

LAW OFFICE OF GARY A. ABRAHAM

4939 Conlan Rd.
Great Valley, New York 14741
716-790-6141

gabraham44@eznet.net
www.garyabraham.com

December 27, 2018

Honorable Sean Mullany (Sean.Mullany@dps.ny.gov)
Honorable Richard Sherman (Richard.Sherman@dec.ny.gov)
Administrative Law Judges
State of New York Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 14-F-0485- Application of Lighthouse Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a 201 MW Wind Energy Facility

Motion of Save Ontario Shores, Inc., Requesting a Ruling on Applicant's Astrourfing

Dear Judges Mullany and Sherman:

Please accept this letter as a motion requesting you direct Lighthouse Wind and its parent Apex Clean Energy to stop filing pre-preprinted postcards elicited by astroturfing, or identify any such filings as the product of an astroturfing campaign. SOS expects that by doing so, any weight accorded these flings will be appropriately discounted, for the reasons that follow.

As noted in my December 19, 2018 letter in support of Steve Royce's similar motion, astroturfing is the practice of masking sponsors of a message or organization to create an appearance that the message originates from and is supported by neutral parties, thereby creating the false impression of a legitimate grassroots movement, and is contrary to the public outreach required of Article 10 applicants.

Background

In June 2018 a postcard campaign began in support of the Lighthouse Wind project. SOS asserts that this campaign is an effort to give the impression of a legitimate grassroots movement by neutral parties. It meets the definition of astroturfing.

This is the second time that Apex has been named in an astroturfing complaint. A letter campaign in 2016 was one of several concerns that resulted in the Town of Somerset filing a complaint with the State Attorney General. The astroturfing letters and DPS comments abated following the complaint. The Somerset documents are Case No14-F-0485, Item number 220. Dennis Vacco, in his letter to the New York State Attorney General on March 17, 2016 stated "Astroturfing is by its very

nature deceptive, and as recently as 2013 your Office entered into an Assurance of Discontinuance with 19 companies alleged to have engaged in astroturfing.” (available at <http://www.ag.ny.gov/press-release/ag-schneiderman-announces-agreement-19-companies-stop-writing-fake-online-reviews-and>)

Deceptive communications to DPS expressing support for a proposed project by non-stakeholders, dressed up as stakeholder support, is antithetical to Article 10’s policy to promote public participation and mandate that Article 10 applicants conduct public outreach to increase meaningful involvement. In sponsoring its recent postcard-comment campaign, Apex has conducted such deceptive communications.

Details of the postcard campaign:

Starting on June 16, 2018, the first 17 postcards were submitted by four people and were handwritten. One of these postcard writers who submitted five of these postcards is a lease signer in the Heritage Wind project, a different Apex Clean Energy project but did not acknowledge that fact.

The next month, in July, pre-printed signed postcards began to be submitted. By December 13, 2018, 101 of the exact same preprinted postcards had been submitted. One side of the card includes this text:

Dear New York Siting Board,

I am writing you to express my support for the Lighthouse Wind Project.

Name _____

Address _____ Phone _____

_____ Email _____

The other side of the postcard has the pre-printed address for the Siting Board as well as a symbol that says “Yes”. This symbol is a stylized wind turbine, with portions of the Y appearing to be turbine blades. This symbol has been used by Apex Clean Energy on lawn signs, banners and T-shirts, both locally and nationally. Pictures of the lawn sign, T-shirt, banner and cups bearing the symbol and links to articles by Apex bearing the symbol are attached. Thus, it can be reasonably inferred that submission of the postcards are the actions of Apex’s agents.

Over 100 of these postcards have been filed on DMM as of this writing, and more are being filed each day. The following additional details regarding the 101 pre-printed postcards filed as of December 13 are relevant:

1. **Leaseholders:** 50 postcards, or 49.5%, are from lease holders and family members from either the Lighthouse Wind or Heritage Wind projects. (Only 1 postcard from a lease holder divulged that fact on the card.) These postcards were thus submitted by agents for Apex.

2. **Large number from residents outside project area:** 66 postcards, or 65.3%, are from people who do not live near the project area. Some of these have been submitted from people outside of New York State.
3. **Numbered cards indicating a major campaign:** Several of the cards submitted include a range of numbers handwritten in the corner of the postcard, indicating groups of 10 cards at a time are being distributed. For example, comment #1684 was submitted on December 13, 2018 and has “1,511-1,520” written in the top left corner. Accordingly, we can reasonably anticipate that more of the same postcards will be submitted in near future.
4. **The Apex astroturfing campaign includes the Heritage Wind project:** Recent postcards filed on DMM for the Lighthouse Wind project identify the project being addressed as “Heritage Wind” but are otherwise identical to other filed postcards. This indicates Apex is conducting an astroturfing campaign for another New York project proposal.

The omission of any information about the financial interests of project participants in these postcards creates a sense of project support by the proposed host towns’ residents that does not exist. It gives the appearance that the submissions were made by neutral parties. However, project participants—those who have been paid for signing leases or good neighbor contracts with Apex—have a personal financial interest in filing postcards and in soliciting others to do so on behalf of the project.

Comments to DPS regarding the Lighthouse Wind project are open to residents and non-residents. However, the coordinated push to solicit support from outside of the project area, and from project participants within the area, shows that Apex has been unable, beyond project participants, to show support locally. As previously asserted, project participants are agents of the company, and out-of-area people have submitted postcards based on perceived personal financial interest. These people cannot be said to be stakeholders so much as partners and agents of Apex.

Section 1000.4 of the Article 10 regulations set forth the proper purpose of an applicant’s public involvement activities:

- (a) To ensure throughout the Article 10 process that the Board is fully aware of the concerns of stakeholders and that the Board’s consideration of an application is not delayed, it is the Board’s policy to require applicants to actively seek public participation throughout the planning, pre-application, certification, compliance, and implementation process. It is also the Board’s policy to encourage stakeholders to participate at the earliest opportunity in the review of the applicant’s proposal so that their input can be considered.

Section 1000.4’s emphasis is on the applicant’s duty to reach out to “stakeholders”, “[t]hose persons who may be affected or concerned by any issues within the Board’s jurisdiction relating to the proposed major electric generating facility and any decision being made about it.” 6 NYCRR § 1001.2(an). Apex correctly highlighted the importance of reaching out to actual stakeholders in its summary of Section 1000.4 found in its approved PIP (dated January 15, 2015, at p. 4):

Section 1000.4 of the Article 10 regulations specifies that the Public Involvement Program must include:

- (1) consultation with the affected agencies and other stakeholders;

- (2) pre-application activities to encourage stakeholders to participate at the earliest opportunity;
- (3) activities designed to educate the public as to the specific proposal and the Article 10 review process, including the availability of funding for municipal and local parties;
- (4) the establishment of a website to disseminate information to the public; (5) notifications; and
- (6) activities designed to encourage participation by stakeholders in the certification and compliance process.

In its PIP, (at 6), Apex promised to “continue to research *the area* on the internet and through local media to find groups or individuals that *may have an interest in the Project* so that interested parties in the area have the opportunity to learn more about the Project and share their requests and suggestions.” (emphases added). However, Apex has in reality reached out only to, or principally to “host landowners” and others with a financial interest in the Project, or those who believe they may or could have such a financial interest. *See* PIP, sec. 2.2.3. Apex's “additional outreach activities” to project participants, (*see* PIP, 20-21), have eclipsed the meager effort at mandated outreach its logs indicate it has conducted for non-participant stakeholders.

After four years Apex has been unable to obtain substantial support for the Lighthouse Wind project. Town Board members who oppose the project have been elected through two election cycles. Apex should not be able to do through an astroturfing postcard campaign what it could not do through public involvement – show local support for the project from non-participant stakeholders. It should not be able to seriously prejudice local concerns by misleadingly overshadowing those concerns with a flood of out-of-area and project participant postcard comments for the project.

Conclusion

There is no reason Apex cannot meet with lease holders or good neighbor partners (*i.e.*, project participants) on a regular basis. However, none of those meetings constitute an effort to promote public involvement because none of those persons are stakeholders. If those meetings involved actual stakeholders, Apex would include them in the event logs required to be provided in compliance with its approved Public Involvement Plan.

Similarly, there is no reason Apex’s supporters cannot provide substantive and meaningful comments to the docket (or otherwise). However, the recent postcard campaign has provided comments that are neither. As argued above, they are the product of astroturfing, reaching out to people with a perceived material interest in Apex’s proposed project.

Astroturfing makes it more difficult for the Board to be “fully aware of the concerns of stakeholders.” 6 NYCRR § 1000.4(a). Apex’s postcard astroturfing is an effort to water down substantial and thoughtful comments on local issues submitted by people who are project stakeholders, by filing over a hundred postcards in general support of its project by non-stakeholders.

We request the hearing examiners direct Apex to remove from DMM all postcards displaying

the Apex “Yes” symbol from the recent Apex campaign. Alternatively, the examiners should order Apex to include all such meetings in their PIP event logs, and identify in its logs whether the meeting was primarily or exclusively for project participants. We further request the Hearing Examiners to discontinue its astroturfing campaign, and to direct its project participants to disclose their participant status in future filings in this matter.

Respectfully submitted,

/s/

Gary A. Abraham

Attorney for Save Ontario Shores, Inc.

cc: parties via email

ATTACHMENTS

Uses of the Apex Clean Energy, Inc. wind turbine symbol locally and across the country





Photos by Tom Rivers: Taylor Quarles, project manager for Lighthouse Wind in Orleans and Niagara counties, speaks to about 170 people on Tuesday evening during a dinner at The Gallagher in Medina.

<https://orleanshub.com/apex-says-2020-is-target-date-for-construction-of-turbine-projects-in-orleans/>



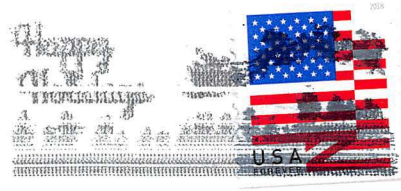
A display at the 2018 Morgan County Fair in Illinois. According to a recent independent phone survey, the majority of Morgan County residents support Apex's Lincoln Land Wind project, which is in development in the area. The survey suggests that Morgan County residents support the project at a rate of almost four to one, reflecting the results of other recent U.S. polls that overwhelmingly favor renewable energy.

<https://www.apexcleanenergy.com/article/consumers-have-spoken-they-choose-renewable-energy/>

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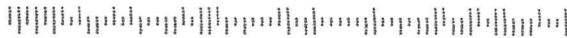
BUFFALO NY 142

2018 PMS 1



2018 DEC 13 PM 2:51

To:
New York Siting Board
Dept. of Public Service
3 Empire State Plaza
Albany, NY 12223



Dear New York Siting Board,

I am writing you to express my support for
the Lighthouse Wind Project.

Name SAMMI LUFFMAN (O'GRADY)
Address P.O. Box 6171 Phone _____
ST. MARY'S GEORGIA Email _____