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2-10-2020 - Bluestone Wind, LLC - 19-E-0121
CASE 19-E-0121 Petition of Bluestone Wind, LLC for
an Original Certificate of Public Convenience and
Necessity and for an Order Granting Lightened
Regulation.

PROCEDURAL CONFERENCE

DATE: February 10, 2020

LOCATION: Third Floor Hearing Room
Agency Building Three,
Empire State Plaza
Albany, New York

ALJ SEAN MULLANY, DPS

1 2-10-2020 - Bluestone Wind, LLC - 19-E-0121

2 (On the record 1:09 p.m.)

3 A.L.J. MULLANY: I'm going to call the
4 case to order. This is Case 19-E-0121, Petition of
5 Bluestone Wind, L.L.C. for an original certificate of
6 public convenience and necessity for an order
7 granting -- and for an order granting lightened
8 regulations. This procedural conference is being
9 issued pursuant to a notice that was issued on
10 January 21, 2020. The first thing I'd like to do is
11 take appearances for the record please starting with
12 the company to my left.

13 MR. WILSON: Steven Wilson, the Law
14 Firm of Young Sommer for Bluestone Wind, L.L.C.

15 MR. STANTON: Chris Stanton,
16 development manager for Bluestone Wind.

17 A.L.J. MULLANY: Is that S-T-A-N-T-O-
18 N, Mr. Stanton?

19 MR. STANTON: Yes, sir.

20 A.L.J. MULLANY: Thank you, sir.

21 MR. WHITLOCK: William Whitlock, vice
22 president of development, Calpine.

23 A.L.J. MULLANY: Thank you, sir.

24 MR. WISNIEWSKI: Benjamin Wisniewski
25 with the Law Firm of The Zoghlin Group, P.L.L.C. We

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2 represent an intervenor party, the Broome County
3 Concerned Residents.

4 A.L.J. MULLANY: And I understand we
5 have at least one person who's participating in
6 today's telephone conference by telephone. Ms.
7 Sacco, could you please make an appearance for the
8 record?

9 MS. SACCO: Yes. This is Attorney
10 Cheryl Sacco, C-H-E-R-Y-L. Sacco is S-A-C-C-O. I'm
11 a partner with Coughlin and Gerhart appearing on
12 behalf of the Town of Windsor.

13 A.L.J. MULLANY: Okay. And we also
14 have another individual, Anne Lawrence who is a
15 member of Broome County Concerned Residents who is
16 listening in on the phone. Ms. Lawrence? I --.

17 MS. LAWRENCE: Yes.

18 A.L.J. MULLANY: I note that you
19 requested party status quite some time ago in this
20 case.

21 MS. LAWRENCE: Correct.

22 A.L.J. MULLANY: I'm just pulling out
23 my paperwork here. Okay. So you filed a request for
24 party status back on February 25th at 2019, and the
25 rationale that you've cited is we have started a

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2 coalition, Broome County Concerned Residents, and we
3 want to play an active role in developing the record
4 creating a win-win situation for all stakeholders
5 involved, such as myself, living less than 2,000 feet
6 away as well as residents down the valley and beyond.

7 Our home is right in the middle of the
8 proposed project area, and we are concerned with
9 health and safety issues as well as the environmental
10 implications of this application for our natural
11 environment and properties.

12 Now -- and I'm -- I guess my question
13 is directed first and foremost to Mr. Wisniewski as
14 counsel for B.C.C.R. As you -- you and I both know,
15 I presided over the Article 10 proceeding with
16 respect to Bluestone Wind, and B.C.C.R. was an active
17 party in that case. The rules allow me to make a
18 grant of party status under certain circumstances.
19 And so I draw your attention to Rule 4.3 which says
20 -- and this is Rule 4.3(c) sub 1, and it says any
21 person may ask the presiding officer for permission
22 to intervene.

23 Permission will be granted if the
24 intervention is likely to contribute to the
25 development of the complete record or is otherwise

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2 fair and in the public interest. So based on the
3 only requests in the docket for B.C.C.R., which is
4 Ms. Lawrence's on behalf of B.C.C.R., that request
5 does not contain enough information for me to make a
6 finding that a grant of party status to B.C.C.R.
7 would be likely to contribute to the development of
8 the complete record or otherwise be fair and in the
9 public interest. So I just want to flag that for
10 you.

11 I don't know if you're prepared to
12 speak to that and offer information that would help
13 inform a decision on that particular standard that I
14 need to apply.

15 MR. WISNIEWSKI: I am, your Honor,
16 prepared to speak specifically to whether or not
17 B.C.C.R. should be considered as a party pursuant to
18 Rule 4.3 subsection C subsection 1. If, your Honor
19 -- I am not able to provide sufficient detail for you
20 to make a determination today, I'd request an
21 opportunity to file an additional written request
22 within so many days of this conference after speaking
23 more with my client.

24 A.L.J. MULLANY: Well, I understand
25 your request. But let's hear what you have to say

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2 today and I'll weigh that in evaluating your request
3 for further opportunity to make a showing.

4 MR. WISNIEWSKI: All right. Your
5 Honor, so with regard to B.C.C.R.'s desire to
6 contribute to the record, when B.C.C.R. initially
7 filed this request, obviously, it raised a lot of
8 issues that would normally be litigated in the
9 Article 10 proceeding and not in this proceeding.
10 And therefore B.C.C. -- and since that time, B.C.C.R.
11 has retained counsel to have a better understanding
12 of this process and understands that there really
13 won't be many, if any, opportunities to litigate and
14 flesh out the record on the issues that you just read
15 about.

16 Therefore, if B.C.C.R. is granted
17 party status, it intends to limit its contribution to
18 the record to issues related to both the financial
19 viability of Calpine and its ownership structure as
20 both of these issues are expressly committed for
21 review under Article 68 of the Public Service Law and
22 have also been approved for litigation in this type
23 of proceeding under the siting board's decision in
24 Cassadaga Wind.

25 A.L.J. MULLANY: So you've explained

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2 to me in brief the scope of the proceeding. But you
3 -- you have nothing to offer as to how B.C.C.R. would
4 flesh out the record on those issues?

5 MR. WISNIEWSKI: Your Honor, if -- I
6 actually am prepared to speak to specific issues and
7 concerns B.C.C.R. has. I was going to present those
8 as part of a request for discovery in this
9 proceeding, but I can do it now if you believe that
10 also would help --.

11 A.L.J. MULLANY: Let's proceed to it
12 because it's a threshold question.

13 MR. WISNIEWSKI: Okay.

14 A.L.J. MULLANY: And if we're going to
15 discuss it now, that will help shed light on further
16 discussion down the road on potential discovery.

17 MR. WISNIEWSKI: I can do that, your
18 Honor. Would you like me first to speak a bit more
19 about why it might be in the public interest for
20 B.C.C.R.?

21 A.L.J. MULLANY: Well, my first
22 concern, public interest is a very squishy concept.

23 MR. WISNIEWSKI: Right.

24 A.L.J. MULLANY: And I'm very
25 concerned about how B.C.C.R. is going to contribute

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1
2 to this particular record in light of the narrow --
3 relatively narrow scope of a Section 68 proceeding.
4 And you mentioned financial viability, but I'm -- I'm
5 curious to know how is it that you might seek to add
6 to the record with respect to the financial viability
7 of the applicant?

8 MR. WISNIEWSKI: Your Honor, as
9 established in the manner of Cassadaga Wind, the
10 C.P.C.N. proceeding associated with that case, in --
11 in that case the -- the judge did allow discovery on
12 precisely the issues of financial viability and
13 ownership structure. And here we believe we have an
14 analogous proceeding where there's a petition that
15 makes numerous conclusory statements but doesn't
16 have, in our opinion, sufficient evidence to prove
17 those conclusory statements.

18 So, you know, keeping in mind that
19 there are two primary issues that we believe we are
20 permitted to litigate, the first being financial
21 viability and related -- relatedly the ability to
22 construct and operate the project and the second
23 being ownership structure, our review of the petition
24 has identified a few statements that we believe do
25 not pass scrutiny and are not supported by the

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2 evidence in the record.

3 So to begin I'll just, you know, read
4 what those statements are from the petition itself
5 which has already been filed in this case. First off
6 on page 14 of the petition, Bluestone states that
7 consistent with the discussion of Calpine and its
8 parent companies above, the owners of the facility
9 are financially viable and the facility itself is
10 economically feasible. There's really no clear tie
11 between this statement and the information above, in
12 our opinion.

13 Second, once the project receives the
14 permits and approvals, the financing needed to
15 construct the facility will be obtained through
16 balance sheet, construction loans or other financing
17 mechanisms. B.C.C.R. believes that statement is very
18 open ended and lacks any detail whatsoever.

19 Third, the petition states, the
20 facility will realize income from the sale of energy
21 pursuant to a long term off take agreement. And then
22 in brackets with an unaffiliated third party question
23 mark, close brackets, and the sale of green
24 attributes.

25 Again, although this is an

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2 aspirational statement and could explain in concept
3 how this project is financially viable. We've taken
4 a -- a closer look at what's available in the public
5 domain that might conflict with those factual
6 statements and have identified a series of factual
7 issues that we would intend to engage in discovery on
8 in order to address the issue of whether or not this
9 project actually is financially viable, and whether
10 or not the ownership structure has been adequately
11 explained on the record.

12 A.L.J. MULLANY: So you -- you say you
13 developed a series of questions related to these
14 concerns?

15 MR. WISNIEWSKI: Yes, your Honor.

16 A.L.J. MULLANY: Do you have anything
17 that's you'd be prepared to share with the company
18 today?

19 MR. WISNIEWSKI: Your Honor, I can
20 read through what I have in my notes. We do not have
21 formal discovery demands. I can turn them around
22 relatively quickly if needed.

23 A.L.J. MULLANY: Okay.

24 MR. WISNIEWSKI: So I'll attempt to
25 elucidate a bit more about what my client's concerns

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2 are and types -- and there will be some questions in
3 here that are similar to what ultimately we would
4 serve on Calpine should we be granted the opportunity
5 for discovery here.

6 So first and foremost, in Calpine's
7 application it states that, quote, road construction
8 and tree clearing must commence by November 1st, 2019
9 so that the projects can be completed and commence
10 commercial operation by December 31st, 2020. If the
11 project does not enter a commercial operation by the
12 state it will lose its production tax credit thereby
13 jeopardizing its economic viability, end quote.

14 Now obviously those dates have come
15 and gone and this raises a series of questions that
16 we would intend to obtain answers to. First and
17 foremost, and I think we know the answer to this so
18 we probably wouldn't answer it, but did road
19 construction and tree clearing commence by November
20 1st, 2019. I think we all know that the answer to
21 that is no.

22 A second question, when must
23 construction commence in order to commence commercial
24 operation by December 31st 2020?

25 Third, what is meant by the term

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2 commence commercial operation in this context?

3 Fourth, how will the project's
4 economic viability be jeopardized by failure to
5 commence commercial operation by December 31st, 2020.
6 Fourth, if Calpine is unable to commence commercial
7 operation by December 31st, 2020 and loses its
8 production tax credits, what is Calpine's plan for
9 economic viability?

10 Five, which is a more fundamental
11 question, are projection tax credits necessary for
12 Calpine's financial viability in this case? Six, in
13 the event construction commences and the project
14 becomes no longer economically viable, what will
15 Calpine do? So that's the first set of questions
16 having to do with economic viability and the idea
17 that the deadlines that were initially proposed in
18 the petition have come and gone. And that would seem
19 to cast over the assertion that we needed to have
20 shovels in the ground by November in order to obtain
21 production tax credits which are purportedly
22 essential to the economic viability of this project.

23 Moving on to a second. Through our
24 firm's own research, we've been able to review
25 Calpine's third quarter 2019 financial reports.

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2 Pursuant to that port -- report, we have discovered
3 that several power plants which provide energy and
4 related projects through Calpine are actually under
5 the Pacific Gas and Electric Corporation. So, in
6 essence, we've determined that Calpine has multiple
7 power agreements with PG&E.

8 As you may know, your Honor, PG&E
9 filed for bankruptcy on January 14th, 2019. And so
10 it -- the important thing here is there's now a
11 question of fact over whether or not PG&E will be
12 able to perform under its agreements with Calpine.
13 And if not, how that might impact the financial
14 viability of Calpine and therefore its ability to
15 construct and operate.

16 So from those third-quarter financial
17 reports, which I do not have with me but they are
18 available online, a direct quote from PG&E is that we
19 cannot predict the ultimate outcome of this matter,
20 this matter being the bankruptcy, and continue to
21 monitor bankruptcy proceedings. So with all this in
22 mind and the uncertainty about where the bankruptcy
23 is going, how PG&E comes out of it and how whatever
24 the bankruptcy revolves -- resolves impacts the
25 purchase agreements of Calpine, we have the following

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1
2 questions that we'd like addressed in this
3 proceeding.

4 First, in the event PG&E is unable to
5 fulfill its obligations under the P.P.A., how will
6 that impact Calpine's economic viability? Second, in
7 the event PG&E is unable to fulfill its obligations
8 under the P.P.A.s, how will that impact Calpine's
9 ability to finance this project, Bluestone Wind?
10 Third, as Calpine determined the amount of loss as a
11 result -- it can sustain as a result of PG&E's
12 bankruptcy before Calpine's ability to financing and
13 construct this project would be impact -- impacted.

14 Fourth, we've determined that it's
15 been publicly estimated that Calpine generates
16 fifteen percent of its earnings before income taxes,
17 appreciation, PG&E. What is the percentage of --
18 that's what I just defined earlier, that is from the
19 P.P.A.s with PG&E? And then finally, and there's
20 some sub questions here, in 2019 the U.S. Bankruptcy
21 Court for the northern district of California
22 determined that the federal -- federal energy
23 regulatory commission has no say in whether the
24 utility PG&E may reject its P.P.A.s if it chooses --
25 if it chooses to while in bankruptcy.

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2 Calpine filed a notice of appeal to
3 this decision. Based on that, we would like to know
4 what is the status of the appeal to the Ninth
5 Circuit. Has PG&E rejected it's P.G. -- P.P.A.'s
6 with Calpine, and what is Calpine's current exposure
7 if PG&E rejects the P.P.A.s? So those are the second
8 set of concerns. The second set of concerns have --
9 have to do with Calpine's relationship with a now
10 bankrupt company which is Pacific Gas and Electric.

11 The third set of concerns have to do
12 with Calpine's express reliance on renewable energy
13 credits or other green attributes to support the
14 financial viability of the project. And, again, that
15 assertion is specifically made on page 14 of the
16 petition. I read it earlier.

17 In relation to that issue, we have the
18 following questions. First, what valuation is
19 Calpine using for its rec sales? How is this
20 valuation calculated?

21 Second, has Calpine entered into
22 agreements for the sale of its anticipated recs for
23 other green attributes?

24 Third, if so, who has these contracts
25 and what are they worth? We need to know more about

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2 them.

3 Fourth, if so, are the agreements
4 contingent on the operation day? And then finally,
5 how is Calpine's financial viability impacted by
6 failure to meet any operation dates that are included
7 in rec contracts? For example, does Calpine have an
8 existing rec contract with NYSERDA? If so, is there
9 an operational date in that contract? If so, has it
10 been met? If it has not, is Calpine required to pay
11 additional financial security in order to protect
12 NYSERDA in the event that Calpine is unable to
13 perform as required by the contract. And if so, how
14 would that payment of security or additional security
15 later impact the financial viability of this case?

16 Moving on to a fourth issue. In
17 footnote 6 of the petition, this goes to ownership
18 structure, as set forth. Footnote 6 in the petition
19 indicates that Access Industries, Inc. which is a
20 privately held multinational industrial group
21 transferred its limited partnership interest and in
22 both parent L.P. to A.I. International Holdings,
23 L.L.C. and then to A.I. Holdings L.P.

24 A.I. Holdings L.P. is organized under
25 the laws of the British Virgin Islands. According to

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2 the petition, A.I. Holdings L.P. has no experience
3 running or operating a power plant. This raises the
4 following issues of fact. How was A.I. Holdings L.P.
5 formed? Who is A.I. Holdings L.P.? Is A.I. Holdings
6 L.P. financially viable?

7 Moving on to another issue, B.C.C.R.
8 and our law firm's research has indicated that
9 Calpine recently became a privately held company and
10 it was -- when it was acquired by Energy Capital
11 Partners. Prior to the acquisition by Energy Capital
12 Partners, by all appearances, Calpine was deeply in
13 debt. Calpine filed for Chapter 11 bankruptcy in
14 2008, and in 2017 they were over \$11.31 billion in
15 debt.

16 On August 17th, 2018 Calpine entered
17 into an agreement plan and merger plan with the
18 affiliates of Energy Capital Partners. Capital
19 Partners paid more than the market value for Calpine
20 shares and assumed all of Calpine's debt. The
21 transaction closed on March 18th, 2018. In relation
22 to this transaction we have the following questions
23 which we think are relevant to financial viability.

24 First, what are the details of
25 Calpine's agreement and merger plan for the

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2 affiliates of Energy Capital? How -- how did going
3 private impact Calpine's finances and what are they
4 now required to report pursuant to the merger? What
5 are they required to disclose and how have their
6 financial audits changed under that merger or
7 acquisition?

8 Your Honor, that is -- that is a -- a
9 sampling of the questions that we would intend to ask
10 if discovery is granted. Again, we think the scope
11 of these questions is narrow and falls squarely
12 within the scope of issues that are relevant to this
13 proceeding and that have not been supplanted -- or
14 supplanted by the holding that already exists in the
15 associated Article 10 case or Bluestone Wind.

16 Your Honor, we believe that by asking
17 these questions and receiving answers, one of two
18 things will happen. Either there will be sufficient
19 evidence in the record as a result of this that will
20 allow you to make a ruling granting certificate. Or
21 it will raise additional questions and substantial
22 issues of fact that will require further evidentiary
23 proceedings in this matter.

24 Either way, we believe that B.C.C.R.
25 will contribute to the record directly, and it's in

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2 the public interest to have a party like Calpine
3 asking these questions in this proceeding.

4 A.L.J. MULLANY: Thank you, Mr.
5 Wisniewski. Anything in response Mr. Wilson?

6 MR. WILSON: Yes, your Honor. I --
7 well, first off and these are all new questions and
8 these -- this is the first time we're hearing of all
9 this -- all these lines of inquiry. I'd still
10 question though just because there's questions that
11 B.C.C.R. has -- has come up with with respect to
12 viability, I'm not sure that that still answers your
13 Honor's threshold question as to how B.C.C.R.'s
14 participation in this case will contribute to the
15 record.

16 So I -- I don't know, in other words,
17 I don't know the fact that they have questions --
18 that they came up with questions that still shows or
19 demonstrates that they are going -- that they should
20 be granted party status in this proceeding. And, you
21 know, with respect to the rest of the questions,
22 we're not prepared to address or -- any of those at
23 this time.

24 But I also question, you know, the --
25 the relevancy of a lot of those questions. And I

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2 don't think that your Honor should necessarily use --
3 use most, if not all, of those questions as a basis
4 here for B.C.C.R.'s party status or for requiring
5 discovery here. For example, the PG&E ties, Pacific
6 Gas and Electric. I -- I don't see how that or any
7 kind of dealings with PG&E bears on Calpine's ability
8 to finance, own and operate the Bluestone project.
9 You know, and I -- and I say the same for a lot of
10 the other questions. But there's so many I can't
11 address each one individually. That's our position
12 on -- on what was just said.

13 A.L.J. MULLANY: Okay. If there's
14 nothing further then I am going to rule on the
15 threshold question about party status. I think Mr.
16 Wisniewski's explanation of what he anticipates
17 B.C.C.R. may contribute to the record, and also
18 bearing in mind that there's a two-prong test for
19 party status which is likelihood that they'll
20 contribute to the record and likelihood that it would
21 be fair and in the public interest.

22 I'm sufficiently persuaded to grant
23 B.C.C.R. party status, and in so doing, I'm not
24 offering any commentary on the legitimacy of the
25 questions that he might propound through discovery or

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2 the legitimacy of any position you might seek to take
3 in an evidentiary proceeding. This is for the
4 limited purpose of allowing you to participate as a
5 party which would give B.C.C.R. the right to engage
6 in discovery in this case. Okay? Anything -- any
7 questions?

8 Okay. So B.C.C.R. is granted party
9 status in this proceeding. Now let's go on to the
10 closely-related question of discovery. I heard what
11 you said, Mr. Wilson. You said a moment ago that you
12 didn't see how, for example, the questions related to
13 PG&E were relevant and material to the application.

14 Discovery is allowed for the purpose
15 of seeking information that might lead to relevant
16 and material information. So it's a slightly lower
17 threshold. You can propound information requests and
18 discovery requests with respect to information that
19 may not, in fact, be admissible, but it's a way of
20 seeking out information to try and find out more
21 about the application of the representations made in
22 the petition.

23 So based on the questions I heard
24 articulated by Mr. Wisniewski, I am sufficiently
25 persuaded that discovery into these matters would be

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2 allowable. But I don't want to spend a great deal of
3 time on discovery. I think in the Cassadaga case
4 they -- Judge Lecakes allowed a week to 10 days of
5 discovery. I'm prepared to allow limited discovery
6 to, you know, for the duration of 10 days. It
7 sounds, Mr. Wisniewski, as though your inquiries are
8 already pretty well formulated, and it's a matter of
9 typing them up. Is that a fair characterization?

10 MR. WISNIEWSKI: Yes, your Honor.
11 We'd -- we'd like to do -- if discovery is granted we
12 would like to do a little bit more work on them.
13 But, yes. I could turn something around relatively
14 quickly. If we were given 10 days to serve our
15 request from now, that would be sufficient.

16 A.L.J. MULLANY: Okay.

17 MR. WILSON: Your Honor, I believe in
18 Cassadaga they were allowed 3 days to serve
19 discovery. And then responses were due 9 days later
20 and the entire process was wrapped up in about 26
21 days. So 10 days -- if they're in sufficient form
22 already, then I think 10 days is -- is a lot of time
23 to -- to allow service and discovery.

24 A.L.J. MULLANY: So what I'm going to
25 do is split the baby so to speak. I'm going to grant

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2 all parties up to 5 business days starting as of
3 tomorrow to serve discovery requests. And then the
4 responses will be governed by the rules of procedure.
5 And I think that fairly balances the interest
6 articulated by the company and -- and by B.C.C.R.
7 Okay?

8 I also want to note for the record
9 that we don't have Ava Thorin participating. She's
10 not on the call today, right? And we don't have Joni
11 Riggi (phonetic spelling) on the call today. We also
12 had party requests from both of these individuals but
13 they're not represented today. Nobody has filed any
14 objection to their request for party status.
15 However, because the requests of party status don't
16 provide enough information to make a -- a decision as
17 to whether or not their participation would
18 contribute to the development of the record or would
19 otherwise be fair and in the public interest, I'm
20 going to deny the party status request of Joni Riggle
21 and of Ava Thorin.

22 And the transcript of this procedural
23 conference will serve as the documentation of that
24 ruling. And for purposes of preserving the record, I
25 -- I have before me -- the information I have before

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2 me is a request that was filed by Joni Riggle on
3 February 22nd, 2019. It's available on the Document
4 Matter Management System. And in that request, Ms.
5 Riggi articulates the nature of her -- of the party's
6 interest in the case as follows.

7 Quote, I believe it is extremely
8 premature to be requesting a C.P.C.N. before a full
9 Article 10 record is developed. I was a party to the
10 Cassadaga Wind project, familiar with the C.P.C.N.
11 and want to have the ability to add and contribute to
12 the complete record. So I would note that -- end
13 quote.

14 And so I would note that the record
15 for the Bluestone Wind Article 10 proceeding has, in
16 fact, been closed. So there's no basis for allowing
17 Ms. Riggi to -- Riggle to participate in this case.
18 It's a separate proceeding and I don't see that she's
19 articulated a basis for a granting of party status.
20 So Joni Riggle's request for party status is denied.

21 With respect to Ava C. Thorin, I'm
22 looking at a document dated February 25th, 2019,
23 three o five p.m. Again, this is available on the
24 Document Matter Management System. Ms. Thorin says I
25 own a cabin on Reservoir Road in Sanford. My home

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2 borders on the Deposit Reservoir and encompasses --
3 encompasses approximately 12 acres, 4 acres of
4 cleared land with a cabin and well, 4 acres of forest
5 and 4 acres under the reservoir. I have been
6 identified as a stakeholder in the Bluestone Wind
7 project.

8 Reading the petition document posted
9 on this page, I believe she's talking about the
10 petition in Case 19-E-0121. Ms. -- Ms. Thorin says I
11 realize that construction on this part of the project
12 will block for a considerable period of time the only
13 access road to my home. I'll be severely impacted by
14 this project not only because Bluestone's map
15 indicates that I will be surrounded by 4 turbines and
16 a meteorological station. She shortens it to a met
17 station, but I will also be denied access to my home.

18 Four turbines surrounding a small home
19 and property will have significant impact on my
20 health and that of my family, the reservoir, the
21 various migratory birds and eagles that frequent the
22 location and the magnificent wildlife in the area.
23 Given that my first notification of this project came
24 in December 2018 and that now there is a petition to
25 fast track approval, I need to know what is going on

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2 in a timely manner so that I can respond with the
3 appropriate -- within the appropriate time frame.

4 Thank you for your consideration. And
5 that's the end of Ms. Thorin's stated rationale for
6 her request of party status.

7 I find that this stated rationale does
8 not provide a sufficient basis to find that Ms.
9 Thorin's participation as an active party in this
10 case would add to the record or be fair and in the
11 public interest.

12 The concerns that Ms. Thorin
13 articulates fall within the scope of the related
14 Article 10 proceeding and are not within the scope of
15 this separate proceeding under Public Service Law
16 Section 68 which is before the Public Service
17 Commission rather than the New York State Board on
18 Electric Generation Siting and the Environment. For
19 these reasons, Ms. Thorin's request for party status
20 is denied.

21 Okay. Thank you for bearing with me
22 during that dramatic reading. Is there anything
23 further that parties would like to discuss today?

24 MR. WILSON: Yes, your Honor. We --
25 could we also set a schedule beyond the discovery for

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2 submission of any kind of issue statements and then a
3 response by the company so that we can have a
4 schedule for that today too?

5 A.L.J. MULLANY: Okay. Let's talk. I
6 don't have a calendar in front of me. Let me go grab
7 a calendar.

8 Okay. So I secured a calendar for
9 purposes of reference. And, Mr. Wilson, you had made
10 a request that we set some additional dates for
11 schedule for closing off discovery and issue
12 statements. And perhaps some other milestones as
13 well. So we've just -- let's see, we're on the 10th
14 and we've said 5 business days for propounding. That
15 puts us to Tuesday the 18th I believe of February
16 since Monday is President's Day.

17 And why don't we say issue statements
18 -- well, we're going to have to build in time for the
19 company to respond. That is subject to a little bit
20 of -- I mean, there's minimums under the rules. But
21 if it turns out that these requests require
22 additional time, I -- I understand the company's
23 interest in moving forward in an expeditious way. So
24 I trust the company is going to do its best to answer
25 the -- the discovery requests as expeditiously as it

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2 can.

3 MR. WHITLOCK: That's correct.

4 A.L.J. MULLANY: So for the sake of
5 setting the schedule, do you want to assume the
6 minimum dates?

7 MR. WHITLOCK: Yeah, I think that will
8 work.

9 MR. WISNIEWSKI: Your Honor, should be
10 built in time for potential objections based on
11 relevance, confidentiality, anything else?

12 A.L.J. MULLANY: Voice of experience.
13 I -- I think what I want to do is -- you know what
14 I'm going to do? I understand your request, Mr.
15 Wilson, and I -- I am committed to getting this case
16 moved forward. But I do want to see how the
17 discovery proceeds. And what I'd like to do is give
18 Mr. Wisniewski his time to propound the discovery
19 request, have the company -- and I'll give the
20 company an opportunity to evaluate those requests.
21 And -- and then perhaps we could have a -- a call to
22 talk about whether there's any need for additional
23 time or if there are any objections to the discovery
24 request.

25 And perhaps at that time then we'd

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2 have a better sense as to how that's proceeding, and
3 we can set a -- a deadline for issue statements
4 because, of course, the responses are going to inform
5 Mr. Wisniewski's articulation on his issue statements
6 so he's going to need a little bit of time for that.
7 It just seems a little bit premature for us to assess
8 what that burden might be.

9 MR. WILSON: Okay. That's fine.

10 A.L.J. MULLANY: Okay?

11 MR. WILSON: Yes. And the only other
12 thing that we would ask then because this is all
13 dealing with financial information of Calpine or
14 possibly its affiliates, and if -- you know, we
15 provide that information I think we might need a
16 protective order in place. So assuming that we are
17 going to answer the questions within 10 days on -- or
18 otherwise the 28th, I guess we would need a
19 protective order then in place by that date.

20 A.L.J. MULLANY: Okay. That's a
21 reasonable request. And I will set about putting
22 together a ruling issuing or adopting a protective
23 order --

24 MR. WILSON: Thank you.

25 A.L.J. MULLANY: -- that's going to be

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2 consistent with other cases I receive. And so I'm
3 hoping that can happen without objection or further
4 litigation or dispute.

5 MR. WILSON: Thank you, your Honor.

6 A.L.J. MULLANY: Okay.

7 MR. WISNIEWSKI: And, if your Honor,
8 can I be heard briefly on the protective order?

9 A.L.J. MULLANY: Yeah.

10 MR. WISNIEWSKI: Broome County
11 Concerned Residents would not object at all to a
12 protective order. It may well be necessary in this
13 case. Taking a step back, one of my client's
14 fundamental concerns about proceedings before the
15 Public Service Commission and the siting board is
16 that some information that is deemed confidential in
17 my client's opinion should not be confidential.

18 So I just want to raise a possible
19 issue now that there could be a dispute later over
20 whether some of the issues that Calpine claims is
21 confidential and subject to the protective order
22 should actually be confidential and subject to the
23 protective order.

24 A.L.J. MULLANY: So I'll -- I'll note
25 for the record then -- I'll note your concern,

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2 up, your Honor. I apologize. I just would like to
3 be heard on the protective order for the Town of
4 Windsor. As the court is aware, no other parties are
5 aware, Town of Windsor is a municipality subject to a
6 FOIL. I believe in the other Article 10 certificate
7 proceeding the -- your Honor was able to address the
8 FOIL issues. And I would just ask that those -- that
9 -- that FOIL be addressed in this as well so that the
10 Town of Windsor is not balancing FOIL and your
11 Honor's protective order.

12 A.L.J. MULLANY: Yes, there were
13 provisions in the protective order, if my memory
14 serves me, in the Bluestone case that addressed --

15 MS. SACCO: Yes, sir.

16 A.L.J. MULLANY: -- municipalities.
17 And it's my intention, Ms. Sacco, to incorporate
18 those provisions in the protective order to be
19 adopted in this case.

20 MS. SACCO: Thank you, sir.

21 A.L.J. MULLANY: Mr. Wisniewski, I --
22 I'm not sure if you've had a chance to say anything
23 more. I'd -- I'd explain the procedures for
24 objecting to claims of confidentiality. And then Ms.
25 Sacco spoke up, so just wanted to make sure there

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2 wasn't something more that you had on that.

3 MR. WISNIEWSKI: Your Honor, I -- I
4 think your explanation is sufficient for now. Again,
5 I'm just anticipating a potential problem in the
6 future and we will do our best to work within the
7 confines of the protective order.

8 A.L.J. MULLANY: Thank you, sir.
9 Which is the good practice of law, anticipating
10 problems and hoping they don't come up. And when
11 they do, trying to resolve them without involving me.

12 Okay. Is there anything further?

13 MR. WILSON: No, your Honor.

14 A.L.J. MULLANY: No, to -- Ms. Sacco,
15 do you have anything further?

16 MS. SACCO: No, your Honor. I have --
17 no thank you.

18 A.L.J. MULLANY: Okay. Thank you all
19 for taking time out of your day to come here and --
20 and participate in this proceeding. Again, if
21 questions come up you can reach out to me. And
22 appreciate it if you do so by e-mail. Just keeps
23 things clean. Copy all the parties that you're
24 communicating with with me. All right? Thank you.
25 Again. We are adjourned.

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(Off the record 1:50 p.m.)

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2 STATE OF NEW YORK

3 I, JANET WALLRAVIN, 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 34, 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 14th day of February, 2020.

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13 JANET WALLRAVIN, Reporter

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