

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

CASE 15-F-0327 - Application of Galloo Island Wind LLC for a
Certificate of Environmental Compatibility and
Public Need Pursuant to Article 10 to Construct
a Wind Energy Facility

SECOND RULING ON DISCOVERY OBJECTIONS

(Issued January 7, 2019)

JAMES A. COSTELLO, ASHLEY MORENO, and MICHAEL CARUSO, Examiners:

This ruling addresses the objection by Galloo Island Wind LLC (Galloo) to a discovery request made by the Town of Henderson (Henderson No. 1). Henderson No. 1 seeks information that Galloo has agreed to provide publicly pursuant to a Code of Conduct Agreement for Wind Farm Development (Wind Farm Code of Conduct or Agreement), signed by Galloo's President and the New York State Attorney General's Office on March 28, 2016. Galloo objected to Henderson No. 1 upon the grounds that it sought information that is not relevant and material to this Article 10 proceeding. For the reasons stated below, we overrule Galloo's objection, determine that Henderson No. 1 seeks relevant and material information, and direct Galloo to provide a substantive response to that discovery request.

The Code of Conduct for Wind Farm Development

The Attorney General's Office created the Wind Farm Code of Conduct after receiving "numerous inquiries regarding Wind Farm Development from citizens, groups and public officials alleging improper relationships between Wind Companies and local officials."¹ The Wind Farm Code of Conduct is designed to

¹ Wind Farm Code of Conduct, p. 1.

promote public integrity in the wind farm development process and "to ensure that wind farm development is done in a transparent manner, in which municipal officials and companies are accountable, and wind farm development business practices are established and maintained so as to avoid conflicts of interest" or the appearance of such conflicts.²

The Wind Farm Code of Conduct states that it is a contract between the wind farm developer and the Attorney General's Office. By signing the Agreement, a wind farm developer agrees to implement the terms of the Wind Farm Code of Conduct "to govern future conduct in connection with the Wind Company's Wind Farm Development in New York State."³ After listing the conflicts of interest that are prohibited, the Wind Farm Code of Conduct establishes various public disclosure requirements that apply to "Wind Farm Companies subject to the Article 10 siting process."⁴

The Wind Farm Code of Conduct establishes public disclosure requirements that apply to matters occurring both before and after the Agreement is signed. With respect to events occurring before the Agreement is signed, the Wind Farm Code of Conduct provides:

For any financial interest held by a Municipal Officer or his or her Relative in any property identified for the Wind Company's Wind Farm Development prior to execution of this Code of Conduct Agreement, the Wind Company shall disclose the full name of the Municipal Officer or his or her Relative and the nature and scope of the financial interest in a chart submitted to the NYAG and displayed on a website, or on a link from a website, hosted by Wind Company. The submission shall include all such instances of which the Wind Company has

² Id.

³ Id.

⁴ Id., p. 3.

knowledge, or through the exercise of reasonable diligence should know that any [M]unicipal [O]fficer or his or her Relative has a financial interest in the property. The format of the submission shall be subject to the approval of the NYAG. Such disclosures shall be made within 60 days of execution of the Code of Conduct Agreement.⁵

For events occurring after the date the Agreement is signed, the Wind Farm Code of Conduct states:

1. Prior to pursuing, either formally or informally, any approvals before any Municipal Board, including a Town Board, and/or submitting a Public Involvement Plan ("PIP") to the Article 10 Siting Board, whichever is sooner (hereinafter the "Disclosure Date"), the Wind Company shall make public disclosures as defined in paragraph 3 below (hereinafter the "Disclosure List"), in the following manner:

a. Submit the Disclosure List in writing for public inspection to the Clerk of such Municipality.

b. Publish Notice of the Disclosure List in a newspaper having a general circulation in such Municipality.

c. Display the Disclosure List on a website, or on a link from a website, hosted by the Wind Company.

d. Submit the Disclosure List in writing to the Office of the Attorney General.

2. All easements and leases relating to Wind Farm Development shall be in writing ("Wind Agreements"). Prior to the Disclosure date, the Wind Company shall duly file, record, and index, in the Office of the County Clerk for the county in which the subject property is located, an abstract or memorandum of each such agreement, as known

⁵ Id.

at the time, or the agreement itself, which at a minimum shall include the categories identified below in the "Disclosure List."⁶

With respect to the Disclosure List, the Wind Farm Code of Conduct provides:

3. Disclosure List. The Wind Company shall maintain a list of any Wind Agreements it has with any Municipal Officers and his or her Relatives The Disclosure List must be updated or modified if a Wind Agreement is signed with any Municipal Officer or Relative after the initial Disclosure Date. The updated Disclosure List is to be displayed on a website, or a link from a website, hosted by the Wind Company.⁷

The Agreement then specifies the information that the Disclosure List is required to include.

In addition, the Wind Farm Code of Conduct states that it "shall be applicable during all phases of wind farm development including preliminary scoping, siting, approval and construction, and shall automatically terminate one year after project completion."⁸ The Agreement also requires the wind farm developer to conduct certain education and training regarding the Wind Farm Code of Conduct. Finally, the Agreement is enforceable by the Attorney General's Office and may subject a wind farm developer to penalties of up to \$50,000 for the first violation and up to \$100,000 for any subsequent violation.

Henderson No. 1 and Galloo's Objection Thereto

On December 19, 2018, the Town of Henderson requested Galloo to provide (1) "the name of any Municipal officer or his or her family (if any), who has a financial interest which would

⁶ Id.

⁷ Id., p. 4.

⁸ Id., p. 6.

be covered under the Code of Conduct"; (2) "a copy of the disclosure list provided to the Clerk of any Municipality and to the Attorney General identifying any individual with a financial interest (if any)"; (3) "a copy of the publication in the local newspaper of the disclosure list (if any)"; (4) the location of the website or link used by the developer for the purpose of the public disclosure of conflicts of interest"; (5) "a copy of all documents filed in the Jefferson County Clerk's Office pertaining to any easement or lease related to the project"; (6) "a copy of the written statement of intent to comply with the Code provided to each Municipality"; (7) "the location and date of seminars provided to all officers, employees and project developers actively working on projects related to the wind farm regarding conflicts of interest and a copy of their acknowledgement form indicating their agreement to comply with the Code" and (8) "a copy of the instructions provided to all officers and employees that indicates that any violation of the Code shall promptly be reported to all officers and employees that indicates that any violation of the Code shall promptly be reported to the NY Attorney General and the instruction for the procedure in making such a report."⁹

On January 2, 2019, Galloo objected to Henderson No. 1 upon the grounds that it sought information that is not relevant and material to the Article 10 proceeding. Galloo asserted that the Wind Farm Code of Conduct is not required by Article 10, is not administered by the Siting Board, and is outside the scope of Article 10 proceedings. Galloo also stated that the Attorney General's Office established the Wind Farm Code of Conduct for Wind Farm developers operating in New York, that Galloo signed the Agreement in 2016, and that a copy of the Agreement was

⁹ Henderson No. 1, pp. 1-2.

available at http://www.gallooislandwind.com/ny_ag_code_of_conduct.

DISCUSSION

Although the Wind Farm Code of Conduct was created by the Attorney General's Office and is not mandated by Article 10, the goals that the Wind Farm Code of Conduct seek to advance -- to promote the integrity of the wind farm development process and to protect that process from actual or apparent conflicts of interest -- are relevant and vitally important to the Article 10 process. We agree with the conclusion of the Attorney General's Office that the public disclosure of the information required by the Wind Farm Code of Conduct would promote the integrity of the wind farm development process, including the Article 10 process. Because Galloo signed the Wind Farm Code of Conduct and thereby agreed to provide certain information to the public, we see no reason why Galloo should not be required to respond to discovery requests about its compliance with the Wind Farm Code of Conduct.

Moreover, whether Galloo has complied with the obligations imposed under the Wind Farm Code of Conduct, as it agreed to do when it signed the Agreement with the Attorney General's Office, affects the parties' and other stakeholders' ability to monitor the process and provide relevant input. More importantly, the question of Galloo's compliance with those obligations is relevant to Galloo's character and fitness, an issue open for the parties to raise and the examiners and Siting Board to review in an Article 10 proceeding.¹⁰

¹⁰ see Matter of Barton Trucking Corp. v O'Connell, 7 NY2d 299, 308 (1959) (licensing officials have the implicit discretion to pass upon the character and fitness of an applicant).

Accordingly, we direct Galloo to provide a substantive response to Henderson No. 1.

(SIGNED)

JAMES A. COSTELLO

(SIGNED)

ASHLEY MORENO

(SIGNED)

MICHAEL CARUSO