

NEW YORK STATE BOARD ON ELECTRIC  
GENERATION SITING AND THE ENVIRONMENT

At a session of the New York State  
Board on Electric Generation Siting  
and the Environment held in the  
City of Albany on April 26, 2019

BOARD MEMBERS PRESENT:

John B. Rhodes, Chair  
New York State Public Service Commission

Louis Alexander, Alternate for  
Basil Seggos, Commissioner  
New York State Department of Environmental Conservation

Dr. Elizabeth Lewis-Michl, Alternate for  
Howard A. Zucker, M.D., J.D., Commissioner  
New York State Department of Health

Vincent Ravaschiere, Alternate for  
Howard Zemsky, Commissioner, President & CEO  
New York State Empire State Development Corporation

John Williams, Alternate for  
Richard L. Kauffman, Chair  
New York State Energy Research and Development Authority

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.

ORDER GRANTING AMENDMENT OF CERTIFICATE  
OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC  
NEED SUBJECT TO CONDITIONS

(Issued and Effective April 26, 2019)

BY THE BOARD:

INTRODUCTION

On January 17, 2018, the New York State Board on  
Electric Generation Siting and the Environment (Siting Board)

approved Cassadaga Wind LLC's (Certificate Holder) request pursuant to Article 10 of the Public Service Law (PSL) for a Certificate of Environmental Compatibility and Public Need (Certificate), with conditions, for the Cassadaga Wind Project (Project). The Project consists of, among other things, 48 wind turbines and associated facilities in the Towns of Arkwright, Charlotte and Cherry Creek in Chautauqua County, New York.

On January 11, 2019, the Certificate Holder filed a Petition with the Siting Board seeking an amendment (Petition) to the Certificate which would allow tree clearing outside of the previously-approved tree-clearing window of November 1 to April 1, as ordered pursuant to Condition 147. Through this Order, the requested amendment is approved subject to specific conditions as discussed in more detail below.

#### BACKGROUND

Article 10 of the PSL charges the Siting Board to make specific findings before issuing a Certificate. Specifically, PSL §168(2) requires that the Siting Board, in any decision on an application, make explicit factual findings as to the probable environmental impacts of the construction and operation of the facility, including impacts on ecology, air, ground and surface water, wildlife, and habitat (§168[2][a]); public health and safety (§168[2][b]); cultural, historic, and recreational resources, including aesthetics and scenic values (§168[2][c]); and, transportation, communication, utilities and other infrastructure (§168[2][d]). The statute further provides that the Siting Board's findings must examine the cumulative impact of emissions on the local community to determine whether the construction and operation of the facility will result in a significant and adverse disproportionate environmental impact.

Public Service Law §168(3) prohibits the Siting Board from issuing a Certificate unless the Board determines that: the facility is a beneficial addition to, or substitution for, the electric generation capacity of the State (§168[3][a]); the construction and operation of the facility will serve the public interest (§168[3][b]); the adverse environmental impacts of the project's construction and operation have been adequately minimized or avoided to the maximum extent practicable (§168[3][c]); if the facility results in or contributes to a significant and adverse disproportionate environmental impact in the community in which it would be located, the applicant will avoid, offset or minimize such to the maximum extent practicable for the duration of the Certificate using verifiable measures. (§168[3][d]); and, the facility is designed to operate in compliance with applicable State and local laws and regulations (§168[3][e]).

On January 17, 2018 the Siting Board made specific findings pursuant to PSL §168 based on the evidentiary record and issued a Certificate for the construction and operation of the Project, with certain conditions.<sup>1</sup> Among the many conditions listed in the Certificate, Condition 147 states that:

Tree and vegetation clearing shall be limited to the minimum necessary for Facility construction. Surrounding trees and vegetation will not be cut down on any property solely to reduce turbulence or increase wind flow to the Facility. To reduce mortality to nesting/roosting birds and bats, all tree clearing activities (except for hazard tree removal) shall be conducted between November 1 and

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<sup>1</sup> Certificate Condition 3 also required the Certificate Holder to provide a written acceptance of the Certificate conditions pursuant to 16 NYCRR §1000.15(a). On February 15, 2018, the Certificate Holder filed a verified statement accepting the Certificate and agreeing to comply with the terms, limitations and conditions contained therein.

April 1 and does not include trees less than or equal to 3 inches in diameter at breast height (DBH).

Condition 147 relates to a recommendation made by the New York State Department of Environmental Conservation (DEC) to minimize impacts to bird and bat species generally and particularly to the northern long-eared bat (NLEB). Generally, minimization of direct impacts to bats can best be accomplished through conducting any necessary forest clearing in occupied habitat during the NLEBs' hibernation period of November 1 to April 1. The NLEB is a federally- and state-listed threatened species.<sup>2</sup> Therefore, as a general rule, DEC guidance requires that, where site specific surveys have not been conducted to determine the presence of the NLEB, tree clearing operations must take place between November 1 and March 31 to protect the NLEB from unintentional harm should they be present.<sup>3</sup>

The Certificate Holder now seeks to amend Condition 147 to allow tree clearing in the previously restricted months of April to November. As explained below, the Certificate Holder claims there are no known NLEB hibernation sites or maternity roost trees within 1/4 mile of the Project, nor is the Project within 1.5 miles of a documented summer occurrence.<sup>4</sup>

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<sup>2</sup> 6 NYCRR §182.2(y)(2); 50 CFR §17.40(o).

<sup>3</sup> Protection of Northern Long-eared Bats, DEC <https://www.dec.ny.gov/animals/106090.html> (Last accessed March 21, 2019).

<sup>4</sup> Summer occurrence is a term used in DEC's NLEB Guidance. The term means a geographic area where NLEB reside in occupied habitat when not in the hibernating period. Starting in July the bats spread out more widely on the landscape.

THE PETITION

The Certificate Holder asserts that the tree clearing window as approved in Condition 147 of November 1 to April 1 would cause significant delays in construction and would not allow for the Project to meet the federal Production Tax Credit (PTC) in-service deadline of December 31, 2020. The Certificate Holder claims that wind farm construction is a complex process that must occur in phases; beginning with tree clearing, followed by grading and installation of access roads, and finally, construction of the Project. The Certificate Holder further asserts that the total construction time for the Project will be approximately 12 to 18 months based on the construction schedule of a recently completed 78 megawatts (MW) wind facility in the near-by Town of Arkwright. As a result, the Certificate Holder claims that tree clearing must be allowed to commence by June 2019 or its ability to meet the in-service deadline for the PTC would be significantly hindered.

The Petition asserts that there are no known hibernation sites or maternity roost trees of the NLEB within a quarter-mile of the Project, nor is the Project within 1.5 miles of a documented summer occurrence. The Certificate Holder, therefore, believes it should be allowed to clear trees during the April 1 to October 31 timeframe, with certain restrictions.

Specifically, the Certificate Holder reiterates that from November 1 to March 31, the NLEB are inactive and are within hibernation sites. Thus, it maintains there should be no restrictions to tree clearing activities.

However, from April 1 to October 31, the Certificate Holder asserts that the NLEB may be active and within the forested landscape. Therefore, the Certificate Holder recognizes that restrictions should be implemented and offers several in its Petition. First, the Certificate Holder states

it will leave uncut all snag (e.g., standing dead tree) and cavity trees unless their removal is necessary for protection of human life and/or property. Snag and cavity trees that must be cleared would only be removed after being observed by an Environmental Monitor to ensure that no bat activity is present. Further, these unoccupied snag and cavity trees would be removed within 24-hours of observation by the Environmental Monitor. Second, Certificate Holder would leave uncut all known and documented roost trees and any trees within a 150-foot radius of a documented summer occurrence, although Certificate Holder states that there are no known or documented roost trees or documented summer occurrence at the Project site. Third, 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 would be suspended and DEC Wildlife Staff will be notified as soon as possible. The Certificate Holder proposes to have an Environmental Monitor present on site during all tree clearing activities. If any bat activity is noted, a stop work order would immediately be issued and remain in place until such time as staff of the DEC and Department of Public Service (DPS) have been consulted and have authorized resumption of work.

According to the Petition, these restrictions are consistent with DEC guidance on the NLEB, specifically regarding the requirements for projects that result in a change of land use within NLEB occupied habitat. In fact, DEC guidance on the NLEB requires these steps to be taken; otherwise, the Certificate Holder would have to obtain an incidental take permit under 6 NYCRR §182.<sup>5</sup> The Petition also asserts that these restrictions are consistent with the U.S. Fish and Wildlife Service Rule 4(d) under the Endangered Species Act, which

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<sup>5</sup> Id.

extends protections only to known occupied maternity roosts, of which none, according to the Petition, occur in the Project area.<sup>6</sup>

Lastly, the Certificate Holder states that as a general matter, suitable habitat for avian species is abundant within the Project site and adjacent areas, and that no threatened or endangered avian species were identified as occurring therein. Therefore, the Certificate Holder believes tree clearing during the April 1 to October 31 timeframe will not result in a significant impact under the Siting Board's rules.

#### NOTICE

The Certificate Holder filed, served and provided notice of its request for an amendment of its Certificate in compliance with the requirements of 16 NYCRR §1000.16(b). The notice was published twice in The Post-Journal and The Observer newspapers. The notice described the Petition and stated, as required by 16 NYCRR §1000.16(b)(5)(iv), that any comments on the Petition must be received by the Secretary to the Siting Board no later than 30 days after the date on which the notice was given. The deadline for the receipt of comments was February 15, 2019.

Several people submitted comments regarding the Petition. Jonathan Townsend contends that the changes proposed by the Petition exacerbate the risk of harm to local bat and bird species. The April 1 to November 1 time period, according

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<sup>6</sup> For the NLEB, the 4(d) Rule tailors protections to areas affected by white-nose syndrome during the bat's most sensitive life stages. The Rule is designed to protect the bat while minimizing regulatory requirements for landowners, land managers, government agencies and others within the species' range.

to Mr. Townsend, represents a critical point in the reproductive cycles of migratory bats, where they birth and rear their pups. Likewise, birds are also nesting and reproducing, and thus similarly are more sensitive during this time period. Therefore, Mr. Townsend asserts that tree clearing activities during this time could negatively impact these species and opposes the Petition.

A number of others echo Mr. Townsend's assertions that the proposed amendment would negatively impact bat and bird species. Tina Graziano notes the presence of Indiana bats, Hoary bats, and the Little Brown Myotis in the surrounding areas, and how construction of wind facilities impacts both mortality rates as well as contributes to habitat loss.

Earl and Joni Riggle (the Riggles) allege the time period coincides with the "leaf-on" time period for invasive species, increasing the need of herbicide application. This would increase the risk of exposure to bioaccumulated and biomagnifying toxins. In addition, invasive pests would be most active during this period, and concurring with the "leaf-on" period of invasive flora, carry a greater risk of spread if tree clearing activities were to occur. The Riggles argue a singular Environmental Monitor to be ineffective in preventing such risks and note that tree clearing and subsequent road clearing during this time could lead to greater erosion.

The Riggles and others also assert that the Petition constitutes a revision rather than a modification under the Siting Board's rules. This is premised on the exacerbation of the aforementioned risks to bat populations in the Project area. Mark Twichell alleges this is significant, because the bat populations play a vital role in lieu of pesticides in agriculture, as well as reduce risk of insect-borne diseases.



The Concerned Citizens of the Cassadaga Wind Project (CCCWP) interprets the standards for significance in 6 NYCRR §617.7(c) to include the short-term and related cumulative impacts in the form of habitat fragmentation, disturbance, and degradation which CCCWP believes will result from tree clearing during this time period. Specifically, CCCWP references the 77.3 acres in which the Certificate Holder intends to clear trees. Accordingly, CCCWP and other parties suggest that a revision, and the hearing process it entails, is necessary here rather than a modification.

Several commenters also contend the Certificate Holder has not met its burden to warrant amendment of the Certificate. They state that the Certificate Holder misrepresented its financial integrity before the Siting Board and should have raised this issue before agreeing to Certificate Condition 147. The CCCWP notes that known factors, such as scheduling interconnection with the New York Independent System Operator, are malleable and could be altered in lieu of adjusting tree clearing times. Thus, CCCWP contends, there is a clear absence of information as to why compliance with Condition 147 is incompatible with the Project's goals.

DEC provided comments on February 12, 2019 and confirms that the Project area does not contain any identified maternity roost locations for the NLEB. Therefore, DEC does not oppose the Certificate Holder's amendment request.

A number of public comments were filed, generally in opposition to the Certificate Holder's amendment request. These comments echoed the sentiments discussed above, as well as the assertion that the impacts to avian and bat species, which would occur during the time period are substantial, and that the Certificate Holder's Petition failed to justify the necessity to modify Condition 147.

On February 22, 2019, the Certificate Holder filed responsive comments. It clarified that the request would not change the areal extent of habitat loss and would stay within the scope of the clearing already authorized outside of the time period. Furthermore, the Certificate Holder states the Project is not sited within a designated Important Bird Area, and no threatened or endangered tree nesting avian species were identified within the Project site. The Certificate Holder reiterates DEC's affirmation that the NLEB would be unaffected, as no hibernation or maternity sites were found within a quarter mile radius. In addition, the Project site is not within 1.5 miles of a documented summer occurrence of the species. Lastly, the Certificate Holder states it has agreed to implement protective measures to ensure any potential impacts are minimized.

On March 1, 2019, CCCWP filed additional comments arguing that the Certificate Holder's responsive comments are unauthorized and should not be allowed. In addition, CCCWP asserts that its original comments reference DEC testimony that tree clearing during the proposed amendment's time period would have significant impacts to NLEB mortality rates; clarifies that it recognizes a change in tree clearing times does not result in a change to the areal extent of habitat loss, but reiterates its concern that such clearing would impact wildlife during a "biologically sensitive time;" alleges the Certificate Holder has an obligation to achieve a "net gain to bat populations;" disagrees with the Certificate Holder's conclusion that NLEB would not suffer from the tree-clearings during the proposed time period because NLEB are known to travel great distances during this period; and, argues that Certificate Conditions 84, 85, and 86 will not protect avian species.

LEGAL AUTHORITY

Under PSL §168(7), "[f]ollowing any rehearing and any judicial review of the board's decision, the board's jurisdiction over an application shall cease, provided, however, that the permanent board shall retain jurisdiction with respect to the amendment, suspension or revocation of a certificate." Accordingly, the Siting Board retains jurisdiction in this case.

The regulations enacted by the Siting Board for PSL Article 10 are applicable to Certificate amendments. Specifically, Section 1000.16 of the Article 10 regulations governs amendments of certificates. Section 1000.16(a) requires, as an initial step, a determination of whether a proposed amendment is a revision. A revision is defined as "an amendment of an application or Certificate proposing or authorizing a change in the facility likely to result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility as determined by the Board." To determine whether a material increase in any environmental impact of the Project will occur in connection with the proposed amendment, the criteria for determining significance set forth in 6 NYCRR §617.7(c) (regulations governing the State Environmental Quality Review Act) apply. The criteria set forth in 6 NYCRR §617.7(c) directs agencies to compare the impacts that may be reasonably expected to result from a proposed action against a set of criteria set forth in that section. Those criteria are intended to be illustrative, not exhaustive, but are indicators of significant adverse impacts on the environment.

DISCUSSION AND CONCLUSION

Expansion of the tree clearing window in this instance will not significantly increase the environmental impacts of

construction and operation of the Project. In determining whether the amendment would likely result in any significant increase in any environmental impact, the Siting Board applies the criteria for determining significance set forth in 6 NYCRR §617.7(c) as directed by 16 NYCRR §1000.16(a).<sup>7</sup> The Siting Board finds here that the application of the criteria in 6 NYCRR §617.7(c) to these facts would not trigger further environmental review as it is not likely that tree clearing between April 1 to November 1 would result in material or significant increases to bird or bat mortality provided certain restrictions are in place. Therefore, the Siting Board finds that the amendment as proposed constitutes a modification and is not a revision. As such, no further hearing is required and the Petition for an amendment to Condition 147 is hereby granted.

6 NYCRR § 617.7(c)(ii) states, "the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such species; or the significant impact to natural resources." The scope of the proposed tree clearing remains unchanged as from when the Certificate Holder received approval of the original Certificate. In addition, the tree clearing area only represents a small fraction of acreage for the total Project. Thus, the change is temporal in nature only. While a temporal change certainly has the potential to have increased impacts, such impacts can be properly minimized through protective measures.

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<sup>7</sup> There is no proposed change in the location of all or a portion of the Project facilities in this Petition.

The area of forest affected does not contain significant habitat areas and in turn, clearing will not have a significant impact on the NLEB or any other threatened or endangered species. NLEBs are not habitat constrained and, as such, tree clearing will not affect their migratory movements. In this particular location, forest clearing will not affect NLEB populations, because the Project is not located in known occupied habitat and it is unlikely that NLEB are or will be present.

Where the Project area is not within five miles of any identified hibernacula, clearing may occur outside the designated window provided proper safeguards are in place. Here, the Certificate Holder agrees that from April 1 to November 1, the NLEB may be active and within the forested landscape and restrictions should be implemented. The restrictions the Certificate Holder provides in its Petition are reasonable and sufficient in light of the fact that NLEB are neither found presently in or anticipated to relocate to the area to be cleared.

In its comments, CCCWP asserts that the impacts of the proposed amendment should constitute a revision because the request would likely result in a significant increase in environmental impacts. Namely, CCCWP asserts that 77.3 acres of forest habit is significant in scope and that, the nature and timing of tree clearing activities would greatly increase impacts to threatened and endangered tree-nesting avian species and migrating raptor species.

While the Siting Board does not necessarily acknowledge CCCWP's claim that 77.3 acres of the total Project area of over 35,000 acres represents significant forest fragmentation, it does acknowledge that a shift in seasonal construction activities of the Project may have additional

impacts. The degree of those impacts can be mitigated, however, by existing Conditions 84, 85, and 86 which state as follows:

84. Excluding bald eagles (*Haliaeetus leucocephalus*), 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.

85. 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.

86. During construction, maintenance, and operation of the Facility, the Certificate Holder shall maintain a record of all observations of New York State threatened or endangered (TE) species as follows:

a) Construction: 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.<sup>8</sup>

d) Reporting Requirements: All reports of TE species shall include the following information: species, observation date and time; GPS coordinates of each individual observed (if operations and maintenance staff do not have GPS available the report should include the nearest turbine number and cross roads location); behavior observed; identification and contact information of the observer; and the nature of and distance to any project construction or maintenance activity.

e) If at any time during the life of the Project any dead, injured or damaged State-listed TE species, or their parts, eggs, or nests are discovered within the Project Area (defined for the purpose of this condition as leased land or property parcels containing Project components) by the Certificate Holder, its designated agents, or a third party that reports to the Certificate Holder, the certificate holder shall immediately (within twenty four (24) hours) contact the regional DEC Region 9 Natural Resource Supervisor (716.372.0645) and United States Fish and Wildlife Service (607.753.9334) to arrange for recovery and transfer of the specimen(s). The following information pertaining to the find shall be recorded: species, the date the animal or nest was discovered; the GPS coordinates of the location of discovery, the name(s) and contact information of the person(s) involved with the incident(s) and find(s); and, if known, an explanation of how the mortality/injury/damage occurred. This record shall be kept with the container holding the specimen and given to the DEC at the time of transfer. If the discovery is followed by a non-business day, the Certificate Holder shall ensure the location

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<sup>8</sup> Certificate Condition 86 sub-parts (b) and (c) apply to post-construction and are not specifically listed herein.

of the find is marked, GPS data recorded, detailed photographs of the carcass(es) or nest(s) taken and surrounding landscape relative to the Project and components, and the specimen(s) placed in a freezer until it can be retrieved by the proper authorities.

Considering the Certificate Holder's proposed protective measures, in concert with the other Certificate Conditions, the Siting Board finds that there will be limited impacts during tree clearing.

CCCPW and others further assert that need for curtailment<sup>9</sup> proves the existence of NLEB and that as a result tree clearing should be limited in this area. As a point of clarification, Certificate Conditions requiring curtailment are required even if the Project is not located in known occupied NLEB habitat. Occupied habitat is an area which contains resources such as hibernaculum, or roost trees, that NLEB spend a good part of the non-hibernating season nearby. The times when curtailment is required are when NLEBs are mobile and their presence is not limited to occupied habitat. At such times NLEBs are vulnerable to mortality from wind turbine strikes in areas outside of their summer resident habitat. Curtailment is also necessary for protecting other species of bats. However, as indicated by DEC, because the area at issue is not identified as a roosting location, and the scope of tree clearing has not changed, the impacts do not rise to the point of significance for the purposes of 6 NYCRR § 617.7(c)(ii).

CCCPW stated that "[a]n amendment to the Certificate that dials back mortality reductions further will logically kill

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<sup>9</sup> Curtailment of wind turbine operation occurs during certain conditions to minimize operational impacts on flying species, particularly bat species.



more birds and bats, including the NLEB."<sup>10</sup> Its reliance on DEC testimony concerning Condition 147 is misguided. Although DEC testimony noted that limiting tree cutting to the hibernation seasons is a "straightforward and reliable way" to avoid impacts to the NLEB, this does not suggest it is the only means to do so.<sup>11</sup> DEC has confirmed that the Project is not located in NLEB occupied habitat and there are no maternity roosts present and has indicated its support for the amendment. While it is technically possible that some NLEBs might migrate or travel through the Project site, the proposed controls are adequate to minimize incidental takings during this time period.

CCCWP and others further contend that these potential impacts should be weighed against the apparent gravity of the Certificate Holder's need to meet a commercial operation deadline. The CCCWP in its comments suggest that because the Project is owned by a seasoned developer, it should have been fully aware of its obligations. Thus, as CCCWP argues, the opportunity to raise its concerns with harmonizing the tree clearing schedule and its operational deadlines arose and passed during the application process and it is inappropriate to re-examine such issues on the back-end. In its Petition, the Certificate Holder asserts that earlier tree clearing would be necessary to meet certain federal program deadlines that cannot be obviated. While such considerations are outside the scope of the criteria outlined in 6 NYCRR §617.7(c), and thus have no bearing on the Siting Board's determination of significance, the Siting Board can balance the impacts of allowing tree clearing

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<sup>10</sup> CCCWP Comments, p. 10.

<sup>11</sup> Id., p. 8.

activities outside the window against the need to achieve the State's goal of increasing renewable energy.<sup>12</sup>

The Siting Board finds that the proposed change to the tree clearing window, along with the other proposed restrictions by the Certificate Holder, will not create a significant adverse impact on the environment. Application of reasonable restrictions on clearing activity as proposed by the Certificate Holder in its Petition will be sufficient to protect the habitat of threatened or endangered avian species. Thus, approval of the requested amendment will be conditioned upon the Certificate Holder adhering to all such construction control measures identified in the Petition.

The New York State Board on Electric  
Generation Siting and the  
Environment orders:

1. The Certificate of Environmental Compatibility and Public Need (Certificate) previously granted to Cassadaga Wind LLC (Certificate Holder) is amended as follows. All tree clearing activities (except for hazard tree removal) shall be allowed between November 1 to March 31 without restrictions. From April 1 to October 31, the following restrictions will be implemented:

- a. The Certificate Holder shall leave uncut all snag and cavity trees, as defined under Department of Environmental Conservation (DEC) Program Policy ONR-DLF-2 Retention on State Forests, unless their removal is necessary for protection of human life and property. When necessary, snag or cavity trees may be removed after being cleared by an

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<sup>12</sup> Moreover, under 16 NYCRR §1000.16(b), the Certificate Holder has the right to seek an amendment of a Certificate granted by the Siting Board.

Environmental Monitor who shall conduct a 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 in the approved clearing area shall be removed within 24-hours of observation.

- b. The Certificate Holder shall leave uncut all known and documented roost trees and any trees within a 150-foot radius of a documented summer occurrence.
- c. If any bats are observed flying from a tree, or from a tree that has been cut, tree clearing activities within 150 feet of the tree shall be suspended and DEC Wildlife Staff shall be notified as soon as possible. The Certificate Holder shall have an Environmental Monitor present on site during all tree clearing activities. If any bat activity is noted, a stop work order shall immediately be issued and shall remain in place until such time as DEC and Department of Public Service Staffs have been consulted and authorize resumption of work.

2. Except as modified above, Condition 147 and all other Certificate Conditions remain in full force and effect.

3. The Certificate Holder shall file with the Secretary, within 15 days after the date of issuance of this Order, a written acceptance of the Certificate, as amended, pursuant to 16 NYCRR §1000.16(a).

4. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

5. This proceeding is continued.

By the New York State Board  
on Electric Generation Siting  
and the Environment,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary