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**VIA FIRST CLASS MAIL**

Attorney General Eric Schneiderman  
New York State Attorney General  
120 Broadway, 25<sup>th</sup> Floor  
New York, New York 10271

Re: Potentially Illegal Deceptive Acts and Practices Engaged in by Apex  
Clean Energy

Dear Attorney General Schneiderman:

I hope this letter finds you well. I represent the Town of Somerset in Niagara County ("Somerset" or "the Town") with regard to the Lighthouse Wind project ("the Project") proposed by Lighthouse Wind LLC and Apex Clean Energy (collectively "Apex"). As you may know there has been a great deal of public interest and opposition to the Project. In a letter dated February 8, 2016, your Assistant Attorney General, Judith Malkin, transmitted to attorneys for Apex a proposed revised Code of Conduct Agreement ("Ethics Code"). We have recently become aware that Apex has signed the Ethics Code. We view this as a positive development and are grateful that you and your Office have devoted substantial time and energy to preventing conflicts of interest. However, I am writing today to provide you with observations regarding deeply concerning conduct engaged in by Apex which runs contrary to the spirit and intent of the Ethics Code and very well may violate New York State Law. Somerset is concerned that Apex has engaged in fraudulent and deceptive business practices, including deceptive public relations strategies, illegal lobbying, and the development of false grassroots or "astroturf" support. Such conduct can have a devastating impact on community relations, turning neighbor against neighbor and negatively impacting the quality of life for communities as a whole. The deceptive lobbying and public relations strategies employed by Apex may also improperly influence decision makers at both the local and state level.

Described herein are numerous actions taken by Apex that we believe are deceptive and provide justification for an investigation by your Office. The conduct of Apex described below likely violates General Business Law § 349(a), which states, "[d]eceptive acts or practices in the conduct of any business . . . in this state are hereby declared unlawful." Based on the conduct described in this letter, Somerset formally requests you open an investigation into the deceptive acts and practices described below.



## I. Evidence of Unregistered Lobbying

Somerset believes Apex has retained the Washington D.C. firm Five Corners Strategies to influence state and local government decisions regarding the Project. On its website, Five Corners Strategies describes itself as “a corporate grassroots public affairs firm that identifies and mobilizes our clients’ supporters to **influence legislative decisions**, land use approvals, and ballot measure campaigns.” <http://fivecornersstrategies.com/about/> (emphasis supplied). Somerset believes lobbyists from Five Corners Strategies have attended multiple Town Board meetings on behalf of Apex in an attempt to influence Somerset officials on multiple issues regarding the Project. Somerset is currently unaware of what additional lobbying efforts have been undertaken by Five Corners Strategies on behalf of Apex. However, Somerset has confirmed that Five Corners Strategies is not a registered lobbyist in New York.


The following is only one example of Five Corners Strategies' and Apex's deceptive lobbying. At a recent Somerset Town Board Meeting, two men who identified themselves as "Bo" and "Danny" made statements in support of the Project. Bo and Danny were dressed in workman's clothes and claimed to be representing residents who could not be present. They then read supportive letters purportedly drafted by local residents into the meeting record. After the meeting Town Officials became aware that Bo and Danny were not residents, but were instead paid employees of Five Corners Strategies. At no point did Bo and Danny disclose that they were paid agents of Apex, or that the opinions they shared were the opinions of Apex, not local residents. This deceptive conduct was likely intended to influence both public opinion and the opinion of Town officials. It can only be considered fraudulent and deceptive, and likely violated General Business Law §349.

In addition, Apex may also be engaging labor unions to provide “boots on the ground” in support of Apex's position. **Exhibit 1** is a letter from Apex's Development Manager thanking a union for its support of the Project and attendance at public hearings. Based on the reports of Somerset public officials, union members from outside the area have recently begun attending public meetings, and have engaged in certain actions apparently designed to suppress public opposition to this Project. To the extent union members operating on behalf of Apex are attempting to influence the decisions of public officials, such action is likely a further example of unregistered lobbying.

## II. Evidence of “Astroturfing” and other Potentially Deceptive Practices

Your Office has recently made it a priority to investigate and penalize companies that engage in astroturfing. Stated broadly, astroturfing is the practice of masking the sponsors of a message or organization to make it appear as though the message originates from and is supported by neutral third parties (in other words, astroturfing creates the false impression of a legitimate grassroots movement). 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.<sup>1</sup>

<sup>1</sup> A.G. Schneiderman Announces Agreement With 19 Companies to Stop Writing Fake Online Reviews and Pay More than \$350,000 in Fines, Sept. 23, 2013 (available at <http://www.ag.ny.gov/press-release/ag-schneiderman-announces-agreement-19-companies-stop-writing-fake-online-reviews-and>).



The Town believes Apex may have engaged in astroturfing by flooding the New York State Department of Public Service (“DPS”) public comment website with form letters purportedly drafted by neutral third parties and showing public support for the Project. Specifically, Apex may have engaged in astroturfing by (1) concealing the true author of letters in support of the project; and (2) failing to disclose whether the signers of those letters have a personal financial interest in the Project. The false impression of authentic grassroots support created by these alleged actions is likely intended to influence public opinion. The alleged astroturfing may also be intended to influence the actions of local officials, the Public Service Commission, and the Article X siting board. In reality, 60 to 70% of the local community is opposed to the Lighthouse Wind Project. **Exhibit 2** is a Town of Yates press release and Town of Somerset Press Release reporting the outcome of public surveys showing strong opposition to the project. In effect, Apex may have attempted to overcome the undisputed strong public opposition by creating the illusion of grassroots support by neutral third parties where no such support exists.

The letters and comments at issue were posted on the official State website for the Lighthouse Wind Project.<sup>2</sup> A few samples of suspicious letters are enclosed here as **Exhibit 3**. The letters are typed in similar font and copy the same public officials. On all letters the name and address of the person submitting the letter is hand written, whereas the rest of the letter is typed. Some signatures bear an unsettling resemblance to others, and an identical hand-written “(continued)” is present on the bottom of the first page of each letter. The letters do not contain any disclosure regarding the true author of the letter, do not disclose who compiled and mailed the letter, and do not disclose whether the purported signer of the letter has a financial interest in the success of the Project. Although the Town does not know the true author of the form letters, Apex provides letter templates in at least two places on its own website.<sup>3</sup> See **Exhibit 4**. **Exhibit 5** is a partial list of filed “public comments” that may have been generated by Apex.

In summary, Somerset is concerned that Apex may have engaged in deceptive practices by concealing the true author and financial interest of various supportive comments posted on the official DPS public comment website. These comments could create a false impression of public support for the Project, and may improperly influence local and State officials with power over approving the Project or its components. The Town believes the enclosed information is sufficient for you to start a formal inquiry into Apex's business practices. The Town also respectfully requests that the Ethics Code be modified to address concerns over possible deceptive practices by wind developers.

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<sup>2</sup> The official public comment website is available here:  
<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=46604&MNO=14-F-0485>

<sup>3</sup> [http://www.lighthousewind.com/get\\_involved](http://www.lighthousewind.com/get_involved) and  
[http://www.lighthousewind.com/take\\_action\\_to\\_support\\_lighthouse\\_wind](http://www.lighthousewind.com/take_action_to_support_lighthouse_wind).

**III. The Ethics Code may not require full disclosure of leases signed before a developer signs the Ethics Code Agreement.**

Yesterday Apex published a press release indicating that it had signed the Ethics Code. While we only have a draft copy of the Ethics Code and not a signed version, Somerset is concerned the Ethics Code is too limited in scope regarding disclosure. Pursuant to the second unnumbered paragraph of Section II – Public Disclosure, a wind company must disclose the names of any municipal officers, or relatives of municipal officers, that have any financial interest in any wind development, regardless of whether such financial interest was obtained prior to or subsequent to the execution of the Ethics Code. However, the remainder of Section II – Public Disclosure appears to only require disclosure of easements and leases entered into after execution of the Ethics Code. Somerset is concerned that the Ethics Code, as drafted, does not require Apex to disclose information about easements and leases entered into prior to Apex executing the Ethics Code. Given that the Ethics Code specifically states the New York State Office of the Attorney General “seeks to ensure that wind farm development is done in a transparent manner,” it seems likely that this gap in disclosure requirements is unintentional and the Ethics Code should be revised to correct this oversight prior to execution by Apex.

Somerset also respectfully requests that the first numbered subparagraph on Section II – Public Disclosure be revised and the words “Planning Board, Zoning Board of Appeals” be added following the phrase “any approvals before a Town Board.” The request is based on the fact that the current version of the Ethics Code only applies to Town Board approvals, but other local municipal boards very well might be involved in decisions regarding special permits, variances, and the subdivision of land. In fact, the Somerset Planning Board will decide whether to grant Apex a special permit for two meteorological towers. Without the benefit of the executed final draft we are unable to form an opinion regarding how transparent Apex must be when dealing with the Town and its residents.

**Conclusion**

In summary, the Town respectfully requests that your office open an investigation into the deceptive business practices described in this letter. In addition, the Town hopes that you will consider revising the Ethics Code to address the potential for deceptive business practices and eliminate the gap in disclosure requirements.

Please contact me if you have any questions.

Best Regards,

Lippes Mathias Wexler Friedman LLP



Dennis C. Vacco

DCV/mcd/bew/Attachments

cc: Assistant Attorney General Judith C. Malkin