

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

CASE 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.

RULING ON INTERVENOR FUNDING REQUEST

(Issued September 28, 2016)

KEVIN CASUTTO AND MARIA VILLA, Examiners:

INTRODUCTION

On July 27, 2016, Bull Run Energy LLC (Bull Run), an affiliate of Invenergy LLC, completed the filing of a Preliminary Scoping Statement (PSS) in connection with its proposal to construct a 449 megawatt major electric generating facility in the Towns of Altona, Clinton, Ellenburg, and Mooers in Clinton County, New York. Construction would consist of up to 150 wind turbines, together with associated underground and overhead collection lines, access roads, permanent meteorological towers, laydown areas, and an operation and maintenance building (the Project). The Project location borders the Adirondack Park to the south and the Canadian border to the north. The Siting Board's review of the Project will be informed by a number of factors, including environmental studies, wildlife studies, electrical studies, land leasing, cultural assessments, and public input.

Bull Run proposes to interconnect the Project with the State's electric system by constructing an approximately 4-mile overhead 230 kilovolt (kV) alternating current electric transmission line with a point of interconnection to the State's electric system at a proposed 230 kV switchyard to be built adjacent to the New York Power Authority Ryan-Plattsburgh 230 kV

transmission line in the Town of Ellenburg (the Transmission Facility). The Transmission Facility would be a major utility transmission facility subject to Public Service Law (PSL) Article VII, which means it cannot be built or operated without a separate Certificate of Environmental Compatibility and Public Need issued by the Public Service Commission. Bull Run plans to file an application for permission to construct and operate the proposed Transmission Facility that will be reviewed in a separate proceeding before the Public Service Commission.

Pursuant to PSL §163(4), a pre-application intervenor fund of \$157,150 has been established for this proceeding.¹ The purpose of the pre-application intervenor fund is to enable municipal and local parties to better participate in review of the Preliminary Scoping Statement and to participate in the stipulations process by allowing municipal and local parties to defray expenses for expert witnesses, consultants, legal representation, and administrative fees.²

A Notice of Availability of Intervenor Funds, issued July 28, 2016, invited eligible municipal and local parties participating in the pre-application process of this proceeding to submit requests for pre-application phase intervenor funding by August 29, 2016. One timely request was filed, jointly, by

¹ The term "Intervenor" refers to a person or entity that joins a case or proceeding as a third party, other than the project sponsor and the Siting Board Staff, for the protection of an interest. Some intervenors join as a matter of right established in the Article 10 statute; others are permitted to join at the discretion of the Siting Board.

² The Examiners must reserve at least 50% of the funds for potential awards to municipalities. 16 NYCRR 1000.10(a)(5). PSL 163(4)(a) provides that any pre-application intervenor funds remaining in the intervenor account upon the filing of an application will be made available to intervenors for use during the application phase of the proceeding.

the Towns of Clinton, Ellenburg, Altona, and Mooers (the Joint Towns).

On September 21, 2016, the Examiners held a public pre-application procedural conference at the Mooers Town Hall, located in Mooers, to consider the funding request. Participants at the conference included Bull Run, Department of Public Service Staff (Staff), and the Joint Towns. During the conference, the Examiners granted an initial award of pre-application funding in the amount of \$100,000 to the Joint Towns. The purpose of this ruling is to confirm the Examiners' ruling from the bench during the September 21, 2016 conference.

THE REQUEST FOR INTERVENOR FUNDS

The Joint Towns are the host towns in which the Project is proposed to be located, and each town is a municipal party eligible to receive pre-application intervenor funds. The Joint Towns maintain that a project of this magnitude will impact all the residents of their municipalities.³ They each assert that their taxpayers and residents will be directly impacted by the Project, and that an award of intervenor funds will allow them to meaningfully participate in the pre-application proceedings.

The Joint Towns each state they have limited financial resources and no funds budgeted or available for review of this Project. Funding for operating municipal services, they each assert, is raised principally from property taxes and is limited.

With their request for intervenor funds, the Joint Towns maintain that they are working collaboratively in an

³ As reported in the 2010 U.S. Census, the Town of Clinton population is 737; the Town of Ellenburg population is 1,743; the Town of Mooers population is 3,592; and the Town of Altona population is 2,887.

effort to minimize the anticipated fees and expenses associated with their review of this Project. The Joint Towns seek intervenor funds to retain legal counsel and technical experts experienced in reviewing wind energy generating facilities. An award of intervenor funds, they contend, will enable the Joint Towns to review and analyze the scope of studies proposed or performed by Bull Run to ensure that Bull Run is fully considering the potential impacts the Project may have on their citizens, and to ensure that Bull Run responds appropriately to other concerns regarding the Project that may be identified by their citizens.

The Joint Towns' funding request identifies the law firm of Pease and Gustafson, LLP (Eric J. Gustafson, Esq., and Lynn M. Fountain, Esq.) to provide legal services and the engineering consultant, GHD Consulting Services, Inc. (GHD), to provide engineering and environmental services during the pre-application scoping phase of this proceeding. The request identifies individuals within each firm who would work on the scoping review and hourly service rates for them. The Joint Towns request \$20,000 for legal services, \$75,100 for their engineering consultant, GHD, and \$4,900 for disbursements and expenses; a total intervenor fund request of \$100,000.

DISCUSSION

The intervenor funds available at this pre-application stage of review are intended to allow interested participants to engage in discussions on any aspect of Bull Run's preliminary scoping statement and the scope of any study or program of studies Bull Run has proposed or that another participant may propose to be required to be submitted with Bull Run's Article 10 application for this Project.

The Joint Towns' funding request meets the criteria identified in 16 NYCRR Section 1000.10(c). The Joint Towns'

funding request shows that the Pease and Gustafson law firm and the GHD engineering firm each have the appropriate respective expertise and experience necessary to represent the Towns in the scoping review process. In view of these circumstances, during the Conference, we granted intervenor funds to the Joint Towns in the amount of \$100,000, as follows: \$75,100 for technical and engineering services of GHD Consulting Services, Inc, \$20,000 for legal services of Pease and Gustafson, LLP, and \$4,900 for disbursements and expenses. We find that such an award will encourage early and broad public participation by the Towns and their constituents. The collaborative participation of the Towns will effectively provide representation of their constituents' interests in the development of an adequate scope of the application for this Project.

Lastly, we emphasize that the purpose of the pre-application phase is to evaluate the preliminary scoping statement and the stipulations process is designed to allow interested parties to reach agreement on any aspect of the preliminary scoping statement, and any study or program of studies made or to be made by Bull Run to support its anticipated application. At this early stage in the proceeding, it is not appropriate or prudent to use intervenor funds to conduct intervenor-sponsored studies, absent prior approval of the Examiners.

CONCLUSION

We confirm the award from the bench on September 21, 2016 of \$100,000 of intervenor funds to the towns of Altona, Clinton, Ellenburg, and Mooers, jointly, as follows: \$75,100 for technical and engineering services of GHD Consulting Services, Inc, \$20,000 for legal services of Pease and Gustafson, LLP, and \$4,900 for disbursements and expenses.

The required quarterly reporting shall be due 15 days following the close of each calendar quarter, with the first quarterly report due 15 days following the close of the fourth quarter of 2016.

Lastly, we emphasize that, in making this award of funds, we are not making any determination on the merits of any issues that a recipient of intervenor funds may pursue through use of the funds.

(SIGNED)

KEVIN J. CASUTTO

(SIGNED)

MARIA E. VILLA