

The Dax Law Firm, P.C.

54 State Street, Suite 805
Albany, New York 12207
www.daxlawfirm.com

Telephone: (518) 432-1002
Facsimile: (518) 432-1028

John W. Dax

William F. McLaughlin*

**Also Admitted in Massachusetts & District of Columbia*

August 22, 2019

Via Hand Delivery and

Document and Matter Management System (DMM)

Hon. Kathleen H. Burgess, Secretary
New York State Board on Electric Generation
Siting and the Environment
Empire State Plaza, Agency Building 3
Albany, New York 12223-1350

Re: Case 15-F-0377 – Application of Bull Run Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a Wind Energy Project

Dear Secretary Burgess:

Enclosed with this letter, in the form and number prescribed by Section 1000.6(a) of the regulations of the Board on Electric Generation Siting and the Environment (Siting Board), is the application of Bull Run Energy LLC (BRE) for authority pursuant to Public Service Law Article 10 to build and operate the Bull Run Wind Energy Center, a 449 MW wind energy project located in the Towns of Altona, Clinton, Ellenburg and Mooers in Clinton County, New York (Application). Also enclosed is a check in the amount of Four Hundred Thousand Dollars (\$400,000.00) for the fee required by Public Service Law Section 164(6)(a).

Prior Filings

On June 24, 2015, BRE submitted its Public Involvement Plan, a revised and updated version of which was filed on September 2, 2015. On July 26, 2016, BRE submitted a Preliminary Scoping Statement (PSS), notice of which was published on July 19-21, 2016, in area newspapers. On September 23, 2016, BRE submitted its response to comments received concerning the PSS, which included a revised PSS.

On September 21, 2016, a pre-application conference was conducted in Mooers, New York by Administrative Law Judges Kevin J. Casutto and Maria E. Villa.

Stipulation Conferences

On September 29, 2016 a *Notice of Commencement of Stipulation Consultations* was served on the active parties. Stipulation conferences were held at various times between October 12, 2016 and May 10, 2017. Although the conferences have been helpful in identifying what the parties require to assess the Project, particularly in the areas of sound and visual impacts, BRE has elected not to pursue execution of any stipulations.

The Application

The enclosed Application, consisting of exhibits and appendices thereto has been prepared in compliance with Section 1000.1 of the Siting Board regulations. Appendices contain detailed protocols and reports on discrete topics and materials not easily included in the text of the exhibits. The exhibits

contain the contents required by Part 1001 of the Siting Board regulations except for exhibits that are not relevant to wind energy technology. Each exhibit includes the required title page and is organized according to the organization of the relevant section of Part 1001.

The Application is comprised of seven bound books. Book 1 includes the text of the exhibits prescribed in Part 1001 and the pre-filed testimony of the sponsoring witnesses, including BRE's Proposed Certificate Conditions with explanatory testimony. The testimony identifies the witness, his or her education and professional experience, and the exhibit, exhibits or parts thereof for which he or she is responsible. Book 2 contains all figures – maps and drawings – associated with the exhibits other than those included in Books 6 and 7. Books 3 and 4 include technical appendices, which have been summarized or referenced in the exhibits. Book 5 includes the Visual Impact Assessment. Book 6 includes Site Plans and Book 7, wetland impact drawings and tabulations.

Accompanying the Application, as required by Section 1000.6(c)(i), is the prepared testimony of each expert witness BRE intends to offer at hearing in support of the Application. The testimony identifies the witness, his or her education and professional experience and the exhibit, exhibits or parts thereof for which he or she is responsible.

Certain information included in the Application constitutes trade secrets, confidential commercial information and confidential critical infrastructure information, which BRE is requesting not be included in the Siting Board's public files. A copy of that request is attached.

Notice and Service of Application

Notice of the Application (copy attached) has been given to the public as required by Section 1000.7 by publishing it in the *Adirondack Pennysaver*, *Malone Telegram* and *Press-Republican* on July 11, 2019. Affidavits of publication are attached. Notice has also been provided as required by BRE's Public Involvement Program plan by mailing postcards (copy attached) to all stakeholders. Affidavits of service of the Application will be posted on the Department of Public Service DMM system once service is completed.

Respectfully submitted,
THE DAX LAW FIRM, P.C.

/s/ John W. Dax

John W. Dax

Enclosures:

- Filing Fee
- Notice of Filing of Application
- Affidavits of Publication
- BRE Postcard to Stakeholders
- Statutory Party List
- Party List
- Letter to Administrative Law Judges Bergen and Villa Requesting Protection of Confidential Information

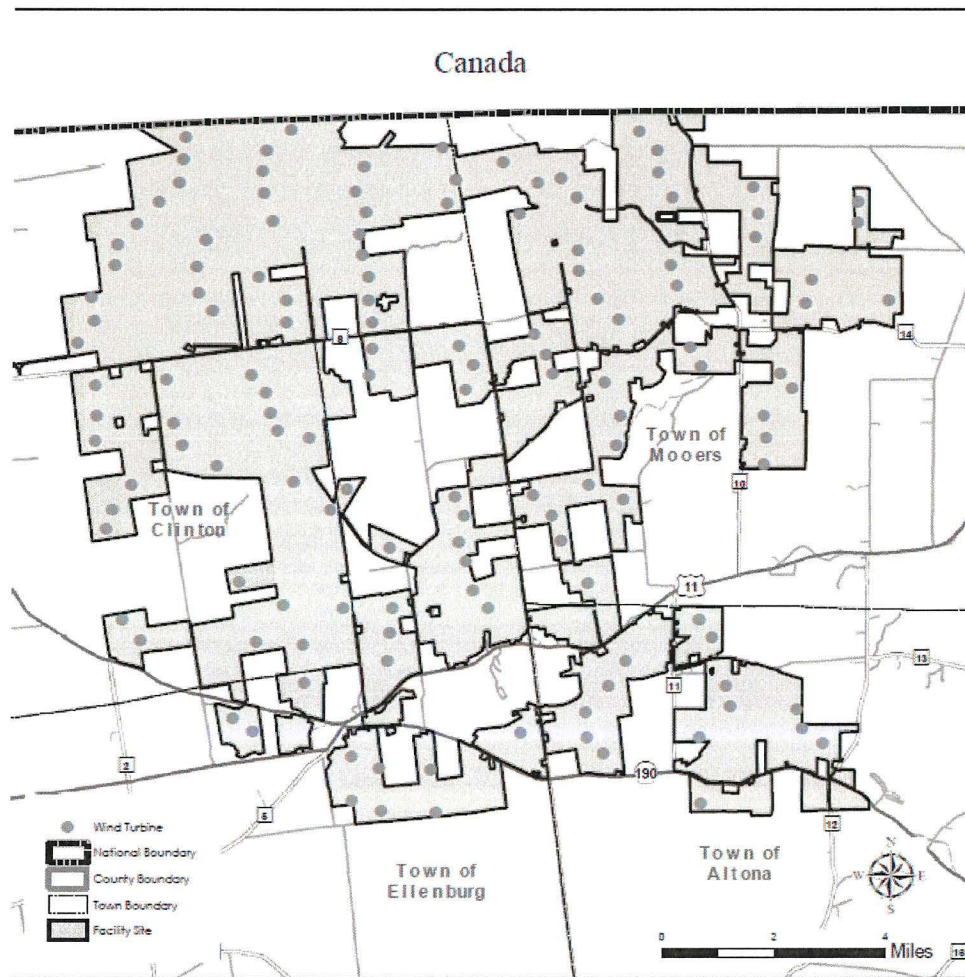
cc (via email): Erika Bergen, Administrative Law Judge, NYSDPS
Maria E. Villa, Administrative Law Judge, NYSDEC
Party List

cc (via UPS): Statutory Parties (list attached)

BULL RUN ENERGY LLC
Clinton County, New York

NOTICE OF FILING OF APPLICATION

Bull Run Energy LLC (Applicant or BRE), an affiliate of Invenergy LLC, is proposing to construct a major electric generating facility subject to Article 10 of the New York Public Service Law (Facility). On or about July 15, 2019, the Applicant will file an Application pursuant to Public Service Law (PSL) Section 164 and 16 NYCRR 1000.6 for a Certificate of Environmental Compatibility and Public Need with the New York State Board on Electric Generation Siting and the Environment (Siting Board) authorizing the construction and operation of the Facility. The Application will be filed in Siting Board Case 15-F-0377.



The proposed Facility is a 449 megawatt (MW) wind-powered electric generation facility with up to 139 wind turbines to be located in the Towns of Clinton, Ellenburg, Altona and Mooers in Clinton County, New York as shown on the map above. The Facility will include wind turbines, access roads, an electrical collection system, meteorological towers, an operation and maintenance (O&M) building, electrical interconnection facilities, and for construction purposes a concrete batch plant and construction staging and laydown yards. The interconnection facilities will include a 230-kV switchyard built adjacent to New York Power Authority's (NYPA) Ryan-Plattsburgh

230-kV transmission line and an overhead 230-kV interconnection line. The proposed interconnection facilities will be subject to review under Article VII of the Public Service Law.

Power from the Facility will be delivered to a point of interconnection (POI) switchyard. BRE will design and construct the POI switchyard according to NYPA's standards and will transfer ownership of the switchyard, including all equipment and real property on which it is located, to NYPA after the Project begins commercial operation.

The Facility will generate electricity from wind, a renewable energy source, reducing air emissions and the use of water resources associated with electricity consumption. The Facility will assist the State in meeting the goals of the State Energy Plan, which include obtaining 50% of electricity consumed in the State from renewable sources by 2030 and significantly reducing greenhouse gas emissions. Other positive impacts include diversification of energy supplies, new employment opportunities (both temporary construction employment and full-time jobs), increased revenues to county and municipal governments, payments to the local hospitality industry, and purchase of local supplies and goods.

The construction and operation of the Facility may result in unavoidable temporary and permanent environmental impacts, including impacts on terrestrial ecology; impacts to avian and bat species; impacts to forested land and wetlands; and visual impacts. Other potential impacts commonly attributed to utility-scale wind energy facilities include noise, shadow flicker, and traffic. The Applicant has designed the Facility layout to meet acceptable standards in these areas and to minimize disturbance to forested lands and wetlands to the maximum extent practicable.

The Applicant intends to submit a request for a Water Quality Certification (WQC) under Section 401 of the federal Clean Water Act, a prerequisite to obtaining a permit from the U.S. Army Corps of Engineers for the disturbance to federally regulated wetlands required to construct the Facility.

Pursuant to the Article 10 process, the Applicant filed a Preliminary Scoping Statement (PSS) with the Siting Board on July 27, 2016 and a revision to the PSS on September 23, 2016. Thereafter, the public had an opportunity to submit comments on the PSS. Following the comment period, the Applicant prepared a summary of the material comments and submitted its reply on September 23, 2016. On September 21, 2016, a pre-application conference to consider intervenor funding requests was held. On September 29, 2016 BRE provided notice of consultations to discuss the contents of the Application to a broad list of potential stakeholders. BRE hosted several telephone conferences between October 12, 2016 and May 10, 2017, to solicit input from stakeholders concerning the content of the Application. BRE is now ready to file an Application.

The Application includes, among other things: an analysis of the environmental setting of the Facility; a description of the Facility including preliminary design drawings and related information; an assessment of potential land use, environmental and health impacts from construction and operation of the Facility; descriptions of the environmental, economic and other benefits of the Facility; results of studies conducted to prepare the Application, including preconstruction studies to assess potential impacts to avian and bat species; proposed measures to minimize environmental impacts; and a consideration of potential alternatives to the Facility. The Application also addresses consistency with State energy planning objectives, including climate change and renewable energy goals and concerns about public health and safety; terrestrial ecology, water resources and aquatic ecology; communications, transportation and utilities; cultural, historical and recreational resources; visual impacts, including shadow flicker; sound

impacts; electro-magnetic fields; and impacts on the statewide electrical system. The Article 10 regulations outlining the required contents of the Application can be found at 16 NYCRR 1001.1 et seq.

This notice is being provided in accordance with 16 NYCRR 1000.7 and will be published at least three (3) days prior to the filing of the Application. A copy of the Application will be served on the Chief Executive Officer of each municipality in which any portion of the Facility is located, as well as those persons and agencies enumerated in 16 NYCRR 1000.6.

With the Application, BRE will deposit \$400,000.00 to be disbursed by the Siting Board to municipalities and other local parties to help pay expenses, including attorney and consultant fees, associated with participating in the Application review process. Fifty percent (50%) of these intervenor funds are reserved for municipalities. Once the Application is filed and determined by the Siting Board to be complete, the Siting Board will schedule a public hearing on the Application. The Siting Board will also issue a notice of availability of intervenor funds to be used by municipalities and local parties to participate in formal review of the Application. Requests for funds must be submitted to the Hearing Examiners within thirty (30) days after the issuance of the notice of the availability of intervenor funds. A pre-hearing conference will be scheduled by the Hearing Examiners to identify intervenors, award intervenor funds, identify issues for the hearing, and establish a case schedule. Additional hearings regarding the Application and project impact assessments will be scheduled by the Hearing Examiners as needed. After hearings, the parties may brief their positions and the Hearing Examiners will issue a recommended decision upon which the Siting Board will base its decision. Article 10 requires that all proceedings on the Application, including a final decision by the Siting Board, be completed within 12 months of the date the Application is determined to be complete.

The record of this proceeding, including the Application, may be examined during normal business hours at the Offices of the New York State Department of Public Service (DPS) at 3 Empire State Plaza, Albany, NY 12223, and may also be viewed at the following public repositories:

- Bull Run Local Office, 5591 State Rte. 11, Building #3, Ellenburg, NY
- Clinton Town Hall, 23 Smith Street, Churubusco, NY
- Ellenburg Center Reading Center, 2 Dupuis Rd, Ellenburg Center, NY
- Sarah A. Munsil Free Library, 5139 Route 11, Ellenburg Depot, NY
- Altona Reading Center, Altona Town Hall, 3124 Miner Farm Road, Altona, NY
- Mooers Free Library, 25 School Street, Mooers, NY

Contact Information

Contact information for Bull Run Energy LLC:

Jon LaBarre
Manager, Renewable Development
Invenergy LLC
5591 State Route 11, Building 3
Ellenburg, NY 12933
Telephone: (518) 420-3909
Email: jlabarre@invenergyllc.com

Contact information for DPS Article 10 Coordinator:

James Denn
Public Information Officer
NYS Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223
Telephone: (518) 474-7080
Email: james.denn@dps.ny.gov

The Application will also be available at the DPS website at www.dps.ny.gov. To access documents, go to "Search" on the top of the webpage and search using the Case Number 15-F-0377 or the direct link:

<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=15-F-0377&submit=Search> or by going to the project-specific website maintained by the Applicant: <https://bullrunwind.com>

File a Request for Notices

Any interested member of the public may file a request with the DPS Secretary to receive copies of all notices concerning the Facility. Written requests should be sent to the DPS Secretary at secretary@dps.ny.gov or sent by mail to the following address:

Honorable Kathleen H. Burgess
Secretary to the Commission
NYS Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223-1350
Telephone: (518) 474-2500
Email: secretary@dps.ny.gov



177 Margaret Street • Plattsburgh, New York 12901
(518) 563-0100 • Fax (518) 562-0303
mail@adkpennysaver.com

AFFIDAVIT OF PUBLICATION

County of Clinton
State of New York,

SS:

Mark Rigby being duly sworn, deposes and says that he is the Publisher of The Adirondack Pennysaver, a weekly newspaper published in Plattsburgh, in the County of Clinton, in the State of New York, and that a notice, a printed copy of which is hereto annexed, has been published in said newspaper once in each week for

1 week(s), via:

Legal notice Bull Run Energy LLC Clinton County NY

Insert Date(s) 7/11/19

Signed: _____

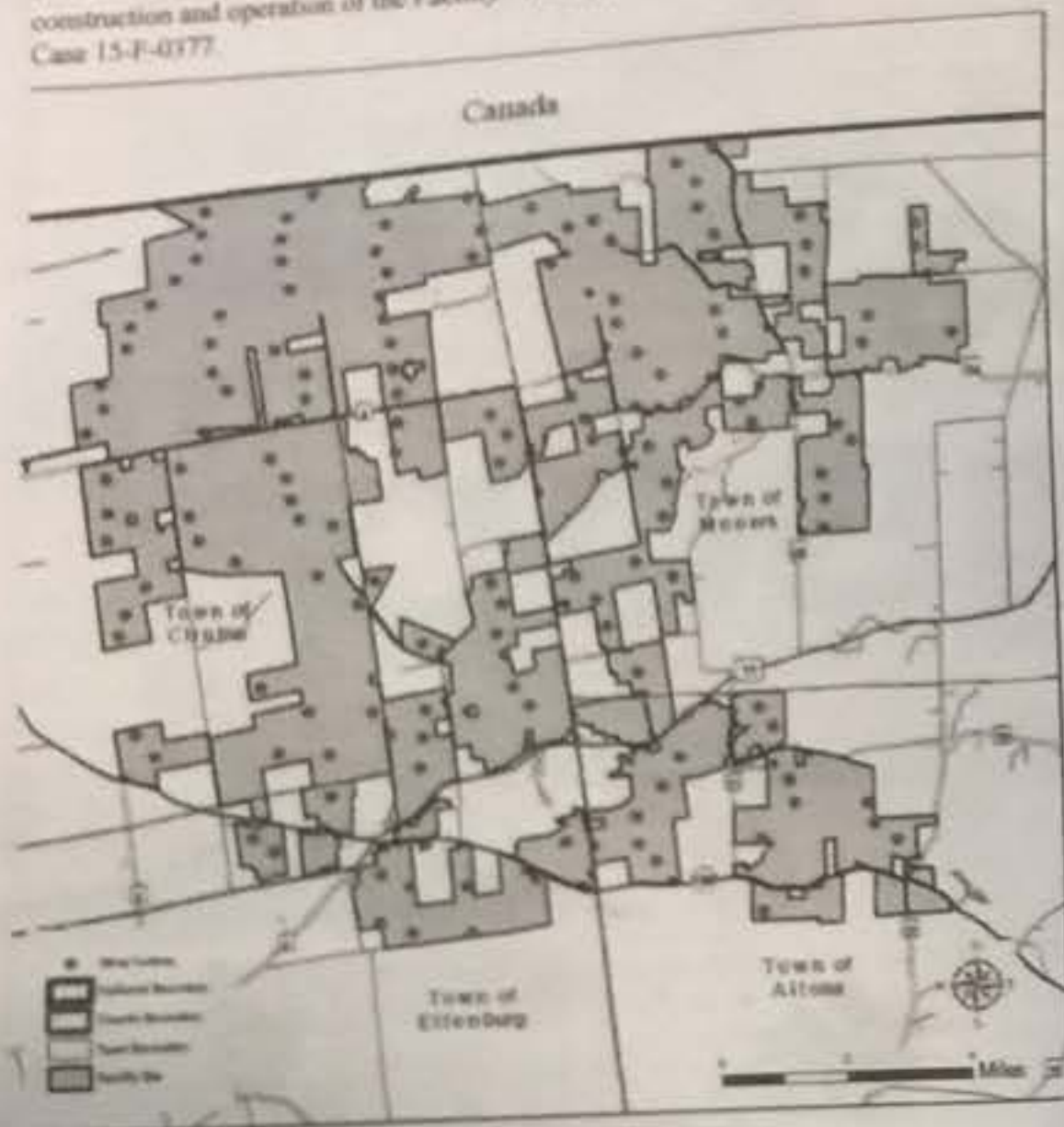
Sworn to me this July 12th day of 2019

Notary Public in and for Clinton County

SUZETTE A. PAVONE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01PA6119393
Qualified In Clinton County
My Commission Expires 11-29-2020

NOTICE OF FILING OF APPLICATION

Bull Run Energy LLC (Applicant or BRE), an affiliate of Invenenergy LLC, is proposing to construct a major electric generating facility subject to Article 10 of the New York Public Service Law (Facility). On or about July 15, 2019, the Applicant will file an Application pursuant to Public Service Law (PSL) Section 164 and 16 NYCRR 1000.6 for a Certificate of Environmental Compatibility and Public Need with the New York State Board on Electric Generation Siting and the Environment (Siting Board) authorizing the construction and operation of the Facility. The Application will be filed in Siting Board Case 15-F-0377.



The proposed Facility is a 449 megawatt (MW) wind-powered electric generation facility with up to 139 wind turbines to be located in the Towns of Clinton, Ellenburg, Altona and Mooers in Clinton County, New York as shown on the map above. The Facility will include wind turbines, access roads, an electrical collection system, meteorological towers, an operation and maintenance (O&M) building, electrical interconnection facilities, and for construction purposes a concrete batch plant and construction staging and laydown yards. The interconnection facilities will include a 230-kV switchyard built adjacent to New York Power Authority's (NYPA) Ryan-Plattsburgh 230-kV transmission line and an overhead 230-kV interconnection line. The proposed interconnection facilities will be subject to review under Article VII of the Public Service Law.

Power from the Facility will be delivered to a point of interconnection (POI) switchyard. BRE will design and construct the POI switchyard according to NYPA's standards and will transfer ownership of the switchyard, including all equipment and real property on which it is located, to NYPA after the Project begins commercial operation.

The Facility will generate electricity from wind, a renewable energy source, reducing air emissions and the use of water resources associated with electricity consumption. The Facility will assist the State in meeting the goals of the State Energy Plan, which include obtaining 50% of electricity consumed in the State from renewable sources by 2030 and significantly reducing greenhouse gas emissions. Other positive impacts include diversification of energy supplies, new employment opportunities (both temporary construction employment and full-time jobs), increased revenues to county and municipal governments, payments to the local hospitality industry, and purchase of local supplies and goods.

The construction and operation of the Facility may result in unavoidable temporary and permanent environmental impacts, including impacts on terrestrial ecology; impacts to avian and bat species; impacts to forested land and wetlands; and visual impacts. Other potential impacts commonly attributed to utility-scale wind energy facilities include noise, shadow flicker, and traffic. The Applicant has designed the Facility layout to meet acceptable standards in these areas and to minimize disturbance to forested lands and wetlands to the maximum extent practicable.

The Applicant intends to submit a request for a Water Quality Certification (WQC) under Section 401 of the federal Clean Water Act, a prerequisite to obtaining a permit from the U.S. Army Corps of Engineers for the disturbance to federally regulated wetlands required to construct the Facility.

Pursuant to the Article 10 process, the Applicant filed a Preliminary Scoping Statement (PSS) with the Siting Board on July 27, 2016 and a revision to the PSS on September 23, 2016. Thereafter, the public had an opportunity to submit comments on the PSS. Following the comment period, the Applicant prepared a summary of the material comments and submitted its reply on September 23, 2016. On September 21, 2016, a pre-application conference to consider intervenor funding requests was held. On September 29, 2016 BRE provided notice of consultations to discuss the contents of the Applica-

tion to a broad list of potential stakeholders. BRE hosted several telephone conferences between October 12, 2016 and May 10, 2017, to solicit input from stakeholders concerning the content of the Application. BRE is now ready to file an Application.

The Application includes, among other things: an analysis of the environmental setting of the Facility; a description of the Facility including preliminary design drawings and related information; an assessment of potential land use, environmental and health impacts from construction and operation of the Facility; descriptions of the environmental, economic and other benefits of the Facility; results of studies conducted to avian and bat species; proposed measures to minimize environmental impacts; and a consideration of potential alternatives to the Facility. The Application also addresses consistency with State energy planning objectives, including climate change and renewable energy goals and concerns about public health and safety; terrestrial ecology; water resources and aquatic ecology; communications, transportation and utilities; cultural, historical and recreational resources; visual impacts, including shadow flicker; sound impacts; electro-magnetic fields; and impacts on the statewide electrical system. The Article 10 regulations outlining the required contents of the Application can be found at 16 NYCRR 1001.1 et seq.

This notice is being provided in accordance with 16 NYCRR 1000.7 and will be published at least three (3) days prior to the filing of the Application. A copy of the Application will be served on the Chief Executive Officer of each municipality in which any portion of the Facility is located, as well as those persons and agencies enumerated in 16 NYCRR 1000.6.

With the Application, BRE will deposit \$400,000.00 to be disbursed by the Siting Board to municipalities and other local parties to help pay expenses, including attorney and consultant fees, associated with participating in the Application review process. Fifty percent (50%) of these intervenor funds are reserved for municipalities. Once the Application is filed and determined by the Siting Board to be complete, the Siting Board will schedule a public hearing on the Application. The Siting Board will also issue a notice of availability of intervenor funds to be used by municipalities and local parties to participate in formal review of the Application. Requests for funds must be submitted to the Hearing Examiners within thirty (30) days after the issuance of the notice of the availability of intervenor funds. A pre-hearing conference will be scheduled by the Hearing Examiners to identify intervenors, award intervenor funds, identify issues for the hearing, and establish a case schedule. Additional hearings regarding the Application and project impact assessments will be scheduled by the Hearing Examiners as needed. After hearings, the parties may brief their positions and the Hearing Examiners will issue a recommended decision upon which the Siting Board will base its decision. Article 10 requires that all proceedings on the Application, including a final decision by the Siting Board, be completed within 12 months of the date the Application is determined to be complete.

The record of this proceeding, including the Application, may be examined during normal business hours at the Offices of the New York State Department of Public Service (DPS) at 3 Empire State Plaza, Albany, NY 12223, and may also be viewed at the following public repositories:

- Bull Run Local Office, 5591 State Rte. 11, Building #3, Ellenburg, NY
- Clinton Town Hall, 23 Smith Street, Churubusco, NY
- Ellenburg Center Reading Center, 2 Dupuis Rd, Ellenburg Center, NY
- Sarah A. Munsil Free Library, 5139 Route 11, Ellenburg Depot, NY
- Altona Reading Center, Altona Town Hall, 3124 Miner Farm Road, Altona, NY
- Mooers Free Library, 25 School Street, Mooers, NY

Contact Information

Contact information for Bull Run Energy LLC:

Jon LaBarre
Manager, Renewable Development
Invenenergy LLC
5591 State Route 11, Building 3
Ellenburg, NY 12933
Telephone: (518) 420-3909
Email: jlabarre@invenenergyllc.com

Contact information for DPS Article 10 Coordinator:

James Denn
Public Information Officer
NYS Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223
Telephone: (518) 474-7080
Email: james.denn@dps.ny.gov

The Application will also be available at the DPS website at www.dps.ny.gov. To access documents, go to "Search" on the top of the webpage and search using the Case Number 15-F-0377 or the direct link:

<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=15-F-0377&submit=Search> or by going to the project-specific website maintained by the Applicant: <https://bullrunwind.com>

File a Request for Notices

Any interested member of the public may file a request with the DPS Secretary to receive copies of all notices concerning the Facility. Written requests should be sent to the DPS Secretary at secretary@dps.ny.gov or sent by mail to the following address:

Honorable Kathleen H. Burgess
Secretary to the Commission
NYS Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223-1350
Telephone: (518) 474-2500
Email: secretary@dps.ny.gov

STATE OF NEW YORK,

Franklin County Betsy J. McGivney sa:

being duly sworn, says that she is Business Manager of The Malone Telegram, a daily newspaper of general circulation published in Malone, in said county, and that notice, of which a true copy cut from said newspaper, is hereunto annexed, was published in said newspaper once a week

for One day weeks consecutively, the first publication being

on the _____ day of _____, 20____ and the last publication

being on 11 the day of July, 2019

me, this 31 } Betsy J. McGivney
Notary Public
GEORGE McLAUGHLIN
Notary Public State of New York
Franklin County No. 4781786
My Commission Expires March 30, 2023

BULL RUN ENERGY LLC Clinton County, New York

NOTICE OF FILING OF APPLICATION

Bull Run Energy LLC (Applicant or BRE), an affiliate of Invenenergy LLC, is proposing to construct a major electric generating facility subject to Article 10 of the New York Public Service Law (Facility). On or about July 15, 2019, the Applicant will file an Application pursuant to Public Service Law (PSL) Section 164 and 16 NYCRR 1000.6 for a Certificate of Environmental Compatibility and Public Need with the New York State Board on Electric Generation Siting and the Environment (Siting Board) authorizing the construction and operation of the Facility. The Application will be filed in Siting Board Case 15-F-0377.

The proposed Facility is a 449 megawatt (MW) wind-powered electric generation facility with up to 139 wind turbines to be located in the Town of Clinton, Ellenburg, Altona and Mooers in Clinton County, New York as shown on the map above. The Facility will include wind turbines, access roads, an electrical collection system, meteorological towers, an operation and maintenance (O&M) building, electrical interconnection facilities, and for construction purposes a concrete batch plant and construction staging and laydown yards. The interconnection facilities will include a 230-kV switchyard built adjacent to New York Power Authority's (NYPA) Ryan-Plattsburgh 230-kV transmission line and an overhead 230-kV interconnection line. The proposed interconnection facilities will be subject to review under Article VII of the Public Service Law.

Power from the Facility will be delivered to a point of interconnection (POI) switchyard. BRE will design and construct the POI switchyard according to NYPA's standards and will transfer ownership of the switchyard, including all equipment and real property on which it is located, to NYPA after the Project begins commercial operation.

The Facility will generate electricity from wind, a renewable energy source, reducing air emissions and the use of water resources associated with electricity consumption. The Facility will assist the State in meeting the goals of the State Energy Plan, which include obtaining 50% of electricity consumed in the State from renewable sources by 2030 and significantly reducing greenhouse gas emissions. Other positive impacts include diversification of energy supplies, new employment opportunities (both temporary construction employment and full-time jobs), increased revenues to county and municipal governments, payments to the local hospitality industry, and purchase of local supplies and goods.

The construction and operation of the Facility may result in unavoidable temporary and permanent environmental impacts, including impacts on terrestrial ecology; impacts to avian and bat species; impacts to forested land and wetlands; and visual impacts. Other potential impacts commonly attributed to utility-scale wind energy facilities include noise, shadow flicker, and traffic. The Applicant has designed the Facility layout to meet acceptable standards in these areas and to minimize disturbance to forested lands and wetlands to the maximum extent practicable.

The Applicant intends to submit a request for a Water Quality Certification (WQC) under Section 401 of the federal Clean Water Act, a prerequisite to obtaining a permit from the U.S. Army Corps of Engineers for the disturbance to federally regulated wetlands required to construct the Facility.

Pursuant to the Article 10 process, the Applicant filed a Preliminary Scoping Statement (PSS) with the Siting Board on July 27, 2016 and a revision to the PSS on September 23, 2016. Thereafter, the public had an opportunity to submit comments on the PSS. Following the comment period, the Applicant prepared a summary of the material comments and submitted its reply on September 23, 2016. On September 21, 2016, a pre-application conference to consider intervenor funding requests was held. On September 29, 2016 BRE provided notice of consultation to discuss the contents of the Application to a broad list of potential stakeholders. BRE hosted several telephone conferences between October 12, 2016 and May 10, 2017, to solicit input from stakeholders concerning the content of the Application. BRE is now ready to file an Application.

The Application includes, among other things: an analysis of the environmental setting of the Facility; a description of the Facility including preliminary design drawings and related information; an assessment of potential land use, environmental and health impacts from construction and operation of the Facility; descriptions of the environmental, economic and other benefits of the Facility; results of studies conducted to prepare the Application, including preconstruction studies to assess potential impacts to avian and bat species; proposed measures to minimize environmental impacts; and a consideration of potential alternatives to the Facility. The Application also addresses consistency with State energy planning objectives, including climate change and renewable energy goals and concerns about public health and safety; terrestrial ecology, water resources and aquatic ecology; communications, transportation and utilities; cultural, historical and recreational resources; visual impacts, including shadow flicker; sound impacts; electro-magnetic fields; and impacts on the statewide electrical system. The Article 10 regulations outlining the required contents of the Application can be found at 16 NYCRR 1001.1 et seq.

This notice is being provided in accordance with 16 NYCRR 1000.7 and will be published at least three (3) days prior to the filing of the Application. A copy of the Application will be served on the Chief Executive Officer of each municipality in which any portion of the Facility is located, as well as those persons and agencies enumerated in 16 NYCRR 1000.6.

With the Application, BRE will deposit \$400,000.00 to be disbursed by the Siting Board to municipalities and other local parties to help pay expenses, including attorney and consultant fees, associated with participating in the Application review process. Fifty percent (50%) of these intervenor funds are reserved for municipalities. Once the Application is filed and determined by the Siting Board to be complete, the Siting Board will schedule a public hearing on the Application. The Siting Board will also issue a notice of availability of intervenor funds to be used by municipalities and local parties to participate in formal review of the Application. Requests for funds must be submitted to the Hearing Examiners within thirty (30) days after the issuance of the notice of the availability of intervenor funds. A pre-hearing conference will be scheduled by the Hearing Examiners to identify intervenors, award intervenor funds, identify issues for the hearing, and establish a case schedule. Additional hearings regarding the Application and recommended decision upon which the Siting Board will base its decision. Article 10 requires that all proceedings on the Application, including a final decision by the Siting Board, be completed within 12 months of the date the Application is determined to be complete.

The record of this proceeding, including the Application, may be examined during normal business hours at the Offices of the New York State Department of Public Service (DPS) at 3 Empire State Plaza, Albany, NY 12223, and may also be viewed at the following public repositories:

- Bull Run Local Office, 5591 State Rte. 11, Building #3, Ellenburg, NY
- Clinton Town Hall, 23 Smith Street, Churubusco, NY
- Ellenburg Center Reading Center, 2 Dupuis Rd, Ellenburg Center, NY

- Sarah A. Munsil Free Library, 5139 Route 11, Ellenburg Depot, NY
- Altona Reading Center, Altona Town Hall, 3124 Miner Farm Road, Altona, NY
- Mooers Free Library, 25 School Street, Mooers, NY

Contact Information

Contact information for Bull Run Energy LLC:
Jon LaBarre
Manager, Renewable Development
Invenenergy LLC
5591 State Route 11, Building 3
Ellenburg, NY 12933
Telephone: (518) 420-3909
Email: jlabarre@invenenergyllc.com

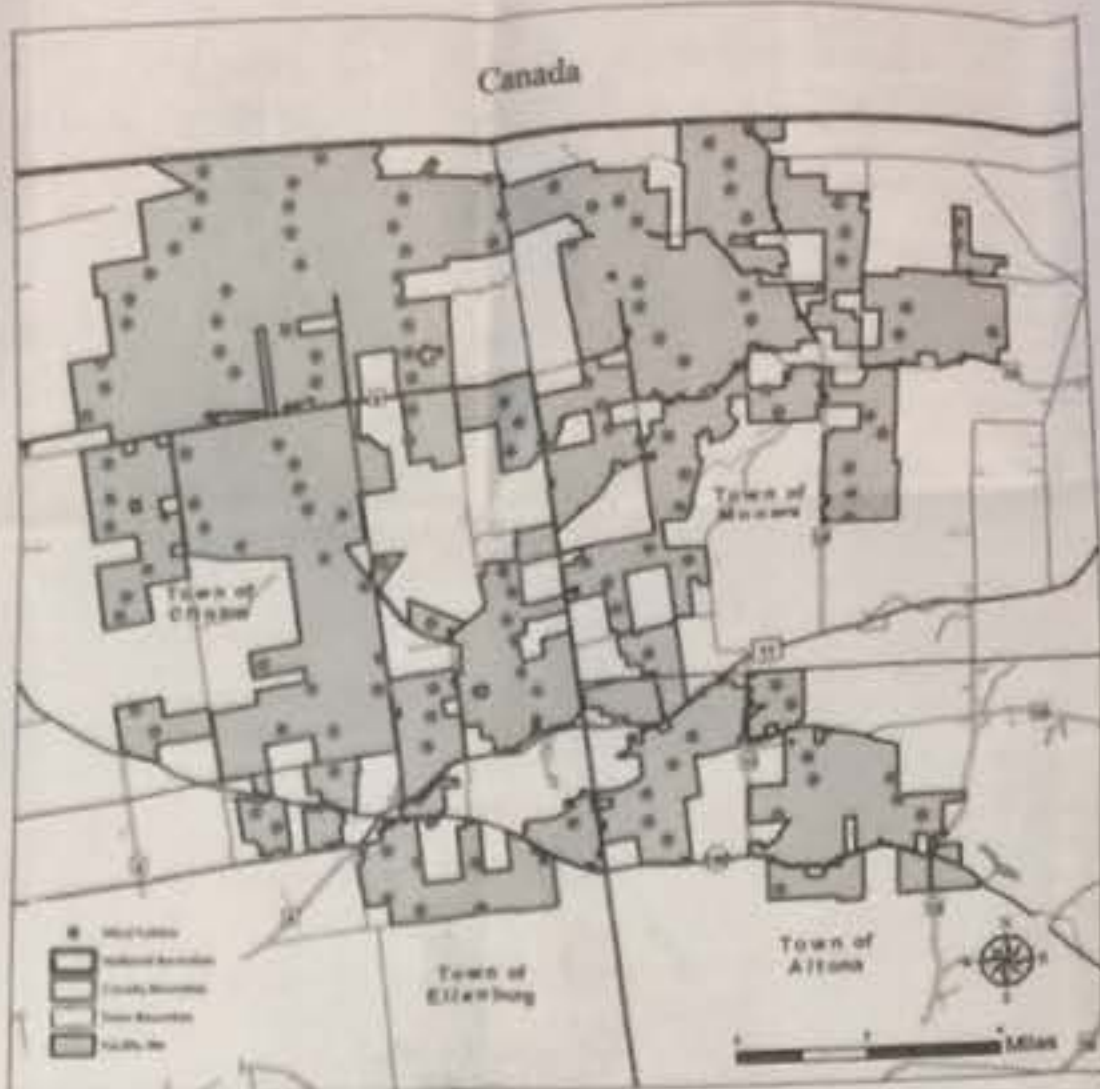
Contact information for DPS Article 10 Coordinator:
James Denn
Public Information Officer
NYS Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223
Telephone: (518) 474-7080
Email: james.denn@dps.ny.gov

The Application will also be available at the DPS website at www.dps.ny.gov. To access documents, go to "Search" on the top of the webpage and search using the Case Number 15-F-0377 or the direct link: <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=15-F-0377&submit=Search> or by going to the project-specific website maintained by the Applicant: <https://bullrunwind.com>

File a Request for Notices

Any interested member of the public may file a request with the DPS Secretary to receive copies of all notices concerning the Facility. Written requests should be sent to the DPS Secretary at secretary@dps.ny.gov or sent by mail to the following address:

Honorable Kathleen H. Burgess
Secretary to the Commission
NYS Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223-1350
Telephone: (518) 474-2500
Email: secretary@dps.ny.gov




State of New York
Clinton County, ss.:

THE DAX LAW FIRM, P.C.
SUITE 805
54 STATE STREET
ALBANY NY 12207

Legal Advertising

Brenda Upton of the City of Plattsburgh, in said county, being duly sworn, doth depose and say that (s)he is the clerk of The Plattsburgh Publishing Co., publishers and printers of the newspaper entitled The Press Republican, printed and published daily and Sunday in the City of Plattsburgh, in said county, and that the advertisements covered on the attached copy have appeared in said newspaper on the dates indicated.





Notary Public

Lamiaa H. Aly
Notary Public State of New York
No. 01AL6236322
Qualified in Clinton County
Commission Expires
February 28, 2023

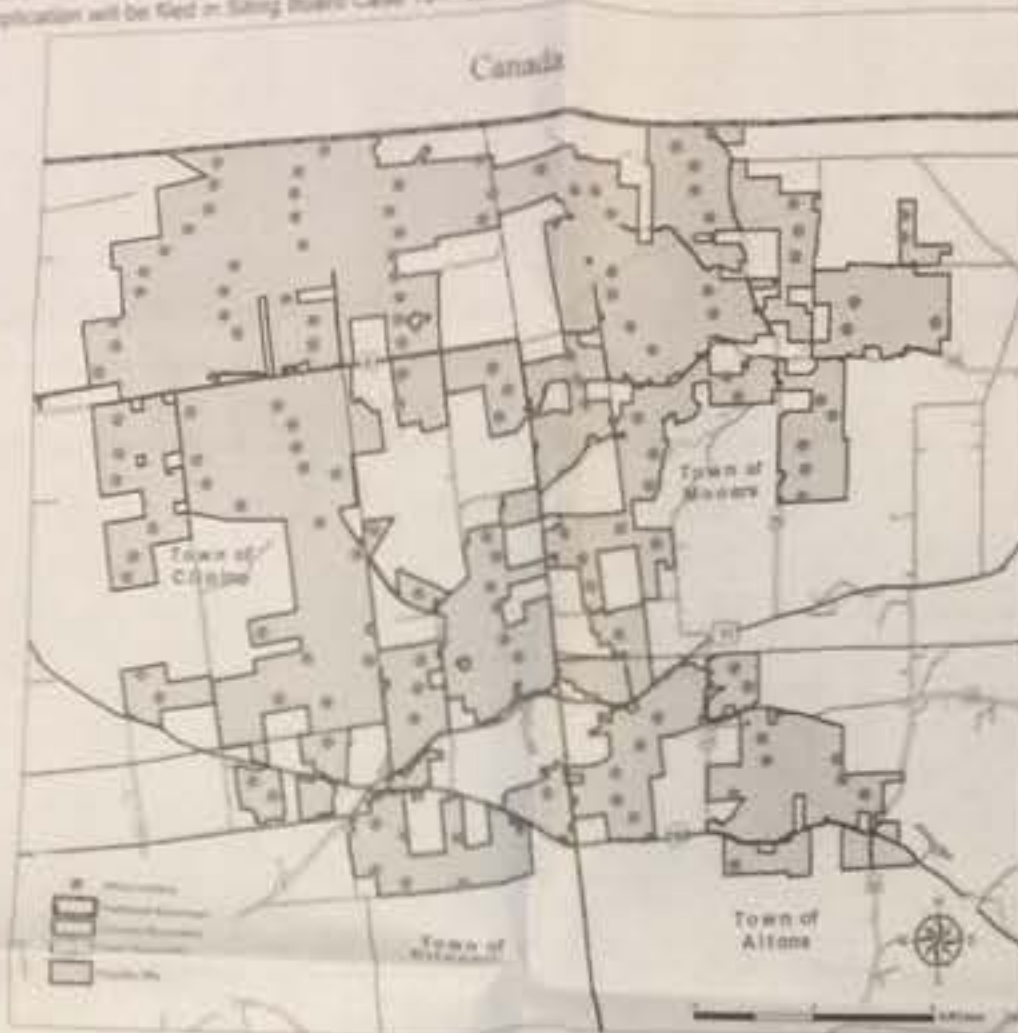
PUBLICATION	EXPIRE DATE	AD CAPTION	# TIMES	AMOUNT
PRESS REPUBLICAN	07/11/2019	BULL RUN ENERGY LLC	1	0.00

START DATE: 07/11/2019 END DATE: 07/11/2019

BULL RUN ENERGY LLC
Clinton County, New York

NOTICE OF FILING OF APPLICATION

Bull Run Energy LLC (Applicant or BRE), an affiliate of Invenergy LLC, is proposing to construct a major electric generating facility subject to Article 10 of the New York Public Service Law (Facility). On or about July 15, 2016, the Applicant will file an Application pursuant to Public Service Law (PSL) Section 164 and 16 NYCRR 1000.6 for a Certificate of Environmental Compatibility and Public Need with the New York State Board on Electric Generation Siting and the Environment (Siting Board) authorizing the construction and operation of the Facility. The Application will be filed in Siting Board Case 15-F-0377.



The proposed Facility is a 440 megawatt (MW) wind-powered electric generation facility with up to 138 wind turbines to be located in the Towns of Clinton, Ellenburg, Altona and Mooers in Clinton County, New York as shown on the map above. The Facility will include wind turbines, access roads, an electrical collection system, meteorological towers, an operation and maintenance (O&M) building, electrical interconnection facilities, and for construction purposes a concrete batch plant and construction staging and laydown yards. The interconnection facilities will include a 230-kV switchyard built adjacent to New York Power Authority's (NYPA) Ryan-Plattsburgh 230-kV transmission line and an overhead 230-kV interconnection line. The proposed interconnection facilities will be subject to review under Article VII of the Public Service Law.

Power from the Facility will be delivered to a point of interconnection (POI) switchyard. BRE will design and construct the POI switchyard according to NYPA's standards and will transfer ownership of the switchyard, including all equipment and real property on which it is located, to NYPA after the Project begins commercial operation.

The Facility will generate electricity from wind, a renewable energy source, reducing air emissions and the use of water resources associated with electricity consumption. The Facility will assist the State in meeting the goals of the State Energy Plan, which include obtaining 50% of electricity consumed in the State from renewable sources by 2030 and significantly reducing greenhouse gas emissions. Other positive impacts include diversification of energy supplies, new employment opportunities (both temporary construction employment and full-time jobs), increased revenues to county and municipal governments, payments to the local hospitality industry, and purchase of local supplies and goods.

The construction and operation of the Facility may result in unavoidable temporary and permanent environmental impacts, including impacts on terrestrial ecology, impacts to avian and bat species, impacts to forested land and wetlands, and visual impacts. Other potential impacts commonly attributed to utility-scale wind energy facilities include noise, shadow flicker, and traffic. The Applicant has designed the Facility layout to meet acceptable standards in these areas and to minimize disturbance to forested lands and wetlands to the maximum extent practicable.

The Applicant intends to submit a request for a Water Quality Certification (WQC) under Section 401 of the federal Clean Water Act, a prerequisite to obtaining a permit from the U.S. Army Corps of Engineers for the disturbance to federally regulated wetlands required to construct the Facility.

Pursuant to the Article 10 process, the Applicant filed a Preliminary Scoping Statement (PSS) with the Siting Board on July 27, 2016 and a revision to the PSS on September 23, 2016. Thereafter, the public had an opportunity to submit comments on the PSS. Following the comment period, the Applicant prepared a summary of the material comments and submitted its reply on December 23, 2016. On September 21, 2016, a pre-application conference to consider intervenor funding requests was held. On September 29, 2016 BRE provided notice of consultations to discuss the contents of the Application to a broad list of potential stakeholders. BRE hosted several telephone conferences between October 12, 2016 and May 10, 2017, to solicit input from stakeholders concerning the content of the Application. BRE is now ready to file an Application.

The Application includes, among other things, an analysis of the environmental setting of the Facility; a description of the Facility including preliminary design drawings and related information; an assessment of potential land use, environmental and health impacts from construction and operation of the Facility; descriptions of the environmental, economic and other benefits of the Facility; results of studies conducted to prepare the Application, including preconstruction studies to assess potential impacts to avian and bat species; proposed measures to minimize environmental impacts; and a consideration of potential alternatives to the Facility. The Application also addresses consistency with State energy planning objectives, including climate change and renewable energy goals and concerns about public health and safety, terrestrial ecology, water resources and aquatic ecology, communications, transportation and utilities, cultural, historical and recreational resources, visual impacts, including shadow flicker, sound impacts, electro-magnetic fields, and impacts on the statewide electrical system. The Article 10 regulations outlining the required contents of the Application can be found at 16 NYCRR 1001.1 et seq.

This notice is being provided in accordance with 16 NYCRR 1000.7 and will be published at least three (3) days prior to the filing of the Application. A copy of the Application will be served on the Chief Executive Officer of each municipality in which any portion of the Facility is located, as well as those persons and agencies enumerated in 16 NYCRR 1000.6.

With the Application, BRE will deposit \$400,000.00 to be disbursed by the Siting Board to municipalities and other local parties to help pay expenses, including attorney and consultant fees, associated with participating in the Application review process. Fifty percent (50%) of these intervenor funds are reserved for municipalities. Once the Application is filed and determined by the Siting Board to be complete, the Siting Board will schedule a public hearing on the Application. The Siting Board will also issue a notice of availability of intervenor funds to be used by municipalities and local parties to participate in formal review of the Application. Requests for funds must be submitted to the Hearing Examiners within thirty (30) days after the issuance of the notice of the availability of intervenor funds. A pre-hearing conference will be scheduled by the Hearing Examiners to identify intervenors, award intervenor funds, identify issues for the hearing, and establish a case schedule. Additional hearings regarding the Application and project impact assessments will be scheduled by the Hearing Examiners as needed. After hearings, the parties may brief their positions and the Hearing Examiners will issue a recommended decision upon which the Siting Board will base its decision. Article 10 requires that all proceedings on the Application, including a final decision by the Siting Board, be completed within 12 months of the date the Application is determined to be complete.

The record of this proceeding, including the Application, may be examined during normal business hours at the Offices of the New York State Department of Public Service (DPS) at 3 Empire State Plaza, Albany, NY 12223, and may also be viewed at the following public repositories:

- Bull Run Local Office, 5591 State Rte. 11, Building #3, Ellenburg, NY
- Clinton Town Hall, 23 Smith Street, Churubusco, NY
- Ellenburg Center Reading Center, 2 Dupuis Rd., Ellenburg Center, NY
- Sarah A. Munsil Free Library, 5139 Route 11, Ellenburg Depot, NY
- Altona Reading Center, Altona Town Hall, 3124 Miner Farm Road, Altona, NY
- Mooers Free Library, 25 School Street, Mooers, NY

Contact Information

Contact information for
Bull Run Energy LLC:
Jon LaBarre
Manager, Renewable Development
Invenergy LLC
5591 State Route 11, Building 3
Ellenburg, NY 12933
Telephone: (518) 420-3909
Email: jlabarre@invenergyllc.com

Contact information for
DPS Article 10 Coordinator:
James Denn
Public Information Officer
NYS Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223
Telephone: (518) 474-7080
Email: james.denn@dps.ny.gov

The Application will also be available at the DPS website at www.dps.ny.gov. To access documents, go to "Search" on the top of the webpage and search using the Case Number 15-F-0377 or the direct link: <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=15-F-0377&submit=Search> or by going to the project-specific website maintained by the Applicant: <https://bullrunwind.com>

File a Request for Notices

Any interested member of the public may file a request with the DPS Secretary to receive copies of all notices concerning the Facility. Written requests should be sent to the DPS Secretary at secretary@dps.ny.gov or sent by mail to the following address:

Honorable Kathleen M. Burgess
Secretary to the Commission
NYS Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223-1580
Telephone: (518) 474-2500
Email: secretary@dps.ny.gov



Dear Neighbor,

I am writing to inform you that the Bull Run Wind Energy Center has filed its Article 10 application with New York State. The Bull Run Wind Energy Center is a proposed wind project on private land in the towns of Altona, Clinton, Ellenburg and Mooers in Clinton County. The project will deliver significant economic benefits to the region by creating more than **435+ good-paying jobs** and investing **\$8.4 million in annual community revenue**. To learn more about the project and the Article 10 process and to view Article 10 filings, please visit **bullrunwind.com**.

Jon LaBarre
Project Developer

Bull Run Wind Farm | 5591 State Rte. 11 | PO Box 56 | Ellenburg, NY 12933
jlabarre@inenergyllc.com | (518) 420-3909 | [@inenergyllc](https://www.instagram.com/inenergyllc)



**\$8.4M+ ANNUAL
COMMUNITY REVENUE**



**420+ CONSTRUCTION AND
14-16 PERMANENT JOBS**



**109,000+
HOMES POWERED**

Invenergy

Invenergy

123 S.Cayuga St.

Suite 201

Ithaca, NY 14850

US Postage

address area

CASE 15-F-0377 BULL RUN ENERGY LLC
Article 10 Application Service List (8/13/19)

<u>No.</u>	<u>Category</u>	<u>NAME1</u>	<u>NAME2</u>	<u>ADDRESS1</u>	<u>ADDRESS2</u>	<u>CITY/STATE/ZIP</u>	<u>HARD COPY</u>	<u>CD</u>
1	NYS PSC	Hon. Kathleen H. Burgess, Secretary	NYS Board on Electric Generation Siting and the Environment	Empire State Plaza, Agency Building 3		Albany, NY 12223-1350	10	1
2	NYS DEC	Basil Seggos, Commissioner	NYS Dept. of Environmental Conservation	625 Broadway		Albany, New York 12233-0001	4	
3	NYS DEC	Robert Stegemann, Director Region 5	NYS Dept. of Environmental Conservation	Ray Brook Headquarters	1115 State Route 86	Ray Brook, NY 12977-0296	3	
4	NYS DOH	Howard Zucker, M.D., Commissioner	NYS Department of Health	Corning Tower, Empire State Plaza,		Albany, NY 12237	2	
5	NYSERDA	Richard L. Kauffman, Chair	New York State Energy Research and Development Authority	17 Columbia Circle		Albany, NY 12203-6399	2	
6	NYS EDC	Howard Zemsky, Commissioner	NYS Dept. of Economic Development	625 Broadway		Albany, NY 12245	2	
7	County-Clinton	Michael E. Zurlo, County Administrator	Clinton County	Clinton County Government Center	137 Margaret Street, Suite 208	Plattsburgh, NY 12901	1	
8	Town-Clinton	Daniel LaClair, Town Supervisor (Deborah McComb, Town Clerk)	Town of Clinton (Clinton County)	Clinton Town Hall	23 Smith Street	Churubusco, NY 12923	2	
9	Town-Ellenburg	Jason Dezan, Supervisor (Bethany Fortin, Town Clerk)	Town of Ellenburg	16 St. Edmund's Way, #3		Ellenburg Center, NY 12934	2	
10	Town-Clinton	Terry Cayea, Alternative Energy Chairman	Town of Clinton (Clinton County)	Clinton Town Hall		Churubusco, NY 12923	1	
11	Town-Altona	Larry Ross, Supervisor (Nikki Bushey, Town Clerk/Tax Collector)	Town of Altona	Altona Town Hall	23 Smith Street 3124 Miner Farm Road	Altona, NY 12910	2	
12	Town-Mooers	Jeff Menard, Supervisor (Kelly McDonald, Town Clerk)	Town of Mooers	2508 Route 11		Mooers, NY 12958	2	
13	Town-Clinton	Pease and Gustafson, LLP (Attorney for Towns) & GHD (Town Engineer)	Town of Clinton (Clinton County)	Clinton Town Hall	23 Smith Street	Churubusco, NY 12923	2	
14	NYS Ag & Markets	Richard A. Ball, Commissioner	NYS Dept. of Agriculture & Markets	10B Airline Drive		Albany, NY 12235	1	
15	NYS DOS	Rossana Rosado, Secretary	NYS Dept. of State	One Commerce Plaza, 99 Washington Ave.		Albany, NY 12231-0001	1	
16	NYS OAG	The Honorable Letitia James	NYS Attorney General	Empire State Plaza, Justice Building, 2nd Floor		Albany, NY 12224	1	
17	NYS DOT	Paul A. Karas, Commissioner	NYS Dept. of Transportation	Main Office, 50 Wolf Road		Albany, NY 12232	1	
18	NYS OPHRP	Erik Kulleseid, Commissioner	NYS Office of Parks Recreation and Historic Preservation	625 Broadway		Albany, NY 12207	1	
19	Library	Barbara Leonard, Director	Ellenburg Center Reading Center	2 Dupuis Road		Ellenburg Center, NY 12934	1	
20	Library	Kristie Drown, Director	Sarah A. Munsil Free Library	5139 Route 11		Ellenburg Depot, NY 12935	1	
21	Library	Joyce Boyer, Director	Altona Reading Center	Altona Town Hall	3124 Miner Farm Road	Altona, NY 12910	1	
22	Library	Jenny Lavigne, Director	Mooers Free Library	25 School Street		Mooers, NY 12958	1	

CASE 15-F-0377 BULL RUN ENERGY LLC
Article 10 Application Service List (8/13/19)

[illegible]

New York State Department of Public Service

[DPS Home Page](#)
[Electric](#)
[Natural Gas](#)
[Steam](#)
[Telecommunications](#)
[Water](#)
[Search](#)
[Site Map](#)
[A-Z Index](#)
[Help](#)

[Generate Labels \(2" * 4.25"\)](#)
[Send Mail](#)
[Post Comments](#)
[Subscribe To Service List](#)
[Request For Party Status](#)

- Matter Master: 15-01357/15-F-0377

Matter Number:	15-01357	Case Number:	15-F-0377
Industry Affected:	Facility Gen.	Company/Organization:	Bull Run Energy LLC
Matter Type:	Petition	Matter Subtype:	Certificate of Environmental Compatibility and Public Need
Title of Matter/Case:	Application of Bull Run Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Expand	Related Matter/Case No:	
		Assigned Judge:	Bergen, Erika

Filed Documents
(107)

Public Comments
(3)

Party List (17)

Calendar (1)

Search:

Sr.No. ▲	Name of Person/Title/Company ▲	Representing Company ▲	Mailing Address ▲	Email/Phone/Fax ▲	Consent to Party Electronic Service ▲
17	Abbott, Judith NYS Department of Health	New York State Department of Health	Empire State Plaza, Corning Tower, Room 1772 Albany, NY 12237	judith.abbott@health.ny.gov	Yes
16	Behnke, Heather Assistant Counsel New York State Department of Public Service	New York State Department of Public Service	Three Empire State Plaza Albany, NY 12223-1350	Heather.Behnke@dps.ny.gov Ph: 518-474-5474 Fax: 518-486-5710	Yes
15	Bucobo, Javier Principal Attorney New York Power Authority	New York Power Authority	123 Main Street White Plains, NY 10601-3170	javier.bucobo@nypa.gov Ph: (914) 390-8238 Fax: (914) 390-8038	Yes
14	Crounse, Sita Senior Attorney Department of Environmental Conservation	New York State Department of Environmental Conservation	625 Broadway, 14th Floor ALBANY, NY 12203-1500	sita.crounse@dec.ny.gov Ph: 518-402-9188 Fax: 518-402-9016	Yes
13	Dax, John Counsel The Dax Law Firm, P.C.	Bull Run Energy LLC	54 State Street, Suite 805 Albany, NY 12207	JDax@DaxLawFirm.com Ph: (518) 432-1002 Fax: 518-432-1028	Yes
12	Dewey, Lorraine Legal Assistant THE DAX LAW FIRM, PC	Bull Run Energy LLC	54 STATE STREET, SUITE 805 ALBANY, NY 12207	ldewey@daxlawfirm.com Ph: (518) 432-1002 Fax: (518) 432-1028	Yes
11	Dufresne, Zack Director of Member Services, Clean Energy Advocate Alliance for Clean Energy New York	Alliance for Clean Energy New York, Inc	119 Washington Ave, Suite 1G Albany, NY 12210	Article10@aceny.org Ph: (518) 432-1405 Fax: (518) 432-1407	Yes
10	Fountain, Lynn Attorney Pease and Gustafson, LLP	Town of Altona, Town of Clinton, Town of Ellenburg, Town of Mooers	40 Main Street Massena, NY 13662	lfountain@pgnylaw.com Ph: 315-769-3898	Yes
9	Jesmer, Graham Assistant Counsel New York State Department of Public Service	New York State Department of Public Service	Three Empire State Plaza Albany, NY 12223-1350	Graham.Jesmer@dps.ny.gov Ph: 518-473-4628 Fax: 518-486-5710	Yes
8	LaBarre, Jon Manager, Renewable Development Invenergy LLC	Bull Run Energy LLC	5591 State Route 11, P.O. Box 56 Ellenburg, NY 12933	jlabarre@invenergyllc.com Ph: 518-420-3909	Yes
7	Miller, Eric Director of Business Development Invenergy LLC	Bull Run Energy LLC	120 N. Lee Street Falls Church, VA 22046	emiller@invenergyllc.com Ph: 301-610-6413	Yes

Sr.No. ⬆	Name of Person/Title/Company ▲	Representing Company ⬆	Mailing Address ⬆	Email/Phone/Fax ⬆	Consent to Party Electronic Service ⬆
6	Moran, Sean Researcher New York State Laborers' Organizing Fund		668 Wemple Road Glenmont, NY 12077	nyslofenergy@gmail.com Ph: 518-937-0733	Yes
5	Mulford, Jason	New York State Department of Agriculture and Markets	10B Airline Drive, Albany, NY 12235	Jason.mulford@agriculture.ny.gov	Yes
4	Phillips, Michael NYS Department of Health	New York State Department of Health	NY	Michael.Phillips@health.ny.gov	Yes
3	Schryer, Sharla New York Power Authority	New York Power Authority	123 Main St White Plains, New YORK 10601	wschrys@nypa.gov Ph: 914-619-0238	Yes
2	Tylutki, Kathleen Environmental Analyst NYS Department of Agriculture and Markets	New York State Department of Agriculture and Markets	10B Airline Drive Albany, NY 12235	Kathleen.Tylutki@agriculture.ny.gov	Yes
1	Wells, Tara Senior Attorney NYS Dept. of Agriculture & Markets	New York State Department of Agriculture and Markets	10B Airline Drive Albany, NY 12235	Tara.Wells@agriculture.ny.gov Ph: 518-487-6084	Yes

Show **All ▼** entries

Showing 1 to 17 of 17 entries

Previous **1** Next[Generate Labels \(2" * 4.25"\)](#)[Send Mail](#)[Post Comments](#)[Subscribe To Service List](#)[Request For Party Status](#)[About Us](#) | [Site Map](#) | [Privacy Policy](#) | [Contact Us](#) | [Accessibility](#) | [Voter Registration](#)

The Dax Law Firm, P.C.

54 State Street, Suite 805
Albany, New York 12207
www.daxlawfirm.com

Telephone: (518) 432-1002
Facsimile: (518) 432-1028

John W. Dax

William F. McLaughlin*

**Also Admitted in Massachusetts & District of Columbia*

August 22, 2019

Via Email erika.bergen@dps.ny.gov

Via Email Maria.Villa@dec.ny.gov

The Honorable Erika Bergen
Administrative Law Judge
NYS Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

The Honorable Maria Villa
Administrative Law Judge
NYS Dept. of Environmental Conservation
625 Broadway
Albany NY 12233-1500

Re: 15-F-0377 – Application of Bull Run Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a Wind Energy Project. ***Request for Protection of Confidential Information***

Dear Judge Bergen and Judge Villa:

Today Bull Run Energy LLC (BRE) is filing with Secretary Burgess its Application for a Certificate of Environmental Compatibility and Public Need authorizing construction and operation of the 449 MW Bull Run Energy Center located in the Towns of Altona, Clinton, Ellenburg and Mooers in Clinton County, New York (Application). By this letter BRE seeks protection from public disclosure of all or portions of the following documents unredacted copies of which are attached:

Exhibit 5, Appendix 5a-1 and Appendix 5a-2 – System Reliability Impact Study
Exhibit 6, Appendix 6c – Turbine Design Certification
Exhibit 6, Appendix 6d – Wind Resource Assessment
Exhibit 8 – Electric System Production Modeling (and related computer files)
Exhibit 13, Figure 13-1 – Map Depicting Status of BRE's Real Property Rights
Exhibit 14 – Facility Costs
Exhibit 22, Appendix 22h-1b – Aerial Raptor Nest Survey
Exhibit 22, Appendix 22h-1d – Bat Mist Netting Survey Report
Exhibit 22, Appendix 22h3 – Net Benefit for Listed Bats

Applicable Standards

The State's Freedom of Information Law (FOIL), Public Officer Law (POL) § 84-90, provides that records held by State agencies are presumed to be open for public inspection (POL

§ 84). “Record” is broadly defined. FOIL authorizes agencies to deny access to records or portions thereof that

are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise

(POL § 87.2[d]). This exception to disclosure has been interpreted to consist of two independent exceptions: “records or portions thereof that... are trade secrets” and “records or portions thereof that... are submitted to an agency by a commercial enterprise... which if disclosed would cause substantial injury to the competitive position” of that enterprise. The qualifier “which if disclosed would cause substantial injury” does not limit the exception for trade secrets: if a record contains a trade secret, that portion of the record is excepted from disclosure without any need to demonstrate that disclosure would cause substantial injury to the competitive position of the entity submitting the document. In *Matter of Verizon N.Y. Inc. v New York State Pub. Serv. Commn.*, 137 AD3d 66, 69-70 (2016), the Appellate Division stated:

Accordingly, we agree with Supreme Court that the plain language of Public Officers Law § 87(2)(d) confirms that the Legislature intended to create two separate FOIL exemptions in the same statutory provision, one that exempts all records proven to be bona fide trade secrets, and another that requires a showing of substantial competitive injury in order to exempt from FOIL discovery all other types of confidential commercial information imparted to an agency.

These standards are incorporated into the rules of the Public Service Commission and incorporated into Siting Board practice by virtue of 16 NYCRR § 1000.3. Trade secrets are broadly defined to include “any formula, pattern, device or compilation of information which is used in one’s business, and which provides an opportunity to obtain an advantage over competitors who do not know or use it” (16 NYCRR 6-1.3[a]). This definition is nearly identical to the definition given “trade secret” in the Restatement of Torts, which the lower court relied on in *Matter of Verizon NY Inc. v New York State Pub. Serv. Commn.*, 46 Misc3d 858, 869 (2014). Factors to be considered by the agency in deciding whether disclosure “would be likely to cause substantial injury to the competitive position of the subject commercial enterprise” include the extent to which disclosure would cause unfair economic or competitive damage, the extent to which the information is known to others, the value of the information to the enterprise or its competitors and the degree of difficulty and cost of developing the information (16 NYCRR 6-1.3[b][2]).

Records containing “critical infrastructure information” are exempt from disclosure pursuant to POL § 89.5(1-a). “Critical infrastructure” is also defined in POL § 86.5.

Each of the documents contains information that qualifies for protection as a trade secret, confidential commercial information and/or critical infrastructure information.

Exhibit 5, Appendix 5a-1 and Appendix 5a-2 is a System Reliability Impact Study prepared for the New York Independent System Operator (NYISO), BRE and New York State Electric & Gas Corporation pursuant to confidentiality requirements of the NYISO's Open Access Transmission Tariff. It contains critical infrastructure information.

Exhibit 6, Appendix 6c contains a report certifying the conformity of turbine designs to their design standards prepared by a third-party certification firm for two manufacturers of wind turbines under consideration by BRE. This report includes information that are trade secrets of those manufacturers.

Exhibit 6, Appendix 6d is a Wind Resource Analysis prepared exclusively for BRE, which assesses the potential of the Project to produce electric energy. This analysis lies at the heart of BRE's business decision-making regarding the ultimate value of the Project to its owner and, accordingly, guides its investment, bidding and procurement strategies in the highly competitive wind power development industry. The competitive pressure BRE faces is illustrated by the number of proposals submitted to New York State Energy Research and Development Authority and New York Power Authority in response to their requests for proposals from renewable energy developers. The analysis provides information known only to BRE and its affiliates, was developed at considerable expense to BRE and could only be duplicated at considerable expense to others. Access to this information by BRE's competitors or vendors would inform them about BRE's revenue and earnings expectations, giving them insights into BRE's bidding and procurement strategies. Appendix 6d contains, among other items, the very kind of site-specific meteorological data found to be exempt from disclosure in two recent rulings (PSC Case No 15-F-0327 Galloo Island Wind LLC, *Ruling on Request for Confidential Treatment of Information* [Issued May 8, 2018]; PSC Case No. 16-F-0328 – Number Three Wind LLC, *Ruling on Request for Confidential Treatment of Information* [Issued September 17, 2018]).

Exhibit 8, is a report prepared to support the Article 10 Application. It includes detailed tables reporting BRE's expected monthly capacity and energy sales volumes and the average prices BRE will receive for its electric energy and the impact on the value of energy throughout the New York Independent System Operator wholesale market. This information is known only to BRE and its consultant and would be expensive and difficult for competitors to develop. Disclosure would afford competitors insights into how BRE expects to operate the Project and the revenues it expects to earn.

Exhibit 13, Figure 13-1 identifies all the real property required for Project development separated into categories including leaseholds still under negotiation. Wind projects require the use of property within an area covering thousands of acres. Property rights must be secured for turbine sites, access roads, electrical collection lines, and related electrical facilities. Lacking the power of eminent domain, Invenergy must secure these rights through negotiations with landowners who are not compelled to sell or negotiate. In order for efforts to assemble the full

array of required property rights to be successful, Invenergy must be able to negotiate with individual property owners independently of other on-going negotiations. Were a property owner able to learn that, *e.g.*, its property was the last outstanding link to complete a required interconnection line route, that owner would be in a position to demand a price for its property above its fair market value.

Figure 13-1 depicts the status of negotiations with owners of parcels Invenergy has identified as needed to develop the BRE Project. The map is kept confidential within Invenergy. While each owner knows the status of his or her negotiations, only Invenergy knows the status over the entire project area. The map is the product of several years of property acquisition efforts by Invenergy. Although it is conceivable that a party could assemble the same information from a search of county property records and interviews with owners, such an effort would be expensive and time-consuming and would not capture the entirety of what is reflected due to Invenergy's deliberate timing strategy of when it records its acquired property rights. Disclosure of Figure 13-1 would pose substantial harm to BRE's ability to conduct arm's length negotiations with owners of land not already under BRE's control.

By identifying those parcels which, though needed or desirable for Project development, are not now under BRE's control, Figure 13-1 would be useful to both competitors in the wind industry (who could use it to drive up BRE's real property costs) and to landowners with whom BRE is currently negotiating who could use it to sharpen their negotiating position. The information has been compiled by BRE for its own use and would be difficult and costly to replicate by others.

Exhibit 14 provides projected capital costs for the development and construction of the BRE Project. The cost estimates are the product of the application of the owner's experience, expertise, and vendor relations, a combination which is uniquely Invenergy's. The resulting cost estimates are known only to BRE and its owner and would provide competitors with valuable insights into BRE's cost structure and therefore its earnings potential.

Exhibit 22, Appendix 22.h-3, BRE's *Net Conservation Benefit Plan for Listed Bats*, includes a plan to voluntarily curtail operations under certain conditions and times of day and year in order to avoid or minimize bat fatalities. The proposed curtailment plan is known only to BRE. Disclosure would reveal to competitors BRE's tolerance for forgoing revenues from the energy and renewable electricity credit markets in which BRE will sell its production. This information would assist BRE's competitors in formulating business and bidding strategies to the detriment of BRE.

Exhibit 22, Appendix 22h-1b and Appendix 22h-1d – Finally, the Department of Environmental Conservation (DEC) has requested that information revealing the locations and numbers of Threatened and Endangered Species not be publicly disclosed. Appendix 22h-1b Aerial Raptor Nest Survey and Appendix 22h-1d Bat Mist Netting Survey Report contain such information gathered from wildlife surveys focused on bats and raptors. The specific information

Hon. Erika Bergen, Administrative Law Judge, DPS
Hon. Maria Villa, Administrative Law Judge, DEC
August 22, 2019
Page 5 of 5

at issue in the publicly available versions of those reports has been redacted. BRE is honoring DEC's request by asking that you extend confidentiality to that information as well.

Based on the consideration of the factors discussed herein, BRE requests that you maintain the attached documents in a separate, non-public file. Each has been marked appropriately.

Respectfully submitted,
THE DAX LAW FIRM, P.C.

/s/ John W. Dax

John W. Dax

JWD:Imd
Enclosures
cc (without confidential enclosures):
 Party List (via email)

cc (via DMM):
 Hon. Kathleen H. Burgess, Secretary

New York State Department of Public Service

[DPS Home Page](#)
[Electric](#)
[Natural Gas](#)
[Steam](#)
[Telecommunications](#)
[Water](#)
[Search](#)
[Site Map](#)
[A-Z Index](#)
[Help](#)

[Generate Labels \(2" * 4.25"\)](#)
[Send Mail](#)
[Post Comments](#)
[Subscribe To Service List](#)
[Request For Party Status](#)

- Matter Master: 15-01357/15-F-0377

Matter Number:	15-01357	Case Number:	15-F-0377
Industry Affected:	Facility Gen.	Company/Organization:	Bull Run Energy LLC
Matter Type:	Petition	Matter Subtype:	Certificate of Environmental Compatibility and Public Need
Title of Matter/Case:	Application of Bull Run Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Expand	Related Matter/Case No:	
		Assigned Judge:	Bergen, Erika

Filed Documents
(107)

Public Comments
(3)

Party List (17)

Calendar (1)

Search:

Sr.No. ▲	Name of Person/Title/Company ▲	Representing Company ▲	Mailing Address ▲	Email/Phone/Fax ▲	Consent to Party Electronic Service ▲
17	Abbott, Judith NYS Department of Health	New York State Department of Health	Empire State Plaza, Corning Tower, Room 1772 Albany, NY 12237	judith.abbott@health.ny.gov	Yes
16	Behnke, Heather Assistant Counsel New York State Department of Public Service	New York State Department of Public Service	Three Empire State Plaza Albany, NY 12223-1350	Heather.Behnke@dps.ny.gov Ph: 518-474-5474 Fax: 518-486-5710	Yes
15	Bucobo, Javier Principal Attorney New York Power Authority	New York Power Authority	123 Main Street White Plains, NY 10601-3170	javier.bucobo@nypa.gov Ph: (914) 390-8238 Fax: (914) 390-8038	Yes
14	Crounse, Sita Senior Attorney Department of Environmental Conservation	New York State Department of Environmental Conservation	625 Broadway, 14th Floor ALBANY, NY 12203-1500	sita.crounse@dec.ny.gov Ph: 518-402-9188 Fax: 518-402-9016	Yes
13	Dax, John Counsel The Dax Law Firm, P.C.	Bull Run Energy LLC	54 State Street, Suite 805 Albany, NY 12207	JDax@DaxLawFirm.com Ph: (518) 432-1002 Fax: 518-432-1028	Yes
12	Dewey, Lorraine Legal Assistant THE DAX LAW FIRM, PC	Bull Run Energy LLC	54 STATE STREET, SUITE 805 ALBANY, NY 12207	ldewey@daxlawfirm.com Ph: (518) 432-1002 Fax: (518) 432-1028	Yes
11	Dufresne, Zack Director of Member Services, Clean Energy Advocate Alliance for Clean Energy New York	Alliance for Clean Energy New York, Inc	119 Washington Ave, Suite 1G Albany, NY 12210	Article10@aceny.org Ph: (518) 432-1405 Fax: (518) 432-1407	Yes
10	Fountain, Lynn Attorney Pease and Gustafson, LLP	Town of Altona, Town of Clinton, Town of Ellenburg, Town of Mooers	40 Main Street Massena, NY 13662	lfountain@pgnylaw.com Ph: 315-769-3898	Yes
9	Jesmer, Graham Assistant Counsel New York State Department of Public Service	New York State Department of Public Service	Three Empire State Plaza Albany, NY 12223-1350	Graham.Jesmer@dps.ny.gov Ph: 518-473-4628 Fax: 518-486-5710	Yes
8	LaBarre, Jon Manager, Renewable Development Invenergy LLC	Bull Run Energy LLC	5591 State Route 11, P.O. Box 56 Ellenburg, NY 12933	jlabarre@inenergyllc.com Ph: 518-420-3909	Yes
7	Miller, Eric Director of Business Development Invenergy LLC	Bull Run Energy LLC	120 N. Lee Street Falls Church, VA 22046	emiller@inenergyllc.com Ph: 301-610-6413	Yes

Sr.No. ⚡	Name of Person/Title/Company ▲	Representing Company ⚡	Mailing Address ⚡	Email/Phone/Fax ⚡	Consent to Party Electronic Service ⚡
6	Moran, Sean Researcher New York State Laborers' Organizing Fund		668 Wemple Road Glenmont, NY 12077	nyslofenergy@gmail.com Ph: 518-937-0733	Yes
5	Mulford, Jason	New York State Department of Agriculture and Markets	10B Airline Drive, Albany, NY 12235	Jason.mulford@agriculture.ny.gov	Yes
4	Phillips, Michael NYS Department of Health	New York State Department of Health	NY	Michael.Phillips@health.ny.gov	Yes
3	Schryer, Sharla New York Power Authority	New York Power Authority	123 Main St White Plains, New YORK 10601	wschrys@nypa.gov Ph: 914-619-0238	Yes
2	Tylutki, Kathleen Environmental Analyst NYS Department of Agriculture and Markets	New York State Department of Agriculture and Markets	10B Airline Drive Albany, NY 12235	Kathleen.Tylutki@agriculture.ny.gov	Yes
1	Wells, Tara Senior Attorney NYS Dept. of Agriculture & Markets	New York State Department of Agriculture and Markets	10B Airline Drive Albany, NY 12235	Tara.Wells@agriculture.ny.gov Ph: 518-487-6084	Yes

Show **All ▼** entries

Showing 1 to 17 of 17 entries

Previous **1** Next[Generate Labels \(2" * 4.25"\)](#)[Send Mail](#)[Post Comments](#)[Subscribe To Service List](#)[Request For Party Status](#)[About Us](#) | [Site Map](#) | [Privacy Policy](#) | [Contact Us](#) | [Accessibility](#) | [Voter Registration](#)