

NYS BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
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Acting Secretary

December 18, 2012

Honorable Urban C. Hirschey
Supervisor
Town of Cape Vincent
1964 NYS Route 12E
Cape Vincent, NY 13618

Re: Case 12-F-0410

Dear Supervisor Hirschey:

Thank you for your letter dated December 12, 2012 regarding the Public Involvement Plan ("PIP") filed by Cape Vincent Wind Power and your concern about possible conflicts of interest. You state in your letter that Cape Vincent Wind offered charitable donations to service groups in the Town of Cape Vincent, an activity which is not reflected in the PIP. You also expressed concern about a possible conflict of interest because the attorney for the project, John Harris, is married to Commissioner Maureen Harris, a member of the Public Service Commission ("Commission"). I hope the following responds to your concerns.

As you know, the New York State Board on Electric Generation Siting and the Environment ("Siting Board") is empowered to issue Certificates of Environmental Compatibility and Public Need authorizing the construction and operation of major electric generating facilities in New York State, pursuant to Article 10 of the Public Service Law. The statute and the Siting Board's regulations require a project developer to submit its proposed PIP to the staff of the Department of Public Service ("Department staff") for review and comment.

The purpose of this requirement is to ensure that the developer has an adequate plan in place to inform affected communities about the project and to facilitate the public's participation in the Article 10 process. Cape Vincent Wind submitted its proposed PIP on September 17, 2012. Department staff found that the proposed PIP was inadequate and provided suggestions as to how Cape Vincent Wind could improve its plan. The company submitted a revised PIP on November 16, 2012.

You are correct that providing donations to community groups is not an activity listed in the PIP. Notwithstanding your concerns, the fact that the PIP does not discuss charitable donations to local service

groups does not make the plan inadequate or preclude the involvement of any sector of the Cape Vincent community from participating in the Article 10 process.

Furthermore, you are correct that John Harris is married to Commissioner Maureen Harris, who is a member of the Commission, and that Department staff serve as staff of the Siting Board in the Article 10 process. You stated in your letter that the community is very sensitive to conflict of interest issues. I can assure you that the Siting Board, the Department, and the Commission are very aware of concerns about potential conflicts of interest.

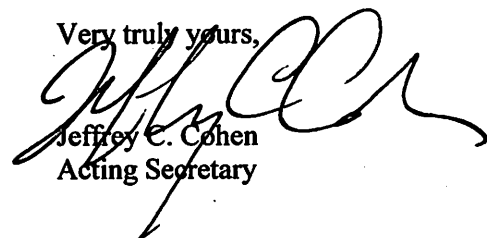
First, the Siting Board, and not the Commission, will review any Article 10 application submitted by Cape Vincent Wind. Commissioner Harris is not a member of the Siting Board and therefore Commissioner Harris will not have any role in that review. While it does not appear at this point that there will be any matters related to the Cape Vincent project that are statutorily required to come before the Commission, Commissioner Harris will be informed that this matter is pending before the Siting Board.

Second, Department Staff will ensure that Commissioner Harris does not receive any documentary information pertaining to the Cape Vincent project and will be instructed, once an application is filed, not to discuss this matter with her. Should an issue arise in the future that requires Commission review, Commissioner Harris will be required to disclose her relationship with her husband and to recuse herself from any consideration of the matter. The process of disclosure and recusal is consistent with the policies set forth by the predecessor agencies to the Joint Commission on Public Ethics (see, for example, Advisory Opinion No. 95-35).

By statute, there is a distinction between the Commission and the Department of Public Service. The chief executive officer of the Department of Public Service is the Chairman of the Public Service Commission, not the Commissioners, as defined in Public Service Law Section 3. Furthermore, the Commission is a separate body within the Department, as defined in Public Service Law Section 4. As such, please be advised that staff assigned to facilitate the stipulation process under Public Service Law 163 (5) do not report to and do not share information with any Commissioner other than the Chairman of the Department of Public Service, as noted above. Department Staff provide information to the Commissioners pertaining only to matters that are within the Commission's statutory powers and duties to consider.

I hope that this letter provides you with a greater understanding of the review process regarding the Cape Vincent project, and all Article 10 projects. The Siting Board will make its decisions on the record developed in the review proceeding, assuming Cape Vincent Wind files an Article 10 application. Please contact me if you have any further questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jeffrey C. Cohen', is written over the typed name and title.

Jeffrey C. Cohen
Acting Secretary