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Case 18-F-0262, High Bridge Wind Project  
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July 13, 2020

John B. Rhodes Siting Board Chair  
CEO - NYS Department of Public Service  
Empire State Plaza Building 3  
Albany, NY 12223

RE: Open Letter to Chairman John Rhodes, NYS Siting Board Case 18-F-0262 (High Bridge (Calpine) Wind Project) regarding NYS deeming impact of the project on property value is not relevant to Article 10 (the public interest).

Chairman Rhodes,

When I agreed to join the NYS Siting Board for the High Bridge (Calpine) Wind Project, I understood my responsibility to be one in which I would, among other things, use my best efforts to ensure the public interest was protected during the siting of the High Bridge Wind project. Section 168 of Article 10 specifically charged me and other members of the Siting Board to ensure, "*the construction and operation of the facility will serve the public interest.*"

Although the interpretation of the term "*public interest*," seems commonsensical, I felt it was important to gain an understanding of how it is viewed by society. After researching the topic, I discovered it is generally meant to be about what matters to everyone in society. It is about the common good, the general welfare, security, and well-being of members of the community we serve. Further I also learned the term is contextual and should not be strictly defined. The Australian Law Reform Commission went so far as to expressly promulgate, "*'Public Interest' should not be defined.*" This makes sense, as strictly defining the term may cause it to lose context specific to a community impacted by a project's construction and operation. The business dictionary describes public interest as: "*Welfare of the general public (in contrast to the selfish interest of a person, group, or firm) in which the whole society has a stake and which warrants recognition, promotion, and protection by the government and its agencies. Despite the vagueness of the term, public interest is claimed generally by governments in matters of state secrecy and confidentiality. It is approximated by comparing expected gains and potential costs or losses associated with a decision, policy, program, or project.*" (source: <http://www.businessdictionary.com/definition/public-interest.html>).

Economist Lok Sang Ho in his publication "Public Policy and the Public Interest", also defines the public interest as the "ex ante welfare of the representative individual," in the sense that the change is not evaluated after the fact but assessed before the fact without knowing whether one would actually benefit or suffer from it. U.S. Supreme Court Justice, Louis Brandeis, even incorporated advocacy for the interests of the general public into his legal practice prior to joining the Supreme Court. In a 1905 speech, he decried, "able lawyers have to a large extent allowed themselves to become adjuncts of great corporations and have neglected their obligation to use their powers for the protection of the people (Reference: Scott L. Cummings, The Politics of Pro Bono, 52 UCLA L. Rev. 1,13-14(2004)). And later a movement occurred in the 1960s and 70s when a large number of American law school graduates began to seek "relevance" in their work by defining themselves as public

interest lawyers, distinct from the "corporate adjuncts" referred to by Brandeis (Reference: Joel F. Handler, Ellen Jane Hollingsworth & Howard S. Erlanger, Lawyers and the Pursuit of Legal Rights 24-39 (1978)).

Prior to our meeting on June 30, 2020, I listened to a meeting held by the Siting Board of the High River Energy project, Case 17-F-0597 where the five regular (non-community) members of our Siting Board also serve as the five regular members of the High River Energy project. In the High River Energy project, the five regular members voted on a similar issue as we were later presented. The issue was whether evidence of the impact of property values (value of the property owned by the community members who are being impacted by the construction and operation of the project) were relevant to Article 10. To my surprise, all five regular (non-community) members voted that property values were *not* relevant. Expectedly, the two ad hoc (community) members dissented, voting that property values are relevant to Article 10 (source: <https://youtube/Avq-xlzG23I>).

During our subsequent meeting where the five regular members of the High River Energy project also serve on the Siting Board for the High Bridge (Calpine) Wind project, we were to discuss and vote on a similar issue. When I had an opportunity to speak, I asked the Siting Board to define public interest. The question was answered by NYS Counsel, Robert Rosenthal, where he provided the following definition, "*It is subsumed within all of the other, umm, factors that the siting board must consider under Section 168, that that is basically, those factors are built into what the public interest is,*" with no comment from the regular (non-community) board members (source: <https://youtube/Avq-xlzG23I>). **This definition is misguided, irresponsible, illogical, and seems to be borne out of a need for convenience and expediency.** Section 168 of Article 10 maintains a provision that is separate, distinct and mutually exclusive from "those (other) factors." To repeat, that provision states: "***the construction and operation of the facility will serve the public interest.***" The Siting Board is required to consider all of the items in Section 168 including, "*the construction and operation of the facility will serve the public interest.*" This means if the project meets all the other requirements of Section 168 it may still not be in the public interest. It means it may still not be in the common good, the general welfare, security, and well-being of members of the community we serve.

**The project's impact on the value of property is inherent in the term public interest. As public interest is a key tenet of Article 10, impact on property value has always been a determinative factor in approving the project and is not a new requirement.**

The decision by NYS to accept an ambiguous definition of public interest is manipulative, ill-conceived and puts the common good and general welfare of the communities the Siting Board is charged with protecting in harm's way. This was proven by the Siting Board's subsequent vote on the High Bridge project over whether evidence of the impact on property value was relevant. Unconscionably, the Siting Board voted five regular (non-community) members against two ad hoc (community) members, that it was **not** relevant and was to **not** be considered in administering the provisions of Article 10 including ensuring the construction and operation of the project is in the public interest (source: <https://youtube/AvqxIzG23I>).

In most cases the value of property represents community members' life investments, the collateral behind their mortgages, their retirements, the source of a child's tuition funding, etc. This is not in their interest? In what world are we living? Property values are absolutely relevant to Article 10 and must be considered as part of the overall calculus related to determining if the project is in the public interest. The Siting Board deciding to develop and

accept an incomplete definition of public interest and to willfully misinterpret Section 168 of Article 10 is evidence it has no intention of protecting the welfare of the communities impacted neither by this project nor to fulfill its true responsibility of protecting the public interest. It has no intention of doing its job.

NYS's desire to become expedient at approving renewable energy projects has also caused it to become callous and reckless. The Siting Board has failed to heed its higher calling of launching this, and similar projects, in a manner that would help NYS build back better and smarter, while also protecting the general welfare of the impacted communities (the public interest). It can and should do both.

NYS representatives should protect the people they represent, its citizenry, the public. They should do their job, do the hard, inconvenient work to ensure the public interest's served by the construction and operation of this and similar projects. Further, ad hoc members volunteering their time to represent communities impacted by these projects are diminished and ignored. This is facilitated by the manner in which the Siting Board is structured and administered. Prior to this vote, there have been no meetings (virtual or otherwise) where board members came together as a group to discuss this project. Also, it is not unreasonable to expect a meeting to convene among all members for the purpose of introducing a topic that will later be voted upon, and then a follow-up meeting to discuss the topic at length after members had an opportunity to research the matter, and then, in a third meeting, a vote. This type of process typically occurs when boards have regularly scheduled meetings among all its members. NYS Siting Board Case 18-F-0262 does not have regularly scheduled meetings that include ad hoc members. In fact, there has only been one meeting to date that brought the regular and ad hoc members of the Siting Board together. This meeting occurred when the Siting Board was asked to vote on whether evidence of the impact on property value was relevant to Article 10 (the public interest). The topic was introduced, members had an opportunity to comment and then a vote occurred. How irresponsible. Community participation in the form of ad hoc membership has proven disingenuous and to lack true merit. It seems to be for the sole purpose of offering the appearance that NYS is concerned for the public's welfare.

With great disappointment, I hereby forfeit my role as an Ad Hoc Member of Siting Board 18-F-A262 in protest to its malfeasance, its structure, and its administration that has facilitated a process in which the public interest has become secondary.

Sincerely,  
Art Christensen

Cc: Richard Kaufmann, Regular Member of NYS Siting Board 18-F-0262, and Chair of NYS Energy Research and Development Authority

Eric Getler, Regular Member of NYS Siting Board 18-F-0262, and President & CEO-designate of NYS Empire State Development

Howard Zucker, MD, JD, Regular Member of NYS Siting Board 18-F-0262, Commissioner of NYS Department of Health

Basil Seggos, Regular Member, Commissioner of NYS Department of Environmental Conservation

Jason Fleming, Ad Hoc Member of NYS Siting Board 18-F-0262

Michele Phillips, Secretary of NYS Siting Board 18-F-A262 Andrew Cuomo, designator of ad hoc appointment, Governor of NYS