

LAW OFFICE OF GARY A. ABRAHAM

4939 Conlan Rd.
Great Valley, New York 14741
716-790-6141; fax is same (please call first)

gabraham44@eznet.net
www.garyabraham.com

April 7, 2016

VIA EMAIL

Honorable Kathleen H. Burgess
Secretary of the Commission
New York State Public Service Commission
Empire State Plaza Agency Building 3
Albany, NY 12223-1350

Honorable Richard A. Sherman
Office of Hearings and Mediation Services
NYS Dept. of Environmental Conservation
625 Broadway, First Floor
Albany, New York 12233-1550

Honorable Sean Mullany
Administrative Law Judge
State of New York
Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Honorable David R. Van Ort
Administrative Law Judge
State of New York
Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Re: Lighthouse Wind LLC, Case No. 14-F-0485
Town of Somerset Motion to Require Full Stakeholder Participation in the Stipulation Process

Dear Secretary Burgess and Your Honors:

Please accept this letter in reply to the Motion of the Town of Somerset for a Ruling, filed on March 30, 2016, in support of the Motion.

On March 17, 2016, I had an email exchange with Mr. Tim Sullivan at U.S. Fish & Wildlife Service, seeking confirmation about a meeting scheduled for March 30, 2016 with Apex, himself and officials from the N.Y.S. Department of Environmental Conservation. I told Mr. Sullivan that I would like to bring the wildlife consultant retained by SOS to the meeting. Mr. Sullivan indicated he had no objection to our attendance and advised that we contact DPS to inquire about any necessary procedures.

On the same day I forwarded my exchange with Mr. Sullivan to DPS attorney Heather Behnke seeking guidance on the procedure for requesting stakeholder attendance at the March 30 meeting, and Ms. Behnke replied the next day, advising that the request be directed to Apex. The full exchange among myself, Mr. Sullivan, and Ms. Behnke is enclosed.

On March 23, 2016, SOS member Kate Kremer immediately wrote to Apex's attorney

James Muscato with the request, and on March 28, Mr. Muscato replied to the undersigned refusing the request. Both Ms. Kremer's and Mr. Muscato's letters are enclosed.

In his letter Mr. Muscato indicates Apex has commenced the stipulations process ("we are in the process of preparing proposed stipulations to be presented to the parties"), but insists that the March 30 meeting is "a technical meeting" but "is not a formal Article 10 session." I am unaware of any Article 10 regulation that identifies formal Article 10 sessions held during the stipulations process, distinguishing such formal sessions from technical meetings with wildlife experts. Mr. Muscato suggests that Article 10 does not require Apex to include active parties in such meetings ("Article 10 does not require that all meetings regarding the Lighthouse Wind Project be attended by every active party").

The effectiveness of subsequent input from our wildlife expert (and other technical consultants) is called into doubt by this way of proceeding. At a minimum the Siting Board should advise the applicant that, by excluding the parties' experts from planning for studies and methods to be utilized in support of its certificate application, including wildlife baseline and impact studies, Apex proceeds at its own risk. If, after having been excluded from meetings and communications to advance such planning the parties believe related proposed stipulations are overly restricted in scope, for example, Apex should have no expectation that stipulations can be reached. Beyond such an admonition, the Board should provide Apex with directives on how to achieve effective consulting with stakeholders pursuant to 16 NYCRR § 1000.5(b).

In his letter Mr. Muscato also criticizes SOS for refusing to meet with Apex. There is no basis for the criticism, as it is factually inaccurate. Contrary to Mr. Muscato, Apex has never provided SOS with any invitation to meet, at any time, for any reason, and Mr. Muscato fails to identify any such communication, written or oral. After canvassing the SOS membership for purposes of this reply to the Davis motion, I am reliably informed that no officer or member of SOS has ever received any phone call, email or any letter that invites any member, counsel or consultant to meet with Apex. Neither have any such persons ever received any invitation in the mail to attend one of Apex's invitation presentations. No such person has been invited to attend any of Apex's meetings with any agency. In fact, Apex has not put SOS on its mailing list for general informational fliers.

Under the circumstances, there can be no other reasonable conclusion but that Apex is not "actively seek[ing] public participation throughout the planning . . . [and] pre-application . . . process," (6 NYCRR § 1000.4), and it has little interest in providing effective opportunities to consult with stakeholders. 16 NYCRR § 1000.5(b). Apex is thus violating the spirit of the public participation provisions of the regulations, if not their letter.

Accordingly, anticipating that Apex's current pattern of conduct will characterize the stipulation process, we support the Town of Somerset's motion to compel Apex to include all stakeholders in future substantive ("technical") meetings with agencies, and to provide all parties

to this proceeding with all information exchanged with agencies to date relevant to this proceeding.

Respectfully submitted,

/s/

Gary A. Abraham
Attorney for Save Ontario Shores, Inc.

gaa/encs.

cc: Party List

Subject: RE: RE: Lighthouse Wind project proposal;
another process question
From: "Behnke, Heather (DPS)"
<Heather.Behnke@dps.ny.gov>
Date: 3/18/16, 9:29 AM
To: "Gary A. Abraham" <gabraham44@eznet.net>

Gary,

Thank you for alerting me to this. I will reach out to Mr. Muscato to see when he anticipates APEX will initiate the stipulation process. All interested parties should be involved in that process. In the meantime, there is no formal process for requesting to attend meetings. Parties are free to make a request directly to the applicant.

Heather Behnke
Assistant Counsel

Department of Public Service
3 Empire State Plaza, Albany, NY 12223

t (518) 474-5474 | f (518) 473-7081 | heather.behnke@dps.ny.gov
www.dps.ny.gov

From: Gary A. Abraham [mailto:gabraham44@eznet.net]
Sent: Thursday, March 17, 2016 2:16 PM
To: Behnke, Heather (DPS)
Subject: Fwd: RE: Lighthouse Wind project proposal; another process question

Heather,

Thanks for responding to my previous process questions. Here's another: in advance of initiating the stipulations process, Apex is meeting with DEC and USFWS to negotiate methods and studies for wildlife impacts. This has caused concern among stakeholders, expressed below in my exchange with Tim Sullivan below. On his suggestion, I am inquiring whether there is a procedure for requesting that stakeholders be present at the now scheduled meeting. If not, please regard this email as such a request.

--Gary

----- Forwarded Message -----

Subject: RE: Lighthouse Wind project proposal
Date: Thu, 17 Mar 2016 14:02:53 -0400

RE: RE: Lighthouse Wind project proposal; another process que...

From: Tim Sullivan <tim_r_sullivan@fws.gov>
To: Gary A. Abraham <gabraham44@eznet.net>

Hello Gary,

You are correct that a meeting is scheduled for March 30 at the NYSDEC Buffalo Office. I did not schedule the meeting but did indicate my availability. Certainly, I have no problems with others participating in the meeting but I am unaware of the Article 10 rules on this issue. Therefore, I suggest you contact the NYS Public Service Commission for guidance on participating in the meeting. Please keep me apprised of what the rules are for this situation and whether or not you will be participating. Thank you for your email.

Tim

Tim Sullivan
US Fish and Wildlife Service
3817 Luker Road
Cortland, NY 13045
(607) 753-9334

-----Original Message-----

From: Gary A. Abraham [<mailto:gabraham44@eznet.net>]
Sent: Thursday, March 17, 2016 1:20 PM
To: Tim Sullivan
Subject: re: Lighthouse Wind project proposal

Tim,

I understand Apex is meeting with you and DEC to finalize wildlife study methods, and the Apex will assert proprietary status over the methods and/or raw data. SOS is in contact with more than one birding org, and we have our own wildlife consultant, all of whom express serious concern over that way of proceeding. Under the Article 10 rules, Apex is suppose to initiate a discussion with stakeholders to develop stipulations as to the scope and method of technical studies like these, but has not.

What access can we have to your discussions with Apex about these matters? We would like to participate.

Thanks,

--Gary

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Law Office of Gary A. Abraham
4939 Conlan Rd.
Great Valley, NY 14741

RE: RE: Lighthouse Wind project proposal; another process que...

(716) 790-6141

www.garyabraham.com

PLEASE NOTE NEW PHONE AND MAIL



March 23, 2016

VIA FIRST CLASS MAIL and Email

James A. Muscato II, Esq.
Young/Sommer LLC
Executive Woods
Five Palisades Drive
Albany, New York 12205
jmuscato@youngsommer.com

Re: Lighthouse Wind Project / Case Number 14-F-0485

Dear Mr. Muscato:

Save Ontario Shores (SOS) is a party to this proceeding and is a local citizen's not-for-profit organization. We have received information indicating that your client, Apex Clean Energy ("Apex") is meeting with the New York DEC and our regional US Fish and Wildlife Service agencies regarding the proposed Lighthouse Wind Project. I am writing to request that Save Ontario Shores be included in any such future meetings and in particular, the meeting on March 30, 2016. We request that Gary Abraham and SOS's environmental consultant, Karen Schneller-McDonald, be permitted to participate on behalf of SOS.

Given the Siting Board's policy of mandatory public participation hope that you honor this request and let us know the time and location. Please contact SOS attorney, Gary Abraham, at (716) 790-6141 gabraham44@eznet.net with details of the meeting and with any questions regarding this request.

Sincerely,


Kate Kremer

Save Ontario Shores, Vice President

585-414-4954

kremer@rochester.rr.com

Young / Sommer LLC

JEFFREY S. BAKER
DAVID C. BRENNAN
JOSEPH F. CASTIGLIONE
JAMES A. MUSCATO II
J. MICHAEL NAUGHTON
ROBERT A. PANASCI
DEAN S. SOMMER
KEVIN M. YOUNG

LAURA K. BOMYEA
E. HYDE CLARKE
JESSICA ANSERT KLAMI
ALLYSON M. PHILLIPS
KRISTIN LAVIOLETTE PRATT
JESSICA R. VIGARS

YOUNG SOMMER WARD RITZENBERG BAKER & MOORE LLC

COUNSELORS AT LAW

EXECUTIVE WOODS, FIVE PALISADES DRIVE, ALBANY, NY 12205

Phone: 518-438-9907 • Fax: 518-438-9914

www.youngsommer.com

SENIOR COUNSEL
MICHAEL J. MOORE
KENNETH S. RITZENBERG
DOUGLAS H. WARD

OF COUNSEL
SUE H.R. ADLER
ELIZABETH M. MORSS
SCOTT P. OLSON
STEPHEN C. PRUDENTE
KRISTIN CARTER ROWE

PARALEGALS
ALLYSSA T. MOODY
AMY S. YOUNG

Writer's Telephone Extension: 243
jmuscato@youngsommer.com

March 28, 2016

Gary Abraham Esq.
c/o Save Ontario Shores, Inc.
4939 Conlan Road
Great Valley, NY 14741

Re: *Lighthouse Wind LLC*

Dear Mr. Abraham:

We represent Lighthouse Wind LLC and are counsel of record in the ongoing Article 10 proceeding (Case No. 14-F-0490) regarding the proposed Lighthouse Wind Project. Recently in the Article 10 proceeding, Lighthouse Wind filed responses to comments on the Preliminary Scoping Statement. As indicated therein, we are in the process of preparing proposed stipulations to be presented to the parties for potential agreement on the scope and methodology of proposed studies to be included in the Article 10 application. There are a number of areas of agreement among the parties identified in the PSS and this will be reflected in the proposed stipulations. In addition, the Company revised the scope of some of the studies proposed in responses to stakeholder comments. Draft stipulations reflecting the modified scope of the proposed suite of studies will be distributed to parties interested in settlement of these issues in the near future. We anticipate that several meetings with the Article 10 proceeding parties will be necessary and we will provide notice to all parties of sessions scheduled to discuss proposed stipulations.

At the same time, the Company continues to implement the outreach and education aspects of its approved Public Involvement Process Plan (PIP), which includes various meetings and consultations with State, local and other stakeholders regarding certain specific aspects of the Project that they have indicated an interest. In conjunction with this robust public outreach

March 28, 2016

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plan, it is our understanding that Lighthouse Wind has also offered on multiple occasions to meet with your client, Save Ontario Shores, Inc. (SOS), but SOS has declined to meet with the Company.

A recent letter from your client requests information relating to a meeting with NYSDEC and USFWS on March 30. However, this is a technical meeting with the biologists at NYSDEC and USFWS and is not a formal Article 10 session. All active parties identified in the Article 10 proceeding are not involved with this meeting and the meeting is not to discuss stipulations nor settlement of issues to be addressed during Article 10. Moreover, even if the meeting fell under the purview of Article 10, Article 10 does not require that all meetings regarding the Lighthouse Wind Project be attended by every active party.

Once stipulations are proposed, we anticipate there will be future meetings and/or telephone calls with all parties to discuss and negotiate final stipulations and agreement on aspects of the Article 10 Application for the Project.

Very truly yours,

A handwritten signature in black ink, appearing to read "James A. Muscato II", with a long horizontal flourish extending to the right.

James A. Muscato II