

**ALICE SOKOLOW**  
**SEPTEMBER 8, 2008**

To the Energy Planning Board,  
Health and Safety of Renewable Energy, especially industrial wind turbines, is of statewide importance.

The PSC and DOH have stated that this does not fall under their jurisdiction. NYSERDA has limited control over fencing, signage, etc.

The PSC recently (1/08) stated that transmission lines would have to be setback from industrial wind turbines greater than the fall zone to preserve the integrity of the transmission lines (attached Sheldon page 93 pdf which states 1.5 times the max height). No recommendations were made for public roads, public in general or nonparticipating adjacent land and landowners. For each manufacturer there are OSHA danger zones and requirements; those OSHA guidelines are not utilized or applied in the *worst case scenarios* under SEQR for the public.

The AG has stated that a municipality would have to request a clarification or opinion; not an individual or group organization. No municipalities have requested clarification of Public Health and Safety which is part of their legislative obligation. Even without participating municipalities, the various NY Agencies did not initiate the discussion and resolution when supplied with detailed information, why or why not?

The closest I came to an answer was from Leonard VanRyn of the DPS (attached).

EJ was ineffective since all the municipalities being considered for wind are just OUTSIDE of the cut off.

This is again of utmost statewide importance. The detailed submission that most agencies received sometime between 2004 to present is the following:

Dear Governor Spitzer,

My request is potentially a request for an Opinion or Clarification as to which government body acts in place of the Energy Council, dissolved in 1995, whose purpose, along with the PSC, is to promulgate rules and regulations with respect to matters affecting public health and safety for "new" (Post 1995) alternative energy projects under Executive Order 111 and the RPS.

In summary, I have asked opinions from many government agencies over the past 4 years and have submitted the same under the RPS SEQR as well as those projects affecting the Finger Lakes. The PSC's response is most significant and the PSC's Attorney states that Public Health and Safety issues associated with wind energy projects are different from other forms of energy and since the Energy Council no longer exists, the PSC does not have the jurisdiction to promulgate regulations.

The DOH submitted specifics as to project review under SEQR, but the DOH's regulatory body states they do not have the jurisdiction.

The SEQR is a balance of environmental concerns and the DEC does not promulgate health and safety rules.

NYSERDA is the authority under the RPS and has supplied "old" guidance (prior to 1995) which emphasizing public restricted access but cannot promulgate new health and safety guidance under the NYS Constitution.

The DOS permitting under Code Officers can approve the NYS or International Building Code which is not applicable, as per the DOS, to industrial wind turbines.

Older projects (Tug Hill) are not within manufacturer's suggested compliance (GE 4/06) and many many new projects are proposed with tentative EIS's. This clarification is urgently needed for the health and safety of many New Yorkers.

Details are attached.

Respectfully,  
Alice Sokolow

**Whereas The NY Constitution states:**

Click here: New York State Constitution  
<http://www.state.ny.us/nyscon/nyscon.html>

[Public health]

§3. The protection and promotion of the health of the inhabitants of the state are matters of public concern and provision therefor shall be made by the state and by such of its subdivisions and in such manner, and by such means as the legislature shall from time to time determine. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.) [Care and treatment of persons suffering from mental disorder or defect; visitation of institutions for]

**Whereas the State Energy Office, in consultation with the public service commission, shall promulgate rules and regulations to implement this section.**

Click here: Consolidated Laws <http://assembly.state.ny.us/leg/?cl=36&a=13>

4. Any owner or operator of a co-generation, small hydro or alternate energy production facility constructed and placed in operation on or after June twenty-sixth, nineteen hundred eighty shall comply with the rules and regulations of the state energy office with respect to matters affecting public health and safety provided, however, that such rules or regulations shall not apply to any such facilities which produce electricity, gas or useful thermal energy for on-site residential use in residential dwellings of four or fewer units. The state energy office, in consultation with the public service commission, shall promulgate rules and regulations to implement this section by January first, nineteen hundred eighty-one.

**Whereas NYSERDA's Guide to Local Authorities acknowledges that "Public Health and Safety issues associated with wind energy projects are different from other forms of energy."**

Click here: <http://www.nyserda.org/energyresources/windguide.pdf>

NYSERDA's Guide To Local Authorities

Page 28-31

"Public Health and Safety issues associated with wind energy projects are different from other forms of energy....."

Blade throw, Fire, Tower Collapse, Ice Shedding, Vandalism and trespassing, and NOISE are all issues of public health and safety.

**Whereas the PSC Renewable Portfolio dealt with wind energy but did not include Public Health and Safety in the GEIS declaring it site specific and under SEQR (which it is not).**

[http://www.dps.state.ny.us/NY\\_RPS\\_FEIS\\_8-26-04.pdf](http://www.dps.state.ny.us/NY_RPS_FEIS_8-26-04.pdf) page 120 of document and 130 of pdf file

**Whereas NYS government is based on a set of checks and balances.**

"The protection and promotion of the health of the inhabitants of the state are matters of public concern and provision therefor shall be made by the state and by such of its subdivisions and in such manner, and by such means as the legislature shall from time to time determine."

**Whereas the PSC Renewable Portfolio assigned NYSERDA as an authority for the Renewable Portfolio and NYSERDA has replied to my FOIL with 9 NYCRR& 7817.1-5 (2004) in reference to small hydro and alternative energy facilities up to 80MW pertaining to fencing, locked equipment, entrances, annual inspection and accident reporting only.**

**Whereas The Energy Office was dissolved in 1995 and the PSC's Health and Safety regulations regarding electric utilities do not identify wind generation safety.** The PSC and State Energy Commission were to promulgate those regulations. The PSC's Attorney states it is not authorized to do so and suggests a request for declaratory ruling. The State Legislature "shall from time to time determine."

**Whereas the PSC states that they are not the government body** as per attorney letter attached.

**Whereas The Department of Health-Regulatory has stated they are not the governmental body.**

**Whereas "The National Electric Safety Code would not apply to structural or building issues more properly in the purview of the building codes."** as per Dick Powell at DPS.  
(email attached)

**Whereas the Code Enforcement Officers may not be allowed to enforce outside of the NYS or International Building Code.**

**Whereas the Department of State has determined that wind turbine farms are not regulated under the Uniform Fire Prevention and Building Code.**

**Whereas the DEC states:**

While the Department of Environmental Conservation is charged with issuing regulations regarding the SEQR process, DEC has no authority to review the implementation of SEQR by other agencies. In other words, there are no "SEQR Police."

**Whereas SEQR is intention is a environmental balance and not Health and Safety:**

(b) In adopting SEQR, it was the Legislature's intention that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.

(c) The basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.

(d) It was the intention of the Legislature that the protection and enhancement of the environment, human and community resources should be given appropriate weight with social and economic considerations in determining public policy, and that those factors be considered together in reaching decisions on proposed activities. Accordingly, it is the intention of this Part that a suitable balance of social, economic and environmental factors be incorporated into the planning and decision-making processes of state, regional and local agencies. It is not the intention of SEQR that environmental factors be the sole consideration in decision-making.

**WHEREAS the DEC under Article 3 is responsible for cumulative impact.**

**WHEREAS the DOH has stated under FOIL that its recommendations are such as supplied under SEQR for the Ecogen Windfarm Project in Italy/Prattsburgh (attached) inclusive is a recommendation of a minimum of 400 meters for ice throw. Yet emails from DOH reflect 400 feet! This is not even OSHA meet safety setbacks!**

**WHEREAS the Executive Order 111 does not detail health and safety measures relative to wind energy generation.**

**WHEREAS the manufacturer's (General Electric), National Wind Coordinating Council and NREL all have new recommendations (attached).**

**WHEREAS the existing NYS windfarm projects do not necessarily meet the new recommendations (Example Tug Hill).**

*WHO is constitutionally responsible for the promulgation of rules and regulation for the protection and promotion of the health of the inhabitants of the State of NEW York as it related to new (after 1995) wind energy?*

Respectfully submitted,  
Alice Sokolow

NYSDOS Codes Division

In a message dated 5/18/2005 9:43:34 AM Eastern Standard Time, [JHarding@dos.state.ny.us](mailto:JHarding@dos.state.ny.us) writes:

The Department of State has determined that wind turbine farms are not regulated under the Uniform Fire Prevention and Building Code. I would suggest that you ask the Public Service Commission if they have regulations for such an installation.

James L. Harding, P.E.  
Sr. Building Construction Engineer  
NYSDOS Codes Division  
41 State Street, 11th Floor  
Albany NY 12231  
(518)474-4073  
Fax: (518) 486-4487  
[JHarding@dos.state.ny.us](mailto:JHarding@dos.state.ny.us)

From DPS:

In a message dated 6/9/2005 3:23:26 PM Eastern Standard Time,  
[richard\\_powell@dps.state.ny.us](mailto:richard_powell@dps.state.ny.us) writes:

Dr. Sokolow,

My apologies for not replying sooner. I have been away from the office.  
I'm sorry you misunderstood my reply.

Each of the Codes and Standards apply where appropriate.

The National Electric Safety Code would not apply to structural or  
building issues more properly in the purview of the building codes.  
Noise standards are normally within the purview of local municipal  
ordinances.

Richard Powell

[Sksajs@aol.com](mailto:Sksajs@aol.com)

06/03/2005 05:59 PM

To: [Richard\\_Powell@dps.state.ny.us](mailto:Richard_Powell@dps.state.ny.us)

cc: [JHarding@dos.state.ny.us](mailto:JHarding@dos.state.ny.us)

Subject: Wind Farm Health and Safety Standards

Dear Mr. Powell,

In a message dated 5/24/2005 2:51:50 PM Eastern Standard Time,  
[richard\\_powell@dps.state.ny.us](mailto:richard_powell@dps.state.ny.us) writes:

The National Electric Safety Code would apply.

How would the NESC apply to turbine fall zones, blade throw, ice throw,  
noise?

"New facilities constructed must follow NESC guidelines or a utility's  
more stringent standards. Specific concerns about existing facilities  
meeting the NESC will be handled on a case-by-case basis and should be  
discussed with Staff."

If this is considered case by case, in the Ecogen Prattsburgh Wind Turbine  
Project, what more stringent standards will be used for each Health and  
Safety concern above?

A 400 foot fall zone is not acceptable practice and definitely not stringent. Proposed noise levels  
of greater than 6 dB

and 10 dB are not acceptable either; yet they are written into the DGEIS.

25 of the 32 areas of siting criteria in the Findings Statement are "no  
siting criteria."

Thank you.

Respectfully,

Alice Sokolow

Electric Safety Standards Q & A

CASE 04-M-0159 ? Proceeding on Motion of the Commission to Examine the  
Safety of Electric Transmission and Distribution Systems.

## RESPONSES TO QUESTIONS ON ELECTRIC SAFETY STANDARDS

On January 5, 2005, the Commission issued an Order in this proceeding that adopts safety standards applicable to all electric utilities. On January 20, 2005, Department of Public Service Staff conducted a technical conference in this matter to discuss questions the utilities and other interested parties may have regarding implementation of the safety standards. During that technical conference, requests were made to provide written responses to questions and issues raised.

The following is a recitation of general questions and answers that were discussed at the technical conference. They should only be used as a guide to help facilitate the implementation process. They should not be considered interpretations, clarifications, or modifications of the Order. Should any party seek a clarification or modification of the Order, it must file a petition with the Commission, pursuant to the Commission's regulations.

As stated in the Order, in many instances, the Commission adopted general parameters and guidelines and gave the utilities discretion, without those parameters and guidelines, as to the specific manner in which to implement the safety standards. Therefore, to the extent detailed questions on compliance were raised, specific responses will not be provided. Also, although best practices have not been established, the Order encourages utilities to work together to develop best practices.

### Q. WHAT ARE "PUBLICLY ACCESSIBLE" FACILITIES?

A. Publicly accessible facilities are those that are within the reach of a pedestrian. They include, but are not limited to, facilities located in public thoroughfares, parks, rear lots, and off-road. While substations are not considered publicly accessible, substation fencing is. Generally, utility facilities located within fencing on customer premises will not be considered publicly accessible (specific circumstances may lead to a different conclusion, so utilities must exercise good judgment in determining public accessibility). Signs, property lines, and other non-physical demarcations are not considered barriers to public access.

### Q. WHAT IS EXCLUDED FROM STRAY VOLTAGE TESTING?

A. The following equipment need not be tested: company- and customer-owned meters, equipment located inside a substation, utility equipment enclosed by customer fencing subject to the caveat stated in the preceding answer, and customer owned equipment except when called in as part of shock complaints or as covered by the streetlight requirements.

### Q. WHAT ABOUT TELECOMMUNICATIONS AND CABLE ATTACHMENTS?

A. The utilities need to exercise good judgment in determining which such equipment should be tested. For example, if such equipment is bonded, publicly accessible, and in close proximity to electric facilities (e.g., a cable amplifier attached to a utility pole and using the utility's down ground), utilities should test it. The Order does not require testing or maintaining an inventory of phone booths, pedestals, and other telecommunications equipment that is not in close proximity to electric facilities.

### Q. WHICH STREETLIGHTS SHOULD BE TESTED?

A. As specified in the Order, included are:

All company-owned streetlights

All streetlights under a maintenance contract

All streetlights on public thoroughfare no matter who owns it

All streetlights to which the utility provides direct service

All traffic signals

Utilities are not required to test streetlights in private parking lots or private parks.

Q. HOW ARE TESTERS CERTIFIED?

A. A make/model must be certified by independent laboratory; in-house certification is not acceptable. Certification is not required for individual units; once a particular make/model has been certified by any utility, it may be used by every utility without additional certifications.

Q. WHAT STEPS ARE NEEDED FOR CORRECTIVE ACTION IF VOLTAGE FOUND?

A. When stray voltage is found, the utility is required to make the area safe irrespective of who owns the facility causing the stray voltage. Subject to the caveats set forth in the Order, permanent repairs to utility-owned facilities must be made in 45 days. If customer-owned equipment is at fault a utility must notify the customer of the problem. If the facilities that were energized by the customer equipment are publicly accessible, the utility is strongly encouraged to follow up with the customer after repairs are made to make sure the stray voltage condition is truly eliminated.

Q. DOES JOB SITE TESTING FACTOR INTO THE TESTING PROGRAMS?

A. Voltage testing results at job sites do not need to be part of testing program. The Order provides only that it be conducted on a daily basis and when the job is completed. If voltage is found, conditions must be made safe before utility personnel leave the site.

Q. WHAT IS INVOLVED WITH INSPECTIONS?

A. All utility-owned equipment needs to be inspected at least once every five years. Inspections include all utility facilities, not only those covered by the testing programs (e.g., conductors, substation equipment, nonconductive facilities such as

fiberglass service boxes and wood poles). With respect to streetlights, utilities are required to inspect only their own facilities. Manholes, service boxes, and other underground structures must be opened regardless of their exterior condition. Any problematic or improper conditions that are found need to be repaired pursuant to the utility's normal practices, unless stray voltage found. In that case, the 45 day rule applies. Each utility must develop its own definition of "hazardous" condition and its own practices and procedures for evaluating the condition of its facilities and determining the time frame to complete repairs of conditions founds.

Q. HOW DETAILED SHOULD A QUALITY ASSURANCE PROGRAM BE?

A. The Order left the details to each utility's discretion. A program akin to a nuclear QA program is probably unnecessary, but a QA program limited to simple checks by a foreman is likely insufficient.

Q. WHAT SHOULD BE AVAILABLE FOR PUBLIC ACCESS?

A. The reports each utility files with the Commission should be readily accessible to the public. Other than typical requirements for entrance into utility facilities, no impediments to immediate public access are permitted. Underlying data and detailed inspection and testing reports need not be provided. It is expected that no utility will seek trade secret status for its public reports or otherwise declare any portion of them to be confidential. That is, the reports should be drafted in such a manner that they provide salient and usable information (e.g., summary statistics by borough or similar geographic area) but not details of findings at specific locations.

Q. HOW SHOULD THE DETAILED RECORDS BE KEPT?

A. The Order left the details to each utility's discretion. The parameters for recordkeeping include that records must be kept in a manner which is easily searchable. Legacy systems that take months to program may not be considered easily searchable. All data needs to be accessible to Staff;

confidentiality concerns, if any, will be addressed on a case-by-case basis.

Q. WHY IS THERE CERTIFICATION OF THE PROGRAMS?

A. Accountability. The certifications are a demonstration that the utility's management is aware of and responsible for the condition of their systems and compliance with the safety standards.

Q. WHAT IS EXPECTED TO BE FILED IN THE ANNUAL REPORTS?

A. The Order left the details to each utility's discretion. Staff expects that they will include some detail of voltage testing performed and results by geographic area, type of equipment (e.g., poles, manholes), and levels of voltage found. The reports should also include:

analyses of stray voltage data to show trends or common causes  
certification requirements  
discussion of performance mechanism, if applicable  
information resulting from inspection program  
changes to program implementation (e.g., steps added, lessons learned)

As noted above, it is expected that no utility will seek trade secret status for its public reports or otherwise declare any portion of them to be confidential.

Q. WHAT IS NEW TO THE NOTIFICATION REPORTING CONCERNING SHOCKS?

A. Notification must be made for shock cases whether or not voltage is substantiated. The notification requirements apply to people and domestic animals, not squirrels or birds.

Q. HOW MANY TARGETS ARE IN THE PERFORMANCE MECHANISM?

A. Two targets per year?one for testing, one for inspections. In the 5th year of the inspection program, the target is 100% completion of all inspections.

Q. HOW DOES ADOPTING THE NESC AFFECT THE UTILITY?

A. New facilities constructed must follow NESC guidelines or a utility's more stringent standards. Specific concerns about existing facilities meeting the NESC will be handled on a case-by-case basis and should be discussed with Staff.

This page ([http://www.dps.state.ny.us/04M0159\\_QA.html](http://www.dps.state.ny.us/04M0159_QA.html))

was last modified: January 26, 2005

Questions regarding this web site? [web\\_questions.html](#)

Need info on filing a complaint against a utility? [Complaint Dept](#)

Want to comment on utility issues? [PSC Comment Form](#)

[PSC Home Page](#)

In a message dated 10/27/2006 10:58:20 AM Eastern Daylight Time, Sksajs writes:

Dear NY DEC, NYSERDA, PSC, DOH, DOS, Assemblymembers and Senators,  
The National Wind Coordinating Council presented the same recommendations for ice throw from windturbines <http://www.nationalwind.org/events/siting/presentations/baring-gould.pdf> p in December 2005 as General Electric made in April 2006 [http://www.gepower.com/prod\\_serv/products/tech\\_docs/en/downloads/ger4262.pdf](http://www.gepower.com/prod_serv/products/tech_docs/en/downloads/ger4262.pdf) .

The SIMPLE FORMULA is:

(Rotor Diameter plus Hub height) times 1.5

Our existing wind turbine projects are not in compliance. Should they be shut down in potential icing conditions? The companies are limited liability companies. The insurance will probably not cover injury due to non-adherence to "known" recommendations.

Who is liable?

The Towns with local laws less than the recommendations?

NYS? The Governor?

The PSC and the nonexistent Energy Council as per law?

The DOH who recommended 400 feet or less?

The DEC who is responsible for cumulative impact under Article 3?  
The IDA's under lease-leaseback who feel that getting approval from the DOH is good enough?  
NYSERDA and its Toolkit?

There are a multitude of projects awaiting approval from these very agencies. What are the current recommendations from each agency? Please accept this as a formal request under the new electronic FOIL.

There is still time for input of new information under a supplemental environmental impact statement for many of these projects. USE it wisely. UPDATE you websites to reflect the pro wind recommendations!

Respectfully,  
Alice Sokolow