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July 26, 2016

James A. Muscato II, Esq.
Young / Sommer LLC
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Albany, NY 12205
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RE: 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 126 MW Wind Energy Project.

Dear Mr. Muscato,

Upon a preliminary review of the Application submitted by Cassadaga Wind LLC, a subsidiary of EverPower Wind Holdings, Inc. on May 27, 2016, the Application, as submitted, is not filed or otherwise in compliance with §164 of the Public Service Law (PSL). The deficiencies identified must be remedied or otherwise cured before the Application can be deemed to comply with PSL §164 and the public hearing can be commenced pursuant to PSL §165.

The Applicant must comply with all filing requirements contained in 16 NYCRR §1001 through 16 NYCRR §1001.41 in addition to the Stipulations that were filed with the Secretary on July 13, 2016 and April 19, 2016. The identified deficiencies in the Application are listed in the attachment to this letter.

Please note that the Cassadaga Wind LLC is required to serve a copy of the information it files as a supplement in order to remedy the identified deficiencies on all entities entitled to receive a copy of the Application pursuant to PSL §164, as well as any additional parties on any established Party List in this proceeding.

Please contact me if I can be of any further assistance.

Sincerely,

Audrey Zibelman
Chair

Enclosure
CC: Service List

General Comments

1. The Application includes many acronyms which are not defined either at their first use or apparently anywhere in the document. The Applicant should provide a list of acronyms with definitions as an appendix to the Table of Contents.

Ex. 2 – Overview and Public Involvement

1. In accordance with Stipulation 2(c) – 1001.2 Exhibit 2: Overview and Public Involvement, this section should describe specific Public Involvement Program (PIP) Plan components conducted to date. In particular, this section should contain a more detailed description of the stakeholder mailings and the open houses noted in the last line of the first paragraph, e.g., when were they held, how many people attended, what topics were discussed, what issues were raised, etc. At a minimum, this section should refer to the pages in the meeting log where these activities are discussed.
2. Stipulation 2(c) – 1001.2 Exhibit 2: Overview and Public Involvement requires the Applicant to identify specific issues that have arisen as a result of the PIP and describe any changes to the proposal that may have resulted. If the proposed Project has not changed, that should be noted as well.
3. In accordance with Stipulation 2(c) – 1001.2 Exhibit 2: Overview and Public Involvement, the *url* of the website and the toll-free number set up for the Project should be included when mentioning these PIP elements. Also, the Applicant should indicate the timeline to respond to public questions received through these communication tools (DPS Staff recommends 5 days).
4. In accordance with Stipulation 2(c) – 1001.2 Exhibit 2: Overview and Public Involvement, the Applicant should indicate that it will provide updates to the repositories as they become available.

Ex. 3 – Location of Facilities

1. Stipulation 3(a) – 1001.3 Exhibit 3: Location of Facilities requires mapping using “United States Geological Survey (USGS) 1:24,000 topographic quadrangles (updated in 2013 and depicting topography and 10-foot contour intervals) showing [listed details].” The Application is incomplete because the mapping at Figure 3-1 is presented at the approximate scale of 1:63,360 rather than 1:24,000, as stipulated. At the scale provided, the topographic elevation

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references are not legible. Revised maps must be provided at the scale as stipulated, and road names should be indicated on the figure.

2. Stipulation 3(a)(1) requires that the figure show “parcels associated with landowners that are hosting Facility components will be indicated, showing the limits of the host parcels in relation to the Facility layout.” The Applicant should explain whether the lines indicating “Facility Site” show the required parcel limits or provide revised property line mapping to satisfy this part. (DPS Staff notes that maps of land parcels are included at Exhibit 13: Real Property. Exhibit 3 may reference the Exhibit 13 mapping exhibit).
3. Stipulation 3(a)(1) requires that the Facilities Site figure show the following two Alternative turbine layouts:
 - Taller turbines in the same locations as the proposed layout and correspondingly larger setback distances
 - Alternative layout within the Facility area boundary.

The alternative turbine locations indicated within the Facility Site figure (Figure 3-1: Proposed Major Electric Generating Facility Locations) appear in many locations to be closer to boundaries of the Site, rather than showing “correspondingly larger setback distances.” Other Alternative turbine locations do not show any associated Facility Site or Facility Area boundary, as called for by the stipulation. The Applicant should revise Figure 3-1 or provide additional mapping of the Alternatives to show the relation to Facility Site and Facility Area boundaries.

4. The Application does not adequately meet the mapping requirements of 16 NYCRR §1001.3(a)(1) and 16 NYCRR §1001.3(a)(2). Ancillary features, both onsite and offsite, are required to be shown on New York State Department of Transportation or USGS maps (1:24,000 topographic edition). Specifically, Figure 3-2 does not identify the location(s) of waste treatment and disposal facilities that will be used during project construction. In addition, according to Page 2 of Exhibit 3, a concrete batch plant will be located somewhere within the Facility’s central laydown area during construction. However, the exact location of the proposed concrete batch plant is not shown on Figure 3-1 and the sources and storage areas of the concrete materials and water for the batch plant are not identified in the Application. Although the Application indicates that GIS shapefile data of the temporary concrete batch plant area was provided, no such data has been provided.

Ex. 4 – Land Use

1. Stipulation (4)(g) and 16 NYCRR §1001.4(g) require various maps, including those “of designated ... FEMA flood hazard areas.” The Application includes mapping of some Flood Hazard Areas at Figure 4-6, however, the included coverage may be incomplete and should be confirmed. In particular, mapped Special Flood Hazard Area at the northerly extent of Figure 4-6 Sheet 4 of 4 does not extend into the adjoining area mapped at Sheet 2 of 4. Furthermore, review of Flood Hazard Area GIS Q3 mapping available from the NYS GIS Clearinghouse (as cited in Application at Exhibit 4, pg. 20) indicates that flood plain is located along Mill Creek, extending north of Sinclairville to the vicinity of Charlotte Center, generally along the County Route 49 corridor, including the location of the proposed 115 kV Generator Lead Line; and also two areas of Flood Hazard Zone located along Cassadaga Creek, north of Moon Road, including crossing the Facility Site as it extends north of the Moon Substation along the existing NMPC Dunkirk-Falconer 115 kV line. (Note: This location of facilities within areas of flood hazard is described at Application Exhibit 9, page 9 under section (9) *Vulnerability to Seismic Disturbances and Climate Change Impacts*; and at Application Exhibit 31, pg. 36 in section (j) *Zoning Designation*.) DPS advises that the Applicant should revise the maps to correctly indicate the presence of any flood hazard zones. (See Map attached as Appendix 1.)

2. Stipulation 4(h) requires:

Maps of all ... designated trails ... oil and gas production and any known pipeline transportation, major communication and utility uses and infrastructure ... and a summary describing the nature of the probable environmental impact of the Facility and interconnection construction and operation of such uses, including an identification of how such impact is avoided or, if unavoidable, minimized or mitigated.

Facility Site mapping does not demonstrate the location and relationship of specific Facility components such as turbine locations, access roads and electric collection and transmission interconnect lines, to existing utility uses and infrastructure, such as gas wells and pipelines, which are mapped on separate figures only. Likewise, the Application does not describe the nature of impacts of Facility location and design on such infrastructure and uses, and also does not identify how impacts on utility uses and infrastructure is avoided, minimized or mitigated. Furthermore, while the designated Cassadaga Water Trail is mapped as crossing the Facility Site at Figure 4-7, there is no description or indication of

the nature of impact or avoidance, minimization or mitigation measures proposed. In accordance with the regulations and stipulations, the Application must contain such land use information.

Ex. 6 – Wind Power Facilities

1. The Application notes on page 6 of Exhibit 6 that, “[t]he Facility as currently proposed will meet or exceed all turbine setback requirements, or written consent will be obtained from affected property owners. For example, turbine site T42 is located within a gas well setback, and the Applicant is obtaining permission from the property owner and well owner to be within that setback.” Per 16 NYCRR §1001.6(b), provide a description of all potential cases of turbine locations that may require the written consent from property owners due to setback adherence issues. Include the proposed turbine setback distances from the related features or structures.

Ex. 9 – Alternatives

1. The Application does not present a clear description of the alternative turbine locations mapped at Figure 3-1, or otherwise. The Applicant should indicate whether these are showing the locations of additional turbines for the hypothetical “75-Turbine Alternative,” as described in Exhibit 9.

Ex. 11 – Preliminary Design Drawings

1. In accordance with Stipulation 11(a) the Applicant should provide paper copies of three of the Preliminary Design Drawings (site plans at Application Appendix L) at a scale of 1”=100’. It appears that the plan set was developed and drawn at the appropriate scale but the hard copy submission contains reduced scale drawings.
2. As per Stipulation 11(a), the Applicant should provide revised Preliminary Design Drawings and site plans providing location of additional facilities components including permanent meteorological towers and any associated access roads.
3. Stipulation 11(a) requires that, “the Application will provide additional information on the need for an on-site concrete plant, including a typical plan layout showing all components of this feature and an approximate location.” Although photos of typical machinery utilized for such a plant are enclosed as Appendix O, there is no plan showing the location of this area designated as a temporary concrete batch plant within the staging area off Cleland Road.

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- a. Provide an outline of the area to be used as the temporary batch plant; and
 - b. If it will be a “wet” plant, provide the information regarding the water source.
4. Stipulation 11(a) also notes: “[i]f an on-site plant will not be utilized, then potential options for concrete will be discussed and an estimate of the number of concrete mixing transport trucks required per day will be provided.” This information is not included in the Application.
 - a. Provide a discussion of potential options for concrete and the estimated number of concrete mixing transport trucks required per day (regardless of the source).
5. According to Stipulation 11(b), Exhibit 11 shall contain “[a] construction operations plan of the location of anticipated construction staging/material laydown areas, work spaces, temporary concrete batch plant(s), contractor trailers/offices, ingress, egress, and parking areas along with notable excavation areas and soil stockpile areas.” Page 1 of Exhibit 11 of the Application states that “[e]xcess soil will be stockpiled along the construction corridors and used in site restoration.” However, no detail was included describing areas to be used for storing imported materials (fill, etc.).
 - a. Describe the locations to be used as imported material storage areas, if any.
6. According to 16 NYCRR §1001.11(f), architectural drawings shall include exterior elevations for all buildings and structures. Elevations of turbines and permanent meteorological towers are not included in the Application. Provide a response and include typical elevations (showing height) for permanent meteorological towers and each wind turbine being considered.
7. Exhibit 11 – 1001.11(i) on page 5 of Exhibit 11 of the Application, the Uniform Building Code (UBC) is listed as one of the Engineering Codes, Standards, Guidelines and Practices to be considered during the design, construction, operation and maintenance of this Facility. Staff advises that the Applicant should remove the reference to the UBC and insert the current *New York State Fire Prevention and Building Code* and current *New York State Energy Code* instead.

Ex. 12 – Construction

1. Stipulation 12(a) requires “[a] preliminary Quality Assurance and Control plan including special inspections (structural) and statements of special inspections required by the Building Code of New York State.” The Application does not specifically address special inspections or statements of special instructions required by the Building Code of New York State.

Ex. 19 – Noise and Vibration

1. Exhibit 19(b), pages 3 to 5 in the Application (Ambient Pre-construction Baseline Noise Conditions) and sections 6.2 and 6.3, pages 51 and 53 in the PNIA (Preconstruction Noise Impact Analysis, Appendix Z.1) report which weather data was collected at different locations within the Facility Site. In addition, measured sound levels were graphed in conjunction with wind gusts (m/s) in section 8.0 of the PNIA. However, exclusions due to rain are reported but rainfall is not documented. Air temperature is only reported for periods of infrasound collections. Criteria for exclusion based upon relative humidity is described but actual values of relative humidity during sound surveys are not reported. Wind direction is not described or reported. As required by Stipulation 19(b), the Application should describe all weather conditions during ambient and infrasound collections. Include graphic or tabular summaries of supporting information (e.g., wind speed, wind direction, temperature, relative humidity and precipitation).
2. Stipulation 19(e)(2) requires “a tonal evaluation based on the reported sound power of the turbines and substation transformers.” Section (2) of Exhibit 19 includes tonal evaluation of Wind turbine Gamesa G114 2.625 MW only. However, Table 2 of the PNIA (Pg. 9) lists fourteen different turbine models considered for the Project. The absence of prominent tones for the turbine model with the greatest sound power levels does not exclude the possibility that other models may have or cause prominent tones. Local laws have 5 dBA penalty provisions for the presence of prominent tones from the turbines. As required by Stipulation 19(e)(2), include the evaluation of prominent tones for all the turbine models that may potentially be selected for the Project.
3. Stipulation 19(f) requires “[a] summary, in tabular and/or graphical format, of A-weighted sound levels indicated by measurements and computer noise modeling at the representative external property boundaries of the Facility, and at the representative nearest and average sensitive sound receptors.” Figures 119 to 122 of the PNIA (appendix B, pp 155 to 158) report sound

contours for the project site in one dBA steps at illegible scale. Receptors are not labeled and parcel lines for non-participating lots are either not included or are at an illegible scale. The Application should include properly scaled legible drawings for figures 119 to 122 including parcel/property lines depicted. Full-size drawings are recommended. Identify (label) receptors in the drawings.

4. Stipulation 19(n) requires “GIS files that contain modeled topography, proposed turbine and substation noise source locations, sensitive sound receptors, and all representative external boundary lines, identified by Parcel ID number, will be provided to DPS-Staff in digital format.” Exhibit 19 of the Application states that these files “are being provided to DPS under separate cover in digital format.” GIS files as required by Stipulation 19(n) have not been provided. Although GIS files with proposed turbine, alternatives and substation locations were provided, the Applicant should confirm whether any of those files correspond to the ones that were incorporated into the computer noise model. If the files are different, the Applicant should provide digital copies of the files that were used.

Ex. 21 - Geology, Seismology and Soils

1. The Application does not provide drawings delineating anticipated cut and fill storage areas as required per 16 NYCRR §1001.21(g) and Stipulation 21(c).
2. According to Exhibit 21 of the Application, construction excavations may encounter areas of perched groundwater, particularly during periods of seasonally high water table and heavy rain events. No discussion is provided describing temporary dewatering practices in such areas and the Application does not indicate whether permanent dewatering may be required during operation of the facility, as required per 16 NYCRR §1001.21(p).
3. Exhibit 21 of the Application does not include vertical profiles showing soils, bedrock, average water table, seasonally high groundwater and typical foundation depth, as required per 16 NYCRR 1001.21(q) and Stipulation 21(q). The Applicants should provide vertical profiles with the required information for each of the soil boring locations indicated in the Preliminary Geotechnical Investigation Report.
4. Exhibit 21(f)(3) on page 4 concerning site preparation for construction, states that a 40-foot wide clearing corridor will be utilized for buried electric. Sheet C-602 shows a buried electric detail utilizing a 50-foot “limit of disturbance.” Note #2 for this detail indicates the clearing limits will be the limit of disturbance. The

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Applicant should correct the discrepancy between the 40- or 50-foot clearing width.

5. The Application does not provide an estimate of the length of HDD or other trenchless methods of electric collector line installation as required by Stipulation 21(f).

Ex. 22 - Terrestrial Ecology and Wetlands

1. Provide GIS files used in wetland delineation figures 22-2.
2. Stipulation 22(b)(5) requires “details of cleaning procedures for removing invasive species from equipment and personnel, and properly disposing of materials.” Review of the Application, including Appendix FF Invasive Species Control Plan (ISCP), indicates that no cleaning procedures are identified. The Applicant should provide the required information.
3. Stipulation 22(b)(7) requires a “[d]escription of the Best Management Practices or procedures that will be implemented, and the education measures that will be used to educate workers.” The Application fails to provide a description of the education methods to be utilized.
4. DEC Advises that consistent with 6 NYCRR Part 182 (Part 182) and Stipulation 22(g) describing Facility design to avoid and mitigate impacts, the application must be augmented to demonstrate how the Applicant will avoid or minimize impacts to Northern long-eared bats (NLEB). NLEB are listed as “threatened” by the US Fish and Wildlife Service (US FWS) and DEC. DEC staff has determined that all wind projects have the potential to take NLEB while operating. This is based on an analysis of post-construction monitoring data from ten projects in the Northeast region which has demonstrated take of NLEB from the operation of wind rejects. Construction impacts should be considered separately from impacts associated with operation, and may be avoided by limiting tree clearing to winter dates. If a take cannot be avoided then the Application must demonstrate that the project will have a ‘net conservation benefit’ or no net loss. To demonstrate compliance with Part 182 the Article 10 application must include:
 - a. Calculation of Take - The Application should include a calculation of the likely take of NLEB from construction and operation of the project. This is consistent with 22h(2), specifying an impact analysis to determine impacts to the NLEB.

b. Minimization - The Application must propose and discuss which impact minimization measures will be implemented, including but not limited to, the use of turbine cut-in speeds that are practicable and will provide significant protection to the NLEB. It should include provision to develop an impact minimization plan in consultation with DPS, DEC and USFWS that describes use of turbine cut-in speeds above manufacturer recommended speeds during certain times and under certain environmental conditions, as well as any other proposed measures.

c. Mitigation - Based on minimization measures proposed by the Applicant, a determination can be made, in consultation with DEC staff to determine if a take of NLEB is likely. One or more conservation measures will also be necessary to mitigate for the calculated loss of NLEB as a result of project construction and operation. Mitigation measures will be developed in consultation with DPS, DEC and USFWS. Please see also Appendix A of DEC's "*Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects*"

5. As written in the application, the Applicant plans to implement a voluntary operational Best Management Plan (BMP) that could reduce bat mortality and the Applicant plans to conduct post-construction monitoring for avian and bat impacts (per Stipulation 22h.(3) for assessing impacts).
6. Stipulation 22(n) requires a discussion of the number of environmental monitors that will be utilized and the necessary qualifications. The Applicant should provide the information as required by the Stipulation.

Ex. 23 - Water Resources and Aquatic Ecology

1. Figure 23-2 does not provide all of the information required per 16 NYCRR §1001.23(a)(2). Groundwater flow direction and groundwater quality are not indicated, the locations of private water supply wells are not identified, and wellhead protection zones are not delineated.
2. The Application does not include GIS parcel data showing the locations of private water supply wells, as required per Stipulation 23(a)(2).
3. The Application does not identify anticipated areas of dewatering during construction, as required by Stipulation 23(a)(3).

Ex. 24 – Visual Impacts

1. Requirements of Stipulation 24 regarding facility visibility predictions include presentation of information in an integrated and related manner that is not provided in the Application. Stipulation 24 (b)(1) requires viewshed maps that are “presented on the most recent edition 1:24,000 scale topographic base map, and in addition to the results of the viewshed analysis, the maps will also depict visually sensitive sites, viewpoint locations, and Landscape Similarity Zones.” The viewshed mapping provided in the Application at Exhibit 24 is USGS hillshade projection on ESRI Streetmap, not topographic edition basemap; is provided at approximate scale of 1:181,025 rather than 1:24,000; and does not depict visually sensitive sites, viewpoint locations and Landscape Similarity Zones. DPS Staff advises that different Viewshed Overlay mapping (Sheets 1 through 5 of 5) is provided at Volume V, exclusively on CD-ROM files in Appendix A to Appendix VV. This mapping more fully represents the information in an integrated manner as required by the Stipulation for Exhibit 24. The Applicant will be required to provide five full-size, large format paper copies of this set of mapping to DPS Staff; and also one set of such mapping to any party requesting service of such documents.
2. Stipulation 24(a)(9)(viii) states that the analysis of shadow flicker effects “will identify potential mitigation measures needed (if any) to offset any identified impacts. The report will specify the mitigation options, and for illustrative purposes, discuss what additional measures could feasibly be implemented once the Facility is constructed.” Therefore, facility design mitigation measures, as identified in Application Exhibit 24 (10) at pages 19 through 22 should be addressed, particularly items “C. Relocation” and “F. Downsizing” or elimination of problem turbines from facility design. Operational stage mitigation, such as limiting operation of problem turbines during periods of excessive shadow flicker generation, should also be addressed. Furthermore, Stipulation 24 does not limit consideration of impacts and mitigation of shadow flicker to non-participating receptors. Facility participant-receptors should be included in the discussion of impact avoidance, minimization and mitigation.

Ex. 25 – Effect on Transportation

1. Page 7 of Exhibit 25 notes (regarding cut and fill activity) that:

[A]pproximately 347,981 cubic yards of material will be excavated for Facility construction. Additionally, approximately 133,028 cubic yards of fill material (of which 55,375 cubic yards will be gravel) will be utilized for the

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construction of the Facility. With the exception of gravel, fill material will be derived from excavated material, and no fill will need to be imported for construction of the Facility. Furthermore, it will not be necessary for materials to be removed the Facility Site.

The Application does not contain a description of the remaining 77,653 cubic yards of fill and its origins. Also, Table 25-2, Construction Vehicle Volumes, contains information pertaining to the total volume of gravel. This gravel total is 40,171 cubic yards, which is less than the noted total of 55,375. Stipulation 25(c)(1) notes that the Application will include:

An estimate of the number, frequency and timing of vehicle trips based on the site plan and location of turbines, along with the number of phases, estimated quantities of earthwork and materials to construct facilities. A tabulation of the anticipated construction vehicle volumes for each site, including delivery flat beds, cranes, concrete trucks, earth disposal trucks, and contractor worker vehicles.

Per Stipulation 25(c)(1), the following information must be provided:

- a. The timing of vehicle trips;
- b. A consistent number for the estimated gravel to be brought in for Facility construction (either 40,171 cubic yards (tallied from table) or 55,375 cubic yards (noted total of gravel to be imported on page 7)), or explain the discrepancy between the numbers provided in the table and the text on page 5 of Exhibit 25;
- c. Describe what material will account for the 77,653 cubic yards remaining from the 133,028 (which is noted as the total additional fill needed on page 7 of Exhibit 25 and page 1 of Exhibit 21 (provided in cubic feet)) detailing quantities of earthwork and materials to construct facilities;
- d. As described above, it appears that 77,653 cubic yards are not accounted for in the Construction Vehicle Volume Table on page 7 of Exhibit 25. In Table 25-2, include the estimated material and truck volume for the additional 77,653 cubic yards to be imported to the Facility Site (Stipulation 25(c)(1) requires the following submittal: A tabulation of the anticipated construction vehicle volumes for each site, including delivery

flat beds, cranes, concrete trucks, earth disposal trucks, and contractor worker vehicles).

Ex. 27: Socioeconomic Effects

1. Stipulation 27(a) states that the Application will include an estimate of the average construction “work force, by discipline, for each quarter during construction, and an estimate of the peak construction employment level.” While the Application includes a table with an estimate of the average construction workforce, by discipline, for each quarter during the period of construction, it does not include an estimate of the peak construction employment level.
2. Stipulation 27(c) provides that the Application will include an estimate of the annual secondary employment and economic activity likely to be generated in the vicinity of the Facility by the construction of the plant. The Application includes secondary employment numbers associated with construction of the Facility but fails to include estimates about other economic activity.
3. Stipulation 27(e) requires the Application to include estimated secondary employment and economic activity generated by Facility operation. The Application provides information on jobs and the dollar value of economic activity, but fails to provide an estimate of the dollar value of economic activity likely to be generated by facility operation.
4. Stipulation 27(i) requires the Application to include detail regarding the anticipated payment in lieu of taxes (PILOT) “agreement with local tax jurisdictions, including the involvement of the Chautauqua County Industrial Development Agency.” The Application does not mention the Chautauqua County Industrial Development Agency. The Applicant should provide an explanation of any past and anticipated involvement of County and local jurisdictions in potential PILOT agreement discussions for the Project.

Ex. 31 – Local Laws

1. In accordance with 16 NYCRR §1001.31 the Applicant should provide the information and analysis required by 16 NYCRR §1001.31(a) through (e), specifically addressing the proposed use, design and area requirements including height, setback, lot size, and related details. The Applicant should also provide copies of any town laws not otherwise provided in the Application.
 - a. Town of Charlotte

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The listing and analysis of applicable local laws only addresses Wind Energy Conversion Systems, but does not address permanent facilities including the proposed Operations and Maintenance building and related site development. The Application should also provide additional review of other aspects of local laws that are generally applicable to site development and construction, such as:

Town Code Article VI Supplemental Regulations:

SECTION 614 Signs

SECTION 620 Construction, Excavation, Piling of Materials Near Lot Lines

b. Town of Stockton

The listing and analysis of applicable local laws does not address the proposed interconnection switchyard as an accessory structure siting (Town of Stockton Zoning Law, definitions pg. 6); or address related lot coverage; or front, side or rear setback requirements (Section 403.2 - Agricultural (A) District Unit Standards); or height restrictions pertaining to substation or transmission line structures proposed (Town Code Section 403.2; and Town Code Section 504 - Height).

Ex. 32 – State Laws and Regulations

1. The Application does not comply with requirements of 16 NYCRR §1000.8(a)(1) for consideration of Clean Water Act §401 Water Quality Certification. Exhibit 32 states that “the request for WQC is not included in this Application and will be submitted at a later date” (Application Vol. II, Exhibit 32 at page 1). A timetable indicating a schedule for requesting the §401 Water Quality Certification must be provided.

Ex. 33 – Other Applications and Filings

The Application at Exhibit 33 does not include discussion or acknowledge applications or filings pending with either the New York State Independent System Operator (NYISO) or the Applicant’s proposal to participate in the New England Clean Energy market.

1. The Applicant must provide a description of the status of its interconnection review process at the NYISO, as well as a schedule and description of future milestones of that review.
2. The Applicant must submit to DPS Staff for review any un-redacted bidding documents (excluding copies of previously filed Article 10 Application, Preliminary Scoping Statement, or Public Involvement Program Plans) filed in

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response to the New England Clean Energy RFP for provision of renewable energy into the New England ISO market (see <https://cleanenergyrfp.com/bids/>).

Appendices

Notification of Application

1. The Application filing indicates that the Applicant served copies of the Application on the appropriate agencies and individuals as per Article 10 regulation. However, the Application materials do not indicate that the Applicant followed procedures established in the approved PIP Plan, namely that the Applicant will issue a notification to all known stakeholders seven days or more prior to each project milestone (Section 5.5). The Application materials do not indicate that the Applicant sent a letter or email to the stakeholder list notifying the stakeholders that the Application was being filed with the Commission.

Appendix KK -Bird and Bat Survey Report

1. DEC advises that the "Bird and Bat Survey Report" (Appendix KK) is dated January 2015, but includes only a summary of the 2013-2014 eagle use survey results. A report submitted to DEC dated April 10, 2015 fully describes the eagle use surveys. The most complete and recent reports should be included in the Application. Additionally, the January 2015 report refers to a memo report "Draft Cassadaga Wind Project 2013-2014 Eagle Use Point Count Survey Results; 26 November 2014" which has not been and should be submitted to DEC.

