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15-F-0377 - 9-21-2016 - Mooers, NY

NEW YORK STATE BOARD ON
ELECTRIC GENERATION SITING AND THE ENVIRONMENT

IN THE MATTER OF

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

PRE-APPLICATION PROCEDURAL CONFERENCE TO CONSIDER
INTERVENOR FUNDING REQUESTS AND BEGIN STIPULATIONS PROCESS

Wednesday, September 21, 2016
10:00 a.m.
Mooers Town Hall
2508 Route 11
Mooers, New York

KEVIN CASUTTO, Presiding Examiner
Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

MARIA E. VILLA, Associate Examiner
N.Y.S. Department of Environmental Conservation
625 Broadway
Albany, New York 12203

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APPEARANCES:

FOR THE DEPARTMENT OF PUBLIC SERVICE:

GRAHAM JESMER
ANDREW DAVIS
JOHN QUACKENBUSH
3 Empire State Plaza
Albany, New York

FOR BULL RUN ENERGY:

THE DAX LAW FIRM
BY: John Dax
Eric Miller
James Murphy.

FOR THE TOWNS OF ALTONA, MOOERS, ELLENBURG AND
CLINTON:

PEASE AND GUSTAFSON
BY: ERIC GUSTAFSON
40 Main Street
Massena, New York

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2 (The hearing commenced at 9:59 a.m.)

3 A.L.J. CASUTTO: Can we come to order
4 please? My name is Kevin Casutto. I'm the New York State
5 Department of Public Service Examiner for this case. Co-
6 presiding with me today is New York State Department of
7 Environmental Conservation Examiner Maria Villa.

8 This is case 15-F-0377, application of Bull
9 Run Wind, LLC, for a certificate of environmental
10 compatibility and public need pursuant to Article 10 to
11 construct a wind energy project.

12 I'd like to have appearances on the record
13 for DPS staff

14 MR. JESMER: Sure. Graham Jesmer for DPS
15 staff, your Honor, joined by Andrew Davis and John
16 Quackenbush.

17 A.L.J. CASUTTO: Thank you. And the
18 project sponsor.

19 MR. DAX: For Bull Run Energy, John Dax,
20 and with me is Eric Miller and James Murphy.

21 THE REPORTER: John, your last name?

22 MR. LAVARE: Lavare from Bull Run Energy.

23 A.L.J. CASUTTO: Thank you. And Mr.
24 Gustafson.

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2 MR. GUSTAFSON: Good morning. Eric
3 Gustafson on behalf of the towns of Altona, Mooers,
4 Ellenburg and Clinton.

5 A.L.J. CASUTTO: Thank you. So this a pre-
6 application procedural conference and the legislature
7 provided in the law for this process to encourage early
8 participation by the public, so that at this point the
9 project sponsor has not yet filed an application for the
10 project. And the legislature has provided for intervenor
11 of funding available for local parties or municipal
12 parties who wish to participate to aid in their
13 participation in this pre-application process.

14 The idea is to have something -- for the
15 public to have some input into shaping how the project is
16 proposed before the application is filed. That's the gist
17 of it.

18 So at -- at this point I'd like to ask Mr.
19 Gustafson if he would like to characterize any particular
20 issues of concern for -- for your clients for the towns --
21 the proposed host towns for the project.

22 MR. GUSTAFSON: Thank you.

23 A.L.J. CASUTTO: If you wish to do so. You
24 don't need to stand. I'm just -- maybe pull the

25

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2 microphone up to you -- if you can pull it a little
3 closer.

4 A.L.J. CASUTTO: Mr. Gustafson. Thank
5 you. That's for the stenographer.

6 MR. GUSTAFSON: Is that
7 good? Can you hear it okay? Good.

8 I think that the towns' main concerns
9 obviously are -- while they were set forth in the initial
10 comments, but the -- the main concerns that the towns
11 general support this -- this type of facility is the
12 impact on the local infrastructure, the local people, the
13 local environment, and on the quality of life. Those are
14 the -- the main concerns obviously for the -- for the
15 residents of Clinton, Altona, Mooers and Ellenburg.

16 Each of the boards has great concern the
17 impact on the taxpayers in the town. And they want to
18 make sure that the -- the best interest of the town are
19 protected.

20 A.L.J. CASUTTO: All right. Thank you.

21 So I'd like to discuss the stipulation
22 process briefly. The siting board regulations are
23 contained in Title 16 of the New York Code of Rules and
24 Regulations and specifically describing the stipulation
25 process of rules 1000.5 I and J.

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2 During the pre-application phase of a major
3 electric generating facility citing case such as this one,
4 pursuant to the Public Service Law Article 10 and related
5 regulations, project sponsor, DPS staff, Department of
6 Public Service staff, and other interested persons may
7 engage in discussions on any aspect of the preliminary
8 scoping statement and any study or program of studies made
9 or to be made by the project sponsor to support an
10 anticipated application -- formal application.

11 If the project sponsor reaches agreement
12 with any of the interested persons, such studies or
13 programs of studies would then be conducted by the project
14 sponsor and included as part of the application for the
15 particular project. The studies may include an evaluation
16 of potential impacts of the proposed project on the
17 environment, public health and other public interested
18 factors.

19 If the project sponsor and interested
20 persons reach agreements or stipulations, the project
21 sponsor must file the proposed stipulations and the public
22 comment period will be announced by Judge Villa and I will
23 set a comment period to provide the participants and other
24 interested members of the public with an opportunity to
25 comment on the proposed stipulations.

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2 After the conclusion of the comment period,
3 the project sponsor and persons in agreement may enter
4 into the final stipulation setting forth those agreements.

5 So some examples of matters that might be
6 addressed in this stipulation process would be regarding a
7 visual impact assessment identifying specific sensitive
8 visual receptor locations or for noise impact assessment,
9 identification of specific sensitive noise receptor
10 locations.

11 I -- I would just add that the -- the
12 regulations are quite detailed in setting forth what is
13 required to be included in an application. So the
14 regulations are already quite detailed, and the
15 stipulation process is intended to refine those
16 requirements with respect to the particular project that's
17 proposed.

18 Now in other Article 10 siting cases, the
19 issue has been raised as to whether the stipulation
20 process is confidential and there was a recent ruling in
21 case 14-F-0485, which is the lighthouse wind project,
22 ruling dated August 25th, 2016, in which the examiners
23 determined that, in fact, the procedure rules of the
24 Department of Public Service applied to Article 10 siting
25 projects. And it's rule 1000.3 of the Article 10

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2 regulations provide that unless a provision of Article 10
3 or Section 306 of the State Administrative Procedural Act
4 conflicts with the rules, then the rules of procedure of
5 the Public Service Commission shall apply in connection
6 with each certification proceeding under Article 10.

7 And one of the procedural rules is Rule 3.9
8 which addresses confidentiality during settlement
9 negotiations, and so the stipulation process is
10 essentially akin to a settlement negotiation even though
11 it precedes the application. So the ruling in that case
12 was that the stipulation process is a confidential
13 negotiations process. Confidential among the
14 participants, but participation in that process is open to
15 anybody in the public who wishes to participate subject to
16 objection that might be ruled upon by the examiners.

17 So we're directly that when Mr. Dax
18 commences the stipulation process to please provide notice
19 to all interested persons that we're aware of that would
20 be the party list and the service list for this case at a
21 minimum and anybody else that you might be aware of who
22 has expressed interest in the case so they'll have an
23 opportunity to participate if they wish to.

24 So now another question that's arisen is
25 what is the effect of the stipulation in the event the

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2 stipulation is reached. And the answer is that the
3 stipulation is only binding on the parties who have signed
4 the stipulation, so if another party is concerned, for
5 example, that a receptor site for visual impact analysis
6 should be considered, but a stipulation was reached to
7 include that location, if the party did not sign the
8 stipulation, then they can still assert that that location
9 is significant and should be considered for visual impact.

10 And the -- the statute and regulations that
11 address these issues are Public Service Law Section 163.5
12 and also Rule 1000.5 paragraph k. So I'd like to talk
13 about intervenor funding now --.

14 Well, before I do that, are there any
15 questions about what I've discussed for the stipulation
16 process?

17 MR. DAX: I just want to clarify on the
18 Notice of Stipulation process, the notice that we are to
19 let the parties know, did you indicate that that is to go
20 to other people besides the people on the active party
21 list? Is there -- I -- I may have misheard, but it seemed
22 to me that you were saying --

23 A.L.J. CASUTTO: Yes.

24 MR. DAX: -- that it should go out to a
25 broader --.

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2 A.L.J. CASUTTO: Yeah, why don't you follow
3 up with me because there's a service list as well, and I
4 don't recall offhand whether that's visible to the public
5 or not.

6 MR. DAX: Okay.

7 A.L.J. CASUTTO: But I'll -- we can -- we
8 can discuss that --

9 MR. DAX: That's fine.

10 A.L.J. CASUTTO: -- later.

11 Anything else?

12 Okay.

13 So regarding intervenor funding, the
14 statute provides for pre-application intervenor funding by
15 the project sponsor, and in this case, the fund is one
16 hundred fifty-seven thousand one hundred and fifty
17 dollars, and as I mentioned previously, municipal and
18 local parties are eligible to request funding.

19 In fact, in this case, the towns through
20 Mr. Gustafson have requested funding.

21 The statute requires that at least fifty
22 percent of the funds be reserved for municipal
23 participants. In awarding the funds, we must allocate the
24 funds in the manner that we believe will be most efficient

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2 and effective in furthering public participation and
3 communication between the project sponsor and interested
4 -- or affected parties in reviewing the preliminary
5 scoping statement in this proceeding. Furthermore --
6 furthermore, the award of funds must precede the beginning
7 of the stipulations process.

8 So as I've described already, I just want
9 to emphasize again at this stage of the proceeding, the
10 purpose of intervenor funding and the stipulation process
11 is to determine what the applicant should be required to
12 include in their application. So at this phase of the
13 proceeding -- for example, the towns would not be
14 developing their own direct case, or creating their own
15 study using the intervenor funds. The purpose is to
16 review with DSS and argue for what the applicant should be
17 required to do as part of their application process.

18 So the funding request for the towns or the
19 party, Mr. Gustafson's clients, is the joint towns. The
20 joint towns have made a funding request for one hundred
21 thousand dollars, and the request indicates seventy-five
22 thousand one hundred dollars for the technical services of
23 GHD. Is that correct, Mr. Gustafson?

24 MR. GUSTAFSON: It is.
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2 A.L.J. CASUTTO: All right. And that in
3 addition a request of legal services of Pease and
4 Gustafson in -- in the amount of twenty thousand dollars.

5 MR. GUSTAFSON: That's correct.

6 A.L.J. CASUTTO: So the examiners are
7 assuming, and I want to confirm with you that the
8 additional forty-nine hundred dollars that would make it a
9 hundred thousand dollar total. The forty-nine hundred
10 would be for disbursements and expenses.

11 MR. GUSTAFSON: That's correct.

12 A.L.J. CASUTTO: All right.

13 And Judge Villa, do you have any questions
14 for Mr. Gustafson about this request for funds?

15 A.L.J. VILLA: No, I don't. Thank you,
16 Judge Casutto.

17 A.L.J. CASUTTO: You're quite welcome. And
18 does any party have any questions regarding this request
19 for funds?

20 Okay. No one -- let the record reflect no
21 one has so indicated.

22 We find that the request for funds is
23 adequate and meets the requirements of the regulations in
24 the -- in regard to the contents of the request for
25 funding, and therefore, at this time we grant the request

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2 of the towns for intervener funds in the amount of one
3 hundred thousand dollars. And we will issue a -- a
4 written ruling confirming our ruling today from the bench.
5 But with the ruling from the bench, the stipulations
6 process may commence.

7 So Judge Villa, do you have any other
8 matters that you wanted to discuss during the conference
9 today?

10 A.L.J. VILLA: I do not, thank you, Judge
11 Casutto.

12 A.L.J. CASUTTO: You're quite welcome.

13 And does any party wish to raise any other
14 matter before we conclude the conference today?

15 I'll let the record reflect no one has so
16 indicated.

17 All right. So during the conference we
18 have awarded one hundred thousand dollars to the joint
19 towns to be confirmed in a written ruling following
20 today's session.

21 I want to thank you very much. That
22 concludes this procedural conference.

23 (The hearing concluded at 10:17 a.m.)

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2 STATE OF NEW YORK

3 I, HOWARD HUBBARD, do hereby certify that the foregoing
4 was reported by me, in the cause, at the time and place,
5 as stated in the caption hereto, at Page 1 hereof; that
6 the foregoing typewritten transcription consisting of
7 pages 1 through 13, is a true record of all proceedings
8 had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 28th day of September, 2016.

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13 HOWARD HUBBARD, Reporter

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