

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

CASE 17-F-0599 - Application of East Point Energy Center, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law for Construction of a Solar Electric Generating Facility in the Town of Sharon, Schoharie County.

RULING ON INTERVENOR FUNDING REQUESTS

(Issued December 3, 2018)

ERIKA BERGEN and MICHAEL CARUSO, Examiners:

On October 4, 2018, East Point Energy Center, LLC (East Point), a wholly owned, indirect subsidiary of NextEra Energy Resources, LLC, completed its filing of a Preliminary Scoping Statement in connection with its proposal to construct the East Point Energy Center (the Project), a commercial-scale photovoltaic (PV) solar electric generating facility, in the Town of Sharon in Schoharie County. As currently proposed, the Project would consist of arrays of solar PV generating panels connected by underground, and possibly overhead, electric collection lines that would generate electricity supplied to the State's bulk electric transmission system. The Project would interconnect with the existing Sharon-Marshville 69-kV transmission line, which is owned by Niagara Mohawk Power Corporation. In addition, the Project likely would require the construction of internal infrastructure, such as interconnection facilities, access roads, and fencing.

Pursuant to Public Service Law §163(4), a pre-application intervenor fund of \$17,500 has been established for this proceeding. The purpose of the pre-application intervenor fund is to allow eligible municipal and local parties

to defray legal, consultant witness, and administrative costs they incur as a result of their review of the Preliminary Scoping Statement. Funding also aids their participation in the stipulations negotiations process. At least 50% of the funds must be reserved for potential awards to municipalities; other eligible local parties may be awarded up to 50% of the remaining funds.

A Notice of Availability of Intervenor Funds, issued October 5, 2018, 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 November 5, 2018. We received only one request for funding, which was from the Town of Sharon (the Town).

On November 14, 2018, we held a public pre-application procedural conference at the Sharon Springs Free Library to consider the funding requests and discuss the procedures for this pre-application phase of the proceeding. During the conference, we provisionally granted an award of \$17,500 to the Town of Sharon. The purpose of this written ruling is to confirm our oral ruling during the procedural conference.

THE REQUEST FOR FUNDING

The Town of Sharon (approximate population: 2,000) is the town in which the Project is proposed to be located and is a municipal party eligible to receive pre-application intervenor funds. The Town of Sharon seeks pre-application intervenor funding because it has limited financial resources, no surplus funds are available for review of this Project, and it does not maintain a professional planning or technical staff qualified to review this proposed Project. So that it may meaningfully participate in the pre-application phase of the proceeding, the Town of Sharon requests intervenor funds in the amount of

\$17,500. The Town of Sharon already has retained Whiteman, Osterman & Hanna, LLP (Terresa M. Bakner, Esq., and Alexandra E. Dobles, Esq.) to provide legal counsel with respect to the Town's rights and obligations during the pre-application phase of this Article 10 proceeding. The Town also has retained Barton & Loguidice, D.P.C. (B&L) to provide expert consulting services related to engineering, land use planning, and environmental impacts, among other issues. With the requested funds, the Town of Sharon intends to pay its legal and expert consulting fees.

DISCUSSION

As was discussed at the procedural conference, intervenor funds are intended to help eligible participants defray legal and consulting expenses associated with their participation in this phase in the Article 10 process. This participation includes review of the PSS and, potentially, the negotiation of stipulations with respect to the scope of any study or program of studies that East Point proposed or that another participant may propose be required to be submitted with East Point's Article 10 application for this Project. We cautioned that, at this early stage in the proceeding, it is not appropriate or prudent to use intervenor funds to conduct intervenor-sponsored studies absent our prior approval. Nor is it permissible for pre-application intervenor funding to be used to cover any costs that were incurred prior to the date the PSS was filed.

At the conference, East Point voiced that it did not oppose the Town's request for funding at this stage of the proceeding but reserved its rights with respect to any future funding requests. No other person or party made any comments on the Town's request. However, we questioned the discrepancy

between the fee amount quoted by B&L in its estimate to the Town (\$9,500) (see Exhibit A to the Town's request for funding) and the anticipated fee amount for B&L that was reported by the Town in its request for intervenor funds (\$11,000). Because Attorney Bakner was uncertain as to the reason for the discrepancy, we provisionally granted the Town an award of intervenor funds in the amount of \$17,500 but explained that we would withhold this written ruling until the Town provided us with a written resolution of the discrepancy. On November 21, 2018, Attorney Bakner reported that the Town would execute an amended proposal for services with B&L to correct the discrepancy in the original request for funding. The Town filed the amended request for funding on November 28, 2018, attached to which is an amended proposal for services from B&L. The amended proposal revises the anticipated fee amount to be charged by B&L to correspond to the fee amount in the request for funding.

CONCLUSION

We confirm the award of \$17,500 to the Town of Sharon, finding that the award will enable the Town's early and effective public participation. We believe that the collaboration between the Town and East Point at this phase of the proceeding will provide effective representation of the interests of the Town's constituents in the development of an adequate scope of the application for this Project. We accept the Town's revised request for funding and find that an award of \$11,000 to the Town for B&L's services and \$6,500 for legal fees to be supported and appropriate.

No disbursement of the intervenor funds awarded herein will be approved to cover any costs or expenses incurred by the Town prior to October 4, 2018, the date on which the Preliminary Scoping Statement was filed by East Point. 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 last quarter of 2018. Lastly, we emphasize that, in making this award of funds, we are not making any determination with respect to the merits of any issues that the Town may pursue through use of the funds.

(SIGNED)

ERIKA BERGEN

(SIGNED)

MICHAEL CARUSO