

***Chautauqua County
Citizens for Responsible Wind Power****

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November 11, 2004

Vincent A. DeIorio, Esq., Chairman
Members of the Board of Directors
New York State Energy Research and Development Authority
17 Columbia Circle
Albany, New York 12203-6399

Re: Proposed Wind Power Project
Westfield and Ripley (Chautauqua County), New York

Dear Mr. DeIorio and Members of the NYSERDA Board of Directors:

In August 2004, Chautauqua County Citizens for Responsible Wind Power submitted a letter to the NYSERDA Board of Directors outlining our concerns about NYSERDA's involvement with the proposed Chautauqua County wind energy project. Mr. Vincent DeIorio initially responded to us in a letter dated August 24, 2004. Mr. Peter Keane then provided a supplemental response in his September 29, 2004 letter. We find that both of these letters do not address the core issues outlined in our August 2004 letter. The following summarizes our concerns in context of the responses provided by NYSERDA to date:

ISSUE #1 - NYSERDA has contracted with an entity (Chautauqua Windpower LLC) that appears to be vastly different than the 3 equity partners which submitted the proposal with their financial information and technical qualifications (York Windpower, Primesouth and Ecology & Environment).

- NYSERDA's responses state that the formation of a separate Limited Liability Corporation is "standard vehicle for the development of energy infrastructure facilities of any type" and that it is "standard operating practice." This may be the case when the partners of the LLC are the same as the partners that submitted the proposal. In this instance, the partners are different. It appears that NYSERDA does not even know who the partners of Chautauqua Windpower LLC are. Why does NYSERDA bother with "competitive procurement" and why does it bother reviewing qualifications and financial information when the funding is just given to a separate company, the partners of which are determined by the proposer, not by NYSERDA?

****Our purpose:*** *To support the responsible siting of wind power developments so that they are protective of the environment, natural resources, migrating birds, endangered species, scenic views, historic districts, community character, residential properties and local economies.*

- NYSERDA's response also suggests that awarding the contract to a different entity is justified by the fact that the proposal itself describes that such an entity will be formed. At best, this is illogical. For example: Company A submits a proposal describing its qualifications and financial information to NYSERDA. In the proposal Company A says that if its proposal is selected, it wants NYSERDA to give the award to Company X, which has not been formed yet. NYSERDA then selects Company A's proposal, based on its qualifications and financial information, and agrees to award the contract to Company X, even though they know nothing about its partners, qualifications or financial information. Is that an appropriate way to distribute public funds?

ISSUE # 2 - The proposal submitted to NYSERDA omits and downplays well-documented environmental concerns at the proposed project site. (Specifically, the project site is in a well-documented bird migration flyway, recognized by Audubon many years before the proposal was prepared.) NYSERDA's Program Opportunity Notice includes a requirement for information on avian issues, but the developer's proposal does not include this critical and readily available information on the sensitivity of this area as a major bird migration flyway.

- NYSERDA's 9/29/04 response states that a "complete and accurate picture of the potential for avian impacts was not available at the time the proposal was submitted or selected." *This response does not address the issue we raised.* NYSERDA's request for proposals did not ask for a "complete and accurate picture" and we would not expect the developer to have had a "complete and accurate picture" when the proposal was prepared. Our point was that NYSERDA's proposal request required the developer to "discuss known environmental issues including.....avian.....endangered species, etc." This area was designated as an "Important Bird Area" by Audubon many years ago, and the fact that this area is a MAJOR bird migration route (including migrating and nesting endangered birds) was well known at the time the proposal was prepared and submitted. This information was readily available on the internet and even in our local rural library at the time the developer prepared the proposal. It appears that the developer either didn't do the research necessary to prepare a thorough and accurate proposal or that they chose to omit this important information. In either case, NYSERDA also apparently did not fact check the proposal.
- NYSERDA's response goes into great detail about how the State Environmental Quality Review Act (SEQRA) process will identify environmental risks. *This not the point of our complaint and is not responsive to the issue we raised.* Our complaint is with NYSERDA's proposal review, selection and contracting processes, not with other state regulatory processes that go into effect during the project. The apparent reason NYSERDA required information on environmental issues, avian issues and endangered species in the proposal is that the presence of these environmental risks would make this project more difficult, costly, and maybe even impossible, to do. Going through a lengthy and costly environmental review process is wasteful when the developer should have identified the significant risks up front, as required by NYSERDA. Why did NYSERDA even ask for identification of avian issues and endangered species as part of the proposal if they are relying on the SEQR process (conducted after proposal review and award) to identify and resolve these issues?

ISSUE #3: The project location is significantly different from that described in the proposal. The location changed to one that is more residential, more visible and more environmentally sensitive than that described in the proposal.

- NYSERDA's response suggests that it is acceptable for the developer to significantly change the project location because the developer determines that it may do so in its proposal. Is this proper? Shouldn't a developer be required to complete a project as described? How would this passive attitude toward project changes discourage developers/contractors from painting a rosy picture in a proposal and then changing it after the contract is finalized? The phrase "bait and switch" comes to mind. Is NYSERDA's passive attitude to project changes tantamount to approving of apparent "bait and switch" tactics?

ISSUE #4: NYSERDA's contract with the developer and its Program Opportunity Notice require that the developer submit a community participation plan. We requested all file information and reports related to this project under Freedom of Information, and no community participation plan was provided. Therefore, it appears that the developer never submitted a community participation plan. This is a concern because a great portion of the public remains unaware and uninformed about this project, which is the largest industrial development ever proposed for the area.

- NYSERDA's initial response (from Mr. DeIorio) is silent on this issue. The second response (from Mr. Keane) only addresses public participation opportunities that will occur during the SEQR process. NYSERDA apparently thought that public participation was important enough to require the developer to submit a plan separate from the SEQR process. The fact that SEQR has opportunities for public participation *does not address the issue we raised*. The developer apparently failed to prepare, submit, and follow through with a public participation plan as required by NYSERDA. NYSERDA apparently did not penalize the developer for this. Special efforts must be taken to inform small rural communities, such as ours, about significant industrial projects. This was not done, and there has apparently been no consequence for the developer's failure to submit this required document.

ISSUE #5: Monthly progress reports were apparently not submitted. NYSERDA's Program Opportunity Notice and its contract require the developer to submit monthly progress reports. We requested these reports in a Freedom of Information Request on December 23, 2003. The first monthly report provided to us was dated January 2004, 16 months AFTER the project was awarded. This suggests that our request prompted the developer to begin producing these reports, and that they had apparently not complied with the terms of their contract.

- NYSERDA's response indicates that the developer did not begin producing monthly reports until January 2004 because "Phase I" of the project did not commence until then. We find this response to be evasive and even misinformed. NYSERDA's Program Opportunity Notice defines Phase I as "site characterization, including wind resource measurement and analysis." The developer was clearly conducting site characterization prior to January 2004: the developer had installed wind measurement towers many months before this; had completed the draft Environmental Assessment Form, had presented a draft special use permit to the towns, had completed spring and fall avian studies, had commenced geotechnical and hydrological studies, etc. We do not understand how NYSERDA can say that "Phase I" did not commence until January 2004. Therefore, the question remains - why did NYSERDA not enforce its own reporting requirements for monthly reports? Perhaps NYSERDA would have

been better informed about the project changes outlined above if they had received detailed monthly reports from the developer.

In summary, we are not satisfied with the responses NYSERDA has provided to us. The manner in which NYSERDA has handled this project leads one to believe that a developer could describe an ideal site, minimize its description of risks in order to get a contract award, and then change the location, environmental sensitivity and partnerships described in the proposal with no risk of losing the award. The developer can apparently also fail to submit required deliverables with no risk of losing the award. If this is the case, why would any developer ever be candid and fully describe risks up front, when there appears to be no downside to changing the ground rules during the course of the project?

Chautauqua County Citizens for Responsible Wind Power urges NYSERDA to carefully analyze the manner in which this project has been, and continues to be, handled. We again urgently request that you reconsider this project's funding and audit these irregular processes and procedures. We look forward to discussing these issues with Board Members on November 15th.

Sincerely,
Chautauqua County
Citizens for Responsible Wind Power

Claire Garrison Quadri
Steering Committee Member

cc: Arthur J. Giacalone, Esq.
Timothy Sullivan, USFWS
Jennifer Hairie, NYSDEC
Governor George Pataki
State Assemblyman William Parment
State Senator Patricia McGee
State Comptroller Alan G. Hevesi
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