

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on November 15, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair  
Gregg C. Sayre  
Diane X. Burman  
James S. Alesi

CASE 18-E-0399 - Petition of Cassadaga Wind LLC for a  
Certificate of Public Convenience and  
Necessity.

ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
AND PROVIDING FOR LIGHTENED REGULATION

(Issued and Effective November 15, 2018)

BY THE COMMISSION:

INTRODUCTION

By petition filed on July 9, 2018 (Petition), Cassadaga Wind LLC (Cassadaga or Petitioner) requests a Certificate of Public Convenience and Necessity (CPCN) pursuant to Public Service Law (PSL) §68 authorizing the construction and operation of an approximately 126 MW wind generating facility (Facility) in Chautauqua County, New York. Petitioner also requests lightened ratemaking regulation relative to its ownership and operation of the Facility as a merchant generating facility operating in the wholesale power markets.

In this Order, the Public Service Commission (Commission) concludes that Cassadaga has satisfied the statutory requirements of PSL §68 and, therefore, grants a CPCN to Cassadaga in connection with the Facility. The Commission also grants Cassadaga a lightened ratemaking regulatory regime

because it will own and operate the Facility on a merchant basis and participate in the wholesale markets.

BACKGROUND

On January 17, 2018, the New York State Board on Electric Generation Siting and the Environment (Siting Board) issued an order granting Cassadaga a Certificate of Environmental Compatibility and Public Need, pursuant to PSL Article 10 (Article 10 Certificate), to construct and operate the Facility.<sup>1</sup> The Siting Board recognized that other “approvals, consents, permits, certificates or other conditions for the construction or operation of the Facility” may be required under PSL §§68, 69 and 70. The Siting Board noted, however, that the Commission “will not duplicate the need and environmental compatibility issues already addressed by the Siting Board and will instead only act on its police power functions ... .”<sup>2</sup>

On June 1, 2018, Cassadaga petitioned the Commission for a ruling that a proposed transfer of indirect, upstream ownership interests in Cassadaga from EverPower Wind Holdings (EverPower) to Innogy Renewables US LLC (Innogy US) does not require further review under PSL §70.<sup>3</sup> In support of its request, Cassadaga cited Commission precedent that adapted the PSL §70 review process to accommodate lightened ratemaking regulation policies. Under this precedent, full regulatory

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<sup>1</sup> Case 14-F-0490, Cassadaga Wind LLC, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions (issued January 17, 2018) (PSL Article 10 Order).

<sup>2</sup> Id., p. 114. PSL §69 obligates electric corporations to obtain Commission approval before assuming debt with a term that exceeds 12 months. PSL §70 obligates electric corporations to obtain Commission approval before transferring any part of their franchise, works, or system.

<sup>3</sup> Case 18-E-0333, Cassadaga Wind LLC, Declaratory Ruling on Transfer Transaction (issued July 17, 2018) (Transfer Ruling).

review of a PSL §70 petition is not needed for transfers of indirect, upstream ownership interests in lightly-regulated electric corporations unless the proposed transfer presents a risk of market power or harm to captive ratepayers. The Commission's Transfer Ruling concluded that the proposed transfer was consistent with this precedent and did not require further regulatory review. Subsequently, the transfer was consummated on July 25, 2018.

Because the Petition was filed before the Transfer Ruling was issued, the Petition included information pertaining to both EverPower, the pre-transaction upstream owner of Cassadaga, and Innogy US, the post-transaction upstream owner of Cassadaga. This Order only addresses information pertinent to Innogy US, which is the current upstream owner of Petitioner.

#### PUBLIC NOTICE AND COMMENT

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) concerning the request for lightened ratemaking regulatory treatment was published in the State Register on August 8, 2018 [SAPA No. 18-E-0399SP1]. The time for submission of comments pursuant to the Notice expired on October 9, 2018. No comments concerning the request for lightened regulation were received, although many comments were filed that opposed the Facility based on its potential public health, social, environmental, and economic impacts.

On August 24, 2018, the Secretary to the Commission (Secretary) issued a Notice of Public Statement Hearing and Procedural Conference. A public statement hearing was held before Administrative Law Judge (ALJ) Dakin Lecakes in Sinclairville, New York on September 17, 2018. Comments were received at the hearing from 23 local community members. ALJ

Lecakes conducted a procedural conference immediately following the public statement hearing.

On October 3, 2018, ALJ Lecakes ruled that, based upon the positions expressed by the public, an evidentiary hearing was not needed to develop an adequate record in this proceeding, but that the record "would benefit from a brief period of discovery and the inclusion of any relevant material..."<sup>4</sup> Accordingly, ALJ Lecakes established procedural milestones that included: (i) discovery limited to relevant issues in this proceeding by October 12, 2018; (ii) Cassadaga's response to all discovery by October 22, 2018; (iii) submission of a Position Statement and/or any relevant information "obtained through discovery or otherwise" by October 25, 2018; and (iv) Cassadaga's response to the position statements and informational filings by October 29, 2018. The Procedural Ruling clarified that the scope of review in this proceeding is limited to "questions involving the readiness and feasibility of Cassadaga Wind to begin construction of the facility that was authorized by the" Article 10 Order.<sup>5</sup> ALJ Lecakes granted party status to the following local community members: Tina Graziano; Patricia Greenstein; Earl Riggle; Joni Riggle; and Dr. Mark Twitchell.<sup>6</sup>

Comments were received throughout this proceeding from Concerned Citizens of the Cassadaga Wind Project (Concerned Citizens) and the Project Community Members, as well as many individual residents of the project host communities

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<sup>4</sup> Case 18-E-0399, supra, Ruling on Process (issued October 3, 2018) (Procedural Ruling).

<sup>5</sup> Procedural Ruling, p. 2.

<sup>6</sup> Comments were received from Concerned Citizens, Project Community Members, and several individuals that reside in or near the Facility host communities.

(collectively referred to as the "Local Intervenors). The comments are summarized in Appendix A.

On October 25, 2018, Concerned Citizens filed a Position Statement opposing the issuance of a CPCN to Cassadaga. On the same day, Department of Public Service Staff (DPS Staff) submitted information to supplement the decisional record.<sup>7</sup> Cassadaga responded to the Position Statement and other comments on October 29, 2018.

On October 31, 2018, ALJ Lecakes ruled that the record included no information creating a question of fact that requires an evidentiary hearing, and that "the record may be considered complete."<sup>8</sup> In so ruling, ALJ Lecakes explained that PSL Article 10 defines the scope of Siting Board jurisdiction, and issues delegated to the Siting Board are preempted and not under Commission consideration unless the Siting Board defers the issue to the Commission.

ALJ Lecakes thus concluded that issues regarding taxes and the potential health, property value, agriculture, and lost economic opportunity impacts associated with the Facility were addressed by the Siting Board and "are not under the Commission's consideration."<sup>9</sup> Noting that Concerned Citizens contested Cassadaga's claim that construction activities do not include tree clearing, ALJ Lecakes ruled that such issue is not before the Commission because it relates to the ongoing process of compliance with the PSL Article 10 Order. Finally, ALJ Lecakes ruled that the information submitted by DPS Staff was

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<sup>7</sup> Case 18-E-0399, supra, Department of Public Service Staff Supplemental Information (filed October 25, 2018) (DPS Staff Filing).

<sup>8</sup> Case 18-E-0399, supra, Further Ruling on Process (issued October 31, 2018), pp. 2-3.

<sup>9</sup> Id., p. 3.

uncontested, relevant to Cassadaga's ability to finance Facility construction and operation, and may be used to inform the Commission's resolution of the Petition.

THE PETITION

Cassadaga explains that it is a New York foreign limited liability company formed in July 2009 to develop, own, and operate the Facility, which it was authorized to construct in the PSL Article 10 Order.<sup>10</sup>

Innogy US owns 100% of the indirect, upstream interests in Cassadaga and is a wholly-owned subsidiary of Innogy SE, which is based in Germany. Innogy US, Cassadaga explains, develops utility-scale wind and solar energy projects throughout the United States and Canada with an intent to own and operate them over the long-term. In New York, Innogy US also indirectly owns the Baron Winds Wind Project that has been proposed for development in Steuben County, New York.<sup>11</sup>

Cassadaga reports that Innogy SE is a publicly-traded company that indirectly owns and operates more than 3 GW of renewable generation in eight countries, including approximately 2 GW of onshore wind generation. According to Cassadaga, Innogy SE employs more than 40,000 employees in 16 European countries and serves approximately 23 million customers.

Petitioner plans to begin construction of the Facility during the first quarter of 2019.<sup>12</sup> The Facility, Cassadaga

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<sup>10</sup> The Petition presents certified copies of Cassadaga's Certificate of Formation and confirmation that the company is registered to do business in New York in Exhibits A and B, respectively.

<sup>11</sup> See Case 15-F-0122, Baron Winds, LLC.

<sup>12</sup> Petitioner states that Facility construction will take approximately one year to complete.

explains, will be located primarily on forested recreational lands.

Cassadaga reports that Exhibits A and B of the Petition satisfy the statutory requirements under PSL §68 to demonstrate that it has the legal capacity to own and operate electric plant and is properly registered to do business in New York. Parts of the Facility's collection lines will be located in municipal rights-of-way. Cassadaga avers that it received permission to locate the Facility in the municipal rights-of-way through Host Community Agreements and Road Use Agreements (Road Use Agreements) with the Towns of Cherry Creek, Charlotte, and Arkwright.<sup>13</sup>

Cassadaga argues that, aside from the administrative task of confirming that the filed documents support the findings required by PSL §68, the remaining scope of Commission review is limited to considering Cassadaga's ability to finance Facility construction and operation.

#### Regulatory Requirements

The information that Cassadaga must provide to support its CPCN application is described in 16 NYCRR Part 21, which includes the information presented in Petition Exhibits A and B. Cassadaga asserts that the Petition satisfies these requirements and provides a sufficient basis for the Commission to complete its review within the scope of this proceeding. Addressing 16 NYCRR §21.2, Cassadaga states that it will not provide utility service in any territory, and that it does not require any municipal right or privilege under franchise. Cassadaga states that the only municipal consents required to construct and operate the Facility are granted in the Road Use Agreements. Other information required by §21.2 is not relevant, Cassadaga

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<sup>13</sup> Cassadaga filed the Road Use Agreements with the Secretary on October 23, 2018.

continues, because it does not have an expired franchise or been granted any permit, license, or authority by any Federal authority relative to the Facility that was not addressed in the Article 10 proceeding.

Cassadaga asks the Commission to take notice of the record developed in the Article 10 proceeding, which includes information that addresses the requirements of 16 NYCRR §21.3. Petitioner avers that §21.3(a) is irrelevant because it will not exercise authority granted by a franchise in any territory. Information required by §21.3(b) describes the Facility, the Towns in which it will be located, and its costs and construction schedule and was provided in Exhibits 3, 11, and 13 to Cassadaga's Article 10 application. Addressing §§21.3(c) and (e), Cassadaga explains that the Facility will be financed by Innogy SE through its balance sheet liquidity, a construction loan, or other financial mechanism. Estimated Facility revenues, Petitioner continues, will be derived from power purchase agreements (PPAs) and wholesale energy sales. The estimated cost of Facility operations for its first three years of service were addressed in the Article 10 proceeding and Exhibits 13 and 27 to the Article 10 application. Cassadaga maintains that §§21.3(d) and (g) are irrelevant because it will not provide any retail services.

Ability to Finance Facility Development

Cassadaga asserts that the Facility is economically feasible, its ownership is financially viable, and it's ready to construct and operate the Facility. Innogy SE will finance Facility construction with liquidity on its balance sheet and, if needed, existing credit facilities. Cassadaga reports that, as of March 31, 2018, Innogy SE held €3.1 billion of cash, cash equivalents, and marketable securities, as well as €2.0 billion of committed liquidity lines. If additional financing is



needed, Cassadaga continues, Innogy SE has investment grade credit ratings from S&P (BBB), Moody's (Baa2), and Fitch (BBB+) that ensure access to additional capital.

Cassadaga argues that Innogy SE has a proven track record of successfully developing and operating renewable energy projects. Innogy SE indirectly owns and operates more than 1,900 MW and more than 900 MW of onshore and offshore wind generation,<sup>14</sup> respectively. Cassadaga further reports that Innogy SE realized revenues of approximately €43 billion in 2017 and is in good financial health.

Petitioner argues that the Facility is economically feasible. The Facility will realize income from the sale of energy pursuant to a long-term off-take agreement and the sale of "green attributes." Cassadaga reports that five years of meteorological testing demonstrates that the Facility will be sited in a location that is suitable for wind energy generation.

Lightened Regulatory Regime

Cassadaga requests that its ownership, construction, and operation of the Facility be subject to a lightened ratemaking regulatory regime that is consistent with previous Commission orders involving wholesale merchant generators. Petitioner asserts that it will operate the Facility on a merchant basis in competitive wholesale markets and will not serve captive retail customers. Noting that it is affiliated with the approximately 300 MW Baron Winds Project that has been proposed for development in Steuben County, New York, Cassadaga asserts that it lacks horizontal market power because this project, when combined with the Facility, would represent a de minimis amount of the State's generation capacity (approximately

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<sup>14</sup> Cassadaga reports that Innogy SE has completed seven offshore wind projects since 2004, and an eighth project is in construction.

0.963%). Cassadaga similarly asserts that it lacks vertical market power because Innogy US does not hold utility assets in New York other than the proposed Baron Winds Project, and it is not affiliated with any power marketer in the United States.

Cassadaga thus requests regulatory exemptions similar to those granted to other owners of merchant generation facilities that operate in competitive markets. Specifically, Cassadaga requests exemptions from most of PSL Articles 2, 4, and 6, except the following PSL sections that should apply to it: (i) §§11, 19, 24, 25, and 26, which prevent actions contrary to the public interest; (ii) §§66(6) and 111, which establish annual reporting requirements; (iii) §68, which requires a CPCN before constructing electric or gas plant or exercising a right of franchise; (iv) §69, which requires Commission approval before assuming debt payable with a term in excess of 12 months; (v) §69-a, which requires Commission approval before issuing securities; (vi) §70, which requires Commission approval before transferring any interest in the jurisdictional company or asset; (v) §§110(1) and 110(2), which pertain to contracts, operational expenses, dividends paid to stockholders, and transactions between affiliated interests; and (vi) §119-b, which pertains to the protection of underground facilities.

#### COMMENTS

All commentary received is described in Appendix A and considered herein. A brief summary of issues raised in these filings is provided below.

Local Intervenors oppose Cassadaga's requests to expedite this proceeding and waive the hearing required under PSL §68. An evidentiary hearing is needed, they continue, to fully examine how Facility construction and operation will impact public health and safety, the environment (including bat

mortality), local property values, and the regional economy. Local Intervenor urge that these issues be investigated without artificial time constraints, and the wind generation project that recently commenced operations in neighboring Arkwright, New York (the Arkwright Facility) should be used to study the health and environmental impacts of wind generation before Cassadaga is allowed to construct the Facility. They argue that the various impacts arising from Facility construction and operation provide sufficient grounds to deny the Petition.

According to Local Intervenor, the Facility is uneconomic and neither Cassadaga nor its upstream corporate parents have the financial viability to construct, operate, and maintain the Facility. Local Intervenor explain that RWE AG (RWE) and E.ON are effectuating an asset transfer under which RWE would acquire Innogy US's renewable generation portfolio, including Cassadaga. Local Intervenor argue that this transaction is very risky for all businesses involved in it, and that it may cause Cassadaga to fail within a couple years.

Cassadaga opposed requests for a public statement hearing and an evidentiary hearing. According to Cassadaga, the Article 10 proceeding developed a comprehensive evidentiary record that is adequate to support issuance of the requested CPCN. The Petitioner claims that the Siting Board authorized this proceeding with a very narrow scope of review, and that most of the arguments advanced by Local Intervenor pertain to issues that were resolved in the Article 10 proceeding and are outside the scope of issues relevant here.

DPS Staff filed information to supplement the decisional record. This information included: (i) Cassadaga's responses to DPS Staff's requests for additional information; (ii) credit ratings reports for Innogy SE, RWE, and E.ON; and

(iii) the Innogy SE Annual Report and financial statements for 2017, and the Half-Year Report for 2018.

LEGAL AUTHORITY

PSL §68 prohibits an electric corporation from constructing electric plant, or from exercising any right or privilege under any franchise, until it receives the Commission's approval in a CPCN. In this instance, however, the Siting Board's issuance of a PSL Article 10 Certificate supplants the requirement for construction approval under PSL §68, but not the requirements for Commission approval of its corporate formation and the exercise of any municipal "right, privilege or franchise."<sup>15</sup> Before the Commission may issue a CPCN, the electric corporation seeking approval must provide a certified copy of its charter and a "verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities." In considering its approval, the Commission "shall consider the economic feasibility of the corporation, the corporation's ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates, and whether issuance of a certificate is in the public interest."<sup>16</sup>

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<sup>15</sup> Case 05-T-0089, Fortuna Energy, Inc., Order Requiring a Hearing and Extending the Time Required to Render a Decision Pursuant to Public Service Law Section 121-a(7) (issued March 23, 2005); see also Matter of TransGas Energy Sys., LLC v. New York State Bd. on Elec. Generation Siting & Env't, et al., 2009 NY Slip Op 6696 (2d Dept., 2009), lv. Denied 2010 NY Slip Op 60611; Case 10-G-0462, DMP New York, Inc. and Laser Northeast Gathering Company, LLC, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Rate Making Regulation (issued February 22, 2011).

<sup>16</sup> PSL §68.

DISCUSSION AND CONCLUSION

State Environmental Quality Review

A comprehensive environmental review of the construction and operation related impacts of the Facility was conducted pursuant to PSL Article 10.<sup>17</sup> The granting of a PSL Article 10 Certificate is specifically listed as a Type II action exempt from review under the State Environmental Quality Review Act (SEQRA).<sup>18</sup> The record in the PSL Article 10 proceeding contains extensive information regarding the potential environmental impacts of the Facility. The PSL Article 10 Certificate addresses the potential environmental impacts, and provides protective measures tailored to avoid, minimize, and mitigate the environmental impacts. The granting of a CPCN, as provided herein, is an activity undertaken in relation to the PSL Article 10 Certificate. In this context, these activities are not subject to the requirements of SEQRA.<sup>19</sup> Accordingly, a separate environmental review under SEQRA is not warranted in connection with Cassadaga's petition for a CPCN.

Evidentiary Hearing

ALJ Lecakes concluded in the Ruling on Process that the comments and information contained in the record in this proceeding did not raise any question of material fact that would benefit from an evidentiary hearing. In the Ruling on Process, ALJ Lecakes established a defined period for discovery and the opportunity to submit additional, relevant information obtained through discovery or otherwise. ALJ Lecakes considered

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<sup>17</sup> PSL Article 10 Order.

<sup>18</sup> See, Environmental Conservation Law §8-0111(5)(b); 6 NYCRR 617.5(c)(35); City of New York v. TransGas Energy Servs. Corp., 34 A.D.3d 466, 470 (2d Dep't 2006).

<sup>19</sup> 6 NYCRR §617.2(b)(1).

the additional comments and information submitted during this period that was relevant to the ability of Cassadaga and its affiliates to finance the Facility. As ALJ Lecakes concluded, the information purporting to discredit the financial viability of Cassadaga and its upstream owners did not constitute evidence sufficient to create an issue of material fact, nor did it contradict the authenticity of relevant information submitted by DPS Staff. ALJ Lecakes thus ruled again that there was no question of material fact requiring an evidentiary hearing and found that the evidentiary record is complete.

Having reviewed the information and comments filed throughout this proceeding, we agree with ALJ Lecakes that there is no material issue of fact in dispute that would merit an evidentiary hearing. Further, PSL §68 requires a hearing before the Commission may issue a CPCN. The hearing held on September 17, 2018 satisfied this statutory requirement and was responsive to Local Intervenors' requests.

Standard and Basis of Review

Cassadaga satisfied the statutory prerequisites for our grant of a CPCN. Through its Petition and supplemental information provided during the course of this proceeding, and the record developed in the Article 10 proceeding, sufficient information is available to satisfy the requirements of 16 NYCRR Part 21 and to provide a full evidentiary record.

Petitioner provided certified copies of its charter and verified statements of the corporate president and secretary, who represented that Cassadaga received the required consent of the proper municipal authorities. Cassadaga provided Road Use Agreements with Charlotte, Cherry Creek, and Arkwright to demonstrate this point. Each Road Use Agreement grants Cassadaga "all municipal franchises and/or road permits

necessary to locate and operate" the Facility and its related infrastructure above, below, or within municipal roads.<sup>20</sup>

Financial Viability

Petitioner has demonstrated that its exercise of rights, privileges, or franchises under a CPCN is economically feasible. Cassadaga's capitalization stems from Innogy SE,<sup>21</sup> which has "committed to invest capital from its own balance sheet" in Facility construction and operation.<sup>22</sup> Examples of this commitment include, for instance, that the financing needed to secure Facility interconnection was issued based on Innogy SE's financial rating, and the letter of credit for decommissioning required by the Article 10 Order will be issued by Innogy SE.<sup>23</sup> Based on this commitment, it is reasonable to consider Innogy SE's financial information when evaluating Cassadaga's financial viability.

Information developed in this proceeding demonstrates that Innogy SE, as the financial backstop for Cassadaga as it develops and operates the Facility, is economically feasible. Innogy SE has €3.1 billion of cash on hand, plus €2.0 billion of committed liquidity lines.<sup>24</sup> The latter was fully undrawn as of May 23, 2018 and can be extended upon request for an additional €1.0 billion.<sup>25</sup> Innogy SE earned a 10.21% return on book equity

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<sup>20</sup> See Town of Charlotte Host Community Agreement at Section 5.2; Town of Cherry Creek Host Community Agreement at Section 5.2; and Town of Arkwright Resolution and Host Community Agreement at Section 5.2.

<sup>21</sup> DPS Staff Filing, Attachment 1, Response 3.

<sup>22</sup> Id., Attachment 1, Response 4(b); Petition, pp. 14-15.

<sup>23</sup> DPS Staff Filing, Attachment 1, Response 3.

<sup>24</sup> Id., Attachment 3, p. 7.

<sup>25</sup> Id.

in 2017,<sup>26</sup> which further supports the financial viability for the utility holding company.

Through its subsidiaries, Innogy SE engages primarily in regulated utility businesses throughout Europe pursuant to supportive regulatory frameworks, and the majority of its renewables assets operate under a fixed feed-in tariff or other contractual arrangement that reduces price volatility.<sup>27</sup> Innogy SE has well-diversified operations across many jurisdictions and market segments, which moderate its business risk and support its investment-grade credit profile.<sup>28</sup> Consistent with this profile, financial statements issued by Innogy SE for 2017 operations indicate stable cash flows over the past few years,<sup>29</sup> and Innogy SE anticipates realizing an adjusted net income of more than €1.1 billion in 2018.<sup>30</sup>

Innogy SE has investment-grade credit with a stable outlook, as assessed by major credit ratings agencies. Moody's and S&P rated Innogy SE as Baa2 and BBB/A-2, respectively, based on their review of defined financial metrics.<sup>31</sup> Both agencies concluded that these ratings have a stable outlook. The liquidity held by Innogy SE, together with its stable, investment-grade credit ratings and the underlying financial metrics on which they are based, support the conclusion that Innogy SE is financially viable and able to support Facility construction and operation.

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<sup>26</sup> DPS Staff Filing, Attachment 6, pp. 2-3.

<sup>27</sup> Id., Attachment 1, Response 2, p. 3, and Attachment 7, p. 12.

<sup>28</sup> Id., Attachment 3, p. 2.

<sup>29</sup> Id., Attachment 6, pp. 2-3.

<sup>30</sup> Id., Attachment 7, p. 3.

<sup>31</sup> See generally, id., Attachment 1, Response 1, and Attachment 3.



The record also demonstrates that Innogy SE, through its subsidiaries, has a successful track record of constructing and operating renewable generation facilities. Innogy SE indirectly owns more than approximately 1.9 GW of onshore wind capacity, and more than approximately 0.9 GW of offshore wind capacity.<sup>32</sup> The recent transfer of upstream interests in Cassadaga to Innogy US was part of an initiative through which Innogy SE acquired an onshore wind project pipeline of approximately 2,000 MW in the United States.<sup>33</sup> This investment is significant and indicates a continuing corporate commitment to operating renewable generation resources.

The Facility should remain an attractive investment to Innogy SE over the long-term. Cassadaga anticipates that the Facility will achieve a 36% capacity factor,<sup>34</sup> which significantly exceeds the 26% statewide average capacity factor for onshore wind resources currently operating successfully in competitive wholesale markets.<sup>35</sup> Petitioner represented that Innogy SE "is committed to the successful development and operation of the Cassadaga Wind Facility because of the excellent revenue generation potential of the Facility based on the existing [PPAs] and other revenue generation potential..."<sup>36</sup> Importantly, the PPAs reduce the business risk associated with owning and operating an electric generating facility.<sup>37</sup>

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<sup>32</sup> Petition, p. 14.

<sup>33</sup> DPS Staff Filing, Attachment 7, p. 2.

<sup>34</sup> *Id.*, Attachment 1, Response 8.

<sup>35</sup> *Power Trends 2018*, New York Independent System Operator, Inc. at 26, available at [https://home.nyiso.com/wp-content/uploads/2018/05/2018-Power-Trends\\_050318.pdf](https://home.nyiso.com/wp-content/uploads/2018/05/2018-Power-Trends_050318.pdf). I

<sup>36</sup> DPS Staff Filing, Attachment 1, Response 4(b).

<sup>37</sup> *Id.*, Attachment 1, Response 9.

Local Intervenors did not present any credible evidence that either Cassadaga or Innogy SE are not financially viable. Local Intervenors claim that Innogy SE may be on the brink of collapse because of risks presented by the pending E.ON/RWE asset transfer, and its adjusted net profit declined in Q1 2017 as compared to the same period one year earlier. Local Intervenors also argue that Cassadaga's apparent reliance on PTCs demonstrates that the Facility is not economic.

These arguments are not persuasive. One element of the asset transfer is that RWE would acquire Innogy SE's renewable generation portfolio. The record in this proceeding does not include any evidence that this asset transfer presents a meaningful risk to Facility construction or operation. To the contrary, Moody's and S&P concluded that the asset transfer would not change their outlook on the Innogy SE, RWE, and E.ON credit ratings.<sup>38</sup> Moody's noted that RWE's acquisition of the Innogy SE renewable generation fleet would mitigate RWE's business risk by diversifying its generation portfolio.<sup>39</sup> Moody's and S&P view the fact that a majority of Innogy SE's renewable portfolio operates under contracts that shield them from merchant power risk as "credit positive."<sup>40</sup> An expected loss of incentives for renewable generation in Europe will increase the portfolio's exposure to market risk, but neither Moody's nor S&P expect this to impact RWE's overall financial health.<sup>41</sup> Moreover, there is no record evidence demonstrating

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<sup>38</sup> See DPS Staff Filing, Attachment 1, Response 1, and Attachments 2-4 and 8-10.

<sup>39</sup> Id., Attachment 3, pp. 1, 4.

<sup>40</sup> Id., pp. 4, 6. Moody's also notes that the average remaining life of contracted earnings is about nine years. (Id.) See also DPS Staff Filing, Attachment 2, p. 4.

<sup>41</sup> Id.

how this potential change in European energy policy would impact Cassadaga's eligibility for renewable energy incentives created by legislative bodies in the United States, or how it otherwise might impair the construction, operation, or maintenance of a renewable generation facility located in Western New York. Accordingly, the asset transfer should not have a material adverse impact on Cassadaga, if it is completed.

Although Innogy SE's adjusted net profit declined in Q1 2017 by almost 11%, the news article cited for this fact notes that Innogy SE still realized an adjusted net profit of approximately \$731 million during this period. The stable credit ratings and the financial metrics underlying them indicate that the reported short-term fluctuation in corporate profit should not be viewed in isolation as a sign of financial distress.

Cassadaga does not dispute that the availability of PTCs is important for project economics, but this is not dispositive. It is typical for merchant generating facilities to consider all available revenues and benefits, including tax credits, when evaluating project economics. Indeed, most if not all merchant generating facilities rely on available tax benefits, such as Payment In Lieu Of Taxes (PILOT) agreements and state or federal tax credits, to the extent they are available to improve project economics and return on investment. A construction schedule designed to achieve the milestones required to secure financing and incentives is prudent planning and not evidence that the project is uneconomic.

For the reasons described above, we find that Cassadaga is economically feasible and financially viable based on Innogy SE's financial strength and commitment to providing the financial support necessary for Cassadaga to construct and

operate the Facility.<sup>42</sup> These factors also demonstrate Cassadaga's ability to finance improvements of the Facility and to render safe, adequate and reliable service.

Other Positions

The scope of this proceeding is narrow. As noted by the Siting Board, the Commission's review of Cassadaga's request for a CPCN focuses on questions involving the readiness and feasibility of Cassadaga wind to begin Facility construction.<sup>43</sup> This proceeding cannot duplicate the public need and environmental compatibility issues resolved in the Article 10 Order.<sup>44</sup> The Commission's review instead is primarily concerned with Cassadaga's ability to construct and operate the Facility.

Local Intervenors advanced numerous other arguments in opposition to the CPCN. To the extent not already discussed, those arguments pertain to the potential public health, environmental, social, and/or economic impact that might result from Facility construction and operation. These issues are beyond the scope of this proceeding and, therefore, will not be considered further.

Concerns as to whether and when Cassadaga may begin clearing tress similarly is beyond the scope of this proceeding. We note, however, that the CPCN is necessary, but not sufficient, for Petitioner to begin this construction activity. Cassadaga also must satisfy applicable PSL Article 10 Certificate Conditions before it may commence construction. Issues and concerns regarding Cassadaga's compliance with these

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<sup>42</sup> If, however, Innogy SE eventually were to reconsider this commitment, a generation facility with an above-average capacity factor and long-term PPAs would be an attractive investment for a different company to acquire.

<sup>43</sup> PSL Article 10 Order, pp. 113-14; Ruling on Process, p. 2.

<sup>44</sup> PSL Article 10 Order, p. 114.

Conditions should be addressed in the Article 10 proceeding and will not be considered further here.

Lightened Ratemaking Regulation

The lightened regulatory regime that Cassadaga requests be applied to its wholesale electric operations is similar to that afforded to other comparably-situated wholesale generators. Its request is therefore granted, to the extent discussed below.

In interpreting the PSL, the Commission has examined what reading best carries out the statutory intent and advances the public interest. The Commission thus concluded previously that new forms of electric service providers participating in competitive wholesale markets would be lightly regulated.<sup>45</sup> Under this approach, PSL Article 1 applies to Cassadaga because it meets the definition of an electric corporation under PSL §2(13) and will be engaged in the manufacture of electricity under PSL §5(1)(b).<sup>46</sup> It is therefore subject to provisions, such as PSL §§11, 19, 24, 25, and 26, that prevent producers of electricity from taking actions that are contrary to the public interest.

All of Article 2 is restricted by its terms to the provision of service to retail residential customers, and so is inapplicable to wholesale generators like Cassadaga. Certain

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<sup>45</sup> Case 98-E-1680, Carr Street Generation Station, L.P., Order Providing for Lightened Regulation (issued April 23, 1999) (Carr Street Order); Case 91-E-0350, Wallkill Generating Company, Order Establishing Regulatory Regime (issued April 11, 1994) (Wallkill Order).

<sup>46</sup> Transfer Ruling, pp. 8-9 (finding that Cassadaga currently is an electric corporation).

provisions of Article 4 are also inapplicable because they are restricted to retail service.<sup>47</sup>

It was decided in the Carr Street and Wallkill Orders that the remaining provisions of Article 4 would pertain to wholesale generators.<sup>48</sup> Application of these provisions is deemed necessary to protect the public interest. The Article 4 provisions, however, are implemented in a fashion that limits their impact on the operation of competitive electric markets. Under PSL §66(6), wholesale generators satisfy annual report filing requirements through a format designed to accommodate their particular circumstances.<sup>49</sup> Filings required under other provisions of Article 4 are reviewed with the scrutiny commensurate to the level the public interest requires. This analysis of Article 4 adheres to Cassadaga.

Regarding PSL §69, prompt regulatory action is possible through reliance on representations concerning proposed financing transactions. Additional scrutiny is not required to protect captive New York ratepayers, who cannot be harmed by the terms arrived at for these financings because lightly-regulated

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<sup>47</sup> See, e.g., PSL §§66(12) (optional tariff filings); §66(21) (retail electric corporation storm plans); §67 (inspection of increased fuel cost); §75 (excessive charges); and, §76 (rates charged to religious bodies).

<sup>48</sup> PSL §68 provides for certification of the construction of new plant or the retailing of electricity to customers via direct interconnections. PSL §69, §69-a, and §70 provide for the review of securities issuances, reorganizations, and transfers of securities or works or systems, respectively.

<sup>49</sup> Case 11-M-0295, Annual Reporting Requirements, Order Adopting Annual Reporting Requirements Under Lightened Ratemaking Regulation (issued January 23, 2013).

participants in competitive markets bear the financial risk associated with their financial arrangements.<sup>50</sup>

Regarding PSL §70, it was presumed in the Carr Street and Wallkill Orders that "regulation does not adhere to transfer of ownership interests in entities upstream from the parents of the New York competitive electric generation subsidiary, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption."<sup>51</sup> In those Orders, however, wholesale generators were also advised that the potential for the exercise of market power arising out of an upstream transfer would be sufficient to defeat the presumption and trigger PSL §70 review. Cassadaga may avail itself of this presumption. Under PSL §§66(9) and (10), we may require access to records sufficient to ascertain whether the presumption remains valid.

Several provisions of PSL Article 6 adhere only to the rendition of retail service. These provisions do not pertain to Cassadaga because it will not engage in the generation of electricity for retail sales.<sup>52</sup> Moreover, application of PSL §115, on requirements for the competitive bidding of utility purchases, is discretionary and will not be imposed on wholesale generators. In contrast, PSL §119-b, which pertains to the protection of underground facilities from damage by excavators, adheres to all persons, including wholesale generators.

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<sup>50</sup> See, e.g., Case 10-E-0405, NRG Energy, Inc., Order Approving Financing (issued November 18, 2010); Case 01-E-0816, Athens Generating Company, L.P., Order Authorizing Issuance of Debt (issued July 30, 2001).

<sup>51</sup> Carr Street Order, p. 8; Wallkill Order, p. 9.

<sup>52</sup> See, e.g., PSL §112 (rate order enforcement); §113 (reparations and refunds); §114 (temporary rates); §114-a (lobbying cost sin rates); §117 (consumer deposits); §118 (bill payments via an agency); §119-a (use of utility poles and conduits); and, §119-d (tax benefits in rates).

The remaining provisions of Article 6 need not be imposed generally on wholesale generators.<sup>53</sup> These provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers. In comparison, so long as the wholesale generation market is effectively competitive, wholesale generators complying with tariffs approved by the Federal Energy Regulatory Commission, such as Cassadaga, will provide just and reasonable rates and cannot raise prices even if their costs rise due to poor management. Moreover, imposing these requirements could interfere with wholesale generators' plans for structuring the financing and ownership of their facilities. This could discourage entry into the wholesale market or introduce inefficiencies into market operations to the detriment of the public interest.

As discussed in the Carr Street Order, however, market power issues may be addressed under PSL §§110(1) and (2), which afford us jurisdiction over affiliated interests. Cassadaga has not reported any affiliation with a power marketer, foreclosing that avenue to the exercise of market power. Consequently, we impose the requirements of PSL §§110(1) and (2) on Cassadaga only conditionally, to the extent a future inquiry into its relationships with an affiliate becomes necessary.

Finally, notwithstanding that it is lightly regulated, Cassadaga is reminded that it and any other entities that exercise control over Facility operations remain subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and the other

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<sup>53</sup> These requirements include approval of: loans under §106; the use of utility revenues for non-utility purposes under §107; corporate merger and dissolution certificates under §108; contracts between affiliated interests under §110(3); and, water, gas, and electric purchase contracts under §110(4).



requirements of PSL Articles 1 and 4, to the extent discussed above and in previous Orders.<sup>54</sup> Included among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,<sup>55</sup> to give notice of generation unit retirements,<sup>56</sup> and to report personal injury accidents pursuant to 16 NYCRR Part 125. These conditions further ensure Cassadaga will render safe, adequate, and reliable service.

#### CONCLUSION

Having held the hearing required by PSL §68(1) on September 17, 2018, the Commission finds that Cassadaga has demonstrated its financial viability and readiness to construct and operate the Facility, and that the issuance of a CPCN to Cassadaga is in the public interest. The Commission also grants Cassadaga's request for a lightened regulatory regime.

#### The Commission orders:

1. A Certificate of Public Convenience and Necessity is granted to Cassadaga Wind LLC pursuant to Public Service Law section 68, as discussed in the body of this Order.
2. Cassadaga Wind LLC shall comply with the Public Service Law in conformance with the requirements set forth in the body of this Order.

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<sup>54</sup> See, e.g., Case 16-E-0409, Indeck Corinth Limited Partnership, Order Providing for Lightened Regulation (issued December 21, 2016).

<sup>55</sup> Case 04-M-0519, Safety of Electric Transmission and Distribution Systems, Order Instituting Safety Standards (issued January 5, 2005), and Order on Petitions for Rehearing and Waiver (issued July 21, 2005).

<sup>56</sup> Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

3. Cassadaga Wind LLC shall, within 30 days of the issuance of this Order, file with the Secretary a verified written statement signed by a duly authorized officer indicating Cassadaga Wind LLC's complete and unconditional acceptance of this Order and its terms and conditions. Failure to comply with this condition shall invalidate this Order.

4. In the Secretary's sole discretion, the deadline set forth in this Order may be extended. Any requests 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 shall be closed upon compliance with Ordering Clause No. 3.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary

## Summary of Comments, Motions, and Positions Statements

### Concerned Citizens of the Cassadaga Wind Project

On July 18, 2018, the Concerned Citizens of the Cassadaga Wind Project (Concerned Citizens) requested a public hearing as to whether Cassadaga Wind, LLC (Cassadaga Wind) should be issued a Certificate of Public Convenience and Necessity (CPCN) under Public Service Law (PSL) §68. Concerned Citizens argued that Cassadaga Wind is not financially viable and could “disappear” within the next year due to business risks associated with Terra Firma, Cassadaga’s indirect upstream owner when these comments were filed, and RWE AG (RWE) and E.ON, two European companies engaged in an asset transfer that would result in RWE acquiring Innogy SE’s renewables business, including Cassadaga.<sup>57</sup>

Relying on news reports, Concerned Citizens argues that RWE’s acquisition of the Innogy SE renewables business presents a significant risk that Innogy SE will fail. The reports, Concerned Citizens continue, assert that Innogy SE is losing employees due to fears about the company being broken up by, or potential layoffs following, the asset transfer. The reports also note the complexity of the asset transfer, and that Innogy SE’s adjusted net profit over the three-month period ending March 31, 2017 declined almost 11% as compared to the same period a year earlier. According to Concerned Citizens, these reports demonstrate that the asset transfer is so complex that even the executives leading the involved companies do not understand its components. Concerned Citizens thus oppose

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<sup>57</sup> In Case 18-E-0333, the Public Service Commission (Commission) reviewed and approved the indirect transfer of Cassadaga from Terra Firma to Innogy SE. The transfer was effectuated on July 25, 2018.

Cassadaga's request to waive the hearing required by PSL §68, and they advocated that an evidentiary hearing be held.

On September 24, 2018, Concerned Citizens renewed their request for an evidentiary hearing. Concerned Citizens initially agree with statements made by Commission Chair John Rhodes that energy projects should protect and accommodate the concerns of local communities. The Commission, they continue, should determine whether Cassadaga can safely operate and maintain the turbines throughout their useful lives, and Concerned Citizens question where the evidentiary record supporting this analysis may be found. Concerned Citizens also repeat their concerns about the financial risks presented by the pending asset transfer between RWE and E.ON, and claim that the transfer will cause Innogy SE to "be dissolved within 2 years." Turning to the production tax credits (PTCs) that Cassadaga will earn from Facility operations, Concerned Citizens assert that the credits will expire after 10 years and the subsequent project income will be inadequate for Cassadaga to safely operate and maintain the Facility.

On October 16, 2018, Concerned Citizens submitted information addressing the potential impacts that noise from operating wind turbines might have on public health. The comments cite a World Health Organization (WHO) publication which recommends a wind turbine noise standard lower than that adopted for the Facility. Concerned Citizens argue that it is inappropriate for a state or public health agency to adopt a noise standard that exceeds the recommended level and thus presents an increased risk to public health. Concerned Citizens also discuss other studies and statements that purport to demonstrate a linkage between turbine-related sound and vibrations, and adverse health effects. In their comments, Concerned Citizens also argue that the Department of Public

Service and Department of Health are under-staffed and thus incapable of adequately vetting the increasing number of renewable energy projects that are being proposed for development. Concerned Citizens advocate that studies should be funded to investigate the adverse health impacts caused by wind turbines. They assert that many residents of the neighboring Town of Arkwright are experiencing a variety of harmful health effects from the wind turbines that recently commenced operations there (the Arkwright Project). Concerned Citizens also cite a report which discusses studies claiming to demonstrate linkages between wind turbines and global warming (due to the amount of land cleared for the facilities).

Concerned Citizens conclude that a new and different approach to energy policy is needed. Other clean energy alternatives that do not require as much land as onshore wind projects should be emphasized. Concerned Citizens note a concern that the Facility will be repowered and increased in height while maintaining the existing, inadequate setbacks. They also express concern that the current inability to recycle "toxic fiberglass blades" is creating an environmental "nightmare." Finally, Concerned Citizens renew their request for an evidentiary hearing.

On October 22, 2018, Concerned Citizens filed a Position Statement opposing the issuance of a CPCN to Cassadaga. Concerned Citizens argue that, according to Cassadaga's Petition, the economic viability of the Facility is dependent on tree-clearing and PTC eligibility. If Cassadaga and Innogy SE are financially viable, they argue, Facility development should not depend either on a need to quickly begin construction, or the availability of PTCs.

Concerned Citizens reference statements made by Cassadaga at the Procedural Conference that tree clearing was

authorized by the order granting an Article 10 Certificate, and additional approvals are not needed before it begins this activity. According to Concerned Citizens, DPS counsel agreed that tree clearing is deemed to be construction, and the Article 10 Certificate requires that a compliance filing be submitted and approved by the Commission before Cassadaga may commence tree clearing. Concerned Citizens advocate that Cassadaga must be prohibited from tree clearing until it has received all necessary regulatory approvals.

Concerned Citizens identify other compliance filings and reports that it argues must be filed for approval before Cassadaga may commence construction activities, including tree clearing. Many of these filings must be submitted 60 or more days before construction commences. Concerned Citizens argue that Cassadaga has not satisfied these deadlines. Stating that Facility viability is "contingent on tree clearing and meeting construction deadlines for" PTCs, Concerned Citizens assert that the Facility and its owners are not financially viable and should not be issued a CPCN. Concerned Citizens repeat their request for an evidentiary hearing before tree clearing may commence.

On October 25, 2018, Concerned Citizens submitted additional information to supplement the record. Concerned Citizens argue that the Article 10 Certificate obligates Cassadaga to satisfy a turbine certification and project certification requirement before receiving a CPCN. They are not aware of any documentation submitted to satisfy this requirement and assert that Cassadaga effectively is asking that this requirement be converted to a post-CPCN obligation. Concerned Citizens contend that Cassadaga has not provided adequate information to demonstrate the safe distance for turbine setback, as required by the regulations promulgated to implement

Article 10. They also question the qualifications and ability of the contractor hired to develop and design a wind project. The New York Independent System Operator, Inc. (NYISO), Concerned Citizens continue, has reported that onshore wind facilities typically operate with a 26% capacity factor. Cassadaga, however, estimates that the Facility will operate with a 36% capacity factor. Concerned Citizens argue that this estimate is excessive, unsupported, and does not reflect known factors that will make it impossible for Cassadaga to achieve this level of operations.

#### Project Community Members

On July 19, 2018, a group of community members living within the Facility project area (the Project Community Members) opposed Cassadaga's requests for expedited review of its Certificate application, waiver of the public hearing required by PSL §68, and that it be issued a Certificate.<sup>58</sup> Project Community Members assert that Cassadaga executed a power purchase agreement with ISO New England Inc. (ISO-NE) and, therefore, the electricity and renewable attributes produced by the Facility will not benefit New York and the Facility is not needed in New York. Further, the impacts of Facility construction and operation are not needed, convenient, or in the public interest. Addressing a Siting Board conclusion that the Facility would benefit the Regional Greenhouse Gas Initiative (RGGI), Project Community Members assert that RGGI is not

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<sup>58</sup> The Project Community Members are: John and Jennifer Conway; John and Carol Yanni; Michael Shoemaker; Eda and Ruby Holtz; David and Chris Monteleone; James and Kursten Baldwin; Jean Zybert; Natalie Zybert; Chris Firkins; Audrey Giambrone; Jade Giambrone; Edna, Ronald, and Eric Prince; Sue Baldwin; Andrew Zybert; Julie Delcamp; Robin Delcamp; and Sandra Miniri.

effective and any carbon dioxide emissions reductions achieved is due to the transition from coal to natural gas to fuel electric generation.

Project Community Members argue that the Facility will not further State clean energy goals and industrial-scale wind energy actually will perpetuate dependence on natural gas. Discussing reports issued by the NYISO, Project Community Members assert that increasing reliance on wind energy will require a corresponding increase in the amount of "regulation resources" (i.e., gas-fired generation plants) to ensure reliability. Project Community Members note that the nearby gas-fired generating plant located in Dunkirk, New York (the Dunkirk Facility) is reliable and supports over 250 jobs, but it will be retired and replaced by wind energy projects that support only a few full-time jobs, are unreliable, and will increase both taxes and electric rates. Further, Project Community Members continue, renewable energy in New York tends to be produced in locations where it is not needed and significant investments in the transmission system are needed for this energy to be deliverable to locations where there is demand for it. Project Community Members argue that the high cost of transmission upgrades and probable local resistance make customer-funded renewable energy subsidies a poor investment. They also argue that Europe is phasing-out subsidies for renewable energy projects, which "is likely to impact the economic solvency" of Innogy SE.

Finally, Project Community Members explain that several of the turbines will be located adjacent to property owned by Amish residents. They argue that the turbines will have an unacceptable impact on these residents.



Tina Graziano

On September 20, 2018, Ms. Graziano commented that industrial wind facilities should not be located in residential areas. Ms. Graziano stated that the first priority always should be avoiding human health impacts, and people have the right to remain safe and healthy in their homes. Finally, Ms. Graziano requests that an evidentiary hearing be held.

Jonathan Townsend, MS

On September 17, 2018, Mr. Townsend commented on the impact that the Facility might have on local bat populations. Mr. Townsend asserts that wind turbines are likely to cause more bat mortality than the white-nose syndrome that has been responsible for a significant decline in bat populations. According to Mr. Townsend, the Siting Board disregarded mitigation measures to avoid the vast majority of bat mortality that might otherwise be caused by Facility operations. Mr. Townsend argues that Cassadaga should not be allowed to begin site preparation until it has received approval for the Net Conservation Benefit Plan required by the Siting Board. Finally, Mr. Townsend advocates that the wind project that the Arkwright Project should be used to study the impact of wind turbine operation on bat mortality rates, and Cassadaga should not be allowed to proceed with site preparation until its plans reflect lessons learned from this study.

Mark L. Twitchell, DDS

On August 2, 2018, Mr. Twitchell objected to Cassadaga's request for an expedited review of its Petition. Mr. Twitchell advocated that Commission review of the Petition must be thorough and conducted in a transparent manner without

any artificial time constraints, and that a public hearing should be held.

On October 11, 2018, Mr. Twitchell opposed Cassadaga's request to expedite this proceeding and advocated that Facility construction should not be allowed to begin before all conditions imposed by the Article 10 Certificate have been satisfied. Mr. Twitchell argues that turbine safety and the economic burden imposed on local communities by the Facility should be examined in this proceeding, to the extent not already considered in the Article 10 proceeding. According to Mr. Twitchell, incidences of tower collapse, blade loss, and fire were not examined adequately in the Article 10 proceeding notwithstanding that "blade failures and turbine fires [are] the most frequent categories of turbine accidents." Mr. Twitchell argues that the failure to consider the actual likelihood of these events, and the damage they could cause, cast doubt on whether the Facility is capable of operating in a safe, adequate, and reliable manner.

Turbine setback criteria established in the Article 10 proceeding are inadequate, Mr. Twitchell continues, to accommodate the emergency evacuation zone that turbine manufacturers recommend be established by maintenance workers responding to wind turbine accidents. Mr. Twitchell argues that Cassadaga inappropriately relieved the turbine manufacturer of liability for damage caused by a blade throw or fire. Further, the "trespass zoning" caused by inadequate setbacks is responsible for significant property value loss from adjacent properties that could be damaged by blade throws, tower collapse, and fire. Mr. Twitchell urges the Commission to withhold the CPCN until Cassadaga conclusively has demonstrated that it can ensure turbine safety.

Mr. Twitchell argues that the Facility will impose an economic burden on host communities that far exceeds any benefits it might provide. Cataloging various losses alleged to result from Facility construction and operation, Mr. Twitchell argued that the Facility will cause a net economic loss of approximately of between \$23.8 million and \$79.8 million to Chautauqua County. This estimate excludes related losses related to other social and environmental impacts associated with Facility operations. Mr. Twitchell argues that an evidentiary hearing is needed to examine impacts from the Facility. He also contends that there is no basis for the Commission to conclude that the Facility is in the public interest of the communities that will host it.

Robert Bommer

On September 11, 2018, Mr. Bommer commented in opposition to the Facility. Mr. Bommer argued that the Facility does not satisfy the environmental compatibility or public need requirements of Article 10 because it will adversely impact local agriculture, tourism, recreation, and property values, and is fueling public discord. The Article 10 siting process, Mr. Bommer continues, failed to provide residents with sufficient and timely notice of the proposed Facility, as required by the regulations promulgated to implement Article 10.

Julie Ortendahl

On September 24, 2018, Ms. Ortendahl opposed the Facility based on the adverse environmental impacts associated with its construction and operation. Ms. Ortendahl cites tree clearing, noise, and light flicker as three such impacts, and the extensive activity required for construction as four such impacts that should be avoided.

On October 25, 2018, Ms. Ortendahl stated that she refused to sign a lease to host a wind turbine on her property because of the onerous contractual demands. Ms. Ortendahl explains that the lease included a "gag order" and questions why the project must be developed under "a veil of secrecy." Visual and environmental impacts associated with the Arkwright Project, Ms. Ortendahl continues, seem inconsistent with the Comprehensive Plan adopted for Chautauqua County. Ms. Ortendahl argues that wind farms in other states are developed differently, in less populated areas, and involve less extensive deforestation.

Roger L. Irish

On September 25, 2018, Mr. Irish submitted comments opposing the Facility. Mr. Irish argued that the Facility is not needed, and that the Dunkirk Facility would be a better option for electricity with lesser environmental impacts. Mr. Irish also states that the Facility will diminish his property value, and questions whether Cassadaga has posted a bond to cover future decommissioning costs.

Karen Engstrom

On October 2, 2018, Ms. Engstrom commented that impacts from the Arkwright Project on public health and bat mortality, should be studied and subjected to an evidentiary hearing before the Commission decides whether to issue Cassadaga a CPCN. Citing Chair Rhodes, Ms. Engstrom states that these steps are necessary to accommodate the concerns of community members that live within the Facility's footprint. Ms. Engstrom quotes several individuals that live near the Arkwright Project to illustrate the adverse impacts it is causing.

Susan Baldwin

On October 5, 2018, Ms. Baldwin explained that she discussed wind turbines with the NYS Thruway Authority. According to Ms. Baldwin, the Thruway Authority stated that four-of-five wind turbines installed at their plazas do not work and parts are unavailable to repair them. Ms. Baldwin argues that greater energy conservation is needed more than increased generation.

George Borello

On October 5, 2018, Mr. Borello, Chautauqua County Executive, opposed Cassadaga's request for a CPCN. Mr. Borello argues that the Facility is not in the public interest because of adverse impacts on property values, quality of life, and "the public perception of adverse health effects," which collectively impact tourism and economic development. According to Mr. Borello, whether there is a scientific basis for claims that wind turbines have negative health effects is secondary to the public perception that there are such impacts, and this perception has an adverse economic impact. Mr. Borello argues that wind turbines significantly lower the value of neighboring properties and the setbacks and turbine heights approved for the Facility are unprecedented, arbitrary, and inappropriate. Chautauqua County and its residents, Mr. Borello continues, should not be used as guinea pigs to test the health and economic impacts associated with State energy policies.

Mark Odell

On October 6, 2018, Mr. Odell, a Chautauqua County Legislator and Chairman of Planning and Economic Development and the Subcommittee on Energy, opposed Cassadaga's request for a CPCN. Mr. Odell agreed with concerns that Cassadaga and its

corporate parent are not financially viable, the Facility would have adverse health and economic impacts on the County, and the Dunkirk Facility is underutilized. On March 28, 2018, Mr. Odell continues, the Chautauqua County Legislature adopted a Resolution requesting that the Chautauqua County Industrial Development Agency refrain from negotiating payments in lieu of taxes (PILOT) agreements with wind generation facilities that equal or exceed 5 MW. Mr. Odell explained that this Resolution reflects concerns that larger facilities would have significant adverse impacts. Mr. Odell argues further that the Facility would “score poorly” under the new compensation mechanism for distributed energy resources (the Value of Distributed Energy Resources (VDER)) that determines project value based on a weighting of certain factors.

Bruce Roll and Cheryl Golubski

In comments filed on October 7 and 9, 2018, Mr. Roll and Ms. Golubski, Arkwright residents, opposed Cassadaga’s request for a CPCN due to anticipated health and environmental impacts. Mr. Roll and Ms. Golubski claim that the company and local Arkwright officials are corrupt, and that the Arkwright Project siting process was an illegal and deceitful scam.

Cassadaga

On August 1, 2018, Cassadaga responded to the Concerned Citizens and Local Community Members. Cassadaga repeated its arguments that there is no need for either an evidentiary hearing or a public statement hearing because the Article 10 proceeding included multiple hearings and developed an extensive evidentiary record. Cassadaga also argues that a hearing is not needed for the Commission to conduct the limited review authorized by the Siting Board on Electric Generation

(Siting Board). According to Cassadaga, waiving the hearings is in the public interest because it would allow Facility construction to commence on schedule. Cassadaga asserts that the Commission previously has ruled that an evidentiary hearing is not needed unless there is a specific factual issue in dispute, and there is no such disputed issue this proceeding. The issues raised by Facility opponents, Cassadaga continues, pertain to matters such as project need and environmental compatibility that were settled in the Article 10 proceeding and thus are outside the scope of this proceeding. Cassadaga also disputes the media reports cited by Concerned Citizens. According to Cassadaga, it is unclear how "international market dynamics and predictions made by media analysts" are relevant to the narrow scope of review in this proceeding.

On October 29, 2018, Cassadaga responded to the Concerned Citizens' Position Statement and other public comments. Cassadaga argues that the majority of issues identified in the Concerned Citizens' Position Statement pertain to environmental and public health matters that were addressed in the Article 10 proceeding and thus are outside the scope of Commission review here. Cassadaga explains that compliance with the Article 10 Certificate conditions is not a prerequisite to obtaining a CPCN, and any concern regarding such compliance is outside the scope of this proceeding and instead should be addressed in the Article 10 proceeding.

Other commenters, Cassadaga continues, address health, environmental, and economic concerns that were resolved in the Article 10 proceeding and are outside the narrow scope of review here. Cassadaga asserts that, contrary to arguments advanced by residents of the host communities, such issues include turbine safety, utilization of the Dunkirk Facility, and county legislative actions that pertain to future wind generation

projects. As to irrelevant concerns regarding the new mechanism for valuing distributed energy resources, Cassadaga continues, the Facility would not be subject to the VDER Value Stack because it is not a behind-the-meter resource that previously qualified for net metering.

Cassadaga asserts that Concerned Citizens misunderstand its request for expedited review of the Petition. Delays in Facility approvals and construction, Cassadaga continues, could impair its ability to meet certain project deadlines. Such delays could degrade Facility viability, for example, by impacting PTC eligibility. Cassadaga argues that its project deadlines were presented to explain why it is requesting expedited review, and not to justify the issuance of a CPCN.

Cassadaga argues that neither Concerned Citizens' Position Statement nor other comments filed present new information relevant to whether Cassadaga is ready and able to construct and operate the Facility. The submissions instead address public health and safety, noise guidelines, environmental and community impacts, and public policy matters that were litigated in the Article 10 Certificate proceeding and are beyond the scope of review in this proceeding. Accordingly, Cassadaga continues, oral or written testimony and an evidentiary hearing are not needed to provide a full record in this proceeding.

#### Department of Public Service Staff

On October 25, 2018, DPS Staff submitted additional information to supplement the evidentiary record. The filing included: (i) Cassadaga's responses to its requests for additional information; (ii) credit ratings reports for Innogy SE, E.ON, and RWE, including reports that address how the RWE-



E.ON asset transfer may impact the companies; (iii) the Innogy SE Annual Report for 2017; (iv) the Innogy SE audited financial statements for 2017; (v) the Half-Year Report for 2018 issued by Innogy SE; and (vi) an Joint Press Release issued by RWE and E.ON which summarizes the pending asset transfer.