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Three Empire State Plaza, Albany, NY 12223-1350  
www.dps.ny.gov

Via E-Mail

March 29, 2019

Secretary Kathleen H. Burgess  
Department of Public Service  
3 Empire State Plaza  
Albany, NY 12223

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

Dear Secretary Burgess,

Department of Public Service Staff (Staff) respectfully submits its Written  
Statement of Issues in the above referenced matter. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Andrea Cerbin".

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Andrea Cerbin  
Assistant Counsel

Cc: Hearing Examiners  
Parties

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 for Construction of the Bluestone Wind Farm Project Located in the Towns of Windsor and Sanford, Broome County.

**DPS STAFF'S PROPOSED ARTICLE 10 ISSUES**

Andrea Cerbin  
Assistant Counsel  
NYS Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350  
(518) 408-1441

Dated: March 29, 2019  
Albany, New York

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.

## **DPS STAFF'S PROPOSED ARTICLE 10 ISSUES**

### **BACKGROUND**

On September 18, 2018, Bluestone Wind, LLC (Applicant), filed an application (Application) seeking authorization to construct and operate a commercial scale 124-megawatt (MW) wind power project (Facility), located within the Towns of Sanford and Windsor, in Broome County, New York. Subsequent to a Procedural Conference held on February 20, 2019 the Hearing Examiners issued a "Ruling on Schedule" dated March 7, 2019. Consistent with that schedule, each party is required to submit a list of all Public Service Law (PSL) Article 10 issues it proposes for litigation.

### **ARTICLE 10 ISSUES**

Staff of the Department of Public Service (DPS Staff) hereby submits the following proposed preliminary list of PSL Article 10 issues that it intends to litigate in this case. DPS Staff reserves the right to add to the issues identified herein if, during this case, other relevant issues are identified which cannot be resolved through means other than litigation.

1. **Environmental Impacts of Construction and Operation**

PSL Sections 168(2)(a)-(d) require that, in reviewing an application for a Certificate of Environmental Compatibility and Public Need (Certificate), the Siting Board on Electric Generation Siting and the Environment (Siting Board) shall not grant a Certificate without making explicit findings regarding the nature of the probable environmental impacts of the construction and operation of the Facility, including the cumulative environmental impacts of the construction and operation of related facilities on the ecology, air, ground and surface water, wildlife, and habitat; public health and safety; cultural, historic, and recreational resources,

including aesthetics and scenic values; and, transportation, communication, utilities and other infrastructure.

Such findings shall include whether the cumulative impact of the construction and operation of the Facility results in a significant and adverse disproportionate environmental impact, in accordance with regulations promulgated by the New York State Department of Environmental Conservation (NYSDEC). As discussed in detail below, DPS Staff submits that the Applicant has failed to satisfy its burden with respect to fully characterizing the nature and probable impacts of the construction and operation of the Facility and without additional mitigation measures, the Siting Board cannot approve the request for a Certificate.

2. Facility layout and design and Local Laws (Exhibits 4, 6, 11, and 12)

DPS Staff will examine the proposed Facility layout and design in detail and will propose modifications to Facility location details to avoid or reduce site-specific impacts on affected resources, including forest land, water resources, and agricultural lands.

In addition, DPS Staff is reviewing numerous turbine locations listed in the Application that may not meet local requirements pertaining to roads, property lines, and public use. More specifically, DPS Staff intends to examine the following issues:

- a. Staff has requested information regarding minimization of impacts on Facilities Site properties that are enrolled in NYS Forest Tax Law §480-a program. The 480-a program supports long-term forest management but discourages land use conversions during property enrollment. Staff will analyze potential measures for avoiding or minimizing impacts on enrolled acreage in this resource conservation program. Applicant response to Staff Discovery is outstanding.
- b. Need to identify and adopt standards and practices for trench breakers for temporary & permanent drainage & erosion control measures for underground collection lines on extreme slopes; furthermore, the record needs to provide consideration of coordination of erosion and drainage control measures on these slopes with nearby existing gas pipeline ROW drainage controls on steep

slopes. Related stream and wetlands protection measures must be included in final designs at these facilities locations.

3. Construction (Exhibit 12)

Bluestone Wind has proposed a turbine setback of 1.2 times the fall zone from gas pipelines. DPS is evaluating whether this setback should be increased.

In addition, the Applicant notes that it has consulted with gas pipeline owners in the Facility Area (Millennium, Bluestone Gas Corporation, and Constitution (proposing a pipeline that would cross the Facility site)). Bluestone should provide assurance that agreements will be submitted prior to construction showing sign-off from pipeline owners regarding collection system and construction vehicle crossings of existing (or proposed) pipelines and collection line installations parallel to existing (or proposed) pipelines.

Bluestone has proposed a turbine setback of 1.25 times the fall zone from substations and transmission lines (115 kV and greater). In other Projects, DPS has recommended 1.5 times the turbine blade tip height from substations and transmission lines.

4. Noise and Vibration (Exhibit 19)

DPS Staff intends to test the adequacy of the Applicant's proposed goals for the prevention of short-term and long-term adverse effects and the sufficiency of proposed regulatory limits. DPS Staff advises that additional regulatory limits need to be adopted and verifiable measures should be proposed. DPS Staff intends to test the operational noise assessments, the avoidance, minimization and mitigation measures, and the proposed regulatory limits for the Facility. DPS Staff also intends to test the proposed compliance and complaint resolution protocol and the conclusions of the noise assessment.

DPS Staff intends to examine the design goals and assessment of potential operational noise impacts, in relation to the WHO-1999, WHO-2009, WHO-2018, and NARUC-2011 guidelines, as well as the low-frequency noise, infrasound levels and perceptible vibrations, and sounds limits at non-participating boundary lines. More specific details are provided below.

- a. Design Goals and Assessment of Potential Operational Noise Impacts:
  - i. WHO-1999
    - 1) The relevance and adequacy of proposed maximum short-term outdoor nighttime noise levels of 45 dBA-Leq-8-h as a regulatory limit for the Facility.
    - 2) The adequacy of assumptions for outdoor to indoor noise reductions for assessment of indoor recommendations for participating and non-participating receptors.
    - 3) The height of evaluation of short-term noise impacts for sensitive receptors.
  - ii. WHO-2009
    - 1) The equivalence between short-term long-term regulatory limits.
    - 2) The height of evaluation of short-term noise impacts for sensitive receptors.
  - iii. WHO-2018 Guidelines
    - 1) The need for evaluation of potential noise impacts from the facility on sensitive receptors based on the recently released WHO-2018 guidelines for wind-turbine noise.
    - 2) The adequacy and relevance of a proposed short-term and long-term regulatory limits for evaluation of the new recommendation included in the WHO-2018 guidelines.
    - 3) The height of evaluation of long-term noise impacts for sensitive receptors.
  - iv. Low-Frequency Noise, Infrasound Levels, and Perceptible Vibrations
    - 1) The height of the receptors for evaluation of low frequency sounds.
    - 2) Sound impacts for the Collector Substation including penalties for prominent tones.
  - v. Sound Limits at Non-Participating Boundary Lines
    - 1) The equivalencies and conversions between short-term and long-term noise descriptors.



- b. Avoidance, Minimization and Mitigation Measures
  - i. The adequacy of proposed design and layouts and need for mitigation/relocation/elimination of wind turbines.
  - ii. The absence of specification of contingency mitigation options for low-frequency (31.5 and 63 Hz.), infrasound (16 Hz.), and potential amplitude modulation issues.
  - iii. Use of NRO's in compliance filings.
- c. Proposed Regulatory Limits
  - i. The sufficiency and adequacy of proposed regulatory limits for sound sensitive receptors (participating and non-participating), the absence of proposed regulatory limits for boundary lines and the sufficiency of regulatory limits for evaluation of potential long-term effects.
- d. Compliance Protocol. Adequacy and sufficiency of compliance protocol provisions.
- e. Complaint Resolution Protocol. Adequacy and sufficiency of complaint resolution protocol provisions.
- f. Compliance Filings
  - i. Sufficiency of proposed compliance filings.
- g. Conclusions
  - i. Whether the adverse environmental noise effects of the construction and operation of the Facility have been minimized or avoided to the maximum extent practicable.
  - ii. Whether the Applicant will avoid, offset, or minimize the noise and vibration impacts caused by the facility upon the local community for the lifespan of the project to the maximum extent practicable using verifiable measures.

5. Cultural Resources (Exhibit 20)

DPS Staff is reviewing impacts to historic resources, and potential measures and methods for impact avoidance and minimization to address (or potentially to offset) adverse visual effects on historic resources.

6. Terrestrial Ecology and Wetlands (Exhibit 22)

DPS Staff is evaluating the potential impacts of the Facility on birds (particularly Bald and Golden Eagles) and bats (including NLEB) and evaluating what avoidance, minimization, and mitigation measures, including changes to facility location, layout, and curtailment regimes are necessary to protect sensitive environmental resources.

7. Water Resources and Aquatic Ecology (Exhibit 23)

With respect to groundwater resources, portions of the proposed Facility (including turbines T1, T6, and T7) are located within the Clinton Street Ballpark Valley Sole Source Aquifer. In addition, there are numerous public and private drinking water wells within the Facility Area. Staff is evaluating the potential impacts of Project construction on groundwater resources, including resources relied upon by residents as the primary sources of drinking water, with consideration of steep slopes and impacts from blasting operations.

In addition, the proposed Facility layout requires numerous crossings of, and construction within proximity to, several NYSDEC Protected Streams (Class C(T) and above). Staff is reviewing the proposed crossings and Facility locations, with consideration of steep slopes and potential impacts to water quality during construction. Included in this analysis is an evaluation of proposed horizontal directional drilling (HDD), and potential constraints for the proposed HDD locations and risks of frac-outs at crossing of NYSDEC Protected Streams.

8. Visual Impacts (Exhibit 24)

Staff is analyzing facilities layout and predicted visual effect, and is considering development of measures to reduce visual impacts.

9. Effect on Communications (Exhibit 26)

The Application states that the National Telecommunications and Information Administration (NTIA) reported low impacts to doppler/weather radar. However, this is based on turbine heights of 410 feet and not the currently proposed heights of 673 feet. It is noted that an updated request was submitted to the NTIA on August 30, 2018 and that the Applicant will



provide the Siting Board with updated correspondence upon receipt. DPS requests that any updates regarding consultation between the Applicant and NTIA be provided as soon as possible. DPS notes that if significant modifications to the Project arise (as required by NTIA or through FAA Notice of Construction) due to the height changes, then all relevant Exhibits, figures, and drawings must be submitted as a Supplement to the Application.

10. Site Restoration and Decommissioning (Exhibit 29)

DPS Staff is reviewing the Applicant's proposed *Decommissioning Plan* and notes that it disagrees with several elements of the plan. DPS has issue with the Applicant's proposed use of scrap value for calculating a net decommissioning and site restoration estimate. DPS recommends that the projected total gross cost be used for establishing a decommissioning and site restoration estimate (it should be noted that Bluestone lists both cost options and has not provided assurance that it will omit scrap value from its final decommissioning estimate).

In recent cases, DPS Staff maintains that financial assurance be provided to the towns in the form of letters of credit for the total amount of the decommissioning and site restoration estimate. Furthermore, DPS Staff takes issue with the proposed timing for obtaining security and submittal of revised estimates. Proof from the Towns of an acceptable form of letter of credit should be provided to the Secretary 90 days prior to construction. The letters of credit should remain active for the life of the Facility, until it is decommissioned, and adjusted every fifth year under the administration of the Towns' and/or DPS for inflation of relevant costs. DPS Staff does not recommend placing the burden on the Towns of attempting to sell used wind turbines to fund decommissioning and site restoration activities. Also, DPS Staff contends that it is inappropriate to have the Towns assume the responsibility of managing a major construction undertaking consisting of decommissioning and restoration of a wind farm. Staff will develop recommended certificate conditions regarding the decommissioning plan that are consistent with prior Siting Board approved plans.

11. Conformance with Local Laws (Exhibit 31)

DPS Staff takes issue with the Applicant's proposals regarding land use classifications that appear to contradict the text of the Town of Sanford Land Use law.

Design of ancillary facilities has not been demonstrated to conform with local setback distances. Applicant response to Staff Discovery is outstanding.

12. Certification conditions, compliance authority and complaint resolution

Certificate Conditions will be advanced to address appropriate terms and conditions for potential issuance of a Certificate of Environmental Compatibility and Public Need, including performance standards, impact avoidance and mitigation measures, compliance filing and reporting requirements, and impact monitoring and operational controls requirements.

**CONCLUSION**

DPS Staff's review of the Application and submission of testimony concerning the above-referenced issues will provide an independent assessment that can serve to enhance the record for the Siting Board and should properly be added to the list of issues for litigation in this proceeding. As indicated, through discovery of issues, other issues may be identified and DPS Staff reserves the right to supplement this issues list in order to develop an adequate record.