

NEW YORK STATE BOARD ON ELECTRIC  
GENERATION SITING AND THE ENVIRONMENT

CASE 19-F-0588 - Application of EDF Renewables for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction of the Homer Solar Energy Center in the Towns of Homer, Cortlandville and Solon, Cortland County.

RULING CONFIRMING PRE-APPLICATION INTERVENOR FUNDING  
AWARD AND COMMENCEMENT OF STIPULATIONS PROCESS

(Issued June 16, 2020)

MICHAEL CLARKE, ASHLEY MORENO and MOLLY McBRIDE, Examiners:

On April 13, 2020, EDF Renewables Development, Inc. (EDF), a subsidiary of EDF Renewables, Inc., filed a Preliminary Scoping Statement (PSS) in connection with its proposal to construct a 90 megawatt (MW) solar photovoltaic major electric generating facility (the Project) in the Towns of Cortlandville, Homer and Solon (the Towns) in Cortland County, pursuant to Article 10 of the New York State Public Service Law (PSL). With its PSS, EDF submitted the required intervenor fee of \$31,500 to be used to defray certain costs incurred by eligible municipal and local parties as a result of their participation as intervenor parties during the pre-application phase of this proceeding.

By notice issued May 4, 2020, municipal and local parties were invited to submit requests for pre-application intervenor funding by June 3, 2020. The Towns timely filed a joint request for \$31,500, the total amount of available funds. No other request for intervenor funds was submitted. A telephonic procedural conference was held on June 9, 2020, during which the Examiners granted the request of the Towns in full. This ruling confirms our oral ruling.

THE INTERVENOR FUNDING REQUEST

The Towns are host municipalities for the proposed facility, indicating that they "represent a combined population of 15,469 persons in this proceeding, making their full involvement imperative to ensuring that [the Project] does not result in adverse impacts to the people who will be most affected by [its] construction." The Towns maintain that they have limited financial resources and are unaware of any other sources of funding that would facilitate their meaningful participation in the proceeding. Accordingly, they seek a joint \$31,500 award to retain legal and engineering consultants who will assist them during the pre-application review and stipulations process.

More specifically, the Towns would retain the law firm of Patrick M. Snyder, Esq., and the engineering firm of Barton & Loguidice, D.P.C. (Barton). Mr. Snyder has been a practicing attorney for 32 years and is currently the Town Attorney for Homer; he specializes in municipal law, land use law and regulatory matters, and he is also a licensed professional engineer in New York. Barton, meanwhile, employs a staff of environmental scientists, land use planners, hydrogeologists and professional engineers "with extensive experience in site design, stormwater management, landscape architecture, and environmental impact assessment." The firm has assisted several municipalities in their review of solar projects proposed pursuant to Article 10 throughout New York.

In attachments to their funding request, the Towns have provided the resumes of relevant Barton personnel and Mr. Snyder's curriculum vitae. They have also provided proposed contracts with their consultants.

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DISCUSSION

Intervenor Funding Award

Pursuant to PSL § 163(4), the Examiners may direct disbursement of intervenor funds only to municipal and local parties<sup>1</sup> for the purposes of defraying pre-application expenses for expert witnesses, consultants, and administrative and legal fees. The purpose of pre-application intervenor funds is to enable municipal and local parties to effectively contribute to the review of the PSS, thereby encouraging early and effective public involvement. The Examiners must reserve at least 50% of the funds for potential awards to municipalities and must award funds equitably after determining that the funds will be expended to make an effective contribution to the review of the PSS and the development of an adequate scope of the project sponsor's application.<sup>2</sup>

The Towns are municipal parties eligible to receive pre-application intervenor funds because the Project is proposed to be located within them. The funding request of the Towns meets the criteria identified in 16 NYCRR § 1000.10(c). The request sets forth the interests to be represented, the lack of availability of other funds, the amount sought, the names and professional qualifications of the attorney and experts to be employed, a detailed statement of the services to be provided, and copies of contracts or proposed contracts with the attorney and experts.

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<sup>1</sup> "Municipality" is defined to include counties, cities, towns and villages located in this State. PSL § 160(1). "Local parties" are defined as "persons residing in a community who may be affected by the proposed major electric generating facility" and who "individually or collectively" seek intervenor funding. PSL § 160(9).

<sup>2</sup> PSL § 163(4)(b); 16 NYCRR § 1000.10(a)(7).

The participation of the Towns at this stage of the process will ensure representation of their constituents' interests in the development of an adequate scope of the application for the Project. Indeed, we find that their participation during the PSS stage will encourage early and effective public involvement in this proceeding. We therefore confirm our joint award of \$31,500 to the Towns. This amount represents all of the available intervenor funds, which may be applied to both legal and engineering services provided to the Towns, at their discretion, to assist them in their review of the PSS and their participation in the pre-application phase of this proceeding.

The awarded pre-application intervenor funds are to be used only for the purposes approved in this ruling. The Towns, or their attorney, shall provide a copy of this ruling to each professional providing services under this award. The award of intervenor funding under this ruling is granted only to the extent that the legal and engineering services to be provided "make an effective contribution to review of the [PSS], thereby encouraging early and effective public involvement," as required by 16 NYCRR § 1000.10(a)(8). To the extent that the Towns wish to use pre-application intervenor funds to retain experts other than the legal and engineering consultants identified in their application, they must first seek approval by filing another application consistent with 16 NYCRR § 1000.10(c).

The Towns are required to enter into a contract with the Department of Public Service (DPS). Thereafter, DPS will provide the awardees with a form voucher that must be completed and submitted to receive disbursements. No funds will be disbursed until after professional work has been performed and detailed invoices have been submitted for review and have been approved by the Presiding Examiners and the DPS Finance Office.

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Any request for disbursement of funds for professional services must be in compliance with 16 NYCRR § 1000.10(a)(12). Requests for disbursements must sufficiently describe the services provided and explain specifically how such services relate to the review of the PSS and/or will meaningfully contribute to the development of an adequate scope of the application to be submitted by EDF. In general, pre-application intervenor funding cannot be used for matters not directly related to these specific purposes for ancillary municipal matters. For example, intervenor funds may not be used to defray costs incurred in assisting the Towns in updating their local zoning laws, in considering PILOT agreements or to assess the impact of the Project on property values<sup>3</sup> because those activities will not meaningfully contribute to the development of an adequate scope of the application by EDF.

The Towns must also comply with the quarterly reporting requirements set forth in 16 NYCRR § 1000.10(a)(11). The quarterly reports shall be due 15 days following the close of each calendar quarter, with the first quarterly report due 15 days following the close of the second quarter of 2020 (July 15, 2020). These reporting requirements are, in part, intended to enable the Presiding Examiners to provide meaningful oversight of funding awards, to track the progress of work performed with intervenor funds, and to ensure that the funds are used for the purposes for which they were awarded. Failure to comply with these reporting requirements may result in a denial of requested disbursements. If actual expenditures exceed the amount awarded, they will not be reimbursed from the intervenor fund.

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<sup>3</sup> See Case 17-F-0597, High River Energy Center, LLC - Solar Major Electric Siting, Order Granting Interlocutory Relief (issued and effective April 3, 2020), pp. 5-6.

Stipulations

The stipulations consultations may commence now that intervenor funds have been awarded. The stipulations consultation process is subject to the notice and confidentiality requirements under 16 NYCRR § 3.9. EDF is directed to update its stakeholder list to include all host and adjacent landowners. EDF must also file its initial notice of the commencement of the stipulations process and serve it on all persons or entities listed on the party list as well as those persons and entities included on the updated stakeholder list. The initial notice must include a general description of the issues to be discussed during the stipulations process. EDF is required to file an affidavit of service of the notice within seven days of service.

The initial notice of the commencement of the stipulations process must specify that future notices regarding the stipulations process will be served only on (1) persons or entities that have notified EDF of their intent to participate in the stipulations process, and (2) persons or entities listed on the party list for this proceeding.<sup>4</sup>

(SIGNED)

MICHAEL CLARKE

(SIGNED)

ASHLEY MORENO

(SIGNED)

MOLLY McBRIDE

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<sup>4</sup> Persons wishing to be added to the party list should complete and file the form "Notice of Intent to be a Party in an Article 10 Proceeding." This form can be obtained through this [link](#), or by contacting Judge Clarke's and Judge Moreno's assistant, Daniel Cameron, at [daniel.cameron@dps.ny.gov](mailto:daniel.cameron@dps.ny.gov).

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