

1 4/6/2022 - Siting Board - 18-F-0262 and 19-F-0299

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

5 CASE 18-F-0262 - Application of High Bridge Wind, L.L.C.
6 for a Certification of Environmental Compatibility and
7 Public Need Pursuant to Article 10 to Construct an
8 Approximately 100 MW Wind Powered Electric Generating
9 Facility located in the Town of Guilford, Chenango County.

10 Case 19-F-0299 - Application of Excelsior Energy Center
11 L.L.C. for a Certificate of Environmental Compatibility
12 and Public Need Pursuant to Article 10 of the Public

13 Service Law for Construction of a Solar Electric
14 Generating Facility in the Town of Byron, Genesee County.

15 Siting Board Meeting

16 Date: Wednesday, April 6, 2022 @ 1:00 pm

17 TAMMY MITCHELL, alternate for Rory M. Christian, Chair of
18 the New York State Public Service Commission

19 LOUIS ALEXANDER, alternate of Basil Seggos, Commissioner,
20 New York State Department of Environmental Conservation

21 DR. ELIZABETH LEWIS-MICHL, alternate of Mary T. Bassett,
22 M.D., Commissioner, New York State Department of Health

23 VINCENT RAVASCHIERE, alternate of Hope Knight, acting

24 Commissioner, President & CEO-designate, New Yor State
25 Empire State Development Corporation

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

NORMAN PAWLAK, Ad Hoc Members for - CASE 19-F-0299

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2 (The meeting commenced at 1:00 p.m.)

3 CHAIRPERSON MITCHELL: Good afternoon.

4 My name is Tammy Mitchell. I'm the director of the
5 Office of Electric and Gas and Water at the New York
6 State Department of Public Service. I have been
7 designated to serve as the alternate representing the
8 chair of the New York State Board on Electric
9 Generation Siting and the Environment. Or as it is
10 also known the Siting Board. I call this meeting of
11 the siting board to order.

12 Before moving to the agenda, I would
13 like to introduce the alternates representing the
14 permanent members of the siting board. Louis
15 Alexander, alternate representing the Commissioner of
16 the Department of Environmental Conservation, Dr.
17 Elizabeth Lewis-Michl, alternate representing the
18 Commissioner of the Department of Health, Vincent
19 Ravaschiere, alternate representing the Commissioner
20 of the New York State Department of Economic
21 Development and John Williams, alternate representing
22 the Chair of the New York State Energy Research and
23 Development Authority. I would also like to
24 introduce the ad hoc member for Case 19-F-0299 Norman
25 Pawlak. Secretary Phillips, are there any changes to

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2 the agenda?

3 SECRETARY PHILLIPS: There are no
4 changes to the agenda.

5 CHAIRPERSON MITCHELL: Thank you,
6 Secretary Philips. We will begin with Case 19-F-0299
7 Application of the Excelsior Energy Center, L.L.C.
8 for a certificate of environmental compatibility and
9 public need pursuant to Article 10 of the Public
10 Service Law for construction of a solar electric
11 generating facility in the Town of Byron, Genesee
12 County presented by Gregg Sayre, Administrative Law
13 Judge, Department of Public Service. Molly McBride,
14 Administrative Law Judge, Department of Environmental
15 Conservation, Dakin Lecakes, Chief Administrative Law
16 Judge, Department of Public Service, Jason Zahr,
17 Chief of Environmental Certification and Compliance,
18 Office of Electric Gas and Water, Department of
19 Public Service, Corey Strub, Utility Supervisor
20 Environmental, Office of Electric Gas and Water,
21 Department of Public Service and Robert Rosenthal,
22 General Counsel are available for questions. Judge
23 Sayre, please begin.

24 A.L.J. SAYRE: Thank you very much.
25 And good afternoon. Please feel free to interrupt me

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2 at any time with questions. After the public
3 involvement program and preliminary scoping statement
4 processes, the application in this case was filed on
5 December 28th, 2020. After it was updated, the chair
6 of the siting board found that it was compliant with
7 the filing requirements in the statute and
8 regulations on April 8th, 2021 which started the one
9 year clock for the siting board to make its decision.

10 The project is a proposed solar farm
11 with up to 280 megawatts in capacity in the Town of
12 Byron in Genesee County. The total project area is
13 3,443 acres of the limit of disturbance for
14 construction and operation is less, 1,712 acres of
15 which 1,629 acres are inside the proposed project
16 fences. The collection lines are proposed to be
17 underground and there is a proposed substation and
18 switching yard to connect the project to a New York
19 Power Authority 345 kilovolt transmission line which
20 runs very close to the project. There is also a
21 proposed battery storage facility with a 20 megawatt
22 4 hour duration capacity.

23 There were five active parties in the
24 case, the applicant, D.P.S. staff, D.E.C. staff,
25 Department of Agriculture and Markets, and a local

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2 intervenor group called Byron Association Against
3 Solar Inc. which I'll refer to as BAAS.

4 The Town of Byron requested and
5 received intervenor funding at both the
6 preapplication and post application stages but it did
7 not file testimony for briefs. Settlement
8 negotiations in this case took place between April
9 and August of 2021 and a proposed settlement among
10 three of the five active parties was filed on August
11 25th. The settling parties reached full agreement
12 among themselves. They are the applicant, D.P.S.
13 staff and D.E.C. staff. The Department of
14 Agriculture and Markets and BAAS opposed the
15 settlement.

16 Testimony was filed by all five
17 parties and the evidentiary hearing took place on
18 October 6th. There was a round of recent reply
19 briefs in the case. It is now before you for a
20 decision.

21 The Department of Agriculture and
22 Markets and BAAS contested only a limited number of
23 issues which means that many of the findings that the
24 statute requires are uncontested. These uncontested
25 issues and findings include the finding that the

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2 facility is a beneficial addition to the state's
3 electric generation capacity consistent with state
4 energy policy, beneficial to fuel diversity and zonal
5 energy pricing, non-impacting to environmental
6 justice areas.

7 And most of the environmental issues
8 have also been settled and uncontested including
9 threatened, endangered and invasive species, ground
10 and surface water, wetlands, air quality, public
11 health, safety and security, noise, decommissioning
12 and restoration, cultural historic and recreational
13 resources, infrastructure impacts and state and local
14 laws and regulations with one exception to the local
15 laws issue, which I'll discuss later.

16 The draft order addresses all the
17 uncontested issues in detail and full citations to
18 the record and makes the required findings such as
19 adverse environmental impacts being minimized or
20 avoided to the maximum extent practicable. I won't
21 discuss the uncontested issues further unless you
22 have questions.

23 The contested issues fall into three
24 areas. The use of agricultural land particularly
25 prime farm land, the impact of the project on the

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2 character of the community as a result of its size
3 and visual impact, and the alleged noncompliance of
4 the project not with local laws but with the Town of
5 Byron and Genesee County comprehensive plans. We'll
6 start with the farm land issue.

7 The Department of Agriculture and
8 Markets objected to 30% of the project being located
9 on prime farm land and objected that a solar energy
10 project constitutes a permanent conversion of farm
11 land to nonagricultural uses. The draft order finds
12 that the argument about permanent conversion of farm
13 land has been considered before by the siting board
14 and was rejected in the Hecate Albany Energy case
15 decided in January of 2021.

16 In that case the siting board
17 concluded that a commercial solar facility does not
18 result in a permanent loss of farm land where, as in
19 both that case and in this case, the certificate
20 conditions require the land to be fully restored as
21 closely as possible to its prior condition upon
22 decommissioning with appropriate security for the
23 decommissioning.

24 In this case, there is some permanent
25 loss of farm land due to access roads and other

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2 similar construction but it amounts to only about 31
3 acres which is less than 1% of the project's area.
4 The draft order also notes that the applicant has
5 agreed to follow the Department of Agriculture and
6 Markets' guidelines for solar energy projects which
7 deal with construction mitigation for agricultural
8 lands.

9 The developer also has agreed to hire
10 a health, safety and environmental manager with
11 agricultural qualifications as well as agreeing to
12 various reporting requirements and coordinating
13 requirements, that involve in the future in the
14 compliance phase of the case, Department of
15 Agriculture and Markets staff.

16 Although the department is certainly
17 correct that agricultural production will be reduced
18 in the footprint of the project for approximately 30
19 years, the reason behind that loss is that the
20 property owners in question have voluntarily entered
21 into lease agreements with the applicant.

22 BAAS offered two studies to support
23 its position that the project will have a massive
24 negative impact on farming in the Town of Byron. One
25 of the reports was based on a completely erroneous

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2 number of affected acres starting from the
3 proposition that 3,500 acres of agricultural land
4 would be removed from use for the life of the
5 project. The correct acreage is 1,712, about half
6 the amount in the study. That report is also
7 deficient in using 1 year of cropped pricing in its
8 analysis of impacts rather than a longer average
9 given the price fluctuation that actually occurred
10 over the course of several years in the town's top 10
11 crops.

12 The second study produced by BAAS
13 claims that the project would cause a redistribution
14 of farms and lands and an increase in farming costs.
15 But it fails to support with underlying evidence its
16 conclusions that the project would increase the cost
17 of farming in the area.

18 BAAS also put in the testimony of a
19 large dairy farmer who stated that he would lose the
20 use of farm land on which he spreads excess manure.
21 It is certainly credible that the loss of this manure
22 spreading arrangement could impact the dairy farmer's
23 operations. However, the dairy farmer has been aware
24 of this project for a number of years and only has an
25 informal oral agreement with the landowner in

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2 question. That landowner decided he wanted to lease
3 the land to the developer and there's nothing legally
4 preventing him from doing so.

5 The order finds no basis on which the
6 manure spreading usage by the dairy farmer should
7 prohibit the landowner -- owner in question from
8 making his own decision about leasing its property.
9 Under all these circumstances, the order concludes
10 that the negative agricultural impacts have been
11 avoided or minimized to the maximum extent
12 practicable.

13 The second issue in dispute is the
14 impact of the project on the community's character.
15 BAAS offered the testimony of witnesses and stated
16 that the visual impact of the project would destroy
17 the small town feeling and tight knit community
18 spirit of the area of the project. However, that
19 testimony does not directly take issue with the
20 significant visual screening measures that the
21 applicant has agreed to take, a fair number of
22 plantings, the use of existing woodlands and
23 hedgerows and other screening measures.

24 The testimony also does not take
25 direct issue with the visual impact analysis offered

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2 by the applicant that indicates that there is minimal
3 expected visibility within the affected visual study
4 area which is the area within a radius of five miles
5 around the fence line of the project. Under these
6 circumstances, the draft order concludes that the
7 BAAS testimony is overstated in claiming that the
8 project will destroy the rural community and finds
9 that visual impacts have been avoided or minimized to
10 the maximum extent practicable.

11 The third issue in dispute is based on
12 the testimony of a local resident who is speaking for
13 himself, not for the town or the county, that the
14 project is inconsistent with the town and county
15 comprehensive plans. The resident is absolutely
16 correct in stating that the protection of
17 agricultural lands is listed as a goal in both of
18 those plans. But the draft order finds that the
19 argument of the project's inconsistency with these
20 plans fails for three reasons.

21 First, the town comprehensive plan
22 also explicitly supports the development of clean
23 energy resources. So there is necessarily, as with
24 most land use issues, some balancing required of
25 competing goals. Second, the town in 2021 adopted a

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2 solar law that allows for some agricultural siting.
3 The town found that the law was consistent with its
4 comprehensive plan, and the county planning board
5 implicitly found that the law was consistent with
6 both the town and county comprehensive plans when it
7 approved the town law. It is also noteworthy that
8 the project disturbs less than 1% of the county's
9 prime farmland.

10 Third, as I noted, the BAAS witness
11 was speaking for himself. Neither the town nor the
12 county chose to file testimony or briefs against the
13 project. The draft order concludes that the project
14 is, in fact, not inconsistent with the town or county
15 comprehensive plan.

16 I should note that the applicant
17 requested a waiver of 10 specific requirements of
18 that Town of Byron local law. The applicant produced
19 evidence that with respect to these requirements
20 compliance would make it uneconomical to build the
21 project. No party opposed those proposed waivers and
22 the order grants them.

23 Finally, as a housekeeping issue, the
24 draft order deletes a provision in the proposed
25 certificate conditions that would have allowed

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2 compliance filings and informational reports prior to
3 the board's approval of the project. It's really a
4 moot issue because the board is acting on the project
5 today and there were no such filings. But that kind
6 of provision was rejected in a prior siting board
7 case and it is proposed to be rejected here to give
8 notice to future parties. That wraps up my
9 presentation and we're available for questions.

10 CHAIRPERSON MITCHELL: Thank you very
11 much, Judge Sayre for your comprehensive summary of
12 the item before us. I believe that the proposed
13 draft order granting a certificate of environmental
14 compatibility and public need for the Excelsior Solar
15 Generating Facility is well balanced and avoids or
16 mitigates impacts to the extent practicable. I will
17 be supporting the item.

18 Let me turn to my fellow board members
19 for any comments or questions. Mr. Alexander?

20 MR. ALEXANDER: Thank you. I had
21 certain questions relative to the agricultural
22 resources analysis. And in this proceeding as noted,
23 Department of Agriculture and Markets has raised
24 certain salient points regarding the use of prime
25 farm land for the siting of solar projects and the

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2 potential implications thereof. However, at the
3 presentation today, as well as the discussion in the
4 order, has fully addressed the -- the questions that
5 I was going to pose. So I thank you, Mr. Sayre for -
6 - Judge Sayre for the review of that issue. With
7 that I have no further questions or comments.

8 CHAIRPERSON MITCHELL: Thank you, Mr.
9 Alexander. Dr. Lewis-Michl?

10 DR. LEWIS-MICHL: No questions or
11 comments.

12 CHAIRPERSON MITCHELL: Mr.
13 Ravaschiere?

14 MR. RAVASCHIERE: I have no questions
15 or comments.

16 CHAIRPERSON MITCHELL: Mr. Williams?

17 MR. WILLIAMS: No questions or
18 comments.

19 CHAIRPERSON MITCHELL: Mr. Pawlak?

20 MR. PAWLAK: Nothing.

21 CHAIRPERSON MITCHELL: Thank you. I
22 will now call for a vote. My own vote is in favor of
23 the recommendations as described. Mr. Alexander, how
24 do you vote?

25 MR. ALEXANDER: I vote in favor.

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2 CHAIRPERSON MITCHELL: Dr. Lewis-

3 Michl?

4 DR. LEWIS-MICHL: In favor.

5 CHAIRPERSON MITCHELL: Mr.

6 Ravaschiere?

7 MR. RAVASCHIERE: In favor.

8 CHAIRPERSON MITCHELL: Mr. Williams?

9 MR. WILLIAMS: In favor.

10 CHAIRPERSON MITCHELL: Mr. Pawlak?

11 MR. PAWLAK: Not in favor.

12 CHAIRPERSON MITCHELL: Thank you. The
13 order is approved and the recommendations are
14 adopted.

15 Next is Case 18-F-0262 Application of
16 High Bridge Wind, L.L.C. for a Certificate of
17 Environmental Compatibility and Public Need pursuant
18 to Article 10 to construct an approximately 100
19 megawatt wind powered and electric generating
20 facility located in the Town of Guilford, Chenango
21 County presented by Noreena Chaudari, Assistant
22 Counsel, Department of Public Service, Jason Zahr,
23 Chief of Environmental Certification and Compliance,
24 Office of Electric Gas and Water, Department of
25 Public Service, Corey Strub, Utility Supervisor

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2 Environmental, Office of Electric Gas and Water and
3 Robert Rosenthal, General Counsel are available for
4 questions. Ms. Chaudari please begin.

5 MS. CHAUDARI: Good afternoon, Chair
6 Designee Mitchell and members of the board. Before
7 you today is an order granting a petition for
8 amendment of the board's March 11th, 2021 order
9 granting a certificate of environmental compatibility
10 and public need with conditions to High Bridge Wind,
11 L.L.C.

12 The certificate authorized High Bridge
13 to construct and operate the utility scale wind power
14 project in the Town of Guilford, Chenango County
15 including the installation and operation of up to 25
16 wind turbines together with associated collection
17 lines, access roads, permanent meteorological towers
18 and operation of a maintenance building and a battery
19 storage system.

20 On December 9th, 2022 High Bridge
21 filed a petition for amendment seeking approval to
22 increase the facility's nameplate capacity from 100.8
23 megawatts to 103.5 megawatts. Modified certificate
24 condition 43C related to Federal Aviation
25 Administration approval of lighting systems by

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2 removing the phrase prior to commencement of
3 construction and modify certain facility component
4 locations including the collector substation and
5 point of interconnection substation, wind turbines
6 and supporting infrastructure.

7 The secretary -- secretary to the
8 siting board consulted with the staff of the
9 Department of Public Service, the Department of
10 Environmental Conservation and the Department of
11 Health before issuing a March 22nd, 2022 letter
12 concluding that the proposed modifications would not
13 result in a significant, adverse increase to
14 environmental impacts as compared to the certificated
15 project. Therefore, the modifications did not
16 constitute a revision that would require a hearing
17 under the regulations.

18 High Bridge explains that the
19 increased nameplate capacity is needed to optimize
20 facility production and accommodate the chosen
21 turbine technology for the facility. With respect to
22 certificate condition 43C High Bridge explains that
23 the language as it currently reads could prohibit the
24 commencement of tree clearing inside preparation
25 activities and specifically requests removing the

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2 phrase prior to commencement of construction from
3 that sub part. Removing the phrase clarifies that
4 the F.A.A. approval of turbine lighting system is
5 required with the F.A.A. determinations for the final
6 turbine locations.

7 The draft order before you explains
8 that the requested change is procedural in nature.
9 However, D.P.S. staff raised a concern regarding the
10 certificate holder's reliance on siting board
11 precedent to assert that its certificate requires
12 final F.A.A. determination prior to turbine erection.
13 As noted in the draft order that interpretation is
14 appropriate if High Bridge posts letters of credit
15 prior to the start of civil construction.

16 High Bridge explains that the various
17 layout changes, which includes shifts of nine turbine
18 locations, are needed to optimize facility design,
19 address concerns raised by parties and ensure
20 compliance with the requirements of the certificate.
21 The secretary's letter included a thorough review and
22 addressed potential impacts of the proposed changes
23 for the project related to land use, noise and
24 vibration and shadow flicker, cultural resources and
25 geology seismology and soil, terrestrial ecology,

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2 wetlands and streams, visual impacts, effect on
3 communication and local laws.

4 As summarized in the draft order
5 before you, the proposed changes will not result in a
6 significant, adverse increase to environmental
7 impacts as compared to the certificated project.
8 Accordingly, the draft order before you approves the
9 petition for amendment. This approval does not
10 relieve High Bridge of the need to comply with the
11 terms, conditions, limitations or modification of the
12 construction and operation of the facility authorized
13 in the certificate. That concludes my presentation
14 and we're available for any questions you may have.
15 Thank you.

16 CHAIRPERSON MITCHELL: Thank you, Ms.
17 Chaudari. I have no comments or questions on this
18 item. Let me now turn to my fellow board members for
19 any comments or questions. Mr. Alexander?

20 MR. ALEXANDER: I have no comments or
21 questions. Thank you.

22 CHAIRPERSON MITCHELL: Dr. Lewis-
23 Michl?

24 DR. LEWIS-MICHL: No comments or
25 questions.

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2 CHAIRPERSON MITCHELL: Mr.

3 Ravaschiere?

4 MR. RAVASCHIERE: No comments or

5 questions.

6 CHAIRPERSON MITCHELL: Mr. Williams?

7 MR. WILLIAMS: No comments or

8 questions.

9 CHAIRPERSON MITCHELL: I will now call

10 for a vote. My own vote is in favor of the

11 recommendation as described. Mr. Alexander, how do

12 you vote?

13 MR. ALEXANDER: I vote in favor.

14 CHAIRPERSON MITCHELL: Dr. Lewis-

15 Michl?

16 DR. LEWIS-MICHL: In favor.

17 CHAIRPERSON MITCHELL: Mr.

18 Ravaschiere?

19 MR. RAVASCHIERE: I vote in favor.

20 CHAIRPERSON MITCHELL: Mr. Williams?

21 MR. WILLIAMS: In favor.

22 CHAIRPERSON MITCHELL: The order is

23 approved and the recommendation is adopted.

24 Secretary Phillips, is there anything further to come

25 before us today?

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2 SECRETARY PHILLIPS: There is nothing
3 further today.

4 CHAIRPERSON MITCHELL: Thank you. We
5 are adjourned.

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

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2 STATE OF NEW YORK
3 I, JAMES MAGLARAS, 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 20, 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 8th day of April, 2022.

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13 JAMES MAGLARAS, Reporter

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