

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

CASE 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.

RULING ON INTERVENOR FUNDING REQUESTS

(Issued January 8, 2018)

SEAN MULLANY and MOLLY MCBRIDE, Examiners:

INTRODUCTION and BACKGROUND

On October 18, 2017, Mohawk Solar, LLC, a wholly owned subsidiary of Avangrid Renewables, LLC, (Mohawk) filed a Preliminary Scoping Statement (PSS) in connection with its proposal to construct a 90-megawatt (MW) photovoltaic (PV) solar electric generating facility (the Project) on approximately 1,000 acres of private land in the Towns of Canajoharie and Minden, Montgomery County. The Project would consist of clusters of solar PV generating panels connected by underground, and possibly overhead, collection lines that will generate electricity supplied to the bulk electric transmission system owned by Niagara Mohawk Power Corporation, doing business as National Grid. The Project will interconnect with the existing St. Johnsville-Marshville 115-kV transmission line. In addition, the Project will require the construction of internal infrastructure, such as access roads and fencing.

Upon the filing of the PSS, a pre-application intervenor fund of \$31,500 was established for this proceeding. A Notice of Availability of Pre-Application Intervenor Funds and Deadline to Request Funds, issued October 24, 2017, directed eligible municipal and local parties intending to participate in

the pre-application stage of this proceeding to submit their requests for pre-application intervenor funding by November 24, 2017. On November 22, 2017, the Towns jointly filed a request for pre-application intervenor funds in an amount totaling \$27,500. No other requests for intervenor funding were timely filed.

A procedural conference to discuss the Towns' request for funding had been scheduled for December 12, 2017. That conference was cancelled, however, due to hazardous weather conditions, and rescheduled for January 23, 2018. To facilitate the commencement of the stipulations process, Mohawk requested a written ruling awarding intervenor funds. No party has objected to Mohawk's request for a written ruling. Accordingly, in this ruling, we award pre-application intervenor funds in the amount of \$27,500 jointly to the Towns of Minden and Canajoharie (collectively the Towns) in order to enable the Towns to make an effective contribution to the review of the PSS and to encourage early and effective public involvement in the pre-application stage of this proceeding. We also authorize Mohawk to commence the stipulations process.

THE REQUEST FOR INTERVENOR FUNDING

The Towns state that the Project as proposed would be located within their respective boundaries. The Towns aver that the population of Minden is approximately 4,297, that the population of Canajoharie is approximately 3,800, and that the Towns' combined population is approximately 8,000 persons.

The Towns point out that they each have Planning Boards and Zoning Boards of Appeal, and that they have a significant interest in local land use issues. The Towns assert that, absent the Article 10 process, their local boards would exercise supervision over the Project and would be responsible

for any local approvals or permits. The Towns state that they will participate in the Article 10 process to ensure that the Project complies with local planning and environmental concerns, and to ensure that the Project is sited in a manner that results in the least impact to residents of the Towns. The Towns request intervenor funding on behalf of all citizens within their respective jurisdictions who will be impacted by the construction of the Project. The Towns seek intervenor funds to allow them to meaningfully participate in the pre-application phase of the Article 10 review of the Project and thereby fully represent the interests of their citizenry.

The Towns point out that they have limited financial resources and state that no funds are budgeted or available for participating in the Article 10 review of the Project. They state that funding for municipal services is raised principally from property taxes and that such funding is limited. The Towns state that they are unaware of any other funding source available to facilitate their participation in this proceeding.

The Towns have both retained the law firm of Whiteman Osterman & Hanna LLP, for legal services related to the pre-application review of the Project, at a rate of \$200 per hour. The Towns' request for funding includes a retainer letter, dated October 4, executed by and on behalf of Whiteman Osterman & Hanna, the Town of Minden, and the Town of Canajoharie. That retainer letter specifies that Terresa M. Bakner, a partner of the law firm, will be primarily responsible for the engagement, and that Ms. Bakner will be assisted by her associate, Emily Perks Quinlan. The Towns' request for funding also includes the resumes of Ms. Bakner and Ms. Quinlan. The Towns' request notes that the law firm of Whiteman Osterman & Hanna has attorneys with extensive experience in the areas of environmental, energy, municipal and land use law.

The Towns have both retained the firm of Barton & Loguidice, D.P.C. (B&L) to provide engineering services related to the Towns' review and evaluation of the potential environmental and economic impacts of the Project. To that end, both the Town of Minden and the Town of Canajoharie have executed retainer letters with B&L, each dated September 27, 2017, which describes the scope of services to be provided by B&L. Those retainer letters provide for engineering services to be provided on a time and expense basis, with an initial not-to-exceed amount of \$9,500 for each of the Towns, respectively.

The Towns' request for funding indicates that B&L's anticipated average hourly billing rate will be \$150 per hour. The B&L retainer letters include a list of the titles and billing rates for B&L's principals and technical employees. The Towns' request for funding includes resumes for the B&L professionals anticipated to be involved with the review of the Project on behalf of the Towns. The Towns point out B&L's prior experience reviewing proposed solar arrays in the New York communities of Rotterdam and Saratoga Springs.

The Towns state that, through their participation in this case, B&L, Whiteman Osterman & Hanna, and the Towns themselves will provide a local perspective regarding the impacts of the proposed solar facility in conjunction with other existing energy infrastructure already located in the area. More specifically, the Towns state that B&L will ensure that the Mohawk performs a thorough and comprehensive evaluation of the Project's potential impacts on local roadways, as well as, visual, agricultural, and socioeconomic resources. In addition, the Towns state that Whiteman Osterman & Hanna will provide legal representation to the Towns regarding the Project in order to protect the Towns' interests and ensure that issues considered by Mohawk are fully studied and considered. Legal

services may include coordinating the Towns' filings and submissions, ensuring that such filings are timely and consistent with applicable rules, advising the Towns regarding the application of local laws to the Project, participating in the pre-application stipulations process, and reviewing potential and actual agreements between the Mohawk and the Towns.

The Towns estimate that reviewing and commenting on the Mohawk proposals and participating during the pre-application phase of the Article 10 process will require approximately \$27,500 in engineering consulting and legal services fees.

DISCUSSION

Pursuant to Public Service Law §163(4), municipal and local parties may receive intervenor funds. The purpose of the pre-application intervenor fund is to enable municipal and local parties to better participate in the review of the PSS and to participate in the stipulations process by allowing those parties to defray expenses for expert witnesses, consultants, legal representation, and administrative fees. The Examiners must reserve at least 50% of the funds for potential awards to municipalities¹ and must award the funds on an equitable basis upon a determination that the funds will be used to make an effective contribution to the review of the PSS and the development of an adequate scope of the application to be submitted by the project sponsor.

The Towns are municipal parties eligible to receive pre-application intervenor funds, inasmuch as the Project as proposed would be located within the Towns. The Towns' funding request meets the criteria identified in 16 NYCRR §1000.10(c).

¹ Public Service Law §164(6)(b); 16 New York State Codes, Rules and Regulations (NYCRR) 1000.10(b)(7).

The Towns have clearly described the qualifications and scope of services to be provided by B&L and Whiteman Osterman & Hanna, and the projected costs for such services. The Towns have also provided retainer agreements with the Towns and both B&L and Whiteman Osterman & Hanna.

We find that the participation of the Towns in this stage of the process will ensure representation of their respective constituents' interests in the development of an adequate scope of the application for the Project. We also find that the Towns' involvement at this stage of the proceeding will encourage early and effective public involvement in this proceeding. We therefore award the amount of \$27,500, jointly, to the Towns of Canajoharie and Minden for the purposes defraying eligible costs incurred during the pre-application stage of this proceeding.

In light of this award of funding, Mohawk is authorized to commence the stipulations process as provided under 16 NYCRR §1000.5(i). The stipulations consultation process is subject to the notice and confidentiality requirements under 16 NYCRR §3.9. Mohawk must provide initial notice of the commencement of the stipulations process to all persons or entities included in the Master List of Stakeholders/Notification List included as Exhibit A to the Public Involvement Plan filed by Mohawk on March 31, 2017 (as updated). The initial notice must include a general description of the issues to be discussed during the stipulations process.

The initial notice of the commencement of the stipulations process must specify that future notices regarding the stipulations process will be served on (1) persons or entities that have notified Mohawk of their intent to

participate in the stipulations process, and (2) persons or entities listed on the party list for this proceeding.²

The award of intervenor funding under this ruling is granted only to the extent that the proposed legal and engineering services to be provided "will contribute to the compilation of a complete record as to the appropriateness of the site and facility," as required by 16 NYCRR 1000.10(c)(1)(vi). Any request by the Towns for disbursement of funds must sufficiently describe the services provided and explain specifically how such services relate to the review of this project by the New York State Board on Electric Generation Siting and the Environment. All disbursement requests must include a particularized showing that the services in question have or will meaningfully contribute to development of an adequate scope of the application to be submitted by the project sponsor. In general, pre-application intervenor funding cannot be used for matters not directly related to these specific purposes. For example, intervenor funds cannot be used to defray costs incurred in assisting the Towns with updating their local zoning laws or for preparing independent studies.

CONCLUSION

We confirm our award of \$27,500 jointly to the Towns for legal and engineering services related to their review of the PSS and their participation in the stipulations process during the pre-application stage of this proceeding. This award of pre-application intervenor funds is to be used only for the purposes approved by us in this ruling. Each of the Towns will be required to enter into a contract with the Department of

² Persons wishing to be added to the party list should complete and file a form "Notice of Intent to be a Party in an Article 10 Proceeding." This form can be obtained through this [link](#), or by contacting Daniel Cameron, at daniel.cameron@dps.ny.gov.

Public Service (DPS) and will be provided with a voucher form that must be used to request the disbursement of funds. No funds will be disbursed until after the work has been performed. Funds will be disbursed only after a voucher, supported by detailed invoices, has been reviewed and approved by the Presiding Examiner and the DPS Finance Office.

Each voucher must also be accompanied by the quarterly report(s) relating to the costs for which the disbursement of funds is requested. In this regard, the Towns are reminded that they must comply with the pre-application reporting requirements set forth in 16 NYCRR 1000.10(a)(11). The quarterly reporting required by this regulation shall be due 15 days following the close of each calendar quarter during which costs were incurred and for which disbursement of intervenor funding is requested.³ The quarterly reports must contain all the information specified under 16 NYCRR §1000.10(a)(11). In general, these reporting requirements, in part, are intended to enable the Presiding Examiner to provide meaningful oversight of funding awards, to track the progress of work performed with intervenor funds, and to ensure that the funds are used for the purpose(s) for which they were awarded. Failure to follow these reporting requirements may result in a determination that further expenditures and disbursements are not warranted. If

³ Given the timing of the issuance of this ruling, the Towns will be allowed up to 15 days after the issuance of this ruling to submit a quarterly report covering costs incurred during Q4 of 2017.

actual expenditures exceed the total budgeted amount awarded,
they cannot be reimbursed from the intervenor fund.

(SIGNED)

SEAN MULLANY
PRESIDING EXAMINER

(SIGNED)

MOLLY MCBRIDE
ASSOCIATE EXAMINER