

Siting Board - 14-F-0490 - 1-17-2018

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

IN THE MATTER OF

Case 14-F-0490 -

Application by Cassadaga Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the New York State Public Service Law for the Cassadaga Wind Project, Towns of Charlotte, Cherry Creek, Arkwright and Stockton, Chautauqua County.

SITING BOARD

Wednesday, January 17, 2018
Albany, New York

JOHN B. RHODES, Chair

Louis Alexander, Department of Environmental Conservation.
Dr. Elizabeth Lewis-Michl, Department of Health.
Vincent Ravaschiere, Empire State Development Corporation.
John Williams, New York State Energy Research and
Development Authority
Gregory Gane, Ad Hoc Member
Karl Kelling, Ad Hoc Member

1 Siting Board - 14-F-0490 - 1-17-2018

2 CHAIR RHODES: Good morning. I'm John
3 Rhodes the Chair of the Public Service Commission and I'd
4 like to call this meeting of the Board on Electric
5 Generation Siting and Environment -- and the Environment
6 to order.

7 Before moving to the agenda, I'd like to
8 note that this is -- will be the first time that the
9 siting board will be considering an application under the
10 Amended Article 10 Laws and Implementing Regulations.

11 And I'd like to introduce each member of
12 the board, beginning with the two ad hoc members from the
13 Cassadaga area. And I'd like to thank them for their
14 service to the -- to the board in this matter, which has
15 been really diligent, thoughtful, serious and absolutely
16 worthy of appreciation.

17 So Mr. Gregory Gane.

18 MR. GANE: Greg.

19 CHAIR RHODES: Greg?

20 MR. GANE: Yes.

21 CHAIR RHODES: And Mr. Karl Kelling.

22 MR. KELLING: Hello.

23 CHAIR RHODES: Continuing, representing the
24 permanent members of the Siting Board, we have Louis --
25 Lou Alexander, an alternate of Basil Seggos of the

1 Siting Board - 14-F-0490 - 1-17-2018
2 Department of Environmental Conservation. We have Dr.
3 Elizabeth Lewis-Michl, Betsy, alternate of Dr. Howard
4 Zucker Department of Health. We have Vincent Ravaschiere,
5 Vince, alternate of Howard Zemsky Empire State Development
6 Corporation. And we have John Williams, alternate of
7 Richard Kauffman New York State Energy Research and
8 Development Authority.

9 So Secretary Burgess, are there any changes
10 to the agenda?

11 MS. BURGESS: Good morning. There are no
12 changes to this morning's agenda.

13 CHAIR RHODES: Well then, let's proceed.
14 So Case 14-F-0490 which is the application of Cassadaga
15 Wind LLC, for a Certificate of Environmental Compatibility
16 and Public Need pursuant to Article 10, to construct a
17 wind energy project, presented by Dakin Lecakes,
18 Administrative Law Judge Department of Public Service and
19 Nicholas Garlick Administrative Law Judge Department of
20 Environment Conservation. Paul Agresta General Counsel,
21 Department of Public Service, and Michael Worden Director,
22 Office of Electric Gas and Water Department of Public
23 Service are available for questions.

24 Judge Lecakes, would you please begin?

25 MR. LECAKES: Thank you very much. Good

1 Siting Board - 14-F-0490 - 1-17-2018
2 morning Chairman Rhodes and members of the Siting Board.
3 I am Administrative Law Judge Dakin Lecakes of the
4 Department of Public Service, and beside me is Nick
5 Garlick of the Department of Environmental Conservation.

6 I would also like to recognize the input of
7 D.P.S. Administrative Law Judge Kevin Casutto to this
8 matter. Judge Casutto served as presiding examiner until
9 his retirement in April 2017. As the Chairman noted today
10 marks the first time that the Siting Board meets under the
11 reformed Article 10, signed into law by Governor Andrew
12 Cuomo in 2011, as power -- part of the Power New York Act.

13 For your consideration this morning, you
14 have before you a draft order that would grant EverPower
15 Subsidiary Cassadaga Wind, LLC, a conditional certificate
16 of environmental compatibility and public need to build a
17 wind-generating facility in portions of four towns located
18 in Chautauqua County, New York.

19 EverPower commenced this case in November
20 2014, when it first indicated its interest in constructing
21 a wind energy project in portions of the towns of
22 Charlotte, Cherry Creek, Arkwright, and Stockton, through
23 its filing of a public involvement plan.

24 After meeting with both local and state
25 agency stakeholders, including holding public forums on

1 Siting Board - 14-F-0490 - 1-17-2018
2 its projects plans, the company submitted a preliminary
3 scoping statement in September 2015, detailing the studies
4 that should be included in its formal application.
5 Cassadaga Wind filed that application in May 2016. And
6 after receiving public comment and providing a number of
7 supplements and amendments, the application was deemed
8 compliant with the Article 10 Regulations in November
9 2016.

10 During these proceedings the company has
11 remained in contact with the stakeholders to try and make
12 its application as comprehensive and informative as
13 possible. Additionally, public comment was allowed from
14 the earliest stages and has continued to be gathered
15 throughout all phases of this matter.

16 In January 2017, Judge Garlick and I held a
17 Public Statement Hearing and Procedural Conference in
18 Sinclairville, New York, a village located within the
19 project area. All of the proceedings were held in the
20 local community as required by Article 10. And several
21 community residents took the opportunity to attend the
22 proceedings and to participate. Community attendance and
23 participation included sitting with us through seven days
24 of evidentiary hearings in July 2017, at the same Sinclair
25 venue. A hall adjacent to the villages fire department.

1 Siting Board - 14-F-0490 - 1-17-2018

2 As did the ad hoc members of the Siting Board who are here
3 with us today.

4 The record compiled in this case, both
5 through the evidentiary hearings and the public comments
6 is extensive. The hearing transcript is over two thousand
7 three hundred fifty pages long, with numerous exhibits,
8 many of which consist of multiple parts.

9 In addition to the public hearing
10 transcript, more than one hundred sixty-five public
11 comments were received and reviewed. After considering
12 the record, Judge Garlick and I developed recommendations
13 for a reasonable outcome of all the issues raised.
14 Secretary Burgess released our recommended decision in
15 November of 2017, with a schedule for the parties to file
16 exceptions to those recommendations. At that time
17 Secretary Burgess also opened a new public comment period
18 specifically directed to the recommendations that were
19 made.

20 The draft order that you have been provided
21 with is a refinement of our recommendations, adopting some
22 while modifying others. What changes were made were based
23 on the party's exceptions and the input of DPS and DEC
24 advisory staff. The draft order if you vote -- vote in
25 favor of adopting it, would grant a conditional

1 Siting Board - 14-F-0490 - 1-17-2018
2 certificate to Cassadaga Wind to build a wind farm
3 consisting of up to forty-eight turbines, and associated
4 facilities including access roads, collection lines, and a
5 generator lead line. The project would interconnect with
6 National Grid transmission facilities. Cassadaga Wind
7 anticipates that its project will be capable of producing
8 up to one hundred twenty-six megawatts of renewable, wind-
9 generated electricity helping New York attain its
10 renewable goals as established by Governor Cuomo and the
11 Public Service Commission in several important proceedings
12 aimed at reducing the state and regions reliance on
13 electricity produced through the burning of fossil fuels.
14 These matters include the renewable portfolio standards,
15 the clean energy standard, and the reforming the energy
16 vision matters before the Public Service Commission.

17 I would like to quickly highlight some of
18 the elements of the draft order that address the points in
19 this matter that provoked the most discussion, as well as
20 the most relevant differences between the draft order and
21 our recommended decision. In the RD we adopted DEC's
22 recommendation on an oper -- operational regimen designed
23 to try and eliminate the bat fatalities. After
24 considering the uncertainties of relying on operational
25 curtailment alone, when weighed against the potential loss

1 Siting Board - 14-F-0490 - 1-17-2018
2 of renewable energy, and with DEC's indication and its
3 exceptions that it was willing to work with Cassadaga Wind
4 to develop a proactive mitigation program that may result
5 in a net gain to bat populations. The draft order allows
6 for less curtailed operations, but requires the
7 development and approval by DPS and DEC of a detailed
8 approach that seeks to preserve and protect bat
9 communities and to encourage population growth and
10 viability.

11 Protections for the local residents for the
12 potential from unwanted noise have also been strengthened
13 through the adoption of a daytime standard as well as,
14 imposing both a long-term and and short-time standard on
15 noise emissions. The draft order also clarifies that low
16 frequency and infrasound should be considered at both the
17 inside and outside of a residence to minimize annoyance
18 through -- both through physical -- physiological
19 perceptions, but also from structural vibrations.

20 For the Boutwell Hill's State Forest,
21 Cassadaga Wind will be allowed to use steel monopole
22 structures, eliminating the need for stabilizing guying
23 wires, but not required to place the lines underground.
24 This modification from the RD recognizes the presence of
25 an existing overhead line along the road running through

1 Siting Board - 14-F-0490 - 1-17-2018
2 the forest so that a seal -- a steel monopole addresses
3 the concerns about the use of guy wires, but does not
4 result in a change of character of the forest or road
5 along which the collection lines will run.

6 Finally, the draft order addresses
7 decommissioning along lines similar to our
8 recommendations, adding some clarification. The
9 certificate holder will be responsible for obtaining a
10 letter or letters of credit in the amount of its initial
11 estimate which will serve as a floor for the duration of
12 the projects existence while requiring updates to that
13 decommissioning estimate. To offer further assurance that
14 there is no deficiency in decommissioning funds, any
15 salvage and resale value will serve as a contingency
16 should additional funds be required.

17 Chairman Rhodes, members of the Siting
18 Board, thank you for your consideration of this draft
19 order. Judge Garlick and your advisory staff are
20 available for questions at this time.

21 CHAIR RHODES: Thank you very much, Judge
22 Lecakes. And thank you again, to all the -- the staff and
23 parties who contributed to this. I will now open the
24 floor for comments and questions, and I will begin with my
25 own comments and then turn it over to my fellow members of

1 Siting Board - 14-F-0490 - 1-17-2018

2 the board.

3 My own comments are brief. This is an
4 important project. And we've heard some of the numbers
5 that characterize it, forty-eight turbines, a hundred and
6 twenty-six megawatts, four towns affected, three of them
7 hosting the turbines, the first of its kind. The state
8 needs and state policy calls for renewable energy that is
9 appropriately sited. This means something. This means
10 energy projects that are designed to succeed as energy
11 projects for the benefit of all New Yorkers, but also
12 critically projects that protect and accommodate the
13 concerns of local communities and of the New Yorkers who
14 live in them.

15 This is the first case under Article 10.
16 It's a process designed to balance many consideration and
17 I appreciate the seriousness of purpose that all have
18 brought to this matter. The submissions, the comments,
19 and other inputs have provided the basis for good and
20 thoughtful discussions and for a good and balanced
21 decision, which we can take today.

22 I'll add two specific observations. I find
23 it noteworthy and positive that the project is consistent
24 with all local laws and ordinances in the spirit of the
25 appropriately sited point that I made earlier. I also

1 Siting Board - 14-F-0490 - 1-17-2018
2 welcome the points where this order provides clear
3 guidance for future projects. These are complicated
4 matters, and as much as possible, when we provide specific
5 objective and predictable standards, we are providing a
6 great and important help to communities and to developers
7 as they consider future projects.

8 I'm going to vote in favor again, with
9 thanks and appreciation for all the work that went into
10 this order. So I'd like now to ask if there are any
11 questions or comments from my fellow board members and I
12 am going to proceed from my right to my left.

13 So Lou Alexander comments or questions?

14 MR. ALEXANDER: Thank you, Chairman Rhodes.
15 I would like to concur certainly with the remarks that you
16 have presented relative to this project, its importance
17 and significance. Also to you know, commend all relative
18 to the extensive work that -- and input that was received
19 and consideration given both through the public outreach
20 process, the recommended decision and this order that is
21 before us today. Thank you.

22 CHAIR RHODES: I'm sorry, just as a matter
23 of procedure, this is a round of questions and comments,
24 not yet a voting moment. So some of us are seasoned and
25 some of us are doing the service for the first time, so

1 Siting Board - 14-F-0490 - 1-17-2018

2 I'd thought I'd clarify that. So Mr. Gane?

3 MR. GANE: I only have a short comment.

4 CHAIR RHODES: Do you want to turn on your
5 mic right there?

6 MR. GANE: Yeah. The state's done a good
7 job in hopefully protecting if this goes forward, with the
8 landowners, the environment, and so on and so forth.
9 Windmill projects do divide communities though, and
10 everybody needs to be aware of that. And I hope -- my one
11 hope is going forward that, Cassadaga LLC, will work with
12 any of the landowners, the non-participants that have
13 issues. And I just hope they do that in good faith. So
14 that's all I have.

15 CHAIR RHODES: Thank you. Mr. Kelling?

16 MR. KELLING: I have no comment to make at
17 this time, thank you.

18 CHAIR RHODES: Dr. Lewis-Michl?

19 MS. LEWIS-MICHL: I have no comments or
20 questions.

21 CHAIR RHODES: Mr. Ravaschiere?

22 MR. RAVASCHIERE: I do have just one
23 question I'd like a little clarification on is the public
24 interest standard. Could you describe a little bit your
25 approach to that public interest standard issue?

1 Siting Board - 14-F-0490 - 1-17-2018

2 MR. LECAKES: The approach that I took in
3 the recommended decision as well as, in -- in the draft
4 order is that it was looked at as one of the
5 characteristics that the Siting Board should consider.
6 It's not a -- a standard that would be considered above
7 any of the other standards. It was taken right out of the
8 public service law and in the way that it's constructed
9 where it -- it requires that the board consider certain
10 environmental impacts, the public interest standard and
11 then some health impacts and -- and so on, the
12 environmental justice concerns. So I -- I considered it
13 as a -- equal to each of those standards. But the one
14 thing that I did do is I -- I looked at it as kind of an
15 all-encompassing question. And when you met the
16 environmental standards, when you met the health
17 standards, when you considered that there were no
18 environmental justice concerns, and you considered the
19 goals and policy objectives of the state for -- for
20 renewable energy and put those all together, that's when I
21 determined that the project was in the public interest.

22 One other thing that I did consider
23 however, was the impact to the community whether it
24 affected the character of the community even though it's
25 not an environmental justice community. I also considered

1 Siting Board - 14-F-0490 - 1-17-2018

2 whether it was consistent with the local laws and was
3 seeking any extraordinary waivers or anything like that.

4 So I put all those together and determined
5 my recommendation that this should be considered in the
6 public interest.

7 MR. RAVASCHIERE: Thank you. I have
8 nothing further.

9 CHAIR RHODES: Mr. Williams?

10 MR. WILLIAMS: Just reiterating maybe other
11 comments, that I commend all those who were engaged in the
12 process as the first of the process, first of potentially
13 many, it is good to see the -- the State's advancing with
14 a proceeding that can lead to a very robust examination of
15 the many different types of issues that need
16 consideration. And see in the proposed order that any
17 mitigation steps that were needed to be taken all appear
18 to be very reasonable and allow the state the continue to
19 advance on its myriad policy outcomes that it is looking
20 for in terms of development of renewable energy. So with
21 that, I just am glad to see that we have a very robust
22 process that has gained its feet underneath it. I very
23 much commend those who all -- all of those who have been
24 engaged in the proceeding and -- and appreciate that we
25 have such a -- a well-reasoned process before us for

1 Siting Board - 14-F-0490 - 1-17-2018

2 consideration.

3 CHAIR RHODES: Thank you. Are there any
4 further second round of comments or questions? Seeing
5 none -- seeing none I will then proceed to call for a
6 vote. I'll share my own vote and then I'll -- we'll work
7 our way down the same row.

8 My vote is in favor of the recommendation
9 to approve the application of the Cassadaga Wind LLC, for
10 a Certificate of Environmental Compatibility and Public
11 Need, with conditions as described.

12 Mr. Alexander, how do you vote?

13 MR. ALEXANDER: Aye, in favor.

14 CHAIR RHODES: Mr. Gane, how do you vote?

15 MR. GANE: I'm in favor.

16 CHAIR RHODES: Mr. Kelling, how do you
17 vote?

18 MR. KELLING: I'm in favor of the project.

19 CHAIR RHODES: Dr. Lewis-Michl, how do you
20 vote?

21 MS. LEWIS-MICHL: Aye, in favor.

22 CHAIR RHODES: Mr. Ravaschiere, how do you
23 vote?

24 MR. RAVASCHIERE: Aye, in favor.

25 CHAIR RHODES: Mr. Williams, how do you

1 Siting Board - 14-F-0490 - 1-17-2018

2 vote?

3 MR. WILLIAMS: Aye, in favor.

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

8 MS. BURGESS: There's nothing further to
9 come before the board today.

10 CHAIR RHODES: So with that, I'll move very
11 quickly to adjourning, but I do want to end on once again,
12 a note of thanks and commendation for the high quality of
13 work that has gone into this. We are adjourned.

14 (Off the record)

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1 Siting Board - 14-F-0490 - 1-17-2018

2 STATE OF NEW YORK

3 I, JANET AXTON, do hereby certify that the foregoing was
4 reported by me, in the cause, at the time and place, as
5 stated in the caption hereto, at Page 1 hereof; that the
6 foregoing typewritten transcription consisting of pages 1
7 through 16, is a true record of all proceedings had at the
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 22nd day of January, 2018.

11

12

13 JANET AXTON, Reporter

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A	
absolutely 2:15	approve 15:9
access 7:4	approved 16:5
accommodate 10:12	April 4:9
Act 4:12	area 2:13 5:19
ad 2:12 6:2	Arkwright 1:7 4:22
add 10:22	Article 1:6 2:10 3:16 4:11 5:8 5:20 10:15
adding 9:8	associated 7:3
addition 6:9	assurance 9:13
additional 9:16	attain 7:9
Additionally 5:13	attend 5:21
address 7:18	attendance 5:22
addresses 9:2,6	Authority 1:22 3:8
adjacent 5:25	available 3:23 9:20
adjourned 16:13	aware 12:10
adjourning 16:11	AXTON 17:3,13
Administrative 3:18,19 4:3,7	Aye 15:13,21,24 16:3
adopted 7:21 16:5	
adopting 6:21,25	B
adoption 8:13	B 1:19
advance 14:19	balance 10:16
advancing 14:13	balanced 10:20
advisory 6:24 9:19	based 6:22
agency 4:25	Basil 2:25
agenda 2:7 3:10,12	basis 10:19
Agresta 3:20	bat 7:23 8:5,8
aimed 7:12	beginning 2:12
Albany 1:11	benefit 10:11
Alexander 1:20 2:25 11:13,14 15:12,13	Betsy 3:3
all-encompassing 13:15	bit 12:24
allow 14:18	board 1:1,10 2:1,4,9,12,14,24 3:1 4:1,2,10 5:1 6:1,2 7:1 8:1 9:1,18 10:1,2 11:1,11 12:1 13:1,5,9 14:1 15:1 16:1 16:9 17:1
allowed 5:13 8:21	Boutwell 8:20
allows 8:5	brief 10:3
alternate 2:25 3:3,5,6	brought 10:18
Amended 2:10	build 4:16 7:2
amendments 5:7	Burgess 3:9,11 6:14,17 16:7,8
amount 9:10	burning 7:13
Andrew 4:11	
annoyance 8:17	C
anticipates 7:7	call 2:4 15:5
appear 14:17	calls 10:8
application 1:5 2:9 3:14 5:4,5 5:7,12 15:9	capable 7:7
appreciate 10:17 14:24	caption 17:5
appreciation 2:16 11:9	case 1:4 3:14 4:19 6:4 10:15
approach 8:8 12:25 13:2	Cassadaga 1:5,7 2:13 3:14 4:15 5:5 7:2,6 8:3,21 12:11 15:9
appropriately 10:9,25	
approval 8:7	

Casutto 4:7,8
cause 17:4
certain 13:9
certainly 11:15
certificate 1:5 3:15 4:15 7:2
 9:9 15:10
certify 17:3
Chair 1:19 2:2,3,19,21,23 3:13
 9:21 11:22 12:4,15,18,21 14:9
 15:3,14,16,19,22,25 16:4,10
Chairman 4:2,9 9:17 11:14
change 9:4
changes 3:9,12 6:22
character 9:4 13:24
characteristics 13:5
characterize 10:5
Charlotte 1:7 4:22
Chautauqua 1:7 4:18
Cherry 1:7 4:22
clarification 9:8 12:23
clarifies 8:15
clarify 12:2
clean 7:15
clear 11:2
collection 7:4 9:5
come 16:6,9
commenced 4:19
commend 11:17 14:11,23
commendation 16:12
comment 5:6,13 6:17 12:3,16
comments 6:5,11 9:24,25 10:3,18
 11:11,13,23 12:19 14:11 15:4
Commission 2:3 7:11,16
communities 8:9 10:13 11:6 12:9
community 5:20,21,22 13:23,24
 13:25
company 5:2,10
compatibility 1:6 3:15 4:16
 15:10
compiled 6:4
compliant 5:8
complicated 11:3
comprehensive 5:12
concerns 9:3 10:13 13:12,18
concur 11:15
conditional 4:15 6:25
conditions 15:11
Conference 5:17
Conservation 1:20 3:2,20 4:5

consider 11:7 13:5,9,22
consideration 4:13 9:18 10:16
 11:19 14:16 15:2
considered 8:16 13:6,12,17,18
 13:25 14:5
considering 2:9 6:11 7:24
consist 6:8
consistent 10:23 14:2
consisting 7:3 17:6
construct 3:16
constructed 13:8
constructing 4:20
contact 5:11
contingency 9:15
continue 14:18
continued 5:14
Continuing 2:23
contributed 9:23
Corporation 1:21 3:6
Counsel 3:20
County 1:7 4:18
credit 9:10
Creek 1:7 4:22
critically 10:12
Cuomo 4:12 7:10
curtailed 8:6
curtailment 7:25

D

D.P.S 4:7
Dakin 3:17 4:3
day 17:10
days 5:23
daytime 8:13
DEC 6:23 8:7
DEC's 7:21 8:2
decision 6:14 7:21 10:21 11:20
 13:3
decommissioning 9:7,13,14
deemed 5:7
deficiency 9:14
department 1:2,20,21 3:2,4,18
 3:19,21,22 4:4,5 5:25
describe 12:24
described 15:11
designed 7:22 10:10,16
detailed 8:7
detailing 5:3
determined 13:21 14:4
develop 8:4

developed 6:12	extraordinary 14:3
developers 11:6	
development 1:21,22 3:5,8 8:7 14:20	<hr/> F <hr/>
differences 7:20	facilities 7:4,6
different 14:15	facility 4:17
diligent 2:15	faith 12:13
directed 6:18	farm 7:2
Director 3:21	fatalities 7:23
discussion 7:19	favor 6:25 11:8 15:8,13,15,18 15:21,24 16:3
discussions 10:20	feet 14:22
divide 12:9	fellow 9:25 11:11
doing 11:25	fifty 6:7
DPS 6:23 8:7	file 6:15
Dr 1:21 3:2,3 12:18 15:19	filed 5:5
draft 4:14 6:20,24 7:18,20 8:5 8:15 9:6,18 13:3	filing 4:23
duration 9:11	Finally 9:6
<hr/> E <hr/>	find 10:22
earlier 10:25	fire 5:25
earliest 5:14	first 2:8 4:10,20 10:7,15 11:25 14:12,12
Electric 2:4 3:22	floor 9:11,24
electricity 7:9,13	foregoing 17:3,6
elements 7:18	forest 8:20 9:2,4
eliminate 7:23	formal 5:4
eliminating 8:22	forth 12:8
Elizabeth 1:21 3:3	forty 10:5
emissions 8:15	forty-eight 7:3
Empire 1:21 3:5	forums 4:25
encourage 8:9	forward 12:7,11
energy 1:22 3:7,17 4:21 7:15,15 8:2 10:8,10,10 13:20 14:20	fossil 7:13
engaged 14:11,24	four 4:17 10:6
environment 2:5,5 3:20 12:8	frequency 8:16
environmental 1:6,20 3:2,15 4:5 4:16 13:10,12,16,18,25 15:10	fuels 7:13
equal 13:13	funds 9:14,16
established 7:10	further 9:13 14:8 15:4 16:6,8
estimate 9:11,13	future 11:3,7
EverPower 4:14,19	<hr/> G <hr/>
everybody 12:10	gain 8:5
evidentiary 5:24 6:5	gained 14:22
examination 14:14	Gane 2:17,18,20 12:2,3,6 15:14 15:15
examiner 4:8	Garlick 3:19 4:5 5:16 6:12 9:19
exceptions 6:16,23 8:3	Gas 3:22
exhibits 6:7	gathered 5:14
existence 9:12	General 3:20
existing 8:25	generated 7:9
extensive 6:6 11:18	Generation 2:5
	generator 7:5

<p>given 11:19 glad 14:21 goals 7:10 13:19 goes 12:7 going 11:8,12 12:11 good 2:2 3:11,25 10:19,20 12:6 12:13 14:13 Governor 4:11 7:10 grant 4:14 6:25 great 11:6 Greg 2:18,19 Gregory 2:17 Grid 7:6 growth 8:9 guidance 11:3 guy 9:3 guying 8:22</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hall 5:25 health 1:21 3:4 13:11,16 heard 10:4 hearing 5:17 6:6,9 17:8 hearings 5:24 6:5 held 5:16,19 Hello 2:22 help 11:6 helping 7:9 hereof 17:5 hereto 17:5 hereunto 17:9 high 16:12 highlight 7:17 Hill's 8:20 hoc 2:12 6:2 holder 9:9 holding 4:25 hope 12:10,11,13 hopefully 12:7 hosting 10:7 Howard 3:3,5 hundred 6:7,10 7:8 10:5</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>impact 13:23 impacts 13:10,11 Implementing 2:10 importance 11:16 important 7:11 10:4 11:6 imposing 8:14</p>	<p>include 7:14 included 5:4,23 including 4:25 7:4 indicated 4:20 indication 8:2 informative 5:12 infrasound 8:16 initial 9:10 input 4:6 6:23 11:18 inputs 10:19 inside 8:17 interconnect 7:5 interest 4:20 12:24,25 13:10,21 14:6 introduce 2:11 involvement 4:23 issue 12:25 issues 6:13 12:13 14:15 it's 10:16 13:8,24</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>JANET 17:3,13 January 1:11 5:16 17:10 job 12:7 John 1:19,22 2:2 3:6 Judge 3:18,19,24 4:3,7,8 5:16 6:12 9:19,21 July 5:24 justice 13:12,18,25</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>Karl 2:21 Kauffman 3:7 Kelling 2:21,22 12:15,16 15:16 15:18 Kevin 4:7 kind 10:7 13:14 know 11:17</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>landowners 12:8,12 law 1:6 3:18,19 4:3,7,11 13:8 laws 2:10 10:24 14:2 lead 7:5 14:14 Lecakes 3:17,24,25 4:3 9:22 13:2 left 11:12 let's 3:13 letter 9:10 letters 9:10</p>
--	---

Lewis-Michl 1:21 3:3 12:18,19 15:19,21	need 1:6 3:16 4:16 8:22 14:15 15:11
line 7:5 8:25	needed 14:17
lines 7:4 8:23 9:5,7	needs 10:8 12:10
little 12:23,24	net 8:5
live 10:14	new 1:2,6,11,22 3:7 4:12,18 5:18 6:17 7:9 10:11,13 17:2
LLC 1:5 3:15 4:15 12:11 15:9	Nicholas 3:19
local 4:24 5:20 8:11 10:13,24 14:2	Nick 4:4
located 4:17 5:18	noise 8:12,15
long 6:7	non-participants 12:12
long-term 8:14	note 2:8 16:12
looked 13:4,14	noted 4:9
looking 14:19	noteworthy 10:23
loss 7:25	November 4:19 5:8 6:15
Lou 1:20 2:25 11:13	number 5:6
Louis 2:24	numbers 10:4
low 8:15	numerous 6:7
M	O
marks 4:10	objective 11:5
matter 1:3 2:14 4:8 5:15 7:19 10:18 11:22 16:4	objectives 13:19
matters 7:14,16 11:4	observations 10:22
means 10:9,9	obtaining 9:9
meeting 2:4 4:24	offer 9:13
meets 4:10	Office 3:22
megawatts 7:8 10:6	once 16:11
member 2:11	open 9:23
members 2:12,24 4:2 6:2 9:17,25 11:11	opened 6:17
met 13:15,16	oper 7:22
mic 12:5	operational 7:22,24
Michael 3:21	operations 8:6
minimize 8:17	opportunity 5:21
mitigation 8:4 14:17	order 2:6 4:14 6:20,24 7:18,20 8:5,15 9:6,19 11:2,10,20 13:4 14:16
modification 8:24	ordinances 10:24
modifying 6:22	outcome 6:13
moment 11:24	outcomes 14:19
monopole 8:21 9:2	outreach 11:19
morning 2:2 3:11 4:2,13	outside 8:17
morning's 3:12	overhead 8:25
move 16:10	P
moving 2:7	Page 17:5
multiple 6:8	pages 6:7 17:6
myriad 14:19	part 4:12
N	participate 5:22
name 17:10	participation 5:23
National 7:6	parties 6:15 9:23

parts 6:8
party's 6:23
Paul 3:20
perceptions 8:19
period 6:17
permanent 2:24
phases 5:15
physical 8:18
physiological 8:18
place 8:23 17:4
plan 4:23
plans 5:2
please 3:24
point 10:25
points 7:18 11:2
policy 10:8 13:19 14:19
population 8:9
populations 8:5
portfolio 7:14
portions 4:17, 21
positive 10:23
possible 5:13 11:4
potential 7:25 8:12
potentially 14:12
power 4:12, 12
predictable 11:5
preliminary 5:2
presence 8:24
presented 3:17 11:16
preserve 8:8
presiding 4:8
proactive 8:4
Procedural 5:17
procedure 11:23
proceed 3:13 11:12 15:5
proceeding 14:14, 24
proceedings 5:10, 19, 22 7:11
 17:7
process 10:16 11:20 14:12, 12, 22
 14:25
produced 7:13
producing 7:7
program 8:4
project 1:7 3:17 4:21 5:19 7:5
 7:7 10:4, 23 11:16 13:21 15:18
projects 5:2 9:12 10:10, 11, 12
 11:3, 7 12:9
proposed 14:16
protect 8:8 10:12

protecting 12:7
Protections 8:11
provide 11:4
provided 6:20 10:19
provides 11:2
providing 5:6 11:5
provoked 7:19
public 1:2, 6, 6 2:3 3:16, 18, 21
 3:22 4:4, 16, 23, 25 5:6, 13, 17
 6:5, 9, 10, 17 7:11, 16 11:19
 12:23, 25 13:8, 10, 21 14:6
 15:10
purpose 10:17
pursuant 1:6 3:16
put 13:20 14:4

Q

quality 16:12
question 12:23 13:15
questions 3:23 9:20, 24 11:11, 13
 11:23 12:20 15:4
quickly 7:17 16:11

R

raised 6:13
Ravaschiere 1:21 3:4 12:21, 22
 14:7 15:22, 24
RD 7:21 8:24
really 2:15
reasonable 6:13 14:18
received 6:11 11:18
receiving 5:6
recognize 4:6
recognizes 8:24
recommendation 7:22 14:5 15:8
 16:5
recommendations 6:12, 16, 18, 21
 9:8
recommended 6:14 7:21 11:20
 13:3
record 6:4, 12 16:14 17:7
reducing 7:12
refinement 6:21
reformed 4:11
reforming 7:15
regimen 7:22
regions 7:12
Regulations 2:10 5:8
reiterating 14:10
relative 11:16, 17

released 6:14
relevant 7:20
reliance 7:12
relying 7:24
remained 5:11
remarks 11:15
renewable 7:8,10,14 8:2 10:8
 13:20 14:20
reported 17:4
Reporter 17:13
representing 2:23
required 5:20 8:23 9:16
requires 8:6 13:9
requiring 9:12
resale 9:15
Research 1:22 3:7
residence 8:17
residents 5:21 8:11
responsible 9:9
result 8:4 9:4
retirement 4:9
reviewed 6:11
Rhodes 1:19 2:2,3,19,21,23 3:13
 4:2 9:17,21 11:14,22 12:4,15
 12:18,21 14:9 15:3,14,16,19
 15:22,25 16:4,10
Richard 3:7
right 11:12 12:5 13:7
road 8:25 9:4
roads 7:4
robust 14:14,21
round 11:23 15:4
row 15:7
run 9:5
running 8:25

S

salvage 9:15
schedule 6:15
scoping 5:3
seal 9:2
seasoned 11:24
second 15:4
Secretary 3:9 6:14,17 16:6
see 14:13,16,21
seeing 15:4,5
seeking 14:3
seeks 8:8
Seggos 2:25
September 5:3

serious 2:15
seriousness 10:17
serve 9:11,15
served 4:8
service 1:2,6 2:3,14 3:18,21,23
 4:4 7:11,16 11:25 13:8
seven 5:23
share 15:6
short 12:3
short-time 8:14
signed 4:11
significance 11:17
similar 9:7
Sinclair 5:24
Sinclairville 5:18
sited 10:9,25
siting 1:1,10 2:1,5,9,24 3:1
 4:1,2,10 5:1 6:1,2 7:1 8:1
 9:1,17 10:1 11:1 12:1 13:1,5
 14:1 15:1 16:1 17:1
sitting 5:23
sixty-five 6:10
sorry 11:22
specific 10:22 11:4
specifically 6:18
spirit 10:24
stabilizing 8:22
staff 6:24 9:19,22
stages 5:14
stakeholders 4:25 5:11
standard 7:15 8:13,14 12:24,25
 13:6,10
standards 7:14 11:5 13:7,13,16
 13:17
state 1:2,6,21,22 3:5,7 4:24
 7:12 8:20 10:7,8 13:19 14:18
 17:2
state's 12:6 14:13
stated 17:5
statement 5:3,17
steel 8:21 9:2
steps 14:17
Stockton 1:7 4:22
strengthened 8:12
structural 8:19
structures 8:22
studies 5:3
submissions 10:18
submitted 5:2

subscribed 17:10	Vince 3:5
Subsidiary 4:15	Vincent 1:21 3:4
succeed 10:10	vision 7:16
supplements 5:7	vote 6:24,24 11:8 15:6,6,8,12 15:14,17,20,23 16:2
T	voting 11:24
take 10:21	W
taken 13:7 14:17	waivers 14:3
terms 14:20	want 12:4 16:11
thank 2:13 3:25 9:18,21,22 11:14,21 12:15,17 14:7 15:3 16:4	Warden 3:21
thanks 11:9 16:12	Water 3:22
thing 13:14,22	way 13:8 15:7
thought 12:2	we'll 15:6
thoughtful 2:15 10:20	we've 10:4
thousand 6:6	Wednesday 1:11
three 6:7 10:6	weighed 7:25
time 2:8 4:10 6:16 9:20 11:25 12:17 17:4	welcome 11:2
today 4:9 6:3 10:21 11:21 16:6 16:9	well-reasoned 14:25
towns 1:7 4:17,21 10:6	went 11:9
transcript 6:6,10	WHEREOF 17:9
transcription 17:6	Williams 1:22 3:6 14:9,10 15:25 16:3
transmission 7:6	willing 8:3
true 17:7	wind 1:5,7 3:15,17 4:15,21 5:5 7:2,2,6 8:3,21 15:9
try 5:11 7:23	wind- 7:8
turbines 7:3 10:5,7	wind-generating 4:17
turn 9:25 12:4	Windmill 12:9
twenty-six 7:8 10:6	wires 8:23 9:3
two 2:12 6:6 10:22	WITNESS 17:9
types 14:15	work 8:3 11:9,18 12:11 15:6 16:13
typewritten 17:6	worthy 2:16
U	X
uncertainties 7:24	Y
underground 8:23	Yeah 12:6
underneath 14:22	York 1:2,6,11,22 3:7 4:12,18 5:18 7:9 17:2
unwanted 8:12	Yorkers 10:11,13
updates 9:12	Z
use 8:21 9:3	Zemsky 3:5
V	Zucker 3:4
value 9:15	0
venue 5:25	1
viability 8:10	
vibrations 8:19	
village 5:18	
villages 5:25	

1 17:5, 6
1-17-2018 1:1 2:1 3:1 4:1 5:1
 6:1 7:1 8:1 9:1 10:1 11:1
 12:1 13:1 14:1 15:1 16:1 17:1
10 1:6 2:10 3:16 4:11 5:8,20
 10:15
14-F-0490 1:1,4 2:1 3:1,14 4:1
 5:1 6:1 7:1 8:1 9:1 10:1 11:1
 12:1 13:1 14:1 15:1 16:1 17:1
16 17:7
17 1:11

2

2011 4:12
2014 4:20
2015 5:3
2016 5:5, 9
2017 4:9 5:16,24 6:15
2018 1:11 17:10
22nd 17:10

3

4

5

6

7

8

9
