

1 17-F-0597, 18-F-0262, et al Siting Board - 3-11-2021

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

5 CASE 17-F-0597 - Application of High River Energy Center,
6 LLC for a Certificate of Environmental Compatibility and
7 Public Need Pursuant to Article 10 of the Public Service
8 Law for Construction of a Solar Electric Generating
9 Facility Located in the Town of Florida, Montgomery
10 County.

11 CASE 18-F-0262 - Application of High Bridge Wind, LLC for
12 a Certificate of Environmental Compatibility and Public
13 Need Pursuant to Article 10 to Construct an Approximately
14 100 MW Wind Powered Electric Generating Facility Located
15 in the Town of Guilford, Chenango County.

16 CASE 16-F-0328 - Application of Number Three Wind LLC for
17 a Certificate of Environmental Compatibility and Public
18 Need Pursuant to Article 10 for Construction of a Wind and
19 Solar Project Located in Lewis County. (Amendment Request)

20 CASE 17-F-0599 - Application of East Point Energy Center,
21 LLC for a Certificate of Environmental Compatibility and
22 Public Need Pursuant to Article 10 of the Public Service
23 Law for Construction of a Solar Electric Generating
24 Facility Located in the Town of Sharon, Schoharie County.
25 (Confirming Order)

CASE 17-F-0617 - Application of Hecate Energy Albany 1 LLC
and Hecate Energy Albany 2 LLC for a Certificate of
Environmental Compatibility and Public Need Pursuant to
Article 10 of the Public Service Law for Construction of a
Solar Electric Generating Facility Located in the Town of
Coeymans, Albany County. (Confirming Order and Tree
Clearing Plan)

Siting Board Meeting

Date: Thursday, March 11, 2021 @ 10:30 am

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2 Siting Board Members:

3 TAMMY MITCHELL, alternate of the Chair

4 LOUIS ALEXANDER, alternate of Basil Seggos, Department of
5 Environmental Conservation

6 DR. ELIZABETH LEWIS-MICHL, alternate of Dr. Howard Zucker,
7 Department of Health

8 VINCENT RAVASCHIERE, alternate of Eric Gertler, Empire
9 State Development Corporation

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

12 KEITH WATERS, Ad Hoc Member, Case 17-F-0597

13 RICHARD VERTUCCI, Ad Hoc Member, Case 17-F-0597

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2 CHAIRPERSON MITCHELL: Good morning.

3 My name is Tammy Mitchell. I am the Director of the
4 Office of Electric Gas and Water at the New York
5 State Department of Public Service. I've been
6 designated to serve as the alternate representing the
7 Chair of the New York State Board on Electric
8 Generation Siting and the Environment. I'd like to
9 call this meeting of the Board on Electric Generation
10 Siting and the Environment to order.

11 Before we get started, I would like to
12 note our arrangements for the meeting today. In line
13 with the guidelines concerning social distancing and
14 minimizing large gatherings and in keeping with the
15 Executive Orders suspending provisions of the Open
16 Meetings Law on an emergency basis, we are conducting
17 today's meeting remotely.

18 I would like to remind those who are
19 participating by phone, to please mute their lines,
20 except when they are speaking. The public will have
21 the opportunity to listen to the meeting by going to
22 the Department's webcast page. We will also record
23 and transcribe the meeting, as has been our practice.
24 These arrangements have been reviewed by our general
25 counsel and he has found that they meet the

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2 requirements of the Executive Orders and that they
3 meet my own expectations of honoring the intent of
4 the Open Meetings Law.

5 Before moving to the agenda, I would
6 like to introduce the alternates representing the
7 permanent members of the Siting Board. When I call
8 your name, please confirm that you are present on the
9 call. Louis Alexander, alternate for Basil Seggos,
10 Department of Environmental Conservation.

11 MR. ALEXANDER: Present.

12 CHAIRPERSON MITCHELL: Thank you. Dr.
13 Elizabeth Lewis-Michl, alternate for Dr. Howard A.
14 Zucker, Department of Health.

15 DR. LEWIS-MICHL: Present.

16 CHAIRPERSON MITCHELL: Thank you.
17 Vincent Ravaschiere, alternate for Eric Gertler,
18 Acting Commissioner New York State Department of
19 Economic Development and President and C. -- and
20 Chief Executive Officer Designate Empire State
21 Development.

22 MR. RAVASCHIERE: Present.

23 CHAIRPERSON MITCHELL: Thank you.
24 John Williams, alternate for Richard Kauffman, New
25 York State Energy Research and Development Authority.

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2 MR. WILLIAMS: Present.

3 CHAIRPERSON MITCHELL: Thank you.

4 And, I would like to introduce the Ad Hoc members for
5 Case 17-F-0597. Please confirm that you are present
6 when I call your name. Keith Waters?

7 MR. WATERS: Present.

8 CHAIRPERSON MITCHELL: Thank you and
9 Rick Vertuci?

10 MR. VERTUCCI: Present.

11 CHAIRPERSON MITCHELL: Thank you.
12 Secretary Phillips, are there any changes to the
13 agenda?

14 SECRETARY PHILLIPS: There are no
15 changes to the agenda. However, I would like to
16 note, that today's agenda includes six separate
17 items. Two of the items will be considered
18 separately by the Siting Board for those respective
19 cases. The remaining four items will be considered
20 and decided by the permanent members of the Siting
21 Board, based on written reviews and analysis
22 previously made available to them. We will refer to
23 these four items as consent agenda items.

24 CHAIRPERSON MITCHELL: Thank you,
25 Secretary Phillips. We will start with Case 17-F-

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2 0597, Application of High River Energy Center,
3 L.L.C., for a Certificate of Environmental
4 Compatibility and Public Need, Pursuant to Article 10
5 of the Public Service Law, for Construction of a
6 Solar Electric Generating Facility, Located in the
7 Town of Florida, Montgomery County, presented by Sean
8 Mullany, Administrative Law Judge, Department of
9 Public Service, Richard Sherman, Administrative Law
10 Judge, Department of Environmental Conservation,
11 Dakin Lecakes, Chief Administrative Law Judge,
12 Department of Public Service and Robert Rosenthal,
13 General Counsel, are available for questions. Judge
14 Mullany, please begin.

15 A.L.J. MULLANY: Good morning, Interim
16 Chair Designee Mitchell and members of the Siting
17 Board. I presided as the presiding examiner over
18 this case with Associate Examiner, Richard Sherman of
19 the D.E.C. I want to offer briefs remarks this
20 morning on the item before you, a Proposed Order of
21 the Siting Board, granting a Certificate of
22 Environmental Compatibility and Public Need to the
23 High River Energy Center, L.L.C., subject to certain
24 terms and conditions.

25 High River Energy Center, which I'm

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2 going to refer to just as High River or Applicant, is
3 a wholly-owned direct -- in direct subsidiary of
4 NextEra Energy Resources, L.L.C. High River proposes
5 to construct and operate -- excuse me, to construct
6 and operate a commercial scale solar electric
7 generating facility within the Town of Florida,
8 Montgomery County, New York State.

9 The project is a large-scale,
10 renewable energy facility that will generate 90
11 megawatts of renewable energy and will occupy
12 approximately 582.5 fenced-in acres within an overall
13 1,425 acre project area. The project will consist of
14 utility scale arrays of solar photovoltaic panels in
15 related facilities and will supply electricity to the
16 New York State Bulk Electric Transmission System.

17 The grant of a certificate to High
18 River would be subject to the conditions that are
19 attached to the Proposed Order. The Proposed Order
20 is supported by a robust and extensive evidentiary
21 record, that supports all of the statutory findings
22 that the Siting Board must make before issuing a
23 certificate, pursuant to Article 10 of the Public
24 Service Law.

25 The Article 10 review process in this

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2 case, was extensive, fair and open and included both
3 pre-application and post-application phases. Notice
4 to the public was provided with respect to all
5 significant milestones in this case. There were many
6 instances of community outreach and education and
7 numerous opportunities for public participation.

8 High River carried out a public
9 involvement program, which included, among other
10 things, establishing a project specific website,
11 local document repositories and a toll-free telephone
12 number for access to project information.

13 In addition, throughout the Article 10
14 process, the Department of Public Service carried out
15 extensive public outreach and send notice -- sent
16 notice of all significant milestones to the parties
17 and service lists. The Department also hosted a
18 public statement hearing and solicited public
19 comments through multiple other means.

20 Aside from the State agency parties in
21 this case, which included the Department of Public
22 Service, the Department of Environmental
23 Conservation, New York State Department of
24 Agriculture and Markets and the Department of Health,
25 the Town of Florida and a local citizens group, the

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2 Citizens for Responsible Solar Farm Placement, were
3 the active parties in this case.

4 The Town of Florida and the citizens
5 group, were each awarded \$15,750.00 in pre-
6 application intervenor funding and were each awarded
7 \$45,000.00 in application funding.

8 Through October of 2020, the
9 Department received approximately 178 public comments
10 through the various avenues available. Project
11 opponents have voiced strong concerns on a range of
12 matters, including High River's alleged unwillingness
13 to provide enough financial support to the Town to
14 offset project impacts, impacts to wildlife, impacts
15 to local community character, impacts to visual
16 resources, public health and local tourism.

17 Some opponents to the project cited
18 construction impacts, destruction of historic and
19 unspoiled views, pollution of groundwater from the
20 facility during operation, fire hazards and noise.
21 On the other hand, project supporters pointed to the
22 project's expected economic benefits, including
23 increased job opportunities and tax benefits. It
24 also pointed to the fact that the project will
25 provide a reliable source of revenues to local

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2 municipalities. The fact that participating land
3 owners will receive revenues, that will help support
4 family-owned and operated farms.

5 Comments in support also noted, that
6 the project will support wholesale energy markets and
7 will help to address climate change and global
8 warming. Supporters also described solar energy
9 development as preferable to the subdivision and
10 commercial and/or residential development of existing
11 farms.

12 The documents attached to the Proposed
13 Order, which include the proposed certificate
14 conditions, the site engineering and environmental
15 plan guide and the noise complaint resolution
16 protocol, were the result of successful settlement
17 negotiations by and between High River, D.P.S. Trial
18 Staff, D.E.C. Staff and the Department of Agriculture
19 and Market Staff. These documents set forth terms
20 and conditions supporting the proposed grant of a
21 certificate and these terms and conditions would be
22 incorporated into the Proposed Order.

23 The record supports a finding by the
24 Board, that the probable environmental impacts of the
25 construction and operation of the facility, will be

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2 minimized or avoided to the maximum extent
3 practicable, provided that the Applicant complies
4 with the certificate conditions. The record also
5 supports the finding by the Board, that the facility
6 is designed to operate in compliance with all
7 applicable State and local environmental health and
8 safety law and regulations.

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

17 Therefore the examiners recommend that
18 the Siting Board adopt to Proposed Order and we are
19 available for any questions from the members of the
20 Board. Thank you.

21 CHAIRPERSON MITCHELL: Thank you very
22 much, Judge Mullany for the clear and thoughtful
23 presentation and for the underlying work that went
24 into this case. I believe this Order flows from the
25 record and a process that has been public, open and

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2 thorough. The certificate conditions are appropriate
3 and flow from settlement negotiations. In my
4 judgment, the identified impacts have been minimized,
5 avoided or mitigated to the maximum extent practical.
6 I believe the resolution is balanced, well-grounded
7 and serves New York State's climate and energy
8 policies, as well as social, economic and community
9 consideration and I'm going to support this item.

10 Let me now turn to my fellow Board
11 members for any comments or questions. Mr.
12 Alexander?

13 MR. ALEXANDER: Thank you. I have
14 only two questions regarding the High River
15 proceeding. Judge Mullany, thank you for your
16 presentation today. My first question relates to
17 glare impact issues that were, you know, assessed in
18 the application and a supplement raised by Citizens
19 for a Responsible Solar Placement and -- which were
20 discussed in the Order. Could you briefly describe
21 the impacts of glare, as evaluated in this
22 proceeding?

23 CHAIRPERSON MITCHELL: Judge Mullany,
24 if you're speaking, you're on mute.

25 A.L.J. MULLANY: Thank you. Thank you

1 17-F-0597, 18-F-0262, et al Siting Board - 3-11-2021
2 for your question, Deputy Commissioner Alexander. To
3 -- to your question, in order to identify potential
4 impacts on residents and roads, High River performed
5 a glint and glare analysis, with respect to the
6 project's original layout and later updated that
7 analysis, based on a modified layout proposal.

8 As specified by the Department of
9 Public -- Public Service Staff and the pre-
10 application stipulations process, the model used by
11 High River for evaluating glare impacts, is the Solar
12 Glare Hazard Analysis Tool or S.T.H.A.T. This was
13 developed by Sandia Labs -- Sanida National
14 Laboratories.

15 This modeling tool was designed in --
16 designed to protect pilots operating aircraft at
17 airports and the theory being that by protecting
18 pilots and by implication passengers, the model is
19 designed to assure public health and safety.

20 The S.T.H.A.T. modeling is an
21 inherently conservative model for several reasons.
22 First, it does not account for physical obstructions
23 between the solar arrays and the receptors, it does
24 not account for atmospheric and meteorological
25 conditions and it assumes that every visual receptor

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2 has a full-on view of the entire project.

3 High Rivers glint and glare analysis,
4 determined that using the standards of 60 hours per
5 year and a subsidiary standard relating to the number
6 of minutes per hour over a three-month period, the
7 project would not present any instances of glare that
8 would impact or have a significant adverse impact in
9 the area surrounding the project.

10 D.P.S. Staff agreed that the glare
11 analysis reflects High Rivers adequate reasonable
12 efforts to identify potential glare impacts and to
13 reduce impacts through mitigation measures. One
14 thing that D.P.S. requested, was that High River
15 extend the coverage of the complaint resolution plan
16 set forth under Certificate Condition 60, to address
17 complaints about glare exceeding the 60 hour annual
18 standard. High River has agreed to do so.
19 Accordingly, if a complaint is found to be valid
20 under the complaint procedure, High River or the
21 certificate holder will provided mitigation, such as
22 vegetative buffers or window treatments.

23 Based on this, the D.P.S. Staff's
24 position is that the facility has proposed and
25 amended and subject to the proposed certificate

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2 conditions, would avoid, minimize or reasonably
3 offset the potential for the project to result in
4 significant adverse glare impacts.

5 MR. ALEXANDER: Judge Mullany, thank
6 you for that explanation. It's very helpful for me.
7 My second question, is -- is more of a comment and it
8 relates to the decommissioning of this facility at
9 the end of its operational life. You know, one of my
10 concerns in these matters is to ensure that a local
11 community is not burdened by decommissioning costs
12 and in this case I understand that the
13 decommissioning for this project will take
14 approximately four to six months, as estimated. I
15 know that the certificate conditions, I believe it is
16 Certificate Condition 51, provides a number of safe
17 guards for the Town. Anything further that you would
18 want to note about the protections that are provided
19 in this Order?

20 A.L.J. MULLANY: Well, you are
21 correct, Deputy Commissioner Alexander. The --
22 Certificate Condition 51 sets forth requirements for
23 project decommissioning. Overall, the intent is to
24 make sure that the local community is not impacted
25 after the project ceases operation and -- and the

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2 site is decommissioned. So, in accordance with that
3 goal, Certificate Condition 51 requires that before
4 installing the solar panels and based on the final
5 layout, the certificate holder has to provide a
6 decommissioning plan and proof of financial security.
7 That's going to be done in a compliance filing. The
8 certificate holder will consult with Town
9 representatives, concerning final decommissioning
10 estimated costs, to get output -- input from the
11 local officials and the certificate holder will also
12 provide the Town with the cost basis for the
13 Applicants or the certificate holders cost estimates.
14 There is a requirement for financial security in the
15 form of a letter of credit, in a -- in the amount of
16 the decommissioning and site restoration estimate and
17 those monies are established to be used solely for
18 the benefit of and held by the Town of Florida. The
19 letter of credit has to be in effect, for the life of
20 the project and the certificate holder will work with
21 D.P.S. Staff and the Town of Florida on the
22 acceptable form of a letter of credit.

23 So, overall Staff's review of -- of
24 these provisions, indicates that they represent a
25 reasonable and appropriate approach to

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2 decommissioning of the project and will achieve the
3 goal of -- of ensuring decommissioning and protecting
4 local -- the locality from any financial impacts of
5 said decommissioning.

6 MR. ALEXANDER: Judge Mullany, thank
7 you very much. Chair Mitchell, I have no further
8 questions.

9 CHAIRPERSON MITCHELL: Thank you, Mr.
10 Alexander. Dr. Lewis-Michl, do you have any
11 questions or comments?

12 DR. LEWIS-MICHL: Thank you, no
13 questions.

14 CHAIRPERSON MITCHELL: Thank you. Mr.
15 Ravaschiere?

16 MR. RAVASCHIERE: No questions, thank
17 you.

18 CHAIRPERSON MITCHELL: Thank you. Mr.
19 Williams?

20 MR. WILLIAMS: Thank you, no
21 questions.

22 CHAIRPERSON MITCHELL: Thank you. Mr.
23 Waters?

24 MR. WATERS: No questions.

25 CHAIRPERSON MITCHELL: Thank you. Mr.

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2 Vertuci?

3 MR. VERTUCI: No questions.

4 CHAIRPERSON MITCHELL: Thank you.

5 I'll now call for a vote. This is Tammy Mitchell and
6 my own vote is in favor of the recommendation to
7 approve the application of High Energy River Center,
8 L.L.C. for a Certificate of Environmental
9 Compatibility and Public Need, as just described.
10 Mr. Alexander, how do you vote?

11 MR. ALEXANDER: I vote in favor.

12 CHAIRPERSON MITCHELL: Thank you. Dr.
13 Lewis-Michl, how do you vote?

14 DR. LEWIS-MICHL: In favor.

15 CHAIRPERSON MITCHELL: Thank you. Mr.
16 Ravaschiere, how do you vote?

17 MR. RAVASCHIERE: In favor.

18 CHAIRPERSON MITCHELL: Thank you. Mr.
19 Williams, how do you vote?

20 MR. WILLIAMS: In favor.

21 CHAIRPERSON MITCHELL: Thank you. Mr.
22 Waters, how do you vote?

23 MR. WATERS: So, representing the
24 community that this project impacts, I vote no.

25 CHAIRPERSON MITCHELL: Thank you. Mr.

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2 Vertucci, how do you vote?

3 MR. VERTUCCI: I vote no and for my
4 constituents that back draft that I have and the
5 feedback from the constituents in -- in the Town that
6 I've talked to, absolutely not.

7 CHAIRPERSON MITCHELL: Thank you. The
8 Order is confirmed and the recommendation is adopted.
9 We will now move to the second item on the discussion
10 agenda, Case 18-F-0262, Application of High Bridge
11 Wind, L.L.C., for a Certificate of Environmental
12 Compatibility and Public Need, Pursuant to Article
13 10, to Construct an Approximately 100 megawatt Wind
14 Powered Electric Generating Facility, Located in the
15 Town of Guilford, Chenango County, presented by Erika
16 Bergen, Administrative Law Judge, Department of
17 Public Service, James Costello, Administrative Law
18 Judge, Department of Public Service, Daniel
19 O'Connell, Administrative Law Judge, Department of
20 Environmental Conservation, Dakin Lecakes, Chief
21 Administrative Law Judge, Department of Public
22 Service and Robert Rosenthal, General Counsel, are
23 available for questions. Judge Bergen, please begin.

24 A.L.J. BERGEN: Thank you. Good
25 morning members of the Siting Board. My name is

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2 Erika Bergen and I co-presided over this case with
3 James Costello and with Associate Examiner, Daniel
4 O'Connell of the Department of Environmental
5 Conservation.

6 The item before you, is a Proposed
7 Order, granting a Certificate of Environmental
8 Compatibility and Public Need, to High Bridge Wind,
9 L.L.C., subject to certain terms and conditions.
10 High Bridge Wind or High Bridge, proposes to
11 construct and operate a commercial-scale, wind-power
12 electric-generating facility in the Town of Guilford
13 in Chenango County. The project is a large-scale,
14 renewable-energy facility, consisting of up to 25
15 wind turbines and related facilities and will
16 generate up to 100 megawatts of electricity.

17 The grant of the certificate to High
18 Bridge, would be subject to the conditions that are
19 attached to the Proposed Order. The Proposed Order
20 is supported by an evidentiary record that supports
21 all the statutory findings the Siting Board must make
22 before issuing a certificate, pursuant to Article 10
23 of the Public Service Law.

24 The Article 10 review process, both in
25 the pre-application and application phases in this

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2 case, was extensive, fair and accessible to the
3 public. Notice to the public was provided with
4 respect to all significant milestones in the case.
5 There were many instances of community outreach and
6 education and numerous opportunities for public
7 participation.

8 High Bridge implemented the requisite
9 public involvement program, by among -- among other
10 things, establishing a project specific website,
11 local document repositories and a toll-free telephone
12 number for members of the public to call for
13 information about the project. In addition, High
14 Bridge hosted a virtual public information session in
15 September 2020, which included a presentation by High
16 Bridge and a question and answer session. Throughout
17 the Article 10 process, the Department of Public
18 Service also engaged in public outreach activities
19 and sent notice of all significant project milestones
20 to the parties and service list. The examiners
21 hosted two public statement hearings, via WebEx in
22 October of 2020 and encouraged public comments to be
23 submitted through other means.

24 Aside from the statutory parties in
25 this case, the Town of Guilford and a local

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2 intervenor group, the Guilford Coalition of Non-
3 Participating Residents or G.C.N.R., were active
4 parties and were represented by counsel. Intervenor
5 funding was awarded to the Town at the pre-
6 application phase and to both the Town and G.C.N.R.
7 during the application phase.

8 The Department received approximately
9 180 public comments in this case, on the D.M.M. and
10 at the public statement hearing. Most of the
11 comments opposed the project, focusing on
12 environmental, health and financial impacts, as well
13 as impacts on community character. Comments in
14 support of the project, cite the economic benefits to
15 the local community, as well as broad support of
16 renewable energy development to counter the harms
17 posed by Global warming.

18 The proposed certificate conditions
19 attached to the Order before you, address the
20 identified environmental impacts of the project,
21 including the impacts that have been the subject of
22 public concern. The proposed conditions are based on
23 the conditions presented in a settlement proposal,
24 negotiated by High Bridge, the Town, the Staff of the
25 Department of Public Service, Department of

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2 Environmental Conservation, Department of Agriculture
3 and Markets and the Department of Health.

4 In signing the settlement proposal,
5 Department of Public Service Staff or D.P.S. Staff,
6 took exception to certain provisions of the sound
7 testing compliance protocol proposed by High Bridge.
8 D.P.S. Staff and High Bridge disagreed over one, the
9 validity of sound level data collected when ground
10 level wind speeds are greater than five meters per
11 second; two, the use of secondary wind screens and
12 three, whether it is necessary to add a 1.5 dBA
13 correction to actual sound measurements for
14 residences that have two or more stories.

15 In accordance with prior Siting Board
16 Orders, the Proposed Order here adopts D.P.S. Staff's
17 position, that the proper use of wind screening,
18 avoids the need to discard sound data collected when
19 ground level wind speeds are greater than five meters
20 per second, that secondary wind screens must be used
21 in addition to the use of the seven inch diameter
22 wind screens proposed by High Bridge to reduce the
23 influence of wind noise on sound testing microphones
24 and improve the accuracy of measurements taken at
25 certain low frequency sounds and that a 1.5 dBA

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2 correction should be applied to actual sound
3 measurements taken at residences that have two or
4 more stories.

5 In addition, High Bridge has agreed to
6 develop a final noise complaint resolution protocol
7 in consultation with the Town of Guilford and
8 submitted as a compliance filing. G.C.N.R. did not
9 join the settlement proposal and raises several
10 substantive arguments in opposition to the project.

11 Instead of the sound level standards
12 proposed by the settling parties, G.C.N.R. argues
13 that the Siting Board should adopt sound level
14 standards that are in compliance with the conditional
15 recommendation made by the World Health Organization
16 in 2018 of 45 dBA Lden outside a receptor residence.
17 The Proposed Order rejects G.C.N.R.'s proposal
18 however and adopts the sound levels proposed by the
19 settling parties, noting that they are the same noise
20 limitations that the Siting Board consistently has
21 determined in other recently approved projects, to be
22 appropriately protective of health and minimize
23 potential annoyance.

24 The Proposed Order also finds G.C.N.R.
25 claims, regarding sound level and shadow flicker

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2 impacts on one resident, who has alleged to suffer
3 from migraines and with respect to shadow flicker
4 impacts on another individual at the same location,
5 who allegedly suffers from photosensitive epilepsy,
6 as unsupported by the evidentiary record in the case.

7 The Proposed Order notes that the
8 sound levels expected at the individual's residence,
9 are below the sound levels proposed by the settling
10 parties and that the evidence offered into the
11 record, is insufficient to support a finding that
12 shadow flicker will have a negative impact on people
13 with migraines or photosensitive epilepsy.

14 The Proposed Order rejects G.C.N.R.'s
15 argument that the Applicant was obligated to conduct
16 an independent medical examination of the two
17 individuals, in order to refute G.C.N.R.'s position,
18 regarding impacts from sound and shadow flicker, in
19 as much as the Public Service Law does not require an
20 individualized impact analysis for residents who
21 oppose Article 10 projects.

22 Moreover, the 30 hour annual shadow
23 flicker limits and mitigation measures -- measures
24 required by the order, are consistent with the
25 standard Siting Board requirements in prior cases, as

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2 well as the Town's renewal energy system local law.

3 G.C.N.R. further argues that the
4 project will negatively impact the rural and natural
5 environment of the Town and that the Applicant has
6 presented no plan to mitigate what G.C.N.R. claims
7 will be a fundamental change to existing community
8 character.

9 The Proposed Order recognizes that the
10 addition of the proposed wind turbines, will have an
11 impact on the community character of the town, with
12 respect to those areas of the Town that are within
13 the view shed of the turbines. The Order also
14 recognizes that measures to mitigate and minimize
15 visual impacts for wind turbines are limited, given
16 their height and size. Here the settling parties
17 agreed to various proposed certificate conditions, to
18 avoid, minimize and mitigate visual impacts to the
19 maximum extent practicable, including a requirement
20 that the Applicant file a final cultural resources
21 mitigation and offset plan, to address adverse visual
22 impacts on historic resources.

23 We note that for its part, G.C.N.R.
24 did not suggest or request any additional or
25 different mitigation efforts than those proposed by

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2 the settling parties. In our view and in the view of
3 D.P.S. Staff, if the Siting Board adopts the
4 certificate conditions proposed by the settling
5 parties, visual impacts resulting from the project,
6 will be avoided or minimized to the maximum extent
7 practicable.

8 G.C.N.R. also raised concerns about
9 potential adverse impacts to ground water and wells
10 from blasting and other construction activities.
11 Under Proposed Certificate Condition 87, no wind
12 turbine will be located within 100 feet of an
13 existing water supply well or intake, no blasting
14 activities will be conducted within 500 feet of any
15 known, active water supply well or intake on any non-
16 participating parcel. High Bridge will take water
17 samples pre- and post-blasting of active water supply
18 wells on non-participating properties within 1,000
19 feet of any blasting activities and High Bridge will
20 drill a new if the water provided by any such well
21 passed water quality standards before construction
22 but not after construction. These proposed setbacks
23 and potable water -- water quality testing
24 requirements, are consistent with prior Siting Board
25 cases. Therefore, we do not believe that the record

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2 supports the concerns raised by G.C.N.R. in this
3 regard.

4 High Bridge requests waiver of three
5 local law provisions. The first prohibits the
6 building or construction of structures when the
7 operation of equipment between the hours of eleven
8 p.m. and seven a.m. in the manner that produces a
9 continuous noise, that results in harassment and undo
10 disturbing of the peace and quiet enjoyment of the
11 neighborhood. There is no opposition to High
12 Bridge's request for a limited waiver.

13 Proposed Certificate Condition 83,
14 limits the noise, limits construction and routine
15 maintenance activities on the project from seven a.m.
16 to eight p.m. Monday through Saturday and eight a.m.
17 through eight p.m. on Sunday and National holidays,
18 with the exception of wind turbine construction
19 limited to the immediate turbine site and delivery
20 activities, which may need to occur during extended
21 hours beyond the schedule on an as-needed basis.

22 The Siting Board granted a similar
23 waiver in the Cassadaga Wind Article 10 proceeding,
24 on the ground that the construction time limit would
25 be unreasonably burdensome if they prevented

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2 construction activities during extended hours on an
3 as-needed basis to address unusual circumstances,
4 such as a time sensitive construction stage that may
5 be affected by inclement weather. The Proposed Order
6 grants the limited waiver requested here, for the
7 same reasons. However, to ensure that Certificate
8 Condition 83 appropriately reflects the limited
9 nature of the waiver requested and granted, the
10 Proposed Order modifies the certificate condition to
11 clarify that the waiver would apply on an as-needed
12 basis to address unusual circumstances.

13 The second local law subject to a
14 waiver request, requires removal of turbine
15 foundations to a depth of four feet below ground
16 surface in both agricultural and non-agricultural
17 land. The Applicant seeks a waiver of the four foot
18 depth requirement with respect to non-agricultural
19 land, stating that it is standard industry practice
20 to remove to a depth of three feet below ground in
21 such areas. The Applicant states that
22 decommissioning costs would be increased for
23 excavation of concrete foundations through blasting,
24 drilling or other noise intensive activities, that
25 otherwise would be necessary -- unnecessary because

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2 foundations in non-agricultural land can be buried
3 and left in place without negatively impacting the
4 surrounding land.

5 Weighing the costs involved and the
6 lack of benefit to be achieved and given the absence
7 of any objection to the requested waiver, the
8 Proposed Order finds, that the local law's excavation
9 depth requirement for turbine foundations on non-
10 agricultural land, would be unduly burdensome if
11 applied here.

12 Finally, High Bridge Winds also seeks
13 a waiver of the local law requirement, in that it
14 posts a letter of credit in a good faith amount of
15 not less than 120 percent of the estimated cost of
16 complete decommissioning and removal. The Town
17 agrees with High Bridge, that a letter of credit in
18 the amount of 110 percent of the decommissioning and
19 site restoration costs, updated every five years and
20 without an offset for salvage value, appropriately
21 protects the Town's interest. The signatory parties
22 have agreed to that revised security amount, which is
23 consistent with prior Siting Board orders. Absent a
24 demonstrated need for the posting of additional
25 security and absent any objection to the requested

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2 waiver in this case, the Proposed Order grants the
3 waiver.

4 The record in this case supports a
5 finding by the Board, that the probable environmental
6 impacts of the construction and operation of the
7 facility, will be minimized or avoided to the maximum
8 extent practicable, provided that the Applicant
9 complies with the certificate conditions. The record
10 also supports a finding by the Board, that the
11 facility is designed to operate in compliance with
12 all applicable State and local environmental, health
13 and safety laws and regulations.

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

22 The examiners recommend that the Board
23 adopt the Proposed Order, including the attached
24 certificate conditions. This ends our presentation.
25 Thank you.

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2 CHAIRPERSON MITCHELL: Thank you very
3 much, Judge Bergen for the comprehensive presentation
4 and the good work that went into this case. The
5 Proposed Order again, is very thoughtful, flows from
6 an open and extensive public process and is supported
7 by strong evidentiary record. The Proposed Order
8 contains conditions that appropriately deal with the
9 identified concerns. I believe the proposed
10 resolution is balanced and in my opinion, is in the
11 public interest. I will be supporting this item.
12 I'll now turn to my fellow Board members for any
13 comments or questions.

14 Mr. Alexander?

15 MR. ALEXANDER: Yes, I do have one
16 comment. First, you know, thank you Judge Bergen for
17 the presentation. I had a question relating to
18 visual impacts. I am familiar with this and other
19 areas of the Southern Tier, that have been selected
20 as sites for wind projects and understandably, one of
21 the reasons that these areas are so attractive to
22 their residents, is -- are the pastoral views and the
23 unimpeded landscapes. So, how these projects are
24 sited and how visual impacts are addressed, certainly
25 are important. However, your presentation today, you

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2 know, addressed the questions I had, with respect to
3 visual impacts, you know, as well as the, you know,
4 thorough review in the Order. So, I have nothing
5 further, thank you.

6 CHAIRPERSON MITCHELL: Thank you, Mr.
7 Alexander. Dr. Lewis-Michl, do you have any
8 questions or comments?

9 DR. LEWIS-MICHL: No questions or
10 comments, thank you.

11 CHAIRPERSON MITCHELL: Thank you. Mr.
12 Ravaschiere?

13 MR. RAVASCHIERE: No questions, thank
14 you.

15 CHAIRPERSON MITCHELL: Thank you. Mr.
16 Williams?

17 MR. WILLIAMS: No questions, thank
18 you.

19 CHAIRPERSON MITCHELL: Thank you. I
20 will now call for a vote. This is Tammy Mitchell and
21 my vote is in favor of the recommendation to approve
22 the application of High Bridge Wind, L.L.C. for a
23 Certificate of Environmental Compatibility and Public
24 Need, as just described. Mr. Alexander, how do you
25 vote?

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2 MR. ALEXANDER: I vote in favor.

3 CHAIRPERSON MITCHELL: Thank you. Dr.
4 Lewis-Michl, how do you vote?

5 DR. LEWIS-MICHL: In favor.

6 CHAIRPERSON MITCHELL: Thank you. Mr.
7 Ravaschiere, how do you vote?

8 MR. RAVASCHIERE: In favor.

9 CHAIRPERSON MITCHELL: Thank you. Mr.
10 Williams, how do you vote?

11 MR. WILLIAMS: In favor.

12 CHAIRPERSON MITCHELL: Thank you. The
13 Order is confirmed and the recommendation is adopted.
14 We will now move to the consent agenda item. Do any
15 members of the Siting Board wish to comment or recuse
16 from voting on any items on the consent agenda,
17 beginning with Mr. Alexander?

18 MR. ALEXANDER: Chair Mitchell, I do
19 wish to comment on Case 16-F-0328, Number Three
20 Winds.

21 CHAIRPERSON MITCHELL: Go ahead.

22 MR. ALEXANDER: Thank you. As I
23 understand from the Draft Order before us, by this
24 amendment petition, the certificate holder seeks
25 approval to install two fewer turbines, that is from

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2 31 to 29 turbines, but to increase the maximum
3 turbine blade tip heights for up to 24 turbines from
4 586 feet up to 591 feet.

5 My first question relates to visual
6 impacts. You know, I understand that the
7 supplemental visual impact analysis indicated that
8 the increase in height of the turbines, did not
9 significantly increase visibility or increase
10 contrast with existing conditions. I also understand
11 that these new turbines will have blade spans of
12 approximately 47 feet longer than the turbines they
13 would replace. And, my question is, is there any
14 indication that these longer blades would cause any
15 significant new or additional visual impacts?

16 MR. ROSENTHAL: So, good morning
17 Deputy Commissioner Alexander. It's Bob Rosenthal,
18 General Counsel of D.P.S. and Counsel to the Siting
19 Board. So, let me just start off with, you know, a
20 brief summary of the original application. I'll talk
21 about the amendment and then the analysis.

22 The original application has two
23 turbine capacities with separate technologies, five
24 2.3 megawatts turbines of the G.E. technology, 26 3.6
25 megawatt turbines, also of the G.E. technology for a

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2 total of 105.8 megawatts of capacity. That was
3 approved in the original certificate.

4 Under the amendment, there would be a
5 reduction in the number of the higher capacity
6 turbines from 26 to 24. The capacity of those
7 turbines would be increased from 3.6 megawatt to a
8 range of 4 to 4.2 megawatts allowed, so that the
9 same, you know, total approved under the original
10 certificate would apply with just 105.8 megawatts and
11 thus, the design would replace the G.E. design on a
12 larger turbine.

13 You noted some of the key attributes
14 and I'll -- I'll go into them in total. So, there
15 would be two less higher capacity turbines. The
16 remaining 29 turbines would be sited in the same
17 locations. And, as you noted, although the turbine
18 blades and the Vespa design would be 47 feet longer
19 than the G.E. design, the tip height would be
20 increased by only five feet and that's because the
21 height of the turbines head -- hub, would be
22 decreased. So, it would be -- the -- the hub would
23 be closer to the ground and although the -- the
24 blades would be longer, the tip height would -- would
25 be only five feet greater.

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2 So, there was an analysis that was
3 conducted by Saratoga Associates on behalf of Number
4 Three Wind and that's included with the amendment and
5 it shows that the overall project visibility would
6 have an increase of approximately 0.1 percent within
7 the five miles study area and less than 0.1 percent
8 within the ten mile study area. And, based on that
9 conclusion, the Draft Order, subject to the Board's
10 approval, determines that the design change would not
11 result in any significant adverse and visual impact.
12 With respect to your specific question, I have, you
13 know, Andy Davis from -- from my office on the -- on
14 the -- on the call and he can get into this a little
15 bit more detail. I think the basic answer, is that
16 the visual analysis looks at what one can see from a
17 -- a certain vantage point. Hence, it's why the
18 analysis looks at tip height and not sort of the
19 radius of the -- you know, of each turbine
20 individually -- it doesn't look at the quality of
21 what one thinks. It looks at, what one can see is
22 the basic answer to your question. And -- and, I
23 have again, Andy Davis is on the line, if he has
24 anything further to add on that specific issue.

25 MR. DAVIS: Good morning Siting Board

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2 members, Andy Davis here, Chief of the Environmental
3 Certification and Compliance section of D.P.S. Staff.
4 The -- the question of blade length, factors into
5 visual assessment in -- in a couple of ways. As --
6 as Bob Rosenthal pointed out, the -- with the blade
7 -- longer blades, it will allow the hub height to be
8 reduced. The hub height is -- is -- was looked at in
9 the original application and called out separately,
10 primarily because of the lighting -- F.A.A. warning
11 lights that are, you know, generally mounted on the
12 top of the cell which is essentially the hub height
13 and the extent of that visibility should be reduced
14 in -- in this instance because the hub heights are
15 reducing by a significant height of 16 feet, thus the
16 -- the longer blades and having a slightly -- slight
17 increase in the maximum blade tip height.

18 The other -- so that should be a net
19 decrease in -- in visibility of the F.A.A. lighting.
20 The other issue that is considered as a factor of
21 blade length, is the shadow flicker zone, which, you
22 know, is -- is a factor of -- of --of visual effects
23 of the flickering of the blades, you know, on -- as
24 they pass before sunlight. The longer blades here,
25 result in a slightly increased zone, where the shadow

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2 flicker analysis is appropriate. That was done for
3 this amendment, identifying some receptors that would
4 potentially experience a greater exposure of shadow
5 flicker but the certificate granted, includes
6 provisions for limiting shadow flicker exposure at
7 any non-participating residences or receptors to 30
8 hours per year, regardless of the -- the -- the blade
9 length. So two factors on that.

10 If you have questions on that, please
11 let me know.

12 MR. ALEXANDER: I'd like to thank both
13 Mr. Rosenthal and -- and Mr. Davis, for that
14 discussion and review. It -- it -- it was quite
15 helpful for me, so thank you. Just noting on shadow
16 flicker that Mr. Davis referenced, I appreciate that
17 the Order specifically, you know, references the
18 applicability of Certificate Condition 57 on shadow
19 flicker, which you know, provides for minimization
20 and mitigation, as appropriate.

21 So, my second question, relates to
22 what I would call aviation issues or aviation safety.
23 When this first application -- when this application
24 was first considered and an Order issued in November
25 of 2019, there was considerable attention given to

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2 aviation safety, the aircraft detection lighting
3 system issue, D.O.D. and -- and related aviation
4 issues. And, there were, you know, various, you
5 know, filing requirements and other conditions
6 imposed, at that time.

7 Now, it is my understanding, that from
8 this Order and this process, that the original
9 Certificate Condition 38, dealing with F.A.A.
10 filings, the filings dealing the exterior lighting
11 package, as well as the Federal permits filing,
12 together with all other requirements and conditions,
13 as authorized by the certificate, you know, will
14 apply to this project as amended. And, I just want
15 to, you know, confirm that my understanding in that
16 regard is correct.

17 MR. ROSENTHAL: So, again thanks for
18 your question, Deputy Commissioner Alexander and that
19 -- that's accurate ... you know, per the Condition 38
20 ... specifically provides that all material --
21 materials related to the F.A.A. approval lighting
22 systems, to be installed on wind turbines, shall be
23 filed with the, you know, the Secretary of F.A.A.,
24 prior to construction, so that it's approved
25 construction requirement. The Applicant would have

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2 to provide, you know, in -- in the docket that
3 approval, prior to ... being allowed to commence
4 construction ... and Condition 38, that the same
5 requirement applies to any project modifications, as
6 -- like the one provided for ... So, you're --
7 you're -- you are correct, that -- that there would
8 have to approval by F.A.A., prior to construction.

9 MR. ALEXANDER: Thank you. I
10 appreciate it again. I -- you know, yours and Mr.
11 Davis's consideration or responses to the questions
12 that I've raised. Chair Mitchell, I have no further
13 comments.

14 CHAIRPERSON MITCHELL: Thank you, Mr.
15 Alexander. Dr. Lewis-Michl, do you have any comments
16 on the consent agenda?

17 DR. LEWIS-MICHL: No comments or
18 questions, thank you.

19 CHAIRPERSON MITCHELL: Thank you. Mr.
20 Ravaschiere?

21 MR. RAVASCHIERE: No comments or
22 questions, thank you.

23 CHAIRPERSON MITCHELL: Thank you. Mr.
24 Williams?

25 MR. WILLIAMS: Thank you, no

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2 questions.

3 CHAIRPERSON MITCHELL: Thank you. I
4 will now call for a vote. This is Tammy Mitchell and
5 my vote is in favor of the recommendations on the
6 consent agenda. Mr. Alexander, how do you vote?

7 MR. ALEXANDER: I vote in favor.

8 CHAIRPERSON MITCHELL: Thank you. Dr.
9 Lewis-Michl, how do you vote?

10 DR. LEWIS-MICHL: In favor.

11 CHAIRPERSON MITCHELL: Thank you. Mr.
12 Ravaschiere, how do you vote?

13 MR. RAVASCHIERE: I vote in favor.

14 CHAIRPERSON MITCHELL: Thank you. Mr.
15 Williams, how do you vote?

16 MR. WILLIAMS: In favor.

17 CHAIRPERSON MITCHELL: Thank you. The
18 items are approved and the recommendations are
19 adopted. Secretary Phillips, is there anything
20 further to come before us today?

21 SECRETARY PHILLIPS: There's nothing
22 further to come before you today.

23 CHAIRPERSON MITCHELL: Thank you. We
24 are adjourned.

25 (The meeting concluded at 11:22 a.m.)

1 17-F-0597, 18-F-0262, et al Siting Board - 3-11-2021
2 STATE OF NEW YORK
3 I, HANNAH ALLEN, do hereby certify that the foregoing was
4 reported by me, in the cause, at the time and place, as
5 stated in the caption hereto, at Page 1 hereof; that the
6 foregoing typewritten transcription consisting of pages 1
7 through 42, is a true record of all proceedings had at the
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 15th day of March, 2021.

11

12

13 HANNAH ALLEN, Reporter

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