

1 18-F-0262 and 16-F-0328 - Siting Board - 7-1-2021

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

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

10 CASE 16-F-0328 - Application of Number Three Wind LLC for  
11 a Certificate of Environmental Compatibility and Public  
12 Need Pursuant to Article 10 for Construction of a Wind  
13 Project Located in Lewis County

14 Siting Board Meeting

15 Date: Thursday, July 1, 2021 at 10:30 am

16  
17 TAMMY MITCHELL, alternate for John B. Howard, Chair New  
18 York State Public Service Commission

19 JAMES MCCLYMONDS, alternate for Basil Seggos, Department  
20 of Environmental Conservation

21 JANET JOSEPH, alternate for Richard L. Kauffman, Chair New  
22 York State Energy Research and Development Authority

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

25 VINCENT RAVASCHIERE, alternate for Eric Gertler, Acting  
Commissioner, President & CEO-designate New York State  
Empire State Development

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2 CHAIRPERSON MITCHELL: Electric, Gas  
3 and Water at the New York State Department of Public  
4 Service. I've been designated to serve as the  
5 alternate representing the Chair of the New York  
6 State Board on Electric Generation Siting and the  
7 Environment or as it is also known, the Siting Board.

8 I'd like to call this meeting of the  
9 Siting Board to order. And, before we begin, I'd  
10 just like to say, that it's very nice to be here in  
11 person, back here in the -- in the Board room and  
12 with my fellow Siting Board colleagues.

13 Before moving to the agenda, I'd like  
14 to introduce the alternates representing the  
15 permanent members of the Siting Board. Here in  
16 Albany to my far right, is Janet Joseph, alternate  
17 for Richard Kauffman, New York State Energy Research  
18 and Development Authority. To my immediate right, is  
19 Dr. Elizabeth Lewis-Michl, alternate for Dr. Howard  
20 A. Zuckard, Department of Health. To my left, is  
21 James McClymonds, alternate for Basil Seggos,  
22 Department of Environmental Conservation. And, in  
23 New York City, is Vincent Ravaschiere, alternate for  
24 Eric Gertler, Acting Commissioner New York State  
25 Department of Economic Development and President and

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2 Chief Executive Officer Designee Empire State  
3 Development. Secretary Phillips, are there any  
4 changes to the agenda?

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

7 CHAIRPERSON MITCHELL: Thank you,  
8 Secretary Phillips. I will now turn to the first  
9 item for discussion today, which is Case 18-F-0262,  
10 Application of High Bridge Wind, L.L.C., for a  
11 Certificate of Environmental Compatibility and Public  
12 Need, Pursuant to Article 10, to Construct an  
13 Approximately 100 Megawatt Wind Powered Electric  
14 Generating Facility, Located in the Town of Guilford,  
15 Chenango County, presented by Dakin Lecakes, Chief  
16 Administrative Law Judge, Department of Public  
17 Service. John Sipos, Deputy General Counsel is  
18 available for questions. Judge Lecakes, please  
19 begin.

20 A.L.J. LECAKES: Thank you very much.  
21 Good morning, Chair Designee Mitchell and members of  
22 the Siting Board; greetings from Western New York.  
23 Before you is a Draft Order that would deny the  
24 petition for re-hearing, filed on April 9th, 2021 by  
25 Guilford Coalition of Non-Participating Residents,

1 18-F-0262 and 16-F-0328 - Siting Board - 7-1-2021  
2 G.C.N.R. In its petition, G.C.N.R. seeks re-hearing  
3 of the Siting Board's March 11th, 2021 Order,  
4 granting a certificate of environmental compatibility  
5 and public need with conditions to High Bridge, to  
6 construct and operate a utility scale wind energy  
7 facility with a capacity of 100.8 megawatts in the  
8 Town of Guilford, Chenango County.

9 G.C.N.R. makes numerous allegations  
10 about the Order's alleged deficiencies, claiming the  
11 following; that the Siting Board incorrectly denied  
12 G.C.N.R.'s motion for an extension of Article 10's  
13 twelve-month decisional statutory time period, in  
14 light of the COVID-19 Pandemic; that the process in  
15 this case did not provide adequate public  
16 participation; that the parties did not properly  
17 follow the settlement guidelines; that the record was  
18 incomplete because the Town of Guilford signed the  
19 settlement but did not provide testimony or a  
20 statement in support; that the Siting Board  
21 incorrectly affirmed the hearing examiner's ruling,  
22 allocating intervenor funding and then denied  
23 G.C.N.R.'s later request to reallocate additional  
24 funds from the Town to G.C.N.R.; that the Siting  
25 Board incorrectly determined that High Bridge's

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2 service of a revised preconstruction noise impact  
3 analysis was proper; that the Board incorrectly  
4 denied G.C.N.R. an opportunity to present evidence of  
5 potential impacts to property values; that an  
6 individualized impact assessment, regarding shadow  
7 flicker, should have been required for at least one  
8 flicker sensitive resident; and that the Board's  
9 analysis of shadow flicker impacts, is deficient  
10 because the Order does not require High Bridge to  
11 modify the project to accommodate the particular  
12 circumstances of two Town residents; that the Siting  
13 Board's refusal to apply a world health organization  
14 conditional recommendation on noise limits was  
15 incorrect; that the record does not support the  
16 Siting Board's finding of sufficient mitigation to  
17 visual impacts, such as ground water and well  
18 impacts; and similarly, that the Siting Board  
19 erroneously denied G.C.N.R.'s proposed modifications  
20 to Certificate Condition 87 that relates to ground  
21 water and wells; that the record does not support the  
22 Board's findings on socioeconomic benefits because it  
23 does not contain a host community agreement or PILOT  
24 agreement to substantiate such benefits; and finally,  
25 that the evidence in the record does not support the

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2 Siting Board's finding, that the project is in the  
3 public interest.

4 G.C.N.R. also requested a stay of any  
5 construction work and Board or Commission review of  
6 compliance filings, pending a determination on its  
7 rehearing petition. To this last request, I note  
8 that Article 10 does not provide for any stay of a  
9 certificate holder's activities or responsibility to  
10 comply with the certificate's conditions and no stay  
11 was required here.

12 As for the petition, arguments on  
13 rehearing, must do more than restate the same  
14 arguments that the Siting Board considered and  
15 rejected in the Certificate Order. As discussed in  
16 the Draft Order before you, G.C.N.R.'s petition does  
17 not establish any error of law or fact to support its  
18 rehearing request. Instead, G.C.N.R.'s arguments on  
19 each point, were raised and fully briefed, when made  
20 to the examiners and before the Siting Board, when  
21 the Siting Board considered and issued the March 2021  
22 Certificate Order. Also, after reviewing the record,  
23 I note that it is complete and fully supports the  
24 Board's findings in that March Order.

25 As to G.N.C. -- G.C.N.R.'s claims,

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2 regarding the Town's participation in the settlement,  
3 the guidelines do not require every party to a  
4 settlement, to provide individual testimony or  
5 exhibits. A signature page is sufficient to indicate  
6 any one party's agreement with the proposed terms.

7 Now, before I end, I would like to  
8 make one last note about the Draft Order's inclusion  
9 of a discussion, regarding the issue of intervenor  
10 funding. G.C.N.R. attempts to support rehearing with  
11 emails it obtained through the Freedom of Information  
12 Law that were sent between employees of the  
13 Governor's office and another completely unrelated  
14 renewable energy developer. G.C.N.R. did not provide  
15 these emails to be included in the evidentiary record  
16 and even if they were obtained only after the Board's  
17 March Order, they do not present any new  
18 circumstances for the purposes of rehearing. They  
19 are not relevant to this case, at all.

20 What is concerning here, is that  
21 G.C.N.R. questions the examiners objectivity and  
22 independence, despite having no evidence that the  
23 examiners had any connection to the emails or were  
24 even aware that they existed. To make such an  
25 allegation without evidence, is untenable. Yet,

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2 G.C.N.R. tries to argue that it was withheld what it  
3 believes was sufficient intervenor funding, based on  
4 an unsupported theory that the emails show some  
5 concerted effort to suppress funding amounts to  
6 opposition parties in Article 10 cases.

7 Besides being completely  
8 unsubstantiated, G.C.N.R.'s argument rests on a  
9 misunderstanding of Article 10 intervenor funding,  
10 relative to the amount spent by any given awardee.  
11 In discussing this point, the Draft Order explains  
12 that while funding is made to help defray some of the  
13 costs of litigation, it was never intended to  
14 completely cover party expenses. This concludes my  
15 presentation and we are available for any questions.

16 CHAIRPERSON MITCHELL: Thank you very  
17 much, Judge Lecakes. I'm persuaded that the denial  
18 on each of the petition's claim, is proper and  
19 appropriate, based on the record and the underlying  
20 facts and I will be supporting the recommended  
21 denial. Let me now turn to my fellow Board members  
22 for any comments or questions. Ms. Joseph?

23 MS. JOSEPH: No additional comments or  
24 questions.

25 CHAIRPERSON MITCHELL: Thank you. Dr.



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2 Lewis-Michl?

3 DR. LEWIS-MICHL: No comments or  
4 questions.

5 CHAIRPERSON MITCHELL: Thank you. Mr.  
6 McClymonds?

7 MR. MCCLYMONDS: No comments or  
8 questions.

9 CHAIRPERSON MITCHELL: Thank you and  
10 Mr. Ravaschiere?

11 MR. RAVASCHIERE: No comments or  
12 questions.

13 CHAIRPERSON MITCHELL: Thank you.

14 With that, I'll now proceed to call for a vote. This  
15 is Tammy Mitchell and my own vote is in favor of the  
16 recommendation to deny the petition for rehearing, as  
17 just described. Ms. Joseph, how do you vote?

18 MS. JOSEPH: I vote yes.

19 CHAIRPERSON MITCHELL: Dr. Lewis-  
20 Michl?

21 DR. LEWIS-MICHL: In favor.

22 CHAIRPERSON MITCHELL: Mr. McClymonds?

23 MR. MCCLYMONDS: In favor.

24 CHAIRPERSON MITCHELL: And, Mr.

25 Ravaschiere?

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2 MR. RAVASCHIERE: In favor.

3 CHAIRPERSON MITCHELL: Thank you. The  
4 Order is approved and the recommendation is adopted.  
5 We will now move on to the second item for  
6 discussion, Case 16-F-0328, Application of the Number  
7 Three Wind, L.L.C. for a Certificate of Environmental  
8 Compatibility and Public Need, Pursuant to Article  
9 10, for Construction of a Wind Project, Located in  
10 Lewis County, presented by Heather Behnke, Assistant  
11 Counsel Department of Public Service. John Sipos,  
12 Deputy Counsel and Brian Ossias, Managing Attorney  
13 are available for questions. Ms. Behnke, please  
14 begin.

15 MS. BEHNKE: Good morning, Chair  
16 Designee Mitchell and members of the Board. Before  
17 you today, is an Order granting a petition for  
18 amendment of the Board's November 12th, 2019 Order  
19 granting a certificate of environmental compatibility  
20 and public need with conditions to Number Three Wind,  
21 L.L.C.

22 The certificate authorized Number  
23 Three Wind to construct and operate up to 105.8  
24 megawatt wind-powered electric-generating facility,  
25 consisting of up to 31 utility scale wind turbines

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2 and associated facilities in the Towns of Lowville  
3 and Harrisburg in Lewis County.

4 On March 11th, 2021, the Siting Board  
5 granted the petition for amendment, which authorized  
6 Number Three Wind to install fewer turbines, 29  
7 instead of 31, but to increase the maximum turbine  
8 for up to 24 turbines from 586 feet up to 591 feet.  
9 On May 24th, 2021, Number Three Wind filed a  
10 subsequent petition for amendment, seeking an  
11 amendment of Condition 38 of the certificate, which  
12 requires Number Three Wind to file Federal aviation  
13 administration permits and required approval  
14 documentation, prior to commencing construction.

15 Specifically, Number Three Wind seeks  
16 to have language in Condition 38 A and C changed to  
17 allow the required F.A.A. approvals to be filed prior  
18 to turbine erection instead of prior to construction.  
19 According to Number Three Wind, the changes are  
20 necessary because the taller turbines approved in the  
21 March 11th Amendment Order, require the Federal  
22 agencies to confirm that their prior approval for the  
23 certificated facility, with respect to air space,  
24 remains applicable to the slightly taller turbines  
25 approved in the Amendment Order.

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2 In its petition, Number Three Wind  
3 explained that Fort Drum technical staff confirmed  
4 that the minor increase in height was acceptable but  
5 unexpected administrative delays in the Federal  
6 Agency Review, the finding necessitates the change to  
7 the wording of Condition 38 in order for Number Three  
8 Wind to meet its construction schedule for the  
9 projects expected in-service date of October of 2022.

10 The Order before you recommends  
11 approval of the amendment. Approving the requested  
12 change in language in Certificate Condition 38 A and  
13 C, merely clarifies that the new turbine design that  
14 was approved in the March 11th Amendment Order, may  
15 not be installed without F.A.A. approval. If the  
16 Order is approved, all of the certificate conditions  
17 will remain applicable, including the requirement to  
18 have a decommissioning plan approved, prior to  
19 commencing construction. Number Three Wind is  
20 required to post letters of credit to cover the cost  
21 of any decommissioning, related to the removal of the  
22 foundations and site restoration, in the event the  
23 F.A.A. does not approve the turbines or makes  
24 additional changes to the project layout.

25 Accordingly, the Order before you

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2 approves the petition for amendment of the  
3 certificate. That concludes my presentation and we  
4 are available for any questions you may have.

5 CHAIRPERSON MITCHELL: Thank you, Ms.  
6 Behnke. I find that the proposed amendment is  
7 substantially a clarification to Certificate  
8 Conditions 38 A and C and would not have any adverse  
9 environmental impacts. I will be voting in favor of  
10 the recommendation. I'll now turn to my fellow Board  
11 members for any comments or questions. Ms. Joseph?

12 MS. JOSEPH: No comments or questions.

13 CHAIRPERSON MITCHELL: Thank you. Dr.  
14 Lewis-Michl?

15 DR. LEWIS-MICHL: No comments or  
16 questions.

17 CHAIRPERSON MITCHELL: Thank you. Mr.  
18 McClymonds?

19 MR. MCCLYMONDS: No comments or  
20 questions.

21 CHAIRPERSON MITCHELL: Thank you. Mr.  
22 Ravaschiere?

23 MR. RAVASCHIERE: I have no comments  
24 or questions.

25 CHAIRPERSON MITCHELL: Thank you. I

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2 will now call for a vote. This is Tammy Mitchell and  
3 my own vote is in favor of the recommendation, as  
4 just described. Ms. Joseph, how do you vote?

5 MS. JOSEPH: In favor of the  
6 recommendation.

7 CHAIRPERSON MITCHELL: Thank you. Dr.  
8 Lewis-Michl?

9 DR. LEWIS-MICHL: In favor.

10 CHAIRPERSON MITCHELL: Thank you. Mr.  
11 McClymonds?

12 MR. MCCLYMONDS: In favor.

13 CHAIRPERSON MITCHELL: Thank you and  
14 Mr. Ravaschiere?

15 MR. RAVASCHIERE: I vote in favor.

16 CHAIRPERSON MITCHELL: Thank you. The  
17 Order is approved and the recommendation is adopted.  
18 Secretary Phillips, is there anything further to come  
19 before us today?

20 SECRETARY PHILLIPS: There is nothing  
21 further today.

22 CHAIRPERSON MITCHELL: Thank you,  
23 Secretary Phillips. With that, we are adjourned.

24 (The proceeding concluded.)

25

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2 STATE OF NEW YORK

3 I, ANNETTE LAINSON, do hereby certify that the foregoing  
4 was reported by me, in the cause, at the time and place,  
5 as stated in the caption hereto, at Page 1 hereof; that  
6 the foregoing typewritten transcription consisting of  
7 pages 1 through 14, is a true record of all proceedings  
8 had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto  
10 subscribed my name, this the 5th day of July, 2021.

11

12

13 ANNETTE LAINSON, Reporter

14

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