

**Steuben County Industrial Development Agency
7234 Route 54N, P.O. Box 393, Bath, NY 14810**

**Minutes of the Regular Meeting
January 24, 2008**

- I. Call to Order:** The Regular Meeting of the Steuben County Industrial Development Agency (SCIDA) was called to order at 12:00 p.m. by the Chairman, Mike Doyle at their offices at 7234 Route 54N, Bath, NY

Present:	Mike Doyle	Chairman
	Philip Roche	Vice Chairman
	Rick Weakland	Member
	Doug Malone	Member
	John Sirianni	Member
	Mike Nisbet	Member
	George Connors	Secretary
Also Present:	James Sherron	Exec. Director SCIDA
	Kathy Warren	Treasurer/Admin. Asst.
	Russ Gaenzle	Harris Beach
	Frank Pavia	Harris Beach
	Rick VenVertloh	LaBella Associates
	Jim Griffin	Consultant
	Chris Swartley	UPC Wind Management
	Lawrence Mott	UPC Wind Management
	John Hood	Nixon Peabody
	Paul Reichel	Windfarm Prattsburgh
	Mary Perham	The Leader
	Numerous members of the public	

- II. Secretary's Report.** A motion to approve the December 2007 Steuben County Industrial Development Agency's Regular Meeting minutes was made by Doug Malone, seconded by Mike Nisbet. All in favor. Approved.

- III. Treasurer's Report.** The December 2007 financial statements were presented by Treasurer, Kathy Warren. A motion was made by Phil Roche to approve the Treasurer's Report for December 2007, seconded by George Connors. All in favor. Approved.

IV. NEW BUSINESS

- A. Update on Hiring Practices by UPC – Cohocton Construction Labor.** Lawrence Mott from UPC distributed a letter to the SCIDA Board updating the local hiring practices for the Cohocton wind projects. Lawrence indicated that he is working with the local unions for the skilled labor that is needed for the project. He indicated that currently they are at 56% local hires as of January 17th, 2008

with 209 total workers and 117 being local. He stated that he had hoped to be at 60% by the end of January. The reason that they are not is that the project is behind schedule. Because they are behind more work will carry into May, June and July for the locals.

Lawrence is willing to backup his data. George Connors recommended that Lawrence provide the backup to the data by zip codes as suggested protecting people's privacy.

B. Comments on Cohocton Windfarm projects. Chris Swartley from UPC addressed the four main items that came up at the public hearing last week.

1. In UPC's application to SCIDA for financial assistance why was the \$4.4 million in PILOT revenues and the PILOT number significantly different? The reason is that at the time of the submission of the application to SCIDA it appeared the New York Legislature had passed a law extending Empire Zone benefits to renewable generation. With Empire Zone projects you submit with full taxes and the project is reimbursed for those taxes. Subsequent to that NYS made it clear that they support renewable energy, in particular wind power, but they are not going to put wind projects into the Empire Zone. At that point the original proposed PILOT was once again considered.

2. There was a question as to why the PILOT in Steuben County is lower than other counties. A number of \$8,000 per mw was mentioned as part of that comment. That is currently a general market number in New York State that renewable energy generators are paying in tax revenues. Through the PILOT, the hosting agreement and the Historical Society UPC is paying in excess of \$8,000 per megawatt. They are at or above what is considered market in New York.

3. A question was raised as to the ongoing litigation and how does it affect the project? UPC cannot comment specifically on pending litigation but indicated that UPC's commitment to continue with this project and continue with construction is as strong as ever.

4. Do the Clipper wind turbines have defects? Are they capable of performing? Are they going to cause trouble and therefore not generate the revenue that is being sought? Was there any information that UPC may have been aware of in the fall of 2007 or earlier that should have been brought forth in a public setting? Lawrence Mott indicated that it is very clear that the Clipper Wind turbines are an early market entry and that UPC's investors are very exhaustive in their work to insure that they are not buying a lemon. This summer it was discovered that there was a manufacturing defect in the gear boxes and it was addressed by Clipper. It was reviewed by several third parties, a national lab and UPC's independent engineers. It was evaluated on the Steel Wind site in Lackawanna and another site. The Cohocton machines were retrofitted and were tested in their factory in Cedar Rapids and were certified before they were

shipped from Cedar Rapids to Cohocton. Their gear boxes are not having any of those issues. There is on going testing. The gear boxes are up on the national renewable energy lab dynamometers. This is an intense item that is getting a lot of scrutiny and UPC is very comfortable with Clipper's attack and where UPC stands on having reliable, operating machines.

Phil Roche asked SCIDA counsel, Russ Gaenzle, if commencement of the project was proper prior to the approval of SCIDA benefits. Is the pending litigation something that the SCIDA Board should consider before approving financial assistance to the project? Russ indicated that if any applicant wants to start their project prior to SCIDA Board approval of financial assistance it is at their discretion. They have to comply with any other laws that may control their particular project but that is at their risk. With these projects we have adopted Resolutions dating back to 2003 which probably gave them some comfort that this is the type of project that the Board would consider providing financial assistance to. There is no legal requirement that the Final Inducement be in hand before they actual start constructing the project, be it this project or any other project. As far as the litigation component, the issues that are out there are not directly related to our involvement with the projects or financial assistance package that we are proposing to provide. In his opinion he would recommend to the Board at this point it should not bear upon the decision whether to go forward.

C. CANANDAIGUA POWER PARTNERS & CANANDAIGUA POWER PARTNERS II – FINAL RESOLUTION. Russ Gaenzle, SCIDA counsel, presented to the Board the Final Resolution that would give the project approval to close, the Payment-In-Lieu-of-Taxes Agreement, sales tax exemption and if needed a mortgage recording tax exemption. He indicated that in the Resolution you adopt the Finding Statement which is identical to the Town's Finding Statement that was adopted last July. It would authorize the execution of the Lease or related document Leaseback, PILOT or any other documents that would be required in order to close.

Frank Pavia, Environmental Counsel from Harris Beach, stated that the Finding Statement ratifies the Finding Statement that the Town Planning Board adopted as Lead Agency under SEQRA. It also sets forth additional mitigation measures that as an involved agency the Board has the authority to adopt as well. Under the SEQRA regulations your Finding Statement as an involved agency can be adopted simultaneous to your Final Resolution. SCIDA was not the lead agency in the SEQRA process. Frank indicated that as an involved agency under the SEQRA regulations you are still required to adopt a Finding Statement. Under the SEQRA regulations there is no specific time frame as associated with the Lead Agency's requirement. The regulations specifically say that it can be adopted simultaneous to the involved agencies action.

Phil asked Jim Sherron if there was understanding that there would be a local agreement with a Host Agreement with the town. Is that in place? Jim indicated that it was in place and that he thought that some of the funds had been distributed.

Phil Roche made a motion to accept the Final Resolution as presented, seconded by George Connors. Role call was taken:

George Connors	Yea
John Sirianni	Yes

Doug Malone asked if this was to approve the PILOT? Russ indicated that it does approve the PILOT and the requirements that were set forth under the last meeting which is if there were any SID's, credits on future PILOT payments they would get the agreement of the town board. Doug indicated that he would like the opportunity to talk with the Board prior to approving the PILOT on some of the items that have come to the Board over the last week. Russ asked the nature of the discussion before the Board can authorize going into executive session. His concerns were as to the position of the Town from the letter received from the town and the support of the communities SCIDA is representing. Russ indicated that it could be discussed in open session. It was indicated by several Board members that there were potential threats of litigation in the material the Board received prior to the Board meeting. Russ indicated that if it involves the potential or treat of litigation it is a factor that will allow the Board to go into executive session. The vote was tabled at this time

D & E. WINDFARM PRATTSBURGH – Legal Issues & SEQRA. Russ indicated that this is similar approval Resolution for the Windfarm Prattsburgh project. The Resolution was distributed to the Board. Russ indicated that the Board adopted a Finding Statement in May of 2007. The required public hearing has been held and the deviation process has been completed. We are now prepared to close on the Lease transaction including the PILOT.

Russ indicated that Rick VenVertloh from LaBella Associates has a couple points he wanted to discuss with the Board on some minor issues and conditions that will be resolved and made subject to this Resolution before a closing takes place.

Rick VenVertloh indicated that in May 2007 the Board issued their Finding Statement. The work that LaBella has been doing since then has been on SCIDA's behalf to oversee the environmental compliance components that were built into the environmental record. There were a couple of key obligations that LaBella has been looking at that are relevant to discuss today. One was the establishment of an environmental monitor position for the project. That position has been established. The IDA has contracted with LaBella Associates to handle that requirement. That position will be to respond to the IDA and assure the Board and to review the project and inform the Board that the compliance items

in the environmental record are actually being taken care of. The contract has been reviewed by Harris Beach and is now executed.

Construction drawings and review of setbacks. Rick indicated that LaBella has received construction drawings for the project and included in the construction drawings is a table which identifies all the setbacks for the project. They have reviewed those construction drawings and the table. They find that there are some setbacks that can't be checked because the geographic area shown on the constructions drawings isn't large enough. The table is there and stamped by a professional engineer but they are continuing to review the setback issues. There are still a few they want to check.

There was a requirement for UPC to notify nonparticipating adjacent landowners. The purpose of that was to notify them that there was a Finding Statement in place, that the environmental record was complete and that there was a contact person within the town, which is Harold McConnell that complaints could be lodged with. That process has been essentially completed, however, upon checking the mailing list it was discovered that there were a few properties that still need to be notified. Although the process is mostly complete there are still a few properties that need to be notified. Rick indicated that there are five properties. Frank indicated that there are five letters that are being mailed today of which he has copies.

There was a requirement for a decommissioning plan to be in place. Russ will address. Rick indicated that the requirements for that plan are essentially complied with. Russ indicated that one of the requirements under the EIS was that there be put in place some sort of credit facility to pay for decommissioning when the turbines are at the end of its useful life. He indicated in working with Paul Reichel and Kevin Bernstein we have seen the letter of credit however it hasn't been executed yet. That will be a condition for Harris Beach to close. They have assured us that who the provider will be that is an investment grade AAA financial institution from down state. He didn't recall the name. One of the concerns raised was how do we know in twenty (20) years from now that this financial institution will still be around and liquid if that letter of credit needs to be drawn on. The letter of credit has what's called an evergreen provision that means that it has five year periods where it can terminate. Unless it is terminated it continues to extend. There is also the requirement that if for whatever reason it is terminated or the financial institution is downgraded below a certain level that the company provides a new letter of credit with a higher rated bank. That will be a condition to close that we actually see that signed standby letter of credit. Phil asked if there was some provision in there for an increase? Frank indicated that it is to be evaluated every five (5) years the salvage value and the estimated decommissioning costs of the project. There is a requirement that if it does increase that the credit facility will increase to cover that additional amount. Russ indicated that the industry standard is that you will not have a letter of credit for any type of transaction for a twenty (20) year period. They are

not issued. Frank indicated that our Finding Statement has that requirement set forth in it. Doug asked what the terms of the draw were. He indicated that our real risk is that if something happens and the company is longer viable. Russ indicated that if the company doesn't pay the letter of credit will require the liquidity provider to be drawn upon to pay whatever the decommissioning costs are. The terms are going to provide if the company does not pay the decommissioning costs the bank is required to pay those costs. There is no out. Doug asked about the notification of the bank not reissuing. Russ indicated that will be in the document as well. There will be conditions in the LLC that if they terminate prior to the five (5) year period they have to give 30 or 60 days notice during which period the company will be required to get a substitute letter of credit. Doug asked that at the end of the five (5) year period if the bank decides not to renew does the IDA and counsel get 30 – 60 day notice? Russ indicated that he can make sure that is in the documents. Doug indicated that in that time period we can draw on the line and protect our interest until a new letter is in place.

Rick VenVertloh indicated that there was a requirement to be a final cultural resource mitigation plan in place. There is now a plan that has been established that has been negotiated with the town, the Army Corps of Engineers and the Office of Parks, Recreation and Historic Preservation. There is a memorandum of agreement that needs to be executed. All of those provisions are in place.

Mike Nisbet asked what the purpose of the adjacent landowner notification is and what the land owners' rights are once notified, if any. Rick indicated that it was more of a courtesy for the town and for the people that are affected by the project. Frank indicated that it was a courtesy to provide the nonparticipating landowners the notice that there was an Environmental Impact Statement and there was a SEQRA review completed and also that there was within a certain number of days construction activities occurring. It was a courtesy notice to them and that there was a complaint resolution process. Rick indicated that this is a town without zoning. Normally there would be a special use permit and site plan review process that would provide for some level of community input. In this case that the time of the Finding Statement there wasn't.

Phil asked if the checklist would continually be monitored. Rick indicated that there are many more items that are more related to construction as it is written in the Finding Statement. These are what Rick considered more of the key obligations that Harris Beach, LaBella and Jim felt were important to report the status of today with the Boards considering a Final Resolution on the project. Phil stated that the SEQRA approval was contingent upon the company meeting the checklist items. Phil asked that regardless of what the Board does today, approve or not approve the Final Resolution, is the company is still required to go forward with that checklist? Rick indicated that was correct. Frank indicated that LaBella's role as environmental monitoring is a series of conditions and requirements that the project sponsor is going to need to adhere to both now and

some that need to occur before closing, some that will occur during construction and some that will occur after construction. LaBella as the environmental monitor will work and report to Jim while overseeing the process. The Finding Statement requires a significant number of conditions and requirements that you need to meet from this point going forward. Frank indicated that with respect to the setback instruction information the project sponsor has committed to getting the additional information analysis to LaBella as it will be a condition prior to closing. Russ indicated that the resolution is set up that there is a catch all provision that will require satisfaction of such other conditions and terms that you impose upon the project sponsor before you close that he will memorialize into the Resolution as adopted. Frank indicated that with respect to the historic and cultural mitigation the Corps of Engineers and OPRHP have signed off to this agreement and it is just a matter of getting the agencies to sign it. It will be a condition to prior to closing.

Phil asked if LaBella or Harris Beach saw anything in the checklist that is a deal breaker or they don't think will get resolved? Rick indicated that he did not. At this point the project sponsor has substantially met the obligations.

F. FINAL RESOLUTION – WINDFARM PRATTSBURGH. Phil made a motion to accept the Final Resolution, seconded by John Sirianni. Role call was requested by counsel. Doug stated that due to the pending letters received from Prattsburgh he asked that the vote be tabled until the Board comes out of Executive Session. Russ indicated that if you want to go into Executive Session to discuss pending litigation that can be done and the Board will have to come out of Executive Session before the Resolutions can be considered.

VI. OTHER BUSINESS

A. CORNING INC. SULLIVAN PARK EXPANSION – EXTENSION OF SALES TAX EXEMPTION LETTER. Jim Sherron indicated that we have had a requested from Corning for the extension of their sales tax exemption letter on the Sullivan Park Expansion project for one year to December 31, 2008. Rick Weakland indicated it was for the renovation portion of the project not the new construction portion of the project. Russ indicated that technically the Board does not need to make a formal approval. The sales tax exemption letters are set up that if the project goes beyond that which it originally anticipated the entity can advise Jim of that fact and simply provide them with the sales tax exemption letter. When time permits we like to come to the Board to make sure they are aware of what is happening.

VII. Executive Session. A motion was made by John Sirianni to enter into executive session under the Public Officers Law – Article 7 Section 105, paragraph d at 12:40 p.m., seconded by George Connors. All in favor. Approved.

Various projects were discussed in executive session but the Board took no action. Phil Roche made a motion to reconvene the Agency meeting at 1:10 p.m., seconded by George Connors. All in favor. Approved.

In open session Russ Gaenzle indicated that there was no discussion in Executive Session on the PILOT Agreement or any other financial assistance that has been discussed over the past months and years.

Jim Sherron indicated that the IDA commenced discussions over three (3) years ago with a PILOT number on wind farm companies. Currently there are seven (7) wind farms that are projected in the County. Jim indicated that he has tried to keep all the PILOTs universal. He did some research relative to what the state was paying on average for wind power. Some of the projects were being charged by the tower, some by megawatts that they were rated at. We took an average and it came to approximately \$5,000 per megawatt. At that point we looked at around \$5,300 per megawatt. That was the level that we were looking at that time. We made a commitment to negotiate faithfully on that basis. In addition to that we put a 3% escalator on it which brought it to \$8,200 per megawatt at the twentieth year. That is how that number came about. It was an average that was taken throughout the state at the time. Doug asked if the towns and jurisdictions were agreeable to those numbers. Jim indicated that the formal PILOT still hasn't been accepted but those were the numbers that were being discussed. We were notified by the towns that they were satisfied and that we should approve the financial assistance for the project and we have the resolutions from the town to do so.

Phil Roche made a motion to approve the Final Resolution for the Canandaigua Power Partners project and the Canandaigua Powers Partners II project, seconded by George Connors. Role call as follows:

George Connors	yea
Michael Doyle	yea
Doug Malone	yea
Rick Weakland	yea
Phil Roche	yea
Mike Nisbet	yea
John Sirianni	yea

Russ Gaenzle indicated that the Windfarm Prattsburgh Resolution will contain the conditions that Rick VenVertloh spoke of earlier, the letter of credit and the other minor issues on the SEQRA process prior to closing. Phil indicated SCIDA was Lead Agency on this project. Phil Roche made the motion to approve the Final Resolution as clarified by counsel, seconded by John Sirianni. Role call as follows:

George Connors	yea
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Michael Doyle	yea
Doug Malone	yea
Rick Weakland	yea
Phil Roche	yea
Mike Nisbet	yea
John Sirianni	yea

VIII. Adjournment. With no further business to discuss, a motion was made by Phil Roche to adjourn the meeting and seconded by George Connors. All in favor. Approved.

Meeting was adjourned at 1:15 p.m.

Respectfully submitted,

George Connors
Secretary