULLANY: Okay. And -- and so you  
12 had that twenty-one-day clock for requesting any feedback  
13 on the circulated stips?

14                  MR. WILSON: We did. We thought, you know,  
15 we wanted to put a time frame in there not to leave it  
16 open-ended. Our rationale was that the -- the regulations  
17 provide twenty-one days for comment on any Preliminary  
18 Scoping Statement, so, you know, that being the size that  
19 it is, we thought twenty-one days would be reasonable for  
20 a first round of draft -- comments on the draft  
21 stipulations. It was a proposal and, you know, we're  
22 willing to discuss with the parties, you know, if -- if  
23 more time is necessary, we're willing to accommodate --  
24 accommodate those requests.

25                  A.L.J. MULLANY: Understood. Okay. And

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2 Ms. Bakner, do you have any questions at all about the  
3 Intervenor funding disbursement process? I mean there are  
4 criteria spelled out in the regulations as I'm sure you  
5 have seen.

6 MS. BAKNER: No, Your Honor, I don't have  
7 any questions. Laura on the public service commission has  
8 been very helpful and the Town of Canajoharie's graciously  
9 agreed to be the lead agency -- the lead municipality for  
10 purposes of any Intervenor funding.

11 A.L.J. MULLANY: Uh-huh.

12 MS. BAKNER: So that will be pretty simple  
13 I believe.

14 A.L.J. MULLANY: Uh-huh. Okay.

15 MS. BAKNER: And the only question we had  
16 was the deadline on the response as far as the  
17 stipulations. Just so you know, Your Honor, Barton and  
18 Loguidice is appearing with the town planning board in  
19 order to get their input on the stipulations and the  
20 information to date, so it would be helpful to us to have  
21 some additional comment time I believe. You've just done,  
22 what was it, Canajoharie or was it --?

23 MR. LE FEVRE: I met with Canajoharie town  
24 planning board last evening and I'm scheduled to meet with  
25 Town of Minden planning board on February 12th. That's

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2 the next regularly scheduled meeting.

3 A.L.J. MULLANY: Okay. So as you may know,  
4 the regulations are conspicuously silent as to how this  
5 stipulations process might proceed and it's akin to a  
6 settlement process, so for the benefit of everybody  
7 assembled, that's something that you can work out with the  
8 project sponsor and the other parties that are  
9 participating or individuals participating in that  
10 process. I -- I and the other examiners have to stand  
11 aloof from that process unless in the event there's any  
12 dispute in which case there's a provision that says that  
13 the examiner can step in and mediate any dispute that  
14 comes up, so and again, one of the functions of calling  
15 you all here out in the dead of night was to -- so that  
16 you get to meet us and you're aware that you can call on  
17 us if you run into a dispute and we can offer some  
18 mediation services for that.

19 MS. BAKNER: Excellent. Thank you.

20 A.L.J. MULLANY: Do we have any members of  
21 the public that want to offer any remarks or have any  
22 questions about the project or -- because we've got the  
23 sponsor here and we've got the towns represented, we'd be  
24 able to offer you some information or you can approach me  
25 or any of the examiners and, you know, direct your



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2 inquiries to us and we can arrange to have them forwarded  
3 to the right person or responded to as we may see fit?  
4 Okay.

5                   So did we beat the eight minutes?

6                   THE COURT REPORTER: Eight o three.

7                   A.L.J. MULLANY: Eight o three. Good.  
8 Good. Okay. I did ask the town supervisor before anybody  
9 arrived and it was just Judge Bergen and I, but she can  
10 bear witness to my request, I asked for permission to take  
11 this lovely gavel home, but I was told that the Honorable  
12 Phillip Gizzy [phonetic spelling] would -- he's a grumpy  
13 guy and -- Phillip Gizzy Junior and he would likely object  
14 to that, so -- but I would be in Albany and I'd be fifty  
15 miles away, so --.

16                   A.L.J. ERIKA BERGEN: I'll put on the  
17 record that he didn't say no.

18                   A.L.J. MULLANY: Okay. All right. Well,  
19 there being no further questions then we are adjourned,  
20 and I thank you all for coming tonight.

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2 STATE OF NEW YORK

3 I, JANET AXTON, do hereby certify that the  
4 foregoing was reported by me, in the cause, at the time  
5 and place, as stated in the caption hereto, at Page 1  
6 hereof; that the foregoing typewritten transcription  
7 consisting of pages 1 through 9, is a true record of all  
8 proceedings had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto  
10 subscribed my name, this the 30th day of January, 2018.

11

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13 JANET AXTON, Reporter

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