

ADVOCATES FOR STARK

P. O. Box 91
Van Hornesville, New York 13475

Richard Jack, Supervisor
Town of Warren
Kingdom Road
Jordanville, New York 13361

December 13, 2006

Dear Supervisor Jack and the Warren Town Board:

On behalf of Advocates for Stark, I wish to comment on the lack of detail regarding the decommissioning fund in the Supplement to the DEIS for the Jordanville Wind Project. Mary Lenz of Jordanville contributed substantially to the explanation of construction bonding in this letter.

In the construction business, major projects are almost always bonded. A bond secures the contracts for everyone associated with the project. This applies to insurance companies, subcontractors, suppliers, financial institutions, lessors, lessees, etc. When the developer purchases a bond, *all* the contracts connected to the project become part of that bond. The bond assures that all promises, conditions, payments and performances will be honored. If they are not honored, the bonding company will step in and execute the terms of all the contracts. The bonding company can then go after the developer to recover their expenses.

In most cases, when a developer has a bond on a project, the sub-contractors on that project must also purchase a bond for their share of the project. For example, if a developer is constructing a building, the developer will have a bond for the whole project, and every subcontractor --- the cement company, the steel company, the electrical company, etc. --- will each have a bond for their part of the project.

Bonding companies require that the developer be qualified for the bond. The developer must have experience in the field. And they must have sufficient financial strength to cover the cost of the entire project. This includes the attachments, addendums, rental payments, maintenance and repairs. The financial statements show the financial strength of the developer, and corporate resumes show the experience necessary to successfully complete the project. Bonds cannot be purchased if the developer is not qualified.

A bonding company requires the developer's corporate officers to personally indemnify, or guarantee, the face value of the bond. This includes the spouses, as well as the corporate officers. This means the bonding company can claim their personal property, should the project fail.

Advocates for Stark, Page 2 of 3, 12/13/06

The Jordanville Wind Project is approximately a million dollars per megawatt, \$136 million dollars. The turbine companies should be bonded for Performance and Payment for completion of the project. They should have a Public Improvements Bond to cover the costs of damage to roads and other property during installation and construction. And they should have a Decommissioning Bond that includes an inflation factor.

I am particularly concerned about the dismantling or “decommissioning” of the project. This will be a very expensive process, as it will require cranes to take the turbines down, and vehicles to transport them out of the area. Roads will be damaged by the weight of these turbines, and they will need to be repaired or rebuilt. This expense should be planned and funded now, not left to whoever owns the project at the end of its useful life. That owner will have no incentive to compensate the towns for damages, and those damages will extend well beyond the towns of Stark and Warren. State roads should be protected, as well as town and county roads. No taxpayer should have to cover the cost of roads destroyed by the project owners.

Decommissioning was supposed to be covered in the Draft Environmental Impact Statement. It was not. The Lead Agency specifically requested that the Decommissioning Fund be addressed in the Supplement to the DEIS. It was not addressed in the Supplement, which had only a draft plan.

At the Stark Town Board meeting in December, I learned from Richard Bronner, Supervisor, Town of Stark, that bonding will be addressed in the permitting phase of development. I believe this is too late, because all of the taxing entities will then be negotiating from a position of weakness. They will no longer be under the protection of the State Environmental Quality Review process.

The point of the SEQR process is that the Lead Agency can look at the environmental impacts and decide they are too great. They can withdraw from the project. The “go or no-go signal” is virtually the only bargaining chip the towns have. SEQR provides protection for the towns and the county. Once the Lead Agency approves the Final Environmental Impact Statement, the towns --- and the county --- are effectively trapped. They cannot withdraw. If, on any issue, the towns demand more than the developer wants to give, the sponsor can simply threaten to sue the towns, and the towns will back down, because they cannot afford a lawsuit.

Therefore, it is critical that the towns and the county negotiate all their terms before the SEQR process ends. Once SEQR ends, your negotiating powers will be significantly weakened, if not obliterated.

We have an example of the lawsuit option in the town of Malone, New York, where Noble Environmental is seeking to install a wind turbine project. Two towns were

Advocates for Stark, Page 3 of 3, 12/13/06

involved. The other town was the Lead Agency. This precisely parallels the position of the Town of Stark. Malone decided to enact an ordinance prohibiting wind turbines. Noble Environmental is suing the Town of Malone to force them to participate in the project against their will. This has already cost the town and individuals tens of thousands of dollars, and the suit has barely begun.

Community Energy has consistently avoided any discussion of bonding. They have talked about a Letter of Support, and about a Letter of Credit. These letters are worthless if the company no longer exists or if it goes bankrupt. For example, a Letter of Credit from Enron, once believed to be a solid company, is now worthless. A Letter of Credit is not acceptable. Only a bond --- or a cash fund under Town control --- is acceptable.

Jordanville Wind is a Limited Liability Company. By definition, they can dissolve literally overnight, and none of the principals is liable for the financial commitments of Jordanville Wind, LLC. Contracts signed with Jordanville Wind could be useless. And a Letter of Credit from any of the involved companies is not reliable over the projected 20-year life of the project.

I urge the Lead Agency to insist upon nothing short of full bonding for performance, payment, public improvements and decommissioning. You will need to figure out how that bonding follows to successive owners, because the IRS tax structure for wind turbines is a huge incentive to sell the project every two years. According to the IRS table for Double Declining Accelerated Balance Depreciation, if the equipment goes into service during the first half of the year, the annual depreciation is:

Year 1	40%
Year 2	24%
Year 3	14.4%
Year 4	10.8%
Year 5	10.8%

A 64% tax deduction in two years is very attractive to large multi-national corporations and investment banks. You will note that Maple Ridge a/k/a Tug Hill Plateau is now owned by Goldman Sachs --- an investment bank. It is unlikely that Community Energy, Iberdrola or Jordanville Wind will be connected to this project longer than two years. Therefore, you must find a way to make the bonding follow the project ownership.

Sincerely yours,

Sue M. Brander
For Advocates for Stark
cc. Richard Bronner, Supervisor, Town of Stark

