NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

Case 16-F-0062 – Application of Eight Point Wind, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a Wind Energy Project.

PETITION TO AMEND THE CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY & PUBLIC NEED ON BEHALF OF EIGHT POINT WIND, LLC

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I. Introduction

Pursuant to Public Service Law ("PSL") § 162 and 16 NYCRR § 1000.16, Eight Point Wind, LLC ("Eight Point Wind" or "Certificate Holder") hereby respectfully requests that the Certificate of Environmental Compatibility and Public Need, with Conditions ("Certificate"), granted on August 20, 2019, be amended to allow for updated, moderately taller turbine technology, minor locational shifts for a portion of the turbines within previously certified sites, and associated reductions and minor shifts in access roads and collection lines required ("Modified Project"). As the Modified Project will comply with all the Certificate Conditions concerning noise limits at residences and across property lines, the Certificate Holder is also requesting that Certificate Condition 64(c)(ii) be revised to accommodate the new sound power level for the different turbine technology, or deleted, because the New York State Board on Electric Generation Siting and the Environment ("Siting Board") has not included this type of limit in subsequently issued Article 10 certificates for wind facilities.

Eight Point Wind applied for a Certificate from the Siting Board pursuant to PSL Article 10 to construct and operate the Eight Point Wind Project ("Project") in the Towns of Greenwood and West Union, Steuben County, New York (Case No. 16-F-0062). The Article 10 Application ("Application") for the Project was filed on November 29, 2017. Following submittal of the Application, Eight Point Wind submitted two Supplements to the Application (April 10, 2018

and August 10, 2018) and the Application was deemed compliant on September 6, 2018. The Siting Board granted a Certificate on August 20, 2019 and Eight Point Wind filed its written acceptance of the Certificate on September 17, 2019.

II. Overview

A. Necessity of Modification

Since acceptance of the Certificate, Eight Point Wind has determined that modifications are necessary to construct and operate the Project. New wind turbine technology has been made available since the Application was filed in 2017 that has increased the efficiency of individual turbines.

The Application included an evaluation of a total of 35 wind turbines, 31 of which would be constructed resulting in 101.8 MW of Project nameplate capacity. Four alternate turbine locations were evaluated in the event that any of the 31 primary turbine location sites became unfeasible to build due to issues discovered prior to or during construction.

As Certified, the Project proposed the use of two types of turbines, General Electric ("GE") 3.43 MW (586.5 feet) wind turbines and GE 2.3 MW (534.8 feet) wind turbines ("Certified Project"). Eight Point hereby proposes to instead install six fewer turbines, up to 25 total turbines in total, comprising 19 newly available, more efficient Siemens 5.0 MW (656.1 feet) turbines and six GE 2.5 MW (485.6 feet) turbines. As a result, the following modifications are proposed to the Certified Project:

- the total number of installed turbines will decrease from 31 to 25;
- 20 of the turbines will be shifted within previously Certified locations to accommodate setback and other siting requirements resulting from use of the new turbine technology;

- access road and collection line layout will be slightly modified to accommodate the shift in turbine locations resulting in a reduction of 3.2 acres of access roads and 3.6 miles of collection lines;
- foundation design will be updated to support new turbine technology; and
- Certificate Condition 64(c)(ii) will require modification to account for the slightly higher sound power level of the Siemens turbines.

Out of an abundance of caution, Eight Point Wind is including a total of six alternate turbine locations in the proposed Modified Project submitted herewith, despite the fact that no more than a total of 25 turbines will actually be constructed. Therefore, the Modified Project shows a total of 31 turbines. In sum, Eight Point Wind proposes to modify the Certified Project by installing six fewer turbines and eliminating 3.2 acres of access roads and 3.6 miles of collection lines. As summarized below and described in the appended Attachment A, the modifications proposed do not meet the definition of a "revision," and therefore hearings are not required pursuant to 16 NYCRR Part 1000.16(a)&(c).

B. The Proposed Modifications Will Not Result in a Significant Adverse Increase to Environmental Impacts or New Adverse Environmental Impacts.

The Chair of the Siting Board has the authority to grant amendments to a Certificate of Environmental Compatibility and Public Need after consultation with the permanent members of the Siting Board provided no party opposes such request within 30 days.[1] A hearing is not required unless the Secretary determines that an amendment is "likely to result in (i) any significant adverse environmental impacts of such facility, determined according to 6 NYCRR §617.7(c), in comparison to such impacts of the facility as proposed or approved, or (ii) the

[1] PSL § 161(1).

identification of an adverse environmental impact not included in the application."[2] The regulations at 16 NYCRR §1000.16(b)(1) and (2) require a petition for an amendment to:

> describe the amendments proposed and the relevant engineering design, performance or operational changes proposed, with supporting documentation to describe the nature of the changes caused by or related to the amendment," and include "the data and information required by this Subchapter that would otherwise be necessary to support an application for a certificate.

The Department of Public Service Staff ("DPS Staff"), in consultation with the Department of Environmental Conservation ("DEC") and the Department of Health ("DOH"), is tasked with determining whether the proposed modifications would result in a significant adverse increase to environmental impacts or a new adverse environmental impact as compared to the Certified Project.[3] The required data and analyses are appended hereto as Attachment A.

As demonstrated in Attachment A, the Modified Project will not result in any significant adverse environmental impact or a new adverse environmental impact. To the contrary, the Modified Project, on balance, will result in a reduction in environmental impacts from the Certified Project. Attachment A examines potential impacts with respect to: land use; public health and safety (shadow flicker); noise; geology, seismology, and soils; terrestrial ecology and wetlands; water resources and aquatic ecology; visual impacts; effect on transportation; effect on communication; local laws and ordinances; and electric interconnection. Each of these is briefly summarized below.

Land Use – Exhibit 4

The Project Area was reviewed to determine impacts to land use from the Modified Project. As described in Attachment A, the changes in impact to any specific land use type have

[2] 16 NYCRR § 1000.2(ak).

[3] 16 NYCRR § 1000.16(a).

decreased due to the decreased number of turbines, access roads, and collection lines. Additionally, due to the decrease in the total number of turbines, permanent soil impacts to Mapped Agricultural Districts will decrease and there will be no additional permanent impacts to prime farmland. Overall, access roads will decrease by 3.2 acres and collection lines will decrease by 3.6 miles. While permanent impacts will decrease, temporary impacts to successive shrubland and agricultural land may increase by approximately 45 acres. These incremental temporary impacts are related to the need for larger temporary access roads and work locations to accommodate the taller turbines and all the affected acreage will be restored following construction. As explained below, however, the 45 acres is most likely an overestimate of the temporary impacts.

Shadow Flicker – Exhibit 15

The Updated Shadow Flicker Analysis modeled the new turbines under a "worst case" scenario, which included 31 turbine locations (rather than 25), including the six alternate locations. The duration of shadow flicker was calculated at 763 discrete modeling points as was done for the Certified Project. In addition, the hours for which the Project must curtail operation due to bat avoidance measures (Certificate Condition 34(i)) were not excluded. All non-participating receptors except one are predicted to receive less than 30 hours of shadow flicker per year, consistent with the results from the Shadow Flicker Analysis completed for the Certified Project. As described fully in Attachment A and Appendix B, modeling with the actual 25 turbines instead of 31, which will be submitted as a Compliance Filing, would likely show no exceedances. In addition, the curtailment regime will also be considered in the final modeling. Eight Point Wind may also offer this one residence participation in the Project. In any event, Certificate Condition 31 also requires the preparation of a Shadow Flicker Impacts Analysis,

Control, Minimization and Mitigation Plan (the "Mitigation Plan") to be submitted in the Compliance Filing. That Mitigation Plan includes the opportunity for a non-participating residence to avail itself of the Complaint Resolution Plan to address the noted shadow flicker issues, with various options to resolve complaints. Accordingly, to the extent an exceedance remains, the Mitigation Plan will address it with mitigation and no incremental, adverse shadow flicker impacts will be caused compared to the Certified Project. The Modified Project, therefore, will comply with the applicable Certificate Conditions addressing shadow flicker (Certificate Condition 31).

Noise and Vibration – Exhibit 19

The updated Noise Impact Assessment ("NIA") evaluates the "worst case" scenario—31 turbines, including the six alternate turbine locations—and concludes that the Modified Project will comply with all residence and property line noise limits imposed by the Certificate Conditions. The only exception is the sound power level for the new Siemens turbines. The proposed Siemens 5.0 turbines will have a sound power level slightly higher than the 106 dBA level prescribed by Certificate Condition 64(c)(ii).[4] Because the Modified Project will comply with all other Certificate Conditions related to noise limits at residences and across property lines, the modified sound power level has no acoustical consequence for the public. Accordingly, the Certificate Holder is hereby requesting that this condition either be modified to reflect the new sound power level or eliminated. Eliminating this condition would be consistent

[4] The Siemens sound power level has been redacted because it is confidential, and a trade secret request is being submitted simultaneously with this Petition. The unredacted information is being sent directly to DPS.

with Siting Board precedent; the Siting Board has not imposed such a limit subsequent to issuing the Certificate for the Project.[5]

Geology, Seismology and Soils – Exhibit 21

As a result of the reduction in turbines and adjustments to the foundations, the estimated quantity of imported material has decreased. Specifically, the estimated quantity of gravel that will be imported to the site has decreased by 5,934 cubic yards or 12.5% due to a decrease in total number of proposed turbines.[6] As a result of slight turbine shifts and updated soils data for Steuben County, turbines will be constructed on three additional soil types: MrC, ARC, and MSB, as described in Attachment A. However, this will not result in any changes to the methods of construction of the turbines and therefore will result in no incremental impacts.

Terrestrial Ecology and Wetlands – Exhibit 22

The capacity of the Project is not changing; therefore, the Modified Project will not result in any incremental impacts to birds and bats. As a result of the minor turbine shifts within previously Certified locations and the reduction in turbine locations from 31 to 25, there will be a reduction in wetland and waterbody impacts. Permanent wetland impacts have been reduced from 0.047 acres to 0.0104 acres. The temporary impacts have also been reduced from 4.3 acres to 2.8 acres. Permanent stream impacts have been reduced from 169 linear feet to 80 linear feet. Temporary stream impacts have also been reduced from 3,701 linear feet to 2,130 linear feet.

[5] *See* Case 16-F-0267, *Atlantic Wind LLC*, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (June 30, 2020); Case 17-F-0285, *Alle-Cat Wind Energy LLC*, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (June 3, 2020); Case 16-F-0205, *Canisteo Wind Energy LLC*, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (Mar. 13, 2020); Case 16-F-0559, *Bluestone Wind, LLC*, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (Dec. 16, 2019); Case 16-F-0328, *Number Three Wind LLC*, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (Nov. 12, 2019); Case 15-F-0122, *Baron Winds, LLC*, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (Sept. 12, 2019).

[6] These are conservative estimates, as they include the 6 alternate turbine locations which will not be built.

The total impacts to wetlands have decreased by 1.54 acres (35%) and the total impact to streams has decreased by 1,660 linear feet (43%).

While permanent impacts to successional shrubland have decreased by 0.13 acres, temporary impacts to successional shrubland have increased by 2.13 acres to accommodate the proposed shifts in Project Components. In addition, as noted above, temporary impacts to agricultural land have increased by approximately 30 acres. Although the Project Area has not changed, the Limits of Disturbance ("LOD") has been adjusted and expanded in some areas to accommodate the larger turbines. These LOD adjustments are a conservative measure that account for the new requirements to deliver the turbines to the site; however, the impact areas, access road widths, etc., required for the turbines have not changed from the Certified Project. The LOD has been widened in some areas to alert contractors and those accessing the site that the turbines, during construction, may extend beyond the originally identified LOD. The extents of the LOD, however, do not indicate that the entire area within the LOD will be impacted. Accordingly, the projected increase in temporary impacts to agricultural land may not occur at all. In any event, any incremental impacts to agricultural land are temporary and will be restored upon completion of construction.

Both permanent and temporary impacts to successional old-field communities have decreased: by 0.20 acres for permanent impacts and by 2.5 acres for temporary impacts. Additionally, temporary impacts to forestland have decreased by 14.46 acres and temporary impacts have decreased by 1.87 acres. Overall, the Modified Project will result in a decrease in impacts to terrestrial ecology and wetlands.

Water Resources and Aquatic Ecology – Exhibit 23

As a result of the minor turbine shifts within previously Certified sites and the reduction in the total number of turbines, impacts to surface waters have decreased. As described in Attachment A, permanent stream impacts have been reduced from 169 linear feet to 80 linear feet, while temporary stream impacts have been reduced from 3,701 linear feet to 2,130 linear feet.

Visual Impacts – Exhibit 24

To address any potential incremental visibility resulting from the Modified Project, Eight Point Wind has prepared a Supplemental Visual Analysis. The Supplemental Visual Analysis includes a viewshed analysis and updated photographic simulations. The Supplemental Visual Analysis evaluated the potential changes in Project visibility resulting from the reduction in turbine number, change in turbine model with moderately increased height for the Siemens turbines, shorter GE turbines, and minor shifts within previously Certified locations. The Supplemental Visual Analysis concludes that the additional visibility within both 5 and 10 miles of the Modified Project is not significant, resulting in an increase of approximately 0.5%. That equates to an additional 3.1 square miles of incremental visibility expected within the entire 10-mile visual study area of 552.48 square miles. The updated viewshed maps in Appendix D show that these new visible areas mostly occur as small increases in the size of areas that could already see original turbines, rather than entirely new, large, isolated geographic areas. Furthermore, several of these areas of incremental visibility are on undeveloped slopes or in open agricultural fields that are inaccessible to the public or infrequently accessed by the landowner.

On the other hand, there will be less visibility in the foreground, with a decrease of 0.8% visibility within 0.5 miles of the Project as compared to the Certified Project. The reduction of

turbine number visible from certain areas likely explains this decrease in visibility. As the analysis concludes, the overall 0.5% visibility increase for the Modified Project within the ten-mile study area appears to occur at locations farther out where many turbine views would be diminished because of distance. In sum, these changes in predicted visibility are insignificant.

Effect on Transportation – Exhibit 25

As described in Attachment A, the Modified Project will require 18 proposed onsite road improvement locations, six locations in the northern portion of the Project Area and 12 locations in the southern portion of the Project Area. This is a decrease of two less improvements compared to the Certified Project.

To accommodate the taller turbines and updates to turbine foundations, more concrete and aggregate may be needed for each turbine site. However, Eight Point Wind is anticipating using larger trucks to transport aggregate and concrete needed for haul road and foundation construction, resulting in fewer truck loads needed to transport materials to each turbine site. With fewer turbine sites overall and an increase in truck capacity, there will be a decrease in the expected loaded trips per turbine site and for the Modified Project. The Certified Project included approximately 5,930 loaded trips compared to the Modified Project which proposes approximately 4,382 loaded trips for turbine materials, a 26% reduction.

Finally, as a result of the decrease in proposed turbines there will be a reduction in traffic and employees traveling along NY 248, King Hill Road, McDonald Road, Irish Hill Road, Keenan Road, and Mahoney Road.

Summary

The Modified Project will result in reduced environmental impacts from the Certified Project on an overall basis. Specifically:

- The number of turbines required for the Project will be reduced from 31 to 25 turbines (without alternates);
- Both taller and shorter turbines are now proposed. Additional visibility within both 5 and 10 miles of the Modified Project is not significant, resulting in a minor increase of approximately 0.5%. On the other hand, there will be less visibility in the foreground, with a decrease of 0.8% visibility within 0.5 miles of the Modified Project as compared to the Certified Project;
- Total access roads will be reduced by 3.2 acres;
- Collection lines will be reduced by 3.6 miles;
- The total impacts to wetlands have decreased by 1.54 acres (35%) and the total impact to streams has decreased by 1,660 linear feet (43%);
- Permanent wetland impacts have decreased by 0.037 acres (78%) and temporary wetland impacts have been reduced from 4.3 acres to 2.8 acres;
- Permanent stream impacts have been reduced from 169 linear feet to 80 linear feet (52%) and temporary stream impacts have been reduced from 3,701 linear feet to 2,130 linear feet;
- Permanent impacts to successional shrubland have decreased by 0.13 acres;
- Both permanent and temporary impacts to successional old-field communities have decreased: by 0.20 acres for permanent impacts and by 2.5 acres for temporary impacts;
- Temporary impacts to forestland have decreased by 14.46 acres and permanent impacts have decreased by 1.87 acres.
- The permanent soil impact within Agricultural Districts due to the Modified Project is 0.32 acres less than the Certified Project;
- The estimated quantity of gravel that will be imported to the site will decrease by 12.5% due to the decrease in total number of proposed turbines;
- There will be a decrease in the expected loaded trips per turbine site (a 26% reduction);

- The only minimal increase in permanent impacts to vegetative communities are to successional shrubland, which will be restored, while temporary impacts within developed land have increased negligibly; and
- Temporary impacts to agricultural land may increase by approximately 30 acres; however, the projected increase may not occur at all and any incremental impacts to agricultural land are temporary and will be restored upon the completion of construction.

Similar modifications have previously been approved by the Siting Board. The Siting Board approved Baron Wind, LLC's proposal to replace 26 of its previously approved 68, 500-foot turbines with 650-foot turbines, while potentially reducing the total number of turbines to be built.[7] The Secretary, after consultation with DPS Staff, DEC, and DOH, concurred with the agencies that the proposed changes would not result in any significant adverse environmental impacts as compared to the certificated project, including potential impacts related to turbine height, shadow flicker, cultural resources, noise, wetlands, surface waters, and eagles, birds and bats.[8] Similarly, the Secretary recently informed Number Three Wind LLC that its proposed amendment, consisting of a request to install two fewer turbines but to increase the turbine height for up to 26 turbines up to 650 feet would not result in a significant adverse increase to environmental impacts as compared to the certificated facility.[9]

[7] Case 15-F-0122, *supra*, Order Approving Amendment (May 6, 2020), at 3.

[8] *Id.* at 7–8.

[9] Case 16-F-0328, *supra*, Letter from Secretary Phillips to Eric Miller Regarding Petition for Amendment of the Certificate of Environmental Compatibility and Public Need, with Conditions Issued on November 12, 2019 (Jan. 4, 2021), at 3.

III. Conclusion

For the reasons stated herein and in the attached supporting documentation, Eight Point Wind respectfully requests that the Siting Board amend the Certificate as described above. The proposed modification does not constitute a revision, because it is not likely to result in (i) any significant adverse environmental impacts in comparison the facility as approved, or (ii) the identification of an adverse environmental impact not included in the application.

Respectfully Submitted,

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