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April 16, 2019

VIA EMAIL

Hon. Sean Mullany
Presiding Examiner
NYS Dept. of Public Service
3 Empire State Plaza
Albany, NY 12223

Hon. Daniel O'Connell
Associate Examiner
NYS Dept. of Environmental Conservation
625 Broadway, First Floor
Albany, NY 12223

Re: Case No. 16-F-0559: Application of Bluestone Wind LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Major Electric Generating Facility in the Towns of Windsor and Sanford, Broome County, NY

Dear Presiding Examiners Mullany and O'Connell:

Our office represents Bluestone Wind, LLC ("Bluestone Wind" or the "Applicant") in the above referenced proceeding. Please accept this letter in response to Delaware-Otsego Audubon Society, Inc.'s (DOAS) letter dated April 15, 2019 regarding two reports they propose to submit to the record in this proceeding.

DOAS provided these reports to Bluestone Wind on April 5, 2019 for review of potential confidential information. On April 8, 2019, the Applicant advised DOAS that their reports rely upon and quote directly from Bluestone's reports which were submitted under confidential cover when the Application was originally filed in September 2018. The Bluestone reports were submitted confidentially because they contain confidential commercial and trade secret information and include sensitive information related to the location of threatened and endangered

species. On April 11, 2019, DOAS reached out to Your Honors regarding the process for filing reports which refer to data that the Applicant has deemed confidential. Your Honors provided guidance to DOAS regarding assertions of confidentiality. We suggest that there may have been some confusion on DOAS' part about whether the Applicant had already deemed the material confidential when it submitted the Application. The Applicant contacted DOAS on April 12, 2019 to clarify, and potentially narrow, the confidentiality assertion. However, confusingly, DOAS responded to the Applicant that their reading of Your Honors' guidance required Bluestone to justify their confidentiality position again before they could discuss. On April 15, 2019, DOAS filed a letter indicating they will file the reports publicly on April 18, 2019, stating DOAS disagrees with Bluestone's assertion of confidentiality, again, which was made with the original application almost 8 months ago, and that they are "not aware of any request for protected status".

DOAS' two reports rely upon, quote, cite to, ask questions about, dispute, criticize, and otherwise use Protected Information submitted by the Applicant and, are therefore, covered by the Protective Order (§ 21). One report quotes directly from the Net Conservation Benefit Plan (Appendix TT) which was submitted under confidential cover with Bluestone Wind's Article 10 Application, the other report contains a review of eagle use surveys submitted with the Application, which were also submitted under confidential cover (Appendix OO). With the filing of the Application, the Applicant submitted a Comprehensive Brief in Support of Confidential Protection, which included the Applicant's request for confidentiality of these two appendices. The reports prepared by DOAS may also contain information related to the location of endangered, protected, threatened or rare animal species which are protected from public disclosure pursuant to ECL Section 3-0301(2)(R). Therefore, NYSDEC may also have an interest in reviewing the reports prior to locational information being publicly filed.

Although the Applicant is concerned with DOAS's indication that it will publicly file information covered by the Protective Order, the Applicant has reviewed the reports prepared by DOAS and is willing to waive the confidentiality of the information that is repeated in the DOAS reports. While, the DOAS report entitled "Review of Bluestone Net Conservation Benefit Plan" quotes directly from the Applicant's confidential filing, the Applicant is willing to waive confidential protection for the limited purpose of quoting from the report and has no objections to DOAS submitting its' report with the quotations unredacted.

With respect to the DOAS report entitled "Review of Eagle Survey Data Collected for the Bluestone Wind Facility", this report cites specific data and maps included in the Applicant's Eagle Use Surveys (Appendix OO) which, again, were submitted by the Applicant under confidential cover. The DOAS report generally does not provide a level of detail that the Applicant objects to being publicly filed, therefore the Applicant also has no objections to DOAS submitting this report unredacted.

The Applicant maintains that the Net Conservation Benefit Plan and the Eagle Use Surveys are confidential as outlined in the Comprehensive Brief in Support of Confidential Protection, and the Applicant is only waiving such confidentiality protections for the limited purpose in the DOAS reports which discuss in a generic and limited manner the details of these two confidential

appendices. To be clear, the Applicant maintains that the information in Bluestone's reports not otherwise cited to or quoted by DOAS remains confidential.

Please do not hesitate to contact us with any questions.

Respectfully submitted,

Jess A Klami

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CC: DMM Party List (via email)
Secretary Burgess (via email)