

NEW YORK STATE BOARD ON ELECTRIC  
GENERATION SITING AND THE ENVIRONMENT

CASE 16-F-0559 - Application of Bluestone Wind, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction of the Bluestone Wind Farm Project Located in the Towns of Windsor and Sanford, Broome County.

SECOND RULING ON APPLICATION STAGE INTERVENOR FUNDING

(Issued April 5, 2019)

SEAN MULLANY AND DANIEL P. O'CONNELL, Examiners:

INTRODUCTION and SUMMARY

At a procedural conference held on February 20, 2019, at the Windsor Community House in Windsor, New York, we awarded application-stage intervenor funds in the amount of \$84,750 jointly to the Towns of Sanford and Windsor (the Towns) and in the amount of \$18,000 to the Delaware-Otsego Audubon Society, Inc. (Audubon). A total of \$21,250 remained unawarded. On March 4, 2019, Audubon submitted a second request for intervenor funding, seeking \$17,837. On or about the same time, other individuals and organizations expressed interest in requesting funds. By notice issued March 6, 2019, a new deadline of March 27, 2019, was established for requesting funds. Broome County Concerned Residents (BCCR) filed a timely request, seeking \$21,250.

In this ruling, we award the additional sum of \$10,625 to Audubon, and the sum of \$10,625 to BCCR.

DISCUSSION

Application stage intervenor funding is available to eligible municipal and local parties to participate in the application stage of the Article 10 review process. Funds are

available to defray expenses incurred for retaining expert witnesses, consultants, and legal representation, and for administrative fees. In making an award of funds, the Examiners must find that the fund recipient will use the funds to contribute to a complete record leading to an informed decision by the Siting Board as to the appropriateness of the site and the facility.

We have reviewed the requests submitted by Audubon and BCCR and find that the legal and expert consultants they propose to retain have sufficient expertise and experience to contribute to the compilation of a complete record as to the appropriateness of the site and the facility. In the case of Audubon, the additional intervenor funds will be used for legal and expert consulting services related to preparing and presenting expert testimony on the sections of the application related to avian impacts and options and proposals for mitigating avian impacts.

BCCR's funding request states that it is in the early stages of understanding the Bluestone proposal, and that its members have questions and concerns about the environmental, financial, health and safety, and liability risks of the project.<sup>1</sup> As it learns more, BCCR states, it may need to retain consultants and experts to evaluate the impact of the project on the community. If awarded the \$21,250 it has requested, BCCR would use the funds to retain Christopher Denton, an attorney having experience in real property law, environmental law, oil and gas leasing law, and other areas. BCCR anticipates that Mr. Denton will advise BCCR as to local laws and regulations

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<sup>1</sup> BCCR RFIF, p. 2. The issues statement filed by BCCR suggests it may seek to litigate a range of issues related to the need for the project, the potential local impacts of the project, the avoidance or mitigation of such impacts, and Bluestone's compliance with local law.

applicable to the project, would attend meetings relating to the project, and would provide such other legal consulting services as BCCR may request.

The amount of funding available is less than the total amount requested. However, Audubon has demonstrated through its participation in this case to date that it is committed to presenting a case on avian impacts. BCCR's case, on the other hand, remains largely inchoate and its contribution to the record, even at this late date, is still essentially undefined. These considerations must be weighed in light of the need to ensure that the use of intervenor funds will contribute to a complete record leading to an informed decision by the Siting Board as to the appropriateness of the site and the facility and will facilitate broad participation in the proceeding.

Having considered and weighed these factors, we award Audubon one half of the available funds (i.e., \$10,625) and award the other half of the available funds to BCCR (i.e., \$10,625). In making these funding awards, we do not endorse, pre-judge, or make any determination on the merits of any case that Audubon or BCCR might present, whether through the use of intervenor funds or otherwise.

The funding recipients are cautioned that disbursements of funds will only be made after submission of a voucher, supported by appropriate documentation of claimed costs, in the form required by the Department. Funds will not be disbursed to defray costs that do not fall within the applicable statutory and regulatory criteria for allowable uses of intervenor funds. Intervenor funds will not be disbursed to defray costs related to negotiating bilateral agreements unless such negotiations are primarily designed to lead to agreements on issues within the scope of the Siting Board's review in this proceeding and such negotiations are conducted on notice to all

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parties in this case. All application-stage funding recipients must enter into a new contract with the Department of Public Service in connection with this stage of funding and must timely submit quarterly funding reports pursuant to the applicable regulations. Noncompliance may result in the denial of disbursement requests.

(SIGNED)

SEAN MULLANY

(SIGNED)

DANIEL P. O'CONNELL