

1 16-F-0267 - 7-12-2017 - Lowville, NY

2 NEW YORK STATE
3 DEPARTMENT OF PUBLIC SERVICE

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6 16-F-0267 APPLICATION OF ATLANTIC WIND LLC - FOR A
7 CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND
8 PUBLIC NEED PURSUANT TO ARTICLE 10 FOR
9 CONSTRUCTION OF THE DEER RIVER WIND ENERGY
PROJECT IN LEWIS AND JEFFERSON COUNTIES

10 PRE-APPLICATION PROCEDURAL CONFERENCE

11

12 LOWVILLE ACADEMY AND CENTRAL SCHOOL DISTRICT
13 7668 State Street
14 LGI Room
15 Lowville, New York 13667
16 7-12-2017, 5:00 p.m.

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20 A.L.J. JAMES COSTELLO
21 DEPARTMENT OF PUBLIC SERVICE
22 Empire State Plaza
23 Albany, New York

24

25 A.L.J. LISA WILKINSON
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Empire State Plaza
Albany, New York

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2 On the record 5:04 p.m.)

3 A.L.J. COSTELLO: Call Case Number 16-F-
4 0267, the Application of Atlantic Wind, L.L.C. for a
5 Certificate of Environmental Compatibility and Public Need
6 pursuant to Article Ten for construction of the Deer River
7 Wind Energy Project in Lewis and Jefferson Counties.

8 My name is James Costello. I am the
9 presiding examiner designated by the Department of Public
10 Service. With me is Lisa Wilkinson. She's the examiner
11 designated by the Department of Environmental Conservation
12 for this matter.

13 This is a pre-application conference being
14 held pursuant to a notice issued on June 5th, 2017. The
15 conference is being transcribed and a written
16 transcription will be available on the siting board's
17 website which was maintained by the Department of Public
18 Service. Just as -- the outset like to thank the Lowville
19 School District for having us here. Let's start with
20 taking appearances, so can I start with the person
21 representing the project sponsor?

22 MR. MUSCATO: Hi. Good evening, your
23 Honor. My name is Jim Muscato from the Law Firm of Young
24 Sommer representing the Applicant Atlantic Wind. I have
25 representatives from Atlantic Wind along with me tonight.

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2 I won't introduce them by name for the -- for -- they will
3 not be speaking. But just wanted to mention that.

4 A.L.J. COSTELLO: Okay. Thank you.
5 Department of Public Service staff are you here?

6 MS. CERBIN: Yes, this is Andrea Cerbin on
7 the telephone, Department of Public Service Office of
8 General Counsel.

9 A.L.J. COSTELLO: Okay. Can you hear us
10 okay?

11 MS. CERBIN: Yes, I can. Thank you, your
12 Honor.

13 A.L.J. COSTELLO: Okay. Okay, sure. Are
14 there any other state agencies?

15 MR. BINDER: Yes, your Honor. Good
16 evening, your Honors. Jonathan Binder for the Department
17 of Environmental Conservation, Office of General Counsel.

18 A.L.J. COSTELLO: Are there any other state
19 agencies? No. Then we'll turn to the towns.

20 The Town of Pinckney.

21 MR. BURROWS: Yes, your Honor. My name is
22 Jim Burrows. I'm an attorney with Conboy, McKay, Bachman
23 and Kendall. My office serves as attorneys for the Town
24 of Pinckney and I'm here this evening with Sherry Harmych.
25 She is a supervisor for the Town of Pinckney, your Honor.

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2 A.L.J. COSTELLO: Good. Thank you. And
3 Town of Harrisburg?

4 MR. GEBO: Mark Gebo, firm of Hrabchak and
5 Gebo in Watertown, New York representing both the towns of
6 Harrisburg and Montague. Also with me is Steven Bernat,
7 supervisor Town of Harrisburg.

8 A.L.J. COSTELLO: Okay. So you're
9 representing both towns?

10 MR. GEBO: Both towns.

11 A.L.J. COSTELLO: Town of Harrisburg and
12 Town of -- okay. And for the Concerned Citizens of Deer
13 River Wind Energy Project and Heath Ash.

14 MR. DAVIS: Mark Davis from the law firm of
15 Lippes, Mathias, Wexler, Friedman and Mr. Ash is -- is
16 with me.

17 A.L.J. COSTELLO: Are there any other
18 individuals that are going to be speaking here tonight?

19 MS. MCNICHOL: I may or may not. Joan
20 McNichol the Lewis County attorney on behalf of the
21 county.

22 A.L.J. COSTELLO: And for the parties that
23 made their appearance here today there's no -- we know at
24 this pre-application stage that there's no formal parties
25 yet. But we ask for -- for basically administrative

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2 convenience purposes that if you haven't done so already
3 that you would register as a -- a user of the Department's
4 Matter Management System, the D.M.M. System and -- and
5 register as a party in the case that way we can keep track
6 of things.

7 I'm going to start out just go -- a brief
8 overview of what the process of what we're here for
9 tonight, okay. We're here at -- the conference as
10 mandated by Article Ten of the Public Service Law and
11 we're here to consider two items. First is the pre-
12 application intervening -- intervenor funding requests
13 that we received. We will probably be asking you some
14 questions about your applications. We'll take any
15 objections that anyone might have with respect to the
16 applications. And then we'll probably take a -- a short
17 break so that we can discuss it and come back with our
18 rulings on that.

19 We'll -- we'll rule on the applications
20 tonight and there will be a more detailed written ruling
21 that will be issued in the near future. So if you have
22 any questions on that, you know, let me know. And then to
23 the next part of the process we'll be talking about the
24 initiation of the stipulation process and we'll just give
25 it a little background and some of the ground rules

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2 involved with that.

3 Once the funding is awarded tonight then
4 the stipulation process can begin and we'll talk a little
5 bit about that. Are there any questions about the process
6 for -- that I've discussed so far? Okay. Not hearing any
7 we're going to turn to the request for intervenor funding
8 and by statute the pre-application intervenor funding for
9 this case was established at thirty-five thousand dollars.
10 And municipal and local parties are eligible to request
11 that funding.

12 The statute requires that at least fifty
13 percent or seventeen thousand five hundred dollars of it
14 be reserved for municipal participants. And in awarding
15 the funds we must allocate them on an equitable --
16 equitable basis to ensure that the funds will make an
17 effective contribution to the review of the preliminary
18 scoping statement and development of an adequate scope of
19 -- of the application that may be submitted and provides
20 for early and effective public involvement.

21 Okay. We received four requests for
22 intervenor funds. We received one from the Town of
23 Pinckney, one from the Town of Harrisburg, one from the
24 Town of Montague and one from Heath Ash and Concerned
25 Citizens of Deer River Wind Energy Project. Are there any

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2 other applications that I haven't mentioned? Okay. I'm
3 not hearing anything.

4 And to the extent that I had sent out
5 requests for certain supporting documentation and that was
6 sent to me by e-mail, those documents do have to be
7 uploaded to the D.M.M. system as you did with your initial
8 applications. So if there's any contracts that you
9 provided to me in support of your application you have to
10 make sure that those are uploaded.

11 Okay. I just want to read something just
12 as a -- to give a little understanding of what the pre-
13 application intervenor funding is to be used for. And I'm
14 just looking at one of the applications which has a
15 question and it says for all expert witnesses,
16 consultants, attorneys or others to be employed during the
17 pre-application stage you are to provide a detailed
18 statement specifying how such services will make an
19 effective contribution to review of the preliminary
20 scoping statement and the development of an adequate scope
21 of appropriate studies for the application to be
22 submitted.

23 So that -- that's basically what the
24 intervenor funding is for at this stage -- the pre-
25 application stage. With that we'll -- we'll turn to the

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2 individual applications.

3 Okay. We have an application from the Town
4 of Pinckney we'll look at first. Yes?

5 A.L.J. WILKINSON: If we could also just
6 note that the requests for funding total seventy thousand
7 dollars. And so one of the things we're going to have to
8 do tonight is allocate probably less money than was
9 requested to -- to folks so that it, you know, can get to
10 the thirty-five thousand dollars.

11 A.L.J. COSTELLO: All right. There's
12 thirty-five thousand dollars in total. Towns combined
13 asked for thirty-five thousand dollars and Heath Ash and -
14 - and your group has asked for thirty-five thousand
15 itself. So at least half of that amount has to go to the
16 towns or the municipalities.

17 Now with respect to the Town of Pinckney
18 there's a request for ten thousand five hundred -- total
19 request of twenty thousand dollars. Ten thousand five
20 hundred dollars of which is to be used for engineering
21 services by Bernier Carr and Associates. And the question
22 I have is -- seems that Bernier Carr and Associates is
23 going to be working for all -- all of the towns.

24 In coming at your estimates about the
25 estimate for the Town of Pinckney was it considered how

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2 you're going to -- how -- is there going to be an overlap
3 of services provided to the towns? Are you making sure
4 that the funds are not being used -- you know, they're
5 being used in the most expeditious way so that -- so that
6 there's not a duplicate -- duplication of effort?

7 Town of Pinckney?

8 MR. BURROWS: If -- if may, your Honor.

9 A.L.J. COSTELLO: Yes.

10 MR. BURROWS: Jim Burrows on behalf of the
11 Town of Pinckney, my limited understanding so far and with
12 Kris Dimmick with -- with Bernier Carr and Associates is
13 that he would perform these services generally for all
14 three of the host communities and that he would simply --
15 by coordinating with the communities there wouldn't be any
16 overlap. It was actually intended by having one engineer
17 involved we would avoid the duplication of efforts, your
18 Honor.

19 A.L.J. COSTELLO: Okay. And -- and
20 arriving at the figure, the ten thousand five hundred
21 dollar figure and the other towns did -- did you
22 collaborate with the town -- the other towns in coming at
23 the division of the -- the amounts requested?

24 MR. GILBERT: Yes, we did. Ian Gilbert,
25 your Honor, also with the Conboy Law Firm, Jim Burrows

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2 associate. We actually spoke first through Mark Gebo's
3 office who put us in touch with Kris Dimmick. And my
4 understanding going back was that Kris -- Kris gave us the
5 quote -- the price with the understanding that he would be
6 working for all three towns.

7 A.L.J. WILKINSON: Yes. Noting -- noting
8 the areas of expertise of Bernier Carr and Associates on
9 page five and comparing that -- actually that's the area
10 of study. But the firm seems to be more of a hard
11 engineering firm with I think that you're -- you're
12 expecting civil engineers to be working on the project.
13 So my question is where are you going to get the expertise
14 for what -- for example, to study wildlife impacts and
15 land use impacts, public health impacts, visual impacts?
16 Are they going to come from that same engineering firm?
17 And are those people listed in six B who are going to be
18 working on those issues?

19 MR. BURROWS: I'd actually have to defer to
20 the engineers for the precise answer to that question.
21 But my understanding is -- is they -- they've explained
22 they have the ability to perform those services
23 adequately. I know they've got a tremendous reputation
24 here in the North Country. We've got confidence in them
25 and if the time comes that -- that we determine that they

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2 do not have the ability to handle those questions we would
3 at that point look for outside assistance.

4 But -- but again the key here would be that
5 the Town of Pinckney would -- would collaborate with the -
6 - the Towns of Harrisburg and Montague as well to try to
7 make sure that the -- we addressed any of the issues that
8 we found to be important in this overall project.

9 A.L.J. WILKINSON: All right. Because at
10 this -- I mean at this stage what -- what's important is
11 to assess the scope of studies and what studies might be
12 performed for filing an application rather than
13 necessarily studying impacts. So, you know, as -- as long
14 as you believe that this engineering firm has the
15 expertise to, you know, contribute to a study scope on
16 those other issues --.

17 MR. BURROWS: We've got the confidence
18 level at this point, your Honor, yes.

19 A.L.J. WILKINSON: All right.

20 A.L.J. COSTELLO: I have a question with
21 respect to the Town of Pinckney and the -- the requested
22 or the intended services to be performed by the attorneys.

23 MR. BURROWS: Yes.

24 A.L.J. COSTELLO: And I'm just reading from
25 the application on page five. It says the attorneys will

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2 review current zoning and assist the town in updating
3 zoning. The attorneys will assist the town with PILOT
4 considerations, road agreements, cultural mitigation
5 studies and the like. Those aspects are not what is
6 currently at issue.

7 We're -- we're dealing currently not with -
8 - funding is not available for you to revise local laws.
9 It's -- funding is available for you to help develop the -
10 - you know --

11 MR. BURROWS: Understand.

12 A.L.J. COSTELLO: -- scope. Go ahead.

13 MR. BURROWS: Understand, your Honor. That
14 -- that was -- was essentially a listing of the services
15 that we're generally providing for the town. I recognize
16 that some of those services may not be covered with the --
17 the intervenor funding but we did want to -- we did want
18 to elaborate on the services that we will be providing the
19 Town of Pinckney.

20 A.L.J. COSTELLO: Okay. Thank you. And I
21 just -- before we move on, does anyone have any objections
22 to the Town of Pinckney's request?

23 No. Hearing none we'll move on to the next
24 application by the Town of Harrisburg. We might as well
25 take Harrisburg and Montague together.

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2 MR. GEBO: Exactly.

3 A.L.J. COSTELLO: And is it your
4 understanding with respect to the scope of services that
5 are to be provided by the engineer? It's the same as was
6 previously described to us?

7 MR. GEBO: I do. I'd -- I'd like to --.

8 A.L.J. COSTELLO: I'm sorry, please --.

9 MR. GEBO: I'm sorry. It's Mark Gebo. I
10 would like to just add perhaps on the engineering side
11 that our firm has been involved in quite a number of wind
12 projects here in Lewis County and actually some in
13 Jefferson as well. Kris Dimmick has worked -- at Bernier
14 Carr has worked with us on a number of these and he's been
15 instrumental in helping us understand established
16 protocols for different types of studies that need to be
17 done.

18 I believe he has a great deal of experience
19 in this area. We're working with him currently on the
20 number three Wind Road Project which I think is currently
21 pending before your agency. He also has recently
22 completed working with the Town of Denmark on the
23 Copenhagen Wind Project which is an approved project and
24 probably going to be built sometime this fall.

25 He worked extensively with Cape Vincent who

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2 had some wind issues I understand in the past. And he's -
3 - he's -- I believe has the expertise to help us
4 understand the establishment of the protocols, the
5 parameters of the studies, what sort of things we need to
6 look at. And they do have a -- a relatively large staff
7 with numerous expertises in the office that he can draw
8 on. And so we do have confidence in his ability to do
9 these services for us during this stage of the process.

10 A.L.J. COSTELLO: Than you, Mr. Gebo.

11 A.L.J. WILKINSON: And just to follow up,
12 so of all the areas listed on page five you believe that
13 law firm can provide effective -- I mean that engineering
14 firm can provide effective assistance?

15 MR. GEBO: Yes. And I say that based not
16 only upon what they've listed as experience but having
17 worked with them extensively in the past.

18 A.L.J. WILKINSON: Okay.

19 A.L.J. COSTELLO: All right. And what
20 we're going to do is just go through all of the
21 applications. And as I said earlier, we'll probably take
22 a break so we can discuss the funding and then we'll come
23 back with it and tell you what the -- what the rulings are
24 --

25 MR. GEBO: Sure.

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2 A.L.J. COSTELLO: -- on the requests. Are
3 there any objections to either the Town of Harrisburg or
4 the Town of Montague's requests for pre-application
5 intervenor funds?

6 Not having heard any we'll move on to the
7 next application. That's on behalf of Heath Ash and the
8 Concerned Citizens of Deer River Wind Energy Project. And
9 just direct this question towards you and if you just say
10 -- state your name again.

11 MR. DAVIS: Yes. Mark Davis on behalf of
12 Heath Ash.

13 A.L.J. COSTELLO: Mr. Davis, can you just
14 tell me something about -- about the -- this group and
15 also where we have to know that they reside within the --.

16 MR. DAVIS: Mr. Ash resides in the Town of
17 Pinckney with his wife. The group -- we were recently
18 retained in June and the group is in the early stages.
19 There may not be any additional members other than Mr. Ash
20 and his wife at this point. I know that there's other
21 neighbors reaching out to them now that they know that
22 they've retained counsel and are going through this
23 process. So that is a group that is likely going to grow
24 as we go through the process. But he is a resident of the
25 -- of the Town of -- of Pinckney and has an interest in

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2 seeing that this project is -- is properly sited. And
3 wants to take advantage of the public participation that
4 Article Ten provides.

5 A.L.J. COSTELLO: Okay. Is there anything
6 on -- and this is information purposes, is there anything
7 -- concerns, unique concerns that your group has that
8 would not be represented by the towns in this matter?

9 MR. DAVIS: Well, he can -- he may know
10 better than -- than I and -- and he's certainly capable of
11 -- of speaking. But I -- I would say that I had heard
12 that the -- the towns were supportive of the project. And
13 there were some citizens with Mr. Ash that had some
14 concerns. So I don't know exactly where the towns are at.
15 I -- I saw the request for funding to -- to help defray
16 costs of attorneys and engineers.

17 Although the engineering firm is -- is well
18 qualified I didn't hear anything about, you know, the
19 specific wildlife experts or public health experts, noise
20 experts. So we would certainly collaborate with the town
21 to the extent we could. Right now we don't have any
22 budget, a very limited budget of -- of Mr. Ash's personal
23 funds. So depending on whether or not we were awarded
24 intervenor funding, you know, the issues I've heard were
25 noise, health and real property values.

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2 Our firm has worked or are involved in
3 other active Article Ten proceedings and we have
4 relationships and connections to -- to various experts in
5 those fields I mentioned. And depending on whether or not
6 my client can afford any of those experts that those would
7 be the people we would intend to retain. But we've kind
8 of come here with our hand out and if -- if funding is
9 provided then we will develop a better scope of -- of our
10 participation in this proceeding.

11 A.L.J. COSTELLO: Okay. Thank you.

12 A.L.J. WILKINSON: So you would -- because
13 your request right now, you know, states that you may hire
14 experts but it doesn't specifically identify experts or
15 particular areas -- you know, general areas that you would
16 study, not specific areas, you know, I'm -- I'm just
17 wondering for example for public health impacts would you
18 be -- how would that not be duplicating what the towns
19 would be interested in? Would there be something
20 different?

21 MR. DAVIS: Well, I didn't hear the town
22 say anything about retaining any public health experts. I
23 only heard an engineer. But like I said I would -- if the
24 town is -- is going to hire a public health expert and
25 well, then Mr. Ash will have no interest in spending his

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2 own money on duplicating those efforts. This is
3 legitimately a concerned resident of one of the towns who
4 wants to be involved. And he doesn't want to necessarily
5 pay for it all out of his own pocket, so to the extent he
6 can defray some of those costs which is, you know, the
7 stated purpose of intervenor funding that -- that's why
8 we're here.

9 I didn't, you know, -- I don't know if
10 we're going to -- I know there's three towns. I know that
11 they're entitled to half of it. I don't know if you're
12 going to award all of it to them, so I laid out what the
13 concerns I heard from Mr. Ash were. But in addition to
14 any experts that we had retained or not retained there are
15 the legal services be a cost associated with that going
16 forward as well. So part of that request, funds would be
17 used to pay the attorneys' fees.

18 A.L.J. COSTELLO: Okay. But the
19 application that we have right now appears to be just on
20 behalf of the -- for the law firm. So there's -- there's
21 an indication that you may hire experts but yet the
22 request itself is with respect to the legal services of
23 the law firm which we have a retainer agreement with
24 between your firm and Mr. Ash. We don't have anything
25 about other experts at this point in time so it would be -

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2 - the application would be considered or at this point an
3 application to fund the services of the law firm.

4 MR. DAVIS: Well, the application that --
5 that, you know, is used talks about experts, consultants
6 and attorneys you have retained and experts, attorneys,
7 consultants that you may retain. We have been retained.
8 We don't have any money to retain any experts yet, so what
9 I did is I answered the portion of the application that
10 said who -- what experts do you anticipate retaining. And
11 we would -- I need to talk more with Mr. Ash where his top
12 priorities are, but they would be in the areas of real
13 property values, noise and -- and public health.

14 A.L.J. WILKINSON: And so right now if you
15 were to retain experts you would be retaining them for the
16 purpose of reviewing the preliminary scoping statement.

17 MR. DAVIS: At this point, honestly, it
18 would be more to help us through the -- the stipulation
19 phase.

20 A.L.J. WILKINSON: The stipulation phase.

21 I mean --

22 MR. DAVIS: The P.S.S. has been filed.

23 A.L.J. WILKINSON: -- and I'm saying in
24 furtherance of stipulations. In furtherance of developing
25 stipulations.

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2 MR. DAVIS: Would help us understand the --
3 the P.S.S. In other cases I've been involved that
4 document's not going to change much if at all --

5 A.L.J. WILKINSON: Right.

6 MR. DAVIS: -- so going -- we would be
7 going forward through the stipulation phase. And whether
8 -- I know we're not entitled to thirty-five -- thirty-
9 five, seventeen and five ten it's -- it's not enough
10 money. It's never going to be enough money so whatever
11 funds are awarded will be used towards attorneys' fees and
12 any experts that we can retain within the funding provided
13 and any money that the Ash's contribute individually and
14 any money the group can raise down the road. But right
15 now it's -- it's all -- this all happened in the last
16 couple of weeks.

17 A.L.J. WILKINSON: All right.

18 A.L.J. COSTELLO: Yeah, just are there any
19 objections with respect to Heath Ash's application?

20 MR. MUSCATO: Yes, your Honor. Your
21 Honors, this is Jim Muscato on behalf of the Applicant.
22 We -- we have the same questions and concerns that you've
23 mentioned tonight regarding the application. It seems as
24 if the application is seeking prospective relief for
25 unnamed experts without qualifications that have been

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2 identified without subject areas that are -- that have
3 been identified, other than health and sound which are
4 already subject areas duplicated in the Article Ten
5 process by, among others, the Department of Health staff
6 that's involved, the Department of Public Service sound
7 experts that are involved, and also the consulting firms
8 that the towns mentioned have also had experience in those
9 areas as well having reviewed wind farm projects as Mr.
10 Gebo mentioned.

11 So we have concerns that in this instance
12 because the only application for funding in front of you
13 is an application by the law firm for, in fact, more than
14 what the towns requested in their requests that -- and --
15 and it's also for individuals proceeding in this.

16 I recognize there's the potential for some
17 -- a group someday that these are all issues that as the
18 application sits today does not have enough information
19 for their prospective award of funds.

20 So those -- those are our concerns with
21 respect to the application. I -- I didn't mention before
22 we support the applications by the towns. We appreciate,
23 in fact, that the towns have worked together, are
24 coordinating on counsel and are coordinating on
25 engineering firms and -- and we believe that that's going

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2 to be an efficient use of the funding. And we recognize
3 it's limited by statute but the limited funding that's
4 available during this phase.

5 A.L.J. COSTELLO: Would you like to
6 respond?

7 MR. DAVIS: I -- I would only respond that
8 I've heard Mr. Muscato and other lawyers from his firm
9 object to local residents attempts to participate in this
10 process. I can think specifically in Cassadaga Wind of
11 hearing similar objections. The -- the statute encourages
12 broad participation. That -- that, you know, includes the
13 -- the governments, the local governments. It also
14 includes residents like Mr. Ash and I think it's
15 inappropriate to -- to try to exclude Mr. Ash, his wife
16 and other local residents who want to be involved in this
17 process.

18 MR. MUSCATO: Just to be clear. We're not
19 excluding anybody from the process. The company has
20 engaged in open house meetings, has -- has engaged in
21 public forums, soliciting public comment. We have a
22 public involvement program plan that we're currently
23 implementing so we're certainly interested in public
24 involvement. That -- that's not the issue.

25 The issue in this particular application is

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2 whether or not the limited funding that's available
3 through the pre-application process in Article Ten should
4 be used for individuals to retain legal counsel to
5 potentially participate in a stipulations process when
6 there are others representation at the town level.
7 There's representation at the state level through D.O.H.
8 and D.P.S. representatives.

9 The issues that the concerned -- that the
10 resident seems to be concerned about are going to be
11 addressed. And since we're talking about the scope of
12 studies those are -- as -- as the hearing examiners
13 referred to earlier tonight, those are issues more
14 directed to experts. And -- and when those experts are
15 identified then there's potentially the opportunity for
16 additional funding. But it's just at this time the
17 application is -- is limited.

18 MR. DAVIS: I know, but you're not --
19 you're not handing me any money tonight. There's --
20 there's -- if -- if I -- I have to go through the voucher
21 process to get paid so you're going to see what the money
22 was used for. And if -- if -- if it was not proper then I
23 -- the firm doesn't get the money, the expert I proposed
24 uses -- doesn't get to the money -- doesn't get the money.
25 This is just a -- our application and the application

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2 considers what have you -- who and what have you currently
3 retained and what do you anticipate retaining. And I
4 filled out a complete application and submitted it on
5 behalf of Mr. Ash.

6 A.L.J. WILKINSON: Have you discussed with
7 the towns the work they want to do and whether that work
8 covers the issues that you're interested in for this --
9 for the -- you know, for this initial phase of the
10 application?

11 MR. DAVIS: I've not had any conversations
12 with attorneys for either of -- any of the towns.

13 MR. BURROWS: If -- if I -- if I may, your
14 Honor, Jim Burrows on behalf of the Town of Pinckney. We
15 do have an objection to the application for intervenor
16 funds from Mr. Ash and it's not a personal matter. It's
17 just that we were unaware that Mr. Ash was -- was uniquely
18 interested in this application until we saw that -- that
19 he had applied for intervenor funding.

20 The -- the towns of -- of Harrisburg,
21 Montague and Pinckney had been coordinating for basically
22 a year in this process with numerous public meetings
23 coordinating together to make sure we're using the same
24 engineer to try to help us in this process. And we've
25 done that in -- in large part to avoid a duplication of

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2 any efforts.

3 And -- and now when we learned that a
4 private citizen is interested and -- and wants to take a
5 significant part of those funds I am concerned on behalf
6 of the Town of Pinckney that it -- that it would be
7 duplicative and it would effectively deprive the Towns of
8 Pinckney, Montague and Harrisburg in really taking a hard
9 look at this earliest stage so we do have those concerns.
10 But we haven't had any contact as of yet from Mr. Ash or
11 his counsel in this matter. So we're -- we're kind of
12 shooting in the dark at this point, your Honors.

13 A.L.J. COSTELLO: Anything further? Okay.
14 We'll -- we'll take a -- like a five-minute break. We'll
15 go off the record, take a five-minute break and then we'll
16 come back and let you know our decision on your
17 applications.

18 (Off the record 5:34 p.m.)

19 (On the record 5:42 p.m.)

20 A.L.J. COSTELLO: Now, unfortunately, this
21 isn't a lot of money to -- to divvy up between everyone so
22 we -- we -- not -- we can't make everyone happy. But this
23 is what we've decided. With respect to the Town of
24 Pinckney we're awarding sixteen thousand dollars. Town of
25 Harrisburg ten thousand five hundred dollars. Town of

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2 Montague three thousand five hundred dollars, and Heath
3 Ash and the Concerned Citizens of the Deer River Wind
4 Energy Project five thousand dollars.

5 We would ask though that you provide the
6 further information about experts as you clarified that
7 would be the funding would be subject to further
8 information about experts.

9 A.L.J. WILKINSON: And issues that you're
10 going to study.

11 MR. DAVIS: Not many with five thousand
12 dollars. It will be brief.

13 A.L.J. COSTELLO: Yeah -- I mean, it's
14 unfortunate --

15 MR. DAVIS: I understand.

16 A.L.J. COSTELLO: -- the amount of money
17 that's involved.

18 MR. DAVIS: Yes.

19 A.L.J. WILKINSON: You know, maybe you can
20 also collaborate with the towns and zero in on the issues
21 that are not being addressed that you really want to
22 address.

23 MR. DAVIS: Yes, absolutely.

24 MR. GEBO: I think speaking for the towns
25 we'd be happy to meet with Mr. Ash and his representatives

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2 to be aware of their concerns and try to make sure they
3 get addressed.

4 A.L.J. COSTELLO: The next item up for or
5 consideration is the stipulation process which can now
6 begin. The preliminary scoping statement -- statement
7 includes proposed studies or program of studies designed
8 to evaluate potential environmental and health impacts.
9 And pursuant to Article Ten of the Public Service Law and
10 related regulations the project sponsor from the
11 Department of Public Service staff and other interested
12 persons may engage in discussions on any aspect of the
13 preliminary scoping statement, and any studies or program
14 of studies made or to be made by the project sponsor to
15 support the filing of an application on the project
16 including the content and methodology of the studies.

17 If the project sponsor can reach an
18 agreement with respect to the scope or content of studies
19 with any such interested person or with respect to any
20 other aspects of preliminary scoping statement the
21 agreement will be put into writing as proposed
22 stipulation. And we expect the parties that are being
23 awarded funds to -- to be involved in that stipulation
24 process.

25 The project sponsor will give notice of the

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2 proposed stipulation and the examiners will set a comment
3 period for public comment to provide participants and
4 other interested members of the public, you know, the
5 opportunity to comment on the proposed stipulations.
6 After that comment period ends then the project sponsor
7 and persons in agreement with respect to the stipulations
8 may file the final stipulations.

9 The stipulations are binding only on the
10 parties who sign on to the stipulations so you do not have
11 to agree to the stipulation. And if you do agree it --
12 agree to it that will be binding on you with respect to
13 you can't go back and ask the Applicant to change the
14 scope or methodology of project study already agreed to.

15 I just want to talk a little bit about the
16 negotiation of the stipulations. The -- our regulations,
17 the Public Service Law regulations -- I'm sorry, the
18 Public Service Commission regulations provide that unless
19 a provision of the Public Service Law Article Ten, Section
20 306 of the State Administrative Procedure Act or other
21 Part One thousand regulations conflict with it, the rules
22 of procedure for Public Service Commission shall apply.

23 And in this regard we are referring to Rule
24 309(D) and I'm just going to read to you what it states.
25 Basically it's -- it's saying that the stipulation process

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2 is -- the negotiation process is confidential. So if you
3 agree to participate, if you do participate in the
4 stipulation process, the negotiations in that stipulation
5 process are confidential.

6 So I'm just going to read to you what the -
7 - what the rule states. It states that no discussion,
8 admissions, concession or offer to stipulate or settle
9 whether oral or written made during any negotiation
10 session concerning the stipulation or settlement shall be
11 subject to discovery or admissible in any evidentiary
12 hearing against any participant who objects to its
13 admission.

14 Participating parties and their
15 representatives and other persons attending the -- here
16 would be the stipulation negotiations -- shall hold
17 confidential the discussions, admissions, concessions and
18 offers to setler -- settle and shall not disclose them
19 outside the negotiations except to their principals who
20 shall also be bound by the confidentiality requirement
21 without the consent of the parties participating in the
22 negotiations.

23 So basically as I say it's -- the
24 stipulation process will be confidential but members of
25 the public, you know, if you're interested in

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2 participating you can do that but you're subject to the
3 confidentiality rule.

4 Also as -- as a result of that -- the
5 application of that rule, the project sponsor will
6 commence the stipulation process by filing a notice of the
7 commencement of the stipulation process. And to make sure
8 that it reaches the widest scope. I don't know if this --
9 you've been asked to do this previously but we are asking
10 that you serve that notice with the stipulation process on
11 everyone in the public involvement plan -- that you've
12 identified in the public involvement plan.

13 You can also indicate in that notice that
14 if a person wants to continue getting notices and
15 receiving information they should sign up as a party.

16 And, again, I understand it was not formal
17 party it's just for purposes of -- of us tracking it.

18 MR. MUSCATO: I have a question, your
19 Honor.

20 A.L.J. COSTELLO: Yes.

21 MR. MUSCATO: With respect to distribution
22 of the notice commencing stipulations it was my
23 understanding on the regulations that the stipulation
24 process is a voluntary process. That the Applicant can
25 engage with any party that's willing to sign a

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2 stipulation. So I guess I'm confused about the regulatory
3 requirement to send out the stipulation notice to everyone
4 on it.

5 A.L.J. COSTELLO: Well, it's -- it's -- the
6 -- the requirement is so that we make sure that the widest
7 scope of people who want to participate are aware of this,
8 that it's going forward and can participate. They're not
9 required to participate.

10 MR. MUSCATO: Well, but that's what I guess
11 my point is. I don't think we're required to participate
12 in terms of the Applicant may voluntarily enter into
13 stipulations with any party or -- or not that it --

14 A.L.J. COSTELLO: But if you're enter --

15 MR. MUSCATO: -- can reach agreement with.

16 A.L.J. COSTELLO: -- entering into
17 negotiations on the stipulation process --

18 MR. MUSCATO: Yes.

19 A.L.J. COSTELLO: -- there -- there should
20 be -- people should be allowed to approach you and attempt
21 to enter into negotiations.

22 MR. MUSCATO: Sure. I guess what I had
23 understood was tonight -- the purpose of today's
24 conference is -- it's indicated in the notice that the
25 pre-application conferences for parties to identify, one,

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2 whether they're going to seek intervenor funding. And,
3 two, whether they're going to participate in the
4 stipulations process.

5 So if parties were going to participate in
6 stipulations the distribution noticing this conference was
7 widely provided to people. They could have shown up
8 tonight and indicated their interest in participating.

9 A.L.J. COSTELLO: Is there -- is there --
10 is there a problem with you providing these -- some
11 stipulations --

12 MR. MUSCATO: No --

13 A.L.J. COSTELLO: -- to a wider audience?

14 MR. MUSCATO: -- but no -- no, no. There's
15 no problem with that I guess. But my confusion about it
16 is it seems to be a burden shift to who the Applicant is
17 required to engage in discussions with.

18 A.L.J. COSTELLO: You're not required to
19 engage in discussions.

20 MR. MUSCATO: I see.

21 A.L.J. COSTELLO: All you're required to do
22 is issue the notice.

23 MR. MUSCATO: I see. I -- I understand.

24 A.L.J. COSTELLO: That's -- it's just so
25 people are -- are aware, but it's -- you're not required

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2 to engage in discussions. It's that this -- they have --
3 they're aware that you're entering into the stipulation
4 phase of the process.

5 MR. MUSCATO: I -- I appreciate the
6 clarification, your Honor.

7 A.L.J. COSTELLO: Okay. Are there any
8 other questions with respect to -- to that aspect? If not
9 do -- do you want to discuss -- is there anyone now that's
10 interested in or would like to, you know, express their
11 interest in -- in entering into the stipulation process?

12 MR. MUSCATO: Your Honor, on behalf of the
13 Applicant, yes, of -- of course. We're interested in
14 identifying parties that are willing to discuss the scope
15 and methodology of -- of studies to be included in the
16 application. So I just wanted to put that on the record.

17 A.L.J. COSTELLO: Thank you. And any --
18 any of the -- the parties that were awarded intervenor
19 funding, can I hear from you with respect to the
20 stipulation process? I'll start with --.

21 MR. DAVIS: I would -- I'm not -- I'm not
22 certain to be honest with you. I need to talk to Mr. Ash
23 and -- and see what he wants to do going forward in light
24 of tonight's award. But Mr. Muscato and I are well aware
25 of one another and I can let him know Mr. Ash's

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2 intentions, you know, within a few days.

3 MR. MUSCATO: Or -- or beyond I was just
4 going to say. The -- the cutoff with respect to that I
5 appreciate Mr. Davis's offer to get back to us in a -- in
6 a couple of days. We're going to circulate the notice as
7 soon as we can draft the notice, and then we would
8 appreciate that once the notice is circulated that the
9 parties that wish to participate in the stipulation
10 process would get in touch with us within five days or so.

11 A.L.J. COSTELLO: And the Town of Pinckney?

12 MR. BURROWS: Yes, your Honors. We've
13 received considerable outreach from the Applicant over the
14 last year plus with many of the representatives. We do
15 anticipate being able to work with them through the
16 stipulation process. We've got no reason to think that we
17 would not be able to, so we look forward to working with
18 the Applicant as this application proceeds.

19 A.L.J. COSTELLO: Okay. And -- and I'll
20 just note for the record that the -- the representative
21 for the Towns of Montague and Harrisburg left before this
22 question was raised, so with that if anyone --.

23 MR. MUSCATO: Again, with -- with respect
24 to the representative for Harrisburg and Montague there
25 will be an opportunity for them to indicate that they

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2 would like to discuss stipulations with us as well after
3 the commencement of the -- after the notice commencing
4 stipulations.

5 A.L.J. COSTELLO: And before we close the
6 proceedings. Yes?

7 MS. CERBIN: Your Honor, D.P.S. would like
8 to formally note our request to be part of the
9 stipulations as well.

10 A.L.J. COSTELLO: Yes, I apologize for not
11 -- for not getting to you. Okay. So we have D.P.S.

12 MR. BINDER: And -- and likewise, your
13 Honor, for the Department of Environmental Conservation.

14 MR. MUSCATO: Are objections allowed? No.
15 I'm just kidding, your Honor.

16 MS. MCNICHOL: And also, your Honor, the --
17 the county if it doesn't join in with the -- with the
18 towns which we have done in the past, we will also just go
19 on record that we may want to have those discussions as
20 well.

21 A.L.J. COSTELLO: Okay. If we have nothing
22 further than the proceeding today is closed. Thank you.

23 MR. MUSCATO: Thank you, your Honor.

24 (Off the record 5:55 p.m.)

25

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2 STATE OF NEW YORK

3 I, ANNETTE HOGAN, do hereby certify that the foregoing was
4 reported by me, in the cause, at the time and place, as
5 stated in the caption hereto, at Page 1 hereof; that the
6 foregoing typewritten transcription consisting of pages 1
7 through 35, is a true record of all proceedings had at the
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 19th day of July, 2017.

11

12 ANNETTE HOGAN, Reporter

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