

Case 14-F-0490 - Siting Board

NEW YORK STATE

BOARD ON ELECTRIC GENERATION SITING

AND THE ENVIRONMENT

CASE 14-F-0490 APPLICATION OF CASSADAGA WIND LLC FOR A
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED
PURSUANT TO ARTICLE 10 TO CONSTRUCT A WIND ENERGY PROJECT.

DATE: April 26, 2019

LOCATION: Albany, New York

LOUIS ALEXANDER
alternate of Basil Seggos of the Department of
Environmental Conservation;
DR. ELIZABETH LEWIS-MICHL
alternate of Howard Zucker Department of Health,
VINCENT RAVASCHIERE
alternate of Howard Zensky Empire State Development
Corporation,
JOHN WILLIAMS
alternate of Richard Kaufman, New York State Energy
Research and Development Authority.

1 Case 14-F-0490 - Siting Board

2 MR. RHODES: So, my name is John
3 Rhodes. I'm the -- I'm the Chair of the Board of the
4 Board on Electric Generation Siting and the
5 Environment and I'd like to call this meeting of that
6 Board to order.

7 Before moving to the agenda, I would
8 like to introduce the members present today who
9 represent the permanent members of the Siting Board;
10 Louis Alexander alternate of Basil Seggos of the
11 Department of Environmental Conservation; Dr.
12 Elizabeth Lewis-Michl alternate of Howard Zucker
13 Department of Health, Vincent Ravaschiere alternate
14 of Howard Zensky Empire State Development
15 Corporation, John Williams alternate of Richard
16 Kaufman, New York State Energy Research and
17 Development Authority.

18 Secretary Burgess, are there any
19 changes to the agenda?

20 MS. BURGESS: There are no changes to
21 the agenda today.

22 MR. RHODES: Thank you. So, the one
23 item on the -- on the agenda and on the regular
24 agenda is Case 14-F-0490, which is the petition of
25 Cassadaga Wind, L.L.C. for an amendment to the

1 Case 14-F-0490 - Siting Board
2 Certificate of Environmental Capability and Public
3 Need for the Cassadaga Wind Project, presented by
4 Andrea Cerbin, Assistant Counsel Department of Public
5 Service. Brian Ossias, managing attorney, is
6 available for questions. Andrea, please begin.

7 MS. CERBIN: Thank you and good
8 afternoon Chair Rhodes and members of the Siting
9 Board.

10 On January 17th, 2018, the New York
11 State Board on Electric Generation Siting and the
12 Environment, approved the first Certificate of
13 Environmental Capability and Public Need under
14 Article Ten of the Public Service Law for the
15 Cassadaga Wind Project. The -- the certificate
16 approved, with conditions, the construction and
17 operation of forty-eight wind turbines and associated
18 facilities in the towns of Arkwright, Charlotte and
19 Cherry Creek in Chautauqua County, New York.

20 One of those conditions the Siting
21 Board imposed on the certificate holder, was a
22 condition Number One Forty-seven, which in part,
23 restricted tree clearing activities related to
24 construction and site preparation from November 1 to

25

1 Case 14-F-0490 - Siting Board

2 April 1, a broad condition designed to protect
3 nesting and roosting bats.

4 On January 11th, 2019, Innogy, the new
5 owner of the project, filed a request for an
6 amendment of condition 147 to allow tree clearing
7 outside of the previously-approved tree clearing
8 window of November 1 to April 1, in order to begin
9 site preparation to meet certain construction
10 deadlines.

11 The draft order before you today,
12 recommends that the amendment be approved, subject to
13 specific conditions that would ensure protections for
14 nesting and roosting bats from tree clearing
15 activities outside of the originally improved tree
16 clearing window.

17 In making this recommendation, the
18 draft order relies on the Petitioner's statements
19 that there are no known hibernation sites or
20 maternity roost trees of the Northern Long Eared Bat,
21 a threatened species in the State, within a quarter
22 mile of the project nor is there -- nor is the
23 project within one point five miles of the documented
24 summer occurrence.

25

1 Case 14-F-0490 - Siting Board

2 Moreover, the Department of
3 Environmental Conservation Staff provided comments on
4 February 12th, 2019, confirming that the project area
5 does not contain any identified maternity roost
6 locations for the Northern Long Eared Bat and thus,
7 does not oppose the amendment request.

8 Restrictions, however, should be
9 implemented to protect nesting, roosting bats in the
10 event of an occurrence. These restrictions will
11 include, that the certificate holder shall leave
12 uncut, all snag and cavity trees, unless the removal
13 is necessary for the protection of human life and
14 property.

15 Snag and cavity trees that must be
16 cleared, would only be removed after being observed
17 by an environmental monitor to ensure that no bat
18 activity is present. Further, these unoccupied snag
19 and cavity trees, would be removed within twenty-four
20 hours of observation by the environmental monitor.

21 Second, the certificate holder would
22 leave uncut, all known and documented roost trees and
23 any trees within a hundred and fifty foot radius of
24 documented summer occurrence.

25

1 Case 14-F-0490 - Siting Board

2 And third, if any of the bats -- if
3 any bats are observed flying from a tree or on a tree
4 that has been cut, tree clearing activities within a
5 hundred and fifty feet of the tree, would be
6 suspended and the D.E.C. Wildlife Staff would be
7 notified, as soon as possible.

8 The certificate holder proposes to
9 have an environmental monitor present, on site,
10 during all tree-clearing activities. If any bat
11 activity is noted, a stop work -- work order would
12 immediately be issued and remain in place until such
13 time as D.E.C. or D.P.S. Staff have been consulted
14 and then authorize the resumption of work.

15 The draft order conditions the
16 approval of the requested tree clearing amendment on
17 these restrictions being in place. These
18 restrictions are also consistent with D.E.C. guidance
19 on the Northern Long Eared Bat, specifically
20 regarding the requirements for projects that result
21 in the change of land use within Northern Long Eared
22 Bat occupied habitat.

23 It should also be noted that there was
24 a request from the Concern Citizens of the Cassadaga
25 Wind Project, that was filed this morning, asking

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Case 14-F-0490 - Siting Board

that the vote on this amendment be postponed until a thorough investigation of the financial status of Innogy could be performed. The Concerned Citizens state that it -- that they are concerned that ongoing merger actions in the E.U. with Innogy's parent company, R.W.E. and possible anti-trust action by the E.U. Regulatory bodies, could imperil financial viability of this project and any construction activities should be halted until these mergering anti-trust actions have been resolved.

The transfer from -- the transfer of the certificate from Ever Power to Innogy, was previously evaluated by the Commission, pursuant to Section 70 in Case 18-E-0333 and no further action is warranted here. If you have any questions, I'm available to answer them.

MR. RHODES: Thank you Andrea. My only comment is that this order is well done. It's a call for consideration of the issues and the evidence and properly arrives at -- sets reasonable and effective conditions. I am going to be in favor of this item. Do any of my fellow Board members wish to make a comment or ask questions? Seeing and hearing none, I will proceed to call for a vote.

1 Case 14-F-0490 - Siting Board

2 My own vote is in favor of the
3 recommendation to amend certificate condition One
4 Forty-seven, as described. Mr. Alexander, how do you
5 vote?

6 MR. ALEXANDER: My vote is in favor.

7 MR. RHODES: Thank you. Dr. Lewis-
8 Michl, how do you vote?

9 MS. LEWIS-MICHL: I vote in favor.

10 MR. RHODES: Dr. -- Mr. Ravaschiere,
11 how do you vote?

12 MS. RAVASCHIERE: In favor.

13 MR. RHODES: And, Mr. Williams, how
14 do you vote?

15 MR. WILLIAMS: In favor.

16 MR. RHODES: The matter is approved
17 and the recommendation is adopted. Secretary
18 Burgess, is there anything further to come before us
19 today?

20 MS. BURGESS: There are no further
21 matters today.

22 MR. RHODES: Thank you. I want to
23 thank you, fellow Board members, for your service.
24 We are adjourned.

25

1 Case 14-F-0490 - Siting Board

2 STATE OF NEW YORK

3 I, ANDREW BELAIR, 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 8, 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 3rd day of May 2019.

11

12

13 ANDREW BELAIR, Reporter

14

15

16

17

18

19

20

21

22

23

24

25

A	Burgess 2:18,20 8:18,20
action 7:7,15	C
actions 7:6,11	call 2:5 7:20,25
activities 3:23 4:15 6:4,10 7:10	Capability 3:2,13
activity 5:18 6:11	caption 9:5
adjourned 8:24	Case 1:1,6 2:1,24 3:1 4:1 5:1 6:1 7:1,15 8:1 9:1
adopted 8:17	Cassadaga 1:6 2:25 3:3,15 6:24
afternoon 3:8	cause 9:4
agenda 2:7,19,21,23,24	cavity 5:12,15,19
Albany 1:14	Cerbin 3:4,7
Alexander 1:20 2:10 8:4,6	certain 4:9
allow 4:6	certificate 1:7 3:2,12,15,21 5:11,21 6:8 7:13 8:3
alternate 1:20,22,23,24 2:10,12 2:13,15	certify 9:3
amend 8:3	Chair 2:3 3:8
amendment 2:25 4:6,12 5:7 6:16 7:2	change 6:21
Andrea 3:4,6 7:18	changes 2:19,20
ANDREW 9:3,13	Charlotte 3:18
answer 7:17	Chautauqua 3:19
anti-trust 7:7,11	Cherry 3:19
APPLICATION 1:6	Citizens 6:24 7:4
approval 6:16	cleared 5:16
approved 3:12,16 4:12 8:16	clearing 3:23 4:6,7,14,16 6:4 6:16
April 1:13 4:2,8	come 8:18
area 5:4	comment 7:19,24
Arkwright 3:18	comments 5:3
arrives 7:21	Commission 7:14
Article 1:8 3:14	company 7:7
asking 6:25	COMPATIBILITY 1:7
Assistant 3:4	Concern 6:24
associated 3:17	concerned 7:4,5
attorney 3:5	condition 3:22 4:2,6 8:3
Authority 1:25 2:17	conditions 3:16,20 4:13 6:15 7:22
authorize 6:14	confirming 5:4
available 3:6 7:17	Conservation 1:21 2:11 5:3
B	consideration 7:20
Basil 1:20 2:10	consistent 6:18
bat 4:20 5:6,17 6:10,19,22	consisting 9:6
bats 4:3,14 5:9 6:2,3	CONSTRUCT 1:8
BELAIR 9:3,13	construction 3:16,24 4:9 7:9
Board 1:1,3 2:1,3,4,6,9 3:1,9 3:11,21 4:1 5:1 6:1 7:1,23 8:1,23 9:1	consulted 6:13
bodies 7:8	contain 5:5
Brian 3:5	Corporation 1:23 2:15
broad 4:2	Counsel 3:4
	County 3:19
	Creek 3:19

cut 6:4	
D	G
D.E.C 6:6, 13, 18	Generation 1:3 2:4 3:11
D.P.S 6:13	going 7:22
DATE 1:13	good 3:7
day 9:10	guidance 6:18
deadlines 4:10	H
Department 1:20, 22 2:11, 13 3:4 5:2	habitat 6:22
described 8:4	halted 7:10
designed 4:2	Health 1:22 2:13
Development 1:23, 25 2:14, 17	hearing 7:24 9:8
documented 4:23 5:22, 24	hereof 9:5
Dr 1:21 2:11 8:7, 10	hereto 9:5
draft 4:11, 18 6:15	hereunto 9:9
E	hibernation 4:19
E.U 7:6, 8	holder 3:21 5:11, 21 6:8
Eared 4:20 5:6 6:19, 21	hours 5:20
effective 7:22	Howard 1:22, 23 2:12, 14
Electric 1:3 2:4 3:11	human 5:13
Elizabeth 1:21 2:12	hundred 5:23 6:5
Empire 1:23 2:14	I
Energy 1:8, 24 2:16	I'd 2:5
ensure 4:13 5:17	I'm 2:3, 3 7:16
Environment 1:4 2:5 3:12	identified 5:5
environmental 1:7, 21 2:11 3:2 3:13 5:3, 17, 20 6:9	immediately 6:12
evaluated 7:14	imperial 7:8
event 5:10	implemented 5:9
evidence 7:20	imposed 3:21
F	improved 4:15
facilities 3:18	include 5:11
favor 7:22 8:2, 6, 9, 12, 15	Innogy 4:4 7:4, 13
February 5:4	Innogy's 7:6
feet 6:5	introduce 2:8
fellow 7:23 8:23	investigation 7:3
fifty 5:23 6:5	issued 6:12
filed 4:5 6:25	issues 7:20
financial 7:3, 8	It's 7:19
first 3:12	item 2:23 7:23
five 4:23	J
flying 6:3	January 3:10 4:4
foot 5:23	John 1:24 2:2, 15
foregoing 9:3, 6	K
forty-eight 3:17	Kaufman 1:24 2:16
Forty-seven 3:22 8:4	known 4:19 5:22
further 5:18 7:15 8:18, 20	L

L.L.C 2:25	operation 3:17
land 6:21	oppose 5:7
Law 3:14	order 2:6 4:8,11,18 6:11,15 7:19
leave 5:11,22	originally 4:15
Lewis- 8:7	Ossias 3:5
Lewis-Michl 1:21 2:12 8:9	outside 4:7,15
life 5:13	owner 4:5
LLC 1:6	
LOCATION 1:14	
locations 5:6	
Long 4:20 5:6 6:19,21	
Louis 1:20 2:10	
	P
M	Page 9:5
making 4:17	pages 9:6
managing 3:5	parent 7:6
maternity 4:20 5:5	part 3:22
matter 8:16	performed 7:4
matters 8:21	permanent 2:9
meet 4:9	petition 2:24
meeting 2:5	Petitioner's 4:18
members 2:8,9 3:8 7:23 8:23	place 6:12,17 9:4
merger 7:6	please 3:6
mergering 7:10	point 4:23
Michl 8:8	possible 6:7 7:7
mile 4:22	postponed 7:2
miles 4:23	Power 7:13
monitor 5:17,20 6:9	preparation 3:24 4:9
morning 6:25	present 2:8 5:18 6:9
moving 2:7	presented 3:3
	previously 7:14
N	previously-approved 4:7
name 2:2 9:10	proceed 7:25
necessary 5:13	proceedings 9:7
Need 1:7 3:3,13	project 1:8 3:3,15 4:5,22,23 5:4 6:25 7:9
nesting 4:3,14 5:9	projects 6:20
new 1:2,14,24 2:16 3:10,19 4:4 9:2	properly 7:21
Northern 4:20 5:6 6:19,21	property 5:14
noted 6:11,23	proposes 6:8
notified 6:7	protect 4:2 5:9
November 3:24 4:8	protection 5:13
Number 3:22	protections 4:13
	provided 5:3
O	Public 1:7 3:2,4,13,14
observation 5:20	pursuant 1:8 7:14
observed 5:16 6:3	
occupied 6:22	Q
occurrence 4:24 5:10,24	quarter 4:21
ongoing 7:5	questions 3:6 7:16,24
	R
	R.W.E 7:7

radius 5:23
Ravaschiere 1:22 2:13 8:10,12
reasonable 7:21
recommendation 4:17 8:3,17
recommends 4:12
record 9:7
regarding 6:20
regular 2:23
Regulatory 7:8
related 3:23
relies 4:18
remain 6:12
removal 5:12
removed 5:16,19
reported 9:4
Reporter 9:13
represent 2:9
request 4:5 5:7 6:24
requested 6:16
requirements 6:20
Research 1:25 2:16
resolved 7:11
restricted 3:23
restrictions 5:8,10 6:17,18
result 6:20
resumption 6:14
Rhodes 2:2,3,22 3:8 7:18 8:7,10
 8:13,16,22
Richard 1:24 2:15
roost 4:20 5:5,22
roosting 4:3,14 5:9

S

Second 5:21
Secretary 2:18 8:17
Section 7:15
Seeing 7:24
Seggos 1:20 2:10
service 3:5,14 8:23
sets 7:21
site 3:24 4:9 6:9
sites 4:19
Siting 1:1,3 2:1,4,9 3:1,8,11
 3:20 4:1 5:1 6:1 7:1 8:1 9:1
snag 5:12,15,18
soon 6:7
species 4:21
specific 4:13
specifically 6:19
Staff 5:3 6:6,13

state 1:2,23,24 2:14,16 3:11
 4:21 7:5 9:2
stated 9:5
statements 4:18
status 7:3
stop 6:11
subject 4:12
subscribed 9:10
summer 4:24 5:24
suspended 6:6

T

Ten 3:14
thank 2:22 3:7 7:18 8:7,22,23
third 6:2
thorough 7:3
threatened 4:21
time 6:13 9:4
today 2:8,21 4:11 8:19,21
towns 3:18
transcription 9:6
transfer 7:12,12
tree 3:23 4:6,7,14,15 6:3,3,4,5
 6:16
tree-clearing 6:10
trees 4:20 5:12,15,19,22,23
true 9:7
turbines 3:17
twenty-four 5:19
typewritten 9:6

U

uncut 5:12,22
unoccupied 5:18
use 6:21

V

viability 7:9
Vincent 1:22 2:13
vote 7:2,25 8:2,5,6,8,9,11,14

W

want 8:22
warranted 7:16
WHEREOF 9:9
Wildlife 6:6
Williams 1:24 2:15 8:13,15
wind 1:6,8 2:25 3:3,15,17 6:25
window 4:8,16
wish 7:23

WITNESS 9:9 work 6:11, 11, 14	
X	
Y	
York 1:2, 14, 24 2:16 3:10, 19 9:2	
Z	
Zemsky 1:23 2:14 Zucker 1:22 2:12	
0	
1	
1 3:24 4:2, 8, 8 9:5, 6 10 1:8 11th 4:4 12th 5:4 14-F-0490 1:1, 6 2:1, 24 3:1 4:1 5:1 6:1 7:1 8:1 9:1 147 4:6 17th 3:10 18-E-0333 7:15	
2	
2018 3:10 2019 1:13 4:4 5:4 9:10 26 1:13	
3	
3rd 9:10	
4	
5	
6	
7	
70 7:15	
8	
8 9:7	
9	