

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

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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

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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

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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

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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

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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

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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

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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

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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.

12

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14 Kayla Allen, Reporter

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