

NYS BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT

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December 1, 2014

Daniel E. Fitzgerald
Project Manager
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Re: Case 14-F-0485 – Application of Application of Lighthouse Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a 201 MW Wind Energy Facility.

Dear Mr. Fitzgerald:

This letter is to inform you that the Staff of the New York State Department of Public Service (DPS Staff) has reviewed the proposed Public Involvement Program plan for the proposed Lighthouse Wind farm (the “Project”) received from Apex Clean Energy Holdings, LLC (“Apex” or the “Applicant”) on October 31, 2014, and finds it to be inadequate in several areas. As detailed below, the plan does not adequately address many of the appropriate details needed to provide a robust Public Involvement Program (PIP).

In an effort to guide and assist you in preparing an adequate PIP plan, DPS Staff has prepared some specific recommendations, which are outlined below. DPS Staff believes that the application process will be streamlined if the Applicant develops a thorough PIP plan that includes outreach to potentially affected stakeholders early in the process to effectively obtain preliminary input that will guide development of the scope of studies for the application.

DPS Staff provides the following recommendations specific to the filed draft PIP plan:

General Observations and Recommendations

1. The organization of the PIP plan would benefit from an outline numbering scheme, for example: numbering “Project Summary” as Section 1, “Identification of Specific Stakeholders” as Section 2, etc. Subcategories in each section should also get their own identification, such as: “Methodology for Identification of Stakeholders” as Section 2a. This numbering convention will make it easier for a reader to follow along, particularly when the description of one section references another.
2. The PIP should include an introduction that provides the background to the case (i.e., Apex Clean Energy Holdings, LLC is proposing to submit an Application to construct a 201 MW winder energy Project under Article 10 of the Public Service Law...). In addition, the introduction should indicate that a PIP is required under Article 10 and should describe the purpose of the PIP.
3. Many of the comments below ask for more background information, either regarding the Project or the Article 10 process/requirements. Depending on the amount of public involvement done prior to the start of the Article 10 process, the PIP may be the first document the public sees regarding a Project. As such, the Applicant should write the PIP as if the reader has minimal knowledge of Article 10 and the Project. While this does not mean that the PIP has to be a recitation of the Article 10 regulations, it should put the Project and the outreach activities into context.

Project Summary

1. ***Recommendation:*** *The Applicant should consider adding more information to put the Project in context by:*
 - a. *indicating the size of the Project footprint/study area;*
 - b. *describing, at a high level, what the Project consist of (e.g., wind turbines, collection lines, access roads, substations, etc.); and*
 - c. *giving a clearer picture about the purpose and benefits of the Project (i.e., why is this Project being proposed and why is it important, necessary, and/or beneficial, etc.).*
2. The map is very difficult to read since it is also being used to display area zip codes.

Recommendation: *The Applicant should include a map that focuses on the Project area, where municipal boundaries are distinguishable. The figure should*

be labeled. If available, please provide DPS Staff with a map showing the Project area including individual turbine locations, and location of electric lines, substation, switchgear and interconnection points. The original map can be moved to the section on Language Access where there is a discussion of zip codes.

Identification of Stakeholders

1. Methodology

This section should describe what methodology was used to identify potential stakeholders such as environmental groups, local businesses, consumer organizations, Native American tribes, etc. For example, are there any organizations associated with Lake Ontario that should be included in the involvement plan?

Recommendation: *The Applicant should describe the proactive measures it will take to identify potentially interested parties, particularly in the early stages of the Project (e.g., consultation with DPS and municipal officials, review of county records, internet searches, etc).*

2. Affected Agencies

Recommendation: *Identify “Department of Public Service” as the NYS Department of Public Service and the “Department of Defense” as the U.S. Department of Defense. If applicable, public airports and heliports within the required distances should be added to the list of stakeholders. These corrections should be made in the Stakeholder and Consultation Register as well.*

3. Host Municipalities

Recommendation: *Given that the Villages of Barker and Lyndonville are within the Towns of Somerset and Yates, respectively, they should be considered as host municipalities.*

4. Adjacent Municipalities

The one mile and five mile buffer zones are unclear since the Project study area has not been discussed. As such, it is difficult to understand why the Town of Newfane was included as an adjacent community, but Hartland (south of Somerset) and Carlton, Ridgeway and Gaines (east and south of Yates) were not.

Recommendation: *The relationship of these municipalities and the study area needs to be better defined. Also, the PIP should describe how it intends to incorporate the interests and concerns of these municipalities while*

developing draft scope and methodologies of studies for the Preliminary Scoping Statement (“PSS”).

5. Adjacent Landowners

The Applicant states that it will identify adjacent landowners that are within 500 feet of the permanent improvements. However, there is no mention of identifying adjacent landowners within 2,500 feet of the proposed turbines or homeowners within 5,000 feet of the proposed turbines. Specific host and adjacent landowners are not identified in the PIP.

Recommendation: *The Applicant should note why it has not been included at this stage (e.g., final Project footprint is pending additional fieldwork and stakeholder input). However, landowners in proximity of the Project study area should be included in outreach activities.*

6. Public Interest Groups/Other Stakeholders

Recommendations:

- a. *The Applicant should also identify environmental groups or business organizations that may be interested or impacted by the proposed Project. The Project is adjacent to Lake Ontario so it is reasonable to assume that there are environmental organizations with an interest in activities near the shoreline.*
- b. *The Applicant should identify whether private or public airport/heliport and communication operations (radio, etc.) are located in the vicinity of the Project. If so, they should be added to the list of stakeholders to be consulted.*
- c. *The Applicant should identify whether there are Native American tribes in the vicinity of the Project. If so, a representative of the community should be included on the stakeholder list.*

7. Environmental Justice Community

Recommendation: *This section should provide a brief description of what is meant by “environmental justice community,” i.e., a specific percentage of the population in a given area reports themselves as members of minority groups or have a household income below the federal poverty level. Also, this PIP should note the distance to the nearest EJ community in relation to the Project study area and indicate that the community is not expected to be impacted by the Project.*

8. Preliminary Stakeholder List

Recommendations:

- a. *There should be a separate list of all identified stakeholders, separate and distinct from the list of consultations: not all stakeholders will be participating in individual consultations so the list in Appendix A is incomplete.*
- b. *The preliminary stakeholder list should be organized by stakeholder group (i.e. agency, municipal officials, public interest groups, etc.) and include contact names and mailing addresses. It should also include local regional offices of the government agencies.*
- c. *The stakeholder list should also include the addresses of the local document repositories.*

Language Access

1. Languages Spoken Other Than English

The PIP states, on page 3, that, “languages other than English are not spoken by more than 5,000 people....”

Recommendation: *The Applicant should explain the significance of the 5,000 figure. The data in the Appendix should be summarized and provide a percentage of people in the two counties that speak a language other than English at home.*

2. Translation and Communication

Due to the fact that English is spoken in the vast majority of households, all Project communication will be conducted in English. If an individual community member requires assistance understanding Project documents or information, efforts will be made to ensure translation is provided as needed.” Appendix B indicates that there are a fair number of individuals within the listed postal zip code areas that speak English less than “very well.”

Recommendation: *The Applicant should provide more details on how translation will be provided if needed for any of these individuals to provide input regarding the Project, either in person or in writing. For example, will the website feature an option such as Google Translate that will translate content into other non-English languages? The Applicant could also consider a statement printed on publications in the predominant non-English language indicating how to get a translated copy.*

Identification of Goals and Methods for Specific Consultations with Specific Stakeholders

1. Plan for Consultations

Recommendations:

- a. *What was Appendix A should now be referenced here as Appendix B. The Applicant should create a list of stakeholders that is separate and distinct from the “register,” which details the consultations the Applicant will have with certain stakeholders. As such, Appendix A should now be a list of all stakeholders (with addresses) and Appendix B would be the register (currently labeled as Appendix A).*

Page 4 of the PIP notes that the development team will conduct semi-regular individual meetings with key government and community leaders, as identified in the stakeholders list, to keep them informed and updated on Project progress.

- b. *The Applicant should clarify what is meant by “semi-regular” meetings.*
- c. *The Applicant should indicate how Apex staff will be available to answer questions by directing them to the section on Outreach Contacts.*

2. Schedule of Consultations

A schedule of consultations is provided on page 4 of the PIP, along with a more detailed schedule provided as Appendix A. The schedule for early consultation with stakeholders should be geared more toward getting early input for development of the Preliminary Scoping Statement rather than generally “prior to submittal of Application” as is stated at numerous locations in the consultation matrix in Appendix A. Since the comment period for review of Preliminary Scoping Statement is limited to only 21 days (16 NYCRR 1000.5(g)), the early outreach and consultation phase should be geared toward informing, engaging and soliciting input from stakeholder groups to guide the developer in identifying interests, issues and resource concerns that should be addressed in the studies and methodologies presented in the Preliminary Scoping Statement.

Recommendations:

- a. *Collecting feedback for Project scoping and development should be scheduled to occur during Project scoping phase, preferably before development of the Preliminary Scoping Statement (PSS) document, so that the scope of studies presented in the PSS, including topic areas, data needs, methodologies and protocols for studies and analysis, are conducted as appropriate to address the regulatory, planning, scheduling, communication and coordination needs and interests of the various stakeholders and interest groups whose input is being sought.*

- b. *In the table on page 4, the Applicant should explain what is meant by the term “invite”? Are the stakeholders being asked to come to an event such as an open house or is this an “invitation” to learn more about the Project through the website, notifications and printed materials? It is particularly important to distinguish between consultations and other outreach activities since the table on page 4 indicates the general public will be involved but the Consultation Register is focused on agency and municipal officials. It may be less confusing if the schedule of consultations was paired with the list of activities beginning on page 7.*
- c. *The goals of the outreach described in the table on page 4 seem to be to provide information to the public, rather than gather information and input from the public.*
- d. *The goals of the outreach described in the table on page 4 seem to be to provide information to the public, rather than gather information and input from the public.*

3. Outreach Contacts

Page 5 of the PIP provides contact information for an Albany office and states that: “The phone number listed below will be answered during business hours and will accept messages after business hours.” The number listed is (716) 562-4262.

Recommendations:

- a. *The Applicant should indicate that there is a local office in the Project area as well and provide the contact information.*
- b. *The Applicant should consider providing a toll-free number for the convenience of stakeholders that may not reside in the Project area.*

Desired Goal of Consultations with Identified Stakeholders

Pages 4 and 5, regarding Desired Goals of Consultation with Identified Stakeholders: The general outline of outreach provided in this section as drafted is geared toward informing and providing information to stakeholders, which is one of the requirements of the regulations at 16 NYCRR 1000.4(d). The other requirements of the proposed Public Involvement Program plan should be identified, namely “engag[ing] and solicit[ing] input from” stakeholders. DPS Staff suggests that the plan should be expanded to include efforts to identify the interests of stakeholders, and to solicit specific information regarding particular resources, locations, and issues of concern to the affected communities, agencies, and interest groups. Specific goals should include identification of ways to responsibly assess the potential for impacts on resources, locations and issues as part of drafting the Project scoping outline (Preliminary Scoping Statement). Feedback to interest groups can identify how the scoping documents are geared to

develop information that is responsive to their expressed interests. Then detailed analysis of impacts, and appropriate impact minimization and mitigation responses to identified impacts can be developed for reporting in the Application.

Recommendation: *The Applicant should expand the statement of “Goal of Consultations” to inform, engage and solicit input from stakeholders, including identification of specific interests to advance development of Project design and the scope of impact analysis and study methodologies for the Project Scope of Studies.*

Measuring Success

Recommendation: *As noted above regarding the table on page 4, there should be a greater emphasis on engaging the public and stakeholders with a goal towards soliciting their issues and concerns. Feedback from the stakeholders can be instrumental in developing appropriate study areas and can ultimately impact the final Project.*

Tracking Public Involvement Program Activities

The Applicant indicates that it will provide opportunities for commenting on the Project via mail, surveys and telephone.

Recommendation: *As noted above, DPS encourages the use of a toll-free number to gather public comment.*

Website

1. Identification of Content

In describing the Lighthouse Wind Farm website, it is noted on page 6 of the PIP that “The following additional content may be included on the site: wind energy blog, opportunities to share feedback, opportunities to volunteer or participate in other ways, opportunities to share information through Facebook and Twitter, and opportunities to sign up for an email newsletter to be sent out at least twice per year.”

Recommendations:

- a. *The site should also include: the address of the local office, copies of all publications such as factsheets and newsletters, and addresses of local document repositories.*
- b. *What is anticipated by “volunteering” at events? The site should make it clear that an RSVP or volunteering is not necessary to participate in the public event.*

- c. *The Applicant should provide more details on how blogs, Facebook and Twitter will be used to gather public comment. The Applicant indicated that these items may be included on the site. Would representatives from Apex participate in these activities? Would representatives from Apex respond to questions posed in this format by stakeholders or the general public? If yes, then the Applicant should describe how this data would be entered as feedback to be used for studies and addressing Project details.*
- d. *Will the electronic newsletter be posted on the site as well? If someone signs up for the newsletter, will they also receive other notifications for the Project via email? Is there a separate sign-up opportunity for interested parties who want to receive a hard copy of the newsletter and other postal mail notifications? Regarding the email newsletter, please add the following emails to the distribution list:*

andrew.davis@dps.ny.gov

john.quackenbush@dps.ny.gov

erin.odell-keller@dps.ny.gov

lorna.gillings@dps.ny.gov

scott.dean@dps.ny.gov

Public Consultations, Outreach and Activities to Encourage Participation

This section would benefit from a brief description of the stages in the Article 10 process so that the outreach activities are put into context in relation to the Project stages.

1. General Outreach

Recommendations:

- a. *Phone poll – The Applicant should state at what stage of the Project will the phone poll be conducted and whether it would be prior to the submission of the PSS.*
- b. *Office Hours – The Applicant should clarify the days and times staff will be available to respond to the public.*
- c. *Document repositories – The Applicant should indicate that hard copies of application materials are available for public review and provide the addresses of the locations.*

- d. *Dissemination of PSS – The Applicant should clarify that notice of the PSS will be placed in newspapers whose circulation covers the host and adjacent municipalities. Reference the chart on page 9.*
- e. *Additional Public Events – The Applicant should state whether there will be an additional open house in the host community that does not have the Applicant’s office space. The Applicant should also note whether the public information sessions will also be held at the Applicant’s office space or held in multiple locations throughout the Project area. In addition, the Applicant should consider providing a workshop on the Article 10 process and Intervenor funding.*
- f. *The calendar shows the information sessions running from the fourth quarter of 2014 through the second quarter of 2015 but the Project continuing through the end of 2016. The calendar should be clarified to show that events, meetings, etc., will continue throughout the life of the Project as discussed in the certification and compliance sections.*

2. Dissemination Plan for Event Information

Recommendations:

- a. *The Applicant should include how and when event information will be disseminated through the use of email and mailing lists that will be created throughout the course of the Project. It is unclear how this section differs from the Notification section on page 10.*
- b. *Did the Applicant investigate the use of radio spots/public service announcements for disseminating event information? If so, the radio stations should be identified in the PIP.*

3. Educational Materials

Recommendation: *The Applicant should provide the timeframes for developing the materials listed in this section and note when they will be available to the public.*

Notifications

Recommendations:

- a. *Content of notices – should include location of document repositories.*
- b. *Who will receive notices – what about landowners? Assuming they do not opt into the email or text alert program, how will they be notified?*

Appendix A

1. Appendix A states that proposed meetings with County & Town officials will take place “no later than two months after submittal of PSS – In-person meeting or via telephone....”

Recommendations:

- a. *Notice to officials should identify the applicable 21 day comment period for review of the PSS, and the Applicant should offer to meet with officials before or during the review period so that participation in the PSS scoping comment is encouraged, as appropriate.*
 - b. *The reference to identifying “local laws potentially applicable” should also include reference to local and regional land use plans, comprehensive plans and related documents that address specific local issues and community goals.*
2. Comments regarding general consultation with stakeholders and listed goals of consultation noted in Appendix A: The Project area is at least partially within the New York State Department of State designated Coastal Boundary area, and the involved towns have Local Waterfront Revitalization Program (LWRP) documents applicable to “actions” and major Projects within the jurisdictional area.

Recommendation: *The revised PIP plan should specifically refer to the Project locations within LWRP and Coastal Boundary areas; and outreach should include efforts to identify planning, design and development interests specified in LWRP documents and related code and planning provisions.*

3. The following recommendations pertain to general consultation interests and listed goals of consultation for the specified agencies and interested parties in Appendix A (or missing from this appendix):

Municipal Highway Authorities and NYS DOT:

- a. *Consultations should solicit capital Project planning information and details of any major roadway construction plans, schedules and information that may affect transportation and routing of oversize equipment deliveries, Project phasing or construction schedules, etc.*
- b. *Identify appropriate contact personnel at NYS DOT – central and regional offices as appropriate, to fully engage and consult with this agency.*

NYS Office of Parks, Recreation and Historic Preservation:

- a. *The Project Area boundary appears to abut Golden Hill State Park and the Project Area is traversed by a proposed “Greenway Trail” near the shore of Lake Ontario in Yates, and along old railroad grade through Somerset (NYS OPRHP, New York Statewide Trails Plan, 2010).*
- b. *Consultation with NYS OPRHP should include contacts with the Historic Services Bureau (for cultural resources survey matters), as well as State Park and Resource Management staff, to identify interests, issues and concerns of those bureaus of the State agency.*
- c. *The Applicant should show the limits of and label Golden Hill State Park on the map included on page 1 of the PIP.*

NYS Department of Public Service:

- a. *DPS is the primary agency responsible for coordinating the regulatory review process under PSL Article 10. Interaction with DPS will be more effective if developer adopts a more proactive engagement effort than simply meeting the minimum requirements by submitting documents and providing notifications as required by Article 10 regulations.*

Department of Defense:

- a. *DPS Staff suggests that DOD input on the general Project area should be sought early on to guide development of Project layout and design from the beginning, rather than adjusting layout after learning about any potentially significant design problems.*

Other Interested Groups:

- a. *The Great Lakes Seaway Trail National Scenic Byway traverses through the Project area for several miles on NYS Route 18. DPS Staff recommends that the applicant reach out to the Seaway Trail management to establish contact and engage in outreach efforts as appropriate to that agency’s interests (Offices in Sacketts Harbor, NY).*
- b. *The developer should establish contact with the owner/operator of the Tiger Paw Aerodrome, 10601 West Lakeshore Road, Lyndonville NY. This airfield is located within the Project study area in the Town of Yates.*

Appendix D

The referenced studies and fact sheets, attached to the PIP as Appendix D, regarding property values, health effects, etc. refer to broad information and are not specific to the surrounding areas associated with the Project.

Recommendations:

- a. *The publications should be updated to reflect information developed as part of the PIP – i.e., toll-free number, document repository locations, etc.*
- b. *Although the referenced studies and fact sheets contain useful data, it would be beneficial for DPS Staff to receive an outline of potential studies to be performed for this Project with a description of how the Applicant intends to gather input and respond to stakeholder interests and concerns during development of these studies.*

Appendix G

In Appendix G, Draft Form Letters and Notices, it is noted that an Open House regarding the Project was conducted on October 13. It would have been advantageous to DPS Staff if a notice was provided to DPS for this event. Early consultation with stakeholders is encouraged and recommended in 16 NYCRR 1000.4 (c)(2).

Recommendation: *DPS Staff recommends that the Applicant provide notification to DPS Staff prior to any scheduled outreach events in the future. Please provide an agenda of the October 13 activity, describing any presentations made by the Applicant. Also, provide copies of any presentation documents used during this event. Finally, provide documentation noting questions and feedback from individuals that made comments during this Open House.*

Additional Comments and Recommendations

1. *The Project description section should identify the location of reasonable alternative sites, where applicable and a preliminary Study Area. If this is not applicable, the PIP should indicate why this does not apply and how it impacts the outreach program.*
2. *The PIP should also provide information on the impact of the Project on major routes of transportation during construction and operations. While specific information is not available at this point, the PIP should acknowledge that this will be investigated during the Project and the public will be kept informed as the Project moves forward.*

Pursuant to 16 NYCRR §1000.4(e), Apex Clean Energy “shall within 30 days consider the measures recommended by DPS and, in a final written Public Involvement Program plan filed with the Secretary, shall as to each specific measure either revise the Public Involvement Program plan to incorporate the DPS recommendation, or provide a written explanation as to why it decided not to incorporate the recommendation.”

If you have any questions or need additional information regarding the DPS recommendations above, please contact me at (518) 474-9075 or by e-mail at erin.odell-keller@dps.ny.gov.

Sincerely,

A handwritten signature in black ink that reads "Erin O'Dell-Keller". The signature is written in a cursive, flowing style.

Erin O'Dell-Keller
Manager, Outreach and Education
Office of Consumer Services