Complaint Filed on April 25, 2007 with the Department of Justice under the Sherman Antitrust Act by Concerned Citizens from the States of New York, Vermont, Maryland, and California

Nature of Complaint

This is an Antitrust Complaint alleging that an International Cartel is engaged in Market Allocation, Price Fixing and Bid Rigging in Windfarm Developments in New York and Vermont, as well as other states across the nation. This Complaint was submitted by 94 concerned citizens via email to the U.S. Department of Justice, Antitrust Division on April 25, 2007.

Summary of Complaint

A number of foreign companies, along with at least one domestic firm, have conspired to eliminate competition in the newly emerging domestic wind energy industry. Through a maze of ad hoc LLC's, partnerships, affiliations, cross-ownerships, strategic alliances, memoranda of understanding, joint ventures, and associations these entities have allocated the market geographically and effectively prohibited any manner of competition for highly profitable business ventures. The end result of this collusion is that thousands of landowners and hundreds of municipalities have been denied substantial monetary gains that would otherwise be available in a free and competitive market. Due to a plethora of subsidies, incentives, and tax breaks the wind energy developments are highly profitable and virtually all of the earnings are funneled abroad to the foreign owners and investors.

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Companies, Individuals, and Organizations Involved

1. **Babcock and Brown**: described as an international investment, advisory and infrastructure firm.

    - Babcock and Brown: based in Sydney, Australia and trades on the ASX as symbol BBN.

    - Babcock and Brown Ltd.: involved in investment banking, structured finance advisory, arrangement and management business, principal investment and other wholesale financial services. It is controlled by BBN, and trades as BNB on ASX. BNB is a major investor in global windfarm development and operation. BNB has a total market capitalization of over $8.5 billion, of which $3.825 billion is owned by the executives of the bank.

    - Global Wind Partners: an investment fund, 67% of which is owned by BBN and BNB.

    - Babcock and Brown Wind Partners: a listed fund; apparently a successor to Global Wind Partners that comprises three funds: Babcock and Brown Wind Partners Trust, Babcock and Brown Wind Partners Ltd, and Babcock and Brown Wind Partners (Bermuda) Ltd. Following an IPO in 1995, this fund traded on the ASX as symbol BBW. This investment fund is described as being managed by Babcock and Brown (BNB).

    - Babcock and Brown Infrastructure Management Pty. Ltd. (BBIM): formerly known as Prime Infrastructure, it is an investment fund that had some oversight responsibility or ownership of Babcock and Brown Wind Partners.

    - Babcock and Brown Infrastructure (BBI): a listed fund, managed by BBIM.

    - Babcock and Brown Power: a listed fund; owns two power-generating stations in Australia (acquired in 2006), one of which is called Ecogen.

    - Babcock and Brown Operating Partners LP (later became an LLC?): based in San Francisco and responsible for at least some of Babcock and Brown's US operations. This unit has a joint venture with BP Alternative Energy North America for the development of a 300MW windfarm in Weld County CO. Babcock and Brown LP (presumably an informal name for Babcock and Brown Operating Partners LP) is described as an equity investor in Sweetwater Wind Power Project in Texas. They are partnered in this project with DKR Development LLC (the project developer), Catamount Energy Corp. (also an equity investor) and TXU (the utility buying 100% of the project's electricity). DKR Development was founded in 2001 by four former Enron executives, one of whom serves on the Catamount Board of Directors.

- Babcock and Brown Power Operating Partners, described as a wholly owned subsidiary of BNB, acquired 100% of the membership interests in G3 Energy LLC in January of 2005. G3 Energy was involved with the development of windfarms in 4 states and Canada.

  Babcock and Brown Power Operating Partners, on September 8, 2005, won preliminary approval for a $300M 400 MW transmission line to bring power into San Francisco (Trans Bay Cable).

  Babcock and Brown Power Operating Partners, on 6-5-06, announced a deal to purchase 443MW of wind turbines from Mitsubishi for projects in New Mexico, Colorado, and Texas. Mitsubishi Power Systems (MPS) will also provide wind turbine commissioning, installation support and maintenance for 5 years.

  Babcock and Brown Power Operating Partners, on 1-23-06, announced that it had selected enXco, Inc. to provide operations and management support for B+B's Kumeyaay project near San Diego.

  In the 11-30-06 DOE/EIA listing of power plants, Babcock and Brown Power Operating Partners is designated as Utility ID # 50123, and as the Company associated with the Plant named Ecogen Wind in Italy NY and Prattsburgh NY.

- BBPOP Wind Equity LLC.

- BBWP (US) LLC.

- B+B Eifel UK Ltd.: a partner in a windfarm in Germany that later was acquired by B+B.

- GWP Pty. Ltd.

- BBI US Holdings Pty. Ltd.

- BBI US Holdings II Ltd.

- BBI Glacier Corp

- Sweetwater Wind 1 LLC, Sweetwater Wind 2 LLC, Sweetwater 3 LLC, Sweetwater Wind 4 LLC, and Sweetwater 5 LLC

- Eurus Combine Hills 1 LLC
- Blue Canyon Windpower LLC
- Caprock Wind LLC
- Kumeyaay Wind LLC
- Jersey-Atlantic Wind LLC
- Wind Park Bear creek LLC
- Crescent Ridge LLC
- Argonnne Wind LLC
- GSG LLC
- Buena Vista Energy LLC
- Ecogen LLC and Ecogen Wind LLC
- Cedar Creek Wind Energy LLC
- Cross-Sound Cable Company LLC
- Trans Bay Cable LLC
- B+B US: contacts at this business (we are not sure which B+B entity they represent) have said that they are "partners" with another developer, Ecogen LLC, which is trying to build windfarms in Italy NY and Prattsburgh NY. However, a 5-31-06 statement from North Western Energy (as required by FERC Order No. 2004) listed Ecogen LLC as a corporate subsidiary or affiliate of Babcock and Brown Infrastructure Ltd. (BBI). This relationship with Ecogen had not previously been shared with local officials, leaseholders, or taxpayers. Recent correspondence from the attorney representing Ecogen stated that Ecogen LLC had recently been succeeded by Ecogen Wind LLC.
- Babcock and Brown Infrastructure (BBI) announced on 12-14-06 that it has sold the remainder of its investment in Babcock and Brown Wind Partners (BBW) as a result of an unsolicited offer. The buyer is not named.
- Babcock and Brown Wind Partners, on 1-19-07, agreed to buy six U.S. windfarms for about $387M from Babcock and Brown Ltd. Press release

further states that Babcock and Brown Wind is managed by Babcock and Brown Ltd. Two of these windfarms are in Pennsylvania, two in Illinois, and one each in California and New Mexico. Three are still under construction.

- GE Energy Financial Services, on 2-15-07, agreed to pay $270M for a stake in U.S. windfarms owned by Babcock and Brown Ltd., giving them 70% of the Class A equity in the six windfarms. Wachovia holds the remaining 30% while Babcock and Brown will own Class B shares. The press release further states that Sydney-based Babcock and Brown will manage the investment.

- Babcock and Brown has an additional 8 listed funds, 2 unlisted funds, 2 private equity funds, and 7 "specialized assets under management".

2. UPC

- UPC Group of Companies: this is frequently referenced as the parent company but it is difficult to see linkages between "UPC Group of Companies", which is made up of three infrastructure component suppliers, and the rest of the UPC entities.

- UPC Group: founded by Brian Caffyn for wind developments in Europe; has a large presence in Italy where all UPC projects were funded by IVPC Energy BV (Amsterdam), a joint venture of UPC and Edison Mission Energy.

- UPC Europe Wind Management LLC: formed by principals of the UPC Group.

- UPC Wind Management LLC: "an American subsidiary of UPC Group", formerly known as Wind Management LLC; founded by Brian Caffyn for US developments. In May of 2006, UPC Wind Management announced that it had received a "significant investment" of new capital from D. E. Shaw and Madison Dearborn Partners. Shaw is a specialized investment and technology development firm; it encompasses a "number of closely related entities with approximately $20 billion in aggregate capital". Madison Dearborn " is one of the largest and most experienced private equity investment firms in the United States. MDP has approximately $14 billion of equity capital under management."

- UPC Canada Wind LLC.

- Evergreen Wind Power LLC: Mars Hill wind energy project in Maine.

- Cape Wind Associates LLC: a joint venture with EMI for development in Nantucket Sound, Cape Wind Project.

- UPC Wind Partners LLC: formed by Brian Caffyn for a joint venture with Global Winds Harvest called Windfarm Prattsburgh LLC, in New York.

- UPC International; this unit may no longer exist; perhaps UPC Europe Wind Management LLC is the successor company.

- Dakota One Power Partners: a joint venture of UPC Wind Partners and Global Winds Harvest for wind development in Dickey County, N.D.

- Kaheawa Wind Power LLC: UPC and Makani Nui Associates LLC are Project Sponsors for this project and HSH Nordbank is "arranger and administrative agent."

- UPC Energy Group: formed by Brian Caffyn, Nicholas A. Wrigley, and Frederick W. Mowinckel. The purpose of this business is difficult to ascertain. Our belief is that it exists solely for tax avoidance purposes. These same three "members" were recently named as Chairman and Non-Executive Director, Vice Chairman and Non-Executive Director, and Non-Executive Director, respectively, of the Board of Solar Integrated. This announcement also gave details of a stock options package (total of 11 million shares in Solar Integrated) that were granted not to the three new Board members but to UPC Energy Group. According to one report, Solar Integrated had to issue 617,000 additional warrants to GE Energy Financial Services to make up for the stock dilution. A separate report stated that Solar Integrated re-priced the shares held by GE to keep them whole.

- Energy Finance Advisors (EFA UK Limited) is described on its website as:

  > *" a niche financial advisory business focused on raising capital and providing consulting services for companies investing in the renewable energy sector. Our strength is in developing highly structured financing packages for our clients, tailored to their particular needs and circumstances.*
  >
  > *"Our partners have significant and complementary expertise in the investment banking, legal, tax and accounting and project development spheres as well as extensive track records in the renewable energy field.*
  >
  > *"Our clients include developers, project owners and multinationals who are looking to raise and deploy capital in the most cost effective and efficient manner, as well as private equity*

> *firms and high net worth individuals seeking advice on specific investment opportunities."*

Energy Finance Advisors is listed as "financial advisors to the Borrowers and structured the Facilities" for three windfarms in Italy, as well as the "financial advisor to the Sponsor" for the sale of 425MW of Italian wind energy assets. It appears as if UPC was the developer of the first three and the Sponsor of the last. The three Italian windfarms are also listed on the UPC website. Energy Finance Advisors has the same street address in London and the same telephone/fax numbers as UPC Europe Wind Management, LLC. It is clear that this entity is just one more shell company in the overall UPC scheme.

3. **Global Winds Harvest** (based in Ad Ruhr, Germany)

   - Global Winds Harvest, apparently separate from Babcock and Brown's Global Wind Partners, has a Joint Venture with UPC Wind Partners for the development of Windfarm Prattsburgh. They also had a Joint Venture with UPC in Canandaigua Power Partners I, LLC and Canandaigua Power Partners II, LLC for wind developments in Cohocton NY. According to UPC, they have since bought out GWH's interests in Cohocton.

   - They have a Joint Development Agreement with EHN/Acciona (based in Spain) for wind developments in the U.S. EHN/Acciona also has a joint venture with Horizon Wind Energy as described in item 6 following.

4. **Clipper Windpower (UK, 2001, London Stock Exchange AIM))**

   - A major player in wind turbine manufacturing, windfarm construction, operations and maintenance.

   - Are under contract with UPC Wind Management for the delivery and installation of 50 wind turbines plus 5 years of operations and maintenance.

   - On 7-24-06, Clipper announced that, under a supply contract with UPC Wind, they will provide 8 turbines to the Steel Winds project in Lackawanna NY which is being developed by UPC Wind and BQ Energy, LLC. Our research indicates the BQ Energy is a barbecue restaurant located in Pawling NY, with no apparent expertise in any aspect of wind energy.

   - Clipper signed a "strategic alliance" with BP Alternative Energy (UK) for 1700 wind turbines. BP Alternative Energy recently acquired Orion Energy LLC and Greenlight Energy Corp., both US-based wind developers.

5. **Everpower Wind, LLC**: developing wind proposals for Howard NY and Allegany NY in partnership with ConEd Development. EverPower may be privately held, or like many other players in the wind industry, be owned by investment banks or investment funds. Researchers from Howard NY believe that Everpower may be controlled by Taiwanese interests. Executives at Everpower have refused to answer questions about their corporate structure or ownership.

6. **Horizon Wind Energy and PPM Atlantic Renewables**: Horizon, owned by Goldman Sachs, and PPM, owned by Scottish banking interests, are the joint developers of Maple Ridge LLC, a windfarm in central NY. Maple Ridge has since been purchased by Ibertrola, a wind farm operator based in Spain. Horizon Wind Energy, in a joint venture with AES-Acciona, is developing the Marble River Wind Farm in Clinton and Ellenburg NY and is independently developing the Dairy Hills Wind farm in Perry NY. They are also the owner of Madison Wind Farm in New York.

   On 3-27-07 Energias de Portugal (EDP) announced that it had agreed to purchase Horizon Wind Energy from Goldman Sachs for approximately 1 billion Euros. This purchase was "funded by debt and proceeds from a tax equity partner." The equity partner was not identified.

7. **Consultants to the Wind Energy Industry:** the developers (Ecogen, UPC, and others) in the New York towns of Cohocton, Italy, and Prattsburgh have generally used the same stable of consultants for their Environmental Impact Statements and have frequently re-used each others' studies rather than perform new studies as required by environmental conservation law. These Consultants include:

   - Environmental Design and Research, Landscape Architecture, Environmental Services, Engineering and Surveying, P.C. from Syracuse, NY (coordinates the preparation of Environmental Impact Statements; prepares numerous sections of the EIS as well)
   - Woodlot Alternatives, Inc. from Topsham, ME (conduct biological studies)
   - Haley and Aldrich of New York from Rochester, NY.
   - Hessler Associates, Inc. from Haymarket, VA (noise studies).
   - Comsearch from Ashburn, VA.
   - Fisher Associates from Rochester, NY (civil engineers).
   - Nixon Peabody LLC (law firm representing multiple non-competing LLC's). On information and belief, the Nixon Peabody attorneys are fully aware of the extent of the alleged antitrust violations and have advised their clients on such matters.
   - LaBella Associates LLP (engineering firm paid to rubber stamp the State Environmental Quality Review process).

As these "consultants" are being paid to conclude that these massive projects are environmentally benign, they design and carry out "studies" that conclude exactly that. Although many of these reports look valid at first glance with a lot of tables and graphs and digital simulations, a closer look reveals that they have little if any scientific rigor or merit. In numerous cases, the methodology makes little sense to a reasonable person. For example, many of their avian studies report that they identified migrating birds at night by shining a flashlight into the dark sky; these same studies also used the technique of "moon watching" in which the "scientist" looked at the moon through binoculars and counted the number of birds he (supposedly) saw. At another study of avian mortality at a turbine site in Oregon, the majority of the dead birds were found upwind of the turbines. In the real world, birds killed by wind turbines would be found downwind of the turbine. The data that was reported must have been falsified. In general, these consultants work only for wind energy developers, and they have limited if any credentials to perform their assigned work.

8. **Local Officials** (Town Boards and IDA's): developers are receiving favorable support in many towns because Board members are financially incented through leases to vote for the projects. In the town of Prattsburgh there is only one dissenting board member; all others have direct or indirect financial incentives. In Cohocton, a majority of the board has leases and supports the developments. In Howard, 3 out of 5 board members are leaseholders. In meeting after meeting town residents have asked these biased officials to recuse themselves on votes relating to wind development. They have always refused.

   In Steuben County, NY the Industrial Authority (SCIDA) has taken on the Lead Agency role in the SEQRA process for numerous projects. SCIDA is being paid large sums by the developers (up to $600K per project) for SEQRA approval, and has no motivation to conduct a fair, objective, and legal review. James Sherron, SCIDA's Executive Director, appears to be intimately involved with various developers at every step of the process from pre-planning to construction. That Sherron and SCIDA are being paid by the developers to deliver a fast-track SEQRA approval is a definite conflict of interest. There does not appear to be any public entity or authority that is responsible for protecting the interests of citizens and landowners.

9. **Names of Individuals:** we have the names of many of the individuals involved in the above entities including Executive Committees, Boards of Directors, founders, Town Boards, Town Planning Boards, principals, etc.

There are many other smaller or peripheral players but they are difficult for us to track as we only have access to public documents through internet search engines. However, here is an example of how one of the more interesting projects was structured.

On 1-30-01, Offshore Energy Resources Ltd, (OERL) was established in UK. The two Directors of this entity were Brian Caffyn (UPC) and Ian John Sharpe (may be a Babcock and Brown employee). Two shares of stock in this entity were issued with a total capitalization of 3 pounds sterling. One share was transferred to Instant Companies Ltd. and one to Swift Incorporations Ltd., both with the same UK address. OERL later surfaced as a venture between IVPC Energy BV (owned by UPC and Edison Mission

Energy and located in Amsterdam) and Babcock and Brown Operating Partnership (San Francisco). We believe that OERL subsequently morphed into the developer for a UK windfarm.

It is our conclusion that the web of connectivity between and among the above-listed entities expressly constitutes an International Cartel as defined by the Department of Justice. Based on our review of available documentation it is our belief that the prime players in this Cartel are Babcock and Brown (parent company in Australia), UPC (parent company in Europe), Clipper (parent company in UK), and General Electric (parent company in US). Other members of the cartel are based in Scotland, Germany, Spain, and Netherlands.

How They Have Violated Antitrust Laws

1. **Market Allocation.** The first step in the process of developing a wind farm is to quietly approach landowners and obtain 20-year leases for wind turbine sites. The projects are intentionally kept rather small, 20 to 60 turbines over 4,000 to 6,000 acres, in direct violation of the anti-segmentation provisions of the NY State Environmental Quality Review Act. Leaseholders are sworn to secrecy so that all the required leases can be obtained before the project is announced. The business entity for each project is always an ad hoc LLC. Sometimes a project LLC is described as a joint venture between two developers; sometimes a project LLC has a single developer. The “members” of these LLC’s are generally executives of parent companies or investment funds. It cannot be coincidence that these projects have never had any overlap. Following are a number of examples of the market allocation being practiced by the developers.

    - The Town Of Cohocton, NY has multiple projects under review at the present time. Canandaigua Power Partners 1 LLC, an affiliate of UPC Wind Partners LLC, is planning a windfarm for Brown Hill, Pine Hill, and Lent Hill. A second project is Dutch Hill LLC, also an affiliate of UPC Wind Partners LLC. This project will be on Dutch Hill. There is also Pine Hill Wind Generation (Clipper Windpower), Inc., Pine Hill Wind Generation II (also Clipper), and Canandaigua Power Partners LLC II on Dutch Hill (UPC). Miraculously, each of these five projects has its own footprint; there is no overlap. And there was never any competition for leasing rights.

    - The Town of Prattsburgh, NY has multiple projects as well. Windfarm Prattsburgh LLC is a joint venture of UPC Wind Partners LLC and Global Wind Harvest LLC. A separate project by Ecogen LLC (or more recently Ecogen Wind LLC) and Babcock and Brown is called Ecogen Prattsburgh/Italy Windfarm. Though these projects are adjacent to each other, and in some cases intertwined, there has never been competitive bidding for any piece of property. Ecogen has announced that it plans to build additional windfarms in other sections of the Town of Italy NY as well. No other developer has shown an interest in these other sites.

- The Town of Howard, NY has one project, Howard Windfarm LLC, with one developer, Everpower Wind LLC. Howard is somewhat unique in this area due to its much higher elevations. It is therefore a superior wind resource. It does not make good business sense that other developers do not want to compete for such a profitable resource.

- The Town of Hartsville, NY has one project and one developer, Airtricity (based in Europe).

- The Township of Allegany, NY has one project, the Allegany Township Project with one developer, Everpower Renewables, and two owners, EverPower Wind Holdings and ConEd Development, Inc.

- The Towns of Hornsby and Orange, NY, have one project, Clipper Paragon LLC, and one developer, Clipper Windpower (based in UK).

- The Town of Cherry Valley, NY has one project and one developer, Reunion Power.

- In Vermont's Northeastern Kingdom, there is only one developer, UPC.

- In Jefferson County, NY, there is one wind developer, St. Lawrence Windpower LLC that is controlled by AES/Acciona Energy NY.

- In Nantucket Sound, there is only one developer, a venture between UPC and EMI.

- There are two wind projects in Herkimer County: Fairfield/Norway and Jordanville/Stark, that were originally owned by PPM and Community Energy respectively. These two LLC's are now both controlled by Ibertrola of Spain.

This pattern of market allocation is abundantly clear. Such a perfect alignment and segmentation of multiple projects with more than 700 wind turbines could not have occurred by chance. All of these allocations must have been worked out prior to any lease solicitations. To the best of our knowledge this pattern is common in other states as well. We are not aware of any locale, at least in New York or Vermont, where there has been any competition for the same piece of real estate. The geographical market allocation is blatant, obvious, and complete.

2. **Price Fixing and Bid Rigging.** As a result of the market allocation conspiracy all competition is removed from the negotiation process with municipalities, school

districts, and landowners. The developers have put themselves in the position of being able to dictate all the terms and conditions for each and every project. The developer decides what the value will be for each element of the deal and forces it upon the willing or unwilling partners. This price fixing and/or bid rigging reduces the value of the projects to the local stakeholders by hundreds of millions of dollars over the life of the projects. And this decrease in cost to the developers directly translates into higher profits for the (mostly foreign) parent companies and investment banks funding these illegal schemes. It may be of interest to know that the businesses involved in wind energy development across the globe are heavily sprinkled with former Enron executives.

Products or Services Affected by this Conduct

Many of the small towns in NY and elsewhere have very limited resources. In the Town of Italy there are fewer than 1,000 residents, and the average household income is about $31,000. By allocating this market into small segments (either town or sub-town) the developers very quickly exhaust local resources and try to steamroll their way through the permitting and approval processes.

Because the developers are building electrical generating capacity that will be needed for the New York City market there is no direct value from the service locally. However the expanded production of wind power will drive up electrical costs across the state and increase our economic disadvantage.

Who is Harmed by the Alleged Violations

1. **Payments In Lieu of Taxes (PILOT).** Due to rather bizarre regulations in New York, the developers are not required to pay property taxes on their projects (individual projects are worth $120M to $250M). Rather, they can negotiate with the designated Lead Agency to pay an annual PILOT. Because there is no competition the developers have a “take it or leave it” attitude and they get away with paying a few cents on the dollar compared to full valuation. In our analysis for Windfarm Prattsburgh LLC we determined that the annual PILOT would be $255,000 as compared to a full tax levy of $6,000,000.

   There are also many situations where the designated Lead Agency has no particular interest in how the town or local school board make out with respect to PILOT. For example, the lead agency for Windfarm Prattsburgh is Steuben County Industrial Development Authority (SCIDA). SCIDA will be paid over $600,000 for the final project approvals so SCIDA has no incentive to take care of Prattsburgh as more money in PILOT might mean less money in their own pockets (SCIDA has only two employees).

2. **Lease Payments.** Because there is no competition between developers for development rights, property owners have no leverage to negotiate more favorable terms and conditions for their leases. Once again it is take it or leave it. Locally developers have been offering about $3,000 per year per turbine site. With the cost of a wind turbine ranging from $1.5M to $2.5M, a $3,000 lease payment is indeed paltry. But the landowner has no recourse, as the developer is the only game in his part of town.

3. **Non-participating Landowners and Residents.** Market allocation has put all the power in the hands of the developers. With the deep pockets of investment bankers such as J.P. Morgan, Goldman Sachs, Wachovia, Babcock and Brown and others, the developers have the financial wherewithal to do whatever they want. They have without question compromised, threatened, and intimidated local officials and in many cases they have even written the changes in zoning laws that enable them to put up more turbines by reducing required setbacks from property lines, residences, roads, and other adjacent areas. As a result many of us fear that the rural experience that is our culture and our heritage may be gone forever. What is now scenic and serene will suddenly be industrial. The direct impact on our property values is yet to be determined but our local realtors believe that it will be severe, particularly for the more desirable properties and view sheds.

4. **Economic Impact.** Tourism is the lifeblood of our economy here in the Central Finger Lakes. Annually it brings in $200M and supports 15,000 jobs. Studies in Europe have concluded that windfarms and rural tourism are not compatible, and that the presence of a wind farm is likely to reduce the number of visitor by 15% to 25%. Such a loss would bankrupt most of our tourism businesses.

Absent this illegal market allocation we would not be forced to deal with these developers at a town or sub-town level. Rather we would be planning these projects at the county or regional level where we would have the resources to deal with the developers on a level playing field and negotiate terms and conditions in a competitive environment fair to all parties. Without market allocation, we could force them to participate in a traditional, and legal, competitive bidding process. As it is, there is no competition whatsoever. The developers dictate (nearly identical) terms and conditions for multiple projects and the municipalities and landowners have no alternative but to accept their terms.

Our Role in Local Windfarm Development

As residents of targeted or adjoining towns, we are likely to be directly and negatively impacted by the construction of nearby windfarms. The extent of the impact cannot be determined until we know the details of final plans, and ultimately whether or not the plans will go through. However, without rapid intervention by the Department of Justice it is likely that some windfarms will be built this year. We expect that construction will have a serious adverse effect on our region's reputation and economic development.

Upstate New York has yet to begin to recover from the loss of our manufacturing base over the last 15 to 20 years, and the industrialization of our most important assets, rural character and scenic beauty, may make economic recovery next to impossible.

Other than working together in rather informal networks or more formal advocacy groups to study wind energy and its potential impact, we play no role other than that of concerned and informed citizens.

In terms of assisting the Department of Justice in the investigation of these alleged violations, there are perhaps two roles we can play:

1. **Information Source.** Our networks and advocacy groups have compiled extensive documentation regarding many aspects of wind energy. We would be glad to offer this information to the Department of Justice. Additionally we have available a number of subject matter experts who are very knowledgeable of the many technical, economic, public health, and environmental aspects of commercial windfarms.

2. **Access to Regional Network.** In the course of our work we have linked up with activists across the state of New York including most of the affected towns. We also have contacts in Vermont, New Hampshire, Massachusetts, Maryland, and Virginia that we could make available at your convenience.

The Wind Energy Business Model – A Brief Summary

The American Wind Energy Association, a trade association (lobbying group), has a wonderful marketing campaign that promises to deliver clean, safe renewable energy, reduce energy costs, cut down on foreign oil, and even reduce global warming. However, a cursory examination of these claims demonstrates that they are a carefully contrived mix of outright lies, half-truths, and selective use of data. It is unfortunate that a poorly informed and gullible public accepts many of these promises at face value. Here is a very brief discussion of facts regarding wind energy.

Wind energy is, by its nature, intermittent, variable, and unreliable. Unlike conventional utilities (coal, nuclear, hydro, and natural gas) wind cannot be ramped up as electrical demand rises nor can it be throttled back when demand lessens.

Because of these factors wind adds very little, if any, incremental and useable energy to modern electrical grids. We have come to expect that electricity will be available when we want it, not only when the wind is blowing.

Modern electrical grids operate very efficiently by forecasting anticipated demand and satisfying actual demand through economical base providers (coal, nuclear, and hydro) and dispatching other suppliers (such as gas turbines and hydro) to cover shorter peak demands. Wind energy does not fit into this carefully orchestrated system because it is not predictable and it cannot be dispatched as needed to meet demand. During last summer's heat wave the wind farms in California produced at only 2% of capacity and did nothing to assist in meeting peak demands.

If wind were required to compete with other technologies there would be no windfarms in the US. However wind does not have to compete:

- Wind energy does not have to be marketed. Grid operators are required to purchase and accept every KW of wind-generated electricity regardless of whether they want it or need it. A guaranteed market for a variable, intermittent, and unwanted commodity is the essence of a controlled and non-competitive activity.

- Windfarms are very expensive to install at a cost of $1.5M to $2.5M per wind turbine. Such a large upfront investment demands significant returns for investors. However since windfarms generate an anemic amount of energy, they do not make sense economically. They cannot and do not provide a positive return for investors, by themselves. The only way that windfarms can make money is through grants, subsidies, renewable energy certificates, production tax credits, and special tax treatments. All of these schemes are Enronesque, and many of them were in fact invented by Enron. It is a modern energy trading shell game where hundreds of millions in taxpayer money is funneled through one shell company after another until it finally arrives at its ultimate destination. Typically this final resting place for our cash is large multi-national investment banks and foreign manufacturers. On 1-19-07, Rosalie Duff, investor relations manager for Babcock and Brown Wind Partners, gave this explanation for their decision to spend $387M to buy windfarms in the U.S. "The U.S. is a very attractive wind energy market at the moment. Growth is being driven principally in respect to the extension of the production tax credits. That's why the market has been growing very rapidly."

  By contrast, a number of European countries (including Denmark, Germany, Spain, and Switzerland) that had previously subsidized wind are now ending those subsidies as the high cost of wind electricity was damaging their economic growth. Without the recent one-year extension of the production tax credits by Congress, there would be very little enthusiasm for wind power in the U.S. The financial viability of windfarms in the U.S. is solely dependent upon governmental largesse. It would be useful to determine exactly what favors the American Wind Energy Association and its members have bestowed upon our elected officials in exchange for this special treatment.

Windfarm Project Structures that Reflect the International Cartel

Most windfarm development projects involve arrangements among several business entities including investors, developers, suppliers, builders, and operators. While a number of the larger companies have the resources to play all of these roles simultaneously, such single-player scenarios are rare. Here are some examples of the various arrangements used to develop windfarms.

- On two different windfarm projects in Italy (Europe), IVPC was named "the project company", UPC and Edison Mission Energy (who together own IVPC) were named "project sponsors", and Babcock and Brown acted as "financial advisor to the project company and structured the facility". On a third Italian project, Tomen replaced Edison Mission Energy as Project Sponsors along with UPC. For the UPC Italian projects, investors included: Banca Nationale Del Lavoro S.P.A., Dexia Crediop S.P.A., MCC S.P.A., San Paulo IMIS S.P.A., The Royal Bank of Scotland PLC-Milan, MPS Bancaverde S.P.A., BNB Paribas, Allied Irish Banks PLC, Investec Bank UK Ltd. and Investec.

- For a project in Iowa, GE Energy was the turbine supplier. The project was "owned" by MidAmerican Energy Company and "being developed" by enXco, Inc. and Clipper Windpower (a turbine manufacturer).

- At another project in Iowa, it looks as if Clipper was the turbine supplier. This project was owned by PPM Energy (Scotland), developed by Clipper Windpower, and operated by GE Energy.

- In the Solar Integrated news release about their new Board members it was noted that Brian E. Caffyn, the new Board Chair "has been in the 5 years prior to the date of this announcement, a director or partner in (approximately 115 different) companies or partnerships."

Such a maze of structures and partnerships is sound proof that this is an intelligent and planned approach to the market, and that its clear intent and outcome was and is restraint of trade.

Follow The Money

Because of the generous government subsidies, production tax credits, renewable energy certificates, special tax treatment, and carbon trading, windfarm development in the U.S. has become a highly profitable venture. That is why wind is such a popular area for the private equity funds and global investment bankers who fund the lion's share of these projects.

In May of 2006, the Beacon Hill Institute at Suffolk University (Boston MA) released a report entitled Subsidies to a Wind Farm in Nantucket Sound that stated:

The Project would only be privately profitable because of the subsidies it can expect to receive. It would receive a "gross subsidy" (subsidy before taxes) of $731 million consisting of

- *(i) the Federal Production Tax Credit, which would contribute $180 million to revenue in present value terms;*
- *(ii) the sales of Massachusetts "green credits", worth a total of $487 million in present value terms; and*
- *(iii) accelerated depreciation of investment costs, which would allow the firm to defer payment of Federal income tax, worth $65 million.*

The report goes on to explain that the net subsidy after taxes is $581 million, and that the project would provide a 25% return on equity, a rate unheard of in today's economy. It is no wonder that the large investors cannot find enough wind projects to buy into.

However it is not just the investors who are reaping hundreds of millions of dollars in returns. All the rest of the players are doing quite well also. Developers, manufacturers, consultants, advisors, dealmakers, and others each have their slice of this very handsome pie. And there are many companies, including UPC, Clipper, Babcock and Brown, GE and others, who play each of these roles in different projects. Many of the executives in this cartel have become enormously rich s a result of their illegal activities. The amount of cash being thrown around in the wind business dwarfs the likes of Tyco or Enron.

Prosecuting these criminals and returning some of this cash back to the taxpayers and residents whose lives have been so disrupted by these corrupt conspiracies would be a very noble endeavor. This is exactly the kind of perverse market interference that the Sherman Antitrust Act was intended to prohibit.