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March 22, 2016

Via Email and U.S. First Class Mail

James A. Muscato, II
Young Sommer LLC
Executive Woods, Five Palisades Drive
Albany, New York 12205

Dear Mr. Muscato:

Re: *Application of Cassadaga Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a 126 MW Wind Energy Project*

As you know, this firm represents the Towns of Arkwright, Charlotte, and Cherry Creek in connection with the above-referenced matter. Following our discussion on March 11, 2016, I write to respond to Seth Wilmore's February 23, 2016 letter wherein he identified Cassadaga Wind LLC's ("Cassadaga Wind") preliminary interpretation as to whether provisions of the Towns' local laws are procedural or substantive.

As a first matter, please refer to the Towns' prior comments on the Public Scoping Statement. Specifically, the Towns are of the opinion that their right to regulate roadways derives from the state constitution and state law and are therefore not preempted by Article 10. Thus, they will not be addressed below, but we raise them to be clear that the Towns' position has not changed.

Below are the Towns' responses to Cassadaga Wind's designation of certain provisions of the Towns' local laws as procedural.

Town of Arkwright

1. "Permits Required for Wind Overlay District and Special Use Permit pursuant to Article VI A, Wind Energy Facilities § 653(A)-(H), which includes the application requirements for Wind Energy Facilities Creation of Wind Overlay Zone § 656(B)-(C)." Section 653(A) is not merely a procedural requirement. It provides that "[n]o Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Arkwright except in compliance with this Article." To the extent this applies to the application for permits, the Town agrees that it is procedural. However, this section also mandates compliance with substantive requirements of the law. Section 653(B), the Wind Overlay Zone requirement, is a substantive use restriction. The Town Agrees that § 653(C) and (D) are of a procedural nature. Section 653(E) is a substantive requirement, noting that the law applies to the entirety of the Town.

- The Town agrees that § 653(F), (G), and (H) are of a procedural nature. Section 656 is a substantive requirement, as Wind Energy Facilities are only permitted in a Wind Overlay Zone. This represents a zoning use restriction.
2. “Application for Wind Energy Conversion Systems § 657(A)(1)-(20).” The Town agrees that these provisions are procedural. However, the substantive requirements for information are applicable and should be included within Cassadaga Wind’s application.
 3. “Application Review Process § 658(A)-(J).” The Town agrees that these provisions are procedural.
 4. “Noise and Setback Easements § 663(A)(1)-(3).” The Town disagrees that these provisions are entirely procedural. This section provides that if a substantive setback requirement is not met, a waiver will be granted by the Town Board under certain circumstances (*e.g.*, written consent or an easement from the affected property owner to be a project participant). While the waiver application would be procedural, the substantive requirement to obtain such consent to achieve compliance with a setback requirement is applicable.
 5. “Creation of Wind Overlay Zones and Issuances of Special Use Permits § 664(A)-(D).” The applications for a special use permit and for a rezoning are procedural. However, as set forth above, the Wind Overlay Zone requirement is a substantive use restriction.
 6. “Fees § 671(A)-(D).” The Town agrees that § 671(A), (B) and (D) are of a procedural nature. However, § 671(C) is a substantive provision preserving the Town’s ability to enter into a host community agreement.
 7. “Enforcement; Penalties and remedies for violation § 673(A)-(C).” The Town disagrees that these provisions are procedural. The substantive requirements of the Town’s law are applicable to the project unless a waiver is granted by the Siting Board. Nothing in Article 10 preempts the Town’s enforcement authority over the substantive requirements that remain applicable to the project. In addition, Section 268 of the New York Town Law provides a right of enforcement of substantive requirements of local zoning laws that has not been preempted by Article 10.
 8. “Use of Town Rights of Way – Local Law No. 1 of 2015 regulating and creating a permitting system of use and cuts and openings in and under Town rights of way.” The entirety of this local law is not procedural. There are several substantive requirements. However, the Town would agree that the permitting provisions in this local law are of a procedural nature.