



May 29, 2012

Via email (secretary @dps.ny.gov)

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

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:

Invenergy Wind LLC (Invenergy) appreciates the opportunity to provide comments regarding the draft Article X regulations issued on March 27, 2012.

Invenergy and its affiliated companies develop, own and operate large-scale renewable and other clean energy generation facilities in North America and Europe. Invenergy is committed to clean power alternatives and continued innovation in electricity generation. As the nation's largest independent wind power generation company, Invenergy and its affiliated companies currently have over 6,600 MW of wind, solar and thermal projects under contract, in construction or in operation.

In New York, Invenergy owns the 112.5 MW High Sheldon Wind Farm and the 94 MW Stony Creek Wind Farm, projects that have been thoroughly reviewed and permitted under New York's State Environmental Quality Review Act (SEQRA) process and that have received Certificates of Public Convenience and Necessity (CPCN) from the New York Public Service Commission.

Invenergy is actively developing additional wind energy facilities in New York, and as such, supports implementation of Article X regulations that provide regulators with necessary information, and other stakeholders with clear expectations on the review process. We have developed the following comments with these goals in mind.

Section 1000.2 (ar) - Definition of Study Area

Under the draft regulations, the study area for a wind project would include all areas within 5 miles of a wind turbine. This may be an appropriately large area for assessing visual impacts, but it is unreasonably large for other evaluations.

Most significantly, the term "study area" is used in Section 1001.19 (a) where a map is required of the study area showing locations of all "sensitive sound receptors." This suggests that all receptors within five miles of a wind turbine are sensitive sound receptors, and that the developer perform field surveys to identify all sound receptors in the 5-mile study area. Given the large area covered by a typical wind project, mapping of all residences and other receptors within five

miles of a wind turbine would require significant survey effort.¹ Further, given the low noise levels from wind projects, there is little benefit gained from surveying all residences and other receptors located more than one mile from a wind turbine.

Recommendation: Change the first sentence of 1001.19 (a) to read: “A map showing the location of sensitive sound receptors located within one mile of the facility, related facilities, and ancillary equipment (including any related substations).”

Exhibit 19 - Noise Regulations – Background Noise Labels

Section 1001.19 (f), subsections (1), (2), and (3) all require L90 noise statistics for different conditions. The L90 statistic is useful for assessing the “background” sound levels in an environment and should be provided in an application. However, the background sound is only one component of the pre-existing, or ambient, sound environment. Ambient sound also includes short term and nearby sounds such as people talking, passing cars, barking dogs, etc. To avoid confusion, the terms “background” and “ambient” should not be used interchangeably. These subparagraphs require information on background sounds only, not on the overall ambient noise environment.

Recommendation: In the labels for sections 1001.19(f) (1), (2), and (3) insert the word “background” after the word “ambient”.

Exhibit 19 – Noise Regulations – Need for Additional Noise Cases

Section 1001.19(f) requires expected noise levels for extreme scenarios, but not the most likely conditions. Adding additional noise cases would ensure applications also contain information on more typical conditions.

Recommendation: After Section 1001.19(f) (6), add the following paragraphs:

- (7) Daytime ambient average noise level – a single value of sound level equivalent to the energy-average ambient sound levels (Leq) during daytime hours (7 am – 10 pm); and
- (8) Typical facility noise levels - the noise level from the proposed new sources modeled as a single value of sound level equivalent to the level of the sound exceeded 50% of the time by such sources under normal operating conditions by such sources in a year (L50).
- (9) Typical future noise level during the daytime period - the energy-average ambient sound level during daytime hours (Leq), plus the noise level from the proposed new sources modeled as a single value of sound level equivalent to the level of the sound exceeded 50% of the time by such sources under normal operating conditions by such sources in a year (L50).

Exhibit 22 - Wetlands

Section 1001.22 (i) requires applications include delineations of all wetlands “on the facility site,” an area which is not clearly defined in the draft regulations. For a wind project, this could

¹ For a typical wind project, the areas within 5 miles of wind turbine would be seven times (7x) greater than the area within 1 mile of a wind. For a typical 100 MW wind project, this could require the survey of all structures in an area that is likely covers one third to one half of an entire New York county.

be interpreted to be all areas planned to be under lease, which can be 20-30 times larger than the area that is actually impacted during project construction.²

Wetland delineations can be one of the more expensive studies performed during development of a wind project, and the cost is highly dependent on the acres to be studied for wetlands. The proposed regulations could increase wetland delineation costs 20-30 times over what is currently spent.

Current wetland delineation practices provide an appropriate level of information for assessing impacts while also providing flexibility to assess potential changes in the project configuration. These practices involve biologists surveying for wetlands at locations where construction impacts are expected to occur and in adjacent areas. For instance, biologists would delineate any wetlands within 100 feet of the proposed boundaries of a wind turbine installation assembly area and within 100 feet of the center of planned routes for access roads and cables.

Recommendation: Change the first sentence of Section 1001.22(i), to read: “A map showing delineated boundaries based on on-site identification of all federal, state and locally regulated wetlands present within 100 feet of those ground areas proposed to be physically disturbed during construction or operation of the facility and the interconnection.”

Exhibit 14 - Capital Costs

This section requires the applicant submit a detailed estimate of the facility’s capital costs, broken down in a rational manner into major cost components appropriate to the facility. A project’s capital cost is proprietary information that appears unnecessary for review of an application for a merchant facility where the financial risk is taken by the facility owners and not ratepayers.

Recommendations: Replace section 1001.14 (a), with: “An estimate of the approximate total capital cost of the proposed facility.” Remove section 1001.14 (c).

Exhibit 6 - Wind Meteorological Assessment

Section 1001.6 (d) requires the applicant for a wind facility submit a meteorological analysis of unspecified detail that supports the estimated net capacity factor. A detailed meteorological analysis is proprietary information, that, similar to capital costs, appears unnecessary to evaluate an application for a merchant facility where the financial risk is taken by the facility owners and not ratepayers.

Recommendation: Remove section 1001.6(d).

Exhibit 19 – Alternatives

Exhibit 19 requires a private applicant to describe and analyze other sites owned or under option to the applicant. It is unclear whether an applicant would be required to perform such evaluations for a site that is currently under development by the applicant, but where the applicant has obtained sufficient land rights or completed appropriate environmental reviews to proceed with a full Article X application. To require an applicant to disclose, describe, and analyze such a site would likely jeopardize the future development of the alternative site, limiting future opportunities for the applicant and the state. Further, even if an alternative site was fully under

² The High Sheldon Wind Farm includes 75 wind turbines sited on approximately 7,000 acres of leased land. Approximately 260 acres (3.7%) of the leased land was impacted during construction.

option, had passed internal environmental reviews, but had not been developed to the point where an application had been submitted, it would still likely be harmful to future development of the alternative site to present specific analyses showing it to be less beneficial than the proposed facility. And lastly, analyzing a specific alternative site may unnecessarily raise public concern or optimism for a site for which the applicant is not prepared to proceed with full development.

Analysis of specific alternative sites is more appropriate for centrally-located power plants where the applicant has the power of eminent domain. For these situations, a large number of alternatives may be available, and jeopardizing future development of one of these alternatives may not be a concern. For wind projects, jeopardizing future sites is a concern due to the relatively limited number of possible sites.

Recommendations: In Section 1001.9 (a) insert the word “fully” before the word “owned.”

Section 1000.5 - Alternatives Analysis in Pre-Application Procedures

Section 1000.5 (d) requires that, as part of the pre-application process, an applicant provide public notice in any community where an alternative site is being evaluated. Section 1000.5(1) (2) (viii) requires the applicant to compare the proposed facility to specific alternatives in its preliminary scope.

As discussed in the comments above on Exhibit 19, evaluation of specific alternatives could jeopardize future development of the alternatives. Requiring public notice of specific alternatives during the public scoping process will only increase the risk to the alternative site.

Recommendations: In Section 1000.5 9(d), delete the words “and in which any alternative location identified is located.”

Section 1000.5 - Definitions of Revisions and Modifications

The definitions of “modification” and “revision” recognize the need for flexibility to make relatively minor adjust to wind turbine locations without full environmental reviews. This flexibility should be extended to other project components such as access roads and electric cables and also to the model of wind turbine to be installed. All of these changes should be subject to the current language in the draft regulation: “provided such change does not significantly increase impacts on sensitive resources or decrease compliance with setback and similar requirements.”

Recommendation: In Section 1000.5 (ak), for the definition of “Revision,” after the words “original location,” insert “, the shifting of the route of a wind turbine access road or electrical collection circuit by up to 500 feet, or the changing of the model of wind turbine to be installed,”

For further discussion of these comments, please contact me at (301) 610-6413.

Sincerely,



Eric Miller
Director, Business Development