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Siting Board - 14-F-0490 - 5-15-2018

STATE OF NEW YORK

DEPARTMENT OF PUBLIC SERVICE

IN THE MATTER OF

Case 14-F-0490

Application by Cassadaga Wind LLC for a Certificate of Environmental Compatibility and Public Need pursuant to Article 10 of the New York State Public Service Law for the Cassadaga Wind Project, Town of Charlotte, Cherry Creek, Arkwright and Stockton, Chautauqua County.

SITING BOARD

May 15, 2018

Albany, New York

JOHN B. RHODES, Chair

Lou Alexander, alternative of Basil Seggos as the Department of Environmental Conservation.

Kevin Malone, alternate of Dr. Howard Zucker, Department of Health.

Vincent Ravaschiere, alternate of Howard Zensky Empire State Development Corporation.

John Williams, alternate of Richard Kauffman New York State Energy Research and Development Authority.

Gregory Gane, ad hoc member

Karl, Kelling, ad hoc member

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2 CHAIRMAN MR. JOHN RHODES: My clock says ten
3 thirty, so we'll -- we'll proceed.

4 I would like to call this meeting of the
5 Board on Electric Generation Siting and the Environment to
6 order.

7 Before moving to the agenda, I would like
8 to introduce each member of the board who are present
9 today beginning with the two ad hoc members, Mr. Gregory
10 Gain and Mr. Karl Kelling, who are attending this meeting
11 in the Department's Buffalo office and of course I wanted
12 to thank them for their continued service to the Board in
13 this matter.

14 Then representing the permanent members of
15 the siting board, we've got Lou Alexander, alternative of
16 Basil Seggos as the Department of Environmental
17 Conservation. We've got Kevin Malone, alternate of Dr.
18 Howard Zucker, Department of Health. We have Vincent
19 Ravaschiere, alternate of Howard Zensky Empire State
20 Development Corporation. We have John Williams, alternate
21 of Richard Kauffman New York State Energy Research and
22 Development Authority.

23 Secretary Burgess, are there any changes to
24 the agenda?

25 MS. KATHLEEN BURGESS: Good morning. There

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2 are no changes to this morning's agenda.

3 MR. RHODES: With that, let's proceed to
4 the item. Case Fifteen -- case, excuse me 14-F-0490 is
5 the petition for rehearing filed by Concerned Citizens of
6 the Cassadaga Wind Project regarding Cassadaga Wind
7 L.L.C.'s certificate of environmental compatibility and
8 public need pursuant to Article Ten to construct a wind
9 energy project. This item will be presented by Dakin
10 LeCakes, Administrative Law Judge, Department of Public
11 Service; Paul Agresta, General Counsel, Department of
12 Public Service, and Mike Worden, Director Office of
13 Electric Gas and Water, Department of Public Service are
14 available for questions.

15 Judge LeCakes, please begin.

16 A.L.J. DAKIN LECAKES: Thank you very much.

17 Good morning Chairman Rhodes and members of
18 the Siting Board. When we were here in January,
19 Administrative Law Judge from the Department of
20 Environmental Conservation, Judge Nick Garlick and myself
21 presented to the Siting Board our evaluation and
22 recommendations regarding an application filed by
23 Cassadaga Wind L.L.C. under Article 10 of the New York
24 State Public Service Law.

25 At that meeting, the Siting Board voted to

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2 issue a certificate of environmental compatibility and
3 public need to Cassadaga Wind authorizing it to construct
4 a major electric generating facility consisting of up to
5 forty-eight wind turbines in Chautauqua County, New York.

6 That authorization was provided through a
7 written order issued on January 17th. The order included
8 161 certificate conditions applicable to the project's
9 construction and operation.

10 Cassadaga Wind submitted its formal
11 acceptance of the certificate and conditions on February
12 15th.

13 On February 20th, Concerned Citizens for
14 the Cassadaga Wind Project filed a petition for rehearing
15 on certain limited points in the certificate conditions.

16 First, Concerned Citizens took issue with
17 Condition 32 which requires Cassadaga Wind to prepare and
18 file a final bird and bat conservation strategy plan in
19 consultation with the Department of Public Service, the
20 Department of Environmental Conservation, and the United
21 States Fish and Wildlife Service. Concerned Citizens
22 requested that the condition be modified to include
23 language identical to Condition 33 which would allow for
24 participation in those consultations by any party to this
25 matter.

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2 The second, Concerned Citizens complains
3 that the certificate conditions do not properly avoid or
4 minimize the impacts of fluctuating project noise.
5 Concerned Citizens raises a couple of issues with regard
6 to both the applicant's pre-construction modeling and its
7 monitoring protocols during project operation. Concerned
8 Citizens believes that the applicable sound limits in the
9 conditions do not account for maximum sound levels, that
10 the conditions rely too much on operational monitoring,
11 rather than pre-construction modeling, and that the
12 operational modeling relies too much on residential
13 complaints.

14 Finally, Concerned Citizens requests that
15 the Board require Cassadaga Wind to submit information on
16 noise reduction operations based on the noise modeling
17 results in Cassadaga Wind's application.

18 Cassadaga Wind objected to the petition
19 being filed one day late and to the fact that Concerned
20 Citizens did not take exception to some of the conditions
21 that it now seeks to modify. Cassadaga Wind also
22 addressed the merits of each of Concerned Citizens'
23 objections.

24 Prior to this meeting, you were provided
25 with a draft order. The draft order before you contains

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2 the recommendations of advisory staff on this matter.

3 It would excuse the rehearing petition as
4 being one day late as an exercise of Board discretion
5 particularly on this first Article 10 certificate granted
6 but cautions that such discretion is exercised here
7 particular to the circumstances of this case.

8 As for the bird and bat conservation
9 strategy plan, the order agrees with Cassadaga Wind that
10 Concerned Citizens failure to take exception to the same
11 language that was included in the recommended decision
12 precludes it from requesting relief, but the order then
13 explains that Concerned Citizens was not intended to be
14 precluded from those discussions and consultations and so
15 the order modifies -- the draft order modifies on the
16 Board's own motion the language of the condition to
17 include all parties in this case in those discussions in
18 order to clarify the Board's original intent for that
19 certificate condition.

20 As for the noise issues, the draft order
21 explains that the board did consider Concerned Citizens
22 arguments and that nothing new was raised in its rehearing
23 petition finding that the January order and certificate
24 conditions appropriately account for maximum noise values,
25 that the effects -- that it also accounts for the effects

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2 of wind shear and amplitude modulation and that it
3 achieves a proper balance between the requirements on pre-
4 construction noise modeling and post-construction or
5 operational noise monitoring.

6 The January order also balances the --
7 achieves a proper balance between requiring that the
8 certificate holder perform regular noise testing and in
9 response to residential complaints that might be filed
10 with the certificate holder or the Public Service
11 Commission. Finally, as for the noise reduction
12 operations, the order is clear -- the draft order is clear
13 that such protocols are required where the modeling
14 demonstrates that they are necessary.

15 Lastly, the order also explains the role of
16 the parties and Department of Public Service staff in the
17 compliance filing process, noting that they will have the
18 opportunity to comment on any filings made by the
19 certificate holder during its compliance filing process.

20 With that, I'm ready for any questions.

21 MR. RHODES: Thank you, Judge LeCakes. My
22 own comments are brief. First, I'd simply welcome the
23 fact of this rehearing. I think it demonstrates that our
24 process can work as it should and shows that our
25 consideration of these matters is serious and transparent.

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2 I am pleased that the Concerned Citizens
3 played the role that they played on speaking up on these
4 matters and raising their points. I thank you for your
5 work in developing the draft order and I will support the
6 recommendation.

7 So are there any comments or questions from
8 my fellow board members?

9 SECRETARY BURGESS: Can I just remind
10 everyone to please speak into the microphone, a little bit
11 closer please?

12 MR. RHODES: I beg your pardon.

13 MS. BURGESS: There, speak a little closer
14 into the microphone please.

15 MR. RHODES: Sorry. Thank you. Are there
16 any comments or questions from my fellow board members?

17 Hearing and seeing none, let's proceed to a
18 call for a vote. My vote is in favor of the
19 recommendation to deny the petition of Concerned Citizens
20 of the Cassadaga Wind Project on the merits and to correct
21 certificate condition 32 as described.

22 Mr. Alexander, how do you vote?

23 MR. LOUIS ALEXANDER: My vote is also in
24 favor.

25 MR. RHODES: Mr. Gain, how do you vote?

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2 MR. GREGG GAIN: In favor.

3 MR. RHODES: Mr. Kelling, how do you vote?

4 MR. KARL KELLING: I'm in favor of the
5 Board's recommendation.

6 MR. RHODES: Thank you. Mr. Malone, how do
7 you vote?

8 MR. KEVIN MALONE: My vote is in favor.

9 MR. RHODES: Mr. Ravaschiere, how do you
10 vote?

11 MR. VINCENT RAVASCHIERE: In favor.

12 MR. RHODES: Mr. Williams, how do you vote?

13 MR. JOHN WILLIAMS: In favor.

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

17 MS. BURGESS: There's nothing further to
18 come before the board today.

19 MR. RHODES: With that, let us adjourn.
20 Thank you.

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STATE OF NEW YORK

I, HANNAH ALLEN, do hereby certify that the foregoing was reported by me, in the cause, at the time and place, as stated in the caption hereto, at Page 1 hereof; that the foregoing typewritten transcription consisting of pages 1 through 10, is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 22nd day of May, 2018.

HANNAH ALLEN, Reporter

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