

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Petition of Cassadaga Wind, LLC for Amendment  
of the Certificate of Environmental Compatibility  
& Public Need

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Case No. 14-F-0490

**PETITION OF CASSADAGA WIND, LLC FOR AN AMENDMENT TO  
THE CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY & PUBLIC NEED FOR  
THE CASSADAGA WIND PROJECT**

Dated: January 11, 2019  
Albany, New York

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**Table of Contents**

I. INTRODUCTION ..... 3

II. CERTIFICATE CONDITION 147 ..... 4

    A. Necessity of Modification..... 4

    B. Impact Analysis ..... 7

        i. Bat Species ..... 7

        ii. Avian Species ..... 9

    C. Proposed Modification..... 11

        November 1 to March 31 ..... 11

        April 1 to October 31 ..... 12

III. CONCLUSION..... 12

## I. INTRODUCTION

On January 17, 2018, the Siting Board issued an Order granting a Certificate of Environmental Compatibility and Public Need, with Conditions (“Certificate”) to Cassadaga Wind, LLC (“Cassadaga Wind” or “Certificate Holder”). Cassadaga Wind is currently in the process of preparing the requisite compliance and informational filings required by the Certificate Conditions to commence construction in or about June 2019. The Certificate authorizes construction of 48 wind turbines to be located in the Towns of Cherry Creek, Charlotte, and Arkwright, capable of producing up to 126 megawatts (MW) (referred to herein as the “Facility”).

Pursuant to 16 NYCRR § 1000.16, Cassadaga Wind respectfully requests an amendment to Certificate Condition 147 to allow necessary tree clearing to proceed after April 1, 2019 and prior to November 1 subject to certain specified restrictions as discussed further below. Certificate Condition 147 only allows tree clearing between November 1 and April 1. For reasons explained below, this will not be feasible and would delay construction of the Facility for at least 8 months. Given the anticipated 18-month construction schedule for the Facility,<sup>1</sup> the resulting delay would make it impossible to achieve the deadline of commercial operation by December 31, 2020. Cassadaga Wind also requests the same minor change be made to the Net Conservation Benefit Plan compliance filing which was approved by the Siting Board on August 9, 2018.

The Amendment will not have a significant adverse impact on the environment and therefore, should not be considered a “revision” but instead should be considered a “modification” of the Certificate. The amendment would be minor as the measures proposed by the Applicant will be protective so that tree clearing activities in the late spring, summer and early fall do not increase

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<sup>1</sup> This is based on the Applicant’s experience and the construction schedule for the nearby and smaller (78 MW) Arkwright Wind Project in Chautauqua County New York.

adverse environmental impacts on threatened or endangered species or the habitat of such a species from the impacts already assessed in the Application and addressed in the Siting Board's Order. Under 1000.2(ak) a revision is a project change that that is likely to result in a "significant increase in any environmental impact of the facility." The expansion of the tree clearing window will not have a significant increase in the environmental impact of the Facility, in particular given the measures proposed below. As such, this amendment can be authorized pursuant to 16 NYCRR 1000.16 for modifications. Cassadaga Wind seeks approval as soon as possible so that as soon as all remaining compliance filings are filed for the Facility, construction can commence. Under 1000.16, no hearing is required for modifications to a Certificate. After a 30-day public comment period, the Siting Board/Commission can render a decision.

## **II. CERTIFICATE CONDITION 147**

Pursuant to Certificate Condition 147, "[t]o reduce mortality to nesting/roosting birds and bats, all tree clearing activities (except for hazard tree removal) shall be conducted between November 1 and April 1 and does not include trees less than or equal to 3 inches in diameter at breast height (DBH)."

### **A. Necessity of Modification**

At the time of certification, the Cassadaga Wind, LLC was a wholly-owned subsidiary of EverPower Wind Holdings ("EverPower"). Subsequent to the granting of the certificate, EverPower sold Cassadaga Wind, LLC, and Cassadaga Wind, LLC is currently a subsidiary of innogy Renewables US LLC ("innogy").<sup>2</sup> innogy assumed control over the development and

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<sup>2</sup> For more information regarding the sale of Cassadaga Wind, LLC seej case No. 18-E-0399

construction of the Facility on or about July 25, 2018, and since that time has been working to finalize the construction designs for the Facility.

Although the transition between EverPower and innogy has been smooth; the integration process, subsequent staffing changes, and differing operational project criteria have resulted in minor adjustments to the final Facility design by the new design team. Upon closure of the acquisition transaction, the new teams conducted an intensive review of all Cassadaga Wind Facility aspects. As a result, a number of minor adjustments were identified to optimize the Facility both during and after construction. The adjustments explored by the new team include the removal of two turbines of concern to DPS staff due to steep slopes (T42 and T36), placement of additional electrical collection lines underground, and realignment of access roads to further minimize wetland impacts resulting from grading. These changes result in an overall decrease in environmental impacts as a result of the Facility, but exploration of the proposed changes has required additional field and land work to assess potential impacts.

This delay, due to optimization of the Facility design, prevented Cassadaga Wind from being able to submit associated compliance and informational filings prior to the start of the tree clearing window in November 2018. However, it is anticipated that over the next 4 months, Cassadaga Wind will file all remaining compliance filings required for the commencement of construction in June 2019.

Since the Facility design is still being finalized, under Condition 147 Cassadaga will have to wait until November 2019 to begin tree clearing and this presents a considerable construction restraint as outlined below, which directly impacts Cassadaga Wind's ability to meet certain obligations and operational commitments.

Wind farm construction is a complex process that often occurs in phases, beginning with tree clearing, followed by grading and installation of access roads. After the roads are completed, the concrete foundations for the turbine towers and ancillary structures are excavated and poured. Foundation work is followed by digging the trenches for the underground electrical cables, laying the electrical and communication cables, and building any overhead collection system and substation. Subsequent activities include assembling and erecting the wind turbine towers, mounting the nacelles on top of the towers, and attaching the rotors. Clearly, tree clearing lays the ground work for all other stages of construction to begin. Tree clearing for a project the size of Cassadaga can take several months, and the entire construction process can take anywhere from 12 to 18 months to complete. Additionally, unforeseen changes during the construction process may require tree removal to allow for additional workspaces or equipment clearances, so even if tree clearing could be accomplished during the 5-month period, circumstances may require additional unanticipated clearing outside of the window.

For Cassadaga, it is anticipated that 18 months will be required to complete construction from tree clearing through commissioning of the turbines (commercial operation date [“COD”]). This assumption is based on the construction schedule of the recently completed 78 MW Arkwright Wind Project, which took 18 months from start to finish, and discussions with contractors that have responded to a solicitation for the Balance of Plant (“BOP”) contractor. Therefore, Cassadaga Wind needs to begin tree clearing by June 2019, or the Facility is at risk for contingencies and delays that could jeopardize the Facility’s ability to begin commercial operation by December 31, 2020. The December 31, 2020 date is required to meet the qualifications for the federal Production Tax Credit (“PTC”) incentives, to satisfy obligations under the negotiated Power Purchase Agreements (“PPAs”), and to meet the scheduled interconnection COD of 2020.

The ability to achieve these timeframes is jeopardized by the limitation to conduct all tree removal between November 1 and April 1. In order to achieve the Facility milestones, Cassadaga Wind must clear trees outside of this window.

Therefore, Cassadaga Wind requests this amendment to Certificate Condition 147 to expand the tree clearing window. As mentioned above, the Facility must commence construction in June 2019 in order to meet construction deadlines. It is anticipated that over the next 4 months, Cassadaga Wind will file the remaining compliance filings required for the commencement of construction in June 2019. Cassadaga would therefore request that the Certificate be amended to allow tree clearing during the April 1 to October 31 timeframe with the proposed measures outlined below.

## **B. Impact Analysis**

To determine whether a proposed amendment is a modification or a revision, 1000.16(a) states that the criteria for determining significance under 6 NYCRR 617.7(c) shall apply. The modification allowing tree clearing outside the stated window would not result in an increase risk to bird and bat species for the Cassadaga Facility because the Applicant is proposing measures that are will minimize disturbance or mortality to nesting/roosting bird and bat species. None of the criteria in 617(c) will be triggered by the Amendment. Accordingly, the Amendment is not a “revision” and the procedures applicable to modifications shall apply.

### **i. Bat Species**

Condition 147 relates to a recommendation by DEC to minimize impacts to bat species, and in particular the northern long-eared bat (“NLEB”) which is state-listed as threatened. However, there are no known NLEB hibernation sites or maternity roost trees within ¼ mile of the Cassadaga Facility, nor is the Facility within 1.5 miles of a documented summer occurrence. Instead of the blanket prohibition of tree clearing, Cassadaga Wind is proposing Certificate Condition 147 be amended to allow tree clearing during the April 1 to October 31 timeframe with the following restrictions:

November 1 to March 30

During this period of time, the NLEB are inactive and are within the hibernation sites. No restrictions to tree clearing activities.

April 1 to October 31

During this period of time, NLEB may be active and within the forested landscape. The following restrictions will be implemented to minimize potential impacts:

- Leave uncut all snag and cavity trees, as defined under DEC Program Policy ONR-DLF-2 Retention on State Forests, unless their removal is necessary for protection of human life and property. Snag or cavity trees may also be removed after being cleared by an Environmental Monitor who will conduct a brief survey for bats exiting the tree. This survey should begin 1/2 hour before sunset and continue until at least 1 hour after sunset or until it is otherwise too dark to see emerging bats.<sup>3</sup> Unoccupied snag and cavity trees will be removed within 24-hours of observation.
- Leave uncut all known and documented roost trees and any trees within a 150-foot radius of a documented summer occurrence (note: this restriction is not applicable to the Facility area as the comprehensive wildlife studies within the Application determined there are no known or documented roost trees or documented summer occurrence in the Facility).
- If any bats are observed flying from a tree, or on a tree that has been cut, tree clearing activities within 150 feet of the tree will be suspended and DEC Wildlife staff will be notified as soon as possible. Cassadaga will have an Environmental Monitor present on site during all tree clearing activities. If any bat activity is noted, a stop work order will

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<sup>3</sup> This survey recommendation is based on the protocol for conducting emergence surveys in the US Fish and Wildlife Service’s 2018 Range-wide Indiana Bat Survey Guidelines.



immediately be issued and will remain in place until such time as DEC and DPS staff have been consulted and authorize resumption of work.

Although the Facility site is not recognized as occupied NLEB roosting habitat by NYSDEC, the above restrictions are consistent with NYSDEC's Guidelines for the protection of northern long-eared bats, specifically the Requirements for Projects that Result in a Change of Land Use within NLEB Occupied Habitat.<sup>4</sup> According to NYSDEC guidance, forest management (tree clearing) activities that incorporate the above requirements do not need a permit under 6 NYCRR Part 182 because cutting of live trees under the prescribed conditions is unlikely to result in an incidental take of NLEB. These restrictions are also consistent with the US Fish and Wildlife Service 4(d) rule under the Endangered Species Act, which extends protections only to known occupied maternity roosts and hibernacula, of which none occur in the Facility area. Therefore, the above listed restrictions will ensure that impacts to nesting/roosting bats during the April 1 to October 31 timeframe are minimized.

**ii. Avian Species**

With respect to avian species generally, Facility tree clearing may have an impact on individual birds; however suitable habitat is abundant within the Facility Site, and adjacent areas will be available during and after construction. No threatened or endangered tree nesting avian species were identified as occurring within the Facility Site. Therefore, it is not anticipated that Facility construction, and specifically, tree clearing will have a significant effect on regional, statewide or range wide populations of avian species generally.<sup>5</sup>

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<sup>4</sup> <https://www.dec.ny.gov/animals/106090.html>

<sup>5</sup> See Exhibit 22 of the Cassadaga Application.

Pre-construction avian surveys did not identify breeding habitat within the Facility area with potential to support federally listed avian species, State-listed threatened bald eagle,<sup>6</sup> or the State-listed Special Concern species common loon.<sup>7</sup> There are no lakes in the Facility Site with potential to support breeding of bald eagle or common loon, which nest on lakes greater than 25 acres in size. The lack of documented breeding populations of these species within the Facility indicates a low potential for impacts during tree clearing activities. While potential habitat for three state-listed threatened species (northern harrier, sedge wren and Henslow's sparrow) was identified, these species do not utilize forested areas for nesting. The northern harrier and Henslow's sparrow are ground nesting birds, generally found in grassland areas, and the sedge wren nests in tall grasses and sedges found near emergent wetlands. No Henslow's sparrows or sedge wrens were observed or heard during pre-construction surveys.<sup>8</sup>

Given the low likelihood that a state-listed species will be nesting within the Facility Site, disturbance of listed avian species during tree clearing activities will be avoided through the implementation of the protections afforded under existing Certificate Conditions 84, 85, and 86 and additional restrictions are not required to be incorporated into Condition 147.

Condition 84 requires that "if at any time during the life of the Project an active nest of any federally, or State, listed threatened or endangered bird species is discovered within an active construction, ground clearing, grading, or maintenance site, the regional DEC Natural Resource Supervisor will be notified within forty-eight (48) hours of discovery, and the nest site will be marked. An area five hundred (500) feet in radius around the nest will be avoided until notice to continue construction at that site is granted by the regional DEC Natural Resource Supervisor."

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<sup>6</sup> There are no known bald eagle nests within the Facility area.

<sup>7</sup> See Appendix OO of the Cassadaga Application for the full Habitat Assessment

<sup>8</sup> Id.

Condition 85 requires that “if at any time during the life of the Project a bald eagle nest is located, the regional DEC Natural Resource Supervisor will be notified within forty-eight (48) hours of discovery, and prior to any disturbance of the nest or immediate area. An area six hundred sixty (660) feet in radius from the nest tree will be posted and avoided until notice to continue construction at that site is granted by the regional DEC Natural Resources Supervisor. The nest tree will not be approached under any circumstances unless authorized by the regional DEC Natural Resource Supervisor.”

Among other things, Condition 86 requires that “during construction the onsite environmental monitors and environmental compliance manager identified in the Environmental Compliance Manual shall be responsible for recording all occurrences of TE species. All occurrences shall be reported in the bi-weekly monitoring report submitted to the DEC and shall include the information described below. If a TE avian species is demonstrating breeding behavior it should be reported to the Natural Resources Supervisor within twenty-four (24) hours.”

The above listed conditions adequately minimize potential impacts to nesting birds during construction of the Facility, and additional restrictions are not required to be incorporated into Condition 147 to protect listed avian species.

### **C. Proposed Modification**

Based on the above, Cassadaga Wind proposes that Certificate Condition 147 be amended to read as follows:

“To reduce mortality to roosting bats, all tree clearing activities (except for hazard tree removal) shall be conducted in the following manner:

#### **November 1 to March 31**

No restrictions to tree clearing activities.

### **April 1 to October 31**

The following restrictions will be implemented:

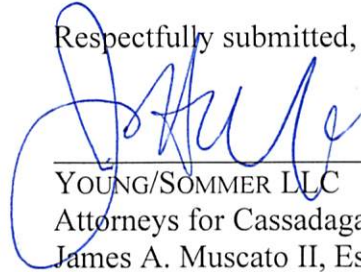
- Leave uncut all snag and cavity trees, as defined under DEC Program Policy ONR-DLF-2 Retention on State Forests, unless their removal is necessary for protection of human life and property. Snag or cavity trees may also be removed after being cleared by , an Environmental Monitor who will conduct a brief survey for bats exiting the tree. This survey should begin 1/2 hour before sunset and continue until at least 1 hour after sunset or until it is otherwise too dark to see emerging bats. Unoccupied snag and cavity trees will be removed within 24-hours of observation.
- Leave uncut all known and documented roost trees and any trees within a 150-foot radius of a documented summer occurrence (note: this restriction is not applicable to the Facility area as the comprehensive wildlife studies within the Application determined there are no known or documented roost trees or documented summer occurrence in the Facility).
- If any bats are observed flying from a tree, or on a tree that has been cut, tree clearing activities within 150 feet of the tree will be suspended and DEC Wildlife staff will be notified as soon as possible. Cassadaga will have an Environmental Monitor present on site during all tree clearing activities. If any bat activity is noted, a stop work order will immediately be issued and will remain in place until such time as DEC and DPS staff have been consulted and authorize resumption of work.

### **III. CONCLUSION**

The current restrictions contained in Certificate Condition 147 present a considerable construction restraint, which directly impacts Cassadaga Wind's ability to meet certain obligations and operational commitments. However, the measures and restrictions outlined above can be implemented and equally reduce impacts to nesting/roosting threatened or endangered birds and bats without jeopardizing the Facility's ability to commence commercial operations in December 2020. Therefore, Cassadaga Wind respectfully requests that the Certificate be modified to allow tree clearing during the April 1 to October 31 timeframe with the restrictions described. Cassadaga Wind also requests the same minor change be made to the Net Conservation Benefit Plan compliance filing which was approved by the Siting Board on August 9, 2018.

Dated: January 11, 2019

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J. Muscato", is written over a horizontal line.

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