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May 31, 2016

**VIA FIRST CLASS MAIL AND EMAIL**

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

**VIA FIRST CLASS MAIL AND EMAIL**

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

**VIA FIRST CLASS MAIL AND EMAIL**

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

**VIA FIRST CLASS MAIL**

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

Re: Lighthouse Wind LLC  
CASE 14-F-0485

**Motion to Require Full Stakeholder Participation in the Stipulation Process**

Your Honors:

As you are aware, this office represents the Town of Somerset (the Town) with regard to Apex Clean Energy's (Apex's) proposed Lighthouse Wind



Project (the Project). I write today to request a written decision regarding the Town's motion dated March 30, 2016. The Town also requests a written decision regarding Your Honors' *sua sponte* directive that the entire stipulation process is deemed confidential in accordance with 16 NYCRR § 3.9.

On March 30, 2016, the Town submitted a letter motion requesting Apex be compelled to allow full stakeholder participation throughout the Article 10 stipulation process (the "March 30 Motion"). The Town also requested "a ruling requiring Apex to immediately provide the Town with any and all documents and information previously provided to any New York State or Federal agency regarding the Project." In response to the March 30 Motion and the numerous filings in both opposition and support, a pre-hearing teleconference for all stakeholders was scheduled (the "Teleconference"). The Teleconference was held on Wednesday, April 27, at 11 am.

During the Teleconference, Your Honors stated the March 30 Motion was moot and that the entire stipulation process should be deemed a confidential settlement negotiation in accordance with 16 NYCRR §3.9.

First and foremost, the Town respectfully disagrees with Your Honors' determination that stipulation proceedings are tantamount to a settlement negotiation. The Article 10 siting process requires public participation. Such participation cannot occur where entire stages of the process are deemed confidential. Furthermore, there appears to be little or no justification for maintaining a veil of confidentiality during the stipulation drafting process. The issues and positions that will be discussed during the stipulation drafting process have already been raised publicly via the PSS and its numerous responsive comments. The issues and positions will again be published publicly once a final "draft" stipulation is reached. If public participation is allowed at the beginning and end of the stipulation process, the Town does not understand why the drafting process itself must remain confidential. Finally, from a pragmatic standpoint, the confidentiality of the stipulation process imposes an unreasonable burden on municipal stakeholders by preventing them from including their constituents in the stipulation proceedings. The confidentiality requirement is effectively a gag-order. It prevents municipal leadership from discussing the stipulation process with the most important stakeholders, the public.

Additionally, I am writing to respectfully request a written determination be issued memorializing the verbal rulings you made during the Conference Call. New York Administrative Procedure Act §307(1) requires that any decision adverse to the rights of a party to a proceeding be in writing. Furthermore, 16 NYCRR §3.2 requires any order issuing a directive or



prohibition be in writing and served upon every person or corporation to be affected by the order.

In this case, the recent verbal directive has significantly impacted the rights of both stakeholder parties and the public at large. The ruling regarding confidentiality has severely restricted the public's ability to participate in the Article 10 stipulation process during its critical, formative stages. It is only fitting that such a ruling should be in writing and in full public view.

In addition, the Town respectfully requests Your Honors address the merits of our frequent demands for information regarding Apex's "confidential" meetings with various agencies and officials. Because Apex has raised confidentiality as a defense to disclosure, such requests should be adjudicated pursuant to 16 NYCRR §6-1.4. On multiple occasions the Town has demanded that Apex disclose documents and information related to various meetings between Apex and various state and federal agencies. Apex has routinely refused to comply, citing confidentiality. Most recently, in the March 30 Motion, the Town requested "a ruling requiring Apex to immediately provide the Town with any and all documents and information previously provided to any New York State or Federal agency regarding the Project." During the Conference Call, the Town's request appears to have been rejected on the grounds that the stipulation process is deemed confidential *in toto*.

However, the Town's request is not limited to documents and information created during the stipulation process. The Town respectfully requests a decision regarding whether Apex is required to disclose information about its prior meetings with state and federal agencies. 16 NYCRR §6-1.4 requires a written ruling on this issue.

The applicable regulation, 16 NYCRR §6-1, places the burden of proving confidentiality on the party seeking confidentiality. The party seeking confidentiality is required to submit a comprehensive brief specifying in detail the reasons why such information should be accorded confidential status. Apex has failed to do so. In addition, a determination regarding relevance is required followed by a written decision granting or denying the confidentiality status.

Here, none of the procedures set forth in 16 NYCRR §6-1.4 have been followed. Instead, the Town is left with an off the record determination that an entire portion of the Article 10 proceedings are to be considered confidential, along with the very real likelihood that any violation of the confidentiality could lead to the revocation of party status.

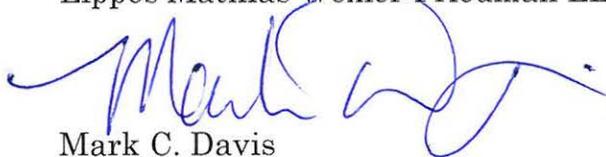


The Town therefore respectfully requests a written ruling be issued formally deciding the March 30 Motion and determining whether the Town is afforded access to information concerning meetings between Apex, state and federal agencies, and officials that have occurred throughout the Article 10 pre-application process.

Please contact me with any questions.

Respectfully yours,

Lippes Mathias Wexler Friedman LLP



Mark C. Davis

MCD/jms

Enclosure

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**\*All cc via DMM website and individual email.**