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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.

RULING GRANTING, and DENYING, PARTY STATUS

(Issued April 5, 2019)

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

INTRODUCTION

In this ruling, we grant party status to Broome County Concerned Residents (BCCR) and deny the individual party status requests of Gail Musante, Robert Blaisure, Kristine Blaisure, Mark Olson, Angela Olson, John Alfano, Mary Willis, Heather DeHaan, Jim DeRose, Deborah K. Rogler, Richard Rogler, Harris Epstein, and Carol Epstein.

BACKGROUND

A request for party status on behalf of BCCR was docketed in this proceeding on March 12, 2019. To ensure that all parties received notice of this request and an opportunity to respond, a ruling was issued on March 28, 2019, allowing responses by other parties on or before April 1, 2019.

Since the March 28 issuance of the ruling allowing time to respond to BCCR's party status request, a number of individuals identifying themselves as members of BCCR have also

requested individual party status.¹ These individuals have asserted that "the public has a right to participate" in the Article 10 review process and ask for individual party status so that they can "upload documents and facilitate the discussion." None of these individuals has identified any interests or positions that differ from the interests or positions that may be asserted on their behalf by BCCR.²

Bluestone Wind, LLC (Bluestone) was the only party to timely respond to BCCR's request for party status.³ Bluestone does not oppose BCCR's participation as a party in this proceeding. However, Bluestone asks that BCCR be required to identify a point of contact and group representative for the organization. This, Bluestone argues, will promote the consolidation of parties having common interests, clarify how BCCR will receive service and comply with other procedural requirements, avoid duplication of party representation, and help ensure the confidentiality of ongoing settlement discussions.

¹ As of this writing, the following persons have requested individual party status: Mrs. Gail Musante; Robert Blaisure; Kristine Blaisure; Mark Olson; Angela Olson; John Alfano; Mary Willis; Heather DeHaan; Jim DeRose; Richard Rogler; Deborah K. Rogler; Harris Epstein; and Carol Epstein.

² Mr. and Mrs. Epstein seek individual party status because they do not expect BCCR to address all of the concerns of all of its members. However, they have not identified any interest or concern (or described any evidence they might offer individually) that BCCR will not pursue.

³ The March 28 sought to achieve finality on the question of BCCR's party status.

DISCUSSION

The statute allows party status for (1) any individual resident in a municipality entitled to receive a copy of the application under PSL §164(2)(a); (2) any non-profit corporation or association formed in whole or part to promote certain purposes which include consumer interests, conservation, natural beauty and the environment; (3) any other municipality or resident of such municipality located within a five mile radius of the proposed facility; or (4) any other municipality or resident of such municipality which the Siting Board in its discretion finds to have an interest in the proceeding because of the potential environmental effects on such municipality or person.⁴ In each of these circumstances, however, party status is only available if the individual resident, non-profit corporation or association, or municipality has filed with the Siting Board a notice of intent to be a party, within 45 days after the date given in the published notice as the date for the filing of the application.

Bluestone arranged for the publication of a "Notice of Submission of Application" in the Norwich/Sidney Pennysaver on September 4, 2018, and in the Windsor Standard and the Deposit Courier on September 5, 2018.⁵ Those notices gave September 7, 2018, as the date for the filing of the application, so the deadline for filing a notice of intent to be a party was October 22, 2018 (i.e., the forty-fifth day after September 7, 2018).

BCCR was not formed until sometime in February 2019, about four months after this deadline. Because of this, neither BCCR nor its individual members are eligible for party status under PSL §166(1)(k), (l), (m) or (n).

⁴ PSL §§166(1)(k), (l), (m), and (n), respectively.

⁵ Bluestone Application, Attachment 3 (DMM Item No. 60, docketed September 18, 2018).

PSL §166(4) states that the "presiding officer may for good cause shown, permit a municipality or other person entitled to become a party under subdivision one of [PSL § 166], but which failed to file the requisite notice of intent within the time required, to become a party, and to participate in all subsequent stages of the proceeding."

BCCR has shown good cause why it should be allowed to participate as a party in this case. Although formed after the deadline for filing notice of intent to be a party, BCCR's members reside within the areas potentially impacted by the project. BCCR has actively participated in the case since its formation. BCCR has requested intervenor funding, filed a statement of issues, and filed a motion. No other party has objected to granting BCCR party status. For these reasons, BCCR's request for party status is granted, pursuant to PSL §166(4).

The requests of BCCR's members for individual party status are denied. BCCR has been granted party status and the members of BCCR have not shown how their participation as individual parties would contribute to the record. The individual members of BCCR can, acting together as an association, present their case in this proceeding. This will reduce the number of filings and promote the orderly and efficient administration of this case. Therefore, pursuant to 16 NYCRR §§4.3(b)(3) and 1000.3, the individual requests for party status filed by Gail Musante, Robert Blaisure, Kristine Blaisure, Mark Olson, Angela Olson, John Alfano, Mary Willis, Heather DeHaan, Jim DeRose, Deborah K. Rogler, Richard Rogler, Harris Epstein, and Carol Epstein are denied.

BCCR must take the record as it finds it. BCCR is subject to all prior rulings in this case. Pursuant to 16 NYCRR §2.1, BCCR's representative(s) must conform to the standards of

conduct required of attorneys appearing before courts of this State of New York. This includes the requirement to become familiar with and to comply with all applicable rules of procedure governing appearances before the Siting Board. A failure to conform to the applicable standards of conduct will be grounds for exclusion from this and any other proceeding. Procedurally defective filings may be subject to summary dismissal.

BCCR must provide the Secretary, the Examiners, and all parties with the names, addresses, telephone numbers, and email addresses of no more than two persons authorized to represent the members of BCCR, to make filings on behalf of BCCR, and to accept service on behalf of BCCR. BCCR must provide such information by no later than seven calendar days after the issuance of this ruling.

(SIGNED)

SEAN MULLANY

(SIGNED)

DANIEL P. O'CONNELL