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 for the Bluestone Wind Project

BRIEF OPPOSING EXCEPTIONS
SUBMITTED BY
ALLIANCE FOR CLEAN ENERGY NEW YORK

Submitted by:

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I. PRELIMINARY STATEMENT

In accordance with the October 1, 2019 Notice of Schedule for Filing Exceptions issued by the Secretary to the New York State Board on Electric Generation Siting and the Environment ("Siting Board"), the Alliance for Clean Energy New York ("ACE NY") is submitting comments in response to the Brief on Exceptions filed by certain Parties in the above-referenced proceeding. Specifically, our comments are in regard to the Town of Sanford’s Moratorium, also known as Local Law No. 2 of 2019.

ACE NY is a member-based organization with a mission of promoting the use of clean, renewable electricity technologies and energy efficiency in New York State, in order to increase energy diversity and security, boost economic development, improve public health, and reduce air pollution. ACE NY has members engaged in the wind power, solar energy, hydropower, fuel cell, biomass, offshore wind, transmission, and energy efficiency industries. Our members also include environmental organizations and consultants and suppliers to the clean energy industry. ACE NY actively participates in proceedings at the Public Service Commission ("PSC") to advocate for the clean energy policies that New York needs to grow business opportunities for renewable energy and energy efficiency businesses.

ACE NY is a Party to this proceeding and has been given Party status in other Article 10 proceedings as well. In the case of Article 10 proceedings, ACE NY occasionally submits comments when an issue affecting a particular proposed project has a likely potential of affecting numerous renewable energy project proposals or, more broadly, affecting New York’s overall ability to meet its clean energy goals.

ACE NY supports New York’s mandate to reach 70% renewable electricity by 2030 as included in the recently enacted Climate Leadership and Community Protection Act. Achievement of this important and ambitious goal will provide numerous and diverse benefits to New Yorkers: driving
private investment from renewable energy companies to New York State; modernizing electric generation facilities to replace some of the State’s aging fleet of power plants as they gradually are retired and decommissioned; diversifying the types of power generation technologies that are collectively meeting New York’s electricity demand so that the State is not overly reliant on one fuel type; reducing the emission of air pollutants that contribute to smog and other public health risks; and reducing carbon emissions from the power generation sector in New York, and thus helping to meet the States greenhouse gas emissions reductions mandate and take action against impacts of global climate change. For these and other reasons, New York’s ambitious Renewable Energy Standard is a wise and forward-thinking public policy that will benefit New Yorkers. Achieving this standard will require the construction and operation of new utility-scale renewable energy projects, such as the proposed Bluestone Wind Project, each of which will be reviewed by the Siting Board. The Siting Board therefore has a critical role in New York’s achievement of its Renewable Energy Standard mandate. Further, as there are so few projects that have completed the Article 10 siting process, the Siting Board’s decision will have an important role in setting the precedent for new generation permitting in New York for the foreseeable future.

II. SUMMARY

These ACE NY comments focus on the State’s interpretation and implementation of the Article 10 siting process vis-à-vis local laws and how it could affect all types of renewable energy projects. The specific decisions made in this proceeding will have a critical impact on the ability of New York to make progress towards its 70% renewable energy goal and the goals of the State Energy Plan. As detailed in these Comments, we respectfully recommend that the Siting Board take each opportunity to make decisions that will facilitate the ability of New York to achieve its clean energy goals, and craft a more efficient, timely, and affordable Article 10 process. Specifically, we ask the Siting Board to carefully consider the implications of enforcing late filed local laws on applicants.
Enforcing late filed local laws on applicants undergoing the rigorous Article 10 permitting review process will introduce uncertainty and delays to an already lengthy and expensive process. It has a very high potential to chill investment in the development of new renewable energy projects in New York.

III. DISCUSSION

Parties in this proceeding have asked the Siting Board to extend the statutorily established 12-month period for the Siting Board’s decision in order to consider the Town of Sanford’s Moratorium law and any subsequently passed revisions to the Town’s local law. The Town of Sanford has not yet passed any revisions to their local laws, but Parties are requesting that the Article 10 process be delayed to allow the Town of Sanford an opportunity to amend their local law, and that any amendments to the local law be applied to the Bluestone Wind project.

ACE NY urges the Siting Board to deny any extensions to the statuary schedule and requests that Siting Board provide clarity and certainty for Article 10 applicants, that they will not be subjected to unnecessary delays in the Article 10 schedule due to local laws filed after the close of evidentiary hearings or be required to comply with these late filed local laws. Requiring applicants to comply with local laws that restrict or inhibit projects that are enacted late in the process, such as after the close of evidentiary hearings, is contrary to the intent behind the Public Service Law (“PSL”) and Article 10 and would frustrate the ability of the State to reach its clean energy goals.

The PSL provides that the Siting Board shall make a final decision on a Certificate application within 12 months of a determination that an application is compliant. (PSL § 165 [4][a]). To ensure the Siting Board can meet this statutory deadline, the PSL expressly provides that if a municipality does not present evidence in support of a local ordinance, law, resolution or other action or regulation, it “shall be barred from the enforcement thereof”. (PSL § 166(1)(j)). Therefore, local laws must be enacted and become part of the evidentiary record for a given project by the close of the evidentiary
hearing, especially where the local law may require facility changes and thus impact the ability of the
Siting Board to issue a decision by the statutory deadline.

In enacting the Article 10 regulations the Siting Board acknowledged that the Article 10
process has strict deadlines that “will act as a practicable hindrance” on the consideration of new local
laws including the “application deadline, the deadlines for testimony, and the date upon which
hearings are closed”. (Case No. 12-F-0036, Memorandum and Resolution Adopting Article 10
Regulations, Issued and Effective July 17, 2012).

Permitting municipalities to enact substantive local laws which require facility redesign or
changes after these deadlines have passed is clearly in contravention of the PSL and Article 10
regulations and would frustrate the Article 10 process and the ability of needed renewable energy to
be developed in the State. The Siting Board cannot allow municipalities to interfere with the deadlines
proscribed by the PSL and Article 10 by enforcing local laws passed after the close of the evidentiary
hearing.

In fact, we suggest that to both provide fairness and stimulate project development in support
of the state’s renewable energy goals, the Siting Board could and should develop a process to provide
feedback on the appropriateness and applicability of a local law much earlier in the process at the
request of a project applicant. An earlier decision regarding a local requirement and whether it could
or should be complied with or waived by the Siting Board will undoubtedly ease the administrative
burden on Siting Board staff, as well as provide certainty to municipalities and applicants.

IV. CONCLUSION

ACE NY is providing these narrow comments regarding the application of Bluestone Wind,
LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 because
the outcome of this proceeding, and the precedent set by the Siting Board’s decisions in this case, will
have a critical impact on the ability of New York to make progress towards its 70% renewable energy
goal and its carbon emission reduction goals, as described in the State Energy Plan and laid out in the Climate Leadership and Community Protection Act. As detailed in these comments, we respectfully recommend that the Siting Board take each opportunity to make decisions that will facilitate the ability of New York to achieve its clean energy goals, and craft a more efficient, timely, and affordable Article 10 process. Such process does not allow for the consideration of late filed local laws.

Dated: November 5, 2019

Respectfully submitted,

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