NEW YORK STATE BOARD ON
ELECTRIC GENERATION SITING AND
THE ENVIRONMENT

CASE 16-F-0267 - Application of Atlantic Wind LLC for a
Certificate of Environmental Compatibility and Public Need
Pursuant to Article 10 for Construction of the Deer River
Wind Energy Project in Lewis and Jefferson Counties.

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

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

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

CASE 19-F-0512 - Application of Boralex, Inc. for a
Certificate of Environmental Compatibility and Public Need
Pursuant to Article 10 to Construct the Approximately 120-
Megawatt Greens Corners Solar Facility Proposed in the
Towns of Hounsfield and Watertown, Jefferson County.

CASE 19-F-0602 - Application of EDF Renewables for a
Certificate of Environmental Compatibility and Public Need
Pursuant to Article 10 for Construction the Genesee Road
Solar Energy Center in the Towns of Sardinia and Concord,
Erie County.

Siting Board Meeting via Webex Connection

Tuesday, June 30, 2020 @ 10:30 am
JOHN B. RHODES, Chair

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

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

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

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

RICHARD LUCAS, Ad Hoc Member, Case 16-F-0267

MICHAEL TABOLT, Ad Hoc Member, Case 16-F-0267

ART CHRISTENSEN, Ad Hoc Member, Case 18-F-0262

JASON FLEMING, Ad Hoc Member, Case 18-F-0262

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

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

JOHN GAUS, Ad Hoc Member, Case 19-F-0512
CHAIRMAN RHODES: I'm going to propose we begin in 10 seconds. Good morning. This is John Rhodes, Chair of the Siting Board. And I'd like to call this meeting of the Board on Electric Generation Siting and the Environment to order. Before we get started, I would like to note our arrangements for the meeting today. In line with the guidelines concerning social distancing, and minimizing large gatherings, and in keeping with the executive orders, suspending provisions of the Open Meetings Law on an emergency basis. We are conducting today's meeting remotely.

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

These arrangements have been reviewed by our General Counsel and he has found that they meet the requirements of the executive orders and that they meet my own expectations of honoring the intent of the Open Meetings Law. Before moving to
the agenda, I would like to introduce the alternates representing the permanent members of the Siting Board, and when I call your name, if you could just confirm that you are here on the call.

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

MR. ALEXANDER: Present.

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

DR. LEWIS-MICHL: Present.

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

MR. RAVASCHIERE: Present.

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

MR. WILLIAMS: Present.

CHAIRMAN RHODES: Thank you. And I would also like to introduce the ad hoc members who are here for four of the six cases on today's agenda.
Case 17-F-0597. The application of High River Energy Center, Keith Waters.

MR. WATERS: Present.

CHAIRMAN RHODES: Thank you, and Rick Vertucci.

MR. VERTUCCI: Present.

CHAIRMAN RHODES: Thank you very much.

For Case 18-F-0262 High Bridge Wind, Art Christensen.

MR. CHRISTENSEN: Present.

CHAIRMAN RHODES: Thank you. And Jason Fleming.

MR. FLEMING: Present.

CHAIRMAN RHODES: Thank you very much.

And for Case 19-F-0512, John Gaus -- I'm sorry, which is the application of Boralex, John Gaus. I hope I pronounced that right.

MR. GAUS: That is correct. Present.

Thank you.

CHAIRMAN RHODES: Thank you. Thank you. And for Case 16-F-0267, application of Atlantic Wind, Mike Tabolt.

MR. TABOLT: Present.

CHAIRMAN RHODES: And Richard Lucas.

MR. LUCAS: Present.
CHAIRMAN RHODES: Great. Thank you very much. Secretary Phillips, are there any changes to the agenda?

SECRETARY PHILLIPS: There are no changes to the agenda.

CHAIRMAN RHODES: Good. Thank you. So with that, we will start with Case 17-F-0597, application of High River Energy Center, LLC for a Certificate Of Environmental Compatibility And Public Need Pursuant to Article 10 of the Public Service Law for construction of a solar electric generating facility located in the Town of Florida, Montgomery County, presented by Robert Rosenthal, General Counsel.

Mr. Rosenthal, please begin.

MR. ROSENTHAL: Good morning, Chair Rhodes, and other members. There are six matters on today's agenda, four of which are orders that address the same legal issue albeit in different context. The legal issue concerns whether a project's potential impact on property values or ancillary impacts on property taxes constitutes a relevant issue for consideration under Article 10 of the Public Service Law.
The first agenda item is an order that would confirm a One-Commissioner Order issued by Chair Rhodes on April 3rd, 2020, ruling that a project's potential impact on property values is not a relevant consideration under Article 10. In High River, the context was an examiner’s initial ruling, awarding intervener funds to two interveners, the Town of Florida, and Citizens for Responsible Solar Farm Placement.

The purpose of litigating a proposed solar project’s potential impacts on real property values. The applicant High River filed a motion for interlocutory review of that ruling. Again, Chair Rhodes issued a decision on that motion pursuant to a one-commissioner order that I will summarize for you now.

Procedurally, the One-Commissioner Order granted interlocutory review pursuant to 17 N.Y.C.R.R. Section 4.7 C-2 based on the required finding of extraordinary circumstances, namely that the Siting Board would be unable to claw back any expended funding.

On the merits, the One-Commissioner Orders started by restating the basis of the
examiner’s ruling granting the use of intervener funds for the purpose of adjudicating whether the project at issue impacts property values. The order noted that the examiner’s ruling was based on two aspects of Section 168 of the statute.

First, that it is relevant to the Siting Board’s consideration under Section 168 of a project’s effects, "such additional social, economic, visual or other static environmental and other considerations deemed pertinent by the Board." And second, that it is relevant to the Siting Board’s general charge under Section 168 to determine whether a project is in the public interest.

The One-Commissioner Order reversed the examiner’s ruling to this extent, based predominantly on the plain language of Article 10 and its implementing regulations. The order noted, for example, that neither the statute nor the regulations were required, or mentioned the potential impact of property values as an issue to be examined in the application.

The order also considered the expansive nature of the Article 10 regulation and noted that the issue of a project’s impacts on
property values was neither required to be included in Article 10 application nor included as a consideration pursuant to Section 168.

Finally, the order noted that the question of whether to include consideration of impacts on property values in the application was raised in the Article 10 rulemaking process. Yet the Siting Board did not include it as a requirement.

For these reasons, the one-commissioner order determined that a project’s -- its potential impacts on property values is not a relevant consideration under Article 10, and that the request for intervener funding to review that issue should not have been granted. The One-Commissioner Order thus reversed the examiner’s ruling.

Again, the order before you would simply confirm that ruling, namely that a project's potential impact on property values is not relevant under Article 10. Let me know if you have any questions. Thank you.

CHAIRMAN RHODES: This is John Rhodes. I do not have any questions. I will only note that in arriving at the decision behind the One-Commissioner Order, which was from me, I had a
clearly stated view that this was procedurally the correct outcome, was correct on the merits and it was in keeping with the plain language of the statute.

So it's probably to be expected that it's off of the One-Commissioner Order. I endorse the findings of that order or the outcomes of that order, but just for the record I repeat that here.

Are there any comments or questions from my fellow board members? Mr. Alexander?

MR. ALEXANDER: No questions.

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

DR. LEWIS-MICHL: No questions.

CHAIRMAN RHODES: Thank you. Mr. Ravaschiere.

MR. RAVASCHIERE: No questions.

CHAIRMAN RHODES: Thank you. Mr. Williams.

MR. WILLIAMS: No questions.

CHAIRMAN RHODES: Thank you. Mr. Waters.

MR. WATERS: I -- I don't have any questions. I have comments though. I think procedurally, as you mentioned, it may be in
accordance from a procedural standpoint, from a town resident I believe that it should be considered. I believe, the town residents have, you know, we have a stake in this, and I think that our property values are important to us and I disagree with the order.

CHAIRMAN RHODES: Thank you very much. Mr. Vertucci.

MR. VERTUCCI: I'd like to echo Mr. Waters' comments that I think it should be relevant and especially to the surrounding residents of these farms. I believe I disagree with the order also.

CHAIRMAN RHODES: Thank you very much, both of you, for so clearly stating your point of view. I will now proceed to call for a vote. My own vote is in favor of the recommendation to confirm the April 3, 2020 One-Commissioner Order as just described. Mr. Alexander, how do you vote?

MR. ALEXANDER: I vote in favor.

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

MS. LEWIS-MICHL: In favor.

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

MR. RAVASCHIERE: In favor.
CHAIRMAN RHODES:  Mr. Williams, how do you vote?

MR. WILLIAMS:  In favor.

CHAIRMAN RHODES:  Thank you.  Mr. Waters, how do you vote?

MR. WATERS:  I'm a dissenting vote.

CHAIRMAN RHODES:  Thank you.  And Mr. Vertucci, how do you vote?

MR. VERTUCCI:  Not in favor.

CHAIRMAN RHODES:  Thank you very much. With this vote, the order is confirmed, and the recommendation is adopted.  Thank you very much for joining us to our ad hoc member colleagues.  We will now move to the second item on the agenda, which is Case 18-F-0262, application of High Bridge Wind, LLC for Certificate Of Environmental Compatibility And Public Needs Pursuant to Article 10 to construct an approximately 100 megawatt wind-powered, electric-generating facility located in the Town of Guilford, Chenango County, presented by Robert Rosenthal, General Counsel.  Mr. Rosenthal, please begin.

MR. ROSENTHAL:  Thank you.  So this is the second order on the same issue that I mentioned at the outset.  The draft order before you in High
Bridge addresses a motion for interlocutory review filed on May 19th, 2020 by a citizens group called Guilford Coalition of Non-Participating Residents.

Guilford Coalition seeks a reversal of the aspect of the examiner’s ruling dated April 27th, 2020, that would exclude from the record, "Evidence of property value impacts." The ruling came in the context of an issues conference in which the examiners ruled that such evidence would not be considered in the adjudicatory aspect of the case.

The examiners relied on the one-commissioner order issued by Chair Rhodes in High River that I just summarized. The draft order before you would first grant Guilford Coalition's motion for the limited purpose of addressing the arguments therein based on a finding of extraordinary circumstances, namely:

That the issues ruling sets out the scope of issues for adjudication and the proceeding, which requires resolution while the record in the case remains open. The draft order before you, however, would otherwise affirm the examiner’s rule. In its motion, Guilford Coalition raised new arguments in addition to those addressed in the one-
Siting Board – 6-30-2020

commissioner order in High River.

It asserted that a project’s alleged impact on property values may reduce property taxes that can be assessed by local taxing jurisdictions and that such reduced taxes may have an adverse economic impact that must be considered pursuant to Article 10, the reg -- and regulations.

And the specific regulations that were pointed to are Sections 1001.27 sub H., sub I., and sub J. The draft order reviews each of these regulatory provisions and finds that none requires an applicant to examine in its application the potential impacts of a project on pop -- on property values or such ancillary impacts on property taxes.

For example, Section 1001.27 H. requires the applicant to identify the taxing jurisdictions relevant to the siting of the project, which Guilford Coalition acknowledges was done here and in any event is not relevant to its argument. Section 1001.27 I. requires the applicant to estimate the, "Incremental amount of annual taxes that would be levied on the project, a matter that simply bears no relationship to the impact of an Article 10 project on property values or taxes."
Finally, Section 1001.27 J. requires an applicant to undertake an analysis that includes, "The fiscal costs to the jurisdiction that are expected to result from the construction and operation of the facility. As the regulations otherwise make clear, the fiscal costs referenced in this provision are limited to municipal operating costs necessary to address the construction and operation of the -- a project such as the costs related to police, fire, emergency, water, sewer, solid waste disposal, highway maintenance, and other municipal public authority or utility services."

Under the plain language of this regulatory provision, no fiscal analysis is required related to a project's potential impact on property taxes. The order before you otherwise relies on the one-commissioner order issued in High River which you just confirmed or at least five members confirmed.

That order found that neither the Article 10 statute nor the implementing regulations require or mention as an issue to be considered the potential impact of our property on -- of a project on property values. For these reasons, the draft order would affirm the examiner’s ruling and denying
Guilford Coalition's motion for interlocutory review.

That concludes my presentation and again, I'm happy to take questions.

CHAIRMAN RHODES: Thank you, Bob.

This is John Rhodes. My own comment is that I can clearly see the relevance of the High River precedents and I agree with the -- the petition proposed by examiner both as to including developing this issue in the record but also as a matter of substance with the outcome. I'm referring that these requirements do not exist. Thank you very much.

I'm now going to ask whether there are comments or questions from my fellow board members.

Mr. Alexander?

MR. ALEXANDER: No questions.

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

DR. LEWIS-MICHL: No question.

CHAIRMAN RHODES: Thank you. Mr. Ravaschiere?

MR. RAVASCHIERE: No questions.

CHAIRMAN RHODES: Thank you. Mr. Williams?

MR. WILLIAMS: No question.
CHAIRMAN RHODES: Thank you, Mr. Christensen?

MR. CHRISTENSEN: I'm sorry. Yes. I do have a comment and a question. So during my orientation to be on the Siting Board, I reviewed Article 10, specifically, my responsibilities and the Siting Board's responsibilities as it relates to Section 168.

In Section 168, there's a provision, paragraph 3B, that says the construction and operation of the facility will serve the public interest. So in that call, I specifically asked where is public interest defined? Is there a legal definition for public interest?

And we were unable to identify that definition and have been in search for one and still, we're unable to identify a legal definition for public interests, which was odd to me since it was such an important tenet for our responsibility as a Siting Board member and to the Board itself.

So I can only conclude that public interest must mean -- must have a commonsensical definition and please tell me if I'm wrong but what could public interest be? So it must be public
safety, perhaps public health, the environment, and certainly – and certainly, it must be the public net worth, the public -- the value of the public’s property.

For example, if we just look at the current situation that we're dealing with, with COVID, we had to balance the public wealth, the economy, the reopening of phase one, should we have reopened phase one when we did? Well, if we didn't, perhaps we would have been further along in combating the virus across the country, but we did because we had to balance the economy because it is a public interest, the wealth and net worth of people is a public interest.

So for us to not look at this issue in a broader context is, in my opinion, would be a dereliction of duty of the Siting Board. So my question is, please give me a -- the legal definition of public interest?

MR. ROSENTHAL: So I think that you did a very good job of describing it. It is subsumed within all of the other factors that the Siting Board must consider under Section 168 that that is basically those factors go into what the public
Here we are, you know, as I noted earlier, the regulations are very extensive. There are multiple exhibits, well over thirty that have very specific requirements that the applicant has to address in the application. This is not one of them.

In addition, there is a rulemaking process, so the statute was enacted. Then afterwards, regulations were drafted. Those regulations were subject to the -- to the State Administrative Procedure Act process, including a sixty-day public comment period.

In the public comment period, this issue was raised as a potential issue that should be addressed. At the end of the day, the Siting Board, in 2013, when the regulations were promulgated, decided against this issue being addressed. One other issue that I'll -- that I’ll raise for you is that Article 10 examines much of the same issues that the State Environmental Quality Review Act examined or SEQRA.

And SEQRA is a statute that applies to all projects that are, you know, reviewed by any state or municipal agency in the state, with some
exceptions and the one -- one exception is Article 10 takes the place of -- of SEQRA and under SEQRA, there is a wide body of case law that says that prop -- impacts to property values is not considered a public health or environmental impact to be reviewed.

And so for all of those reasons, you know, that -- those are all of the reasons that go into the draft orders and that have been ruled on, you know, previously as to why the -- that issue is not to be one to be considered under Article 10.

MR. CHRISTENSEN: Okay. Thank you for your comment. I don't -- I don't think we should be -- what was the Board that you mentioned, whose promulgation you're referencing?

MR. ROSENTHAL: It's this board. So the five permanent members of the Board that the actual, you know, there are different people right, now but they have the same positions, voted on a set of regulations that are the regulations that the applicant has to file in preparing its application.

And that board looked at this issue in 2013 and decided against including it. And as I noted, that's consistent with what occurs under SEQRA, which is a similar statute and has a -- like a
long line of cases that have looked at this issue.

MR. CHRISTENSEN: Okay. Thank you.

CHAIRMAN RHODES: Thank you very much, Bob. Also, thank you, Mr. Christensen. Mr. Fleming, do you have any comments or questions?

MR. FLEMING: I do have a comment. Just listening to this discussion, where in this process is the ability to evaluate the cost of decrease in values on -- on property. Small communities, we, you know, we do not have the big business for -- for tax revenue, it's all relied on property values and when I look at the operational costs of a power facility, that -- when that has a negative impact on the property values, I think that has to be considered in their operational costs without any other changes to the tax base or to the community, the operation of this facility is going to decrease the tax revenue, which in turn puts an undue burden on the bill upon the town itself.

MR. ROSENTHAL: So as I noted in the presentation, there is a provision of the regulations that require the applicant to look at how the project may result in, you know, increased services, you know, like police services and -- and whatnot.
The reason that that's included is because the applicant is required to enter into discussions with the taxing jurisdictions to enter into what's called -- which are like taxes, but they're -- they're called PILOTS. And which stands for payments in lieu of taxes or P-I-L-O-T or PILOTS.

And that PILOT arrangement can, you know, add up to and I'm throwing general numbers out for you, that are generally between $5,000 and $7,000 per megawatt that a developer would offer to pay a municipality, you know, to -- as part of providing, you know, a benefit to the community and for paying for any of those extraneous, you know, fiscal type of operational impacts to a municipality.

For a project such as this one, that could add up to easily $500,000 per year that the project developer is paying the town for what is generally a 20-year duration. And it also includes, you know, escalators per each year based on inflation would be 2.5% a year. I do not know what the PILOT arrangement was that was agreed to here.

But that -- that's sort of the purpose behind that -- that particular provision and so I hope that answers your question.
MR. FLEMING: Yes. So it's left up to the local officials to calculate any loss in property values as a result of the project and have that factored into the PILOT agreement going forward.

MR. ROSENTHAL: I don't necessarily know if that's the particular case but there is, I -- you know, came to this job having come from private practice and I did negotiate PILOTS, there's also something called the host community agreement that can be negotiated with a town.

And there's a lot of guidance on both of those items on NYSEDA’s website. And, you know, there are a lot -- I mean, you know, that's certainly something that, you know, a town could take into consideration. But the numbers are a lot. I mean, the developers are coming to these towns offering like I said, somewhere generally between $5,000 and $7,000 a megawatt which can add up to a lot of money.

MR. CHRISTENSEN: It can add up to -- this is Art Christensen. It can add up to a lot of money, but it can still be a small percentage of the overall town and school budget.

MR. ROSENTHAL: Yeah. I mean, you know, I'm not at all, obviously, that all, you know,
depends on the size of the town and the size of that budget. Did you have any other questions on this issue?

MR. FLEMING: This is Jason. I do not.

MR. ROSENTHAL: Okay. Thank you.

CHAIRMAN RHODES: Mr. Christensen, are you good to go?

MR. CHRISTENSEN: Yeah. I would just -- Jason, I would just like to state that -- look at it this way. If we have a school budget of $9 million and a town budget of $8 million and that's $17 million. I don't -- I don't know what they are but let's just say that's close.

And we're talking about an offset of $500,000 to $700,000 against that. It's a drop in the bucket. And if we're also talking about property values of neighboring properties going down by 50% and within a mile going down by 30%, within 2 miles going down by 10%, there's a much bigger impact than this token PILOT agreement. That's my opinion.

CHAIRMAN RHODES: I thank Mr. Christensen, Mr. Fleming, thank you both for your very clear expression of your views and for your
probing questions. I'd like now to move to calling for a vote. My own vote in favor of the recommendation to grant the request for interlocutory review and affirm the examiner’s issue ruling as described. Mr. Alexander, how do you vote?

MR. ALEXANDER: I vote in favor.

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

MS. LEWIS-MICHL: In favor.

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

MR. RAVASCHIERE: In favor.

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

MR. WILLIAMS: In favor.

CHAIRMAN RHODES: Mr. Christensen, how do you vote?

MR. CHRISTENSEN: I dissent.

CHAIRMAN RHODES: Thank you. And Mr. Fleming, how do you vote?

MR. FLEMING: Not in favor.

CHAIRMAN RHODES: Thank you very much. And with that voting tally, the order is confirmed, and the recommendation is adopted. Thank you very
We will now move to the third item on the agenda, Case 19-F-0512. Application for Boralex, Inc. for Certificate of Environmental Compatibility and Public Need pursuant to Article 10, to construct to approximately 120 megawatt Greens Corners Solar facility proposed in the Towns of Hounsfield and Watertown, Jefferson County, presented again by Robert Rosenthal, General Counsel. Mr. Rosenthal, please begin.

MR. ROSENTHAL: Thank you, Chair Rhodes. So this is the third of the fourth orders that I mentioned at the outset. This draft order addresses the motion for interlocutory review filed on May 22nd, 2020 by the Jefferson County Land Preservation Alliance, which I'll call the Alliance.

In its motion, the Alliance seeks a reversal of the aspects of the examiner’s ruling dated May 8th, 2020, determining that the Alliance, "Is not authorized to use pre-application intervenor funds for the purpose of developing an appropriate scope of studies related to the project's impact on property values."

Thus, the Alliance's motion is related
to intervenor funding sought to examine a project's potential property value impacts in the context of the preliminary scoping statement or P.S.S. As in the other cases that addressed this issue, the order before you would grant the motion for the limited purpose of addressing the substantive issues raised based on the finding of extraordinary circumstances, namely:

That the examiner’s ruling identified the scope of issues that would ultimately be addressed in the application. The argument raised by the Alliance in this case are very similar to those raised in the motion that you just addressed or that five of you just addressed in the High River case, where you affirmed the examiner’s ruling finding that the issue of a project's impact on property values is irrelevant under Article 10, and thus, that it need not be considered in the Article 10 application process.

Specifically, the Alliance asserts that a project's alleged impact on property values may result in a reduction in property taxes that can be assessed by local taxing jurisdictions and that such reduced taxes may have an adverse economic
Siting Board – 6-30-2020

impact that must be considered pursuant to Section
1001.27 H., I., and J. of the Article 10 regulations.

As just noted in the context of my presentation on the motion in High River and in High Bridge, the regulation simply cannot be read to require Green Acres to examine the alleged impacts of the property, of the project on property values or in fiscal costs of the relevant taxing jurisdictions.

For these reasons and the others that are mentioned in the order before you, the examiner’s ruling precluding the use of funding to examine the potential impact of a project on property values at the P.F.C. -- P.S.S. stage should be affirmed.

Again, that concludes my presentation and I remain available for questions if you have any. Thank you.

CHAIRMAN RHODES: Thank you very much. This is John Rhodes again. This has consistently, I -- I agree with what's proposed here with the propriety of addressing the issues in the record as we are doing, at the same time agreeing with the outcome based on the plain language that the issues, the asserted issues, the asserted requirements simply don't exist. And therefore, also on the outcome that relates to the use of intervenor funding to address
this issue.

I will now ask whether there are comments or questions from my fellow board members. Mr. Alexander?

MR. ALEXANDER: No questions.

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

DR. LEWIS-MICHL: No questions.

CHAIRMAN RHODES: Thank you, Mr. Ravaschiere?

MR. RAVASCHIERE: No questions.

CHAIRMAN RHODES: Thank you. Mr. Williams?

MR. WILLIAMS: No questions.

CHAIRMAN RHODES: Thank you. Mr. Gaus?

MR. GAUS: I do have a question and comments. Is the legal analysis that the consideration of property values is not required or that it is specifically prohibited?

MR. ROSENTHAL: It's -- it's the -- it's -- it's the former. It's not prohibited, and it's not required. And so, sir, just -- let me just elaborate if you don't mind, I apologize for
interrupting.

MR. GAUS: Well, it's okay. Please do. Thank you.

MR. ROSENTHAL: Okay. So it's a point that I made in one of the three presentations, which is that literally the regulations are, you know, they're on my desk. I would say they're three inches thick. There's an -- an awful lot of information that the applicant has to include in the application. They go through a process, they provide the application. Our staff has to review the application for completeness.

Oftentimes we find that the application information is deficient one way or another and we send it back for, you know, further consideration until the point where all the information required in the regulations is in the application and therefore can be considered for determination by the Siting Board.

This issue was not one of -- it's not in the regulations. It's not required in the regulations. It hasn't been required in any of the projects that have, you know, come to the Siting Board to date. So that's -- that's sort of, you
know, at the end of the day, is an overriding issue regarding why the Siting Board has not required, has not taken the step to say, you know, we're going to require something in addition to what are very extensive regulations.

MR. GAUS: Thank you for that. And thank you for reading the three pages of documents on that -- on that challenge and legal analysis on those.

MR. ROSENTHAL: Three inches -- three inches, Mr. Gaus, not three pages.

MR. GAUS: Yeah, just three -- and it's a three inches. Thank you for not asking me to read them. Full disclosure before my comments. I'm generally very supportive of solar project deployments. I would not be opposed to my neighbors deploying them next to my farm. I'm contemplating deploying them on my own farm. I've made my living there for over the last decade building, owning, and operating the renewable energy projects. So I'm generally quite supportive of the project.

I do have concerns with this particular issue and a desire to make sure we're being sensitive to the concerns of our neighbors.
With respect to property values, I think the long-term human health and environmental health of a community is very much tied to its economic health.

So I think property value is certainly tied into the issue that we're considering and then in today's particularly socially-charged environment, I would not be opposed to the agency requesting funds for this purpose, looking into the potential property impacts in the context of the ethnicity of the property owners and the household income of those property owners to make sure that we are not disproportionately and negatively impacting any disadvantaged class of people. That -- that concludes my comments.

CHAIRMAN RHODES: Thank you very much. Once again, I want to thank the commenters, the ad hoc members are very thoughtful -- for your very thoughtful remarks. We will move now to -- I will move now to calling for a vote. My own vote and I should -- I should be more diligent, and I'm John Rhodes.

My own vote is in favor of the recommendations to grant the request for interlocutory review and to affirm the examiners
intervenor funding ruling as described.

Mr. Alexander, how do you vote?

MR. ALEXANDER: I vote in favor.

CHAIRMAN RHODES: Thank you very much.

Dr. Lewis-Michl, how do you vote?

DR. LEWIS-MICHL: In favor.

CHAIRMAN RHODES: Thank you. Mr.

Ravaschiere, how do you vote?

MR. RAVASCHIERE: In favor.

CHAIRMAN RHODES: Thank you. Mr.

Williams, how do you vote?

MR. WILLIAMS: In favor.

CHAIRMAN RHODES: And thank you. And

Mr. Gaus, how do you vote?

MR. GAUS: With general support for
the project and with respect on this particular
issue, I vote nay.

CHAIRMAN RHODES: Thank you very much.

With that vote tally, the order is confirmed, and a
recommendation is adopted. Thank you again to my
board colleagues. We will now move to the fourth
item on the agenda, Case 16-F-0267, Application of
Atlantic Wind, L.L.C., for Certificate of
Environmental Compatibility and Public Need pursuant
Siting Board – 6-30-2020
to Article 10 for Construction of the Deer River Wind Energy Project in Lewis and Jefferson County, presented by James Costello, the Administrative Law Judge, Department of Public Service.

Gregg Sayer, Administrative Law Judge, Department of Public Service, Daniel O'Connell, Administrative Law Judge, Department of Environmental Conservation and Robert Rosenthal, General Counsel are available for questions.

Mr. Costello, please begin.

MR. COSTELLO: Good morning, Chair Rhodes, and members of the Siting Board. My name is James Costello and I am one of the two assigned examiners in this case. My co-presiding examiner Administrative Law Judge Gregg Sayer and the Associate Examiner Administrative Law Judge, Dan -- Daniel O'Connell of the New York State Department of Environmental Conservation are present with me this morning and available for questions, as is our General Counsel.

I will offer brief remarks on the item before you which is a proposed order, the Siting Board granting a certificate of environmental compatibility and public need to Atlantic Wind,
L.L.C., the applicant in this case. The grant of the certificate would -- would be subject to the detailed conditions that are included as Appendix A. to the proposed order.

Atlantic Wind proposes to construct and operate a commercial scale wind electric-generating facility consisting of up to 25 wind turbines and associated facilities located within the Towns of Pinckney and Harrisburg in Lewis County and the point of interconnection in the Town of Rodman in Jefferson County.

21 turbines would be located in the Town of Pinckney and four turbines would be located in the Town of Harrisburg. The project will have a total maximum generating capacity of 101.4 megawatts. The proposed work before you is based upon an extensive evidentiary record that was compiled during a two-day evidentiary hearing.

The record supports all of the findings the Siting Board must make under Public Service Law, Article 10. Although this is a fully litigated case, the applicant was able to resolve many of the issues raised by various parties throughout the course of the proceedings.
In their post-hearing brief, the Towns of Pinckney and Harrisburg stated that the applicant had addressed the issues they raised in this proceeding and that they are in agreement that the proposed facility would be beneficial to the communities and should be approved.

A local intervenor group known as the Tug Hill Alliance for Rural Preservation or THARP raised several issues including noise and lighting at the evidentiary hearing and in post-hearing briefs. THARP indicated that it no longer opposes the award of a certificate to the applicant because the applicant addressed its concerns through the course of the proceedings.

The Town of Rodman also does not oppose the project. The applicant has agreed to many of the certificate conditions proposed in this case by staff of the Departments of Public Service, Environmental Conservation, and Agriculture and Markets, which are included as part of Appendix A in the draft order.

The Article 10 review process was, lengthy, fair and open and included both pre-application and post-application phases. Public
Siting Board – 6-30-2020

notice was provided with respect to all significant announcements. There were multiple instances of community outreach and education and numerous opportunities for public participation.

Among other things, the applicants sponsored five open houses for the public between June 2016 and October 2019 and maintained a website and established a toll-free telephone number for public questions and comments. Department of Public Service also held two information sessions followed by on-the-record, public-statement hearings held near the project area.

The application intervenor funding was awarded to the Towns of Pinckney, Harrisburg, and Montague and to a local citizens group known as Concerned Citizens of Deer River Wind Energy Project. That group later dissolved, but members of the group continued to participate in the proceedings as members of THARP.

At the application stage, intervenor funding was awarded to the Towns of Pinckney, and Harrisburg, and to THARP. After the applicant revised its application, the applicant was required to provide additional intervenor funding and
additional awards were requested and made to the Town of Pinckney and THARP.

Project information has been widely available to the public through various means including the Department of Public Services Document and Matter management system, the applicant’s project website, at local libraries, at the open houses hosted by the applicant and at the information sessions held in conjunction with the public statement hearings.

Approximately 48 comments, both oral and written, were provided by the public throughout the Article 10 review process. Those who supported the project cited the economic benefits to the local area and the need for renewable energy to reduce reliance on fossil fuels.

Project opponents cited among other things, the disruption of the natural beauty of the project area, adverse impacts on wildlife, tourism, and recreation, concerns about health impacts due to noise and shadow flicker, potential impacts on wells and cumulative impacts from other nearby wind farms.

In general, those that oppose the project stated that the Tug Hill area has done its
part for the development of green energy, that
further wind farm development in the area was not
warranted and that any benefits resulting from the
project should not outweigh local opposition to the
project.

The proposed certificate conditions
seek to address the identified environmental impacts
of the project including impacts that were the
subject of public comment. Pursuant to Public
Service Law, Section 168 Sub-division (3)(c), the
proposed order includes a finding by the Board that
the probable environmental impacts of the
construction and operation of the facility will be
minimized or avoided to the maximum extent
practicable based upon the applicant's compliance
with the certificate conditions contained in Appendix
A. to the order.

And pursuant to Public Service Law,
Section 168 Sub-division (3)(e), the order includes a
finding that the project will be constructed and
operated in compliance with all applicable state
environmental, public health and safety laws.

The order also includes a finding by
the Board that the construction and operation of the
Siting Board – 6-30-2020

project will serve the public interest, based on the consistency of the construction and operation of the facility, with the energy policies and long range planning objectives and strategies contained in the most recent state energy plan as well as additional social, economic, and other factors deemed relevant by the Board.

To ensure the public interest benefits of the project are realized and similar to other projects approved by the Siting Board certificate condition thirty-three would require the applicant to track actual jobs created during project construction and operation and to track tax payments of local jurisdictions.

The proposed order before you addresses certain limited issues that were raised by the parties in briefs on exceptions to the recommended decision. For example, the proposed order rejects the applicant's argument that certain certificate conditions regarding water-quality standards should be revised to limit their application exclusively to state jurisdictional or regulated streams and wetlands.

Consistent with the Siting Board's
order in the Canisteo Wind Article 10 proceeding, the
proposed order states that state water quality
standards, by not only the state-regulated water
bodies but the federally regulated water bodies as
well. The order also concludes that pursuant to the
Board's authority under the Federal Clean Water Act,
the Board may include water-quality standard related
conditions and an Article 10 certificate in
anticipation of the issuance of a water-quality
certification pursuant to 16 New York C.R.R. Section
1000.8.

The proposed order also determines
that locations of poles in the adjacent areas of two
class two freshwater wetlands and the overhead
collection line spanning these wetlands are
permitted under pertinent statutes and regulations
and in light of the pressing social and economic need
to reduce greenhouse gas emissions established by the
Climate Leadership and Community Protection Act.

With respect to noise issues, the
proposed order adheres to prior Siting Board
decisions, will apply a sound level standard of 45
dBA L.E.Q. eight hours at non-participating residence
at 55 dBA L.E.Q. eight hour at participating
Siting Board – 6-30-2020

residence. The proposed order also addresses certain certificate conditions regarding noise modeling assumptions, the use of noise reduction operations and protocols for post-construction sound testing compliance.

The order states that the record is sufficiently developed to allow the Siting Board to determine that the applicant has avoided, minimized, or mitigated visual impacts from one of the turbines that is located in the Tug Hill State Forest and with respect to certain trails and with use to that turbine.

Finally, the order agrees with the Department of Public Service staff that consistent with other Siting Board orders, the overall decommissioning estimate should be established in the final decommissioning plan based on the final layout of the project.

The examiners recommend that the Board adopt the proposed order including the certificate conditions attached as Appendix A. to the order, the site engineering and environmental plan specifications attached as Appendix B., and the sound testing compliance protocol attached as Appendix C.
This concludes my presentation and the examiners are available for any questions the Siting Board may have.

CHAIRMAN RHODES: Thank you very much, Judge Costello, this is John Rhodes. Thank you for your presentation.

I appreciate the extent of the agreement that was reached among the parties on the many and various issues here and I also appreciate the furtherance of consistency of our commission orders. I am gratified every time that I see those.

I'm also pleased that the process was thorough, open, and inclusive. I appreciate that the certificate conditions are useful and go to the heart of some of the issues that required the most attention and just note that they are ones that we know often require attention like wetlands, and water quality, and noise, and decommissioning.

And I agree with the proposed order that I think it's fully supported by the record and agree with the conclusion that this project meets the health and safety and environmental standards. We have addressed these community concerns and is fully in keeping with the direction we need to go in terms
of energy and climate in the state and therefore is in the public interest.

Thank you very much. I will now ask my fellow board members whether they have any comments or questions.

Mr. Alexander. Maybe I'm mute. Can I check that other folks, can you hear me?

MR. ROENTHAL: Yeah.
CHAIRMAN RHODES: Okay. Thank you. We'll come back to Mr. Alexander. Dr. Lewis-Michl?
MS. LEWIS-MICHL: No questions.
CHAIRMAN RHODES: Thank you very much. Mr. Ravaschiere?
MR. RAVASCHIERE: I have no questions.
CHAIRMAN RHODES: Thank you. Mr. Williams?
MR. WILLIAMS: No questions.
CHAIRMAN RHODES: Thank you. Mr. Tabolt?
MR. TABOLT: I have no questions.
CHAIRMAN RHODES: Thank you. Mr. Lucas?
MR. LUCAS: I have no questions.
CHAIRMAN RHODES: Thank you. Mr.
Alexander, back to you for comments or questions?

MR. ALEXANDER: Thank you, Mr. Chairman. As noted, I think this order carefully and comprehensively addresses the outstanding issues in this matter. I also believe that it is significant that settlement was reached on various of the issues in this case.

I would note that with respect to one of the subjects at issue, that is wetlands, that I concur with D.E.C. staff's statement and its brief on exceptions that these wind turbines and their related structures and facilities are prop -- properly characterized or categorized together as an industrial facility and covered by 6 -- N.Y.C.R.R. 63.4 D.43.

However, the discussion in the order and the record in this matter certainly indicate that the impacts to wetlands will be avoided or mitigated to the maximum extent practicable and I do intend to support this order when the vote is called. I have no further comments.

CHAIRMAN RHODES: Thank you very much. With that, we will proceed -- I will proceed to call for a vote and begin with my own vote. I'm John
Rhodes, and my vote is in favor of the recommendation to approve the application of Atlantic Wind, L.L.C. for a Certificate of Environmental Compatibility and Public Need as just described. Mr. Alexander, how do you vote?

MR. ALEXANDER: I vote in favor.

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

MS. LEWIS-MICHL: In favor.

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

MR. RAVASCHIERE: In favor.

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

MR. WILLIAMS: In favor.

CHAIRMAN RHODES: Thank you. Mr. Tabolt, how do you vote?

MR. TABOLT: I vote in favor.

CHAIRMAN RHODES: Thank you very much.

Mr. Lucas, how do you vote?

MR. LUCAS: In favor.

CHAIRMAN RHODES: Thank you very much.

With this tally, the order is confirmed, and the recommendation is adopted, and thank you very much.
We will now move to the fifth item on the agenda, Case 19-F-0602, application of E.D.F. Renewables for a Certificate of Environmental Compatibility and Public Need pursuant to Article 10 for construction of the Genesee Road Solar Energy Center in the Towns of Sardinia and Concord, Erie County, presented by Robert Rosenthal, General Counsel. Mr. Rosenthal, please begin.

MR. ROSENTHAL: So this is the fourth of the four orders that addresses the relevance of a project’s potential impacts on property values. The order, the proposed order before you in this case addresses the motion for interlocutory review filed on May 21, 2020 by the Sardinia Rural Preservation Society or S.R.P.S.

In its motion, S.R.P.S. seeks a reversal of the aspects of the examiner’s ruling dated May 6th, 2020 that would exclude intervenor funding for the purpose of evaluating economic impacts related to property value. This motion is taken in the same context as the one addressed in the Green Corners case for review and examiner’s ruling precluding the use of intervenor funds at the P.S.S.
stage to be used for examining the potential impacts of a property on prop -- of a project on property values or ancillary impacts on property taxes, or fiscal costs.

Because I've provided a summary in three other cases, I'll provide a very short summary here and otherwise be open to any questions that you may have. The proposed order before you would grant interlocutory appeal for the very limited purpose affirming the examiner’s ruling. And it’s otherwise identical to the order that you just issued in the Green Acres' case. It affirms the examiner’s ruling and rules that the potential impact of a project and property values is irrelevant under Article 10. Again, let me know if you have any questions. Thank you very much.

CHAIRMAN RHODES: Thank you very much. It's John Rhodes. My own comments are that out of -- consistently with our prior discussions today, I do find that the examiner’s ruling is right, in -- both in terms of opinion for the issue for development and the record, but also with the decision that -- that this use of funds is -- it's not proper, and that this is not a required issue for examination or
development in these kinds of cases.

I will now turn to my fellow board members for their comments or questions if they have any. Mr. Alexander?

MR. ALEXANDER: No questions.

CHAIRMAN RHODES: Thank you. Ms. Lewis-Michael?

DR. LEWIS-MICHL: No question.

CHAIRMAN RHODES: Thank you. Mr. Ravaschiere?

MR. RAVASCHIERE: No questions.

CHAIRMAN RHODES: Thank you. Mr. Williams?

MR. WILLIAMS: No questions.

CHAIRMAN RHODES: Thank you very much.

I will now proceed to call for a vote. I'm John Rhodes. My name -- my vote is in favor of the recommendation to grant the request for interlocutory review and to affirm the examiner’s intervenor fund ruling as described. Mr. Alexander, how do you vote?

MR. ALEXANDER: I vote in favor.

CHAIRMAN RHODES: Thank you very much. Dr. Lewis-Michl, how do you vote?

DR. LEWIS-MICHL: In favor.
CHAIRMAN RHODES: Thank you. Mr. Ravaschiere, how do you vote?

MR. RAVASCHIERE: In favor.

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

MR. WILLIAMS: In favor.

CHAIRMAN RHODES: Thank you. With that voting tally, the order is confirmed, and the recommendation is adopted. We will now move to the sixth and final item on the agenda, Case 16-F-0205, application of Canisteo Wind Energy, L.L.C. A Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for construction and operation of the Canisteo Wind Energy Project located in the towns of Cameron, Canisteo, Greenwood, Jasper, Troupsburg, and West Union, Steuben County presented by Maureen Leary, Administrative Law Judge,

Richard Sherman, Administrative Law Judge, Department of Environmental Conservation and Robert Rosenthal, General Counsel are available for questions. Judge Leary, please begin.

A.L.J. LEARY: Good morning, Chairman Rhodes, and members of the Siting Board. I want to
make sure that you can hear me clearly.

CHAIRMAN RHODES: I can hear you.

A.L.J. LEARY: Okay, thank you. As noted, Judge Sherman, and I, and Mr. Rosenthal are available ques -- for questions. I will offer brief remarks today in favor of the Siting Board's adoption of the proposed order on rehearing before you. I will highlight some of its noteworthy aspects.

On March 13th, 2020, the Siting Board adopted the order issuing certificate with conditions in this proceeding, which authorized Canisteo Wind to construct and operate -- operate a commercial-scale, electric-generating wind facility in the towns noted by the Chair, all of which are in Steuben County.

The Siting Board Certificate authorized the facility consisting of up to 117 wind turbines, with a total maximum generating capacity of 290.7 megawatts along with other associated facility components. The Siting Board Certificate indicates that it adopted, in large part, the examiner’s recommended decision and proposed certificate conditions attached to that decision, with some exceptions.

On April 13th, 2020, Canisteo Wind
filed a rehearing petition which challenges certain certificate conditions and other issues that had been determined by the Siting Board and the certificate.

Specifically, Canisteo Wind objects to public health requirements related to noise and shadow flicker, and to environmental requirements related to threatened and endangered species.

Canisteo Wind also raises issues associated with the wording of nineteen separate certificate conditions or subdivisions of those conditions.

The Department of Environmental Conservation staff filed opposition to the rehearing petition, as did local resident and intervenor John Sharkey. The six towns in which the project will be located filed their collective support for Canisteo Wind's rehearing petition.

The proposed rehearing order before the Siting Board today rejects Canisteo Wind's petition on two basic grounds. First, that Canisteo Wind has waived its objections by failing to raise them on exceptions to the recommended decision, which is a requirement of 16 N.Y.C.R.R. Section 4.10(d). The second ground, that Canisteo Wind has failed to
Siting Board – 6-30-2020

meet the criteria for rehearing by raising an error of law or fact or by identifying new circumstances warranting a different Siting Board determination, which is a requirement of 16 N.Y.C.R.R. Section 3.7(b).

With respect to the first ground, namely the waiver of objections, Canisteo Wind raises for the first time on rehearing many of its objections. It has thereby deprived the Siting Board of the opportunity to address those objections before it issued the Article 10 certificate here.

The proposed rehearing order finds that Canisteo Wind waived its ability to raise these objections and may not now seek a different resolution on rehearing. Notwithstanding this waiver, the rehearing order briefly considers each of Canisteo Wind's challenges on the merits and rejects them based on the record, and on prior Siting Board orders in other Article 10 cases.

For example, Canisteo Wind challenges noise-related certificate conditions, and asserts that the required post-construction noise testing protocol is unworkable.

Canisteo Wind also asserts that the
collection substation tonal penalty has been double
counted, and that the required amplitude modulation
measurement is unreasonable and should be eliminated.

After first determining that these
challenges have been waived, the proposed rehearing
order discusses the record evidence supporting the
Siting Board's use and adoption of the noise testing
protocol while noting that the company and D.P.S.
staff should work collaboratively in the compliance
phase to assure the protocol's practical
implementation.

In addition, the rehearing order
relies on the record to support the Siting Board's
conclusions that the collection substation noise
limit of 40 dBA L.E.Q. one hour and the associated
tonal penalty are reasonable and that the
requirements to measure amplitude modulation and
proposed mitigation measures are warranted if
modulation exceeds if -- I'm sorry -- if modulation
depth exceeds five dBA.

Canisteo Wind also challenges thirty
minute daily turbine shadow flicker limit imposed by
the town of Canisteo's local wind law. Again, the
rehearing order first finds that this issue has been
waived, but also notes on the merits that this certificate condition essentially restates Canisteo's local law and that Canisteo Wind agreed to comply with all local laws and requirements which necessarily includes the town of Canisteo's shadow flicker requirement.

The rehearing order concludes that the Siting Board has not misinterpreted this law or requirement as Canisteo Wind alleges. Canisteo Wind's environmental challenges relate to endangered and threatened species. It objects to the Siting Board's findings and conclusions regarding the northern long-eared bat, which is protected under the state's laws and regulations set forth in Environmental Conservation Law, Article 11 and 6 N.Y.C.R.R. Part 182.

Specifically, Canisteo Wind challenges the Siting Board's determinations in four respects:

First, that Canisteo Wind has failed to demonstrate the impracticability of measures to fully avoid the prohibited taking of the northern long-eared bat.

Second, that the Siting Board's impracticability determination excluded consideration
of the recently passed Climate Leadership and Community Protection Act.

Third, that a demonstration of impracticability requires a showing that the project's economic viability would be jeopardized by the measures necessary to achieve full avoidance of any taking of a protected species.

And fourth, that Canisteo Wind failed to demonstrate that curtailment during the thirty minutes before sunset and the thirty minutes after sunrise was not supported by the record.

As the proposed rehearing order notes, Canisteo Wind did not raise most of these objections in its brief on exceptions and therefore waived them. On the merits, however, the proposed rehearing order finds that based on the record, Canisteo Wind failed to show the impracticability of full avoidance measures, and that the project would become economically unviable.

The proposed rehearing order rejects Canisteo Wind's related argument that requiring an applicant to demonstrate economic unviability is inconsistent with the Siting Board's obligations under the Climate Leadership and Community Protection
The order -- the rehearing hearing
order finds that by approving this renewable energy project, the Siting Board has, in fact, furthered the attainment of the statewide greenhouse gas emission limits to be established pursuant to that Act, unless its actions are consistent.

The proposed rehearing order also finds that Canisteo Wind has failed to identify an error of law or fact regarding the time of day requirement for curtailment -- for turbine curtailment to protect the bat species. The proposed rehearing order reaffirms the curtailment thirty minute before sunset, thirty minutes after sunrise based not only in record evidence, but because this requirement is also consistent with the Siting Board's other -- other decisions in Article 10 cases.

Canisteo Wind's rehearing petition also challenges the prohibition on construction activities in the occupied habitat of protected grassland species during breeding season. Canisteo Wind seeks modification of the relevant certificate condition to include language from the Number Three Wind certificate, which allows certain staged
Siting Board - 6-30-2020

coloration activities to continue into the breeding season.

The proposed rehearing order rejects this challenge as waived, but nevertheless notes that Canisteo Wind may propose staged construction measures during the compliance phase of the project as a -- either the net conservation benefit plan or the listed grassland species. Rehearing order is therefore consistent with what the Siting Board has done in the Number Three Wind proceeding.

Finally, Canisteo Wind challenges the certificate condition that requires it to demonstrate in compliance filings to the satisfaction of D.E.C. staff and D.P.S. staff, that full avoidance of impacts to listed bat and grassland species is impracticable, thereby requiring prep -- the preparation and approval of a net conservation benefit plan.

Canisteo Wind claims that this is an improper delegation of the Siting Board's authority to agency staff. The proposed rehearing order finds that because all compliance filings are ultimately subject to the Siting Board's approval, the Siting Board has not improperly delegated its authority to
Proposed rehearing order reviews decisions on these environmental issues that were made by the Siting Board in other Article 10 cases, and finds that its determination here is consistent.

In addition, Canisteo Wind challenges the wording of nineteen certificate conditions claiming that clarifying revisions are needed.

On July 31st, 2019, shortly before the commencement of the evidentiary hearing, Canisteo Wind submitted proposed certificate conditions for the Siting Board's consideration, which were then included as Exhibit 89 in the hearing record. Of the 19 conditions to which Canisteo now objects, nine are worded precisely as the company itself proposed them in its July 31st submission, or others contain nearly identical order or very similar phrasing.

Rehearing order finds that after proposing these conditions, Canisteo Wind cannot now object to the wording of them. In addition, all but one of the challenge -- challenged certificate conditions were included in the recommended decision, and Canisteo Wind did not raise objections to the
Siting Board – 6-30-2020

wording in its brief on exceptions. Rehearing order, therefore, finds its objections in this regard to have been waived.

In any event, the Siting Board nominally revises three certificate conditions in the rehearing order, all of which are appended in redline form as Appendix A. These minor changes are in the nature of an errata and do not represent substantive revisions. For example, the rehearing order revises Certificate Condition 40 which contains facility lighting requirements and deletes Condition 50 which has similar and duplicative language.

Of note is the proposed rehearing orders correction to the inadvertent omission of a subdivision to a noise-related certificate condition that the Siting Board clearly intended to apply to the facility when it issued the certificate order. By way of background, D.P.S. staff requested on exceptions to the recommended decision that the Siting Board correct the numerical noise limit at non-participating property boundaries, changing that limit from 45 dBA L.E.Q. eight hour to 55 dBA L.E.Q. eight hour. Canisteo Wind argued on exceptions that the condition should be deleted entirely.
Siting Board – 6-30-2020

In its certificate order, the Siting Board changed the numerical noise limit to 55 dBA L.E.Q. eight hour as D.P.S. staff had proposed. At the same time, the Board expressly rejected Canisteo Wind's request to delete the condition entirely. This corrected condition was then inadvertently omitted from the final certificate conditions.

The rehearing order addresses the submission and implements the Siting Board's findings and intention by including this noise limit as a subsection of Condition 68. Canisteo Wind notably does not challenge on rehearing, the Siting Board substantive determination not to delete this noise limit.

In summary, rehearing order is based in large part on Canisteo Wind's waiver of the issues presented in the rehearing petition, but also explains that on the merits the extensive evidentiary record in this proceeding does not support rehearing because Canisteo Wind presents no error of law or fact.

We, therefore, recommend the Siting Board accept its adoption of the proposed rehearing order and the appended revised certificate
conditions. This concludes my presentation. Judge Sherman, Mr. Rosen -- Mr. Rosenthal, and I are available for any questions the members of the Siting Board may have. Thank you.

CHAIRMAN RHODES: Thank you, Judge Leary. My own -- it's John Rhodes. My own comments are that I -- I'm inclined to support the adoption of the proposed rehearing order and the appended revised certificate conditions. I think the -- as a matter of procedure and as a matter -- as on -- and on the merits and the matter of examining the evidentiary evidence, that is the correct outcome.

I find that the original Canisteo order was careful, thorough, and balanced with certificate conditions that were very important to achieving the public interest. And as a matter of note, I do affirmatively support including the condition on the omitted condition on the merits of noise limits. I am going to support this proposed order.

Mr. Alexander, do you have any comments?

MR. ALEXANDER: I would just like to note that this order on rehearing and the
presentation today has been quite helpful by its
discussion of both precedent and procedural
requirements as they relate to the issues that have
been raised. Thank you.

CHAIRMAN RHODES: Thank you. Dr.

Lewis-Michl?

MS. LEWIS-MICHL: No questions.

CHAIRMAN RHODES: Thank you very much.

Mr. Ravaschiere, any comments, or questions?

MR. RAVASCHIERE: I have no questions.

Thank you.

CHAIRMAN RHODES: Thank you. Mr.

Williams, any comments, or questions?

MR. WILLIAMS: No questions.

CHAIRMAN RHODES: Thank you. With

that, I will proceed to call for a vote. It's John

Rhodes. My own vote is in favor of the

recommendation to deny the petition for rehearing and
to adopt the modifications and correction to

specified specific conditions as described. Mr.

Alexander, how do you vote?

MR. ALEXANDER: I also vote in favor.

CHAIRMAN RHODES: Thank you. Dr.

Lewis-Michl, how do you vote?
Siting Board – 6-30-2020

DR. LEWIS-MICHL: In favor.

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

MR. RAVASCHICRE: I vote in favor.

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

MR. WILLIAMS: In favor.

CHAIRMAN RHODES: Thank you. With this vote tally, the order is confirmed, and the recommendation is adopted. Secretary Phillips, is there anything further to come before us today?

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

CHAIRMAN RHODES: Thank you very much. With that, and with gratitude to all of our Siting Board colleagues I adjourn. Everybody, be safe. Thank you.

(The meeting concluded.)
STATE OF NEW YORK

I, HANNAH ALLEN, do hereby certify that the foregoing was reported by me, in the cause, at the time and place, as stated in the caption hereto, at Page 1 hereof; that the foregoing typewritten transcription consisting of pages 1 through 64, is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 2nd day of June, 2020.

HANNAH ALLEN, Reporter