

S. E. a.

**From:** The Law Office of Christopher Denton <paralegal@dentonlawoffice.net>

**Sent:** Wednesday, April 03, 2019 3:20 PM

**To:** Mullany, Sean (DPS) <Sean.Mullany@dps.ny.gov>; Saviola, Michael (AGRICULTURE) <Michael.Saviola@agriculture.ny.gov>; maryewillis@gmail.com; harris.epstein@gmail.com; flugrad@millenniumpipeline.com; kristineblaisure@yahoo.com; Tylutki, Kathleen (AGRICULTURE) <Kathleen.Tylutki@agriculture.ny.gov>; Isinger@couchwhite.com; lbomyea@youngsommer.com; kristineblaisure@yahoo.com; Thomas1, Richard (HEALTH) <Richard.Thomas1@health.ny.gov>; Wells, Tara (AGRICULTURE) <Tara.Wells@agriculture.ny.gov>; Macfee, Ryan R (HEALTH) <ryan.macfee@health.ny.gov>; anne@greenwichenvironmental.com; Article10@aceny.org; valeria.teran@calpine.com; gail.musante@gmail.com; Gaidasz, Karen M (DEC) <karen.gaidasz@dec.ny.gov>; bbegeal@cglawoffices.com; athorin265@gmail.com; windsorsupervisor@echoes.net; epsteincarol@gmail.com; Cerbin, Andrea (DPS) <Andrea.Cerbin@dps.ny.gov>; alec.jarvis@calpine.com; amolson08@gmail.com; andymason@earthling.net; jvderose@yahoo.com; jklami@youngsommer.com; Binder, Jonathan A (DEC) <jonathan.binder@dec.ny.gov>; jada12953@aol.com; hwatkins@nyslof.org; CSacco@cglawoffices.com; jmuscato@youngsommer.com; hezyonka@gmail.com

**Cc:** O'Connell, Daniel P (DEC) <daniel.oconnell@dec.ny.gov>

**Subject:** Re: 16-F-0559, Bluestone Wind, LLC - PSL Article 10 // Treatment of Protected Information

3 April 2019

**Honorable Sean Mullany**

Administrative Law Judge

Office of Hearings and Alternative Dispute Resolution

Department of Public Service

3 Empire State Plaza

Albany, NY 12223

Re: Application to order waiver of confidentiality in Documents attached to the letter, dated April 1, 2019 and for other relief.

Dear Judge Mullany:

I apologize for not recognizing you this morning when you telephoned my office, ex parte. I do not know your voice, and you did not identify yourself to my secretary as the Administrative Law Judge in this case, nor to me until half way through the conversation.

I was surprised when I received an email from you later in which you informed the recipients of the email that BCCR's filing had been removed summarily and that you were informing all of us that we must treat this information as "Protected Information". No opportunity was afforded my clients to be heard on the matter and the Letter from Young/Somers LLC failed to show that the documents to which they objected had been previously submitted. They gave neither page number nor document title where said documents might have been located, nor did they give the date and document filing number where they might have been filed. Additionally, if the documents are in some secret file, BCCR has no notice of the existence of or the contents of such secret file.

The Ruling Adopting Protective Order issued October 24th, 2018 defines "Protected Information": "Protected Information is information that is submitted to the New York State Board on Electric Generation Siting and Environment (Siting Board) or the Department of Public Service (DPS) by a party to this proceeding under cover of a claim that it should be protected from public disclosure under the Freedom of Information Law (FOIL), Public Officers Law (POL) sections 84 et seq. ...."

The burden clearly is on the Applicant to have submitted in advance any information that it believes justifies a Protected Information order. NO such document was submitted nor shown to have been submitted. Information can only be protected if it is part of the record. Not having made it part of the record by submitting it in advance, the Applicant cannot now attempt to suppress it. Without the submission, the information cannot be deemed 'Protected Information'. Indeed, the information has to originate from the Applicant, as it must be submitted "under cover of claim that it should be protected". No submission and no cover of claim means it is not "protected Information".

The fact that the information embarrasses the Applicant by exposing tactics which discourage public and community participation is not a criteria that the court can consider when no submission has been made. And a submission after the information is already public is moot. If a reporter asks a politician a question and the politician answers it, then says "by the way that was off the record", it is too late. My office could not find in the record, using the DPS's search engine, where the lease and the 'purchase of silence and promotion' road agreements had been submitted.

Therefore, my clients object to your pre-emptive ruling that the Letter and its contents are "protected Information" and ask that you rescind said ruling immediately.

I remain,

Very Truly Yours,

Your Honor, this is my reply to your email of earlier today, stating that we need to treat the attachments to my letter as "Protected Information".

Christopher Denton, Esq.

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