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Town of Eaton
Town Board
35 Cedar Street
P.O. Box 66
Morrisville, NY 13408

Re: *Hoffman Falls Wind Project, Comments on Proposed Wind Law*

Dear Town Board,

Hoffman Falls LLC, a subsidiary of Liberty Renewables, Inc. ("Applicant") is proposing to construct and operate the Hoffman Falls Wind Project ("Facility" or "Project") an approximately 100-megawatt ("MW") wind powered electric generating facility in the Towns of Fenner, Nelson, Eaton, and Smithfield in Madison, County, New York. The proposed Facility will include the installation and operation of up to 24 wind turbines together with the associated electrical collection lines (below ground), access roads, meteorological tower, aircraft detection light systems ("ADLS"), operation and maintenance ("O&M") facility, concrete batch plant, and collector substation. The Applicant will also construct a new point of interconnect ("POI") substation and 115-kV high-voltage loop-in and loop-out transmission lines ("Interconnection Facilities") adjacent to its collector substation. Upon completion, the ownership of these Interconnection Facilities will be transferred to National Grid.

As we understand, the Town Board is currently considering repealing its current Commercial Wind Energy Facilities Regulations, which it passed in 2011 (Local Law #1 of 2011) and replacing that law with a new "Local Law Amending Chapter 120 of the Town of Eaton Code to Regulate Commercial Wind Energy Facilities within the Town of Eaton" (proposed Local Law #4 of 2023). We have reviewed the Town of Eaton's proposed Commercial Wind Energy Facilities

Law (hereinafter referred to as the proposed law) and would like to offer the following comments. In general, we support the Town's efforts, and want to encourage the Town to propose a reasonable local law which balances local landowners' rights to use their land for wind energy development with limited restrictions intended to protect residents and properties not participating in a wind project. With that objective in mind, there are a few areas where we believe revisions would improve the Town's proposal in terms of clarity, consistency with New York State standards and practices, and feasibility of implementation for large-scale wind projects.

It is important that the wind siting standards imposed in the new law consider the impact of these standards on project siting throughout the Town as well as the context of the local law considering the state siting and permitting authority under Section 94-c of the Executive Law ("94-c Process"). Standards that unnecessarily restrict developable areas on parcels within the Town may create the unintended consequence of a ban on large scale (utility) wind projects. For example, unnecessarily large setbacks severely limit the availability of land in the Town where wind projects can be built.

The Hoffman Falls Wind Project will be submitting its permit application to the Office of Renewable Energy Siting ("ORES") pursuant to Section 94-c. ORES may elect not to apply, in whole or in part, any local law or ordinance which would otherwise be applicable, if as applied to the proposed facility, the law is unreasonably burdensome in view of the Climate Leadership and Community Protection Act ("CLCPA") targets and environmental benefits of the proposed facility or are inconsistent with the requirements of 19 NYCRR § 900.6, the State's uniform standards and conditions for renewable energy projects. Therefore, local laws and ordinances must be reasonable and not unnecessarily restrict development of wind facilities, which are essential to the State meeting its CLCPA goals. We encourage the Town, where possible, to adopt standards that are consistent with the standards under Section 94-c. Aligning with the State standards reduces confusion during the application and siting process, minimizes the potential for disputes, and allows the Town to focus on local issues rather than spending resources developing standards that already exist at the State level.

Below, the Applicant has identified substantive provisions of the proposed law which if enacted as currently drafted would require a waiver from ORES, as the provisions would be unreasonably burdensome on the Facility. The Applicant has also offered suggestions on how the proposed law could be modified to address the Town's concerns while still encouraging wind energy development, like the Hoffman Falls Wind Project.

Comments/Suggestions

Property Line Setbacks

Section 120-23.15(G)(1)(a) of the proposed law states:

“No WECS shall be allowed within the following setbacks. If more than one setback applies, the most restrictive setback shall prevail.

- (a) From property lines. A minimum distance of 2.0 times the Total Height of turbine (including blades) from any non-participant’s property line, excluding adjoining lot lines of the project participants.
- (b) From public road and highways. A minimum distance of 2.0 times the Total Height of turbine (including blades), from any public road and highway.”

These setbacks are more restrictive than the setbacks contained in the 94-c regulations, which require a setback of 1.1 times to non-participating property lines and public roads and is also more restrictive than setbacks applied to other wind energy facilities in the State which have been permitted and are operating safely. Siting constraints such as landowner participation, resource availability, waking effects, sound and shadow flicker minimization, presence of wetlands, presence of cultural resources, and parcel shape and location will require that turbines are sited closer than 2.0 times the turbine height to non-participating parcel boundaries and public roads. In total these constraints constrict the available footprint within which a turbine may be placed on any given parcel, and a setback of 2.0 times would severally limit where turbines could be placed in the Town, potentially even eliminating turbines from the Town completely. We therefore encourage the Town to consider adopting a more reasonable setback of 1.1 times to non-participating property lines and public roads in line with the requirements of 94-c. If not, the Applicant will need to seek a waiver of these provisions from ORES.

Construction Hours

Section 120-23.15 (D)(16) of the proposed law states “Construction of the WECS shall be limited to the hours of 7 AM to 7 PM, Monday through Friday.”

This restriction precludes construction on weekends and does not contain any provisions for exceptions to these restrictions, which are necessary especially for wind turbine erection activities. Therefore, the Applicant will need to seek a waiver of this provision if enacted by the Town Board. These restrictions are unreasonably burdensome for wind projects as it will delay construction, cause construction of the Facility to disrupt the community for longer and may ultimately impact the Facility’s ability to provide energy in a timely manner to the energy consumers of New York. It is typical in the industry to conduct construction work at turbine sites during early morning and night hours to take advantage of cooler temperatures and low wind

speeds. The low wind speeds are especially important when performing wind turbine erection activities (i.e., tower section, nacelle/hub, and blade installation) because, due to safety concerns, tower sections and blades cannot be installed during high wind conditions. In addition, pouring concrete is dependent on temperature, so this activity could be shifted to early morning depending on forecasted temperatures. As required under Section 94-c (19 NYCRR § 900-6.4(a)), if such activities must occur outside the construction hours, the Applicant would notify the New York State Department of Public Service (NYS DPS), ORES, affected landowners, and the town(s) at least 24 hours in advance of such activities. In addition, turbine deliveries must be coordinated with NYS DOT and State Police, and delivery of turbines is likely to occur in the late afternoon, making the need to work past 7 pm of utmost importance. We therefore encourage the Town to consider adopting the construction hours consistent with 94-c which requires:

a) *Construction Hours.* Construction and routine maintenance activities on the facility shall be limited to 7 a.m. to 8 p.m. Monday through Saturday and 8 a.m. to 8 p.m. on Sunday and national holidays, with the exception of construction and delivery activities, which may occur during extended hours beyond this schedule on an as-needed basis.

1. Construction work hour limits apply to facility construction, maintenance, and to construction-related activities, including maintenance and repairs of construction equipment at outdoor locations, large vehicles idling for extended periods at roadside locations, and related disturbances. This condition shall not apply to vehicles used for transporting construction or maintenance workers, small equipment, and tools used at the facility site for construction or maintenance activities.

2. If, due to safety or continuous operation requirements, construction activities are required to occur beyond the allowable work hours, the permittee shall notify the NYSDPS, ORES, affected landowners and the municipalities. Such notice shall be given at least twenty-four (24) hours in advance, unless such construction activities are required to address emergency situations threatening personal injury, property, or severe adverse environmental impact that arise less than twenty-four (24) hours in advance. In such cases, as much advance notice as is practical shall be provided.

Decommissioning

Section 120-23.15 (I)(3)(d) of the proposed law states:

“The [decommissioning] plan shall include provisions for financial security to secure completion of decommissioning (removal of non-functional towers and appurtenant facilities) and site restoration. The applicant, or successors, shall continuously maintain a fund payable to the Town of Eaton, in a form approved by the Town Attorney, and in an

amount to be determined by the Town Board for the period of the life of the facility. This fund shall be no less than 150% of the cost of full decommissioning (including salvage value) and restoration in the form of cash on deposit with the Town or cash held in escrow in a New York licensed-financial institution, pursuant to an agreement acceptable to the Town. All decommissioning funding requirements shall be met prior to commencement of construction.”

As part of the 94-c process, the Applicant will prepare a Decommissioning and Site Restoration Plan for site restoration in accordance with 19 NYCRR § 900-2.24 and § 900-6.6, which will include plans for removal of turbines in the event of abandonment and will include a net decommissioning and site restoration estimate to be allocated between the Towns based on the estimated costs associated with removal and restoration of the facilities within each Town. With respect to the decommissioning amount, the Town’s requirement for decommissioning security exceeds the ORES requirement for decommissioning by 35%, this would cause the decommissioning estimate to overestimate costs, causing additional costs to the Facility in the form of the financial security, which creates a financial disincentive with little to no actual benefit to the community. ORES has determined that “a 15% contingency is reasonable based on careful consideration of the best practices for siting renewable energy projects.”¹ There is no basis to require more for this Project. In addition, this requirement does not allow an offset for salvage value, however it is common industry practice to offset decommissioning with salvage value, as history shows that scrap metal always maintains some value. Excluding salvage value would therefore also result in an overestimate of decommissioning costs. As such the Applicant would need to seek a waiver of these provisions, and suggest instead that the Town could adopt a 15% contingency and allow for salvage value as permitted under 94-c.

Made in America Requirements

Section 120-23.15 (S) of the proposed law states: “All WECS shall be required to utilize components and materials made and manufactured in the United States of America.”

The proposed local law does not include a definition of what components must be made in America, and it is therefore assumed that all components of the wind turbine including but not limited to the turbine tower, turbine foundation, nacelle, hub, rotor blades, transformer, power and braking systems, and all electrical equipment, must utilize parts made in America. The wind turbine industry relies on a global supply chain for components such as wind turbine blades, generators, and control systems. While some components may be manufactured in the United States, many of these components are specialized and require advanced manufacturing that is only available outside of the United States. As of 2022 only one of the top 10 wind turbine manufacturers in the world was headquartered in the United States, the other nine are located throughout Europe and China. Even GE, which is headquartered in Boston, relies on parts manufactured in other countries. As such the Applicant would need to seek a waiver of this

¹ ORES Assessment of Public Comments on Title 19 of NYCRR Part 900 at page 102.

provision. The Applicant suggest a more reasonable and clear provision would be to require that applicants use commercially reasonable efforts to source and procure components, materials, equipment, spare parts and other items necessary to construct the Facility from manufacturing facilities located in New York State and utilize materials and equipment that uses iron and steel produced by steel mills within the United States. This is what NYSERDA requires for power contracts and would still encourage applicants to source materials from New York and the United States if commercially reasonable and available.

Miscellaneous Comments

The Applicant notes that there are also multiple provisions in the proposed local law for various financial securities (i.e., SWPPP security and road repair bond) and fees (i.e., application and permit fees). These provisions are procedural and supplanted by 94-c. However, the Applicant would note for the Town that pursuant to 19 NYCRR § 900-5, the Applicant will submit with the 94-c Application \$1,000 dollars for each MW of capacity for local agencies and potential community intervenors. Any local agency or potential community intervenor can submit a request to the Office for funding within thirty (30) days of the date of the application filing. By regulation, 75% of the local agency account funds shall be reserved for local agencies such as the Town. The Applicant will also work with the Town to enter into a reasonable Road Use Agreement to address the use and repair of Town Roads as a result of construction of the Facility.

As noted above, we appreciate the Town’s consideration of these comments and the proposed edits to the law and look forward to working with the Town to develop siting criteria which addresses both the Town’s interest in promoting reasonable siting constraints as well as encouraging a potentially economically beneficial use in the Town.

Sincerely,

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Young/Sommer LLC
Attorneys for Liberty Renewables, Inc.