

1 16-F-0328/20-F-0067 - Siting Board - 2-13-2020

2 NEW YORK STATE BOARD ON  
3 ELECTRIC GENERATION SITING AND  
4 THE ENVIRONMENT

5 16-F-0328 - Application of Number Three Wind LLC for a  
6 Certificate of Environmental Compatibility and Public Need  
7 Pursuant to Article 10 for Construction of a Wind Project  
8 Located in Lewis County.

9 20-F-0067 - In the Matter of the Rules and Regulations of  
10 the Board on Electric Generation Siting and the  
11 Environment, Contained in 16 NYCRR, Chapter X,  
12 Certification of Major Electric Generating Facilities,  
13 Proposed Amendments to Parts 1000 and 1001.

14 Siting Board Meeting

15 Date: Thursday, February 13, 2020 at 9:30 am

16 Location: 3 Empire State Plaza  
17 19th Floor  
18 Albany, New York

19 JOHN B. RHODES, Chair

20 LOUIS ALEXANDER, alternate of Basil Seggos, Department of  
21 Environmental Conservation

22 DR. ELIZABETH LEWIS-MICHL, alternate of Dr. Howard Zucker,  
23 Department of Health

24 VINCENT RAVASCHIERE, alternate of Eric Gertler, Empire  
25 State Development Corporation

JOHN WILLIAMS, alternate of Richard Kauffman, New York  
State Energy Research and Development Authority

LESLIE A. SHELDON, Ad Hoc Member

WILLIAM H. SCHAAB, Ad Hoc Member

1                   16-F-0328/20-F-0067 - Siting Board - 2-13-2020  
2                                   (On the record 9:30 a.m.)  
3                                   CHAIRMAN RHODES: Good morning. I'm  
4 Chairman Rhodes, chair of the Public Service  
5 Commission and I call this meeting of the Board on  
6 Electric Generation Siting and the Environment to  
7 order. Before we move into the agenda I would like  
8 to introduce the alternates representing the  
9 permanent members of the siting board. In Albany we  
10 have Louis Alexander, alternate of Basil Seggos,  
11 Department of Environmental Conservation. We have  
12 Dr. Elizabeth Lewis-Michael, alternate of Dr. Howard  
13 Zucker, Department of Health. We have Vincent  
14 Ravaschiere here alternate for Eric Gertler [phonetic  
15 spelling], acting commissioner of New York State  
16 Department of Economic Development and president and  
17 chief executive officer designate Empire State  
18 Development. We have John Williams alternate of Rich  
19 Kauffman, the New York State Energy Research and  
20 Development Authority.

21                                   And I would like to introduce the ad  
22 hoc members of the Number Three Wind siting board who  
23 are participating from Watertown. Leslie Sheldon and  
24 William Schaab. Thank you all. Secretary Phillips,  
25 are there any changes or comments on the agenda?

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2 SECRETARY PHILLIPS: There are no  
3 changes, but I would like to just stress or clarify  
4 what we are doing here today. We have two different  
5 cases that are on the agenda. We will begin with the  
6 first case which is Case 16-F-0328. It's the  
7 Application of Number Three Wind. For that case, the  
8 siting board consists of the members that you just  
9 identified. The second item on the agenda today is  
10 Case 20-F-0067. It's the Matter of Rules and  
11 Regulations of the Board on Electric Generation  
12 Siting and the Environment, Proposed Amendments to  
13 Part 1,000 and 1,001. For that item, the board  
14 consists of the permanent board -- board members.

15 So that was to clarify that the siting  
16 board ad hocs for the Number Three Wind case will not  
17 be voting on the regulations in the separate case.

18 CHAIRMAN RHODES: Thank you for that  
19 clarification. But they will vote on the Number  
20 Three Wind which is good. And let's proceed to that.  
21 Case 16-F-0328, Application of Number Three Wind,  
22 L.L.C. for a certificate of environmental  
23 compatibility and public need pursuant to Article 10  
24 for construction of a wind project located in Lewis  
25 County presented by Robert Rosenthal, general counsel

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2           to the siting board.

3                       Chief A.L.J. of the Department of  
4           Environmental Conservation James McClymonds is also  
5           available to answer questions. Mr. Rosenthal, please  
6           begin.

7                       MR. ROSENTHAL: Good morning members.  
8           My name is Bob Rosenthal and I'm counsel to the  
9           siting board. So the first issue -- matter on the  
10          agenda again is the Number Three Wind petition for  
11          rehearing. So let me start with a little bit of  
12          background.

13                      On November 12th, 2019 this board  
14          issued a certificate order for the Number Three Wind  
15          project consisting of 31 turbines to be located on  
16          several parcels in the Towns of Lowville and  
17          Harrisburg in Lewis County about 30 miles southeast  
18          of Watertown. The project developer, N.T.W., filed a  
19          timely petition for rehearing to which D.P.S. and  
20          D.E.C. staff responded as well as a community group  
21          known as THARP.

22                      Before you today is an order denying  
23          the petition in part by granting the petition in  
24          part. The petition for rehearing focused largely on  
25          findings related to 3 issues. First, post

1           16-F-0328/20-F-0067 - Siting Board - 2-13-2020  
2           certification compliance requirements for turbine  
3           noise. Second, all findings related to the impacts  
4           of 2 protected grassland bird species. And third,  
5           the aspect of the order determining not to waive the  
6           Town of Lowville's local law relating to  
7           undergrounding 2.8 miles of a 4 mile transmission  
8           line.

9                         First on turbine noise. First, a good  
10           piece of news. Neither N.T.W. nor any other party  
11           challenged where the board landed on the noise  
12           standard. Forty-five D.B.A. for nonparticipating  
13           landowners and 55 D.B.A. for participating  
14           landowners. Again, we view this as a good thing.  
15           But N.T.W. did seek rehearing on a more narrow issue.  
16           A compliance condition that requires it to use 2  
17           parameters in its preconstruction noise modeling. A  
18           4 meter assessment point and a 2 D.B.A. uncertainty  
19           factor.

20                        The order before you denies the  
21           petition as it relates to the 4 meter assessment  
22           point. The reason is that some of the houses located  
23           near the project are 2 stories tall. Hence, the  
24           basis for the 4 meter assessment point. However, the  
25           order grants the petition as it relates to the 2

1           16-F-0328/20-F-0067 - Siting Board - 2-13-2020  
2           D.B.A. uncertainty factor. The record regarding this  
3           issue is complex and ambiguous.

4                         In another case, D.P.S. staff  
5           determined that post certification compliance is  
6           sufficiently conservative if either a 4 meter  
7           assessment point or a 2 D.B.A. uncertainty factor is  
8           used. To ensure consistency and because the 4 meter  
9           assessment point is well supported in the case, the  
10          order before you grants rehearing for the limited  
11          purpose of deleting the requirement to also use a 2  
12          D.B.A. uncertainty factor.

13                        Second, N.T.B. -- N.T.W. seeks  
14          rehearing with respect to all findings in the  
15          certificate order. That the siting of certain  
16          infrastructure constitutes an incidental take of --  
17          of the Northern Harrier and Upland Sandpiper. The  
18          order before you carefully reviews the findings  
19          related to each of the interrelated issues. The  
20          determination of the take each -- the calculation of  
21          occupied territory and the required offset  
22          mitigation. And -- and it rules that they are well  
23          supported by the record and thus denies rehearing  
24          regarding these findings.

25                        However, the order considered a new

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2           circumstance. That is, on January 1st, 2020 and  
3           after issuance of the certificate order, the Climate  
4           Leadership and Community Protection Act or also known  
5           as the C.L.C.P.A., became effective. One of the key  
6           elements of the C.L.C.P.A. is the mandate on all  
7           agencies to consider whether issuance of any permits  
8           is, quote, inconsistent with the attainment of the  
9           statewide greenhouse gas emissions limits.

10                   The order before you accounts for the  
11           C.L.C.P.A. mandate by granting rehearing for the  
12           limited purpose of giving N.T.W. more flexibility in  
13           creating an offsite mitigation plan including  
14           potentially reducing the mitigation ratio to  
15           something less than three.

16                   Third, the petition seeks rehearing on  
17           the part of the order in which the board had failed  
18           to identify a record basis for waiving the Town of  
19           Lowville local law to the extent regarding the  
20           undergrounding of 2.8 miles of a 4.4 mile  
21           transmission line. On rehearing, N.T.W. points to  
22           several pieces of evidence in the record that the  
23           board indeed did not consider in the certificate  
24           order included -- including that the incremental cost  
25           of undergrounding 2.8 miles of transmission line is

1           16-F-0328/20-F-0067 - Siting Board - 2-13-2020  
2           about \$17 million.

3                       Given this record evidence, which was  
4           not considered in the certificate order, and the fact  
5           that the town of Lowville, through a local process,  
6           agreed to the waiver of its own local law, the order  
7           before you grants this aspect of the petition and  
8           authorizes such waiver.

9                       The remaining aspects of the order  
10          address certificate conditions that N.T.W. contests.  
11          For example, agency staff agreed to the omission of  
12          some conditions which were not included in the  
13          recommended decisions. On rehearing, the order finds  
14          the lack of a record basis for including those  
15          conditions in their certificate order.

16                      Additionally, including the conditions  
17          is unnecessary because the issues addressed in them  
18          were either addressed in other certificate conditions  
19          or in the SEEP specifications. The order thus  
20          requires those conditions to be omitted but otherwise  
21          rejects N.T.W.'s request for a rehearing regarding  
22          omitting other conditions which the order determines  
23          has a firm record basis.

24                      So let me make 3 final points. First,  
25          agency staff have been working to be more consistent



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2           with respect to their positions on certificate  
3           conditions and standards. The first part of this  
4           decision related to compliance conditions for turbine  
5           noise builds on this ongoing process.

6                       Second, the C.L.C.P.A. is now in  
7           effect and it requires this board to ensure that its  
8           findings are consistent with the clean energy goals  
9           established in that statute. And they are very  
10          aggressive. We believe that the C.L.C.P.A. will play  
11          a growing role in this board's decisions moving  
12          forward.

13                      And, third, it has always been this  
14          board's intent for developers to work with  
15          municipalities. That is what N.T.W. did here, and  
16          part of the reason why this order authorizes the  
17          waiver of a local law. And with that I -- I am open  
18          to any questions that you may have.

19                      CHAIRMAN RHODES: Thank you. My own  
20          comments are that obviously I've read the record and  
21          the recommendations with care. I find that this is a  
22          smart, protective, pragmatic, and as Bob said,  
23          consistent resolution on all the issues raised,  
24          noise, upland birds and undergrounding. I commend  
25          the staff and the parties and I'm going to support

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2 this item.

3 I turn now to my fellow colleagues and  
4 ask them for any comments. Mr. Alexander?

5 MR. ALEXANDER: Based on the review of  
6 the petition and the accompanying papers and thank  
7 you for the presentation today, I have no questions  
8 to ask.

9 CHAIRMAN RHODES: Thank you. Dr.  
10 Lewis-Michael?

11 DR. LEWIS-MICHAEL: I have no  
12 questions to ask.

13 CHAIRMAN RHODES: Thank you. Mr.  
14 Ravaschiere?

15 MR. RAVASCHIERE: No questions.

16 CHAIRMAN RHODES: Or Mr. Williams?

17 MR. WILLIAMS: No questions.

18 CHAIRMAN RHODES: Ms. Sheldon?

19 MS. SHELDON: No questions, thank you.

20 CHAIRMAN RHODES: Thank you. And Mr.  
21 Schaab?

22 MR. SCHAAB: I have no questions.

23 CHAIRMAN RHODES: Thank you. With  
24 that I will proceed to call for a vote. My vote is  
25 in favor of recommend -- of the recommendation to

1           16-F-0328/20-F-0067 - Siting Board - 2-13-2020  
2           grant in part and to deny in part the petition for  
3           rehearing therefore -- thereby modifying Number Three  
4           Wind's previously granted certificate of  
5           environmental compatibility at -- which was subject  
6           to conditions. Mr. Alexander, how do you vote?

7                   MR. ALEXANDER: I also vote in favor.

8                   CHAIRMAN RHODES: Dr. Lewis-Michael,  
9           how do you vote?

10                   DR. LEWIS-MICHAEL: In favor.

11                   CHAIRMAN RHODES: Mr. Ravaschiere?

12                   MR. RAVASCHIERE: In favor.

13                   CHAIRMAN RHODES: Mr. Williams?

14                   MR. WILLIAMS: In favor.

15                   CHAIRMAN RHODES: Ms. Sheldon?

16                   MS. SHELDON: I don't think a  
17           rehearing is necessary. I vote no.

18                   CHAIRMAN RHODES: Thank you. Mr.  
19           Schaab?

20                   MR. SCHAAB: I vote in favor.

21                   CHAIRMAN RHODES: Thank you. The  
22           matter is approved and the recommendation is adopted.  
23           And we'll move to the next item of the agenda.  
24           Leslie and Bill you're welcome to sit and listen but  
25           you can't vote.

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2 MS. SHELDON: Okay.

3 MR. SCHAAB: Thank you.

4 CHAIRMAN RHODES: We will move now to  
5 the next item on the agenda which is Case 20-F-0067  
6 in the Matter of the Rules and Regulations of the  
7 Board on Electric Generation Siting and the  
8 Environment contained in N.Y.C.R.R. -- in 16  
9 N.Y.C.R.R. Chapter X, Certification of a Major  
10 Electric Generating Facilities, proposed amendments  
11 to Parts 1,000 and 1,001. Mr. Rosenthal will present  
12 and Mr. Rosenthal, please begin.

13 MR. ROSENTHAL: Thank you, Chair  
14 Rhodes. So also for your consider today is an  
15 emergency rulemaking that modifies both the  
16 definition of the term revision and related  
17 provisions of the regulations adopted to implement  
18 Article 10 of the Public Service Law.

19 As explained in the regulatory package  
20 before you, application of the existing definition or  
21 revision is creating unintended negative  
22 consequences, the most prominent of which is to cause  
23 unwarranted delays in the permitting and construction  
24 of renewable energy projects in the state. These  
25 delays potentially render projects uneconomic by

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2           jeopardizing their eligibility for a federal tax  
3           credit which expires at the end of 2020, time  
4           sensitive project financing commitments and  
5           achievement of construction milestones needed to  
6           maintain rights to interconnect into the state's  
7           electric power grid.

8                     Absent this emergency rulemaking, the  
9           state's goals for deployment of renewable energy  
10          resources and reduction of greenhouse gas emissions  
11          would be impeded. Because these goals are vital to  
12          the protection of public health and welfare and the  
13          existing provisions as applied may cause certificated  
14          renewable energy projects to be abandoned, the public  
15          interest warrants that the definitions should be  
16          modified immediately.

17                    Let me get into the details of the  
18          problem. The existing definition of revision  
19          incorporates a bright line test that is triggered if  
20          projected components like an access road,  
21          transmission interconnection, transmission lines or  
22          turbines are relocated by more than 500 feet. This  
23          is a particularly problematic test for wind projects  
24          where turbines associated with a single project can  
25          often be located on dozens of sites.

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2                           It is fairly typical for the developer  
3 to relocate project components during construction  
4 design phase which occurs after issuance of their  
5 certificate. Additionally, the New York State  
6 Independent System Operator determines the location  
7 of the interconnection. Not the developer and not  
8 the utility. And that too can happen after the  
9 certificate is issued.

10                          A change in location of the  
11 interconnection by greater than 500 feet means that  
12 the associated transmission lines will also be moved  
13 by that distance thus triggering the bright line test  
14 incorporated into the existing definition of  
15 revision. That is precisely what happened in the  
16 Cassadaga case with respect to that project. The  
17 first project that this board certificated.

18                          Because of the bright line test, the  
19 certificate process in Cassadaga had to be reopened  
20 and the project was subjected to a -- an extra  
21 evidentiary hearing despite the fact that the new  
22 location for the point of interconnection was bound  
23 to reduce environmental impacts and nobody objected  
24 to the relocation. To ensure that this does not  
25 happen in the future, the new definition of revision

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2           and associated changes that are before you today  
3           would prevent the reopening of their certificate  
4           process for project changes that are environmentally  
5           benign or environmentally beneficial.

6                         Under the new definition, the bright  
7           line 500 foot test would be deleted. And the  
8           determination of whether the project is considered a  
9           revision would depend entirely on whether the  
10          relocation of project components results in a  
11          significant, adverse environmental impact. To be  
12          clear, the applicant would still be required to  
13          ensure that any proposed amendment to the application  
14          or to the certificate would not cause the project to  
15          be out of compliance with certificate conditions.  
16          Those would still apply.

17                        Under another associated regulatory  
18          change, the P.S.C. secretary after consultation with  
19          D.P.S. and D.E.C. staff, would have 14 days to make a  
20          determination regarding whether a project amendment  
21          is deemed a revision and thus subject to the  
22          additional evidentiary process.

23                        Finally, the 500 foot wetland  
24          delineation requirement, which is directly tied to  
25          the 500 foot bright line test incorporated into the

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2           definition of revision, would be changed to 100 feet  
3           which is consistent with the delineation required  
4           under D.E.C.'s fresh water wet -- wetland  
5           regulations.

6                                Again, the need for this rulemaking  
7           immediately is based on the number of projects that  
8           have been certificated to date. The fact that the  
9           construction season is quickly approaching and any  
10          delay could cause the developer to -- to miss this  
11          year's construction season or worse, the project to  
12          be uneconomic and thus abandoned. And the need to  
13          site the facilities as soon as possible to meet the  
14          clean energy goals set by the Public Service  
15          Commission and under the C.L.C.P.A.

16                               It also important to note that the  
17          goals of an intent underlying adoption of the C.C.L.  
18          -- C.L.C.P.A. also underlined the -- the reasons to  
19          move immediately on the rule change. The C.L.C.P.A.  
20          requires by 2030 for a minimum of 70 percent of the  
21          statewide electric generation to be provided by  
22          renewable energy systems. And by the year 2040 for  
23          the statewide electric demand system to generate zero  
24          emissions.

25                               The intent underlying these aggressive



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2           targets is included in Section 1 of the C.L.C.P.A.  
3           which is incorporated into this rulemaking. Section  
4           1 touches on the impending climate related issues  
5           impacting New York today including that, quote,  
6           climate change is adversely affecting the economic  
7           wellbeing of public health, natural resources and the  
8           environment of the state.

9                       Section 1 of the C.L.C.P.A. goes on to  
10          note the numerous detrimental impacts associated with  
11          climate change including an increase in the severity  
12          and frequency of extreme weather, rising sea levels,  
13          increased average temperatures and the exacerbation  
14          of air pollution. The purpose of the C.L.C.P.A.,  
15          like these regulatory changes here, is intended to  
16          mitigate those impacts.

17                      In sum, the identical public health  
18          and welfare basis underlying the C.P.L. -- C.L.C.P.A.  
19          also animates the need to act immediately on this  
20          rulemaking. And that concludes my presentation.  
21          And, again, I am open to any questions with respect  
22          to the rulemaking.

23                      CHAIRMAN RHODES: Thank you. Again,  
24          I've reviewed this item and I will have no questions.  
25          My own comment is that this is a well justified and

1           16-F-0328/20-F-0067 - Siting Board - 2-13-2020  
2           appropriate revision. In my own internal language I  
3           called it an improvement. When there are changes to  
4           a project that are beneficial and specifically when  
5           they are environmentally beneficial, I would  
6           encourage them and not discourage them.

7           So I see this -- the purpose of this  
8           revision as making sense. I see the timing as of now  
9           as making sense. And I find that the specifics of  
10          the revision in their clarity and in their narrowness  
11          also makes sense as well. I'm going to be in favor  
12          of this item. Mr. Alexander, do you have any  
13          questions or comments?

14                 MR. ALEXANDER: I have no questions.

15                 CHAIRMAN RHODES: Thank you. Dr.  
16          Lewis-Michael?

17                 DR. LEWIS-MICHAEL: No questions.

18                 CHAIRMAN RHODES: Mr. Ravaschiere?

19                 MR. RAVASCHIERE: I have no questions.

20                 CHAIRMAN RHODES: Mr. Williams?

21                 MR. WILLIAMS: No questions.

22                 CHAIRMAN RHODES: Thank you. With  
23          that we will proceed to call for -- I will proceed to  
24          call for a vote. My own vote is in favor of the  
25          recommendation to initiate a rulemaking process

1           16-F-0328/20-F-0067 - Siting Board - 2-13-2020  
2           concerning the proposed amendments to the Article 10  
3           regulations, Parts 1,000 and 1,001. And to adopt the  
4           proposed amendments on an emergency basis. Mr.  
5           Alexander, how do you vote?

6                       MR. ALEXANDER: I also vote in favor.

7                       CHAIRMAN RHODES: Dr. Lewis-Michael,  
8           how do you vote?

9                       DR. LEWIS-MICHAEL: In favor.

10                      CHAIRMAN RHODES: Mr. Ravaschiere, how  
11           do you vote?

12                      MR. RAVASCHIERE: In favor.

13                      CHAIRMAN RHODES: And, Mr. Williams,  
14           how do you vote?

15                      MR. WILLIAMS: In favor.

16                      CHAIRMAN RHODES: Thank you.  
17           Secretary Phillips, is there anything further to come  
18           before us today?

19                      SECRETARY PHILLIPS: No, there's  
20           nothing further.

21                      CHAIRMAN RHODES: Thank you. Without  
22           -- with that I adjourn us. Thank you very much. And  
23           I hope the weather is okay up north in Watertown.

24                      DR. LEWIS-MICHAEL: Thank you.

25                      UNIDENTIFIED SPEAKER: It's clear up

1                   16-F-0328/20-F-0067 - Siting Board - 2-13-2020  
2                   here so far today.

3                                   CHAIRMAN RHODES: All right. Okay.  
4                   Thank you very much all.

5  
6                                   (Off the record 9:51 a.m.)

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2

3 STATE OF NEW YORK

4 I, KAYLA ALLEN, do hereby certify that the foregoing was  
5 reported by me, in the cause, at the time and place, as  
6 stated in the caption hereto, at Page 1 hereof; that the  
7 foregoing typewritten transcription consisting of pages 1  
8 through 20, is a true record of all proceedings had at the  
9 hearing.

10 IN WITNESS WHEREOF, I have hereunto  
11 subscribed my name, this the 19th day of February, 2020.

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14 Kayla Allen, Reporter

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