

Watertown Daily Times Editorial

Eagle eye: Residents spot contradictions by Apex for Galloo wind project

PUBLISHED: THURSDAY, SEPTEMBER 20, 2018 AT 5:15 AM



SUBMITTED PHOTO

An eagle nest photographed last year on Galloo Island has prompted a motion to dismiss Apex Clean Energy's application for a commercial wind project permit, with charges the applicant gave false information in its documentation.

Several interested parties have called out Apex Clean Energy for deceiving state officials about the risks posed to bald eagles on Galloo Island by its proposed wind project.

A motion filed by Clifford P. Schneider and signed by Claudia Maurer, town of Henderson Supervisor John Culkin, and Ann and Martin Maurer claims that Apex lied about its knowledge of an eagles nest on the site of its proposed project. Outlining how documents and applications filed by Apex withheld information about the presence of a nest, the motion urges the state Board on Electric Generating Siting and the Environment to deny the Galloo Island Wind application and terminate the Article 10 process.

“Apex Clean Energy, and its consultant WEST, Inc., deliberately engaged in a deception which went to the heart of their claim that their proposed project would pose no risk to New York’s threatened bald eagle on Galloo Island,” according to the motion. “This deception included omitting important information about the presence of a bald eagle nest on Galloo, which was compounded by numerous assertions, in several submitted documents, that no bald eagles were found or observed on Galloo Island.”

Mr. Schneider received photographs a few weeks ago that appear to be an eagles nest on Galloo Island and eagles roosting near the nest. He forwarded these images to wildlife staff members of the state Department of Environmental Conservation Region 6. The photographs are believed to have been taken in the spring of 2017.

Apex claimed in a document filed in September of last year that no evidence of an eagles nest existed on the island, although the conditions were suitable for them. But in response to an interrogatory request from a party two weeks ago, Apex acknowledged under oath that the island caretaker made the firm aware of the eagles nest in the spring of 2017 and examined the area; it ruled the nest was not being used for breeding at that time. Apex has contradicted itself with previous claims in various documents that there is “no historical evidence” of eagles nests on Galloo Island.

“We disagree with the characterization and assertions made by Mr. Schneider. A potential eagle nest was brought to our attention in 2017. When we assessed the nest, no eggs, chicks, or young were observed, and we determined that the nest was not used for breeding in 2017,” Apex replied in an email. “Given the status of the nest and our understanding of designation criteria, we concluded there was no material reason to update the application. Importantly, Galloo Wind’s proposed facility components are planned to be located at a distance from the nest that is consistent with DEC guidelines.

“Furthermore, contingency plans have been outlined in the application in preparation for the eventuality that active nesting is discovered on the island. These plans are also consistent with DEC guidelines and FWS recommendations.”

This response is very weak. It’s clear that Apex knew of the presence of an eagles nest while claiming it did not. It only acknowledged the nest’s existence when confronted by another party familiar with the situation.

If the Article 10 process is to maintain any credibility, state authorities must reject Apex’s application immediately. It cannot be allowed to use deceptive measures while seeking approval for its wind project.

Turning Apex down outright would send the message to other developers that this kind of behavior will not be tolerated. The firm lied to the state, and the state must not reward such attempted fraud by continuing this process.

Outside Looking In

[On the road to truthiness](#)

First published: September 21, 2018 at 5:48 pm
Last modified: September 21, 2018 at 5:48 pm

We recently ran a story about opponents of the Galloo Island Wind Farm project demanding that developer Apex Clean Energy be disqualified and denied a permit because of apparent lies made in more than one application filing.

Our editorial board determined we would support the opponents' demands because permitting for wind projects is far too important to let material falsehoods become the rule. And the history of commercial wind developers, here and elsewhere, indicates that lies and misstatements of fact are commonplace.

Over in the towns of Yates and Somerset, Apex announced a hearing and public informational session on its proposed Lighthouse Wind that was scheduled to be held in the town of Medina. Medina is not within Lighthouse Wind's footprint. When questioned by town officials, they were told Apex tried to get a site closer to the affected area but were shut out.

But officials subsequently learned, according to a letter to the editor in the Lockport Union-Sun & Journal, that before complaints started to arise, none of the likely available spots within the project area had been contacted by the company.

There is a lot of concern within the communities on the south shore of Lake Ontario about the Lighthouse project. Town elections have swung on the issue, with candidates opposed to the project being elected to office after the controversy took root.

Somerset has enacted local zoning laws that put strict limits on various aspects of commercial wind projects. The opponents clearly outnumber the proponents, and these two towns have spoken pretty clearly that the majority should prevail.

Apex, meanwhile, has left both towns largely in the dark. The Union-Sun reported that even after an Oct. 2 public meeting was announced for Lyndonville, town of Yates, "An Apex spokeswoman declined to say whether specific details of the proposed project, such as tower height or locations, would be presented at the forum."

The hallmark of this ongoing process has been a refusal to share information with the public or even public officials. The inability to commit to revealing project information at its own public informational session is astounding.

According to the Union-Sun: “In July, the company said it plans to erect 40 to 50 turbines that are less than 600 feet tall. That’s a downsize from past project plans, which called for 60 to 70 turbines at ... heights of over 600 feet.”

To date, the company has not revealed where the towers are planned or any other important details sought by the community. Nor has it suggested how 50 turbines will generate 200 megawatts of wind power on lower tower heights; in other areas, it has been achieved with 400-foot towers with far larger than previous generation rotors.

For example, Copenhagen Wind towers are about 100 feet taller than the older Maple Ridge Wind facility, boosting per-tower output with larger blades and nacelles, the tower generating units.

There is a pattern of obfuscation and exaggeration by commercial wind developers. Apex, for example, points to 100 property owners’ signatures on a letter of support.

But between Somerset and Yates, that would yield a very low percentage of the total parcels. And it is likely that every property owner who will receive direct financial payments from Apex would feel compelled to sign that document, putting a large number of the 100 in question.

Apex and other developers routinely point to the vast economic development potential of their projects, pointing proudly to the tax benefits counties, towns and school districts will receive. They do not, however, explain that those payments depend on payment-in-lieu-of-tax agreements that provide PILOT payments of pennies on the dollar compared to full taxation of the projects once built.

The wind companies also rely on a complex series of mergers and subsidiary companies that often obscure who the real owners are. You can be guaranteed, however, that not one dime of the profits from these facilities — profits almost entirely dependent on subsidies paid by taxpayers — will ever land in an upstate New York bank.

The other economic benefit that developers cite is the number of jobs created. They can point to big numbers during construction, but that never exceeds a full calendar year. Copenhagen Wind, which could go online in November, was started last fall. But the bulk of construction labor was hired in this calendar year for a 40-turbine project.

Once the project is online, the long-term job benefits typically range between five and seven workers. The jobs claim is a huge misdirection, employed by every developer who has come to upstate New York pushing projects.

All of this is why the siting board should reject the Apex application and ensure no subsequent applicants with any connection to Apex be allowed to reapply. Apex is working its way through Public Service Department review for Lighthouse Wind. And if the lie over Galloo is allowed to stand, it will be a

sign to every wind developer, and especially Apex, that the siting process under Article 10 of Public Service Law is a mere formality on the way to a rubber-stamp approval.

Perry White, on a steep downhill slope to going, going, gone, is the managing editor of the Watertown Daily Times. Reach him, quickly now, at pwhite@wdt.net.

Galloo parties seek to disqualify developer over alleged lies

By PERRY WHITE

PWHITE@WDT.NET

PUBLISHED: SUNDAY, SEPTEMBER 16, 2018 AT 12:30 AM



SUBMITTED PHOTO

An eagle nest photographed on Galloo Island last November has prompted a motion to dismiss Apex Clean Energy's application for a commercial wind project permit, with charges the applicant gave false information in its documentation.

A group of independent parties to the Galloo Island Wind application before the state Board on Electric Generating Siting and the Environment have requested that Apex Clean Energy's project be denied outright and the application process ceased because, they claim, Apex lied on multiple documents and applications relating to the project.

According to the motion filed by Clifford P. Schneider and signed by Claudia Maurer; John Culkin, town of Henderson supervisor; and Ann and Martin Maurer, "Apex Clean Energy, and its consultant WEST, Inc., deliberately engaged in a deception which went to the heart of their claim that their proposed project would pose no risk to New York's threatened bald eagle on Galloo Island. This deception included omitting important information about the presence of a bald eagle nest on Galloo, which was

compounded by numerous assertions, in several submitted documents, that no bald eagles were found or observed on Galloo Island.”

The eagle controversy began in late September, when Mr. Schneider received photographs that purportedly show an eagles nest on the island, and several photos of eagles roosting near the nest. He sent those to Department of Environmental Conservation Region 6 wildlife employees, expecting that they would immediately investigate the claim.

Instead, DEC failed to respond by email or phone to Mr. Schneider, and soon proposed to strictly limit the ability of parties to the application from even discussing the potential existence of a nest on the island.

The photos that Mr. Schneider passed on to DEC were reported to have been taken in the spring of 2017. Apex, meanwhile, failed to acknowledge it was aware of the existing nest until, in a Sept. 8 request from a party to the case, it wrote “In the spring of 2017 a potential eagle nest was brought to the Applicant’s attention by the island caretaker. During the 2017 Point Count Survey, conducted in support of the Applicant’s permit under the federal Bald and Golden Eagle Protection Act (BGEPA), Stantec consultants observed the nest. The nest was then evaluated by Western Ecosystem’s Technology on April 25, 2017 via aerial survey, at which time a stick nest was confirmed with no eagles, eggs or chicks observed in the nest.”

Because this is a response to an interrogatory request, it was made under oath.

Mr. Schneider’s contention is that Apex willfully withheld its knowledge until a direct question was asked as part of the siting board process.

This sentence from a September 2017 document is cited as proof: “While there are no records of bald eagle nests on or near Galloo Island, the 493 acres of forest habitat on the island can be considered potentially suitable habitat for bald eagle roosting.”

Other statements cited in the motion include references to “no historical evidence” of the presence of nests on Galloo.

Apex replied to a request for comments with this email: “We disagree with the characterization and assertions made by Mr. Schneider. A potential eagle nest was brought to our attention in 2017. When we assessed the nest, no eggs, chicks, or young were observed, and we determined that the nest was not used for breeding in 2017.

“Given the status of the nest and our understanding of designation criteria, we concluded there was no material reason to update the application. Importantly, Galloo Wind’s proposed facility components are planned to be located at a distance from the nest that is consistent with DEC Guidelines.

“Furthermore, contingency plans have been outlined in the Application in preparation for the eventuality that active nesting is discovered on the island. These plans are also consistent with DEC guidelines and FWS recommendations.”

One of the contingency plans is to remove the nest, along with harassing eagles to discourage them from roosting or nesting on the island.

Claudia Maurer, an independent party to the review and wife of Henderson Supervisor John Culkin, sputtered when asked to comment on the filing.

“I believe they have known that nest and those eagles were there from the beginning,” she said. “Everyone in the area knows how many more eagles are being seen here.”

The question is whether this rises to the level of being a fatal error for a wind developer’s application. Thus far, only one project has completed the process, with about 15 in the pipeline.

Siting board spokesman James Denn of the Department of Public Service offered this guidance in an email response to questions: “The rules provide parties with the opportunity to cross examine other parties under oath as part of the evidentiary review process. This recognized system ensures that the most accurate and factual record is developed for the Siting Board for its consideration. If there are purposeful omissions or purposeful factual mistakes in the record, those will be carefully weighed and appropriately adjudicated.”

There is also a process for the siting board to revoke or suspend Article 10 certificates. Under the regulations, the permanent members of the siting board can revoke a certificate if it is discovered that there were “materially false or inaccurate statements in the application and supporting documents.”

Mr. Schneider, reading the PSC response, said “Oh my gosh. That makes things clear. That makes me feel more secure about the process.”

Ms. Maurer hopes this case review will reflect the importance of following the rules.

“We have laws and rules in this country,” she said. “Then we have this big company coming in, ignoring the rules, trying to bowl right over the local people. Well, what’s next? What else did they do wrong? We all have to scrutinize every action, every document now.”

Mr. Schneider said he hopes the motion will receive a full review by the siting board.

“I hope they take it seriously,” he said. “This shouldn’t be the way the board does business.”

Mr. Schneider made a forceful plea for a disqualification of the Apex application in his motion.

“The fact this fraud is so unambiguous and well documented makes moving forward impossible. To allow Apex to simply edit-out the lies and cleanse their documents sends a terrible message to the public — you can lie, cheat, and get caught in the Article 10 process with little inconvenience or penalty. But, there must be consequences other than opposition parties complaining again during the hearing phase.”

Party to Galloo Article 10 review complains that DEC is actively working to suppress eagle information

By PERRY WHITE
PWHITE@WDT.NET

PUBLISHED: WEDNESDAY, SEPTEMBER 5, 2018 AT 12:30 AM

UPDATED: THURSDAY, SEPTEMBER 6, 2018 AT 9:01 AM



SUBMITTED PHOTO

An eagle nest photographed on Galloo Island last November has not yet triggered an inspection of the island by the DEC.

A party to the Article 10 review of the proposed Galloo Island commercial wind project has complained to the siting board that the Department of Environmental Conservation is trying to suppress information about a bald eagle nesting site on the island, including an attempt to slap a gag order on all participants in the proceeding.

Clifford P. Schneider, in a communication filed Tuesday on the Public Service Commission's Galloo Island Website, objected to a recent DEC directive threatening to seek sanctions on anyone who provides information on a yet-to-be-held site inspection in which a search for eagle nesting sites is supposed to be done.

“I believe the purpose of the restrictive conditions and the requirement that all those attending the site visit to Galloo sign the protective order may be designed to protect the interests of the Applicant’s project rather than protecting endangered or threatened species habitats, particularly the potential for bald eagle nesting on Galloo,” Mr. Schneider wrote. “My response, however, is submitted for the express purpose of protecting threatened and endangered species that may exist on Galloo Island.”

Public Service Commission spokesman James Denn responded to questions emailed to him Tuesday afternoon by including a statement made Friday by administrative Judge Ashley Moreno. He did not, however, answer specific questions provided by the Times.

Judge Moreno, in her posting to the case file documents, said that the DEC request is only considered a motion at this juncture.

“By email dated August 24, 2018, DEC requested that we amend the Protective Order in this proceeding to expand upon the definition of “Protected Information” to include any information learned on the scheduled site visit and requests additional conditions be adopted in the context of the Protective Order to address concerns about how such information is treated during the proceeding and afterwards,” she wrote. “It further requests that any party wishing to participate in the site visit be required to first sign the appropriate Protective Order acknowledgment.”

“As a preliminary matter, we are treating DEC’s request as a motion. While the request was served on parties, it was not filed with the Secretary. We have forwarded DEC’s motion and the subsequent related exchanges to the Secretary for posting.”

“Regarding DEC’s first request, our preliminary reaction is that only the definition of “Protected Information” would need to be altered to address DEC’s concerns and that the other suggested conditions are already present in the Protective Order and would become applicable if the definition of “Protected Information” were expanded to include “information learned on a site visit with the examiners about the precise location of any threatened, endangered, or rare species or their habitat.”

“Responses to DEC’s motion must be filed with the Secretary and served on all parties and the examiners no later than 4:30 p.m. Thursday, September 6, 2018.”

Mr. Schneider’s comments were filed on time to be considered by the siting board.

PHOTO PROOF

Mr. Schneider in August was given pictorial proof of the existence of an active eagle nest on the island, complete with photos of fledgling eagles with the distinctive first-year markings, including a dark, rather than white, head.

He sent that evidence to the DEC, expecting them to follow through with an investigation centered around the photographic proof.

Instead, he notes in his letter, “NYSDEC’s response to the bald eagle nesting report was an August 24, 2018 email to parties, not mentioning bald eagles as an issue, but proposing an amendment to the November 10, 2017 Protective Order. ... Included in the request was a set of conditions related to what may be discussed and observed during the site visit to Galloo, as well as a condition that all parties visiting the site sign the amended Protective Order.”

The amended protective order threatened sanctions, up to and including criminal charges, for anyone who violated its restrictions.

“NYSDEC showed an unusual response to the notification of an important, new report of bald eagle nesting in Jefferson County. It was more oriented toward suppression and control than investigation,” Mr. Schneider wrote. “The Applicant’s actions also showed a pattern of trying to suppress, hide and withhold information related to bald eagle nesting on Galloo.”

Apex Clean Energy is proposing to build 30 turbines on Galloo Island, which includes a 32-mile underwater transmission cable that will interconnect with a substation in Oswego. The company says the 108.5 megawatt project is expected to generate enough electricity to power 35,000 homes and support up to six full-time local positions.

Neil T. Habig, Galloo project manager, responded to the posting by email.

“Clif’s filing discusses habitat and presence of protected species. NY DEC has requested that such information be carefully managed, in line with their regulations. There is a pending motion in the Article 10 case related to such information,” he wrote. “We are respecting DEC’s request on the pending matter. That Clif chose to disregard DEC and their regulations is an issue between Clif and DEC. We stand behind our application and supporting studies and we are committed to supporting the rigorous review of our application that the state process requires.”

Gerald Smith, an ornithologist who lives in Barnes Corners, said the public comments from Mr. Schneider are important.

“Clif nailed it,” Mr. Smith said. “This is a significant event because historically, there were significant populations of eagles around the Lake Ontario and the St. Lawrence River, although he broke that down into pre-DDT decimation of the eagle population in general.

“The DDT effect was pretty devastating to eagles everywhere,” he said. “After DDTs were removed, there was a slow recovery” of eagles in the north country.

DDT was an ingredient in pesticides that was banned for its toxicity in 1972. Although there is some controversy of the effect of DDT poisoning of eagles, the U.S. Fish and Wildlife Service says it is one factor in the sharp drop of the eagle population from early in the 20th century on.

According to the service's website, "Forty years ago, our national symbol was in danger of extinction throughout most of its range. Habitat destruction and degradation, illegal shooting, and the contamination of its food source, largely as a consequence of DDT, decimated the eagle population."

Protecting eagles and eliminating DDT and other pollutants has slowly brought the population back.

Mr. Smith said flatly that nesting eagle and commercial wind cannot coexist on Galloo Island.

"Frankly, no young eagle is going to make it off the island," he said. "Eagle reproduction becomes biologically irrelevant with towers and rotors near the nests."

He noted that one of the Fish and Wildlife Services alternatives to eagle nesting on Galloo, tearing down nests and harassing flying eagles, will serve to "manage them out of existence" on the island.

Mr. Smith said he knows of nests on Grindstone Island in the St. Lawrence, in the Perch Lake protected area and at sites along the St. Lawrence in Canada, and said there are likely many he has not heard of.

"Eagles travel as far as 25 miles to fish. ... As more and more wind towers appear along the flyway, the problem of disruption and avoidance will negatively affect an entire region," he said.

"It's a damned shame," he added.

Claudia Maurer, also a party to the Article 10 review, said the DEC gag order made her "speechless."

"It's a complete, utter, total shock that DEC would do something like this," Ms. Maurer said. She said the incident has shaken her faith in the Article 10 process.

"I hope this would raise awareness among the public on what's happening out there," she said. "This is scandalous."

She said she was also appalled that the U.S. Fish and Wildlife Service, which is charged with reviewing eagle kill permits, suggested that the company could remove the nest and harass eagles flying near the island to keep other nests from being built.

"When my husband (Henderson Supervisor John Culkin) read that, he immediately tweeted his outrage to President Trump," she said.

Mr. Culkin has received no reply from the White House.

BY THE NUMBERS

Galloo Island Wind Farm proposal:

- 30 turbines
- 600 foot-tall towers, blades as long as 180 feet
- Megawatts per tower: 3.6
- 32-mile underwater transmission cable