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15-F-0327 - Galloo Island Wind LLC - 7-28-2016

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

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 PROJECT

PRE-APPLICATION CONFERENCE

Thursday, July 28, 2016
10:30 a.m.
Hounsfield Town Hall
Watertown, New York 13601

A.L.J. KEVIN CASUTTO, Department of Public Service, Presiding
Examiner
A.L.J. ASHLEY MORENO, Department of Public Service, Presiding
Examines
A.L.J. MICHAEL CARUSO, Department of Environmental
Conservation, Associate Examiner
Three Empire State Plaza
Albany, New York 12223-1350

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2 APPEARANCES:

3 FOR GALLOO ISLAND WIND LLC:

4 YOUNG SOMMER LLC
5 BY: JAMES MUSCATO II, ESQ.
6 JESSICA KLAMI
7 Executive Woods
8 Five Palisades Drive, Suite 300
9 Albany, New York

7 FOR DEPARTMENT OF PUBLIC SERVICE:

8 ANDREA CERBIN, ESQ.
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11 Albany, New York 12223

10 FOR THE TOWN OF HOUNSFIELD:

11 TIMOTHY SCEE
12 18774 County Rte. 66
13 Watertown, New York

13 FOR THE VILLAGE OF SACKETTS HARBOR:

14 CONBOY, MCKAY, BACHMAN AND KENDALL
15 BY: DENNIS WHELPLEY
16 21144 Storrs Road
17 Sacketts Harbor, New York 13685

17 FOR THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

18 CHRISTOPHER BALK

18 FOR ANTHONY AND CARA DIBNAH:

19 Pro se
20 (Telephonically)
21 ANTHONY and CARA DIBNAH
22 3500 St. Clair Road
23 Fallon, Nevada
24
25

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2 (On the record 10:34 a.m.)

3 A.L.J. CASUTTO: May we come to order,
4 ladies and gentlemen. Good morning. I call Case Number
5 15-F-0327, Application of Galloo Island Wind, LLC for a
6 certificate of environmental compatibility and public need
7 pursuant to Article 10 to construct a wind energy project.

8 My name is Kevin Casutto. I'm an
9 administrative law judge and presiding examiner for
10 today's proceeding. I'm at the Department of Public
11 Service. With me this morning is Ashley Moreno, another
12 administrative law judge at the Department of Public
13 Service and presiding examiner. And Michael Caruso, an
14 administrative law judge at New York State DEC who is an
15 associate examiner on the case.

16 I'd like to begin by having appearances on
17 the record. Why don't we start with the project sponsor?

18 MR. MUSCATO: Good morning, your Honors.
19 My name is Jim Muscato and I'm here along with my
20 colleague Jessica Klami on behalf of the applicant Galloo
21 Island Wind, LLC.

22 A.L.J. CASUTTO: Thank you. And then let's
23 go to Department of Public Service.

24 MS. CERBIN: My name is Andrea Cerbin
25 appearing on behalf of the New York State Department of

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2 Public Service along with Andy Davis.

3 A.L.J. CASUTTO: Thank you. And for the
4 town.

5 MR. SCEE: My name is Timothy Scee. I'm
6 here on behalf of the Town of Hounsfield. I am the
7 supervisor.

8 A.L.J. CASUTTO: Thank you. And for the
9 village?

10 MR. WHELPLEY: Dennis Whelpley, Conboy,
11 McKay, Bachman and Kendall on behalf of the Village of
12 Sacketts Harbor.

13 A.L.J. CASUTTO: All right. And for DEC?

14 MR. BALK: My name is Christopher Balk and
15 I am the regional habitat manager for DEC.

16 A.L.J. CASUTTO: Thank you. And I note
17 that by speaker phone we have participating this morning
18 Anthony Dibnah on behalf of Anthony and Cara Dibnah, who
19 own the Galloo Lighthouse property on Galloo Island.

20 Although we have a speaker phone connection
21 I will say that it may be less than adequate, so I'm not
22 sure how well Mr. Dibnah can hear the proceedings today,
23 but that was the best we could to allow him to participate
24 in some fashion. If we have questions for Mr. Dibnah we
25 will congregate more closely to the speaker phone for that

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2 portion of the hearing.

3 Okay. So this process providing for this
4 hearing today is set forth in the Public Service Law
5 Article 10 statute regarding siting of electric generation
6 facilities in the state, major electric generation
7 facilities.

8 And at this point the project sponsor has
9 not filed an application for the project. So this is a
10 pre-application process and the intent is to allow
11 interested persons to become involved in the project very
12 early on to have input.

13 And -- and the statute projects for
14 intervenor funding which is available to aid interested
15 persons in participating in this pre-application process.
16 So we're here today to talk about the requests we've
17 received for intervenor funding and also to talk about the
18 stipulations process that will ensue after some funding is
19 awarded.

20 So at this point we really don't have
21 formal parties because we really don't have a formal case
22 yet because the application hasn't been filed. But
23 nonetheless if you go to the Department of Public Service
24 website or the siting board website, it will allow you to
25 sign up for the case as a party.

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2 And so as a practical matter, signing up as
3 a party makes it an easy way for people to exchange
4 information electronically. So if you wish to participate
5 in a more active way in this proceeding, I would encourage
6 you to do that so that you'll receive the filings and be
7 able to provide with other people during the process.

8 So I -- I'd like to start by asking the
9 intervenors who are present today, parties who have
10 requested funding if they'd like to state briefly a bit
11 about their interests in the proceeding. It's optional.
12 You don't have to if you don't want to, but let me -- let
13 me start with Mr. Whelpley --

14 MR. WHELPLEY: Sure.

15 A.L.J. CASUTTO: -- for the village.

16 MR. WHELPLEY: Sure. I don't have a heck
17 of a lot to add other than what we've already submitted
18 with our application. But probably most important part of
19 that application for understanding the village's concerns,
20 which are truly somewhat limited, is really set forth in
21 our comments on the preliminary scoping statement.

22 I think that succinctly sets forth what the
23 concerns are and why we're here and intervening.

24 A.L.J. CASUTTO: Okay. And, Mr. Scee, did
25 you -- did you want to say anything more about the town's

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2 interests in this proceeding?

3 MR. SCEE: Certainly. The Town of
4 Hounsfield is the municipality where the wind farm is
5 proposed, and we did submit an application for intervenor
6 funds. And those are noted in a itemized description from
7 our attorney. And also our engineering firm on what the
8 proposed cost to the town would be for those services
9 involving the Galloo Island Wind Farm.

10 A.L.J. CASUTTO: All right. And I'm going
11 to have some questions for Mr. Dibnah regarding his
12 interests, but as I mentioned already, he -- he and his
13 wife are owners of the lighthouse parcel on the island.

14 So the intervenor fund -- the pre-
15 application intervenor fund in this case is -- is set by
16 statute and the amount for this project is thirty-eight
17 thousand six hundred forty dollars (\$38,640). The law
18 requires that half the fund be reserved -- at least half
19 the fund be reserved for municipal parties. That would be
20 nineteen thousand three hundred twenty dollars (\$19,320).

21 The funding requests we've received --
22 we've received basically three funding requests, from the
23 town, the village and the Dibnahs. The town filed two
24 separate requests. One for attorney services and one for
25 technical consultant, but I'm treating that as -- as one

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2 request from the town.

3 So the total amount requested by these
4 parties is almost double the amount that's available. So
5 in awarding the funds the presiding examiners must
6 allocate the funds in a manner that we believe will be
7 most effective and efficient in furthering public
8 participation and communication between the project
9 sponsor and the interested or affected parties.

10 So, again, the stipulations process that
11 will ensue after funding is awarded is intended to specify
12 what will be required of the project sponsor in order to
13 file the -- the complete application that will be subject
14 to another formal review process. That will really begin
15 the formal review process of the project.

16 So this is very early in the process. So I
17 -- I have some questions for the town and village, so let
18 me confirm. The village is within the town, is that
19 right?

20 MR. WHELPLEY: Correct.

21 A.L.J. CASUTTO: And my understanding is
22 actually that the village population is about forty
23 percent, maybe a little bit more than forty percent of the
24 town's population.

25 MR. WHELPLEY: That's correct.

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2 A.L.J. CASUTTO: So I -- I've just -- our
3 role is to assure that the funds are used in an efficient,
4 effective manner. Why do we have separate applications
5 from the village and the town here? Wouldn't it be more
6 efficient if you could cooperate with -- on this and
7 possibly have separate attorneys but -- but have one
8 technical consultant? I'm concerned that we'll have
9 duplicative services if we're awarding funds separately to
10 each of you for technical consultants.

11 Has there been any discussion of possibly
12 coordinating?

13 MR. WHELPLEY: There is none that I know
14 of.

15 A.L.J. CASUTTO: Well wouldn't -- wouldn't
16 the town's interest include those impacts to the village
17 --

18 MR. WHELPLEY: I think --.

19 A.L.J. CASUTTO: -- Mr. Scee?

20 MR. SCHEE: That's correct. We consider the
21 Village of Sacketts Harbor as town residents. And
22 therefore when the Town of Hounsfield supply -- or files a
23 permit or an application for intervenor funds we include
24 the Village of Sacketts Harbor in those.

25 A.L.J. CASUTTO: So --.

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2 MR. SCEE: In previous -- in the previous
3 project there were no concerns from the village as stated
4 in the comments that the village has provided you this
5 time. So we just considered the village as part of the
6 town.

7 A.L.J. CASUTTO: So --.

8 MR. WHELPLEY: We think we have very unique
9 and special concerns for this project because of the
10 nature of this project.

11 A.L.J. CASUTTO: Well, I -- I under -- I
12 understand that and I'm not trying to exclude the village
13 from participation. But has there been any -- is there
14 any hope to consider coordinating? I want to assure that
15 if we do award funds separately that there won't be
16 duplicative services or duplicative work done with these
17 funds. So, for example --.

18 MR. WHELPLEY: We probably could coordinate
19 shared services in regards to visual impacts.

20 A.L.J. CASUTTO: And what -- what are the
21 other issues of concern for the village, for example?

22 MR. WHELPLEY: They're -- they're really
23 transportation issues --

24 A.L.J. CASUTTO: I mean, I don't --.

25 MR. WHELPLEY: -- so they're unique to the

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2 village and not -- don't really concern the town because
3 the location of facilities within the village so they're
4 village assets that are owned and maintained by the
5 village.

6 A.L.J. CASUTTO: Okay.

7 MR. WHELPLEY: We would probably be using
8 the village's engineers heavily as you had saw in our
9 application for coordinating the discussion and analyzing
10 impacts on village infrastructure.

11 MR. SCEE: Those concerns have been
12 addressed by the developer in the comments in the response
13 that the developer filed indicating that minimal impact to
14 the village streets and the heavy loads, the narrow
15 streets because the developer plans on just using like a
16 quarter mile of the streets in the village. And,
17 therefore, those issues will be addressed in the
18 application.

19 A.L.J. CASUTTO: All right. Let me ask,
20 Mr. Scee, in the town's request for funding, your
21 technical consultant, Item Six (A) of that application you
22 talk about -- talk about impacts of transmission lines.
23 What transmission lines are you referring to?

24 MR. SCEE: The impact to transmission lines
25 in the previous project was one of the major concerns.

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2 A.L.J. CASUTTO: No, no. That's the
3 previous project.

4 MR. SCEE: Yeah. But this --.

5 A.L.J. CASUTTO: But I'm talking about for
6 this project.

7 MR. SCEE: The concerns at this point are
8 going underwater all the way from the island to the town
9 or the Town of Oswego should be nonexistent because
10 there's no involvement from other municipalities or towns.

11 A.L.J. CASUTTO: All right. Well, there
12 will be impacts on Galloo Island for collection lines and
13 such but -- which is within the town. So I was wondering
14 if that's what you're referring to. Do you have the
15 application with you?

16 MR. SCEE: I don't have it with me, sir.
17 Our attorney filed the application.

18 A.L.J. CASUTTO: That's okay. Let me see
19 if you can --.

20 A.L.J. MORENO: Well, just to recap and the
21 -- the Six A, the response, the question just since you
22 don't have it in front of you was --.

23 A.L.J. CASUTTO: Well, I'm going to give
24 him a copy.

25 A.L.J. MORENO: Oh, okay.

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2 A.L.J. CASUTTO: So let's --.

3 MR. SCEE: In full disclosure I am visually
4 impaired. I have no central vision.

5 A.L.J. CASUTTO: Okay.

6 MR. SCEE: So when you show me a document
7 the letters disappear.

8 A.L.J. MORENO: How about I'll proceed
9 then? So the question that was asked was for all expert
10 witnesses, consultants, attorneys or others to be employed
11 provide a detailed statement of the services to be
12 provided. And the first portion of -- of the response was
13 that potential environmental impacts associated with the
14 proposed new transmission facilities on lands located
15 within the Town of Hounsfield.

16 So the -- the question that -- what we were
17 trying to understand is when you refer to the transmission
18 facilities what you were referencing. Is that the
19 transmission line that's proposed to take the energy from
20 Galloo Island to Oswego or is it part of the Article 10
21 project discussing gathering lines on the island? We're
22 trying to get a better understanding of -- of what you
23 meant by the transmission facilities.

24 MR. SCEE: I -- I will have to indicate
25 that I do not know the answer to that question.

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2 A.L.J. MORENO: Okay.

3 MR. SCEE: That would be better answered by
4 our attorney, so therefore I can --

5 A.L.J. MORENO: Sure.

6 MR. SCEE: -- I can get back to you if
7 that's necessary at a later date or whatever you'd like.

8 A.L.J. CASUTTO: Yeah, how long would it
9 take to provide us with a response?

10 MR. SCEE: Probably --.

11 A.L.J. CASUTTO: Can you do that in a
12 couple of days or --

13 MR. SCEE: Yeah, yes.

14 A.L.J. CASUTTO: -- two or three days?

15 MR. SCEE: Yes. By Monday you'll have an
16 official response.

17 A.L.J. CASUTTO: By Monday. Okay. And
18 please file the response with the secretary --

19 MR. SCEE: Yes.

20 A.L.J. CASUTTO: -- as is done with filing
21 so that everybody will receive a copy of the response.

22 MR. SCEE: Yes, sir.

23 A.L.J. CASUTTO: So we wanted to clarify
24 also in the town's application, there seems to be a
25 misunderstanding regarding the stipulation process that

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2 there's -- the town seems to assume that once a
3 stipulation agreement has been reached that it would be
4 binding on all the parties in the case. And that, in
5 fact, is not the way it works.

6 And the statute and the regulations are
7 very clear that in the event a stipulation is reached as
8 to what should be provided in the application then that
9 stipulation only binds the parties who sign the -- the
10 stipulation.

11 MR. SCEE: Okay.

12 A.L.J. CASUTTO: So that if the town, for
13 example, did not sign a stipulation on what's to be
14 provided for visual impact analysis, for example,
15 hypothetically, then the town could raise issues about
16 that during the hearing process or argue that the
17 applicant should do something more in assessing visual
18 impacts of the project. You understand?

19 MR. SCEE: Yes.

20 A.L.J. CASUTTO: But, for example, if the
21 village had signed the stipulation hypothetically on
22 visual impacts then the village would be precluded from --
23 from requiring or seeking the applicant to do something
24 more regarding visual impact analysis as part of their
25 application materials. Okay. Is that clear?

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2 And you can look at -- at Rule 1000.5 which
3 states it pretty clearly and it's also in the statute. I
4 thought I had the statutory reference here but I don't
5 right now. Oh, I do actually. It's Public Service Law
6 163 sub five. But the regulation sets it forth more
7 clearly I think.

8 So I'd like to address some questions to
9 Mr. Dibnah now, so I'm going to go over by the speaker
10 phone and bring the microphone over there, and if anybody
11 would like to respond or participate in that colloquy
12 please come over that way.

13 Mr. Dibnah, good morning.

14 MR. DIBNAH: Morning.

15 A.L.J. CASUTTO: So I don't know how much
16 you've been able to follow the proceedings up until now,
17 but I do have some questions for you at this point.

18 MR. DIBNAH: Okay.

19 A.L.J. CASUTTO: All right. And, oh, you
20 know what? I'm going to take another moment just to grab
21 some other materials.

22 So, Mr. Dibnah, on July 18th I sent you a
23 letter asking for clarification about the status of the
24 lighthouse property and whether it's a dwelling and
25 referencing the rules that indicate that for purposes of

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2 eligibility for intervenor funding as a local party the
3 definition includes a person having a dwelling within the
4 community who may be affected.

5 And -- and you responded to that I believe
6 by letter the same day or the following day. Do you
7 recall that? Mr. Dibnah, do you recall that you responded
8 the same day?

9 MR. DIBNAH: Yes, I do.

10 A.L.J. CASUTTO: And in the letter that you
11 provided you indicated essentially that the keepers'
12 quarters are a dwelling, is that right?

13 MR. DIBNAH: That's right.

14 A.L.J. CASUTTO: Okay. So I wanted to ask
15 is there any -- any participants who object to that
16 contention?

17 MR. WHELPLEY: I think the village would
18 object to that contention because of --.

19 A.L.J. CASUTTO: So please come over here
20 so that Mr. Dibnah can you hear you.

21 MR. WHELPLEY: I think the village would
22 object to that contention because it's our understanding
23 no one has resided in that dwelling for at least fifty
24 years.

25 A.L.J. CASUTTO: Mr. Dibnah, were you able

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2 to hear that?

3 MR. DIBNAH: No, I was not.

4 A.L.J. CASUTTO: It's Mr. Whelpley from the
5 village.

6 MR. WHELPLEY: We would object to that
7 because we don't believe that dwelling has been occupied
8 in the last fifty years.

9 MR. DIBNAH: Well, whether it's been
10 occupied or not I don't think anything in Article Ten says
11 it has to be occupied. It just states that you have to
12 have a dwelling.

13 MR. MUSCATO: Your Honor, if we can ask, is
14 there a certificate of occupancy for this location?

15 Hi, Mr. Dibnah. This is Jim Muscato on
16 behalf of Galloo Island Wind. Is there a certificate of
17 occupancy that you have for this location?

18 MR. DIBNAH: No.

19 A.L.J. CASUTTO: Okay. And are there any
20 other questions or comments? Okay.

21 And, Mr. Dibnah, would you like to say
22 anything further?

23 MR. DIBNAH: Well, I may not have a
24 certificate of occupancy at this time. But our plans have
25 been to restore the lighthouse and turn it into a bed and

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2 breakfast which would need a certificate of occupancy.
3 Until we can get this sorted out as to whether or not
4 there is going to be a wind farm on that island it makes a
5 lot of difference as to what continues to happen to the
6 lighthouse.

7 There are several items that are in
8 contention here and we won't be able to solve those
9 problems and then get a certificate of occupancy. The
10 Town of Hounsfield has no objection, neither does the
11 County of Jefferson when it comes to property taxes. They
12 seem to collect their property taxes and they are paid
13 every year and there didn't seem to be any questions there
14 about occupancy.

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

16 MR. WHELPLEY: I have one more thing.

17 A.L.J. CASUTTO: Yeah, go ahead.

18 MR. WHELPLEY: How do you access this
19 dwelling?

20 MR. DIBNAH: Well, there's two ways. You
21 can either with -- go off the beach or there is a easement
22 from the Coast Guard station through the island to the
23 property.

24 MR. WHELPLEY: Could you provide the
25 parties with a copy of that easement?

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2 MR. DIBNAH: Yes, they have a copy of it.

3 A.L.J. CASUTTO: Okay. Well, I don't think
4 we'll go to that level of detail at this point. The
5 easement --.

6 MR. DIBNAH: There's also another easement
7 that the State of New York has from the Coast Guard
8 station which is actually the same easement that I have.
9 And the State of New York would only accept the property
10 at the southern end of the island if that easement was in
11 effect.

12 MR. MUSCATO: Your Honor, if I may. I
13 think there's several disputed facts with respect to the
14 description of this easement, and -- and access to any of
15 these various parcels. So, you know, if it were
16 worthwhile to you to hear more about this with respect to
17 the decision on intervenor funding we could certainly
18 submit something. But I don't want to belabor the point
19 now if it's unnecessary.

20 A.L.J. CASUTTO: I -- I agree. And I -- my
21 view is that the status of the easement is a separate
22 matter. That is a real property matter and is not really
23 the focus of this proceeding. So I -- I would prefer not
24 to go too far into the status of the easement and how it
25 would affect the review of the project.

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2 All right. I think that's sufficient for
3 me. Ms. Moreno or Mr. Caruso, do you have any questions?

4 A.L.J. MORENO: No, your Honor.

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

6 Thank you, Mr. Dibnah.

7 MR. DIBNAH: Okay.

8 A.L.J. CASUTTO: So, Mr. Dibnah, let me
9 remind you that you're on speaker phone. If you can mute
10 your end so that you can just listen that would be
11 helpful, okay? Thank you.

12 All right. So I think at this point I'd
13 like to go off the record for a few moments so that the
14 examiners can consult regarding the status of intervenor
15 funding. And then we'll come back and have some further
16 proceedings. So let's take a ten minute break at this
17 point.

18 (Off the record 11:00 a.m.)

19 A.L.J. CASUTTO: So we're back on the
20 record now and I just wanted to confirm that when I spoke
21 to you by telephone to arrange this telephonic
22 participation we discussed that you would provide a
23 proposed retainer agreement or letter of engagement for
24 your attorney at Harter Secrest.

25 MR. DIBNAH: Yes, that's true. I spoke

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2 with him yesterday and he said he'd send that right out to
3 me.

4 A.L.J. CASUTTO: Okay. So and what -- what
5 I'll request is that you provide that by August 4th and
6 that it be filed with the secretary.

7 MR. DIBNAH: Okay.

8 A.L.J. CASUTTO: All right? And, again, in
9 requesting a proposed retainer agreement we're not making
10 the decision on your request for funding today. We are
11 going to reserve on that request, but this is one element
12 of what could be an adequate request for funding.

13 MR. DIBNAH: Okay.

14 A.L.J. CASUTTO: All right?

15 MR. DIBNAH: Okay.

16 A.L.J. CASUTTO: Thank you. All right, so
17 let's -- let's go back --.

18 We're taking a moment to look at a
19 calendar. So the examiners have consulted and we have
20 decided to make a -- a minimal award to the town and to
21 the village. And we will set a date for a subsequent
22 funding request filing. And we strongly encourage the
23 town and the village to coordinate with each other and
24 make a further request for funding where you'll work
25 together or work jointly so that there will be a more

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2 effective use of the funds.

3 So today we are granting five thousand
4 dollars each to the town and to the village for legal
5 services or technical services. And we will set a date --
6 sorry. I'm -- I'm technologically challenged by my
7 electronic calendar so bear with me a moment.

8 So -- and we're going to set a date of
9 August 11th for the next funding request filing and we
10 encourage the town and the village to coordinate with each
11 other so there will be more effective use of the funds
12 through this anticipated request.

13 Do Mr. Scee and Mr. Whelpley, do you have
14 any questions about that at this point?

15 MR. WHELPLEY: No, I'll contact their
16 attorney.

17 A.L.J. CASUTTO: All right. Very good.

18 MR. WHELPLEY: If that's acceptable to you
19 too.

20 MR. SCHEE: Yes, certainly, Dennis.

21 MR. WHELPLEY: Okay.

22 A.L.J. CASUTTO: So I indicated while we
23 were speaking with Mr. -- Mr. Dibnah a moment ago that the
24 examiners are reserving on Mr. Dibnah's request for
25 funding. I think we have a good record as to the

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2 village's objection and the questions of the applicant
3 regarding the Dibnah funding request. So it would be in
4 the transcript.

5 A.L.J. MORENO: And I should also say that
6 there will be a -- a written ruling subsequent to today's
7 conference as well. And some -- in that it will also
8 memorialize the -- that the town has committed to
9 supplementing with regards to their consultant -- their
10 technical consultant by Monday, August 1st so that we have
11 more information about what the scope is and -- and what
12 it is exactly that you mean by the transmission facilities
13 and whether you're going to fine tune that request as
14 well.

15 And so we'll expect to see that on Monday.

16 A.L.J. CASUTTO: And that's in Item Six A
17 of your funding request for technical services.

18 So now I'd like to talk about the
19 stipulations process. And because we've made and an award
20 of fundings today, the stipulations process can commence.
21 And, Mr. Muscato, have the -- have the participants
22 discussed any type of a schedule for --

23 MR. MUSCATO: No.

24 A.L.J. CASUTTO: -- for stipulations?

25 MR. MUSCATO: No, your Honor. We -- you

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2 know, we wanted to wait till today and -- and --

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

4 MR. MUSCATO: -- see that the stipulation
5 process had formally commenced before doing so. We are
6 prepared to talk about that though if -- if I may.

7 A.L.J. CASUTTO: Yes, please do.

8 MR. MUSCATO: Well, with respect to the
9 schedule that you just indicated where the next funding
10 request filing is August 11th, we anticipated that over
11 the next couple of weeks we would be able to talk with the
12 parties who filed the PSS comments and our responses. And
13 if there are areas of clarification needed with respect to
14 those responses that we could have those conversations
15 with the parties.

16 Clarify what our proposed response is and
17 ultimately provide drafts of stipulations that would
18 encompass those discussions by August 12th. That would
19 enable the parties, the town and the village to have
20 submitted their intervenor funding requests by that date
21 and presumably award soon thereafter will allow them to
22 review the stipulations. And -- and I would expect from
23 there we can have a timely stipulations process.

24 A.L.J. CASUTTO: Yes.

25 MR. MUSCATO: At -- at this point I would

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2 propose tentatively a -- a two-week time frame following
3 August 12th dependent again on -- on the availability of
4 the stip -- the intervenor funds for responses from the
5 parties on the stipulations that we propose. And then
6 beyond that, your Honor, I think the parties can discuss
7 further scheduling.

8 A.L.J. CASUTTO: All right. And did the
9 village or the town want to respond at all to Mr. Muscato?

10 MR. WHELPLEY: No, I think that's an
11 excellent time frame.

12 A.L.J. CASUTTO: Okay. All right. And I
13 would just add that in terms of further awards of funds
14 and the stipulations process that the intervenor funding
15 that's available at this point is -- is not intended and
16 it certainly is not sufficient to cover all the costs of
17 the participants in -- regarding this pre-application
18 process.

19 It's intended to -- to defray expenses. So
20 I would not expect that the timing of any subsequent award
21 would -- should affect the schedule for addressing
22 stipulations. And the participants are responsible to
23 participate in this process regardless of the intervenor
24 funding that's available.

25 And by the same token, the examiners

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2 understand that the municipalities are interested in
3 having this funding as soon as possible, and we intend to
4 make an expeditious ruling on it when we're assured that
5 the funds will be used in an effective and efficient
6 manner. All right? So does anybody --?

7 MR. WHELPLEY: I only have one comment if I
8 may, your Honor.

9 A.L.J. CASUTTO: Yes, please. Please.

10 MR. WHELPLEY: The village has already
11 spent substantial for our preparation and for our comments
12 --

13 A.L.J. CASUTTO: I'm sure.

14 MR. WHELPLEY: -- on the preliminary
15 scoping statement. And that was not without effort. And
16 it required a review of the previous -- some of the
17 previous documents that were part of the environmental
18 review record for the previous project.

19 A.L.J. CASUTTO: Yes. For the Hounsfield
20 project.

21 MR. WHELPLEY: Right. And as you know was
22 a very voluminous record. That's all.

23 A.L.J. CASUTTO: Yes.

24 A.L.J. MORENO: Sorry. And we should
25 clarify that the intervenor funds certainly can be applied

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2 to costs incurred by the intervenors that are well
3 documented from the time that the PSS was filed.

4 MR. WHELPLEY: Right.

5 A.L.J. CASUTTO: So --.

6 A.L.J. MORENO: Actually, can I -- do --

7 A.L.J. CASUTTO: Go ahead.

8 A.L.J. MORENO: -- interrupt for just one
9 second?

10 A.L.J. CASUTTO: Yeah.

11 A.L.J. MORENO: With regards to the
12 schedule laid out by the project proponents, did the
13 resource agencies have any -- any comments or -- or
14 questions they might have for the developer just with
15 regards to the proposed scheduling for the stipulations at
16 all? Just wanted to invite comment from them as well as
17 the intervenors.

18 MS. CERBIN: Staff would like to request
19 additional time with respect to stipulation review. We go
20 -- I mean --.

21 A.L.J. CASUTTO: Well, why don't --

22 MS. CERBIN: You're more aware --.

23 A.L.J. CASUTTO: -- note that you'll speak
24 with the applicant and other participants about that. You
25 don't need to make a decision right here right now.

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2 MS. CERBIN: Yeah, that's fine. Thank you,
3 your Honor.

4 MR. MUSCATO: And I -- and I think, you
5 know, of course we're going to be flexible with respect to
6 the time frames. But, you know, obviously we want to -- I
7 believe the areas of discussion with respect to
8 stipulations can be somewhat confined to discreet topics.
9 And -- and so hopefully that will, you know, allow the --
10 the stipulation process to move forward more quickly. But
11 we're certainly willing to be flexible with that.

12 A.L.J. CASUTTO: Yes. And -- and that's --
13 actually what I was about to say is that the regulations
14 regarding the siting process and what's required in an
15 application to site a major facility are quite detailed.
16 And if anybody has the interest to review the regulation
17 online you'll see that it's -- it's very detailed in what
18 -- what is required.

19 So this stipulation process is really
20 intended to refine what is required by those filings. For
21 example, a visual impact analysis is required but a
22 stipulation might specify what are the sensitive receptor
23 locations for which the analysis should be conducted.

24 Similarly for noise analysis or flicker
25 analysis there might be a specification of the particular

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2 locations that are sensitive receptors to those adverse
3 impacts.

4 MR. MUSCATO: We agree with that, your
5 Honor, and -- and those are the areas of refinement that I
6 was talking about before.

7 A.L.J. CASUTTO: Yes. All right. So at
8 this point I would like to ask my colleagues do you have
9 other questions or comments? Mike, did you want to say
10 something about the SEQRA documents?

11 A.L.J. CARUSO: Yes. This is for Mr. --
12 for Mr. Muscato we -- your -- your -- the PSS references
13 and relies upon the SEQRA record from the previous
14 Hounsfield wind project. And there's -- and also the
15 several studies that were performed and the FEIS. I think
16 it even references the findings. So I think the examiners
17 would like to know what -- what's the intention of the
18 applicant here in bringing in all -- all these previous
19 documents?

20 Right now they're not part of the record so
21 we want to know what your -- what -- what the applicant's
22 intentions are regarding the previous studies.

23 MR. MUSCATO: Well, with respect to the
24 SEQRA record that was done, just so everyone's clear, the
25 Department of Environmental Conservation was lead agency,

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2 and a DEIS and FEIS were prepared and approved by the
3 department as well as ultimately a finding statement in
4 2010.

5 The entirety of that SEQRA record may --
6 may still be available for public review with the
7 department. I'm not certain, but nevertheless the project
8 proposal now with respect to Article 10 is standalone.
9 And it's starting new with respect to the project that's
10 proposed for -- the facility that's proposed here and the
11 impact assessment that's going to be included in the
12 Article Ten application.

13 So the scope and -- and methodology of the
14 studies to be prepared, they reflect the SEQRA record.
15 They understand that as a data point if you will, but they
16 -- they build on top of that. And they -- they are
17 intended to be standalone. That being said, the SEQRA
18 record itself while that's not being taken from the
19 previous SEQRA record and just put into the Public Service
20 Commission as a -- as a filing in this matter, certain of
21 the reports as I mentioned before are data points that are
22 being referred to in the other reports that have to be
23 prepared as part of the requirements for Article 10.

24 In the instances where those reports are
25 referenced and they're being used for purposes of the

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2 Article 10 examination, they can be provided and -- and
3 will be provided to the parties and -- and posted on DMM
4 and will be available on the applicant's website.

5 But, again, in order to avoid any confusion
6 about the SEQRA record and -- and previous approvals for
7 the project, the applicant sees this as a process that
8 where those documents are operative we'll refer to them,
9 we'll provide them. But if it's not operative then we --
10 we would prefer not to confuse folks with providing that.

11 A.L.J. CARUSO: So in other words it's --
12 it's the -- the data points as you're referring to that --
13 that supports the -- the -- the FEIS and the findings that
14 will be brought into this record, if you're going to still
15 be using whether it's a certain study or whatever that
16 will be submitted to the parties and to DMM.

17 MR. MUSCATO: Yeah.

18 A.L.J. CARUSO: But the conclusions will
19 not be.

20 MR. MUSCATO: Correct. Well, a good
21 example of this would be the AV reports and -- and other
22 wildlife reports that were prepared back in 2010. There
23 still is validity with respect to the data that was done
24 there. But a counter example to that would be a wetlands
25 delineation. That -- that's going to be redone. That

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2 information is going to be provided anew given the age of
3 some of that reporting.

4 So I think it would be confusing to folks
5 to refer to that wetlands report and -- and provide that
6 information when it's not being relied on here.

7 A.L.J. CARUSO: Okay. Very good. Thank
8 you.

9 A.L.J. CASUTTO: And, for example, even if
10 an aviation -- avian report I -- I would think would need
11 to be updated from eight years ago or ten years ago.

12 MR. MUSCATO: Right. And those scopes have
13 been discussed with the agencies and their -- their, you
14 know, ongoing process with respect to refining those and
15 ensuring that they're adequate for the Article 10
16 application. I would point out with respect to any
17 conclusions that were reached in that former process,
18 again, you know, there -- it's a -- it's a data point.
19 It's a conclusion that was reached by an agency based on
20 the record that was before it to the extent that those
21 facts remain the same, you know, the agency's position
22 with respect to that, I think that's going to be up to the
23 agency if there's a -- not disagreement but any
24 distinction with respect to those conclusions.

25 But obviously this is a decision that's

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2 going to be made ultimately by the siting board, a
3 different regulatory body, so I think those statements are
4 -- are taken for what they're -- from who they're from.

5 A.L.J. CARUSO: Okay. Very good. I did
6 have one other -- I do have one comment on the PSS. Under
7 Section Two point nine, alternative B ten it's -- your --
8 the applicant's discussion of vulnerability to seismic
9 disturbances and climate change impacts. In the
10 discussion regarding climate change impacts, the -- the
11 discussion is nonresponsive to the question.

12 The question is how would the facility --
13 how is the facility vulnerable to climate change impacts.
14 And the -- what we got was that the facility is not going
15 to be generating greenhouse gases basically and therefore
16 isn't going to have any impacts. The question I think is
17 okay are the lake levels going down because I think that's
18 what's happening in the Great Lakes. At least that's the
19 current theory.

20 Are -- are you going to have -- you need to
21 discuss lower lake levels, increased lake levels,
22 increased storm intensities, that kind of stuff I think to
23 address vulnerability of this facility to -- to climate
24 change.

25 MR. MUSCATO: Well, with respect to that,

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2 your Honor, I'm not certain that the -- the response -- to
3 the extent that there are climate change impacts that have
4 to be addressed by this facility I understand the comment
5 and we can take a look at how we've responded to that and
6 -- and possibly clarifying the application.

7 I think otherwise with respect to general
8 climate change impacts that are -- are current regardless
9 of the facility, those will also be generally described.
10 And not -- not just in the alternative section but also in
11 Exhibit Ten as it relates to New York State's energy
12 policy. And -- and the reasons why the energy policy is
13 not just an energy policy it's an environmental policy as
14 well because it does address the climate change impacts
15 that you're mentioning.

16 A.L.J. CARUSO: Right. Very good.

17 A.L.J. CASUTTO: All right. And --.

18 A.L.J. MORENO: With regards to the
19 stipulation process I just want -- I think Judge Casutto
20 covered this already, but to the extent that -- that the
21 intervenors or there's additional members of the community
22 who may be interested in understanding a little bit more
23 about the stipulation process, the stipulation process is
24 not necessarily for intervenors to go out and do their own
25 studies at this point.

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2 Again, studies are going to be included
3 with the application that will be conducted by the
4 application -- by the applicant if -- if they do come
5 forward with an application. And so the -- the
6 stipulation process is really to try to, again, fine tune
7 the types of studies and the methodologies that they'll be
8 using in preparing the studies that would go into an
9 application.

10 And just by a clarification, our
11 regulations do state, should the -- the interested folks
12 who are participating in this stipulation process run into
13 any issues or problems along the way, they're more than
14 welcome to reach out to us, the presiding examiners, to
15 try and mediate any issues. So to the extent it comes up,
16 I just wanted to remind you that that option is available
17 should you need it.

18 And -- and one more thing is just that the
19 Article Ten process is relatively new. As you may know,
20 for folks that are interested in learning more about the
21 process to get a little bit more exposure to the
22 applications that have been filed to date to the extent
23 that you're interested in reviewing records or finding out
24 just a little bit more about what's involved in the
25 process, the siting board does maintain a website that

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2 has, you know, questions and answers. It provides copies
3 of the -- the statute and the regulations.

4 So to the extent that members of the public
5 that are here today may be interested in learning a little
6 bit more about what the review process entails and the
7 stipulation process, that's a resource that you could look
8 to for a little bit more information.

9 A.L.J. CASUTTO: Okay. And do any of the
10 parties have anything further? Yes.

11 MR. BALK: I have a -- a brief statement to
12 speak on behalf of the Department of Environmental
13 Conservation. I am Christopher Balk. I am regional
14 habitat manager of the New York State Department of
15 Environmental Conservation. I'm appearing today on behalf
16 of the department.

17 As an initial matter, I note that the
18 department previously approved an earlier iteration of the
19 Galloo Island Wind Project consisting of about eighty-two
20 turbines, and that the earlier iteration of the project
21 was the subject of a final environmental impact statement
22 findings and several permits including permits under
23 Article Fifteen of the ECL. SPDES construction storm
24 water general permit and an ECL Article Eleven special
25 license, the predecessor to our current --.

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2 A.L.J. CASUTTO: All right. So, Mr. Balk,
3 let's --

4 MR. BALK: I'm sorry.

5 A.L.J. CASUTTO: -- just identify some of
6 the acronyms for the record.

7 MR. BALK: Okay.

8 A.L.J. CASUTTO: And for the public who's
9 here.

10 MR. BALK: Okay.

11 A.L.J. CASUTTO: SPDES and ECL and there
12 was another one in there.

13 MR. BALK: Yeah. ECL is Environmental
14 Conservation Law.

15 A.L.J. CASUTTO: Conservation Law.

16 MR. BALK: SPDES is storm water pollution
17 --.

18 A.L.J. CASUTTO: State pollutant discharge
19 elimination system.

20 MR. BALK: Yes. Thank you. And I think
21 that was it, right? Yes.

22 A.L.J. CASUTTO: I thought there was
23 another acronym in there but I think I --.

24 MR. MUSCATO: May have been FEIS which was
25 final environmental impact statement.

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2 A.L.J. CASUTTO: Okay. Final environmental
3 impact statement.

4 MR. BALK: I thought I said that. Okay.

5 A.L.J. CASUTTO: And Article Fifteen or
6 water permits.

7 MR. BALK: Yes.

8 A.L.J. CASUTTO: Correct?

9 MR. BALK: Prevention of water is the
10 Article Fifteen part of the Environmental Conservation
11 Law. So back to listing of the permits that were issued
12 for that. There was the Article Eleven special license
13 which involves the permitting of take of protective
14 wildlife. Also Environmental Conservation Law Article
15 Twenty-four wetlands permit.

16 For this iteration of the Galloo project,
17 the department has reviewed the applicant's preliminary
18 scoping statement and submitted comment -- comments on it
19 by a letter dated June 21, 2016. Those comments are
20 available on the DPS website. The department's concerns
21 center on potential impacts to natural resources that
22 would be affected by the project and expects to
23 participate in the stipulations process going forward.

24 Project manager for the department is
25 Stephen Tomasik in our Albany office and the project

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2 attorney for the department is Lawrence Weintraub also in
3 the Albany office. That concludes my statement.

4 A.L.J. CASUTTO: All right. Thank you very
5 much. And did any other party want to say anything
6 further before we close the record today? We won't -- we
7 won't take --.

8 UNIDENTIFIED SPEAKER: I'm learning the
9 process. Thank you.

10 A.L.J. CASUTTO: Okay. Yeah. After we go
11 off the record we'll be happy to answer your questions.
12 So I'm just going to go over to the speaker phone to
13 confirm for Mr. Dibnah that we're closing up the record
14 and that I've reserved on his request for funding. I made
15 -- and that we've made awards to the town and village.

16 So, Mr. Dibnah, are you still with us?

17 MR. DIBNAH: Yes, I am.

18 A.L.J. CASUTTO: Okay. So we're closing
19 the record at this point and I just wanted to confirm --
20 I'm not sure how well you were able to hear the
21 proceedings, so the examiners awarded five thousand
22 dollars in funding to the town and five thousand to the
23 village.

24 We have reserved on your funding request
25 and we will make a decision after we review the filing

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2 that you're going to give us, the retainer agreement.

3 MR. DIBNAH: Okay.

4 A.L.J. CASUTTO: All right? So you will be
5 contacted as the stipulations process begins and I'm sure
6 that provisions will be made for a better telephone
7 conference connection should you wish to participate by
8 that manner, okay? Are you there?

9 MR. DIBNAH: Yes.

10 A.L.J. CASUTTO: Okay. So that's -- that's
11 really all I have to say, so I'm going to conclude the
12 telephone conference now and then I'm going to close the
13 record, all right?

14 MR. DIBNAH: Okay.

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

16 MR. DIBNAH: Thank you.

17 A.L.J. CASUTTO: All right. And with that
18 we will close the record of the hearing. I thank you very
19 much ladies and gentlemen.

20 (Off the record 11:38 a.m.)

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2 STATE OF NEW YORK

3 I, HANNAH ALLEN, do hereby certify that the foregoing was
4 reported by me, in the cause, at the time and place, as
5 stated in the caption hereto, at Page 1 hereof; that the
6 foregoing typewritten transcription consisting of pages 1
7 through 41, is a true record of all proceedings had at the
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 4th day of August, 2016.

11

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13 HANNAH ALLEN, Reporter

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