



DELAWARE-OTSEGO AUDUBON SOCIETY, INC.

P.O. Box 544, ONEONTA, NY 13820

Kathleen H. Burgess
Secretary to the Commission
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

March 28, 2019

Sean Mullany, Presiding Examiner
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Daniel P. O'Connell, Associate Examiner
New York State Department of Environmental Conservation
625 Broadway, First Floor
Albany, NY 12233-1550

RE: Case No. 16-F-0559

Application of Bluestone Wind, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the New York State Public Service Law to Construct the Bluestone Wind Energy Facility in the Towns of Sanford and Windsor, Broome County, New York

Dear Secretary Burgess and Examiners Mullany and O'Connell:

Attached please find the Delaware-Otsego Audubon Soc.'s proposed list of Article X issues for litigation in the above-referenced proceeding.

Our organization has engaged in settlement discussions with the applicant, with limited success. Hence we believe these issues should be considered for litigation.

Sincerely,

Andrew Mason, Co-President

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Delaware-Otsego Audubon Soc., Inc.

Issues for Litigation

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Seasonal Status of Golden Eagles—Raptor surveys conducted by the Delaware-Otsego Audubon Society (DOAS) in the Project Area have documented the presence of wintering Golden Eagles and also Golden Eagles spending significant stop-over time during migration. This presence increases the risk to these birds from turbine collisions. The applicant considers these birds as migrating. This is an important issue in determining risk of take of eagles and necessary mitigation measures. Dr. Tricia A. Miller has prepared a study, Assessment of Seasonal Status of Golden Eagles Observed in the Bluestone Wind Project Area, which argues persuasively that a significant proportion of Golden Eagles recorded on both the applicant's and DOAS' surveys are in fact remaining in the project area for multiple days.

Dr. Miller is an acknowledged and experienced researcher and expert on Golden Eagles, particularly the eastern North America population.

Quality of consultant WEST, Inc. surveys—The applicant's eagle surveys were carried out by WEST, Inc. following guidelines from the US Fish & Wildlife Service (USFWS) that suggest 30% of the project area be surveyed. The applicant's surveys included an area slightly above this threshold. However, an analysis of the viewsheds of these surveys shows that only 15.6% of the project areas were actually visible from survey points, due to topography. Such a reduction in visibility could result in lower detectability of eagles. Since data collected during surveys and specific survey information (e.g., effort, area surveyed) are used to inform estimates of eagle fatalities, these view limitations could significantly affect risk calculations.

Avian Risk Assessment—The study Review of Raptor Sections of the Bluestone Wind Avian Risk Assessment, by Dr. Tricia A. Miller, raises significant questions regarding the assumptions and conclusions of the applicant's Avian Risk Assessment. This assessment is the basis for proposed mitigation plans for the projects and other determinations including those of the Siting Board. It is critical that the ARA be based on accurate data, models and calculations.

Net Conservation Benefit Plan—Flowing from the Avian Risk Assessment, the applicant's Net Conservation Benefit Plan for eagles carries through errors from that document, and also contains misstatements and misinformation that result in a plan that does not significantly benefit Golden and Bald Eagles, as is required.

Net Conservation Benefit Plan Best Management Practices--Efforts to reduce foraging by eagles in the project area are not adequately addressed in the plan. The plan notes "*Wildlife Response and Reporting System (WRRS) will include protocol for removal of carcasses on roads and pads*". Plans to discourage birds from using the area need to be addressed in detail and available for public comment. A reliable method for removing carcasses that attract eagles, including road kill and livestock, needs to be defined. Road crews cannot and will not prioritize the removal of carcasses for this purpose. Removal of livestock carcasses is not addressed.

The applicant needs to engage NYSDEC in efforts to eliminate coyote hunter bait piles near turbines, and reduce deer populations within the project.

Mitigation of take of Golden Eagles and Bald Eagles—DOAS has significant differences with the applicant regarding the value and effectiveness of its proposals for mitigation of projected take of eagles, as is required by USFWS and the NY State Department of Environmental Conservation. These proposals include retrofitting of power poles to reduce electrocution risk for eagles, funding of DOAS Golden Eagle conservation efforts, and conservation easements on eagle habitat. None of these actions would result in significant mitigation for these birds. Dr. Miller's study, Review and Assessment of Compensatory Mitigation Options for Golden Eagle Take Permits in the Northeastern USA, provides a compelling case for this opinion.

Effective mitigation is a necessity for the project to proceed under state and federal law.

Re-siting or removal of high-risk turbines—Avoidance of threats to wildlife, including eagles, is preferable to mitigation if achievable. Several of the proposed turbine locations in the Bluestone Wind project area pose demonstrably higher threats than others. Removal or micro-siting of these turbines could achieve significant risk avoidance.

Need for additional studies—In light of the questionable quality and effectiveness of Bluestone Wind's raptor studies, which largely serve as the basis for the applicant's Avian Risk Assessment, Net Conservation Benefit Plan, and mitigation proposals, we believe additional well-designed and thorough surveys of eagles in the project area are needed.

Incorporation of new technologies – We believe there are uncertainties and shortcomings in the value and effectiveness of the applicant's proposals for mitigation of projected take of eagles, as noted above. Systems to detect eagles and stop turbines when eagles are present, are currently under development. In the event that agreed upon mitigation efforts are determined to be inadequate or ineffective, the applicant should be required to retrofit turbines in the project once these systems are proven effective.