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April 6, 2016

Hon. Kathleen H. Burgess
Secretary to the Commission
NYS Department of Public Service
3 Empire State Plaza
Albany, New York 12223

Honorable Sean Mullany (Sean .Mullany@dps.ny.gov)
Administrative Law Judge
State of New York
Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Honorable Richard A. Sherman (Richard.Sherman@ dec.ny.gov)
Office of Hearings and Mediation Services
NYS DEC
625 Broadway, First Floor
Albany, New York 12233-1550

Honorable David R. Van Ort (David.VanOrt@dps.ny.gov)
Administrative Law Judge
State of New York
Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Re: CASE 14-F-02194 - Application of Lighthouse Wind LLC

Comments on Town of Somerset's Motion to Require Full Stakeholder Participation in the Stipulation Process.

Your Honors:

This Office represents the Town of Yates (the "Town") in the above-referenced action. On March 30, 2016, the Town of Somerset filed a motion requesting a ruling requiring full stakeholder participation in the stipulation process, and the right to participate in meetings between the Applicant and the Agencies central to establishing review protocols. We too have growing concerns about stakeholder participation in the Article X process. We anticipate that

the ALJs and the Siting Board will clarify, by their attention to this matter, the meaning of how expanded public input, which was an essential part of the "bargain" that was central to the enactment of Article X that reduced local control, is to be carried out.

We write, however, to voice our significant concern that the Applicant has failed to carry out the spirit and letter of Article X in its relations with our community. Since the filing of the startlingly deficient PSS and its equally wanting supplement, we have not a word from the Applicant.

For example, again and again the Applicant states it will address issues in the future – or, even worse – "once the studies and analysis proposed in the PSS have been completed."[1] How can there be meaningful public input into an evaluation process if "potential impacts" are not addressed until ***after*** the studies are completed?

As for the stipulation process, we have heard nary a word.

What emerges from the PSS and the behavior of this Applicant to date is that Lighthouse Wind firmly believes that local concerns, even when expressed in fair, substantive provisions, will simply be overridden by a compliant Siting Board. My firm and I are involved in as many Article X and non-Article X wind farm proceedings as any firm in the State, and the attitude of Lighthouse Wind to the process itself (as evidenced by the ALJ's comments on the PSS) and the affected community is unique in its disdain for even minimal compliance. The Governor and Public Service Commission have set lofty goals for our State in its quest to be a leader in addressing climate change. Lighthouse Wind's dismissive approach to its public participation obligations threatens to significantly impair those efforts.

We recognize that the ALJs and Department staff are, to an extent, exploring new ground; the revised Article 10 process is yet unassisted by multiple rulings, legal precedent, or practical experience. But there are certainly norms for applicants to follow in similar permitting processes and these mandate close interaction with the community. If the expanded public participation requirements of Article 10 stand for anything, it is a broadening of that mandate, to insure the decision makers on the Siting Board are fully cognizant of unique local and regional issues. That obligation is undiminished by potential local opposition, rather it is amplified in such circumstances. We urge the Staff, the ALJs, and the Siting Board to set Lighthouse Wind back on a course of full compliance.

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[1] Lighthouse Wind LLC, Summary Of Responses To PSS Comments Article 10 – Preliminary Scoping Statement Pursuant To PSL 164; 16 NYCRR 1000.5, at 2.

Thank you for your attention to these matters.

Very truly yours,

Daniel A. Spitzer

DAS/dcb

cc: Attached Service List