

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

CASE 12-F-0410 - Application of Cape Vincent Wind Power, LLC,
for a Certificate of Environmental
Compatibility and Public Need to Construct an
Approximately 200-285 Megawatt Wind Electric
Generating Facility in the Town of Cape
Vincent, New York.

RULING ON INTERVENOR FUNDING
AND THE STIPULATIONS PROCESS

(Issued April 10, 2013)

PAUL AGRESTA and MARIA E. VILLA, Examiners:

INTRODUCTION

A notice is being issued in conjunction with this ruling concerning the availability of intervenor funds. It is anticipated that an additional notice will be issued shortly scheduling the first pre-application conference to be held in this proceeding. The purpose of the pre-application conference will be to address intervenor funding issues and to initiate the stipulations process.

INTERVENOR FUNDING

Upon submitting the Preliminary Scoping Statement, the applicant, Cape Vincent Wind Power, LLC, was assessed an intervenor fee of \$99,750 to be used to defray certain expenses incurred by eligible municipal and local parties as they participate as intervenors in the pre-application scoping process in this proceeding. "Intervenor" is a name used to refer to a party that joins an ongoing case or proceeding as a third-party for the protection of an interest. Some intervenors join as a matter of right established in the Article 10 statute;

others are permitted to join at the discretion of the Examiners or the Siting Board.

Not all intervenors are eligible for intervenor funds; only "municipal and local parties" are eligible. Eligible "municipal parties" include any county, city, town or village located in New York State that may be affected by the proposed major electric generating facility. The Examiners must reserve at least 50% of the funds (in this case: \$49,875) for potential awards to municipalities. Eligible "local parties" include persons residing in a community who may be affected by the proposed major electric generating facility. Such persons may seek intervenor funding either individually or collectively. Local parties are eligible to receive up to 50% of the funds. Parties are encouraged to consider consolidating their requests with similar funding proposals made by other parties.

Intervenor funds can be used to pay for expert witnesses, consultants, administrative costs (such as document preparation and duplication) and legal fees. No intervenor funds may be used to pay for appeals of Siting Board decisions or other matters before a court. During the Pre-application Stage, the funds will be awarded on an equitable basis when it is determined that the funds will be used to make an effective contribution to review of the Preliminary Scoping Statement and the development of an adequate scope of the Application to be submitted, and will provide early and effective public involvement.

Eligible municipal and local parties may request funds by filing the requests with the Secretary of the Siting Board and submitting a copy to the Presiding Examiner and to the other parties to the proceeding. Parties preparing requests for funds are encouraged to submit their requests using the standard format provided for that purpose on the Siting Board Website

["<http://www.dps.ny.gov/SitingBoard/>"]. All documents to be submitted should be filed with the Secretary using the Secretary's filing guidelines (also available on the Siting Board Website). A request for intervenor funds must contain all of the information required by the Siting Board's rules set forth in 16 NYCRR, Section 1000.10(c). The standard format form provided for that purpose on the Siting Board Website is designed to comprehensively solicit the required information. Requests for funds must be submitted no later than Friday, May 10, 2013 (30 days after the date of issuance of the companion notice being issued in conjunction with this ruling).

The Examiners are required to examine each request for funds to determine whether the request complies with the rules. A request for intervenor funds that does not comply fully with each requirement of the rules will not be granted. Providing a complete request for funds in the first instance will abbreviate the process of obtaining a grant of funds and will avoid successive filings and rulings, which otherwise may be necessary and will delay the award of funds. If the party believes a regulatory provision is not applicable to its circumstances, the party should explicitly state this contention in its funding request, and also explain why the provision is not applicable.

An initial pre-application conference to consider funding requests will be scheduled by the Examiners shortly. At the pre-application conference, intervenors should be prepared to discuss their funding requests and the award of funds. After a party submits a funding request, the Examiners will issue a formal ruling granting or denying the funding request in whole or in part. In making any funding award, the Examiners are not making any determination on the merits of the issues identified in the award. A party who receives a funding award will be required by the Department of Public Service (DPS) Finance

Office to sign Local Assistance Contract documents, which set forth the terms and conditions for providing intervenor funding.

No funds will be disbursed until after the work has been performed and detailed invoices have been submitted to DPS for review by both the Examiners and the Finance Office. All disbursements from the pre-application intervenor account to any person shall be made by the DPS upon audit and warrant of the Comptroller of the State on vouchers approved by the Chairperson or a designee. All such vouchers must include a description and explanation of all expenses to be reimbursed. Any monies remaining in the intervenor account after the Siting Board's jurisdiction over an Application has ceased shall be returned to the applicant.

Each party receiving an award of funds must use the awarded funds only for the purposes that have been specified in the particular award of intervenor funding. A party receiving an award of funds must also comply with certain reporting requirements. On a quarterly basis, unless otherwise required by the Examiners, any party receiving an award of funds shall provide an accounting of the monies that have been spent, and submit a report to the Examiners showing the results of any studies and a description of any activities conducted using such funds; whether the purpose for which the funds were awarded has been achieved; if the purpose for which the funds were awarded has not been achieved, whether reasonable progress toward the goal for which the funds were awarded is being achieved; and why further expenditures are warranted.

Municipal and local parties that need assistance in preparing a request for intervenor funds may contact Examiner Agresta for assistance. Requests for such assistance do not stay the due date for intervenor funding requests.

THE STIPULATIONS PROCESS

"Stipulations" are agreements among parties that concern matters before the Siting Board and are designed to simplify or shorten litigation and save costs. Any parties to the proceeding can enter into a stipulation setting forth an agreement on any aspect of the Preliminary Scoping Statement and the scope of studies or program of studies to be conducted for the application. It is often in the interests of applicants and other parties to agree in advance to the content of and methodology for conducting studies that will be submitted as part of the application.

So that all parties will have an opportunity to participate, the applicant may not commence consultations or seek agreements on proposed stipulations until the pre-application intervenor funds have been allocated by the Examiners and a meeting of interested parties has been convened by the Examiners in order to initiate the stipulation process. An initial pre-application conference to initiate the stipulations process will be scheduled by the Examiners shortly. The conference will be scheduled to be held in conjunction with the conference on intervenor funding so as to minimize the expense to parties that will likely need to attend both.

No party that is not a signatory to a stipulation is barred from timely raising objections to any aspect of the Preliminary Scoping Statement and the methodology and scope of any stipulated studies or program of studies in any such stipulation. A party that is a signatory to the stipulation may not object to any aspect of the Preliminary Scoping Statement and the methodology and scope of any stipulated studies or program of studies covered in any such stipulation, unless the applicant fails to comply with the stipulation.

Before a stipulation may be executed, notice of the proposed stipulation must be provided and the public and other parties must be afforded a reasonable opportunity to submit comments on the proposed stipulation before it is executed by the interested parties. The Examiners will be available to mediate any issue relating to any aspect of the Preliminary Scoping Statement and the methodology and scope of any such studies or programs of study in order to attempt to resolve any questions that may arise.

(SIGNED)

PAUL AGRESTA

(SIGNED)

MARIA E. VILLA