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February 6, 2013

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

Re: Case 12-F-0410

Dear Supervisor Hirschey:

I have received your January 29, 2013 letter in which you pose several questions regarding the preliminary scoping procedures established pursuant to Article 10 of the Public Service Law. Responses to your inquiries are given below.

If BP chooses to ignore a number of items on our list of potential impacts when they submit their PSS and we object during the comment period and argue for their inclusion, can the hearing examiner compel BP to include these impacts in a revised PSS?

No. The hearing examiner does not direct the outcome of the scoping process. After the developer has filed a preliminary scoping statement (PSS), any person, agency, or municipality may submit comments on the proposed scope by serving such comments on the applicant and filing a copy with the Secretary. The developer is required to prepare a summary of the material comments and its responses to those comments within 21 days after the closing of the comment period. (See 16 NYCRR 1000.5(g)). Thereafter, it is contemplated that the developer will work with interested parties to resolve any disagreements they may have about the sufficiency of the planned scope and the studies to be included in the application. The hearing officer's role during the PSS phase is, among other things, to distribute intervenor funds and to mediate stipulations among the parties, where possible. (See PSL §163(5); 16 NYCRR 1000.5(i)).

Can BP be made to revise and resubmit their PSS? If not, then what recourse would the Town have in this case?

No. As described above, applicants are required to prepare a summary of the material comments received regarding the PSS and to provide a reply to those comments. Once an application has been filed, any party that is not a signatory to a pre-application stipulation may raise objections at the hearing as to the methodology or scope of any study or program of studies performed. (See PSL§ 163(5) and 16 NYCRR 1000.5(k)).

If BP chose not to revise and consider any suggestions during the PSS comment period, is it possible they could move onto the application phase without responding to the Town and the hearing examiner?

Yes. While the law requires a potential applicant to respond to comments on the PSS, it does not require the developer to adopt the recommendations made during the preliminary scoping phase. As noted above, parties may raise objections to the methodology or scope at the hearing on the application.

If you have any additional questions or concerns relating to the PSS process, please contact Ashley Moreno, Assistant Counsel, at (518) 473-8123.

Very truly yours,

Jeffrey C. Cohen
Acting Secretary