

NEW YORK STATE BOARD ON ELECTRIC GENERATION  
SITING AND THE ENVIRONMENT

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IN THE MATTER OF:

Case No. 14-F-0485

Application by Lighthouse Wind LLC for a Certificate of  
Environmental Compatibility and Public Need to Construct  
up to a 201-MW Wind-Powered Electric Generating Facility  
in the Towns of Somerset and Yates, Niagara and Orleans  
Counties, New York

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**TOWN OF YATES RESPONSE TO LIGHTHOUSE WIND LLC'S  
REQUEST FOR ADOPTION OF STIPULATION  
PROCEDURES AND SCHEDULE**

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## PRELIMINARY STATEMENT

Lighthouse Wind LLC (“LW”), in response to the March 30, 2016 motion of the Town of Somerset (“Somerset”) and comment letters submitted in response to the motion, all of which noted that LW’s compliance with its Article 10 public participation responsibilities has been largely hypothetical, has suggested “Proposed Procedures And Schedule For Commencing Stipulations.”<sup>1</sup> The Town of Yates (“Yates”) supports the adoption of procedures and schedule, but not in the manner suggested by LW, which would ultimately limit the effectiveness of the stipulation process and afford too little time for legitimate review by the municipal and private parties. Accordingly, Yates offers the following proposed revised process and schedule.

### A. Process

LW has already taken the first step under its proposed schedule by notifying “all parties by letter of its intention to discuss *specific stipulations* and to determine which Parties, if any, are willing to engage in this process.” (emphasis added). It is not clear if LW is suggesting only certain stipulations will be subject to review. As long as all stipulations related to topics identified by the Participating Parties will be part of the discussion process, Yates concurs. We would request that any Orders confirming the Process and schedule clarify that point.

Of more concern is that LW suggests a work session on the proposed stipulations. Yates believes there must be separate work sessions on the different topics presented. A Participating Party may well have different experts on visual impacts than traffic and

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<sup>1</sup> Case No. 14-F-0485, Lighthouse Wind LLC, OPPOSITION TO TOWN OF SOMERSET MOTION AND REQUEST FOR ADOPTION OF STIPULATIONS PROCEDURES AND SCHEDULE, at 8.

transportation. We highly doubt the DEC (if that agency wishes to participate) has the same key people for wildlife impacts as it does for visual impacts or noise impacts. It would be highly inefficient and very costly to municipalities and private parties to have all experts or advisors on all topics at the same work session.

This one-size fits all approach is obviously designed to limit the conversation about the stipulations. In the only other project to reach the stipulation phase, there has been recent agreement on forty separate topics and the stipulations covered 45 pages. Nor do many of the Parties have the resources to provide all-issue involvement. The process put forth by LW is a clear effort to wash away their failed public input efforts to date and allow LW to check the “we tried” box. It could not have been put forth in good faith.

Accordingly, the Hearing Examiners should issue an order stating that multiple work sessions will be held on the full range of topics. Obviously many areas are similar and will be covered in the same work session. But failure to organize the stipulation review by topic is tantamount to excluding the parties with less resources and limiting fair discussion on the scope of required review.

#### **B. Schedule**

Yates proposes the following revised schedule, which more realistically recognizes the abilities and resources of the parties:

**April 29, 2016** Applicant to Circulate Draft Stipulations to Participating Parties.

**May 27, 2016<sup>2</sup>** Participating Parties provide response to Applicant Draft Stipulations Exhibits and Work Session schedule.

**June 1, 2016** Stipulations Work Session topics and proposed schedule of work sessions proposed by LW.

**June 14 – July 15, 2016** Hold work sessions.

**By August 1, 2016** Circulate Revised Stipulations to Participating Parties.

**C. Conditions**

For the most part, Yates agrees with the conditions proposed by LW, but it notes that the confidentiality provision will deepen Yates' concerns of a lack of transparency and would appear to violate the Freedom of Information Law. Additionally, it is not clear what disagreements LW believes the Presiding Examiners would play a role in resolving unsettled issues. Absent clarity, that point should not be part of any order; nor is it necessary as the parties can neither expand nor limit the authority of the Presiding Examiners.

Finally, LW's suggestion that the parties not seek promotion of any stipulation they are reasonably certain they will be unable to reach agreement about, is the loophole that swallows the whole stipulation process. LW intends to unilaterally declare it believes no agreement can be reached on key issues and thereby duck debate on the range of studies and evaluations to be made about these key points in the pre-application period. It is highly

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<sup>2</sup> In case of delay in commencing this step or any other by LW, the schedule would be extended accordingly.

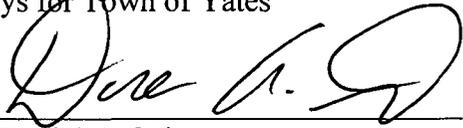
questionable whether the Hearing Officers have authority to rewrite the dictates of Article 10 and the implementing regulations to so significantly modify the process, as LW proposes nothing less than writing the mandates of 16 NYCRR §1000.5(b) out of the review process. LW's proposal is instructive of their continuing repulsion to full public participation but would result in an order that would run afoul of the statute's requirements. Their invitation to exclude essential issues from public review must be denied.

**CONCLUSION**

The Town of Yates respectfully asks that the process and schedule it has proposed herein be adopted.

Dated: April 15, 2016

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