

1 17-F-0182 - Siting Board - 11-19-2020

2 NEW YORK STATE BOARD ON
3 ELECTRIC GENERATION SITING AND
4 THE ENVIRONMENT
5

6 CASE 17-F-0182 - Application of Mohawk Solar LLC for a
7 Certificate of Environmental Compatibility and Public Need
8 Pursuant to Article 10 of the Public Service Law for
9 Construction of a Solar Electric Generating Facility in
10 the Towns of Canajoharie and Minden, Montgomery County.

11 Siting Board Meeting

12 Date: Thursday, November 19, 2020 @ 3:30 pm
13

14 JOHN B. RHODES, Chair

15 LOUIS ALEXANDER, alternate of Basil Seggos, Department of
16 Environmental Conservation

17 DR. ELIZABETH LEWIS-MICHL, alternate of Dr. Howard Zucker,
18 Department of Health

19 VINCENT RAVASCHIERE, alternate of Eric Gertler, Empire
20 State Development Corporation

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

23 GREG YACOBUCCI, Ad Hoc Member
24
25

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2 CHAIRMAN RHODES: Good afternoon.

3 This is John Rhodes, the Chair of the Board on
4 Electric Generation Siting and the Environment and if
5 I could call this meeting of the Board on Electric
6 Generation Siting and the Environment to order.
7 Before we get started, I would like to note our
8 arrangements for the meeting today. In line with the
9 guidelines concerning social distancing and
10 minimizing large gatherings and in keeping with
11 Executive Orders suspending provisions of the Open
12 Meetings Law on an emergency basis, we are conducting
13 today's meeting remotely.

14 I'd like to remind those who are
15 participating by phone, to please mute your lines,
16 except when you are speaking. The public will have
17 the opportunity to listen to the meeting, by going to
18 the Department's webcast page and we will also record
19 and transcribe the meeting, as has been our practice.

20 These arrangements have been reviewed
21 by our general counsel and he has found that they
22 meet the requirements of the Executive Orders and
23 that they meet my own expectations of honoring the
24 intent of the Open Meetings Law.

25 Before moving to the agenda, I would

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2 like to introduce the alternates representing the
3 permanent members of the Siting Board and for good
4 order sake, when I introduce you, could you please
5 acknowledge your presence yes or present or some
6 other statement like that? Louis Alexander,
7 alternate of Basil Seggos, Department of
8 Environmental Conservation.

9 MR. ALEXANDER: Present.

10 CHAIRMAN RHODES: Thank you. Dr.
11 Elizabeth Lewis-Michl, alternate of Dr. Howard
12 Zuckard, Department of Health.

13 DR. LEWIS-MICHL: Present.

14 CHAIRMAN RHODES: Thank you. Vincent
15 Ravaschiere, alternate for Eric Gertler, Acting
16 Commissioner of New York State Department of Economic
17 Development and President and Chief Executive Officer
18 Designate Empire State Development.

19 MR. RAVASCHIERE: Present.

20 CHAIRMAN RHODES: Thank you. And,
21 John Williams, alternate of Richard Kauffman, New
22 York State Energy Research and Development Authority.

23 MR. WILLIAMS: Present.

24 CHAIRMAN RHODES: Thank you. And, I
25 would like to introduce the ad-hoc member of the

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2 Mohawk Solar Article 10 Siting Board, Greg Yacobucci.

3 MR. YACOBUCCI: Present.

4 CHAIRMAN RHODES: Thank you very much.
5 Secretary Phillips, are there any changes to the
6 agenda?

7 SECRETARY PHILLIPS: There are no
8 changes to the agenda.

9 CHAIRMAN RHODES: Thank you. And,
10 with this, we'll get right into it. The Case 17-
11 F-0182, Application of Mohawk Solar, L.L.C., for a
12 Certificate of Environmental Compatibility and Public
13 Need, Pursuant to Article 10 of the Public Service
14 Law for Construction of a Solar Electric Generating
15 Facility in the Towns of Canajoharie and Minden,
16 Montgomery County, presented by Erica Bergen,
17 Administrative Law Judge, Department of Public
18 Service and by James McClymonds, Chief Administrative
19 Law Judge, Department of Environmental Conservation.

20 Also, available to answer questions,
21 are Sean Mullany, Administrative Law Judge,
22 Department of Public Service, Molly McBride,
23 Administrative Law Judge, Department of
24 Environmental Conservation, Dakin Lecakes, Chief
25 Administrative Law Judge, Department of Public
Service and Robert

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2 Rosenthal, general counsel, Department of Public
3 Service and of the Siting Board. Judge Bergen and
4 Judge McClymonds, please begin.

5 A.L.J. BERGEN: Thank you. Good
6 afternoon, Chair Rhodes and members of the Siting
7 Board. My name is Erica Bergen and I co-presided
8 over this case with examiners, Sean Mullany with the
9 Department of Public Service and Molly McBride of the
10 Department of Environmental Conservation. I will
11 provide an overview of the item -- items before you,
12 which is a Proposed Order of the Siting Board,
13 granting a Certificate of Environmental Compatibility
14 and Public Need, to Mohawk Solar, L.L.C., subject to
15 certain terms and conditions. James McClymonds,
16 Chief Administrative Law Judge of the Department of
17 Environmental Conservation, also will offer brief
18 remarks on the disputed issues that were in this
19 case.

20 Mohawk Solar, a wholly owned
21 subsidiary of Avangrid Renewables, proposes to
22 construct and operate a commercial scale, solar
23 electric generating facility within the Towns of
24 Canajoharie and Minden in Montgomery County. The
25 project is a large-scaled renewable energy
facility,

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2 consisting of up to 529 acres of photovoltaic solar
3 panels and related facility. The facility will
4 generate up to 90.5 megawatts of electricity, which
5 is enough to meet the average annual demand of more
6 than 28,000 New York homes.

7 The grant of a certificate to Mohawk
8 Solar, would be subject to the conditions that are
9 attached to the Proposed Order. The Proposed Order
10 is supported by a robust and extensive evidentiary
11 record, that supports all the statutory findings that
12 the Siting Board must make, before issuing a
13 Certificate, pursuant to Article 10 of the Public
14 Service Law.

15 The Article 10 review process in this
16 case, was extensive, fair and open and included both
17 pre-application and post-application phases. Notice
18 to the public was provided, with respect to all
19 significant milestones in the case. There were many
20 instances of community outreach and education and
21 numerous opportunities for public participation.

22 Mohawk Solar carried out a public
23 involvement program, which included, among other
24 things, establishing a project specific website, a
25 local document repository, a toll-free -- toll-free

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2 telephone number for access to project information.
3 In addition, throughout the Article 10 process, the
4 Department of Public Service engaged in extensive
5 public outreach and sent notice of all significant
6 project milestones to the parties and service lists.
7 The Department also hosted a local public statement
8 hearing in the Town of Canajoharie in January of 2020
9 and solicited public comments through multiple other
10 means.

11 Aside from the State agency parties in
12 this case, the Towns of Canajoharie and Minden were
13 the only active parties and they were jointly
14 represented by counsel. Intervenor funding was
15 awarded jointly to these Towns, at both the pre-
16 application and the application phases. The Towns
17 were awarded a total of \$31,500.00 in the pre-
18 application phase and \$90,500.00 in application
19 funding.

20 The Department received 14 public
21 comments in this case, on the DMM and at the public
22 statement hearing. Most comments were submitted by
23 residents and most commenter's support the project,
24 citing the benefits of renewable energy and the
25 harms posed by global warming. Other benefits
cited

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2 include, local economic benefits because of jobs and
3 revenue the project will provide to lease holders,
4 local municipalities and school districts.

5 Opponents to the project, cited
6 concerns about how much energy the project would
7 provide to the local community, if any, visual
8 impacts, loss of agricultural land, impacts to
9 wildlife, including threatened and endangered
10 grassland bird species and accumulative adverse
11 impacts of this and other similar projects proposed
12 in the surrounding areas.

13 The proposed certificate conditions
14 attached to the Proposed Order before you, address
15 the identified environmental impacts of the project,
16 including impacts that have been the subject of
17 public concern. Most of the proposed conditions,
18 which are based on conditions proposed in a
19 supplemental settlement proposal, negotiated by the
20 parties, were undisputed or are the result of those
21 settlement negotiations.

22 The parties' supplemental settlement
23 proposal, however, left two areas of dispute for
24 resolution by the Board, a dispute between the
25 Applicant, Mohawk Solar and D.E.C. Staff, regarding

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2 the project's compliance with the State Endangered
3 Species Act and a dispute between the Applicant and
4 the Department of Agriculture and Markets Staff,
5 regarding the project's impacts to prime agricultural
6 farm land. Judge McClymonds will now brief the Board
7 on the -- these disputed issues and the resolution of
8 those issues in the Proposed Order. Judge
9 McClymonds?

10 A.L.J. MCCLYMONDS: Thank you, Judge
11 Bergen and thank you, Chairman Rhodes and members of
12 the Siting Board, for the opportunity to speak with
13 you this afternoon. As just mentioned, as a result
14 of settlement negotiations culminating in the
15 parties' supplemental settlement proposal, the only
16 issues remaining in dispute between the Applicant and
17 D.E.C. Staff, concern two proposed certificate
18 conditions, related to threatened or endangered or T
19 and E grassland bird species and one condition,
20 related to T and E bird species in general. In
21 addition, a dispute remains between the Applicant and
22 Agricultural and Markets Staff, concerning the impact
23 of the Applicant's Grassland Bird Net Conservation
24 Benefit Plan or N.C.P.B -- B.P. on agricultural
25 lands.

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2 With respect to T and E grassland bird
3 species, the first between the Applicant and D.E.C.
4 Staff, concerns the Certificate Condition 83-C, which
5 contains an exception from a daily monitoring
6 requirement for construction in the occupied habitat
7 of T and E grassland bird species during the breeding
8 season from April 23 to August 15, in the fields that
9 have a history of use for row crops.

10 In briefing, the Applicant requests
11 that if fields were planted with row crops in the
12 last two farming seasons, prior to the commencement
13 to construction and those fields were also
14 historically planted with row crops, during at least
15 one of the prior six years, those fields would not be
16 subject to a breeding season construction prohibition
17 or the daily survey requirement.

18 The Draft Order concludes that the
19 Applicant's requested condition, may be excepted,
20 based upon record evidence that row crops are not the
21 preferred habitat of T and E grassland bird species
22 and the certificate conditions that would apply in
23 the event T and E grassland birds are, in fact,
24 encountered during construction.

25 The second dispute between the

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2 Applicant and D.E.C. Staff, concerns the size of the
3 protective buffer area or the area in which
4 construction activities must cease, unless authorized
5 to resume, to be employed in the event T and E
6 grassland bird species are detected during
7 construction of occupied habitat, in either the
8 breeding or the wintering seasons. The Applicant
9 requested that the standard 500 foot buffer be
10 employed, not a 200 meter or approximately 660 foot
11 buffer, as requested by D.E.C.

12 The Draft Order concludes that the
13 standard 500 foot buffer, in combination with the
14 daily survey by -- by the environmental monitor, is
15 sufficient to avoid the direct take of T and E
16 grassland bird species and accordingly, adopt the
17 buffer proposed by the Applicant.

18 The final issues between the Applicant
19 and D.E.C. Staff, concern Applicant's proposed
20 changes to Certificate Condition 85, which governs
21 the discovery of nests or roosts of T and E birds
22 generally, including Bald Eagles, during project
23 construction or operation.

24 The Draft Order grants the Applicant's
25 request, that Condition 85 only apply to the

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2 discovery of active nests or roosts, on the ground
3 that the onsite environmental monitor, may make the
4 initial determination whether a nest or roost is
5 active, provided the monitor applies a generally
6 accepted, scientific standard for identifying active
7 nests or roosts.

8 The Draft Order, otherwise rejects the
9 other changes requested by the Applicant, on the
10 ground that the changes relate to standard
11 conditions, from which the Applicant has not
12 justified any departure.

13 Accordingly, the Draft Order concludes
14 that based upon the above conditions and the agreed
15 upon conditions and the site engineering
16 environmental plan guidelines, related to T and E
17 bird species, the project will be constructed and
18 operated in compliance with the State Endangered
19 Species Act.

20 The final disputed issues, concern
21 the Department of Agriculture and Market's
22 objection to the use of off-site prime farmland or
23 farmland containing priority soils, groups one
24 through four, for the grassland bird mitigation
25 plan, laid out in the Applicant's revised Net
Conservation Benefit

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2 Plan.

3 The Draft Order concludes that the
4 appropriate standard to resolve Ag and Market's
5 objection, is the Article 10 standard, namely, that
6 the Applicant must demonstrate that impacts to
7 agricultural resources would be avoided, minimized
8 and mitigated to the maximum extent practicable.
9 However, because the Net Conservation Benefit Plan
10 has not been finalized and the final mitigation lands
11 have not yet been selected, the Draft Order concludes
12 it is premature to determine whether the Article 10
13 standard has been met. Instead, the determination
14 whether the plan meets the Article 10 standard, will
15 take place during the compliance phase of the
16 project.

17 Thank you again for the opportunity to
18 brief you on the Proposed Order. I remain available
19 for any questions you may have and I return it to
20 your, Judge Bergen.

21 A.L.J. BERGEN: Thank you, Judge
22 McClymonds. Based upon the forgoing, the record
23 supports a finding by the Board, that the probable
24 environmental impacts of the construction and
25 operation of the facility, will be minimized or

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2 avoided to the maximum extent practicable, provided
3 that the Applicant complies with the certificate
4 conditions.

5 The record also supports a finding by
6 the Board, that the facility is designed to operate
7 in compliance, with all applicable State and Local
8 environmental, health and safety law and regulations.

9 The Proposed Order, if adopted, would
10 find that the construction and operation of the
11 project, will serve the public interest because the
12 project will be consistent with State energy
13 policies, long range energy planning objectives, the
14 strategies set forth in the most recent State energy
15 plan and the additional social, economic and other
16 factors, deemed relevant by the Board.

17 The Examiners recommend that the Board
18 adopt the Proposed Order, including the attached
19 certificate conditions. Thank you.

20 CHAIRMAN RHODES: This is John Rhodes.
21 Thank you very much, Judges McClymonds and Bergen.
22 That was a very nice presentation of -- of -- of a --
23 of a solid and -- and persuasive record. I'm pleased
24 that only a few, namely two, issues could not be
25 resolved by discussions between the parties and I'm

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2 also pleased that the two disputes that -- that you
3 make a point of -- of pointing out, were able to be
4 resolved with, what in my mind to my eyes, is a
5 reasoned resolution of the issues, record based and
6 paying all appropriate attention and meeting the
7 standard of, you know, minimizing or avoiding to the
8 maximum extent practical, the probable environmental
9 impacts and otherwise, finding that under these
10 conditions, the project will be in the public
11 interest.

12 So, I have no questions and I will be
13 inclined to vote in favor of the item. At this
14 point, I now go down and effectively roll call my
15 colleagues on the Siting Board and ask them if they
16 have any comments or questions. Mr. Alexander?

17 MR. ALEXANDER: Thank you, Chair
18 Rhodes. I also would like to thank the Examiners for
19 their review of the matter before us today and I
20 would also like to commend the parties, for their
21 efforts and success in settling many of the matters
22 at issue in this proceeding.

23 As discussed in this Order and as set
24 forth in the Public Service Law, this Siting Board
25 may not grant a Certificate, unless various

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2 determinations can be made. And, in that regard, a
3 number of factors are considered, as noted on page
4 eleven of this Order, including but not limited to
5 environmental impacts.

6 The process as reflected in the
7 Examiners' presentation today, underscores a careful
8 evaluation of the merits of this case. It is clear,
9 however, that the balancing of the factors that must
10 be considered, can lead to hard and difficult
11 choices, at times.

12 There are some aspects in this
13 proceeding, both procedural and substantive, that I
14 would like -- that I wish to comment on. I shall
15 keep my comments brief.

16 First, procedurally, this is the first
17 Article 10 proceeding which has reached this Siting
18 Board, that did not have a recommended decision. I
19 understand that a recommended decision in various
20 circumstances, has not always been considered
21 necessary. I think that a recommended decision,
22 which provides the Examiners an opportunity to
23 address and evaluate matters at issue can be, where
24 appropriate, a useful component to the process.

25 A recommended decision can be

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2 beneficial, particularly where disputes arise on
3 environmental matters and I would suggest that in
4 future proceedings, the preparation of a recommended
5 decision be given consideration where these types of
6 matters are at issue.

7 Second, I have some comments that
8 relate to the parties' presentations, in testimony
9 and in their briefing. The first is to the issue
10 regarding the meaning of active nest, which is
11 addressed in this Order. The Order as discussed by
12 the Examiners, incorporates the adjective, active,
13 and states that the determination of what is an
14 active nest must be made based on generally
15 accepted, scientific indicia.

16 Now, the various indicia are set forth
17 in the Order, including a reference to a U.S. Fish
18 and Wildlife Service publication, of which official
19 notice is being taken. I would encourage parties in
20 Article 10 proceedings, to be as thorough as
21 possible, in detailing from their perspective, the
22 intended meaning and scope of any terms at issue.

23 As noted, this project will utilize an
24 environmental monitor at this site, which is a
25 critical feature, particularly in light of the

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2 potential impacts to threatened and endangered
3 species of grassland birds. To that end, I
4 anticipate that the monitor selection process will
5 confirm that the monitor will possess the appropriate
6 educational and experience qualifications. In future
7 proceedings, if parties have recommendations on such
8 qualifications, it may be helpful for them to set
9 those forth, as appropriate, in the proceeding.

10 And, one of the most important and
11 critical issues as noted today, relates to threatened
12 and endangered species of grassland birds. There
13 were disagreements over various potential impacts,
14 most particularly with respect to row crops, in terms
15 of nesting and breeding potential and the risk of a
16 direct take.

17 Although in my view, Department of
18 Environmental Conservation Staff made some very cogent
19 points in support of its position and the protection
20 of such species is critical, the Order, as indicated,
21 seeks to reach a necessary balance and the balance is
22 reflected in the certificate conditions referenced
23 today, regarding threatened and endangered species.

24 I also note, that the Order also
25 includes references, that protective measures should

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2 be implemented during construction, to avoid
3 significant impacts to grassland nesting birds. I
4 recognize that factual circumstances, regarding
5 threatened and endangered species in future matters
6 may differ and that conditions to protect such
7 species, may vary, based on site-relevant
8 circumstances.

9 Finally, I have one question for the
10 Examiners. Through these proceedings, I've been
11 concerned about any potential financial burden on the
12 local municipalities and landowners in the
13 decommissioning and restoration process. For
14 example, a key issue for solar projects, is how solar
15 panels will be disposed at the end of life of the
16 facility. Now, I read the section on
17 decommissioning and restoration in the Order, as
18 well as the SEEP section on clean-up and
19 restoration, to indicate that the local
20 municipalities and landowners will not share any
21 of the financial decommissioning/restoration
22 burdens and that burden is on the certificate
23 holder. And, I would like to ask the Examiners,
24 if my reading is correct?

25 A.L.J. BERGEN: This is Judge Bergen,

Mr. Alexander. Your understanding of that is

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2 correct. The certificate holder will be obtaining
3 letters of credit. They will be held each by the
4 Town of Minden -- one by the Town of Minden, one by
5 the Town of Canajoharie, that would cover the cost of
6 decommissioning. The Towns would not bear the
7 burden.

8 MR. ALEXANDER: Thank you very much.
9 Chair Rhodes, I have no further comments or
10 questions.

11 CHAIRMAN RHODES: Thank you, Mr.
12 Alexander. Dr. Lewis-Michl, any comments or
13 questions?

14 DR. LEWIS-MICHL: No comments or
15 questions.

16 CHAIRMAN RHODES: Thank you very much.
17 Mr. Ravaschiere, any comments or questions?

18 MR. RAVASCHIERE: No questions, thank
19 you.

20 CHAIRMAN RHODES: Thank you. Mr.
21 Williams, any comments or questions?

22 MR. WILLIAMS: Thank you, no comments
23 or questions.

24 CHAIRMAN RHODES: And, Mr. Yacobucci,
25 any comments or questions?

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2 MR. YACOBUCCI: I do have a comment.
3 I think part of the Clinton Road passageway, is
4 actually deemed a scenic by-way to come from the New
5 York State Thruway to access the, I think it's New
6 York Route 20, and this project, I believe, is on
7 both sides of that road and Route. And, I'm a local
8 from here and I just -- I just don't see it fitting
9 into a scenic by-way and that's the only comment I
10 have. Thank you.

11 CHAIRMAN RHODES: Thank you very much.
12 Judge Bergen or Judge McClymonds, is there -- if
13 there an observation that -- that -- that might help
14 at this point or should we proceed?

15 A.L.J. MCCLYMONDS: I'm not that
16 familiar with the record on this. Judge Bergen, do
17 you -- do you have some insight?

18 A.L.J. BERGEN: I -- that particular
19 issue was not actively disputed by the parties. That
20 -- that was involved in settlement. So, to the
21 extent the Towns had -- had concerns, it's my
22 understanding they've been resolved.

23 CHAIRMAN RHODES: Thank you very much.
24 So, that at least provides clarity on the record in
25 front of us. And, I'd like to proceed to call for a

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2 vote. With that -- for the record, it's John Rhodes,
3 Chair of the Board and Chair of the Public Service
4 Commission and my vote is in favor of the
5 recommendation to approve the application of Mohawk
6 Solar, L.L.C., for a Certificate of Environmental
7 Compatibility and Public Need, with conditions, as
8 just described. Mr. Alexander, how do you vote?

9 MR. ALEXANDER: I also vote in favor.

10 CHAIRMAN RHODES: Thank you very much.
11 Dr. Lewis-Michl, how do you vote?

12 DR. LEWIS-MICHL: In favor.

13 CHAIRMAN RHODES: Thank you very much.
14 Mr. Ravaschiere, how do you vote?

15 MR. RAVASCHIERE: In favor.

16 CHAIRMAN RHODES: Thank you very much.
17 Mr. Williams, how do you vote?

18 MR. WILLIAMS: In favor.

19 CHAIRMAN RHODES: And, Mr. Yacobucci,
20 how do you vote?

21 MR. YACOBUCCI: In favor.

22 CHAIRMAN RHODES: Thank you very much.
23 The matter is approved and the recommendation is

24 adopted. Secretary Phillips, is there anything
25 further to come before us today?

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SECRETARY PHILLIPS: There's nothing further today.

CHAIRMAN RHODES: Thank you. With that, we are adjourned and Happy Thanksgiving to all.

(The meeting concluded.)

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2 STATE OF NEW YORK

3 I, ABBY HALLOWELL, do hereby certify that the foregoing
4 was reported by me, in the cause, at the time and place,
5 as stated in the caption hereto, at Page 1 hereof; that
6 the foregoing typewritten transcription consisting of
7 pages 1 through 23, is a true record of all proceedings
8 had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 23rd day of November, 2020.

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12

13 ABBY HALLOWELL, Reporter

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