

1 Siting Board - 6-30-2020

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

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

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

13 CASE 18-F-0262 - Application of High Bridge Wind, LLC for
14 a Certificate of Environmental Compatibility and Public
15 Need Pursuant to Article 10 to Construct an Approximately
16 100 MW Wind Powered Electric Generating Facility Located
17 in the Town of Guilford, Chenango County.

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

24 CASE 19-F-0512 - Application of Boralex, Inc. for a
25 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

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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

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2 (On the record, 10:30 a.m.)

3 CHAIRMAN RHODES: I'm going to propose
4 we begin in 10 seconds. Good morning. This is John
5 Rhodes, Chair of the Siting Board. And I'd like to
6 call this meeting of the Board on Electric Generation
7 Siting and the Environment to order. Before we get
8 started, I would like to note our arrangements for
9 the meeting today. In line with the guidelines
10 concerning social distancing, and minimizing large
11 gatherings, and in keeping with the executive orders,
12 suspending provisions of the Open Meetings Law on an
13 emergency basis. We are conducting today's meeting
14 remotely.

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

21 These arrangements have been reviewed
22 by our General Counsel and he has found that they
23 meet the requirements of the executive orders and
24 that they meet my own expectations of honoring the
25 intent of the Open Meetings Law. Before moving to

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2 the agenda, I would like to introduce the alternates
3 representing the permanent members of the Siting
4 Board, and when I call your name, if you could just
5 confirm that you are here on the call.

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

8 MR. ALEXANDER: Present.

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

12 DR. LEWIS-MICHL: Present.

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

18 MR. RAVASCHIERE: Present.

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

22 MR. WILLIAMS: Present.

23 CHAIRMAN RHODES: Thank you. And I
24 would also like to introduce the ad hoc members who
25 are here for four of the six cases on today's agenda.

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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.

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2 CHAIRMAN RHODES: Great. Thank you
3 very much. Secretary Phillips, are there any changes
4 to the agenda?

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

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

16 Mr. Rosenthal, please begin.

17 MR. ROSENTHAL: Good morning, Chair
18 Rhodes, and other members. There are six matters on
19 today's agenda, four of which are orders that address
20 the same legal issue albeit in different context.
21 The legal issue concerns whether a project's
22 potential impact on property values or ancillary
23 impacts on property taxes constitutes a relevant
24 issue for consideration under Article 10 of the
25 Public Service Law.

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2 The first agenda item is an order that
3 would confirm a One-Commissioner Order issued by
4 Chair Rhodes on April 3rd, 2020, ruling that a
5 project's potential impact on property values is not
6 a relevant consideration under Article 10. In High
7 River, the context was an examiner's initial ruling,
8 awarding intervenor funds to two intervenors, the
9 Town of Florida, and Citizens for Responsible Solar
10 Farm Placement.

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

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

24 On the merits, the One-Commissioner
25 Orders started by restating the basis of the

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2 examiner's ruling granting the use of intervenor
3 funds for the purpose of adjudicating whether the
4 project at issue impacts property values. The order
5 noted that the examiner's ruling was based on two
6 aspects of Section 168 of the statute.

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

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

23 The order also considered the
24 expansive nature of the Article 10 regulation and
25 noted that the issue of a project's impacts on

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2 property values was neither required to be included
3 in Article 10 application nor included as a
4 consideration pursuant to Section 168.

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

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

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

22 CHAIRMAN RHODES: This is John Rhodes.
23 I do not have any questions. I will only note that
24 in arriving at the decision behind the One-
25 Commissioner Order, which was from me, I had a

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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

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2 accordance from a procedural standpoint, from a town
3 resident I believe that it should be considered. I
4 believe, the town residents have, you know, we have a
5 stake in this, and I think that our property values
6 are important to us and I disagree with the order.

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

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

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

19 MR. ALEXANDER: I vote in favor.

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

22 MS. LEWIS-MICHL: In favor.

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

25 MR. RAVASCHIERE: In favor.

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

4 MR. WILLIAMS: In favor.

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

7 MR. WATERS: I'm a dissenting vote.

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

10 MR. VERTUCCI: Not in favor.

11 CHAIRMAN RHODES: Thank you very much.

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

23 MR. ROSENTHAL: Thank you. So this is
24 the second order on the same issue that I mentioned
25 at the outset. The draft order before you in High

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2 Bridge addresses a motion for interlocutory review
3 filed on May 19th, 2020 by a citizens group called
4 Guilford Coalition of Non-Participating Residents.

5 Guilford Coalition seeks a reversal of
6 the aspect of the examiner's ruling dated April 27th,
7 2020, that would exclude from the record, "Evidence
8 of property value impacts." The ruling came in the
9 context of an issues conference in which the
10 examiners ruled that such evidence would not be
11 considered in the adjudicatory aspect of the case.

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

19 That the issues ruling sets out the
20 scope of issues for adjudication and the proceeding,
21 which requires resolution while the record in the
22 case remains open. The draft order before you,
23 however, would otherwise affirm the examiner's rule.
24 In its motion, Guilford Coalition raised new
25 arguments in addition to those addressed in the one-

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2 commissioner order in High River.

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

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

16 For example, Section 1001.27 H.
17 requires the applicant to identify the taxing
18 jurisdictions relevant to the siting of the project,
19 which Guilford Coalition acknowledges was done here
20 and in any event is not relevant to its argument.
21 Section 1001.27 I. requires the applicant to estimate
22 the, "Incremental amount of annual taxes that would
23 be levied on the project, a matter that simply bears
24 no relationship to the impact of an Article 10
25 project on property values or taxes."

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2 Finally, Section 1001.27 J. requires
3 an applicant to undertake an analysis that includes,
4 "The fiscal costs to the jurisdiction that are
5 expected to result from the construction and
6 operation of the facility. As the regulations
7 otherwise make clear, the fiscal costs referenced in
8 this provision are limited to municipal operating
9 costs necessary to address the construction and
10 operation of the -- a project such as the costs
11 related to police, fire, emergency, water, sewer,
12 solid waste disposal, highway maintenance, and other
13 municipal public authority or utility services."

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

20 That order found that neither the
21 Article 10 statute nor the implementing regulations
22 require or mention as an issue to be considered the
23 potential impact of our property on -- of a project
24 on property values. For these reasons, the draft
25 order would affirm the examiner's ruling and denying

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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.

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2 CHAIRMAN RHODES: Thank you. Mr.
3 Christensen?

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

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

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

22 So I can only conclude that public
23 interest must mean -- must have a commonsensical
24 definition and please tell me if I'm wrong but what
25 could public interest be? So it must be public

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2 safety, perhaps public health, the environment, and
3 certainly -and certainly, it must be the public net
4 worth, the public -- the value of the public's
5 property.

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

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

21 MR. ROSENTHAL: So I think that you
22 did a very good job of describing it. It is subsumed
23 within all of the other factors that the Siting Board
24 must consider under Section 168 that that is
25 basically those factors go into what the public

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2 interest is.

3 Here we are, you know, as I noted
4 earlier, the regulations are very extensive. There
5 are multiple exhibits, well over thirty that have
6 very specific requirements that the applicant has to
7 address in the application. This is not one of them.

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

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

23 And SEQRA is a statute that applies to
24 all projects that are, you know, reviewed by any
25 state or municipal agency in the state, with some

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2 exceptions and the one -- one exception is Article 10
3 takes the place of -- of SEQRA and under SEQRA, there
4 is a wide body of case law that says that prop --
5 impacts to property values is not considered a public
6 health or environmental impact to be reviewed.

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

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

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

22 And that board looked at this issue in
23 2013 and decided against including it. And as I
24 noted, that's consistent with what occurs under
25 SEQRA, which is a similar statute and has a -- like a

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2 long line of cases that have looked at this issue.

3 MR. CHRISTENSEN: Okay. Thank you.

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

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

21 MR. ROSENTHAL: So as I noted in the
22 presentation, there is a provision of the regulations
23 that require the applicant to look at how the project
24 may result in, you know, increased services, you
25 know, like police services and -- and whatnot.

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2 The reason that that's included is
3 because the applicant is required to enter into
4 discussions with the taxing jurisdictions to enter
5 into what's called -- which are like taxes, but
6 they're -- they're called PILOTS. And which stands
7 for payments in lieu of taxes or P-I-L-O-T or PILOTS.

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

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

23 But that -- that's sort of the purpose
24 behind that -- that particular provision and so I
25 hope that answers your question.

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2 MR. FLEMING: Yes. So it's left up to
3 the local officials to calculate any loss in property
4 values as a result of the project and have that
5 factored into the PILOT agreement going forward.

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

12 And there's a lot of guidance on both
13 of those items on NYSEERDA's website. And, you know,
14 there are a lot -- I mean, you know, that's certainly
15 something that, you know, a town could take into
16 consideration. But the numbers are a lot. I mean,
17 the developers are coming to these towns offering
18 like I said, somewhere generally between \$5,000 and
19 \$7,000 a megawatt which can add up to a lot of money.

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

24 MR. ROSENTHAL: Yeah. I mean, you
25 know, I'm not at all, obviously, that all, you know,

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2 depends on the size of the town and the size of that
3 budget. Did you have any other questions on this
4 issue?

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

7 MR. ROSENTHAL: Okay. Thank you.

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

10 MR. CHRISTENSEN: Yeah. I would just
11 -- Jason, I would just like to state that -- look at
12 it this way. If we have a school budget of \$9
13 million and a town budget of \$8 million and that's
14 \$17 million. I don't -- I don't know what they are
15 but let's just say that's close.

16 And we're talking about an offset of
17 \$500,000 to \$700,000 against that. It's a drop in
18 the bucket. And if we're also talking about property
19 values of neighboring properties going down by 50%
20 and within a mile going down by 30%, within 2 miles
21 going down by 10%, there's a much bigger impact than
22 this token PILOT agreement. That's my opinion.

23 CHAIRMAN RHODES: I thank Mr.
24 Christensen, Mr. Fleming, thank you both for your
25 very clear expression of your views and for your

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2 probing questions. I'd like now to move to calling
3 for a vote. My own vote in favor of the
4 recommendation to grant the request for interlocutory
5 review and affirm the examiner's issue ruling as
6 described. Mr. Alexander, how do you vote?

7 MR. ALEXANDER: I vote in favor.

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

10 MS. LEWIS-MICHL: In favor.

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

13 MR. RAVASCHIERE: In favor.

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

16 MR. WILLIAMS: In favor.

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

19 MR. CHRISTENSEN: I dissent.

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

22 MR. FLEMING: Not in favor.

23 CHAIRMAN RHODES: Thank you very much.
24 And with that voting tally, the order is confirmed,
25 and the recommendation is adopted. Thank you very

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2 much.

3 We will now move to the third item on
4 the agenda, Case 19-F-0512. Application for Boralex,
5 Inc. for Certificate of Environmental Compatibility
6 and Public Need pursuant to Article 10, to construct
7 to approximately 120 megawatt Greens Corners Solar
8 facility proposed in the Towns of Hounsfield and
9 Watertown, Jefferson County, presented again by
10 Robert Rosenthal, General Counsel. Mr. Rosenthal,
11 please begin.

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

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

25 Thus, the Alliance's motion is related

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

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

21 Specifically, the Alliance asserts
22 that a project's alleged impact on property values
23 may result in a reduction in property taxes that can
24 be assessed by local taxing jurisdictions and that
25 such reduced taxes may have an adverse economic

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2 impact that must be considered pursuant to Section
3 1001.27 H., I., and J. of the Article 10 regulations.

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

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

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

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

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2 this issue.

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

6 MR. ALEXANDER: No questions.

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

9 DR. LEWIS-MICHL: No questions.

10 CHAIRMAN RHODES: Thank you, Mr.
11 Ravaschiere?

12 MR. RAVASCHIERE: No questions.

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

15 MR. WILLIAMS: No questions.

16 CHAIRMAN RHODES: Thank you. Mr.
17 Gaus?

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

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

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2 interrupting.

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

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

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

21 This issue was not one of -- it's not
22 in the regulations. It's not required in the
23 regulations. It hasn't been required in any of the
24 projects that have, you know, come to the Siting
25 Board to date. So that's -- that's sort of, you

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2 know, at the end of the day, is an overriding issue
3 regarding why the Siting Board has not required, has
4 not taken the step to say, you know, we're going to
5 require something in addition to what are very
6 extensive regulations.

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

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

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

23 I do have concerns with this
24 particular issue and a desire to make sure we're
25 being sensitive to the concerns of our neighbors.

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2 With respect to property values, I think the long-
3 term human health and environmental health of a
4 community is very much tied to its economic health.

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

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

23 My own vote is in favor of the
24 recommendations to grant the request for
25 interlocutory review and to affirm the examiners

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2 intervenor funding ruling as described.

3 Mr. Alexander, how do you vote?

4 MR. ALEXANDER: I vote in favor.

5 CHAIRMAN RHODES: Thank you very much.

6 Dr. Lewis-Michl, how do you vote?

7 DR. LEWIS-MICHL: In favor.

8 CHAIRMAN RHODES: Thank you. Mr.

9 Ravaschiere, how do you vote?

10 MR. RAVASCHIERE: In favor.

11 CHAIRMAN RHODES: Thank you. Mr.

12 Williams, how do you vote?

13 MR. WILLIAMS: In favor.

14 CHAIRMAN RHODES: And thank you. And

15 Mr. Gaus, how do you vote?

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

19 CHAIRMAN RHODES: Thank you very much.

20 With that vote tally, the order is confirmed, and a
21 recommendation is adopted. Thank you again to my
22 board colleagues. We will now move to the fourth
23 item on the agenda, Case 16-F-0267, Application of
24 Atlantic Wind, L.L.C., for Certificate of
25 Environmental Compatibility and Public Need pursuant

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2 to Article 10 for Construction of the Deer River Wind
3 Energy Project in Lewis and Jefferson County,
4 presented by James Costello, the Administrative Law
5 Judge, Department of Public Service.

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

11 Mr. Costello, please begin.

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

22 I will offer brief remarks on the item
23 before you which is a proposed order, the Siting
24 Board granting a certificate of environmental
25 compatibility and public need to Atlantic Wind,

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2 L.L.C., the applicant in this case. The grant of the
3 certificate would -- would be subject to the detailed
4 conditions that are included as Appendix A. to the
5 proposed order.

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

13 21 turbines would be located in the
14 Town of Pinckney and four turbines would be located
15 in the Town of Harrisburg. The project will have a
16 total maximum generating capacity of 101.4 megawatts.
17 The proposed work before you is based upon an
18 extensive evidentiary record that was compiled during
19 a two-day evidentiary hearing.

20 The record supports all of the
21 findings the Siting Board must make under Public
22 Service Law, Article 10. Although this is a fully
23 litigated case, the applicant was able to resolve
24 many of the issues raised by various parties
25 throughout the course of the proceedings.

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2 In their post-hearing brief, the Towns
3 of Pinckney and Harrisburg stated that the applicant
4 had addressed the issues they raised in this
5 proceeding and that they are in agreement that the --
6 that the proposed facility would be beneficial to the
7 communities and should be approved.

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

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

23 The Article 10 review process was,
24 lengthy, fair and open and included both pre-
25 application and post-application phases. Public

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

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

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

21 At the application stage, intervenor
22 funding was awarded to the Towns of Pinckney, and
23 Harrisburg, and to THARP. After the applicant
24 revised its application, the applicant was required
25 to provide additional intervenor funding and

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2 additional awards were requested and made to the Town
3 of Pinckney and THARP.

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

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

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

24 In general, those that oppose the
25 project stated that the Tug Hill area has done its

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2 part for the development of green energy, that
3 further wind farm development in the area was not
4 warranted and that any benefits resulting from the
5 project should not outweigh local opposition to the
6 project.

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

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

24 The order also includes a finding by
25 the Board that the construction and operation of the

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

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

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

25 Consistent with the Siting Board's

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2 order in the Canisteo Wind Article 10 proceeding, the
3 proposed order states that state water quality
4 standards, by not only the state-regulated water
5 bodies but the federally regulated water bodies as
6 well. The order also concludes that pursuant to the
7 Board's authority under the Federal Clean Water Act,
8 the Board may include water-quality standard related
9 conditions and an Article 10 certificate in
10 anticipation of the issuance of a water-quality
11 certification pursuant to 16 New York C.R.R. Section
12 1000.8.

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

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

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

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

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

20 The examiners recommend that the Board
21 adopt the proposed order including the certificate
22 conditions attached as Appendix A. to the order, the
23 site engineering and environmental plan
24 specifications attached as Appendix B., and the sound
25 testing compliance protocol attached as Appendix C.

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2 This concludes my presentation and the
3 examiners are available for any questions the Siting
4 Board may have.

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

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

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

20 And I agree with the proposed order
21 that I think it's fully supported by the record and
22 agree with the conclusion that this project meets the
23 health and safety and environmental standards. We
24 have addressed these community concerns and is fully
25 in keeping with the direction we need to go in terms

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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. ROSENTHAL: 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.

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2 Alexander, back to you for comments or questions?

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

9 I would note that with respect to one
10 of the subjects at issue, that is wetlands, that I
11 concur with D.E.C. staff's statement and its brief on
12 exceptions that these wind turbines and their related
13 structures and facilities are prop -- properly
14 characterized or categorized together as an
15 industrial facility and covered by 6 -- N.Y.C.R.R.
16 63.4 D.43.

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

23 CHAIRMAN RHODES: Thank you very much.
24 With that, we will proceed -- I will proceed to call
25 for a vote and begin with my own vote. I'm John

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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

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2 colleagues on the Siting Board.

3 We will now move to the fifth item on
4 the agenda, Case 19-F-0602, application of E.D.F.
5 Renewables for a Certificate of Environmental
6 Compatibility and Public Need pursuant to Article 10
7 for construction of the Genesee Road Solar Energy
8 Center in the Towns of Sardinia and Concord, Erie
9 County, presented by Robert Rosenthal, General
10 Counsel. Mr. Rosenthal, please begin.

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

18 In its motion, S.R.P.S. seeks a
19 reversal of the aspects of the examiner's ruling
20 dated May 6th, 2020 that would exclude intervenor
21 funding for the purpose of evaluating economic
22 impacts related to property value. This motion is
23 taken in the same context as the one addressed in the
24 Green Corners case for review and examiner's ruling
25 precluding the use of intervenor funds at the P.S.S.

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2 stage to be used for examining the potential impacts
3 of a property on prop -- of a project on property
4 values or ancillary impacts on property taxes, or
5 fiscal costs.

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

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

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2 development in these kinds of cases.

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

6 MR. ALEXANDER: No questions.

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

9 DR. LEWIS-MICHL: No question.

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

12 MR. RAVASCHIERE: No questions.

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

15 MR. WILLIAMS: No questions.

16 CHAIRMAN RHODES: Thank you very much.

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

22 MR. ALEXANDER: I vote in favor.

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

25 DR. LEWIS-MICHL: In favor.

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

4 MR. RAVASCHIERE: In favor.

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

7 MR. WILLIAMS: In favor.

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

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

24 A.L.J. LEARY: Good morning, Chairman
25 Rhodes, and members of the Siting Board. I want to

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2 make sure that you can hear me clearly.

3 CHAIRMAN RHODES: I can hear you.

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

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

16 The Siting Board Certificate
17 authorized the facility consisting of up to 117 wind
18 turbines, with a total maximum generating capacity of
19 290.7 megawatts along with other associated facility
20 components. The Siting Board Certificate indicates
21 that it adopted, in large part, the examiner's
22 recommended decision and proposed certificate
23 conditions attached to that decision, with some
24 exceptions.

25 On April 13th, 2020, Canisteo Wind

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2 filed a rehearing petition which challenges certain
3 certificate conditions and other issues that had been
4 determined by the Siting Board and the certificate.

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

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

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

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

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2 meet the criteria for rehearing by raising an error
3 of law or fact or by identifying new circumstances
4 warranting a different Siting Board determination,
5 which is a requirement of 16 N.Y.C.R.R. Section
6 3.7(b).

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

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

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

25 Canisteo Wind also asserts that the

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2 collection substation tonal penalty has been double
3 counted, and that the required amplitude modulation
4 measurement is unreasonable and should be eliminated.

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

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

22 Canisteo Wind also challenges thirty
23 minute daily turbine shadow flicker limit imposed by
24 the town of Canisteo's local wind law. Again, the
25 rehearing order first finds that this issue has been

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2 waived, but also notes on the merits that this
3 certificate condition essentially restates Canisteo's
4 local law and that Canisteo Wind agreed to comply
5 with all local laws and requirements which
6 necessarily includes the town of Canisteo's shadow
7 flicker requirement.

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

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

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

24 Second, that the Siting Board's
25 impracticability determination excluded consideration

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2 of the recently passed Climate Leadership and
3 Community Protection Act.

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

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

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

21 The proposed rehearing order rejects
22 Canisteo Wind's related argument that requiring an
23 applicant to demonstrate economic unviability is
24 inconsistent with the Siting Board's obligations
25 under the Climate Leadership and Community Protection

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2 Act.

3 The order -- the rehearing hearing
4 order finds that by approving this renewable energy
5 project, the Siting Board has, in fact, furthered the
6 attainment of the statewide greenhouse gas emission
7 limits to be established pursuant to that Act, unless
8 its actions are consistent.

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

19 Canisteo Wind's rehearing petition
20 also challenges the prohibition on construction
21 activities in the occupied habitat of protected
22 grassland species during breeding season. Canisteo
23 Wind seeks modification of the relevant certificate
24 condition to include language from the Number Three
25 Wind certificate, which allows certain staged

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2 construction activities to continue into the breeding
3 season.

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

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

20 Canisteo Wind claims that this is an
21 improper delegation of the Siting Board's authority
22 to agency staff. The proposed rehearing order finds
23 that because all compliance filings are ultimately
24 subject to the Siting Board's approval, the Siting
25 Board has not improperly delegated its authority to

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2 agency staff.

3 Proposed rehearing order reviews
4 decisions on these environmental issues that were
5 made by the Siting Board in other Article 10 cases,
6 and finds that its determination here is consistent.

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

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

20 Rehearing order finds that after
21 proposing these conditions, Canisteo Wind cannot now
22 object to the wording of them. In addition, all but
23 one of the challenge -- challenged certificate
24 conditions were included in the recommended decision,
25 and Canisteo Wind did not raise objections to the

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

5 In any event, the Siting Board
6 nominally revises three certificate conditions in the
7 rehearing order, all of which are appended in redline
8 form as Appendix A. These minor changes are in the
9 nature of an errata and do not represent substantive
10 re -- revisions. For example, the rehearing order
11 revises Certificate Condition 40 which contains
12 facility lighting requirements and deletes Condition
13 50 which has similar and duplicative language.

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

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

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

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

23 We, therefore, recommend the Siting
24 Board accept its adoption of the proposed rehearing
25 order and the appended revised certificate

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2 conditions. This concludes my presentation. Judge
3 Sherman, Mr. Rosen -- Mr. Rosenthal, and I are
4 available for any questions the members of the Siting
5 Board may have. Thank you.

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

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

22 Mr. Alexander, do you have any
23 comments?

24 MR. ALEXANDER: I would just like to
25 note that this order on rehearing and the

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2 presentation today has been quite helpful by its
3 discussion of both precedent and procedural
4 requirements as they relate to the issues that have
5 been raised. Thank you.

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

8 MS. LEWIS-MICHL: No questions.

9 CHAIRMAN RHODES: Thank you very much.
10 Mr. Ravaschiere, any comments, or questions?

11 MR. RAVASCHIERE: I have no questions.
12 Thank you.

13 CHAIRMAN RHODES: Thank you. Mr.
14 Williams, any comments, or questions?

15 MR. WILLIAMS: No questions.

16 CHAIRMAN RHODES: Thank you. With
17 that, I will proceed to call for a vote. It's John
18 Rhodes. My own vote is in favor of the
19 recommendation to deny the petition for rehearing and
20 to adopt the modifications and correction to
21 specified specific conditions as described. Mr.
22 Alexander, how do you vote?

23 MR. ALEXANDER: I also vote in favor.

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

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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.)

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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