

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020

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

5 CASE 15-F-0122 - Application of Baron Winds, LLC for a
6 Certificate of Environmental Compatibility and Public Need
7 Pursuant to Article 10 to Construct a Wind Energy
8 Facility.

9 CASE 20-F-0067 - In the Matter of the Rules and
10 Regulations of the Board on Electric Generation Siting and
11 the Environment, Contained in 16 NYCRR, Chapter X,
12 Certification of Major Electric Generating Facilities,
13 Proposed Amendments to Parts 1000 and 1001.

14 Siting Board Meeting via WEBEX

15 Date: Wednesday, May 6, 2020 @ 10:30 am

16
17 JOHN B. RHODES, Chair

18 LOUIS ALEXANDER, alternate of Basil Seggos, Department of
19 Environmental Conservation

20 DR. ELIZABETH LEWIS-MICHL, alternate of Dr. Howard Zucker,
21 Department of Health

22 VINCENT RAVASCHIERE, alternate of Eric Gertler, Empire
23 State Development Corporation

24 JOHN WILLIAMS, alternate of Richard Kauffman, New York
25 State Energy Research and Development Authority

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020

2 CHAIRMAN RHODES: Good morning. This
3 is John Rhodes, Chair of the Public Service
4 Commission and Chair of the Board on Electric
5 Generation and Siting in the Environment. I call
6 this meeting of that Board to order.

7 Folks, please mute if you're not
8 speaking. Before we get started, I would like to
9 note our arrangements for the meeting today. In line
10 with the guidelines concerning social distancing and
11 minimizing large gatherings and in keeping with
12 Executive Orders suspending provisions of the Open
13 Meeting Law on an emergency basis, we are conducting
14 today's meeting remotely.

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

22 These arrangements have been reviewed
23 by our general counsel and he has found that they
24 meet the requirements of the Executive Orders and
25 that they meet my own expectations of honoring the

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020
2 intent of the Open Meetings Law.

3 Before moving to the agenda, I would
4 like to introduce the alternates representing the
5 permanent members of the Siting Board. After I say
6 your name and -- and affiliation, could you please
7 respond that you're here?

8 Louis Alexander, alternate of Basil
9 Seggos, Department of Environmental Conservation.

10 MR. ALEXANDER: Here.

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

14 DR. LEWIS-MICHL: Here.

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

20 MR. RAVASCHIERE: Here.

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

24 MR. WILLIAMS: Here.

25 CHAIRMAN RHODES: Thank you.

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020
2 Secretary Phillips, are there any changes to the
3 agenda?

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

6 CHAIRMAN RHODES: Thank you. Then
7 let's get right to that agenda. We -- we're taking
8 up Case 20-F-0067, in the Matter Of The Rules And
9 Regulations of the Board on Electric Generation
10 Siting and the Environment 16 N.Y.C.R.R., Chapter X-
11 10, Certification of Major Electric Generating
12 Facilities, proposed amendments to Parts 1000 and
13 1001, presented by Robert Rosenthal, General Counsel.
14 Mr. Rosenthal, please begin.

15 MR. ROSENTHAL: Thank you, Chair
16 Rhodes. Let me just start by hoping that everybody
17 on this meeting and otherwise participating is doing
18 well. As noted by the Chair, I'm going to start with
19 a discussion of the rulemaking that is in front of
20 you today.

21 On February 13th, 2020, this Board
22 approved an emergency rulemaking, to modify the
23 definition of the term revision and related
24 provisions of the original regulations, adopted to
25 implement Article 10 of the Public Service Law.

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020

2 The purpose of the regulatory changes,
3 was to address the fact that the definition of
4 revision, was creating unintended negative
5 consequences and most prominent, of which, is to
6 cause unwarranted delays in permitting and
7 construction of wind energy projects.

8 These delays in turn, could
9 potentially render projects uneconomic for several
10 reasons, including by making them ineligible for a
11 Federal tax credit set to expire at the end of 2020
12 and by failing to meet construction milestones, tied
13 to project financing.

14 The definition of revision included in
15 the original regulations, incorporated a bright line
16 test that would be triggered if project components,
17 like an access road, transmission interconnection or
18 turbines are relocated by more than 500 feet. As
19 explained during my presentation, regarding the
20 emergency regulations, this test is particularly
21 problematic for wind projects, where turbines
22 associated with a single project, can be sited on
23 dozens of parcels.

24 As noted then, it is fairly typical
25 for the developer to relocate project components

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020
2 during the construction design phase of the project,
3 which occurs after the issuance of the certificate.

4 Additionally, given the duration of
5 Article 10 certificate proceedings, the project
6 developer may decide to substitute into a
7 certificated project, more efficient technologies or
8 technologies that recently came on the market.

9 Anyway, this Board approved the
10 emergency rulemaking on February 22nd. It also
11 approved for publication in the State Register, a
12 notice of proposed rulemaking, to finalize the same
13 set of proposed regulatory changes. Like any
14 rulemaking under SAPA, the public was afforded a
15 sixty-day, public-comment process.

16 The comments to the extent opposing
17 the final rule, advance two general arguments.
18 First, that the emergency justification underlying
19 the Board's initial action, was unwarranted. And,
20 second, the proposed regulatory changes would hinder
21 public involvement and result in increased negative
22 impacts to the environment.

23 As a purely legal matter, the first
24 concern questioning the emergency nature of the
25 Board's initial action, would be rendered moot by the

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020
2 Board's final action today, on the final rule and
3 that's because the final rule would replace the
4 emergency rule, which would no longer be legally
5 challengeable. In any event, the Order approving the
6 emergency rulemaking, sufficiently established the
7 emergency basis of the rulemaking, some of which if
8 summarized at the outset of this presentation.

9 As for the comments claiming that the
10 final rule would undermine public involvement in the
11 Article 10 process and result in increased
12 environmental impacts, the Order before you finds to
13 the contrary. The important role that interveners
14 play in the pre-application -- in application
15 processes, would remain unchanged. Intervenors would
16 still be provided with funding by the Applicant and
17 afforded the same rights as the Applicant in the
18 evidentiary hearing process.

19 The intervener's role is important,
20 precisely because it focuses the process on critical
21 local issues, including with respect to wind, noise
22 impacts, setbacks, flicker and visual impacts. Due
23 in large part to the role played by intervenors, the
24 evidentiary hearing process results in strict and
25 comprehensive certificate standards and conditions

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020
2 that apply to these projects. The standards and
3 conditions of a certificate, are intended to ensure
4 that the -- the project either avoids significant
5 adverse environmental impacts or mitigates such
6 impacts to the greatest extent practical.

7 Those standards and conditions will
8 remain applicable to any project change subject to
9 the certificate amendment. This is important because
10 under the new definition of revision, the Applicant
11 would be required to show that the project changes
12 would not result in potential new or increase
13 significant adverse environmental impacts, compared
14 to those evaluated as part of the certificate
15 process. To do that, the Applicant would have to
16 show, that the project changes would be able to
17 comply the strict standards and conditions of the
18 previously issued certificate, which again are based
19 on the same test that addresses the significance of
20 environmental and other impacts.

21 In sum, because the regulatory changes
22 at issue here, ensure that the environmental
23 significance review applies to any changes subject to
24 a project amendment, there is no basis to believe
25 that the regulatory changes, themselves, will result

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020
2 in increased environmental impacts. For these
3 reasons, the emergency rulemaking that you have
4 already approved, should be made final, pursuant to
5 your action today. And, with that, let me know if
6 you have any questions on this initial issue. Thank
7 you.

8 Chair Rhodes, any questions?

9 CHAIRMAN RHODES: Thank you for that
10 gentle reminder. I was on mute. Thank you. My own
11 comment is, that as in the emergency rulemaking, I
12 find these changes to be reasonable, pragmatic and
13 protective. Of course, there's community concerns
14 but also the environmental concerns and the public
15 opportunity to comment. Since these are all
16 preserved and since we are improving the practical
17 reality of the process, I am going to be in favor.
18 Are there any comments or questions from my fellow
19 Board members? Mr. Alexander:

20 MR. ALEXANDER: I have no questions.

21 CHAIRMAN RHODES: Thank you. Dr.
22 Lewis-Michl?

23 DR. LEWIS-MICHL: No questions.

24 CHAIRMAN RHODES: Thank you. Mr.
25 Ravaschiere?

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020

2 MR. RAVASCHIERE: No questions.

3 CHAIRMAN RHODES: Thank you and Mr.

4 Williams?

5 MR. ROSENTHAL: Mr. Williams, I think
6 you're on mute.

7 MR. WILLIAMS: No questions.

8 CHAIRMAN RHODES: Thank you. With
9 that, let's proceed to call for a vote. My own vote
10 is in favor of adopting the memorandum and
11 resolutions as final rule as just described and for
12 avoidance of doubt, this is John Rhodes voting. Mr.
13 Alexander, how do you vote?

14 MR. ALEXANDER: I vote in favor.

15 CHAIRMAN RHODES: Thank you. Dr.
16 Lewis-Michl, how do you vote?

17 DR. LEWIS-MICHL: In favor.

18 CHAIRMAN RHODES: Thank you. Mr.
19 Ravaschiere, how do you vote?

20 MR. RAVASCHIERE: In favor.

21 CHAIRMAN RHODES: Thank you and Mr.
22 Williams, how do you vote?

23 MR. WILLIAMS: In favor.

24 CHAIRMAN RHODES: Thank you. The
25 matter is approved and the recommendation is adopted.

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020

2 We will now move to the next item on
3 the agenda, Case 15-F-0122, Application of Baron
4 Winds, L.L.C., for a Certificate of Environmental
5 Compatibility and Public Need, pursuant to Article
6 10, to construct a wind energy facility, again
7 presented by Mr. Rosenthal. Mr. Rosenthal, please
8 begin.

9 MR. ROSENTHAL: Thank you, Chair
10 Rhodes. The next matter relates to an amendment
11 sought by Baron Winds, to a certificate issued by
12 this Board on September 12th, 2019. As brief
13 background, the certificate approved a wind energy
14 project, having a capacity of up to 242 megawatts, to
15 be located within the Towns of Cohocton, Dansville,
16 Freemont and Wayland in Steuben County.

17 The project as certificated, would
18 have spread the 242 megawatts over 69 wind turbines.
19 On March 9th, 2020, Baron Winds filed an amendment
20 petition, requesting the Siting Board to amend
21 certain aspects of the certificate. The amendment
22 petition seeks approval to modify certain project
23 components, including changes to wind turbine size
24 and technology and associated access roads and
25 electrical collection lines.

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020

2 The proposed amendment would also
3 divide the project into two phases. In phase one,
4 Baron Winds would use a different turbine technology,
5 that would increase the capacity of individual
6 turbines from 3.55 to 5 megawatts, spread out over 26
7 turbines.

8 Keeping the overall capacity of the
9 project constant between phases one and two, in other
10 words 242 megawatts, means that this increase in per
11 turbine capacity as part of phase one, would result
12 in the overall number of turbines included as -- as
13 part of the total project being significantly
14 reduced.

15 If Phase Two of the project also uses
16 5 megawatt turbines and the number of turbines for
17 the entire project would be reduced from 69 to 48.
18 If phase two uses a 3.55 megawatt turbine average,
19 which was approved as part of the certificate, then
20 the total number of turbines would be reduced from 69
21 to 54.

22 As noted in my presentation earlier
23 this morning regarding the new definition of
24 revision, the Company needs to show that the changes
25 sought through the amendment, would not result in

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020
2 potential new or increase significant adverse
3 environmental impacts associated with the full
4 project. Also as noted, Baron Winds must do this by
5 showing that the project changes would be able to
6 comply with the standards and conditions incorporated
7 into the previously issued certificate.

8 The Draft Order before you, finds that
9 Baron has made this showing. So, using the same
10 example as I used in my presentation related to the
11 *rulemaking, with the changes proposed as part of
12 phase one, the project as whole, would still meet the
13 standards and conditions incorporated into the
14 certificate, as related to noise, flicker, setback,
15 wet lands and all of the remaining impacts associated
16 with the project as certificated.

17 One issue of note, is that the visual
18 impacts would change, as a result of the proposed
19 amendment but in an insignificant way. Specifically,
20 the different turbine technology associated with
21 phase one, would increase the turbine height of the
22 26 turbines included in phase one, from 500 to 650
23 feet. However, to be conservative, the amendment
24 assumes under the visual analysis, that all of the
25 remaining 43 turbines authorized in the certificate,

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020
2 would be built as part of phase two, even though as I
3 noted, the likelihood would be that that number would
4 be significantly reduced.

5 In this respect, this submission made
6 by Baron, shows that the perceptible area of
7 visibility, would be increased by 4.7 square miles,
8 within a visual study area of 569.2 square miles,
9 which represents an incremental increase in the area
10 of visibility of less than one percent.

11 After consulting with agency staff,
12 regarding these issues, the Secretary found that the
13 proposed amendment did not constitute a revision. In
14 other words, that the project changes would not
15 result in new or increased significant adverse
16 environmental and other impacts.

17 The Order before you, would adopt that
18 finding and approve the certificate amendment sought
19 by Baron Winds here. One more issue, we learned at -
20 - on Monday, two days ago, that the Town of Cohocton
21 where the 26 turbines would be built, may take action
22 regarding the part of the Town's law, that authorizes
23 turbine heights up to 650 feet.

24 Article 10 requires this Board to make
25 a determination regarding whether the proposed

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020
2 amendments made by Baron Winds, would comply with
3 existing law, not a local law that may be changed in
4 the future.

5 Based on our review of the record, the
6 part of the Town law regarding turbine height,
7 remains in effect and has not been changed or
8 repealed. Accordingly, the Draft Order also finds
9 that the proposed changes in the amendment petition,
10 comply with existing Town law. And, with that, I
11 remain open to any questions. Thank you.

12 CHAIRMAN RHODES: Thank you Bob. This
13 is -- this is John Rhodes. I -- I'm going to be in -
14 - in favor of this recommendation to -- to approve
15 their amendment request. I find that the amendments
16 meet the test and that the Applicant has properly
17 shown and -- and I also note that Staff has properly
18 -- finds the same thing, has properly shown no new
19 negative or no increased negative consequences,
20 including the visual impact analysis and I accept
21 with and -- I accept and concur with counsel's review
22 of the -- the legal status of existing Town law and
23 whether this complies. I'm going to be in favor of
24 this item. Are there any comments or questions from
25 my fellow Board members? Mr. Alexander?

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020

2 MR. ALEXANDER: I have no questions.

3 CHAIRMAN RHODES: Thank you. Dr.

4 Lewis-Michl?

5 DR. LEWIS-MICHL: No questions.

6 CHAIRMAN RHODES: Thank you. Mr.

7 Ravaschiere?

8 MR. RAVASCHIERE: I have no questions.

9 CHAIRMAN RHODES: Thank you and Mr.

10 Williams?

11 MR. WILLIAMS: No questions.

12 CHAIRMAN RHODES: Thank you. With

13 that, I will proceed to call for a vote. My own vote

14 is in favor of the recommendation to approve the

15 amendment request and for avoidance of doubt, this is

16 John Rhodes voting -- voting.

17 Mr. Alexander, how do you vote?

18 MR. ALEXANDER: I vote in favor.

19 CHAIRMAN RHODES: Dr. Lewis-Michl, how

20 do you vote?

21 DR. LEWIS-MICHL: In favor.

22 CHAIRMAN RHODES: Thank you. Mr.

23 Ravaschiere, how do you vote?

24 MR. RAVASCHIERE: In favor.

25 CHAIRMAN RHODES: Thank you. Mr.

1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020

2 Williams, how do you vote?

3 MR. WILLIAMS: In favor.

4 CHAIRMAN RHODES: Thank you. The
5 matter is approved and the recommendation is adopted.
6 Secretary Phillips, is there anything further to come
7 before us today?

8 SECRETARY PHILLIPS: This is Secretary
9 Phillips. There is nothing further to come before
10 you today.

11 CHAIRMAN RHODES: Thank you very much.
12 Then, I adjourn and once again, this is John Rhodes
13 adjourning the meeting. Thank you very much all for
14 making this -- this format work. Stay safe
15 everybody.

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1 15-F-0122/20-F-0067 - Siting Board - 5-6-2020

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
10 subscribed my name, this the 7th day of May, 2020.

11

12

13 HANNAH ALLEN, Reporter

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A	
able 8:16 13:5	aspects 11:21
accept 15:20, 21	associated 5:22 11:24 13:3, 15 13:20
access 5:17 11:24	assumes 13:24
Acting 3:16	Authority 1:23 3:23
action 6:19, 25 7:2 9:5 14:21	authorized 13:25
Additionally 6:4	authorizes 14:22
address 5:3	average 12:18
addresses 8:19	avoidance 10:12 16:15
adjourn 17:12	avoids 8:4
adjourning 17:13	
adopt 14:17	B
adopted 4:24 10:25 17:5	B 1:17
adopting 10:10	background 11:13
advance 6:17	Baron 1:1, 5 2:1 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1, 3, 11, 19 12:1, 4 13:1, 4, 9 14:1, 6, 19 15:1, 2 16:1 17:1 18:1
adverse 8:5, 13 13:2 14:15	based 8:18 15:5
affiliation 3:6	Basil 1:18 3:8
afforded 6:14 7:17	basis 2:13 7:7 8:24
agency 14:11	believe 8:24
agenda 3:3 4:3, 5, 7 11:3	Board 1:2, 10, 14 2:4, 6 3:5 4:9 4:21 6:9 9:19 11:12, 20 14:24 15:25
ago 14:20	Board's 6:19, 25 7:2
Alexander 1:18 3:8, 10 9:19, 20 10:13, 14 15:25 16:2, 17, 18	Bob 15:12
ALLEN 18:3, 13	brief 11:12
alternate 1:18, 19, 21, 23 3:8, 12 3:16, 22	bright 5:15
alternates 3:4	built 14:2, 21
amend 11:20	
amendment 8:9, 24 11:10, 19, 21 12:2, 25 13:19, 23 14:13, 18 15:9, 15 16:15	C
amendments 1:13 4:12 15:2, 15	call 2:5 10:9 16:13
analysis 13:24 15:20	capacity 11:14 12:5, 8, 11
Anyway 6:9	caption 18:5
applicable 8:8	Case 1:5, 9 4:8 11:3
Applicant 7:16, 17 8:10, 15 15:16	cause 5:6 18:4
application 1:5 7:14 11:3	certain 11:21, 22
applies 8:23	certificate 1:6 6:3, 5 7:25 8:3 8:9, 14, 18 11:4, 11, 13, 21 12:19 13:7, 14, 25 14:18
apply 8:2	certificated 6:7 11:17 13:16
approval 11:22	Certification 1:12 4:11
approve 14:18 15:14 16:14	certify 18:3
approved 4:22 6:9, 11 9:4 10:25 11:13 12:19 17:5	Chair 1:17 2:3, 4 4:15, 18 9:8 11:9
approving 7:5	CHAIRMAN 2:2 3:11, 15, 21, 25 4:6 9:9, 21, 24 10:3, 8, 15, 18, 21, 24 15:12 16:3, 6, 9, 12, 19, 22, 25 17:4, 11
area 14:6, 8, 9	
arguments 6:17	
arrangements 2:9, 22	
Article 1:7 4:25 6:5 7:11 11:5 14:24	

challengeable 7:5
change 8:8 13:18
changed 15:3,7
changes 4:2,5 5:2 6:13,20 8:11
 8:16,21,23,25 9:12 11:23
 12:24 13:5,11 14:14 15:9
Chapter 1:11 4:10
Chief 3:18
claiming 7:9
Cohocton 11:15 14:20
collection 11:25
come 17:6,9
comment 9:11,15
comments 6:16 7:9 9:18 15:24
Commission 2:4
Commissioner 3:17
community 9:13
Company 12:24
compared 8:13
Compatibility 1:6 11:5
complies 15:23
comply 8:17 13:6 15:2,10
components 5:16,25 11:23
comprehensive 7:25
concern 6:24
concerning 2:10
concerns 9:13,14
concur 15:21
conditions 7:25 8:3,7,17 13:6
 13:13
conducting 2:13
consequences 5:5 15:19
Conservation 1:18 3:9
conservative 13:23
consisting 18:6
constant 12:9
constitute 14:13
construct 1:7 11:6
construction 5:7,12 6:2
consulting 14:11
Contained 1:11
contrary 7:13
Corporation 1:22
counsel 2:23 4:13
counsel's 15:21
County 11:16
course 9:13
creating 5:4
credit 5:11
critical 7:20

D

Dansville 11:15
Date 1:15
day 18:10
days 14:20
decide 6:6
definition 4:23 5:3,14 8:10
 12:23
delays 5:6,8
Department 1:18,20 3:9,13,17
Department's 2:19
described 10:11
design 6:2
Designate 3:19
determination 14:25
developer 5:25 6:6
Development 1:22,23 3:18,19,23
different 12:4 13:20
discussion 4:19
distancing 2:10
divide 12:3
doing 4:17
doubt 10:12 16:15
dozens 5:23
Dr 1:19,19 3:11,12,14 9:21,23
 10:15,17 16:3,5,19,21
Draft 13:8 15:8
Due 7:22
duration 6:4

E

earlier 12:22
Economic 3:17
effect 15:7
efficient 6:7
either 8:4
Electric 1:2,10,12 2:4 4:9,11
electrical 11:25
Elizabeth 1:19 3:12
emergency 2:13 4:22 5:20 6:10
 6:18,24 7:4,6,7 9:3,11
Empire 1:21 3:19
energy 1:7,23 3:23 5:7 11:6,13
ensure 8:3,22
entire 12:17
environment 1:3,11 2:5 4:10
 6:22
environmental 1:6,18 3:9 7:12
 8:5,13,20,22 9:2,14 11:4 13:3

14:16	general 2:23 4:13 6:17
Eric 1:21 3:16	Generating 1:12 4:11
established 7:6	Generation 1:2,10 2:5 4:9
evaluated 8:14	gentle 9:10
event 7:5	Gertler 1:21 3:16
everybody 4:16 17:15	given 6:4
evidentiary 7:18,24	going 2:19 4:18 9:17 15:13,23
example 13:10	Good 2:2
Executive 2:12,24 3:18	greatest 8:6
existing 15:3,10,22	guidelines 2:10
expectations 2:25	
expire 5:11	<hr/> H <hr/>
explained 5:19	HANNAH 18:3,13
extent 6:16 8:6	Health 1:20 3:13
<hr/> F <hr/>	hearing 7:18,24 18:8
Facilities 1:12 4:12	height 13:21 15:6
facility 1:8 11:6	heights 14:23
fact 5:3	hereof 18:5
failing 5:12	hereto 18:5
fairly 5:24	hereunto 18:9
favor 9:17 10:10,14,17,20,23	hinder 6:20
15:14,23 16:14,18,21,24 17:3	honoring 2:25
February 4:21 6:10	hoping 4:16
Federal 5:11	Howard 1:19 3:12
feet 5:18 13:23 14:23	<hr/> I <hr/>
fellow 9:18 15:25	I'd 2:15
filed 11:19	I'm 4:18 15:13,23
final 6:17 7:2,2,3,10 9:4 10:11	impact 15:20
finalize 6:12	impacts 6:22 7:12,22,22 8:5,6
financing 5:13	8:13,20 9:2 13:3,15,18 14:16
find 9:12 15:15	implement 4:25
finding 14:18	important 7:13,19 8:9
finds 7:12 13:8 15:8,18	improving 9:16
first 6:18,23	included 5:14 12:12 13:22
flicker 7:22 13:14	including 5:10 7:21 11:23 15:20
focuses 7:20	incorporated 5:15 13:6,13
Folks 2:7	increase 8:12 12:5,10 13:2,21
foregoing 18:3,6	14:9
format 17:14	increased 6:21 7:11 9:2 14:7,15
found 2:23 14:12	15:19
Freemont 11:16	incremental 14:9
front 4:19	individual 12:5
full 13:3	ineligible 5:10
funding 7:16	initial 6:19,25 9:6
further 17:6,9	insignificant 13:19
future 15:4	intended 8:3
<hr/> G <hr/>	intent 3:2
gatherings 2:11	interconnection 5:17
	intervener's 7:19

interveners 7:13,15,23	means 12:10
introduce 3:4	meet 2:24,25 5:12 13:12 15:16
involvement 6:21 7:10	meeting 1:14 2:6,9,13,14,19,20 4:17 17:13
issuance 6:3	Meetings 3:2
issue 8:22 9:6 13:17 14:19	megawatt 12:16,18
issued 8:18 11:11 13:7	megawatts 11:14,18 12:6,10
issues 7:21 14:12	members 3:5 9:19 15:25
item 11:2 15:24	memorandum 10:10
<hr/> J <hr/>	miles 14:7,8
John 1:17,23 2:3 3:21 10:12 15:13 16:16 17:12	milestones 5:12
justification 6:18	minimizing 2:11
<hr/> K <hr/>	mitigates 8:5
Kauffman 1:23 3:22	modify 4:22 11:22
keeping 2:11 12:8	Monday 14:20
know 9:5	moot 6:25
<hr/> L <hr/>	morning 2:2 12:23
L.L.C 11:4	move 11:2
lands 13:15	moving 3:3
large 2:11 7:23	mute 2:7,16 9:10 10:6
law 2:13 3:2 4:25 14:22 15:3,3 15:6,10,22	<hr/> N <hr/>
learned 14:19	N.Y.C.R.R 4:10
legal 6:23 15:22	name 3:6 18:10
legally 7:4	nature 6:24
let's 4:7 10:9	Need 1:6 11:5
Lewis-Michl 1:19 3:12,14 9:22 9:23 10:16,17 16:4,5,19,21	needs 12:24
likelihood 14:3	negative 5:4 6:21 15:19,19
line 2:9 5:15	new 1:2,23 3:17,22 8:10,12 12:23 13:2 14:15 15:18 18:2
lines 2:17 11:25	noise 7:21 13:14
listen 2:18	note 2:9 13:17 15:17
LLC 1:1,5 2:1 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1	noted 4:18 5:24 12:22 13:4 14:3
local 7:21 15:3	notice 6:12
located 11:15	number 12:12,16,20 14:3
longer 7:4	NYCRR 1:11
Louis 1:18 3:8	<hr/> O <hr/>
<hr/> M <hr/>	occurs 6:3
Major 1:12 4:11	Officer 3:18
making 5:10 17:14	once 17:12
March 11:19	open 2:12 3:2 15:11
market 6:8	opportunity 2:18 9:15
matter 1:9 4:8 6:23 10:25 11:10 17:5	opposing 6:16
	order 2:6 7:5,12 13:8 14:17 15:8
	Orders 2:12,24
	original 4:24 5:15
	outset 7:8
	overall 12:8,12

P	
page 2:19 18:5	proposed 1:13 4:12 6:12,13,20 12:2 13:11,18 14:13,25 15:9
pages 18:6	protective 9:13
parcels 5:23	provided 7:16
part 7:23 8:14 12:11,13,19 13:11 14:2,22 15:6	provisions 2:12 4:24
participating 2:16 4:17	public 1:6 2:3,18 4:25 6:14,21 7:10 9:14 11:5
particularly 5:20	public-comment 6:15
Parts 1:13 4:12	publication 6:11
percent 14:10	purely 6:23
perceptible 14:6	purpose 5:2
permanent 3:5	pursuant 1:7 9:4 11:5
permitting 5:6	Q
petition 11:20,22 15:9	questioning 6:24
phase 6:2 12:3,11,15,18 13:12 13:21,22 14:2	questions 9:6,8,18,20,23 10:2,7 15:11,24 16:2,5,8,11
phases 12:3,9	R
Phillips 4:2,4 17:6,8,9	Ravaschiere 1:21 3:16,20 9:25 10:2,19,20 16:7,8,23,24
phone 2:16	reality 9:17
place 18:4	reasonable 9:12
play 7:14	reasons 5:10 9:3
played 7:23	recommendation 10:25 15:14 16:14 17:5
please 2:7,16,16 3:6 4:14 11:7	record 2:20 15:5 18:7
potential 8:12 13:2	reduced 12:14,17,20 14:4
potentially 5:9	regarding 5:19 12:23 14:12,22 14:25 15:6
practical 8:6 9:16	Register 6:11
practice 2:21	regulations 1:10 4:9,24 5:15,20
pragmatic 9:12	regulatory 5:2 6:13,20 8:21,25
pre-application 7:14	related 4:23 13:10,14
precisely 7:20	relates 11:10
presentation 5:19 7:8 12:22 13:10	relocate 5:25
presented 4:13 11:7	relocated 5:18
preserved 9:16	remain 7:15 8:8 15:11
President 3:18	remaining 13:15,25
previously 8:18 13:7	remains 15:7
problematic 5:21	remind 2:15
proceed 10:9 16:13	reminder 9:10
proceedings 6:5 18:7	remotely 2:14
process 6:15 7:11,18,20,24 8:15 9:17	render 5:9
processes 7:15	rendered 6:25
project 5:13,16,22,25 6:2,5,7 8:4,8,11,16,24 11:14,17,22 12:3,9,13,15,17 13:4,5,12,16 14:14	repealed 15:8
projects 5:7,9,21 8:2	replace 7:3
prominent 5:5	reported 18:4
properly 15:16,17,18	Reporter 18:13
	representing 3:4

represents 14:9
request 15:15 16:15
requesting 11:20
required 8:11
requirements 2:24
requires 14:24
Research 1:23 3:23
resolutions 10:11
respect 7:21 14:5
respond 3:7
result 6:21 7:11 8:12,25 12:11
 12:25 13:18 14:15
results 7:24
review 8:23 15:5,21
reviewed 2:22
revision 4:23 5:4,14 8:10 12:24
 14:13
Rhodes 1:17 2:2,3 3:11,15,21,25
 4:6,16 9:8,9,21,24 10:3,8,12
 10:15,18,21,24 11:10 15:12,13
 16:3,6,9,12,16,19,22,25 17:4
 17:11,12
Richard 1:23 3:22
right 4:7
rights 7:17
road 5:17
roads 11:24
Robert 4:13
role 7:13,19,23
Rosenthal 4:13,14,15 10:5 11:7
 11:7,9
rule 6:17 7:2,3,4,10 10:11
rulemaking 4:19,22 6:10,12,14
 7:6,7 9:3,11 13:11
Rules 1:9 4:8

S

safe 17:14
SAPA 6:14
second 6:20
Secretary 4:2,4 14:12 17:6,8,8
seeks 11:22
Seggos 1:18 3:9
September 11:12
Service 2:3 4:25
set 5:11 6:13
setback 13:14
setbacks 7:22
show 8:11,16 12:24
showing 13:5,9

shown 15:17,18
shows 14:6
significance 8:19,23
significant 8:4,13 13:2 14:15
significantly 12:13 14:4
single 5:22
sited 5:22
Siting 1:2,10,14 2:5 3:5 4:10
 11:20
sixteen-day 6:15
size 11:23
social 2:10
sought 11:11 12:25 14:18
speaking 2:8,17
Specifically 13:19
spread 11:18 12:6
square 14:7,8
staff 14:11 15:17
standards 7:25 8:2,7,17 13:6,13
start 4:16,18
started 2:8
State 1:2,22,23 3:17,19,23 6:11
 18:2
stated 18:5
status 15:22
Stay 17:14
Steuben 11:16
strict 7:24 8:17
study 14:8
subject 8:8,23
submission 14:5
subscribed 18:10
substitute 6:6
sufficiently 7:6
sum 8:21
summarized 7:8
suspending 2:12

T

take 14:21
tax 5:11
technologies 6:7,8
technology 11:24 12:4 13:20
term 4:23
test 5:16,20 8:19 15:16
Thank 3:11,15,21,25 4:6,15 9:6
 9:9,10,21,24 10:3,8,15,18,21
 10:24 11:9 15:11,12 16:3,6,9
 16:12,22,25 17:4,11,13
that's 7:3

there's 9:13	wet 13:15
thing 15:18	WHEREOF 18:9
think 10:5	Williams 1:23 3:22,24 10:4,5,7 10:22,23 16:10,11 17:2,3
tied 5:12	wind 1:7 5:7,21 7:21 11:6,13,18 11:23
time 18:4	Winds 1:1,5 2:1 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1,4,11,19 12:1,4 13:1,4 14:1,19 15:1,2 16:1 17:1 18:1
today 2:9 4:20 7:2 9:5 17:7,10	WITNESS 18:9
today's 2:14	words 12:10 14:14
total 12:13,20	work 17:14
Town 14:20 15:6,10,22	
Town's 14:22	<hr/> X <hr/>
Towns 11:15	X 1:11
transcribe 2:20	X- 4:10
transcription 18:6	
transmission 5:17	<hr/> Y <hr/>
triggered 5:16	York 1:2,23 3:17,22 18:2
true 18:7	you're 2:7 3:7 10:6
turbine 11:23 12:4,11,18 13:20 13:21 14:23 15:6	
turbines 5:18,21 11:18 12:6,7 12:12,16,16,20 13:22,25 14:21	<hr/> Z <hr/>
turn 5:8	Zucker 1:19 3:13
two 6:17 12:3,9,15,18 14:2,20	
typewritten 18:6	<hr/> 0 <hr/>
typical 5:24	
<hr/> U <hr/>	<hr/> 1 <hr/>
unchanged 7:15	1 18:5,6
underlying 6:18	10 1:7 4:11,25 6:5 7:11 11:6 14:24
undermine 7:10	10:30 1:15
uneconomic 5:9	1000 1:13 4:12
unintended 5:4	1001 1:13 4:13
unwarranted 5:6 6:19	12th 11:12
use 12:4	13th 4:21
uses 12:15,18	15-F-0122 1:1,5 2:1 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1,3 12:1 13:1 14:1 15:1 16:1 17:1 18:1
<hr/> V <hr/>	16 1:11 4:10
Vincent 1:21 3:15	17 18:7
visibility 14:7,10	
visual 7:22 13:17,24 14:8 15:20	<hr/> 2 <hr/>
vote 10:9,9,13,14,16,19,22 16:13,13,17,18,20,23 17:2	20-F-0067 1:9 4:8
voting 10:12 16:16,16	2019 11:12
<hr/> W <hr/>	2020 1:15 4:21 5:11 11:19 18:10
way 13:19	22nd 6:10
Wayland 11:16	242 11:14,18 12:10
we're 4:7	26 12:6 13:22 14:21
webcast 2:19	
WEBEX 1:14	
Wednesday 1:15	

3	
3.55 12:6,18	
4	
4.7 14:7	
43 13:25	
48 12:17	
5	
5 12:6,15	
5-6-2020 1:1 2:1 3:1 4:1 5:1	
6:1 7:1 8:1 9:1 10:1 11:1	
12:1 13:1 14:1 15:1 16:1 17:1	
18:1	
500 5:18 13:22	
54 12:21	
569.2 14:8	
6	
6 1:15	
650 13:22 14:23	
69 11:18 12:17,20	
7	
7th 18:10	
8	
9	
9th 11:19	