

1 Application of Bluestone Wind - 4/9/2020 - 16-F-0559

2 NEW YORK STATE BOARD ON ELECTRIC

3 GENERATION SITING AND THE ENVIRONMENT

4  
5 CASE 16-F-0559 - Application of Bluestone Wind, LLC  
6 for a Certificate of Environmental Compatibility and  
7 Public Need Pursuant to Article 10 for Construction of  
8 the Bluestone Wind Farm Project Located in the Towns  
9 of Windsor and Sanford, Broome County.

8 SITING BOARD MEETING - TELECONFERENCE

9 DATE: April 9, 2020

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

12 BOARD MEMBERS PRESENT:

13 John B. Rhodes, Chair  
14 New York State Public Service Commission

15 Vincent Ravaschiere, Alternate for  
16 Eric Gertler, Acting Commissioner, New York State  
17 Department of Economic Development and President and  
18 Chief Executive Officer Designate, Empire State Dev.

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

22 John Williams, Alternate for

23 Richard L. Kauffman, Chair  
24 NYS Energy Research and Development Authority

25 Elizabeth Lewis-Michl, Alternate for

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

Barbara Mirch, Ad Hoc Member

John Mauro, Ad hoc Member

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2 CHAIRMAN RHODES: My name is John  
3 Rhodes, chair of the Public Service Commission and I'd  
4 like to call this meeting of the board on Electric  
5 Generation Siting and The Environment to order.  
6 Before moving to the agenda, I would like to introduce  
7 the alternates representing the permanent members of  
8 this Siting Board. I should add that as chair of  
9 P.S.C I am also Chair of the Siting Board. Louis  
10 Alexander alternate of Basil Seggos, Department of  
11 Environmental Conservation. Are you on Lou?

12 MR. ALEXANDER: Yes I am on Chairman  
13 Rhodes.

14 CHAIRMAN RHODES: Great, thank you. Dr.  
15 Elizabeth Lewis-Michl, alternate of Dr. Howard Zucker,  
16 Department of Health. Are you on?

17 DR. LEWIS-MICHL: Yes, good morning,  
18 I'm on.

19 CHAIRMAN RHODES: Thank you. Vincent  
20 Ravaschiere, alternate for Eric Gertler, Acting  
21 Commissioner of New York State Department of Economic  
22 Development, and President and Chief Executive Officer  
23 Designate of Park and State Development. Are you on?

24 MR. RAVASCHIERE: Yes, I am, thank you.

25 CHAIRMAN RHODES: Thank you very much

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2 then. John Williams, alternate of Richard Kauffman,  
3 New York State Energy Research and Development  
4 Authority.

5 MR. WILLIAMS: Good morning, I'm on.

6 CHAIRMAN RHODES: Perfect, thank you.  
7 I'd also like to introduce the ad hoc members of  
8 Bluestone Article 10 Siting Board. Barbara Mirch are  
9 you on?

10 MS. MIRCH: Yes, I am, thanks.

11 CHAIRMAN RHODES: Thank you. And John  
12 Mauro, are you on?

13 MR. MAURO: I am, thank you.

14 CHAIRMAN RHODES: Thank you very much.  
15 And I should note that you know that we are conducting  
16 this meeting of the Siting Board by teleconference.  
17 In keeping with the regulations currently in place by  
18 executive orders in place regarding meetings and open  
19 meetings, and -- and the public meeting law hopefully  
20 we can make this work clearly and properly. Secretary  
21 Phillips are there any changes to the agenda?

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

24 CHAIRMAN RHODES: Thank you, then let's  
25 get right into it. Case 16-F-0559, Application of

1 Application of Bluestone Wind - 4/9/2020 - 16-F-0559  
2 Bluestone Wind, LLC for Certificate of Environmental  
3 Compatibility and Public Need Pursuant to Article 10  
4 for Construction of the Bluestone Wind Farm Project  
5 Located in the Towns of Windsor and Sanford, Broome  
6 County. Presented by Robert Rosenthal, General  
7 Counsel, Sean Mullany, Administrative Law Judge,  
8 Department of Public Service, Dakin Lecakes, Chief  
9 Administrative Law Judge, Department of Public  
10 Service, and James McClymonds, Chief Administrative  
11 Law Judge, Department of Environmental Conservation,  
12 are available to answer questions. Mr. Rosenthal  
13 please begin.

14 MR. ROSENTHAL: Thank you. Good  
15 morning and -- and this is Bob Rosenthal, Counsel to  
16 the Siting Board. On the agenda today is a proposed  
17 order denying three separately filed petitions for re-  
18 hearing from the Board's December 16<sup>th</sup>, 2019 order  
19 approving the application filed by Bluestone Wind LLC,  
20 for a certificate of Environmental Compatibility and  
21 Public Need. The certificate order authorizes  
22 Bluestone Wind to construct and operate a 124 megawatt  
23 wind facility in the Towns of Windsor and Sanford in  
24 Broome County.

25 The project will consist of up to 27

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2 wind turbines together with other energy related  
3 infrastructure, including two permanent meteorological  
4 towers, a maintenance building, a collection  
5 substation, and a ten megawatt battery storage system.  
6 Petitions for re-hearing were filed by three parties,  
7 Delaware Otsego Autobon Society Inc., Broome County  
8 Concerned Residents, and Heather Dehan (phonetic  
9 spelling), a local resident that was an active party  
10 in the case.

11 The comprehensive public participation  
12 and fact-finding aspects of the case are described in  
13 both the recommended decision and certificate order  
14 and don't bear repeating here except to note that  
15 Bluestone Wind spent almost two years providing the  
16 public and various elected and appointed officials  
17 with information about the project before filing its  
18 application in September of 2018. That application  
19 was subsequently deemed complete on December 27<sup>th</sup> of  
20 2018, following an evidentiary hearing, multiple  
21 opportunities for briefing and motion practice, and  
22 issuance of a recommended decision, the board  
23 ultimately granted the certificate as noted on  
24 December 16<sup>th</sup>, 2019. With respect to the standard of  
25 review, on -- on the petition, to succeed on a

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2 petition for re-hearing, the petitioner must show that  
3 the Siting Board committed an error of law or fact, or  
4 that new circumstances warrant a different  
5 determination. The proposed order before you finds  
6 that no such errors of law or fact or any  
7 circumstances were identified in the three petitions,  
8 and on this basis the proposed order would deny re-  
9 hearing.

10 So, let me briefly discuss the  
11 arguments that remain on re-hearing. First is a  
12 threshold issue raised by the Broome County Concerned  
13 Residents, or B.C.C.R., which seeks re-hearing of the  
14 boards determination and certificate order that  
15 B.C.C.R failed to exhaust its administrative remedies  
16 to the extent it elected not to take exception to  
17 matters addressed in the recommended decision.  
18 B.C.C.R. argues that application of the exhaustion  
19 principle constitutes a legal error on the part of the  
20 Siting Board. Specifically, it points to two  
21 exceptions to the exhaustive principle that in exerts  
22 apply here.

23 First, that the Siting Board acted  
24 beyond its grant of statutory authority and second,  
25 further administrative process would have been futile

1 Application of Bluestone Wind - 4/9/2020 - 16-F-0559  
2 because the Siting Board was allegedly biased in favor  
3 of state renewable energy policies over local concerns  
4 about project impacts.

5 The order before you finds that neither  
6 these exceptions to the exhaustion principle apply  
7 here. In particular, B.C.C.R. did not show how any of  
8 the board's findings in the certificate order were  
9 beyond the board's authority and B.C.C.R. failed to  
10 demonstrate any bias on the part of the board.

11 The three petitioners raised several  
12 other issues, all addressed in the proposed order  
13 before you. Let me focus on two of those issues here.

14 First, B.C.C.R. argues that the Siting  
15 Board committed legal error by not enforcing either a  
16 moratorium enacted by the Town of Sanford after  
17 closure of the hearing record that would have  
18 temporarily prohibited construction of all wind  
19 facilities, or two, a second law, adopted by the town,  
20 a -- before issuance of the certificate order that  
21 imposed new restrictions on the siting of wind  
22 projects. The certificate order ruled with respect to  
23 both laws, that because they were issued after the  
24 close of the evidentiary record the plain language of  
25 the Article 10 statues does not allow their

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2 consideration. The certificate order also found that  
3 the local law adopting the moratorium was unreasonably  
4 burdensome and subject to waiver by the Siting Board.  
5 The proposed order before you finds that B.C.C.R.  
6 failed to show any error of law with respect to the  
7 boards interpretation of its own statute regarding the  
8 treatment of local laws.

9 Second, all three petitioners raised  
10 issues with respect to findings in the certificate  
11 order related to the impact of the project on Bold --  
12 Bald Golden Eagles that are known to these parts of  
13 Broome County as habitat. The primary argument is  
14 that the board committed an error of law and fact in  
15 relying on an estimate provided by D.E.C. regarding  
16 the number of eagles that would be adversely impacted  
17 by the project. The petitioners argue that D.E.C. used  
18 an inappropriate model to predict the number of eagles  
19 that would be impacted. However, as explained in the  
20 certificate order that reaffirmed in the order before  
21 you, it is within the boards discretion to rely on  
22 D.E.C.'s estimate provided pursuant to expert  
23 testimony filed on its behalf in the case.

24 The petition has raised other arguments  
25 as well, including those related to noise and visual

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2 impacts, and the impact of the project on alleged  
3 environmental justice communities. The proposed order  
4 rejects these arguments and others made in the  
5 petition, and reaffirms the reasonableness of the  
6 Siting Boards findings in the certificate order. With  
7 that, that concludes my presentation, and let me know  
8 if any of the board members have any questions. Thank  
9 you.

10 CHAIRMAN RHODES: Thank you, Bob.

11 My own comment is to concur with the  
12 position that you just described. I know it's not  
13 proffered before us today, but this project was  
14 properly approved in my view, back in December and it  
15 was responsibly sited and permitted and did a good  
16 job, an appropriate job, of balancing the public  
17 interests in clean energy and environmental and  
18 community concerns of benefit.

19 With respect to what's before us today,  
20 I find that upon examination and consideration of  
21 these petitions, what we did was legally and  
22 procedurally sound, and a proper decision is to deny.  
23 So, I am going to be in favor of the recommendation to  
24 deny, and for the reasons I just sited.

25 Can I ask my fellow Siting Board

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2 members, and make -- could I roll call you to see if  
3 you have any comments or questions. Mr. Alexander?

4 MR. ALEXANDER: Chairman Rhodes I have  
5 reviewed the petitions based on the proposed order and  
6 the presentation today, I have no questions.

7 CHAIRMAN RHODES: Thank you. Dr. Lewis-  
8 Michl?

9 DR. LEWIS-MICHL: Hello, I have no  
10 questions or comments.

11 CHAIRMAN RHODES: Thank you. Mr.  
12 Ravaschiere?

13 MR. RAVASCHIERE: I have no questions.

14 CHAIRMAN RHODES: Thank you. Mr.  
15 Williams?

16 MR. WILLIAMS: I have no questions.

17 CHAIRMAN RHODES: Thank you. Ms. Mirch?

18 MS. MIRCH: Just a brief comment, I  
19 don't believe it's right to completely disregard the  
20 local town law and it appears that the communities  
21 voice has not been given the weight that it deserves  
22 in this decision.

23 CHAIRMAN RHODES: Thank you. Mr. Mauro?

24 MR. MAURO: Thank you, I -- I agree  
25 with Mrs. Mirch, I don't think the local community was

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2 -- was listened to and that's based on my own  
3 experiences that I put in the letter to you the last  
4 time that --that you had your hearings.

5 CHAIRMAN RHODES: Yeah, thank you for  
6 that, yeah. Again, well thank you for those comments.  
7 I think that leads us to call for a vote. Again, I  
8 will ask for the votes one by one. My own vote is in  
9 favor of the recommendation to deny the petition for  
10 re-hearing, petitions for re-hearing that were filed  
11 in this case. Mr. Alexander how do you vote?

12 MR. ALEXANDER: I vote in favor.

13 CHAIRMAN RHODES: Dr. Lewis-Michl?

14 DR. LEWIS-MICHL: I vote in favor.

15 CHAIRMAN RHODES: Mr. Ravaschiere?

16 MR. RAVASCHIERE: In favor.

17 CHAIRMAN RHODES: Thank you, Mr.

18 Williams?

19 MR. WILLIAMS: I vote in favor.

20 CHAIRMAN RHODES: Thank you, Ms. Mirch?

21 MS. MIRCH: I vote to oppose the denial  
22 of the petition.

23 CHAIRMAN RHODES: Got it, thank you,  
24 and Mr. Mauro?

25 MR. MAURO: I also vote to deny the --

1 Application of Bluestone Wind - 4/9/2020 - 16-F-0559  
2 the petition.

3 CHAIRMAN RHODES: I'm sorry, you are  
4 agreeing with majority to deny the petition, or you  
5 are agreeing with Ms. Mirch to deny the denial of the  
6 petition?

7 MR. MAURO: Yeah, I deny the denial of  
8 the petition, that's correct.

9 CHAIRMAN RHODES: Thank you, thank you.  
10 I'm sorry if that was legally crude the way I  
11 expressed it, but I hope we're clear.

12 MR. MAURO: We are.

13 CHAIRMAN RHODES: Thank you very much  
14 for your votes, the matter is improved -- approved,  
15 and the recommendation is adopted. Secretary Phillips,  
16 is there anything further to come before us today?

17 SECRETARY PHILLIPS: There is nothing  
18 further today.

19 CHAIRMAN RHODES: With that, I thank  
20 you all for your service through this whole matter and  
21 for helping make this unusual tele-conference format  
22 work effectively and we are adjourned. Thank you.

23 (The meeting concluded.)

24

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2 STATE OF NEW YORK

3 I, TRACY WILLIAMS, 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 12, 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 13th day of April, 2020.

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13 TRACY WILLIAMS, Reporter

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