

Siting Board - 15-F-0327 - December 10, 2018

NEW YORK STATE BOARD ON ELECTRIC  
GENERATION SITING AND THE  
ENVIRONMENT

IN THE MATTER OF

Case 15-F-0327 - Application of Galloo Island Wind LLC for  
a Certificate of Environmental Compatibility and Public  
Need Pursuant to Article 10 to Construct a Wind Energy  
Project.

SITING BOARD  
Monday, December 10, 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  
Joan Treadwell-Woods, Ad Hoc Member

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2 (On the record 2:00 p.m.)

3 CHAIRMAN RHODES: I'd like to call this  
4 meeting on the board on Electric Generation Siting and the  
5 Environment order.

6 Before moving to the agenda, I would like  
7 to introduce each member of the board beginning with the  
8 ad hoc member Ms. Joan Treadwell-Woods who is  
9 participating via video conference from the Office of the  
10 Department of Environmental Conservation located in the  
11 Dulles State Office Building in Watertown. Thank you, Ms.  
12 Treadwell-Woods for your service to the Board in this  
13 matter.

14 SECRETARY BURGESS: Excuse me, Chair. I  
15 don't think your microphone's on.

16 CHAIRMAN RHODES: It's -- it's green.

17 SECRETARY BURGESS: Is it on? I don't  
18 think we're picking --.

19 MS. TREADWELL-WOODS: I hear you.

20 CHAIRMAN RHODES: Do I need to repeat?

21 THE COURT REPORTER: No, go ahead.

22 CHAIRMAN RHODES: Am I better now?

23 THE COURT REPORTER: A little better, thank  
24 you.

25 CHAIRMAN RHODES: Thank you. And

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2   representing the permanent members of the siting board,  
3   Louis Alexander, alternate of Basil -- Basil Seggos of the  
4   Department of Environmental Conservation, Dr. Elizabeth  
5   Lewis-Michael, alternate of Doctor Howard Zucker,  
6   Department of Health, Vince Ravaschiere alternate of  
7   Howard Zemsky, Empire State Development Corporation who is  
8   participating by -- via video conference from the  
9   Department of Public Service's New York City office, John  
10   Williams who is alternate of Richard Kaufman, New York  
11   State Energy Research and Development Authority. And I'm  
12   John Rhodes of the Public Service Commission.

13                   Secretary Burgess, are there any changes to  
14   the agenda?

15                   SECRETARY BURGESS: There are no changes to  
16   the agenda today.

17                   CHAIRMAN RHODES: With that, let us proceed  
18   to the agenda. Case 15-F-0327 request for interlocutory  
19   review filed by Cara and Anthony Dibnah of the examiner's  
20   ruling on party status and intervenor funding --  
21   intervenor funding in the application of Galloo Island  
22   Wind, L.L.C. for a certificate of environmental  
23   compatibility and public need pursuant to Article 10 to  
24   construct a wind energy project, presented by John Sipos,  
25   acting general counsel.

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2 Brian Ossias, assistant counsel is available for  
3 questions. John, please begin.

4 MR. SIPOS: Thank you. Good afternoon,  
5 Chair Rhodes, siting board members and alternate  
6 designees. The matter before this siting board today  
7 concerns a interlocutory appeal by a party in the Galloo  
8 Island Article 10 proceeding from an earlier ruling by the  
9 examiners denying intervenor funding to that party. The  
10 focus on the -- the focus of the proposed draft order  
11 before you today in my briefing will focus on the  
12 procedural question and the procedural posture of whether  
13 the siting board should consider the appeal at this time.

14 And by way of background, in this case the  
15 hearing examiners denied Cara and Anthony Dibnah's request  
16 for intervenor funding to participate in this stage of the  
17 proceeding. Interlocutory review of a ruling will be  
18 available and may be sought but only in extraordinary  
19 circumstances, and that is pursuant to 16 N.Y.C.R.R.  
20 Section 4.7. Ultimately, the determination of whether  
21 extraordinary circumstances exists is fact specific and is  
22 done on a case by case basis.

23 Here the Dibnah's have been permitted to  
24 participate as a party but have not been awarded  
25 intervenor funding to cover expenses that they may incur.

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2    The draft order before the siting board today finds that  
3    the interlocutory appeal does not demonstrate  
4    extraordinary circumstances as required by the  
5    aforementioned Section 4.7. Specifically and contrary to  
6    the Dibnah's assertion, there is ample opportunity for  
7    meaningful participation in the application process even  
8    without intervenor funding.

9           As noted, the Dibnah's were granted party  
10   status meaning that they can participate in the same  
11   manner as they have previously done. For example, as  
12   noted, they retained access to the public information  
13   coordinator's office, can engage in discovery, submit  
14   exhibits and otherwise engage in the proceeding. Should  
15   the Dibnah's ultimately believe that such measures and  
16   opportunities are inadequate, nothing precludes them from  
17   retaining counsel at their own cost to proceed and  
18   represent -- to proceed in the proceeding and represent  
19   their interests.

20           This concludes this summary of our  
21   presentation. And Brian and I are available should the  
22   board have any questions.

23           CHAIRMAN RHODES: Thank you, John and  
24   Brian. I find this to be a straightforward matter based  
25   on the laws described and the facts as presented. So it's

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2    very clear and helpful to me. Thank you. Are there any  
3    comments or questions from my fellow board members? Shall  
4    I begin with you, Louis?

5           MR. ALEXANDER: I have no questions.

6           DR. LEWIS-MICHAEL: I have no questions.

7           MR. WILLIAMS: No questions.

8           CHAIRMAN RHODES: Vince, in New York?

9           MR. RAVASCHIERE: No questions.

10          CHAIRMAN RHODES: All right. Ms. Joan  
11    Treadwell-Woods?

12          MS. TREADWELL-WOODS: Comments -- I do have  
13    some comments.

14          CHAIRMAN RHODES: Please.

15          MS. TREADWELL-WOODS: Thank you for your  
16    earlier words of introduction, Mr. Chairman. They were  
17    very kind. I'd also like to thank some other individuals  
18    who have helped me with getting on board with this process  
19    in -- in joining the siting board. Kate Burgess and her  
20    staff have been extremely helpful. And also the three  
21    administrative law judges I would like to extend my thanks  
22    to them even though I know they're not present. But  
23    Ashley Moreno, Jim Costello and Mike Caruso have extended  
24    themselves to ensure that I fully understand and  
25    participate.

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2 CHAIRMAN RHODES: Do you want to just -- as  
3 a precautionary note, Jim and Ashley are here.

4 MS. TREADWELL-WOODS: Oh, they are, okay.

5 CHAIRMAN RHODES: Before you -- if you'd  
6 like to embarrass them please go ahead, but they're here.

7 MS. TREADWELL-WOODS: Okay. Okay. Well,  
8 that's better. I'm delighted that they're there. But I  
9 just wanted to acknowledge their -- their helpful  
10 assistance. I do have some brief comments and I -- if you  
11 can see my pages it looks like I've brought a term paper,  
12 but I assure you I haven't. It just has very large print  
13 so I can see it. So I'll be pretty brief.

14 But since my appointment in 2016 I have  
15 attended sessions with the three administrative law judges  
16 regarding the application of Galloo Island Wind. Today  
17 this is my quick involvement in a meeting of the New York  
18 State Board on Electric Generation Siting and the  
19 Environment. It is my pleasure to meet with you all.

20 I do have concerns about the proposed  
21 order, and I'd like you to understand those concerns.  
22 These concerns are addressing the exclusionary approaches  
23 being used to limit the scope of those receiving  
24 intervenor funds. I would like to briefly describe these  
25 concerns so that you have a better understanding of my

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2 position.

3 On page six of the proposed order, there's  
4 a sentence there that begins with, given the legislature's  
5 specific inclusion of a definition of local parties, and  
6 it -- and then it goes on for the rest of the sentence --  
7 I disagree with that -- that statement. And I cannot  
8 support it. I find it hard to believe that the intents of  
9 the legislature or the authors of P.S.L. Article 10 were  
10 to be so exclusionary.

11 If their intents were indeed an  
12 exclusionary, then shame on them and the consequential  
13 harm to northern New York and to all of New York State.  
14 After much reading, I see no discreet specific place in  
15 the statutes that prohibits intervenor funds from being  
16 distributed to all local parties. Although there are some  
17 definitions and there are what I call connections of dots,  
18 which can lead to an interpretation of exclusion, I  
19 believe other interpretations are possible.

20 I also contend that the Dibnah's situation  
21 being what we in northern New York call seasonal  
22 residents, could be termed an extraordinary circumstance.  
23 And let me further explain. Jefferson County, which  
24 includes -- also includes the Town of Hounsfield, has a  
25 significant percentage of residents whom we call seasonal.



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2 And our local economies heavily depend on them.

3 Many seasonals are preparing for their  
4 eventual retirement in Northern New York. These seasonal  
5 people represent a huge portion of the town and county tax  
6 base and they spend considerable monies in addition. Some  
7 start new businesses and they support our local  
8 communities in many other ways with their volunteerism.  
9 These seasonal folks often are owners of undeveloped  
10 properties or properties needing improvement.

11 We in Jefferson County welcome these  
12 seasonal residents, and we want them here. We want more  
13 to come here. We do not want to give them reasons to  
14 leave. We do not want to chase them away. Our towns, our  
15 county and our local economies heavily depend on them.  
16 These seasonal residents are very much impacted by  
17 exclusionary practices to limit the scope of eligible  
18 applicants for intervenor funds.

19 Without access to such funds, these people  
20 are at high risk of being able to defend their properties  
21 and property values, especially so in the Dibnah's  
22 situation. They were refused funds in August of 2016  
23 during the preapplication phase, and now the  
24 recommendation is that they again be refused. This is  
25 really a travesty especially when their property, which

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2 shares the island of Galloo with Galloo Island Wind is on  
3 the National Register of Historic Places.

4           I'm going to conclude now. These are --  
5 these are my views and my input into a process that it  
6 appears to be exclusionary and far from being equitable.  
7 I am very concerned that the objectives of having a whole  
8 process and a complete record for the siting board to  
9 review are not being met. And I thank you very much for  
10 listening to me.

11           CHAIRMAN RHODES: Thank you very much for  
12 these thoughtful comments. John, Brian, are you in a  
13 position to respond?

14           MR. SIPOS: Given the procedural posture  
15 that this appeal is in, given that it is an interlocutory  
16 appeal, further discussion about the hearing examiner's  
17 application as well as the underlying statute I -- I would  
18 suggest at this time would be not appropriate by a counsel  
19 as in this case the Dibnah's did present an appeal. That  
20 appeal is measured against Section 4.7 and the  
21 extraordinary circumstances requirement. And the proposed  
22 draft order that is before your Honors today addresses  
23 that procedural context.

24           The -- the typical American rule in -- in --  
25 - in jurisprudence is for their not to be interlocutory

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2   appeals as that can lead to piecemeal litigation and every  
3   -- one consequence is that every order of the -- a lower  
4   tribunal or a trial court could then -- can then be  
5   appealed as soon as it is made. The typical rule is for  
6   there to be an appeal at the end of the entire proceeding.  
7   And in this situation, in this circumstance, the draft  
8   order concludes that the Dibnah's did not satisfy the  
9   extraordinary circumstance stance.

10                   CHAIRMAN RHODES: Thank you very much. May  
11   I just ask a question?

12                   It's my understanding that -- it's my  
13   understanding that multiple parties have, in fact,  
14   received intervenor funding in this case. And that they  
15   have put it to -- I'll use a non-legal term, good use, in  
16   terms of articulately and eloquently making their views  
17   known and developing, supporting support for those views.  
18   Is it the case to your understanding that interview --  
19   intervenor funding has flowed in this case and has been  
20   used by at least some -- and again I'll use the non-legal  
21   word, active intervenors?

22                   MR. SIPOS: That is correct, Chair.

23                   CHAIRMAN RHODES: Thank you. Are there any  
24   further comments or discussion that we need to have?

25                   Seeing none, I will proceed to call for a

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2    vote with the facts and interpretation of laws presented  
3    to us and acknowledging that this is against the  
4    background of an active -- a case with active intervenors.  
5    My vote will be in favor of the recommendation to deny the  
6    request for interlocutory review as filed by Anthony and  
7    Cara Dibnah as described. I'll now proceed to ask my  
8    board colleagues. Mr. Alexander, how do you vote?

9                   MR. ALEXANDER: My vote is also in favor.

10                   CHAIRMAN RHODES: Dr. Lewis-Michael?

11                   DR. LEWIS-MICHAEL: My also is to approve  
12    the order.

13                   CHAIRMAN RHODES: Vince -- Mr. Ravaschiere?

14                   MR. RAVASCHIERE: In favor as well.

15                   CHAIRMAN RHODES: Mr. Williams?

16                   MR. WILLIAMS: In favor.

17                   CHAIRMAN RHODES: Ms. Treadwell-Woods?

18                   MS. TREADWELL-WOODS: Sorry, I was on mute.  
19    Not in favor.

20                   CHAIRMAN RHODES: There are four votes in  
21    favor. The matter is approved and the recommendation is  
22    adopted. Secretary Burgess, is there anything further to  
23    come before us today?

24                   SECRETARY BURGESS: There's nothing further  
25    to come before you today.

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2 MR. ALEXANDER: Mr. Chairman --

3 CHAIRMAN RHODES: Please.

4 MR. ALEXANDER: -- if -- if I may just note  
5 for clarification for the record, I know that the two  
6 D.P.S. A.L.J.s were referenced as being in attendance. I  
7 also wanted to note for the record that the D.E.C. A.L.J.  
8 assigned to this matter is also in attendance today.

9 CHAIRMAN RHODES: That's a fantastic  
10 clarification. Thank you. So with that before we  
11 adjourn, may I -- may I thank the board members, and  
12 especially thank Joan Treadwell-Woods for her -- for her  
13 care to this matter. We are adjourned. Thank you.

14 (Off the record 2:15 p.m.)

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3       STATE OF NEW YORK

4       I, CYNTHIA TORNATORE, do hereby certify that the  
5       foregoing was reported by me, in the cause, at the  
6       time and place, as stated in the caption hereto, at  
7       Page 1 hereof; that the foregoing typewritten  
8       transcription consisting of pages 1 through 13, is a  
9       true record of all proceedings had at the hearing.

10                           IN WITNESS WHEREOF, I have hereunto  
11       subscribed my name, this the 17th day of December,  
12       2018.

13

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15       CYNTHIA TORNATORE, Reporter

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