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April 24, 2018

Town Board of Town of Hopkinton
7 Church Street
Hopkinton, NY 12965

**Re: *Voting Requirements for Proposed Local Law 2 of 2018*
*"Wind Energy Facilities Law of Hopkinton, New York"***

Dear Town Board Members:

I am writing in response to the Town Board's ("Board") attempt to hold a special meeting on Thursday, April 26, 2018 to "revote" on Proposed Local Law 2 of 2018 entitled "Wind Energy Facilities Law of Hopkinton, New York" (the "Local Law"). As set forth herein, the New York State Town Law does not authorize the Board to simply revoke on a local law that was denied.

This letter is to inform the Board that the Board must follow the statutory notice requirements, reintroduce the Local Law and schedule a public hearing before the Board may vote on a new Local Law. The Board cannot forego the statutory notice and public hearing requirements and simply revoke on the Local Law because it was denied after a motion to approve was made at the Board's April 16, 2018 meeting.

"[T]he notice provisions of the Town Law and of the General Municipal Law are mandatory and cannot be superseded." *Burchetta v. Town Bd. of Town of Carmel*, 140 Misc. 2d 1050 (Sup. Ct. Putnam Cty 1990) *citing*, *Trifaro v. Zoning Bd. of Appeals of Town of Red Hook, Dutchess Cty.*, 73 Misc. 2d 483 (Sup. Ct. Dutchess Cty 1973). Neither Town Law nor General Municipal Law allow a municipal board to revoke on a local law which has been denied after a motion to approve, and as such, the Board must follow the provisions for enacting a local law

under these statutes if the Board wishes to enact the Local Law. See *Naftal Assocs. v. Town of Brookhaven*, 221 A.D.2d 423 (2d Dept 1995); *Rockland Properties Corp. v. Town of Brookhaven*, 205 A.D.2d 518 (2d Dept 1994).

Therefore, the Local Law can only be enacted after giving proper and timely notice to the public and conducting a new public hearing. *Callahan v. Kambour*, 49 Misc. 2d 280 (Sup. Ct. Schenectady Cty 1965). It has uniformly been held that notice and public hearing requirements protect the public interest and, therefore, being that these requirements are essential, departure therefrom will invalidate the Local Law. *Town of Lima v. Robert Slocum Enterprises, Inc.*, 38 A.D.2d 503, 506 (4h Dept 1972).

Avangrid has advised the Board that it cannot construct the North Ridge Project with the limitations set forth in the proposed Local Law. In lieu of enacting the Local Law this month, we agree with Ms. Lyons' and Mr. Parker's suggestion at the April 16th meeting that they meet with the Wind Advisory Board and Avangrid to discuss options that may allow the North Ridge Project to be built in the Town. Ms. Lyons did not commit to making any changes to the Local Law, she simply suggested that an open dialogue would be helpful to better understand the potential issues given Avangrid's commitment to investing millions of dollars in the Town. Ms. Lyons did not want to forego this potential investment without further discussion. Avangrid is committed to bringing its consultants to this meeting to explain why certain limitations in the Local Law make it impossible for any wind project to be constructed in the Town.

Avangrid has never suggested that every recommendation of the Wind Advisory Board should be rejected by the Board. There are several provisions that are acceptable to Avangrid. The provisions that prevent the construction of any wind project and require further discussion are generally limited to the following:

- Setback Requirement. The Local Law proposes a setback of five times the total height of a turbine from non-participating property lines, public roads, wind overlay boundary, non-WECS building, farm or commercial structure or any above-ground utilities, registered historical site and APA boundary.
- Sound Standards. The Local Law requires adherence to a maximum "forty [40] Leq A-weighted decibels ["dBA'] at ten [10] minutes intervals at the nearest non-participating property line, school, hospital, place of worship or building existing at the time of the application".
- South of 72 Prohibition. The Local Law prohibits the installation of turbines on lands south of 72.

In the interest of full disclosure, to accommodate the evolving technology expected to be in the market in the next few years, and guard against the phase-out of wind turbine models, we respectfully request the maximum allowable turbine tip height be increased to 600 ft. The Local Law currently limits the tip height of turbines to 500 feet. We understand this is a new factor to consider but we want to be open with the Board and not suggest this change at a later date. Avangrid would be prepared to discuss the turbine tip height at the meeting with Ms. Lyons, Mr. Parker and the Wind Advisory Board.

Avangrid remains committed to working with the Town provided the Wind Advisory Board recommendations are not adopted without being amended first. If the Wind Advisory

Board's recommendations are adopted without the changes suggested by Avangrid, the Town will have sent a clear message that new investments in wind energy are not welcome and we will pivot to other communities that welcome new investments.

Thank you for your consideration.

Very truly yours,



Robert A. Panasci

cc: Roger Linden, Esq.