STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on July 11, 2019

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards

CASE 14-F-0490 - Application of Cassadaga Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a Wind Energy Project, located in the Towns of Charlotte, Cherry Creek, Stockton and Arkwright, Chautauqua County.

ORDER APPROVING COMPLIANCE FILING

(Issued and Effective July 12, 2019)

BY THE COMMISSION:

INTRODUCTION

On January 17, 2018, the New York State Board on Electric Generation Siting and the Environment (Siting Board) granted a conditional Certificate of Environmental Compatibility and Public Need, With Conditions (Certificate Order)[1] to Cassadaga Wind, LLC (Cassadaga Wind or Certificate Holder) pursuant to Public Service Law (PSL) §168. The Certificate Order authorizes Cassadaga Wind to construct and operate a

[1] Case 14-F-0490, Application of Cassadaga Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a Wind Energy Project, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions (issued January 17, 2018).

utility-scale wind energy facility (the Project) in the Towns of Charlotte, Cherry Creek, Stockton and Arkwright, in Chautauqua County. The conditional Certificate contained several Certificate Conditions that required subsequent compliance filings by the Certificate Holder, to be approved by the Siting Board or the Public Service Commission (Commission), in the event the Siting Board's jurisdiction has ceased, including conditions for construction and operational impact mitigation.[2]

Pursuant to Condition 20, on April 23, 2019, Cassadaga Wind filed its final Decommissioning Plan and Proof of Financial Security. The Certificate Holder supplemented its April filing on May 24, 2019 and again on June 13, 2019. Through this Order, the Commission approves the Certificate Holder's final Decommissioning Plan and Proof of Financial Security as filed and supplemented.

BACKGROUND

On April 23, 2019, Cassadaga Wind filed its final Decommissioning Plan and Proof of Financial Security pursuant to Article 10 Regulations 16 NYCRR §1002.3 and required by Certificate Condition 20. Specifically, Certificate Condition 20 requires the following:

> A Final Decommissioning Plan and proof of financial security as required by the Siting Board. The decommissioning estimate shall be updated by a qualified independent engineer licensed to practice engineering in the State of New York to reflect inflation and

[2] Under 16 NYCRR §1002.2, "[t]he applicant may not commence construction of all or any portion of the facility or interconnections for which the Board has required approval of a compliance filing as a condition precedent to such construction until the applicant has submitted the required compliance filing for that portion of the facility and received approval of it by the Board, or by the Commission after the Board's jurisdiction has ceased."

> any other changes after one year of Facility operation, and every fifth year thereafter. The Applicant shall work with Department Staff and the Towns of Arkwright, Cherry Creek, and Charlotte on an acceptable form of letter or letters of credit and the Applicant shall file with the Secretary with the Towns' approvals within 90 days prior to construction. The Applicant shall also file with the Secretary proof that the letter or letters of credit have been obtained in the decommissioning estimate amount, as calculated pursuant to the Siting Board's direction. The letter or letters of credit should remain active for the life of the Facility, until it is decommissioned, as adjusted every fifth year in consultation with the Towns and Department Staff. The Towns of Arkwright, Cherry Creek, and Charlotte shall hold the letters of credit with each letter representing that portion of the respective Town's decommissioning cost. The Applicant shall execute decommissioning agreements with the respective Towns establishing a right for them to draw on the letters of credit if the Applicant defaults on its decommissioning obligations.

The final Decommissioning Plan and Proof of Financial Security requires, among other things, requires that the Certificate Holder to consult with Department Staff and the Towns of Arkwright, Cherry Creek, and Charlotte (the Towns). Furthermore, the final Decommissioning Plan and Proof of Financial Security shall not net out salvage value and shall be filed with the Secretary to demonstrate that the letter or letters of credit have been obtained in the decommissioning estimate amount, as calculated pursuant to the Siting Board's direction, but at a baseline minimum of $8,000,000 total.

The Certificate Holder is also responsible for utilizing an independent engineer licensed to practice in the State of New York to update the decommissioning estimate to reflect inflation and any other changes after one year of Project operation, and every fifth year thereafter.

PUBLIC NOTICE

As indicated, on April 23, 2019 the Certificate Holder submitted its final Decommissioning Plan and Proof of Financial Security. Cassadaga Wind served this compliance filing as required under 16 NYCRR §1002.2(c)(1-5). Pursuant to 16 NYCRR §1002.2(d), "[a]ny interested person or party may file comments regarding any compliance filing within 21 days of the filing and service of such compliance filing done in accordance with subdivision (c) of this section." One Party submitted a written response in the form of a motion on Cassadaga Wind's final Decommissioning Plan and Proof of Financial Security compliance filing during the minimum 21-day comment period or thereafter. That response is discussed in more detail below.

LEGAL AUTHORITY

Under PSL §168(7), "[f]ollowing any rehearing and any judicial review of the Board's decision, the board's jurisdiction over an application shall cease, provided, however, that the permanent Board shall retain jurisdiction with respect to the amendment, suspension or revocation of a certificate." For purposes of the subject compliance filings described here, the Siting Board's jurisdiction has ceased, as such, pursuant to

16 NYCRR §1002.2(f)[3] the Commission has the jurisdiction to approve these compliance filings.[4]

Public Service Law §168(5) includes a delegation of authority to the Commission for compliance administration. That section states "[t]he department [of Public Service] or the [Public Service] commission shall monitor, enforce and administer compliance with any terms and conditions set forth in the [Siting] board's order [Order Granting Certificate of Environmental Compatibility and Public Need]."

The Siting Board's rules, 16 NYCRR §1002(1), establish procedures and requirements for a certificate holder to comply with the "terms, conditions, limitations, or modifications of the construction and operation of the facility authorized in the certificate." 16 NYCRR § 1002.2 describes the procedures that a certificate holder must comply with, including filing requirements, notice procedures, and outlines the jurisdiction of the Siting Board and the Commission in approving compliance filings.

Pursuant to 16 NYCRR §1002.3 a certificate holder is required to submit "(a) a description of and citation to the requirement in a certificate or an order for which compliance is to be demonstrated; (b) a description of how the applicant will comply with the requirements of the certificate or order; and (c) final maps, plans, diagrams, drawings, studies, reports or

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[3] "Compliance filings will not be effective until approved by the Board or by the Commission after the Board's jurisdiction has ceased."

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

other documents demonstrating compliance." Under 16 NYCRR §1002.2(g), the Siting Board, or the Commission if the Siting Board's jurisdiction has ceased, may approve compliance filings subject to specified terms, conditions, limitations, or modifications. Finally, pursuant to 16 NYCRR 1002.2(i), the standard of review for compliance filings shall be whether the "compliance filing reasonably assures compliance with the Certificate."

DISCUSSION

Certificate Condition 20 states that the "the Applicant [Certificate Holder] shall also file with the Secretary proof that the letter or letters of credit have been obtained in the decommissioning estimate amount, as calculated pursuant to the Siting Board's direction." In the body of the Order the Siting Board directed the Certificate Holder to obtain letters of credit in the amount of $8,000,000 stating that "notwithstanding that the decommissioning estimate on the record at this point is only a preliminary value, it is important for our certificate to establish a baseline value for the decommissioning reserve. Consequently, while we adopt Cassadaga Wind's proposal to provide a more refined estimate, through use of an independent engineering consultant, once the Project components are identified, we will nevertheless establish here the $8 million figure, based on the estimate prepared on behalf of the Towns and put into the record by Cassadaga Wind, as the minimum level of an appropriate decommissioning reserve."[5]

Pursuant to Certificate Condition 20, the final Decommissioning Plan and Proof of Financial Security was submitted on April 23, 2019, by the Certificate Holder in

[5] Certificate Order, p. 98.

consultation with the Department Staff and the Towns. However, the amount submitted in the letters of credit did not initially meet the $8,000,000 baseline minimum. In a letter accompanying the letters of credit, the Certificate Holder asserted that since the Project size had been diminished by 20% as a result of several turbines being removed the decommissioning amount should be downwardly adjusted to reflect those changes. It should be noted, however, that no amendment of the Certificate Order was requested at that time to reflect these adjustments to the Project.

After the initial letters of credit were filed a motion to deny the Compliance Filing was submitted by the Concerned Citizens of the Cassadaga Wind Project (CCCWP) on May 9, 2019. The motion to deny by CCCWP states that the final Decommissioning Plan and Proof of Financial Security should "be rejected as inadequate and noncompliant with the Siting Board's Order." CCCWP asserts in its motion that the Certificate Holder's "letters of credit totaling $7,053,937" as filed on April 23, 2019 is not in compliance with the Siting Board's $8,000,000 baseline minimum decommissioning figure established in body of the Certificate Order.

While motion practice on compliance filings is not recognized as an appropriate procedure, the Commission will treat the Motion by CCCWP as comments on the Compliance Filing. In response to CCCWP's comments, on May 24, 2019 the Certificate Holder amended its final Decommissioning Plan and Proof of Financial Security, which subsequently increased the letters of credit to the Towns of Charlotte and Cherry Creek to meet the Siting Board's Certificate Order baseline minimum $8,000,000.

After reviewing the letters of credit, DPS noted that there was a five-year term expiry term in each of the filed letters of credit. Certificate Condition 20 states that "[t]he

letter or letters of credit should remain active for the life of the Facility, until it is decommissioned, as adjusted every fifth year in consultation with the Towns and Department Staff." Accordingly, the Certificate Holder cannot operate the Facility without letters of credit in effect for the life of the Project in the minimum amount of $8,000,000. Department Staff advised the Certificate Holder that they must file a letter of credit for the life of the Project. In response to this, on June 13, 2019 the Certificate Holder filed a cover letter for the filed letters of credit amending the expiry date to May 24, 2059, a term of 40 years, which is 10 years longer than the anticipated life of the Project.

The Certificate Holder's final Decommissioning Plan and Proof of Financial Security was developed in consultation with Department staff and the Towns. The final Decommissioning Plan and Proof of Financial Security, after additional securities were posted on May 24, 2019 and June 13, 2019, satisfies the Certificate Order's minimum of $8,000,000 in the form of letter or letters of credit. Accordingly, the Commission finds that the final Decommissioning Plan and Proof of Financial Security plan reasonably assures compliance with Certificate Condition 20 of the Certificate Order.

CONCLUSION

Given the Certificate Holder's compliance with the required consultation and review by parties and the public, the Commission is satisfied that the noted compliance filing herein meets the standards enumerated under 16 NYCRR §1002.2(i) and reasonably assures compliance with Certificate Condition 20 of the Certificate Order.

The Commission orders:

1. The final Decommissioning Plan and Proof of Financial Security plan filed by Cassadaga Wind, LLC on April 23, 2019, as supplemented on May 24, 2019, and amended on June 13, 2019 is approved.

2. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary