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March 29, 2019

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Daniel P. O'Connell, Associate Examiner  
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Albany, NY 12223-1350

**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:

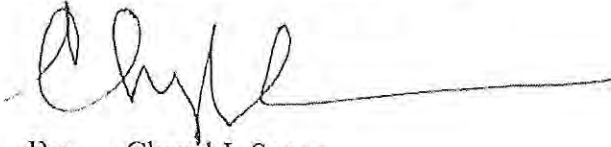
Attached please find the Towns of Sanford's and Windsor's proposed list of Article X issues for litigation in the above-referenced proceeding.

The Towns of Sanford and Windsor have engaged in settlement discussions with the applicant, but these issues should be considered for litigation.

March 29, 2019  
Page 2 of 2

Very truly yours,

COUGHLIN & GERHART, LLP

A handwritten signature in black ink, appearing to read "Cheryl", followed by a long horizontal line extending to the right.

By: Cheryl I. Sacco  
Partner

CIS/kjg  
Attachment

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 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

Town of Sanford and Town of Windsor  
**STATEMENT OF ISSUES**

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STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 16-F-0559

Application of Bluestone Wind for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a Wind Energy Project.

Town of Sanford and Town of Windsor - STATEMENT OF ISSUES

**BACKGROUND**

On March 7, 2019, Administrative Law Judges Mullany and O'Connell issued a Ruling on Schedule in this case setting dates for the submission of Direct and Rebuttal Testimony as well as the filing of Written Statements of Issues, Evidentiary Hearings and Briefs. The following is the written Statement of Issues of the Towns of Sanford and Windsor ("Towns") pursuant to that Ruling.

**ISSUES**

The Towns hereby submit the following statement of issues that remain subject to litigation at this time. The Towns reserve the right to remove issues if they are later resolved or add to the issues identified herein in the event that further issues in controversy arise.

1. **Generally.** Apparently, modifications to the pending Application are contemplated and it has been confirmed that changes will occur but not all the necessary details have been provided regarding the changes. As such, there are unknowns including the final number of towers, the final locations, the manufacturer and model type and height of the towers, and final setbacks. These changes appear to be large enough to potentially affect many aspects of the project. Also these changes affect the Towns, residents, and Towns' infrastructure, in various ways, including but not limited to safety (collapse, ice throws, etc.), noise, flicker, etc. As such, the Towns are uncertain if other issues exist that need to be incorporated herein.

Other items still unknown include:

- a. Additional detail is required on the location, construction and dimensions of the 10MW battery storage building/system. Size and throughput of the concrete batch plant are unknown and should be stated. Also, Applicant should demonstrate compliance with Section 1402.5F.(3) of Chapter XIV of the Town of Sanford Land Use Management Local Law entitled "Renewable Energy Systems" ("Sanford Energy Law") with respect to project buildings.
- b. It is unknown if the Applicant has finalized the location for O&M building, laydown/staging area and battery storage. The siting of an O&M building in

the RA zone may raise concerns. A temporary batch plant and laydown/staging area should have restrictions on hours of operation. Backup alarms, equipment operation, material delivery, etc. may disturb neighbors. See 1402.5.F.(3) of the Sanford Energy Law, which requires screening of accessory facilities. Mitigation needs to be explored and finalized.

- c. Updates to the draft SEEP have not yet been provided and there is a reference in the current version that indicates additional design details will be provided. When and how will Towns have the opportunity to review and comment on the additional design details?

2. **Host Community Agreement and Payment in Lieu of Taxes.** Negotiations are still under way, but not yet finalized and as such they remain an issue. As the final megawatt capacity and number of Towers are in flux, it directly impacts these two documents.

3. **MET Towers.** The Applicant has indicated that the MET towers are permanent. The MET towers needs to be correctly added to the application narrative, currently the Town of Windsor's MET tower is only shown on the map and not in the narrative.

4. **Turbine Setbacks.**

- a. The Applicant appears to be using a ratio found in Sanford's local law; 1.25 for both Towns. The Towns believe that the setback is not far enough from the turbines, particularly for non-participating residences. The Towns are aware of projects with setbacks approved by the State that have a ratio within the range of 1.5 to 3.0.
- b. Where appropriate and for installations in the Town of Sanford, the submissions should make reference the Sections 1402 and 1406 of Sanford Energy Law. All design and facility operation need to conform to the local requirements.
- c. Certain setbacks are dependent upon whether a nearby property owner is a participating or non-participating owner. The Towns have requested, but have not yet received, an updated participation map to determine both the sufficiency of the Applicant's outreach to local residents and the Applicant's compliance with setbacks that are dependent on participation of nearby property owners.

5. **Decommissioning Plan.** The Towns have commented on the Decommissioning Plan and the sufficiency of the decommissioning cost estimate. These issues are unresolved.

- a. The town highway department from the Town of Windsor will not receive the gravel at no cost. Full removal and disposal cost should be included in the estimated decommissioning costs.

- b. The Towns are not certain about the appropriate type of security; whether it be a Letter of Credit, Bond or other. And an independent consultant may be necessary to arrive at a final Decommissioning Cost.
- c. Table A-1 "Estimated Decommissioning Costs" to Appendix MMM is insufficient to objectively verify or analyze the cost estimates. Each item should be further broken down to include unit pricing and quantities used to calculate the total cost. As written, it is difficult for any third party to determine whether the estimates are reasonable. A greater level of detail is needed now and with each cost estimate that is provided in the future (every 5 years) so the Towns can review the adequacy of the financial guaranty.
- d. It is believed the width of the permanent access roads has been increased from 16 feet to 20 feet to comply with turbine manufacturer requirements. That means more material and more labor to remove/decommission and the estimate should reflect that. Decommissioning Plan and cost estimate need to reflect expanded roads and less turbines.
- e. Section 4.1.3 of Appendix MMM indicates that "all crushed rock surfacing will be removed from the Project's access roads unless the landowner specifically requests that the access road be left in place. The removed crushed rock will be loaded into dump trucks and hauled offsite." It is not explained who will move it or where is considered offsite. The Towns want to ensure it is not improperly deposited within the Towns or elsewhere. Similarly, if the landowner chooses to keep the crushed material, they would need to do so in a manner that is compliant with state and local laws. Crushed rock or other material would impact grading on the property and change storm water runoff.
- f. The Plan has some contradictions regarding waste concrete management. Several sections state the concrete is to be demolished to a depth of 48 inches below grade and hauled to a permitted landfill for disposal. Section 4.1.7 of MMM states that concrete will be crushed and disposed of on-site. This discrepancy needs clarification. Concrete that is not being reused beneficially as a specification item is regulated by NYS as a solid waste. Although there is an exemption allowing concrete disposal at 6 NYCRR 363-2.1(h) whereby concrete can be landfilled on site subject to stated conditions, the Towns' preference is for it to be removed.
- g. Financial, liability and other types of protections need to be put in place for the Towns, if they need to take a role in Decommissioning; including but not limited to access via easements to private property, etc.

6. **Local Laws and Ordinances.**

- a. Applicant says it will comply with substantive local laws, subject to Siting Board waiving compliance with local laws that are unreasonably burdensome.



“Unreasonably burdensome” and “substantive requirements” need clarification as it relates to this Application. The Applicant has not indicated to the Towns whether it considers any of the Towns’ substantive local law requirements to be unreasonably burdensome.

- b. The submissions by the Applicant are inconsistent, and/or lack enough detail to ascertain whether the Applicant will comply with applicable substantive provisions of the local laws of the Towns or if they will seek those laws to be deemed unreasonably burdensome. It is unclear and unknown if the Applicant has identified any local laws that it currently deems unreasonably burdensome.
- c. Demonstrate compliance with Section 1402.5B.(2)-(4) of the Sanford Energy Law (contains guy wire setbacks, marking/visibility requirements, wind turbine signage). The application does not appear to comply and it should.
- d. Per Section 1402.5A.(5) of the Sanford Energy Law, project noise should not exceed 50 dbA for any non-participant at any time. All noise-related documents should reflect this. There are general noise limitations stated in the application but none that specifically articulate that 50dba will not be exceeded.
- e. Role of Local Code Enforcement & Building Inspector needs to be clarified. Also, it needs to be clarified if the Applicant shall seek the issuance of any certificate of occupancy or certificate of compliance and if so, from whom.

7. **Traffic and Roads.**

- a. The Road Use Agreement with the Town of Windsor has not been approved by the Town of Windsor. It is an open issue.
- b. The Traffic Control Plan is not yet final. If a draft exists, it should be available review and comment by the public and the Towns.

8. **Contact with the Towns during all stages of the Project.**

- a. The contact information for all individuals responsible for project oversight should also be provided to the Towns.
- b. All reports and notifications generated by these individuals should be provided directly to the Towns.
- c. It has been noted that as part of the post-construction monitoring program a report will be submitted to various agencies. It does not include the Towns. The Applicant should confirm that Towns will be copied on all post-construction monitoring and oversight reports and Towns will have contact info for all oversight personnel.
- d. Complaint Resolution Plan must provide notification of complaints to the Towns whenever DPS staff is notified pursuant to the plan.

- e. There is a reference to Petroleum Bulk Storage. Details of all petroleum and chemical storage need to be provided to local emergency responders and the Towns.
- f. The third party, independent monitors should provide reports and notifications directly to the Towns. The Towns should be provided with daily field reports and should receive immediate notification of any condition that requires notification pursuant to any permit or condition of approval.
- g. The Towns should also be notified whenever SEEP is modified and be given an opportunity to comment.

9. **Storm Water Pollution Prevention Plan (SWPPP)**. The Applicant needs to evaluate the cumulative impact of the development on the Towns' storm water drainage facilities. The impact of extreme weather events, not just average weather conditions, need to be evaluated. Planning for storm water runoff for individual areas of disturbance may not be sufficient as the runoff moves downstream. The Towns have significant topography and have experienced extreme events and flooding in recent past.

10. **Noise**.

- a. All Sound complaint protocols need to be clear and consistent and need to have defined terms. For example "excessive and persistent" need to be defined.
- b. The timeframes to respond to complaints are excessive ("initiate operational noise measurement within 90 days" and "implement noise mitigation within 150 days"). This is excessive and the Towns suggest cutting both periods in half (45 days and 75 days, respectively). Requests have been made to include provisions to shut down a turbine violating the noise requirements beyond these periods.

11. **Shadow Flicker**. This indicates that specific mitigation of shadow flicker may be provided to impacted properties, but this is qualified "for exposures that are not subject to the 30-hour annual limit." It is the Towns' position that this type of impact mitigation for flicker affects should be widely available. It should also be detailed, whom will qualify for shadow flicker mitigation.

**CONCLUSION**

At this time, this document represents the issues that the Towns of Sanford and Windsor believe remain in controversy in this case. The Towns reserve the right to litigate issues not identified herein in the event that further issues are discovered to be in controversy before the Evidentiary Hearing in this matter is conducted.