

1 CANISTEO WIND ENERGY LLC - 3/13/2020 - Albany, NY

2 NEW YORK STATE BOARD ON ELECTRIC

3 GENERATION SITING AND THE ENVIRONMENT

4  
5 CASE 16-F-0205 - Application of Canisteo Wind Energy  
6 LLC for a Certificate of Environmental Compatibility  
7 and Public Need Pursuant to Article 10 for Construction  
8 of a Wind Energy Project in Steuben County.

9 SITING BOARD MEETING

10 DATE: March 13, 2020

11 LOCATION: 3 Empire State Plaza,  
12 19th Floor  
13 Albany, NY 12224

14 BOARD MEMBERS PRESENT:

15 John B. Rhodes, Chair  
16 New York State Public Service Commission

17 Vincent Ravaschiere, Alternate for

18 Eric Gertler, Acting Commissioner, New York State  
19 Department of Economic Development and President and

20 Chief Executive Officer Designate, Empire State Dev.

21 Louis Alexander, Alternate for  
22 Basil Seggos, Commissioner  
23 New York State Department of Environmental Conservation

24 John Williams, Alternate for  
25 Richard L. Kauffman, Chair  
New York State Energy Research and Development Authority

Elizabeth Lewis-Michl, Alternate for

Howard A. Zucker, M.D., J.D., Commissioner  
New York State Department of Health

1 CANISTEO WIND ENERGY LLC - 3/13/2020 - Albany, NY  
2 CHAIRMAN RHODES: I'd like -- it's that  
3 time and I'd like to call this meeting of the Board on  
4 Electric Generation Siting and the Environment to order.  
5 Before moving to the agenda, I would like to introduce the  
6 alternates representing the permanent members of the  
7 Siting Board. We have Louis Alexander, alternate of Basil  
8 Seggos, Department of Environmental Conservation in  
9 Albany. We've got Dr. Elizabeth Lewis-Michl, alternate of  
10 Dr. Howard Zucker, Department of Health in Albany. We've  
11 got Vincent Ravaschiere, alternate for Eric Gertler,  
12 Commissioner of New York State Department of Economic  
13 Development and President and Chief Executive Officer of  
14 the Empire State Development Corporation here in New York,  
15 John Williams, alternate of Richard Kauffman, New York  
16 State Energy Research and Development Authority in Albany  
17 and myself, I'm John Rhodes, Chair of the Public Service  
18 Commission and Chair of this Board in New York.

19 Secretary Phillips, are there any  
20 changes to the agenda?

21 SECRETARY PHILLIPS: There are no  
22 changes to the agenda.

23 CHAIRMAN RHODES: Thank you. Well,  
24 let's get to business. Case 16-F-0205, Application of  
25 Canisteo Wind Energy, L.L.C., for a Certificate of

1 CANISTEO WIND ENERGY LLC - 3/13/2020 - Albany, NY  
2 Environmental Compatibility and Public Need, pursuant  
3 to Article Ten, for construction of the Wind Energy  
4 Project in Steuben County, presented by -- by Maureen  
5 Leary, Administrative Law Judge, Department of Public  
6 Service. Richard Sherman, Administrative Law Judge,  
7 Department of Environmental Conservation, Dakin  
8 LeCakes, Chief Administrative Law Judge, Department of  
9 Public Service, James McClymonds, Chief Administrative  
10 Law Judge, Department of Environmental Conservation and  
11 Robert Rosenthal, general counsel of Department of  
12 Public Service are available to answer questions.  
13 Judge Leary, please begin.

14 A.L.J. LEARY: Thank you, Chairman  
15 Rhodes. Good morning and -- to Chairman Rhodes and  
16 members of the Siting Board. I was the presiding  
17 examiner in this proceeding by Canisteo Wind Energy for  
18 a Certificate of Environmental Compatibility and Public  
19 Need, pursuant to Article 10 of the Public Service Law.

20 With me today to my right, is Judge  
21 Richard Sherman from the Department of Environmental  
22 Conservation, who acted as the presiding examiner.  
23 Since the Chair has already introduced Judge LeCakes,  
24 Judge McClymonds and General Counsel Rosenthal, I will  
25 not go any further, other than to thank them and other

1 CANISTEO WIND ENERGY LLC - 3/13/2020 - Albany, NY  
2 members of the senior advisory staff for their  
3 extensive time and excellent efforts in bringing us  
4 here today to present this order. I will offer brief  
5 remarks in favor of the Siting Board's adoption of the  
6 proposed Order and I will also highlight some of its  
7 noteworthy aspects.

8 The Order before you, consists of four  
9 parts. That is, the Certificate and Order and detailed  
10 certificate conditions, which are appended to the Order  
11 as Appendix A. Attached to those certificate  
12 conditions, are two attachments, Attachments A and B.  
13 These include detailed information on required filings  
14 before the Department, as well as a sound testing  
15 compliance protocol, that the Applicant is required to  
16 follow.

17 The proposed Order before you,  
18 authorizes Canisteo Wind to construct and operate a  
19 commercial scale electric generating wind facility in  
20 the Towns of Cameron, Canisteo, Greenwood, Jasper,  
21 Troupsburg and West Union, all located in Steuben  
22 County, New York.

23 The Order authorizes the construction of  
24 up to 117 wind turbines, with a total maximum  
25 generating capability of 290.7 megawatts. The project

1 CANISTEO WIND ENERGY LLC - 3/13/2020 - Albany, NY  
2 also includes access roads, underground collection  
3 system lines, a collection system substation, permanent  
4 meteorological towers an operations and maintenance  
5 building, a construction lay-down yard and a point of  
6 interconnection switch yard.

7 In a separate but related proceeding,  
8 pending before the Department under Public Service Law,  
9 Article 7, Canisteo Wind seeks approval of a 15 mile,  
10 115 kilovolt transmission line, to connect the wind  
11 facility to the electric system grid, via the New York  
12 State Electric and Gas Bennett Substation, which is  
13 located in the Town of Hornellsville, also in Steuben  
14 County. That proceeding is Case Number 19-T-0041.

15 The Article 10 review process for this  
16 project was fair and open. It included extensive  
17 public participation, which I will outline.

18 Public notice about the project, was  
19 provided at significant milestones during the  
20 proceeding. Canisteo Wind's application, including  
21 amendments and other project information, was made  
22 widely available to the public, first through the  
23 Department of Public Services' Document and Matter  
24 Management System or D.M.M. System and through Canisteo  
25 Winds' project website. Canisteo Wind also provided

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2 hard copies of these materials to the towns, in which  
3 the project is located and to local public libraries in  
4 the project area. The application and its amendments  
5 were served on the appropriate statutory parties and on  
6 other entities as required by Article 10 and the  
7 underlying regulations.

8 There were numerous opportunities for  
9 public participation. For example, the Department  
10 sponsored afternoon and evening public statement  
11 hearings in April of 2019. Immediately prior to these  
12 hearings, the Department sponsored information  
13 sessions, at which Canisteo Wind presented detailed  
14 information about the project and responded to  
15 extensive questions from the community.

16 At the public statement hearing, several  
17 residents from the communities presented comments,  
18 which were transcribed and are a part of the record in  
19 this proceeding. In addition to comments presented at  
20 the public statement hearings, members of the public  
21 submitted approximately 235 comments to the  
22 Department's D.M.M. System, expressing both project  
23 support and opposition. Those who expressed support  
24 for the project, cited the economic benefits to the  
25 local area, including temporary and permanent jobs,

1 CANISTEO WIND ENERGY LLC - 3/13/2020 - Albany, NY  
2 PILOT payments to the towns and the need, in our state,  
3 for clean renewable energy.

4 Those who expressed opposition to the  
5 project, cited concerns about potential health impacts,  
6 due to noise and shadow flicker from wind turbines.  
7 They also expressed issues with the projects visual  
8 impacts, economic impacts on tourism and local  
9 business, unwelcome changes to the rural community  
10 character and other environmental impacts, particularly  
11 to wildlife. All of these public comments have been  
12 considered by the Board and form a part of the record  
13 before the Siting Board today.

14 For its part, Canisteco Wind undertook  
15 community outreach and public education efforts. The  
16 Company established an office in the Town of Canisteco,  
17 sponsored open house events, maintained a company  
18 website with information about the project, provided  
19 application materials to the towns and local libraries,  
20 as well as working with the local officials. Canisteco  
21 Wind also circulated to the public, a toll-free  
22 telephone number and email addresses for questions and  
23 comments to be submitted by the public.

24 After the project application was found  
25 compliant with Article 10's requirements, the examiners

1 CANISTEO WIND ENERGY LLC - 3/13/2020 - Albany, NY  
2 granted party status to the six towns in which the  
3 project will be located. We also granted party status  
4 to individual local resident, John M. Sharky and to a  
5 group of local residents, known as Citizens for  
6 Maintaining Our Rural Environment. I will refer to  
7 them as CMORE.

8 The examiners awarded pre-application  
9 and application phase intervener funds, that were  
10 provided by Canisteo Wind. Those were awarded to the  
11 six towns and to Intervener Sharky. The towns and  
12 Intervener Sharky and CMORE fully participated in this  
13 proceeding. They presented witness testimony and  
14 conducted cross examination at the evidentiary hearing.  
15 They also filed post-hearing briefs and briefs on  
16 exceptions to the recommended decision. In short, both  
17 the towns and the Interveners clearly have contributed  
18 to the record in this proceeding.

19 The Order before you is based upon an  
20 extensive evidentiary record, which supports all of the  
21 required findings and conclusions the Siting Board must  
22 make under Public Service Law, Section 168. Among  
23 other things, the record consists of Canisteo Wind's  
24 application and amendments, expert testimony and  
25 exhibits. The record also includes the expert

1 CANISTEO WIND ENERGY LLC - 3/13/2020 - Albany, NY  
2 testimony, exhibits and other submissions by the  
3 Department of Public Service Staff, the Department of  
4 Environmental Conservation Staff and the Departments of  
5 Health and Agriculture and Markets. The six towns and  
6 Interveners Sharky and CMORE, also made such  
7 submissions.

8 This record was compiled in large part,  
9 during a four-day evidentiary hearing, held from August  
10 19th to August 21st, 2019 in the Town of Bath.  
11 Immediately following the hearing, on August 22nd,  
12 2019, the examiners and the parties' representatives  
13 conducted numerous site visits throughout the six towns  
14 that comprised the project area. And, it's important  
15 to note, that those site visits took an entire day and  
16 covered a -- an approximate mileage of I think 60  
17 miles.

18 A.L.J. SHERMAN: At least.

19 A.L.J. LEARY: In the -- at least, Judge  
20 Sherman is suggesting. In the proposed Order before  
21 you, the Siting Board is adopting a significant portion  
22 of the examiner's findings and recommendations set  
23 forth in their December 23rd, 2019 recommended  
24 decisions. I'm sorry, recommended decision.

25 The six towns in which the project will

1 CANISTEO WIND ENERGY LLC - 3/13/2020 - Albany, NY  
2 be located, are rural communities with largely  
3 agricultural uses -- land uses. There are -- there is  
4 a very significant Amish community located in the  
5 project area. Each of the towns has passed local wind  
6 laws, all of which include substantive provisions  
7 related to noise, shadow flicker, lighting and  
8 setbacks, among other things. Notably, the Order  
9 before you recognizes that Canisteco Wind has indicated  
10 on the record, that the facility will comply with these  
11 substantive requirements established by each of the  
12 Towns' wind laws. Thus, the record fully supports the  
13 Siting Board's finding, pursuant to Public Service Law,  
14 Section 1683-E, that the facility is designed to  
15 operate in compliance with all applicable local laws  
16 and regulations.

17 In addition for the towns' benefit, the  
18 Order contains facility decommissioning, site  
19 restoration and associated financial assurance  
20 requirements. These are intended to protect the towns  
21 from potentially having to -- to bear the significant  
22 expenses at the end of the facility's useful life, to  
23 perform decommissioning and site restoration.

24 A further note, is the Order's  
25 requirement that the facility utilize an aircraft

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2 detection lighting system or A.D.L.S., for the wind  
3 turbines, consistent with Federal Aviation  
4 Administration standards. With A.D.L.S. technology,  
5 the F.A.A. required aviation lights on the facility's  
6 turbines, will remain dark or off, until an aircraft is  
7 detected by radar. This available technological  
8 requirement, will minimize the nighttime visual impacts  
9 -- the nighttime visual lighting impacts associated  
10 with the project.

11 A.D.L.S. technology thus, is consistent  
12 not only with the requirement in Public Service Law,  
13 Section 1683-C, that the Siting Board find impacts to  
14 be minimized or avoided to the maximum extent  
15 practicable but it is also consistent with the  
16 requirement in Public Service Law, Section 1684-A, that  
17 the Board consider the state of available technology,  
18 such as A.D.L.S. Notably, the Siting Board's Order in  
19 Baron Winds, similarly required utilization of A.D.L.S.  
20 technology on that facility's wind turbines.

21 The proposed Order here also contains  
22 noise and shadow flicker limitations that are similar  
23 or the same as those adopted by the Siting Board in  
24 previous Article 10 proceedings, approving wind  
25 facilities. These include Number Three Wind, Blue

1 CANISTEO WIND ENERGY LLC - 3/13/2020 - Albany, NY  
2 Stone Wind and Baron Winds, among others.

3 This Order revises or modifies certain  
4 certificate conditions for purposes of clarity and  
5 consistency. It differs from the examiners  
6 recommendations in certain limited respects. For  
7 example, the examiner's proposed adoption of a  
8 certificate condition that would require the addition  
9 of a two D.B.A. or decibel uncertainty factor, to the  
10 noise modeling to be performed prior to construction by  
11 Canisteo Wind. This Order eliminates the two D.B.A.  
12 uncertainty factor, in an effort to assure that noise  
13 impacts are neither over estimated nor underestimated.  
14 The Order also shortens to 60 days, the time frame for  
15 the Siting Board's approval of the noise modeling, so  
16 that construction is not unreasonably delayed.

17 In this Order, the Siting Board is  
18 clarifying, as well, that an Applicant may identify a  
19 landowner as quote, participating and therefore,  
20 subject to different noise and shadow flicker limits,  
21 only if that landowner has executed an agreement with  
22 the Applicant. In other words, an Applicant may not  
23 identify landowners as participating, if they are still  
24 in negotiations or discussions about such an agreement  
25 with the Applicant, which occurred here and resulted in

1 CANISTEO WIND ENERGY LLC - 3/13/2020 - Albany, NY  
2 substantial additional process in this proceeding.

3 On the whole, the proposed Order and  
4 certification conditions, address the identified  
5 impacts of the project. The Order includes the  
6 required findings by the Board, pursuant to Public  
7 Service Law, Section 1683, namely that the project as a  
8 renewable generation facility, is a beneficial addition  
9 to or substitution for the existing electric generation  
10 capacity of the State, that the probable adverse  
11 environmental impacts of the construction and operation  
12 of the facility, will be minimized or avoided to the  
13 maximum extent practicable; that the facility will  
14 serve the public interest, that the project does not  
15 have an adverse disproportionate impact on low income  
16 or environmental justice communities and that the  
17 facility's construction and operation will comply with  
18 all applicable State and local environmental and public  
19 health and safety laws.

20 Significantly, the Order also makes  
21 clear, that the Siting Board has considered and found  
22 that the proposed wind facility as a renewable  
23 resource, is consistent with the State's energy  
24 policies and long-range planning objectives and  
25 strategies, contained in the most recent State energy

1 CANISTEO WIND ENERGY LLC - 3/13/2020 - Albany, NY  
2 plan.

3 The Order reflects that the Siting Board  
4 has considered the requisite factors set forth in  
5 Public Service Law, Section 1684, including the  
6 project's potential impacts on community character, the  
7 electric system grid and natural gas distribution lines  
8 and as -- and that it has addressed other social,  
9 economic, visual, aesthetic and environmental matters.

10 We recommend the Siting Board's adoption  
11 of this Certificate and Order and the appended  
12 certificate conditions and attachments. This concludes  
13 my presentation. We are, of course, available for any  
14 questions the Chair and the members of the Siting Board  
15 may have. Thank you.

16 CHAIRMAN RHODES: Thank you Judge Leary.  
17 Thank you very much for this. This -- this draft  
18 Order, to me, results from careful and serious  
19 consideration of all the issues. I am pleased by the  
20 open and extensively participatory nature of the  
21 process. I -- I see that the environmental and health  
22 and community issues are all well developed in the  
23 record. That the consideration of these and the result  
24 has been balanced and I like very much that the -- the  
25 conditions for this -- for this wind project, are

1 CANISTEO WIND ENERGY LLC - 3/13/2020 - Albany, NY  
2 aligned and compliant with the stated local needs. I  
3 also appreciate the useful and productive reliance on  
4 standards, that have emerged over prior cases of -- of  
5 -- of wind farm siting.

6 Obviously, I welcome the progress  
7 towards the compelling and necessary climate and energy  
8 goals here in New York State and in sum, I just -- I --  
9 I -- simply put, I find this in the public interest and  
10 I will vote in favor.

11 Mr. Alexander, any comments or  
12 questions?

13 MR. ALEXANDER: Although I have no  
14 questions, just one general comment. I found that the  
15 Order presents a very useful discussion on the two  
16 procedural matters; one, appropriate classification of  
17 landowners, in terms of participating versus non-  
18 participating and also, the discussion regarding the  
19 entitlement; in this instance, relative to CMORE,  
20 regarding access to confidential information. And, I  
21 anticipate that the discussion here in this Order, will  
22 help serve in other proceedings, as -- as a direction  
23 and guidance, as to the appropriate procedures to  
24 follow. Thank you.

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

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2 CHAIRMAN RHODES: Thank you. Dr. Lewis-  
3 Michl?

4 DR. LEWIS-MICHL: No questions.

5 CHAIRMAN RHODES: Thank you. Mr.  
6 Ravaschiere?

7 MR. RAVASCHIERE: I have no questions.

8 CHAIRMAN RHODES: Thank you and Mr.  
9 Williams?

10 MR. WILLIAMS: No questions.

11 CHAIRMAN RHODES: Thank you. With that,  
12 I will proceed to call for a vote. My own vote is in  
13 favor of the recommendation to approve the application  
14 of Canisteco Wind Energy, L.L.C. for a Certificate of  
15 Environmental Compatibility and Public Need, with  
16 conditions; to confirm the one Commissioner Order that  
17 was issued on September 19, 2019 and to deny the  
18 request for interlocutory review of the examiner's  
19 September 6th and September 9, 2019 rulings, as  
20 described in the Order. Mr. Alexander, how do you  
21 vote?

22 MR. ALEXANDER: I vote in favor.

23 CHAIRMAN RHODES: Dr. Lewis-Michl, how  
24 do you vote?

25 DR. LEWIS-MICHL: In favor.

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2 CHAIRMAN RHODES: Mr. Ravaschiere, how  
3 do you vote?

4 MR. RAVASCHIERE: In favor.

5 CHAIRMAN RHODES: Mr. Williams, how do  
6 you vote?

7 MR. WILLIAMS: In favor.

8 CHAIRMAN RHODES: Thank you all. The  
9 matter is approved and the recommendation is adopted.  
10 Secretary Phillips, is there anything further to come  
11 before us today?

12 SECRETARY PHILLIPS: No, there is not.

13 CHAIRMAN RHODES: Thank you. With that,  
14 I -- I -- I adjourn us. Thanks very much.

15 (The meeting concluded.)

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1 CANISTEO WIND ENERGY LLC - 3/13/2020 - Albany, NY  
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 17, is a true record of all proceedings had at the  
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto subscribed  
10 my name, this the 20th day of March, 2020.

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13 HANNAH ALLEN, Reporter

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