

BROOME COUNTY CONCERNED RESIDENTS

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Where Eagles Fly

From the desk of
Anne Lawrence

March 29, 2019

Via Email

Honorable Kathleen H. Burgess
Secretary NYS Board on Electric Generation Siting and the Environment
Three Empire State Plaza
Albany, New York 12223-1350

Via Email

Hon. Judge Mullany
Three Empire State Plaza
Albany, New York 12223-1350

Hon. Judge O'Connell
Three Empire State Plaza
Albany, New York 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 for Construction of the Bluestone Wind Farm Project Located in the Towns of Windsor and Sanford, Broome County

Dear Secretary Burgess, Hon. Judge Mullany, Hon. Judge O'Connell,

On behalf of the Broome Country Concerned Residents (BCCR), enclosed please find BCCR's Statement of Issues for Litigation in the above-referenced proceeding.

This list is not final. Given the limited time the residents have had to study the application, we reserve the right to amend this statement as more research is done, or to bring up other concerns that might become evident out of the case or from the proceeding, or in the event that further issues in controversy arise. This may result in removing issues if they are later resolved or adding to the issues identified hereinafter.

BCCR also requests that the DPS would consider assigning a Settlement ALJ and that subsequent settlement hearings will be held, to determine if any or all of these issues could not be resolved through further settlement hearings, rather than litigation. The agenda and schedule set by the applicant for the two previous settlement hearings was very aggressive and had unrealistic deadlines for us. BCCR has had limited opportunity to properly participate in the design process and we don't want to be dragged prematurely into long and costly litigation processes if this can be avoided. We believe other parties will be amenable to such a proposal as well.

Lastly, I apologize for the rough presentation of this list. We trust you will look at the content and not the formatting of these issues.

Respectfully submitted,

Anne Lawrence
Co-chair BCCR

BCCR list of Issues for Litigation

Pursuant to the Examiners' Ruling on Procedural Schedule, issued March 7, 2019, Broome County Concerned Residents (BCCR) submits this Statement of Issues for Litigation concerning the Application of Bluestone Wind, LLC (Applicant) 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 (Project). BCCR may eliminate or narrow issues depending on the outcome of ongoing settlement negotiations with the Applicant and other parties. BCCR also reserves the right to supplement this list with additional items, if other relevant issues are identified or if it is necessary to develop an adequate record to support a decision under Article 10 of the Public Service Law (PSL).

This project and the time pressure to approve the application stems from a political need, not an immediate energy need. We need to recognize and be realistic and fair about this aspect of the project. If it is deemed a public need that we need to switch to 'renewable' energy, this still has to be done right, shall not be rushed at every cost and to the point it constitutes safety hazards, nor should it be at an unreasonable cost and disproportional burden to the host community and 'receptors' of the project. Additionally, when we speak of 'green energy' and/or 'environmental friendly' energy, all efforts (and associated costs) should be made to ensure the true and utmost environmental neutrality of this project. If the project cannot meet these requirements, the project itself or the siting should be reconsidered.

1. Environmental Impacts of Construction and Operation and other environmental concerns

- 1.1 Negative Impacts to forest, wetlands, groundwater, rivers, aquifers and wells from construction, blasting and pile driving.
- 1.2 Negative Impacts to forest, wetlands, groundwater, rivers, aquifers and wells from potential accidents and spills
- 1.3 Blasting plan:
 - Better vault analysis and hydrological studies; study what the effects will be on the existing cracks
 - Concerns about disturbance of water tables, water quality. Measure pre-existing conditions: test for iron, sulphur, and radon
- 1.4 Negative effects from forest clearing and habitat fragmentation.
- 1.5 Risk of erosion, flooding, and road damage. Some roads are unsuitable for the heavy construction vehicles. Some bridges and culvert might cave.
- 1.6 The need for this project to be truly as 'green' or environmentally responsible as possible.
In order to do this, the final proposal needs to include:
 - Full disclosure of all chemicals used for hydraulic oil and de-icing of the blades etc. etc. and the least toxic compounds possible should be chosen
 - The disturbance of 5000-some acres needs to be compensated with a net benefit in CO₂ emission: olivine (green sands) needs to be used throughout the project and where feasible for access roads to sequester CO₂, to compensate for said soil disturbance, tree clear-cutting and the massive amounts of concrete to be used. The concrete itself also has to be as carbon neutral and non-toxic/non-caustic as possible
- 1.7 Negative impacts to avian species, especially eagles and bats.
 - Calpine needs to finance a new winter study, where they will specifically focus on identifying the wintering golden eagles, as the existing study has too many data gaps.
 - Net benefit plan needs to be in place for golden eagles and bats (especially the northern long-eared bat) before a permit can be issued
- 1.8 Storm-weather plan, curtailment
- 1.9 Construction spoils from the site must be removed
- 1.10 Construction issues arising from building on steep slopes inadequately addressed
- 1.11 Battery storage is a problem
- 1.12 Concrete Batch plant: Better Environmental study specifically for the mobile concrete batch plant. Including water draw & water discharge and noise

Regarding Procedure and timing: no bulldozing or tree clearing shall be allowed until the final project approval is done and all permit conditions have been met. This is not until all hearings and possibly re-hearings have taken place.

2. Health Concerns

The project involves many health issues, both identified and some likely unidentified. The project contains inadequate setbacks and noise limits to successfully protect public health, safety and welfare. This includes adverse health effects and impacts from noise, shadow, shadow flicker, annoyance, vibration, EMF, stray voltage, risk of blade throw, ice throw, tower collapse and fire.

2.1 Noise

We find there is questionable noise modeling in the PNIA, elevated L90 ambient monitoring results, lack of data regarding final turbine selection, wind shear and turbulence data for review. Design goals are not protective for residents.

- 2.1.1 Need to update noise studies based on final hub height, taking into account turbulence and real wind shear factors at hub height and the amplifying effect of the valley. We are at a very high risk of amplitude modulation. 35 dB max from property line needs to be the standard, which means design goals 32 dB from property lines.
- 2.1.2 Noise protection. No exception based on 'maximum noise'
- 2.1.3 Electromagnetic interference inadequately addressed
- 2.1.4 Infrasound needs to be addressed using latest research and whichever WHO standards are most protective. Need protective setbacks for non-participating residents from property lines
- 2.1.5 Lower short-term limits
- 2.1.6 Ambient sound: we need a true ambient baseline. The ambient noise in the study is deliberately inflated. New measuring points need to be established that measure the ambient sound in the middle of the proposed clusters, based on the final plans with actual locations of the turbines
- 2.1.7 Construction noise: needs to be better regulated including noise complaint
- 2.1.8 Noise complaint resolution protocol inadequate. Distance from nearest turbine to file a complaint; number of complaints 'allowed' and/or costs born by residents; new residents in same location; environmental factors can change etc tec. If no immediate mitigation should be possible: turbines need to be stopped or alternative housing needs to be provided until levels are back to approved health standards

2.2 Flicker

- 2.2.1 Flicker study: some residents are not included. Flicker study needs to get redone/updated based on final turbine selection
- 2.2.2 Too many non-participating residents with unacceptable flicker hours
- 2.2.3 Vegetation on non-participating residencies should not be allowed to bring the modeled numbers down: non-participating residents should be free to expand their gardens, cut trees for fire wood or log their land for timber.
- 2.2.4 Shadow flicker detecting system at all locations
- 2.2.5 Inadequate complaint resolution: Respond time should be 1-2 days max
- 2.2.6 If no immediate mitigation should be possible: turbines need to be stopped or alternative housing will be provided until levels are back to approved health standards

2.3 Life Flight

Life flight restrictions because of nearby turbines: residents cannot get an airlift by helicopter that may be

necessary either because of road obstructions, winter road conditions or when immediate and essential time-critical care is needed. The non-participating residents should not be put at risk, being in a non-flight zone.

3. Economic impacts

- 3.1 Decreased property values from wind project.
- 3.2 Loss of tourism and amenity: reasonable compensation for businesses suffering loss from lack of clientele: F.ex but not limited to: campgrounds, golf course, fishing outfits
- 3.3 Negative impacts on tourism, which the towns depend on
- 3.4 Increased Costs for the town: roads, Fire, Police
- 3.5 Economic loss and decreased agriculture yields due to increased bat mortality.
- 3.5 Increased property taxes because overall tax base declines after re-assessment.

4. Decommission

Inadequate planning for decommissioning. Applicant must guarantee a bond for full & realistic costs of project removal and pre-existing conditions restoration. Bond needs to be in place, with adjustment for inflation. Letter of credit is not acceptable from an LLC. An estimate for decommissioning needs to be done by independent agency. Present cost analysis is way under budget.

5. Light pollution

In recognition of the WHO standards, which acknowledge that nuisance from external factors negatively contributes to a person's health, as well as it being an economic risk, as well as it being an environmental issue, we like to separately address the issue of light pollution and the permanent destruction of the 'night sky'. To this extend, the Visual Impact Statements need to be redone to include a nighttime simulation based on the actual turbines of choice. A lighting plan needs to be designed and approved before the project is build, with the design goal being a minimal impact for residents. Infrared light should be used where feasible and possibly FAA can help redirect certain flights at night or impose a no-flight zone at night for low-flying aircraft so there would be no need for blinking red lights every 4 seconds, all night long.

6. Additional risks and concerns

- 6.1 In case of unacceptable temporary noise and dust from construction, alternative housing should be offered and cleaning service afterwards
- 6.2 Risk to nearby major gas pipelines: too close
- 6.3 Risk of tornados: 2 have hit this exact area in the last 2 decades
- 6.4 Pre-construction: effects on local roads. Widening roads especially as it impact non-participating residents
- 6.5 Lack of experience and lack of safety data: Calpine has no experience building a windmill park this scale, nor is there any real data for turbines this high in this setting. We need to have safety data based on the final turbine of choice and regarding sound / decibel levels, and other noise or flicker.
- 6.6 Emergency plan: a better plan for power outage for emergency lighting etc.
3rd party to be paid by Calpine to look after lighting maintenance.
- 6.7 Transmission lines underground, guaranteed

7. Liability concerns

Participating property owners need to be mandatory educated about the liability their lease contains vis a vis their non-participating neighbors and they need to be made aware this may include the right of their neighbors to sue them for damages, that this means they would incur legal fees and that the applicant will not help them out financially. They need to be educated by an independent lawyer, not one selected by Calpine, and they need to hear the liability clauses explained as well as the easement clauses as well as being informed of the final height of the turbines, an element that is presently lacking in their leases and that has been misrepresented to many leaseholders at the moment of signing the contract.

We are especially troubled by the clause (vi) regarding "Wake and Other Effects. A non-exclusive easement for audio effects, visual effects, view, flicker, noise, shadow, vibration, air turbulence, wake effects, electromagnetic interference, ice or other weather created hazards, and any other effects attributable to any Project or operations (i) located or conducted on the Property or (ii) located or conducted by Lessee or its Affiliates on other adjacent properties. The foregoing grant includes the right to cast shadows or flicker onto the Property, to impact view or visual effects from the Property, to cause or emit noise, vibration, and electromagnetic interference on or to any portion of the Property on a 24 hours per day, 7 days a week basis"

Property owners that want to break their lease based on this actual and fair presentation of the facts should have the opportunity to back out of their leases without punishment.

8. Future updates to facility and maintenance guarantee

The residents seek assurance that just because this facility was once planned, designed or built with the up-to-date knowledge of the industry's 'best practices', that doesn't mean we can't learn and change that opinion, and this caution needs to be reflected in the wording and design of the facility. All uncertain areas in the application and in the mitigation solutions should be treated with a view toward the health and safety of the residents, erring on the side of caution to protect those residents first and foremost, and economic implications on the side of the applicant coming second. If in any future point in time additional technology becomes available for impact mitigation, all applicable parts of the facility should be retroactively equipped with such technology.