

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

-----X
In the Matter of the Petition of Jordanville Wind, LLC
Requesting an Order that its Proposed Jordanville
Wind Generation Facility Will be Subject Only to
“Lightened Regulation,” and for Commission
Certification Under Public Service Law § 68
-----X

Case 06-E-1424

MEMORANDUM IN OPPOSITION
TO PETITION FOR PARTY STATUS BY HOLY TRINITY MONASTERY,
HOLY TRINITY SEMINARY and CONVENT OF ST. ELIZABETH

Douglas Ward, Esq.
Michael J. Moore, Esq.
Young, Sommer. . . LLC
5 Palisades Drive
Albany, NY 12205
(518) 438-9907 ext. 238

Attorneys for
Jordanville Wind, LLC

October 9, 2007

PRELIMINARY STATEMENT

Jordanville Wind LLC “JWLLC” objects to the Petition for re-hearing and party status submitted by Holy Trinity Monastery, Holy Trinity Seminary and Convent of St. Elizabeth (collectively referred to as “Proposed Interveners”). The Petition is egregiously late, and seeks to include misleading submissions, which could have, and should have, been submitted during the review of this application prior to decision making. The commission should deny the application and reject the submissions: the proposed submission does not meet the requirements of (16NYCRR Section 3.7), the Proposed Interveners have utterly failed to provide a substantive basis for the request for relief or explain their tardiness, (See 16 NYCRR 4.3 [c] [1-2]) and the belated submission would be “unfairly prejudicial” to other parties (16 NYCRR 4.3 [c] [2]).

PROCEDURAL STATUS

Proposed Interveners’ application comes at the tail end of a lengthy review process. This process was initiated on November 14, 2005 when JWLLC submitted site plan applications and a SEQRA Environmental Assessment Form (EAF) to Towns of Warren and Stark for its proposed 136 MW windfarm project. The Towns, DPS, DEC and others then participated in an extensive SEQRA and permit process review). This one and a half year review culminated this year when the Towns issued SEQRA findings and Permits (issued by Town of Warren on June 20, 2007 and Town of Stark on June 21, 2007) and the PSC issued its SEQRA Findings and CPCN pursuant to PSL §68 on August 23, 2007.

The above SEQRA analysis and Permit review included extensive analysis of the Visual and Cultural Impacts that the project could have. These included detailed analysis of impacts in and near the Monastery Property. Further, members from the Monastery participated in the

SEQRA and local Permit proceedings and made numerous comments on the Project and its impacts. (See e.g., Responsiveness Summary, FEIS at Comment 53; Section 4.3 FEIS Response to Comments at July 12 and 27, 2007 Public Hearings). These Monastery participants could have included all the materials, which they now seek to submit during the SEQRA/local Permit Review Process -- but apparently chose not to do so.

ARGUMENT

POINT I

THE COMMISSION SHOULD REJECT THE PROPOSED INTERVENORS OUT-OF-TIME REQUEST FOR PARTY STATUS.

The Proposed Intervenor's request for party status is simply too late and therefore must be denied by the Commission. The Commission's Regulations provide a clear time period for any interested party to submit comments and seek party status in a proceeding for a certificate under Section 68 of the PSL. The Proposed Intervenor was fully aware of this time period and failed to file for party status. Now, eleven months after the initiation of this proceeding, and more than a month after the issuance of the Commission's Order granting the requested Certificate, the Proposed Intervenor makes this belated request for party status. Their request should be denied by the Commission.

In compliance with 16 NYCRR 21.10, JWLLC published in the Observer-Dispatch, The Evening Telegram, and The Evening Times a notice describing the petition and specifically stating that:

"Any person opposed to the granting of the application should, within 10 days of the date of the publication of the notice notify in writing the secretary of the Public Service Commission at Agency Building 3, Empire State Plaza, Albany, NY 12223, of the reasons

for opposition.”

Attached as Exhibit A is the Affidavits of Publication which have previously been provided to the Commission confirming that the Notice was published in the Observer-Dispatch and The Evening Telegram. The Notice was published in the Observer-Dispatch and The Evening Times on December 8, 2006 and was published in The Evening Telegram once a week for six consecutive weeks, commencing on December 8, 2006 and ending on January 12, 2007. The last date to submit comments and request party status was on January 22, 2007, over eight months ago.

Based on the public notice provided in early January, the Proposed Intervenors and its representatives have been aware of this proceeding for some time and could have intervened much earlier in the process. Indeed, this proceeding remains open only for the limited purpose of overseeing JWLLC’s compliance with the conditions of approval imposed by the Commission in granting the Certificate.

Proposed Intervenors’ seriously untimely request for party status must be denied.

POINT II

THE COMMISSION SHOULD REJECT PETITIONERS’ APPLICATION. IT DOES NOT MEET THE REQUIREMENTS FOR RE-HEARING, IT WILL NOT CONTRIBUTE TO DEVELOPMENT OF THE RECORD, AND IT WOULD BE “UNFAIRLY PREJUDICIAL” TO OTHER PARTIES.

Even assuming the Commission were to overlook the Proposed Intervenors’ significant delay in bringing this application, it does not meet regulatory requirements. The application does not serve, and actually abuses, the aims of the rehearing provisions of 16 NYCRR Section 3.7.

Applications for rehearing must demonstrate:

that the commission committed an error of law or fact or that new circumstances warrant a different determination...(16 NYCRR Section 3.7 [b]).

Proposed Intervenors' application meets none of these requirements. The Intervenors' application is nothing more than a thinly veiled attempt to extend SEQRA and permit review time periods in order to submit materials that should have, and could have, been provided long ago and are now foreclosed. These submissions are nothing new and these impacts are covered extensively in the SEQRA and permit review. (See page 3 above). As noted above these processes are closed. Moreover, after the SEQRA review, the PSC has confirmed the Lead Agency SEQRA review.

The Commission's Regulations provide that intervention may be granted "if it is likely to contribute to the development of a complete record." 16 NYCRR 4.3 (c) (1). As noted above, all the issues addressed in the proposed Intervenors' application (visual impacts on the Monastery property) were addressed in the SEQRA record, which was completed long ago. This record is now closed. Commission regulations further state that untimely petitions for party status may be denied where, as here, they would be "unfairly prejudicial" to other parties. 16 NYCRR 4.3 (c)(2). At this late date, allowing additional parties and additional evidence would be "prejudicial" to JWLLC, the Towns and the Commission. In its belated submission the Applicant would have the parties reopen the SEQRA and permit process to consider and respond to submissions that could have been made long ago. The statute of limitations has run on these decisions and reopening these proceedings for these belated submissions would be extremely prejudicial to this review and these parties.

Further, and more importantly, it is clear that the evidence Proposed Intervenors seek to

belatedly inject into the record is seriously flawed and inaccurate. Contrary to the Proposed Intervenor's position (Petition, pp. 2-3 and Exhibit C, an inaccurate "back of the envelope" depiction of the Facility's wind turbines) the Facility will not have any "visual impact" on their property. Moreover, this Commission's August 2007 Order granting a Certificate to the Facility pointedly held (p.11) that "except where specifically noted herein, the lead agency has appropriately analyzed the environmental impacts associated with [JWLLC's] project," including, of course, alleged visual impacts. The Commission's August Order then held that further visual impact mitigation was needed to avoid impacts to historic/cultural areas south of the Facility site, principally the Glimmerglass Historic District and Otsego Lake in Otsego County (*Id.*, pp. 15, 17, 19).

As noted in the October 9, 2007 letter from JWLLC's consultants at EDR, appended hereto as Exhibit B, the Proposed Intervenor's properties are not in the Glimmerglass Historic District, but are located generally west of the Facility site. Further, EDR's letter demonstrates that the Proposed Intervenor's "evidence" (the above-referenced Exhibit C) "fabricates" the actual appearance of the Facility and "exaggerates" its appearance, by using scientifically inaccurate "desktop" software.

The purpose of the Proposed Intervenor's petition is clearly stated and unambiguous (Petition, p. 7): they seek to have the Commission reverse itself and "deny" the Project, or "diminish" it in size to address the non-existent impacts to the Proposed Intervenor's property. However, this intention is patently flawed for purposes of this proceeding and beyond the scope of the Commission's jurisdiction. It has consistently been Commission policy that the provisions of "party status" are not intended to "unilaterally expand the scope of Commission proceedings or to re-litigate cases of their own." (See Case No. 06-E-0894, Consolidated Edison Company of

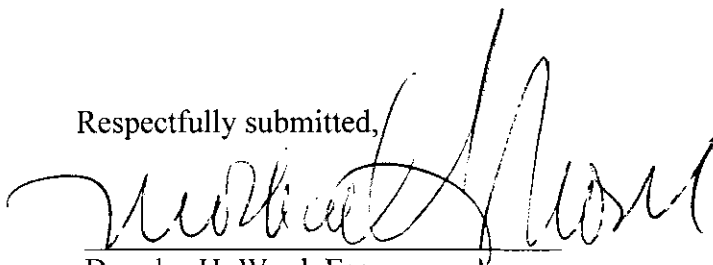
New York, Inc.'s Long Island City Electric Network, issued October 24, 2006).

Therefore, the Commission should deny Proposed Intervenors' request for Party Status and should reject its proposed submission of additional flawed evidence to supplement a closed Record.

CONCLUSION

For the reasons stated above, the Commission should deny the Proposed Intervenors' request for party status.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Douglas H. Ward".

Douglas H. Ward, Esq.

Michael J. Moore, Esq.

Attorneys for Jordanville Wind, LLC

DATED: October 9, 2007
 Albany, New York

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January 18, 2007

Hon. Jaclyn A. Brilling, Secretary
Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

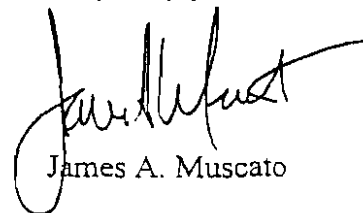
RE: In the Matter of the Petition of Jordanville Wind, LLC
Case No. 06-E-1424

Dear Secretary Brilling:

Please find enclosed a copy of the Affidavit of Publication for The Evening Times relative to the above matter.

Should you have any questions or require additional information, please do not hesitate to contact me.

Very truly yours,



James A. Muscato

JAM/alm
Enclosure
cc: Douglas H. Ward, Esq.

State of New York
County of Herkimer, }
City of Little Falls } s.s.

(ATTACHED COPY)

Susan Randazzo, of the City of Little Falls,
County of Herkimer, and State of New York,
being duly sworn, depose and saith,
that ^{she} is, and during the time of the publi-
cation of the notice hereinafter mentioned
as ^{Clerk} of the newspaper called
The Evening Times, a Public newspaper,
printed and published in the City of Little Falls,
County of Herkimer, State of New York.
Deponent further says, that the notice, of which
a printed copy is hereto annexed, was pub-
lished in said newspaper on

December 8, 2006

Susan Randazzo

Subscribed and sworn to before me this
10th day of JANUARY 2007

Kathleen Kelly

KATHLEEN KELLY
COMMISSIONER OF DEEDS
LITTLE FALLS, N.Y.
EXPIRES DEC. 2007

Notary Public
Justice of the Peace
Commissioner of Deeds

LEGAL NOTICE

PUBLIC NOTICE

APPLICATION OF JORDANVILLE WIND, LLC

Jordanville Wind, LLC submitted an application to the New York State Public Service Commission for expedited review under Section 68 of the Public Service Law for its proposed Jordanville Wind Power facility. Jordanville Wind has moved for expedited review of the application pursuant to 16 NYCRR 21.10 and that the public hearing required by the Public Service Law be held before the Commission on the basis of the application and such exhibits, prepared testimony and any other information as may have been filed by any party or staff counsel, and that oral testimony not be taken. Any person opposed to the granting of the application should, within 10 days of the date of the publication of the notice notify in writing the secretary of the Public Service Commission at Agency Building 3, Empire State Plaza, Albany, NY 12223, of the reasons for the opposition.

Times: December 8, 2006

YOUNG, SOMMER ... LLC

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WRITER'S TELEPHONE EXTENSION: 243
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January 23, 2007

Hon. Jaclyn A. Brilling, Secretary
Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

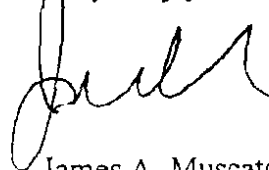
RE: In the Matter of the Petition of Jordanville Wind, LLC
Case No. 06-E-1424

Dear Secretary Brilling:

Please find enclosed a copy of the Affidavit of Publication for The Evening Telegram relative to the above matter.

Should you have any questions or require additional information, please do not hesitate to contact me.

Very truly yours,



James A. Muscato

JAM/alm
Enclosure
cc: Douglas H. Ward, Esq.


AFFIDAVIT OF PUBLICATION

Under Section _____ of the Limited Liability Company Law

State of New York,
County of Herkimer, ss:

The undersigned is the authorized designee of Beth Brewer, the publisher of The Evening Telegram, a daily newspaper published in Herkimer, New York. A notice regarding Jordanville Wind, LLC was published in said newspaper once in each week for six successive weeks, commencing on December 8, 2006 and ending on January 12, 2007.

The text of the notice as published in said newspaper is as set forth below, or in the annexed exhibit. This newspaper has been designated by the Clerk as a newspaper of record for Herkimer County.


Michela Supry

Subscribed and sworn to before me,

This 12th day of January, 2007


Notary Signature

KIM M. KNAPP
NOTARY PUBLIC, State of New York
Registered in Herkimer County
My Commission Expires May 22, 20 07

Notary Public Stamp

PUBLIC NOTICE

Application of Jordanville Wind, LLC

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T — December 8, 15, 22, 29, 2006, January 5 & 12, 2007

YOUNG, SOMMER ... LLC

FFREY S. BAKER
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ICHAEL J. MOORE
J. MICHAEL NAUGHTON
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VALERIE B. STRAUSS

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December 13, 2006

Hon. Jaclyn A. Brilling, Secretary
Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

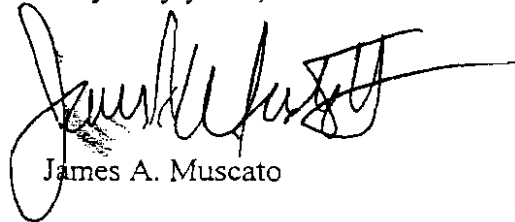
RE: In the Matter of the Petition of Jordanville Wind, LLC
Case No. 06-E-1424

Dear Secretary Brilling:

Please find enclosed a copy of the Affidavit of Publication for the Observer-Dispatch relative to the above matter.

Should you have any questions or require additional information, please do not hesitate to contact me.

Very truly yours,



James A. Muscato

JAM/alm
Enclosure

cc: Douglas H. Ward, Esq.

Affidavit of Publication Under Section 68 (specify applicable section) of the Limited Liability Company or Partnership Law.

State of New York, County of Oneida, ss:

The undersigned is the printer (or publisher) of the Observer-Dispatch, a daily newspaper published in Utica, New York. A notice regarding _____

Gordonville Wind, L.L.C. was published in said
(name of limited liability company)
newspaper once in each week for four/six successive weeks, commencing on 12/9/06
and

ending on 12/19/06. The text of the notice as published in said newspaper is as set forth below, or in the annexed exhibit.

This newspaper has been designated by the Clerk of Oneida County for this purpose.

Patricia Zehr (signature)
Designee for Printer/Publisher

Patricia Zehr (printed name)

Sworn to before me this 12th day of December

Elizabeth Leone - Normat

Notary Public Oneida Co., NY

ELIZABETH LEONE-NORMAT
Commissioner of Deeds
Expiration Date 12 2006

PUBLIC NOTICE

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O-D: 12/9/2006



October 9, 2007

Michael Moore
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**RE: Jordanville Wind Power Project
Public Service Commission Case # 06-E-1424**

Dear Michael:

Environmental Design & Research, Landscape Architecture, Planning, Environmental Services, Engineering and Surveying, P.C. (EDR) has served as the primary consultant for the Jordanville Wind Power Project since 2005. In that capacity, EDR has authored the Draft Environmental Impact Statement (DEIS), Supplement to the DEIS (SDEIS), the Final Environmental Impact Statement (FEIS), the Visual Impact Assessment (VIA) (Appendix F to the DEIS), and the Supplemental Visual Impact Assessment (SVIA). EDR is among the leading wind power consultants in New York, having provided all environmental review and permitting for three out of the five operating commercial wind power facilities in the State. We have also been involved in the review and permitting of over 30 utility-scale commercial wind power projects throughout New York and the Northeast.

As requested, EDR has reviewed the Grant & Lyons LLP September 21, 2007 letter (and all attachments) to the New York State Department of Public Service (DPS), which is a Petition for Party Status and Motion for Reconsideration of the Issuance of the Certificate of Public Convenience and Necessity submitted on behalf of the Holy Trinity Monastery, Holy Trinity Seminary and the Convent of St. Elizabeth. EDR's review of this letter was focused on potential visual impacts to the Holy Trinity Monastery, specifically Exhibit C, which is labeled as a "...photoshop demonstration of the impact of the project on the Monastery landscape which was prepared by the Monks..." Based upon our review, and for the reasons set forth below, EDR has concluded that Exhibit C is an inaccurate representation of the proposed project's visibility and appearance.

With respect to the Monks' use of "Adobe Photoshop," it should be noted that due to this software's inherent limitations, it is not the proper software to use to produce visual simulations and, in my experience, is never the only tool/software used to produce defensible visual impact assessments. This software does not allow the user to accurately scale or orient project elements. It is essentially "clip art" that allows the user to add elements to a photograph without any controls to verify the accuracy of the inserted elements. In reaction to the image included in Exhibit C, EDR also offers the following comments:

1. In Exhibit C, it appears as if wind turbines of different sizes have simply been "placed" on top of the tree line that forms the horizon in this view. Although color contrast and scale of the turbines decreases in the background, there is no accounting for variations in topography at the

Environmental Design & Research,
Landscape Architecture, Planning,
Environmental Services,
Engineering and Surveying, P.C.

individual turbine sites. These variations would significantly change (i.e., reduce) the extent to which each turbine was actually visible above the horizon line.

2. Also attached to the September 21, 2007 letter is a panoramic graphic titled "Holy Trinity Monastery and surrounding environs." The view in this graphic looks east, and there is an existing communications tower pictured in the left hand (i.e., northern) portion of the view. Several wind turbines of the Jordanville project will actually extend beyond (north) of this tower. However, Exhibit C depicts the proposed Jordanville project simply by "zooming in" on the central portion of this photo. This has the effect of excluding nearly 1/3 of the original panoramic view, including the northern communications tower. However, all of the proposed wind turbines are shown in this view, even those located north of the communications tower, which is now outside the view. Therefore, the number and density of the proposed turbines in this view are inaccurately depicted and greatly exaggerated.
3. To further demonstrate the inaccuracy of the turbine arrangement presented in Exhibit C, please take note of the existing MCI communications tower pictured between turbines 31 and 87. From this view, four turbines (13, 14, 31, and 87) should be located to south of this communications tower. However, only turbines 14 and 87 are depicted south of this tower.
4. In Exhibit C, the size and height of the proposed wind turbines are grossly over stated. Based upon data obtained from the Federal Communications Commission (FCC), the MCI communications tower is 180 feet tall. Therefore, a 399-foot wind turbine (i.e., the maximum height from ground to blade tip of the turbine proposed for the Jordnaville project) located along the same plane as the MCI communications tower should appear approximately 2.2 times larger than the MCI tower. However, some of the turbines depicted in Exhibit C (all of which have been placed on top of the horizon tree line, which is essentially along the same plane as the MCI tower) are nearly five times taller. This equates to a turbine height of approximately 900 feet. This inaccuracy is also apparent by simply comparing the height of the background trees (reasonably assumed to be at least 40 to 50 feet tall) with the height of the nearest towers.
5. The rotor, hub, and most of the tower of wind turbines 73, 74, and 75 are depicted as fully visible in Exhibit C. However, by conducting a topographic line of sight analysis using Global Mapper software, I determined that the hub of these turbines is barely visible from the approximate viewpoint of the Monks "demonstration", and the rest of the turbines are screened by intervening topography. If the screening effect of existing vegetation is considered, it is likely that only the blades of these turbines would be visible. This exercise further demonstrates the inaccuracy/exaggeration of the size/height of the wind turbines as depicted in Exhibit C.

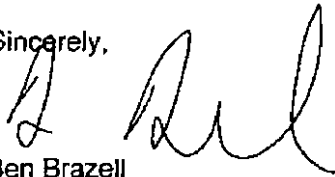
Therefore, based upon the above points, it is EDR's opinion that the graphic presented as Exhibit C to the Grant & Lyons LLP September 21, 2007 letter does not accurately depict the proposed Jordanville project, but rather fabricates the project appearance and over exaggerates the Project's appearance from the Monastery property.

October 9, 2007
Michael Moore
Page 3

By contrast with this unscientific "back of the envelope" process, the suite of analyses that were utilized by EDR are as objective, comprehensive and scientific as possible for analyzing the Jordanville project's potential visual impact. All of the methodologies utilized in the VIA and SVIA are fully described, and the analyses can be replicated for verification (see "Visual Impact Assessment Methodology Section of the VIA (page 11). The simulations prepared by EDR provide an accurate portrayal of what the wind turbines will look like when actually built, which is demonstrated in Figure 6 of the SVIA and in the photographs of the Maple Ridge Wind Farm included in Appendix G of the Final Environmental Impact Statement (FEIS). Specific to the Monastery, it is important to note that potential impacts to this property were analyzed in the VIA and SVIA (see VIA pages 13 – 25, and SVIA pages 15, 23, and 33). Please also note that although the Monastery was originally a project participant with proposed turbines on their land, these turbines were later removed at the request of the monastery. These turbine relocations were effective in mitigating possible visual impacts from certain monastery viewpoints. In fact, the nearest turbine to the Monastery is approximately 1.1 miles away, well in excess of the local setback regulations.

Lastly, please take note of the significant number of objective and defensible simulations prepared by EDR and included in the VIA and SVIA. These simulations were prepared to assess the visual impacts associated with the proposed action, and cover viewpoints that may affect various landscapes, view groups, and sensitive resources (including the Holy Trinity Monastery).

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Brazell". The signature is fluid and cursive, with a large, stylized "B" and "B" at the beginning and end of the name.

Ben Brazell
Project Manager