

**Appendix F**

**Deer River Wind Project**

**Proposed Certificate Conditions**

**Case No. 16-F-0267**

**PROPOSED CONDITIONS**

**October 25, 2019**

## **I. Project Authorization**

1. The Certificate Holder is authorized to construct and operate the Facility (or the Project), as described in the Application by Atlantic Wind LLC (Atlantic Wind for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the New York State Public Service Law (PSL) (the Application) and clarified by the Certificate Holder's supplemental filings, except as waived, modified or supplemented by the New York State Board on Electric Generation Siting and the Environment's (Siting Board's) Order Granting Certificate or other permits.
2. Pursuant to Title 16 of the New York Codes, Rules and Regulations (NYCRR) §1000.15, the Certificate Holder shall, within 30 days after the issuance of the Certificate, file with the Siting Board either a petition for rehearing or a verified statement that it accepts and will comply with the Certificate for the Project. Failure of the Certificate Holder to comply with this condition shall invalidate the Certificate.
3. The Certificate Holder is responsible for obtaining all necessary permits and any other approvals (including those pursuant to PSL §§68, 69, and 70, if applicable), land easements, and rights-of-way that may be required for this Facility and which the New York State Board on Electric Generation Siting and the Environment (Siting Board) is not empowered to provide, or has expressly authorized. In addition, the Siting Board expressly authorizes the Public Service Commission (Commission) to require approvals, consents, permits, certificates or other conditions for the construction or operation of the Facility under PSL §§68, 69 & 70, with the understanding that the Commission will not duplicate any issue already addressed by the Siting Board and will instead only act on its police power functions related to the entity as described in the body of this Article 10 certificate.
4. If the Certificate Holder believes that any action taken, or determination made, by a State or local agency or their respective staffs, in furtherance of such agency's review of any applicable regulatory permits or approvals, or actions or the lack thereof by a utility subject to the Public Service Commission's jurisdiction, is unreasonable or unreasonably delayed, conditioned or withheld, the Certificate Holder may petition the Siting Board or the Commission, as the case may be, upon reasonable notice to that agency, to seek a determination of any such unreasonable or unreasonably delayed, conditioned or withheld, action or determination. The permitting agency, agency staff or utility, as the case may be, may respond to the petition, within ten days, to address the reasonableness of its action or determination.
5. Facility construction is authorized for up to 25 wind turbines in the Towns of Harrisburg and Pinckney (the Towns), in Lewis County with a point of interconnect (POI) in the Town of Rodman, Jefferson County. Additionally, the Facility will include temporary or permanent access roads, overhead and underground collection system, collector substation, POI switchyard, one permanent meteorological (MET) tower, one operations and maintenance (O&M) facility, and temporary laydown yard/staging areas.
6. If the Certificate Holder decides not to commence construction of any portion of the Project (not including turbine deletions or reductions in name plate capacity as a result of final facility design as long as turbine deletions do not result in substantial re-routing of proposed Facility components including access roads, interconnection and collection lines), it shall so notify the Secretary to the

Siting Board (Secretary) promptly after making such decision and shall serve a copy of such notice upon all parties and all entities entitled to service of the application or notice of the application. Such decisions shall not require an amendment to the Certificate.

7. The Certificate Holder shall file a request/application for a Water Quality Certification with the Secretary prior to the commencement of construction of the Facility. This request shall be filed and served and noticed pursuant to 16 NYCRR §1000.8(a)(8) and shall be filed concurrently with the permit application filed with the United States Army Corps of Engineers (Corps) pursuant to Section 404 of the Clean Water Act. Construction activities regulated under federal law may not commence until a Water Quality Certification has been issued by the Chief of the Environmental Certification and Compliance Section of the New York State Department of Public Service Office of Electric, Gas and Water. Upon receipt of all required governmental permits, the Certificate Holder shall file notice of receipt of the permit(s) with the Secretary as soon as practical. Should any required governmental permit be denied, the Certificate Holder shall file with the Secretary documentation demonstrating, to the extent known, the reasons for the denial and how it plans to proceed with its Project plans in light of the denial.
8. The Secretary to the Siting Board, or Secretary to the Commission after the Siting Board's jurisdiction has ceased, may extend any deadlines established by this order for good cause shown. Any request for an extension must be in writing, include a justification for the extension, and be filed prior to the expiration of the affected deadline.
9. Decisions on compliance filings will generally be made at the next available session of the Board or the Commission, as the case may be, provided the compliance filing is received sufficiently in advance of such sessions that there is adequate time in the circumstances to receive comments and process the matter. If DPS Staff determine that a compliance filing requires additional information, details or deliberation, such that the filing will not be decided at the next available session of the Board or Commission, DPS Staff will notify the Certificate Holder within 30 days of submission of the filing and inform the Applicant of the information needed to place the filing on the next available session.

## **II. General Conditions**

10. Certificate Holder and its contractors shall not commence construction until a "Notice to Proceed with Construction" has been issued by the Secretary or by the Chief of the Environmental Certification and Compliance Section of the DPS Office of Electric, Gas & Water. The "Notice to Proceed with Construction" will be issued promptly after all applicable pre-construction compliance and informational filings have been filed by the Certificate Holder and approved, accepted or revised by the Commission or Secretary. The Notice to Proceed will not be unreasonably withheld or delayed by the Commission or Secretary.
11. Commencement of construction is defined as the beginning of unlimited and continuous site clearing, site preparation and grading activity, and construction of the Facility does not include staging, tree-cutting activities related to testing or surveying (such as geotechnical investigation and meteorological testing), together with such testing, drilling and similar pre-construction activities to determine the adequacy of the site for construction and the preparation of filings pursuant to these conditions.

12. Commencement of commercial operation or commercial operation date (COD) is defined as the date on which the Facility as a whole first commences generating or transmitting electricity for sale, excluding electricity generated or transmitted during the period of on-site test operations during commissioning of the Project.
13. The Secretary or the Chief of the Environmental Certification and Compliance Section of the DPS Office of Electric, Gas & Water will issue a conditional “Notice to Proceed with Site Preparation” for the removal of trees, stumps, shrubs and vegetation from the site to clear the site for construction, prior to the submission of all pre-construction compliance and informational filings for the tree-clearing phase of construction, provided that the Certificate Holder shall submit a Tree Clearing Plan consistent with Appendix A, “Guidance for the Development of Site Engineering and Environmental Plan for the Construction of the Deer River Wind Project” Section D.
14. The Certificate Holder shall implement the impacts avoidance, minimization and mitigation measures, as described in the Order Granting Certificate issued in Case No. 16-F-0267.
15. The Certificate Holder shall construct and operate the Facility in accordance with the substantive provisions of the applicable local laws identified in Exhibit 31 of the Application, except for those local laws the Siting Board waives as unreasonably burdensome, as stated in the Order Granting Certificate in Case No. 16-F-0267.
16. The Certificate Holder shall construct and operate the Facility in a manner that conforms to all substantive State requirements identified in Exhibit 32 of the Application.
17. The Certificate Holder shall incorporate and implement as appropriate, in all compliance filings and construction activities, American National Standards Institute (ANSI) standards and measures for engineering design, construction, inspection, maintenance and operation of its authorized Facility, including features for Facility security and public safety, utility system protection, plans for quality assurance and control measures for facility design and construction, utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities, vegetation and facility maintenance standards and practices, emergency response plans for construction and operational phases, and complaint resolution measures.
18. The Certificate Holder shall work with National Grid and any successor Transmission Owner (as defined in the New York Independent System Operator (NYISO) Agreement), to ensure that, with the addition of the Facility (as defined in the Interconnection Agreement between the Certificate Holder, NYISO and National Grid, the system will have power system relay protection and appropriate communication capabilities to ensure that operation of the National Grid transmission system is adequate under Northeast Power Coordinating Council (NPCC) standards, and meets the protection requirements at all times of the North American Electric Reliability Corporation (NERC), NPCC, New York State Reliability Council (NYSRC), NYISO, and National Grid, and any successor Transmission Owner (as defined in the NYISO Agreement). Certificate Holder may be required to demonstrate compliance with applicable NPCC criteria and shall be responsible for the costs to verify that the relay protection system is in compliance with applicable NPCC, NYISO, NYSRC, NERC and National Grid criteria.

19. The authority granted in the Certificate and any subsequent Order(s) in this proceeding is subject to the following conditions necessary to ensure adherence with such Order(s):
- a) The Certificate Holder shall regard the Department of Public Service Staff (Staff or DPS Staff), authorized pursuant to PSL §66(8), as the Siting Board's representatives in the field and, after the Siting Board's jurisdiction has ceased, as the Public Service Commission's (Commission) representatives in the field. In the event of any emergency resulting from the specific construction or maintenance activities that violate, or may violate, the terms of the Certificate, Compliance Filings, or any other order in this proceeding, such DPS Staff may issue a stop work order for that location or activity. Any stop work orders shall be, to the maximum extent possible, limited to affected portions of the Project.
  - b) A stop work order shall expire 24 hours after issuance, or earlier if the issue promoting the stop work order is resolved, unless confirmed by the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, including by Order issued by the Chair of the Siting Board or by one Commissioner of the Commission. DPS Staff shall give the Certificate Holder notice by electronic mail of any application to the Siting Board or Commissioner to have a stop work order confirmed. If a stop work order is confirmed, Certificate Holder may seek reconsideration from the confirming Commissioner, Siting Board or the whole Commission. If the emergency prompting the issuance of a stop work order is resolved to the satisfaction of DPS Staff, the stop work order will be lifted. If the emergency has not been satisfactorily resolved, the stop work order will remain in effect.
  - c) Stop work authority shall be exercised sparingly and with due regard to potential environmental impact, economic costs and consequential damages involved, possible impact on construction activities, and whether an applicable statute or regulation is violated. Before exercising such authority, DPS Staff will consult wherever practicable with the Certificate Holder's authorized representative(s). Within reasonable time constraints, all attempts will be made to address any issue and resolve any dispute in the field. In the event the dispute cannot be resolved, the matter will be brought immediately to the attention of the Certificate Holder's Project Managers and the Director of the DPS Office of Electric, Gas and Water. If DPS Staff issues a stop work order, neither the Certificate Holder nor the Contractor will be prevented from undertaking any safety-related activities as they deem necessary and appropriate under the circumstances. Issuance of a stop work order or the implementation of measures as described below may be directed at the sole discretion of DPS Staff during these discussions.
  - d) If DPS Staff discovers a specific activity that represents a significant environmental threat that is, or immediately may become, a violation of the Certificate, Compliance Filings, or any other Order in this proceeding, DPS Staff may, in the absence of responsible Certificate Holder supervisory personnel, or in the presence of such personnel who, after consultation with DPS Staff, refuse to take objectively appropriate action, direct the field crews to stop the specific potentially harmful activity immediately. If responsible Certificate Holder personnel are not on site or available by telephone, DPS Staff will immediately thereafter inform the Certificate

Holder's construction supervisor(s) (during Construction), National Control Center (during operation) and environmental monitor(s) of the action taken. The stop work order may be lifted by DPS Staff if the situation prompting its issuance is resolved.

- e) If DPS Staff determines that a significant threat exists such that protection of the public or the environment at a particular location requires the immediate implementation of specific measures, DPS Staff may, in the absence of responsible Certificate Holder supervisory personnel, or in the presence of such personnel who, after consultation with DPS Staff, refuse to take objectively appropriate action, direct the Certificate Holder or the relevant Contractors to implement the corrective measures identified in the approved Certificate. However, all directives must follow the protocol established for communication between parties as identified in a flowchart of proper communications which will be prepared and made available at the construction site for the Deer River Wind Project. The field crews shall immediately comply with DPS Staff's directive as provided through the communication protocol. DPS Staff will immediately thereafter inform Certificate Holder's Construction supervisor(s) of the action taken.

### III. Notifications

- 20. At least 14 days prior to the Certificate Holder's commencement of construction date, the Certificate Holder shall notify the public as follows:
  - a) Provide notice by mail to host landowners, and to adjacent landowners within 2,500 feet of turbines or substation components and 500 feet of parcels with other Project components will be located;
  - b) Provide notice to local Town and County officials and emergency personnel;
  - c) Publish notice in the local newspapers of record for dissemination, including at least one free publication, if available (e.g., Pennysaver);
  - d) Provide notice for display in public places, which will include, but not be limited to, the Town Halls of the host communities, at least one library in each host community, at least one post office in each host community, the Facility website, and the Facility on-site construction offices; and
  - e) File notice with the Secretary for posting on the DPS Document Matter Management website.
- 21. The Certificate Holder shall write the notice(s) required in Condition 20 in language reasonably understandable to the average person and shall ensure that the notice(s) contain(s):
  - a) A map of the Project;
  - b) A brief description of the Project;
  - c) The construction schedule and transportation routes;

- d) The name, mailing address, local or toll-free telephone number, and email address of the main contact associated with the Project for all inquiries, including complaints;
  - e) Contact information for the Siting Board and Commission.
22. Upon distribution of Notice, and prior to commencement of construction, the Certificate Holder shall notify the Town Boards of all areas where information regarding the Project, Project activities, and Project contact information have been posted.
  23. At least seven (7) business days prior to commencement of construction, the Certificate Holder shall file with the Secretary an affirmation that it has provided the notifications required by this Section III regarding Notifications and include a copy of the notice(s) and distribution list.
  24. Prior to project declared Commercial Operation Date, , which is defined for purposes of this Order to mean the date upon which the Certificate Holder commences commercial operation and duly notifies NYSERDA of such, the Certificate Holder shall notify the entities identified in Condition 20(a), 20(b), and 20(e) with a telephone number, email and mailing address for the Deer River Operations and Maintenance (O&M) Facility.
  25. The Certificate Holder shall file a written notice with the Secretary within 14 days of anticipated date of commencement of commercial operation of the Facility.

#### **IV. Information Reports and Compliance Filings Requirements**

##### **Information Reports**

The following information will be reported to and shall be filed with Secretary to the Siting Board in accordance with 16 NYCRR §1002.4. The following information shall be filed prior to the commencement of activity pertaining to the phase of construction in which the information is relevant. Phases of construction have been identified as Site Preparation, which includes tree clearing, Commencement of Civil Construction and Commencement of Operations.

##### **General**

26. A table of all participating landowners associated with Deer River Wind Project will be provided to DPS Staff and redacted to protect confidential information prior to the Commencement of Construction.
27. Interconnection:
  - a) Provide a copy of the Interconnection Agreement (IA) between the NYISO, National Grid, and the Certificate Holder upon receipt. Any updates or revisions to the Interconnection Agreement shall be submitted throughout the life of the Project.

- b) Except in the event of an emergency, if any equipment or control system with materially different characteristics than in the IA is installed throughout the life of the Project, the Certificate Holder shall, at least 90 days before any such change is made, provide information regarding the need for, and the nature of, the change to National Grid and file such information with the Secretary. If any such change(s) is made in the event of an emergency, the Certificate Holder shall notify the Secretary as soon as practicable, within one week of the date of installation.
- 28. All Facilities Studies issued by National Grid and the NYISO related to the Facility and any updated facilities agreements will be filed throughout the life of the Facility.
  - 29. Certificate Holder shall submit any System Reliability Impact Study (SRIS) and all appendices performed in accordance with the NYISO Open Access Transmission Tariff (OATT) approved by the Federal Energy Regulatory Commission reflecting the interconnection of the Facility shall be filed with the Secretary prior to Commencement of Operation.
  - 30. The Certificate Holder shall file with the Secretary within 90 days after the commercial operation date a certification that the collector lines were constructed to the latest editions of ANSI standards. The Facility's electrical collection system shall be designed in accordance with applicable standards, codes, and guidelines as specified in Exhibit 5 of the Application.
  - 31. The Certificate Holder shall file Operation and Maintenance Plan(s) for the Facility with the Secretary prior to commencement of Operations. The plan will demonstrate conformance with manufacturer's required maintenance schedules.
  - 32. Prior to Certificate Holder providing final design plans and profile drawings of the interconnection facilities, the Certificate Holder shall work with National Grid to ensure such documents are in accordance with the Facility Study Report and National Grid's Electric System Bulletins, as well as the New York State High Voltage Proximity Act.
  - 33. The Certificate Holder shall file with the Secretary, within 15 months after the Project becomes operational, a tracking report of the actual number of direct jobs created and payments to local jurisdictions made during the construction and operational phases of the Project.

## **Permits and Approvals**

- 34. Upon receipt, copies of any federal permits and approvals required to conduct jurisdictional activities under Sections 401 or 404 of the Clean Water Act associated with certain aspects of construction and operation of the Facility shall be filed with the Secretary.
- 35. The following shall be filed regarding Federal Aviation Administration (FAA) permits and required approval documentation:
  - a) Final Determinations or Determinations with conditions resulting from aeronautical studies;
  - b) If any Determinations of No Hazard to Air Navigation for the Project's wind turbines are extended, revised, or terminated by the issuing office, documentation or



verification detailing the actions shall be filed with the Secretary within 10 days of issuance;

- c) Certificate Holder shall provide any updated Compliance Filings, such as modified site plans and other drawings or details, in accordance with the requirements set forth in the Site Engineering and Environmental Plan for the Construction of the Deer River Wind Project, if relevant Project plans require modifications due to results of FAA studies and Determinations; and
- d) Verification of filing to the FAA of the FAA Form 7460-2, Notice of Actual Construction or Alteration shall be filed with the Secretary within sixty (60) days after declared Commercial Operation Date.

### **Plans, Profiles, and Detail Drawings**

- 36. The Facility design must incorporate the following measures for visual impact minimization:
  - a) Advertisements, conspicuous lettering, or logos identifying the Facility owner, turbine manufacturer, or any other entity on the turbines shall not be allowed;
  - b) Wind turbines, towers and blades shall be FAA approved colors to avoid the need for daytime aviation hazard lighting; and non-reflective finishes used on wind turbines to minimize reflected glare;
  - c) Lighting will be installed on turbines for aviation hazard marking as specified by FAA; and
  - d) Lighting controls at substations, turbines and turbine sites shall be maintained in accordance with the Facility Exterior Lighting Plan.
- 37. As-Built Plans in both hard and electronic copies shall be filed within one year of the commencement of commercial operation of the Facility and shall include the following:
  - a) GIS shapefiles showing all components of the Project (wind turbine locations, electrical collection system, substation, buildings, access roads, met towers, point of interconnection, etc.);
  - b) Collection circuit layout map.

### **Environmental**

- 38. Water Supply Protection
  - a) If environmental or engineering constraints require siting of collection lines or access roads within 100 feet of a known existing, active water supply well, the landowner may request that the Certificate Holder perform pre- and post-construction water potability testing provided the Certificate Holder is granted access by the property owner. The results of such tests and reports shall be made available to the Towns upon request.

- b) Should the NYSDOH-certified laboratory testing conclude that the water supplied by an existing, active water supply well met federal and New York State standards for potable water prior to construction, but failed to meet such standards post-construction as a result of Project construction activities, the Certificate Holder shall coordinate with the property owner, if requested, for a new water well to be constructed, at least 100 feet from collection lines and access roads, and at least 1,000 feet from wind turbines, as practicable given siting constraints and landowner preferences.

## **Compliance Filings**

The following plans, drawings, and other documents shall be filed for approval by the Siting Board or Public Service Commission in accordance with the rules for submittal, public comment, and decisions set forth in 16 NYCRR §1002.2 and §1002.3, unless otherwise noted. The Certificate Holder shall implement all requirements of the compliance filings, as approved or amended by the Siting Board. Required compliance filings shall be filed with the Secretary prior to the commencement of the phase identified as directly related to the filing, unless otherwise noted.

### **General**

39. Prior to the commencement of construction, the Certificate Holder shall submit a Site Engineering and Environmental Plan (SEEP) which shall describe in detail the final Facility design and the environmental protection measures to be implemented during construction of the Facility.
40. Prior to the commencement of construction, the Certificate Holder shall submit an Environmental Compliance and Monitoring Plan identifying the Certificate Holder's construction organizational structure, contact list, and protocol for communication between parties. The Certificate Holder shall provide to DPS Staff and the Towns the names and contact information of individuals responsible for Project oversight. The Certificate Holder may utilize one or more qualified individuals to satisfy the Project oversight responsibilities associated with the environmental monitor and the agricultural monitor.
41. Prior to commencement of operation, a Decommissioning Plan shall be submitted. Letters of credit or equivalent financial security will be established by the Certificate Holder to be held by each town hosting Facility components. The total amount of the financial security created for the Towns will represent the total final decommissioning and site restoration estimate, as described below. The financial security shall remain active until the Facility is fully decommissioned. The final Decommissioning Plan will include the following:
  - a) A final decommissioning and site restoration estimate based on the final Project layout. This estimate will be calculated by multiplying the decommissioning and site restoration cost per turbine by the total number of turbines proposed for the Project, less the salvage value. The estimate will include a 10% contingency. The estimate shall be updated by a qualified independent engineer licensed to practice engineering in the State of New York to reflect inflation and any other changes after one year of Facility operation, and every fifth year

thereafter. Updated estimates will be filed with the Secretary after one year of Project operation and every fifth year thereafter;

- b) Documentation indicating approval by the Towns of an acceptable form of letter of credit;
  - c) Proof that the letters of credit or other security have been obtained in the final decommissioning and site restoration estimate amount, as calculated pursuant to the Decommissioning Plan;
  - d) Letters of credit shall be updated after one year of Facility operation and every fifth year thereafter, based on updated estimates described in sub-section (a) of this condition. Documentation shall be filed with the Secretary after one year of Project operation and every fifth year thereafter specifying changes to the structure of the letters of credit; and
  - e) Copies of agreements between the Certificate Holder and the Towns, establishing a right for each Town to draw on the letters of credit dedicated to its portion of the Facility.
42. The Certificate Holder shall submit a “Complaint Resolution Plan” for both construction and operation phases of the Projects. A copy of the Complaint Resolution Plan shall be submitted to the Towns and shall address complaint reporting and resolution process for construction and operational phases.

### **Health and Safety**

43. A final “Emergency Action Plan” that shall be implemented during Facility construction, and operation. Copies of the Emergency Action Plan shall be provided to DPS Staff, the NYS Division of Homeland Security and Emergency Services, and local emergency responders that serve the Facility. The Certificate Holder may submit separate emergency procedures for construction and operation, if preferred. Emergency procedures for construction must be submitted prior to the commencement of construction and emergency procedures for operation must be submitted prior the commencement of commercial operation.
44. A “Site Security Plan” for Facility construction and operations will be submitted. Copies of the final Site Security Plan shall be provided to DPS Staff, the NYS Division of Homeland Security and Emergency Services, and local emergency responders that serve the Facility. The Certificate Holder may submit separate Site Security Plans for construction and operation. Security procedures for construction must be submitted prior to the commencement of construction and security procedures for operation must be submitted prior the commencement of commercial operation.
45. A “Health and Safety Plan” that shall be implemented during Facility operation and construction will be submitted. The Certificate Holder may submit separate health and safety procedures for construction and operation. Health and safety procedures for construction must be submitted prior to the commencement of construction and health and safety procedures for operation must be submitted prior the commencement of commercial operation.
46. A final site-specific construction “Quality Assurance and Quality Control Plan” (QA/QC Plan) will be submitted prior to the commencement of construction.

47. Lighting of turbine components will be consistent with FAA requirements and other facility components will be lit with task lighting, auto-shut off and downward facing features.

### **Transportation**

48. The Certificate Holder shall coordinate with the State, County, and local municipalities to respond to any locations that may experience any traffic flow or capacity issues.
49. The Certificate Holder will develop final haul routes in consultation with the Towns, will finalize haul routes in coordination with the turbine manufacturer, and will use the final haul routes in preparing the final construction drawings. The Certificate Holder shall file the following:
  - a) Pursuant to 16 NYCRR 1002.4, prior to using a route to haul equipment or materials requiring a permit, and upon receipt copies of all necessary transportation permits from the affected State, County, and Town agencies for such equipment and materials on such route. Such permits shall include but not be limited to: Highway Work Permits to work within the highway Right-of-Way (ROW), permits to exceed posted weight limits, Highway Utility Permits to work within the highway ROW, Traffic Signal Permits to work within the highway ROW, Special Haul Permits for oversized or overweight vehicles, and Divisible Load overweight Permits;
  - b) Final or updated “Route Evaluation Study,” including maps of final transportation routes for Project component deliveries;
  - c) “Traffic Control Plans” for any City, Town, or Village that may experience delays to local traffic during construction activities. The “Traffic Control Plans” shall include copies of any Host Community Agreements and Road Use Agreements with Lewis County and any affected towns where the local roads will be utilized for delivery or construction vehicle transportation;
  - d) Upon receipt, pursuant to 16 NYCRR 1002.4 copies of all necessary agreements with utility companies for raising overhead wires where necessary to accommodate the oversized or overweight delivery vehicles, if applicable.


### **Plans, Profiles, and Detail Drawings**

50. Maps, site plans, profile figures, and environmental controls and construction details incorporating all components of the final layout of the Project shall be provided in the SEEP for Deer River Wind Project.
51. Shapefile data shall be provided to DPS Staff for the final locations of turbines, collection lines, transmission lines, substation, designated clearing, construction and laydown areas, access ways, limits of disturbance and other Project facilities.

### **Environmental**

52. The Certificate Holder shall prepare a “Geotechnical Engineering Report” verifying subsurface conditions at each turbine location. The Geotechnical Engineering Report shall identify appropriate mitigation measures required in locations with highly corrosive soils, soils with a high

frost risk, and soils with high shrink or swell potential. This report shall be submitted prior to commencement of construction.

53. Shadow flicker caused by wind turbine operations shall be limited to a maximum of 30 hours annually at any nonparticipating residential receptor, subject to verification using shadow prediction and operational controls at appropriate wind turbines.
54. Within one year after commencement of operation, the Certificate Holder will consult with the Towns on status of landscape plantings for visual screening at O&M building location. Results of this consultation will be made available to DPS upon request.
55. Cultural Resources Protection Measures, including:
  - a) The Certificate Holder shall indicate on final Site Engineering and Environmental Plans measures for avoidance of archaeological sites identified within the Facility site. The mapped locations of all identified archaeological sites within 100 feet (31 meters) of proposed Facility-related components shall be identified on the final Facility construction drawings, and marked in the field by construction flagging restricting access by the Certificate Holder.
  - b) In the event that resources of cultural, historical, or archaeological importance are encountered during Facility construction, the Certificate holder will implement immediate work stoppage upon the discovery of possible archaeological or human remains. Evaluation of such discoveries, if warranted, shall be conducted by a professional archaeologist, qualified according to New York Archaeological Council Standards. Work that will impact the discoveries shall not resume in the area of such remains until written permission is received from the NYSOPRHP.
  - c) If complete avoidance of archaeological sites is not possible, the Certificate Holder shall consult with the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) and DPS Staff to determine if mitigation is warranted.
  - d) If mitigation funding awards are required of Deer River Wind Project, proof that these awards have been made shall be provided within two years of the commencement of construction of the Facility pursuant to 16 NYCRR 1002.4.
56. The Certificate Holder shall implement a curtailment regime at all turbines for the life of the Project during the period July 1 through October 1 with a curtailment of **<BEGIN CONFIDENTIAL INFORMATION>**  **<END CONFIDENTIAL INFORMATION>**. Following this curtailment regime, operation of the Project for a period of 40 years could result in take of NLEB. This curtailment regime may only be modified with the consent of DPS, DEC, the Certificate Holder, and USFWS (if such consent is applicable under federal law).
57. In addition, the Applicant agrees to implement measures recognized by the U.S. Fish and Wildlife Service to avoid take of Indiana bats for three years or until the issuance of a federal take permit, whichever is achieved first.

58. The Certificate Holder shall explore new adaptive management technologies throughout the life of the Project and will consult with DPS, DEC and USFWS to determine whether these strategies could be practicable and effective at Deer River.
59. A “Net Conservation Benefit Plan” (NCBP), for the take of NLEBs, shall be prepared in consultation with and accepted by DEC. Such acceptance may not be unreasonably withheld, and consultations must take place in a timely manner. The NCBP shall be filed prior to commencement of operation. Mitigation actions identified in the NCBP shall be initiated prior to the start of Project operation.
- A “Post Construction Avian and Bat Monitoring Plan” shall be filed during year one of commercial operations of the Facility, prior to the start of post-construction studies. The details of the post-construction studies (i.e., the start date, number and frequency of turbine searches, search area, duration and scope of monitoring, reporting requirements etc.), will be based in part on DEC’s June 2016 *Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects*, and will be adapted as necessary to accomplish the previously stated objectives. A final plan will be developed through consultation between the Certificate holder and DEC, with consultation with USFWS as necessary, and accepted by DEC prior to filing.
60. A long-range “Facility and Corridors Management Plan” shall be filed within one year after the commencement of operation. The plan shall address specific standards, protocols, procedures and specifications for:
- a) Vegetation management recommendations, based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species;
  - b) All proposed chemical and mechanical techniques for managing undesirable vegetation. Herbicide use and limitations, specifications, and control measures will be included, if proposed;
  - c) Substation Fence-line Clearances, and Overhead Wire Security Clearance Zone specifications, indicating applicable safety, reliability and operational criteria;
  - d) Review and response procedures to avoid conflicts with future use encroachment or infrastructure development;
  - e) Host landowner notification procedures.
61. The Certificate Holder shall prepare an “Invasive Species Control Plan” (ISCP) which shall be submitted by commencement of construction. A post-construction monitoring program (MP) for invasive species shall be conducted in year 1 year 3 and year 5 following commencement of operations. The MP shall collect information to facilitate evaluation of ISCP effectiveness. At the conclusion of the MP following year 5 of operation, a report shall be submitted to DPS Staff, DEC, the Towns, and the New York State Department of Agriculture and Markets (DAM), and filed with the Secretary, summarizing the MP results at Deer River. In the event that there is an increase of invasive species due to Facility construction, the Certificate Holder, DPS, DEC and

DAM will meet to discuss site conditions and the probability of successful additional treatment measures without the need for perpetual treatments.

## V. Noise and Vibration

62. The Certificate Holder shall submit the following details of the Wind Generating Facility:
- a) Location of the turbines identified with Geographic Information System (GIS) coordinates and GIS files. Turbine dimensions to include hub height and diameter of tip blades rotation.
  - b) Proposed grading and turbine ground elevations. Site plan and elevation details, of substations as related to the location of all relevant noise sources (transformers, emergency generator, reactors, if any), any identified mitigations, specifications, and appropriate clearances for sound walls, barriers, mufflers, silencers, and enclosures, if any. Sound information from the manufacturers for all relevant noise sources shall also be presented.
  - c) Sound Power levels from the turbines by following these provisions:
    - (i) Sound Power levels from the turbines selected for the project shall be documented with information from the manufacturers based on tests that determined sound power levels following the International Electrotechnical Commission (IEC) 61400-11 standard and TS 61400-14 standard (1st edition), if available. Sound Power Information will be reported associated with wind speed magnitudes, angular speed of the rotor, and rated power to the extent this information is available. The Sound Power Information will include specifications for Noise Reduced Operations and Low-Noise Trailing Edges if these are available or required to meet the noise conditions of this Certificate.
  - d) If a different turbine model is selected, than the one modeled in the Application, or if the layout has changed from the Application, revised sound modeling with the specifications of the wind turbine model selected for construction to demonstrate that the Project is modeled to meet the following design goals:
    - (i) 40 dBA L(night-outside), annual equivalent continuous average sound level, from the Facility outside any existing permanent or seasonal non-participating residence.
    - (ii) 50 dBA L(night-outside), annual equivalent continuous average nighttime sound level from the Facility outside any existing participating residence
    - (iii) 65 dBZ L(1-hour), maximum 1-hour equivalent continuous average sound level from the Facility at the 16 Hz, 31 .5 Hz, and 63 Hz full octave bands outside any existing non-participating residence.
63. Compliance with Certificate Conditions for the Facility shall be evaluated by the Certificate Holder by following a “Sound Testing Compliance and Noise Complaint Protocol” that shall follow the provisions and procedures for post construction noise performance evaluations presented by the Application.

64. Two sound compliance tests shall be performed by the Certificate Holders after the commercial operations date of the Facility: One during the "leaf-off" season and one during the "leaf-on" season.
- a) Within the first eight months following commencement of operations of the Facility, the Certificate Holders shall perform and complete the first sound compliance test and the results shall be submitted to the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, by filing with the Secretary a report from an independent acoustical or noise consultant.
  - b) The second sound compliance test shall be performed and results shall be submitted to the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, but no later than thirteen (13) months after the commencement of operations of the Facility.
65. If the results of the first or the second sound compliance tests indicate that the Facility, related facilities and ancillary equipment do not comply with all Certificate Conditions on noise contained in this Certificate, the Certificate Holders shall:
- a) Present minimization options to the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, by filing with the Secretary within 60 days after the filing of a test result or the finding of a violation of Certificate Conditions on noise of this Certificate.
  - b) Implement any operational noise mitigation measures within 90 calendar days after the finding of a violation situation, as necessary to achieve compliance.
  - c) Implement any feasible physical noise mitigation measures within 150 days after the finding of a non-compliance or violation situation, as necessary to achieve compliance.
66. Noise levels from all noise sources from the Facility, related facilities and ancillary equipment shall:
- a) Be equal to or less than a limit of 45 dBA Leq (8-hour nighttime), at any existing permanent or seasonal non-participating residence, and 55 dBA Leq (8-hour nighttime) at any existing participating residence existing at the date of this Certificate;
  - b) Be equal to or less than a limit of 65 dBZ L(1-hour), maximum 1-hour equivalent continuous average sound level from the Facility at the 16 Hz, 31 .5 Hz, and 63 Hz full octave bands outside any existing non-participating residence.
  - c) Not produce any audible prominent tones, as defined under ANSI S12 .9 Part 4-2005 Annex C at any non-participant residences existing as of the issuance date of this Certificate. Should a prominent tone occur, the broadband overall (dBA) noise level at the evaluated position shall be increased by 5 dBA for evaluation of compliance with sub-condition 66(a).



- d) Not produce human perceptible vibrations inside any non-participant residence existing as of the issuance date of this Certificate that exceed the limits for residential use recommended in ANSI Standard S2 .71-1983 (August 6, 2012) "Guide to evaluation of human exposure to vibration in Buildings."
- e) Comply with a limit of 40 dBA Leq (1-hour) at the outside of any non-participating residence from the collector substation equipment, and subject to the tonal penalties of sub-condition 66(c).

Emergency situations are exempt from any of these limits.

67. The Certificate Holder shall adhere to the following condition regarding noise complaints:

- a) The Certificate Holder is required to maintain a log of complaints received relating to noise and vibrations caused by the operation of the Facility, related facilities and ancillary equipment. The log shall include, if known, name and contact information of the person that lodges the complaint, name of the property owner(s), address of the residence where the complaint was originated, the date and time of the day underlying the event complained of, and a summary of the complaint.
- b) The Certificate Holder shall provide the Towns with a phone number, email address and mailing address where complaints can be made, along with a form to report complaints designed according to the details required in subsection (a) of this condition.
- c) All complaints received shall be reported to the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, monthly during the first year of commercial operations and quarterly thereafter, by filing with the Secretary during the first 10 calendar days of each month (or the first 10 days of each quarter after the first year). Reports shall include copies of the complaints and, if available, a description of the probable cause (e.g., outdoor or indoor noise, tones, low frequency noise, amplitude modulation, vibrations, rumbles, rattles, etc., if known); the status of the investigation, summary of findings and whether the Facility has been tested and found in compliance with applicable noise Certificate Conditions or minimization measures have been implement. If no noise or vibration complaints are received, the filing is not required for that period.
- d) Should complaints related to excessive and persistent amplitude modulation occur at any non-participant residence existing as of the issuance date of this Certificate with measured or modeled sound levels exceeding 40 dBA Leq-1-hr, the Certificate Holder shall investigate and measure amplitude modulation at the affected receptors during the time frame when the worst conditions are known, or, if not known, expected, to occur. If the L90-10 minute noise levels (dBA), including any amplitude modulation and prominent tone penalties exceed a noise level of 45 dBA and amplitude modulation is in excess of a 5 dB modulation depth at the evaluated receptor(s) for more than 5% of the time during the identified time frame of

evaluation (which will not exceed eight consecutive hours), the Certificate Holder shall continue with the investigation, identify frequency of occurrence and the conditions that may be favorable for its occurrence, and propose minimization measures to avoid or minimize the impacts. Minimization measures that avoid, minimize, resolve or mitigate the amplitude modulation impacts shall be identified and reported to the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, by filing with the Secretary and implemented after review and approval. Compliance with this Certificate Condition shall be finally demonstrated by conducting a test that shows that the L90-10-minute sound levels (dBA), including a 5-dBA penalty for amplitude modulation (if amplitude modulation depth is in excess of 5 dB for more than 5% of the time in any eight consecutive hours) at that particular location and any additional prominent tone penalties, are lower than or equal to 45 dBA. For any complaints that do not exceed the limits established in the foregoing, the Certificate Holder should handle those complaints under its complaint resolution protocol.

- e) The Certificate Holder shall investigate all other noise and vibration complaints by following the “Sound Testing Compliance and Noise Complaint Protocol” in, and consistent with the limits imposed by, these Certificate Conditions.

68. The Certificate Holder shall comply with the following conditions regarding construction noise:

- a) Comply with all applicable local laws regulating construction noise;
- b) Maintain functioning mufflers on all transportation and construction machinery;
- c) Respond to noise and vibration complaints according to the “Sound Testing Compliance and Noise Complaint Protocols” established in the Certificate Conditions.

## **VI. Facility Construction and Maintenance**

### **General**

- 69. Prior to the commencement of construction, the Certificate Holder shall become a member of Dig Safely New York. The Certificate Holder shall require all contractors, excavators, and operators associated with its facilities to comply with the requirements of the Commission’s regulations regarding the protection of underground facilities (16 NYCRR Part 753).
- 70. The Certificate Holder shall comply with all requirements of the Commission’s regulations regarding identification and numbering of above ground utility poles (16 NYCRR Part 217).
- 71. The Certificate Holder shall hire an independent, third-party environmental monitor to oversee compliance with environmental commitments and permit requirements. The environmental monitor shall perform inspections of construction work sites and document work onsite in regular reports. If the Department of Agriculture and Markets (DAM) agrees that the independent third

party monitor is qualified on agricultural issues, one monitor can act as both environmental and agricultural monitor.

72. The Certificate Holder shall ensure that its environmental monitor and construction manager are equipped with sufficient access to documentation, transportation, and communication equipment to effectively monitor such Certificate Holder's contractor's compliance with the provisions of every Order issued in this proceeding with respect to such Certificate Holder's Project components and to those sections of the Public Service Law, Environmental Conservation Law, Section 401 Water Quality Certification, and the SEEP.
  
73. Construction and routine maintenance activities on the Project shall be limited to 6:00 a.m. to 8:00 p.m. Monday through Saturday and 7 a.m. to 8:00 p.m. on Sunday and national holidays, with the exception of construction and delivery activities which may need to occur during extended hours beyond this schedule on an as-needed basis.
  - a) Construction work hour limits apply to Facility construction, maintenance, and to construction-related activities including delivery and unloading of materials, maintenance and repairs of construction equipment at outdoor locations, large vehicles idling for extended periods at roadside locations, and related disturbances. This condition shall not apply to vehicles used for transporting construction or maintenance workers, small equipment, and tools to the site to begin construction or maintenance activities. This condition shall also not apply to activities that do not generate noise.
  
  - b) If, due to safety or continuous operation requirements, construction activities are required to occur beyond the allowable work hours, the Certificate Holder shall notify DPS Staff, affected landowners and municipalities. Such notice shall be given at least 24 hours in advance, unless such construction activities are required to address emergency situations threatening personal injury, property, or severe adverse environmental impact that arise less than 24 hours in advance. In such cases, as much advance notice as is practical shall be provided.
  
74. Prior to commencement of construction begins in any project component area the Certificate Holder shall stake or flag the following:
  - a) The limits of tree clearing;
  
  - b) The limits of disturbance;
  
  - c) Wetlands, streams, waterbodies and DEC wetland adjacent areas within limits of disturbance;
  
  - d) Designated restrictive areas and sensitive environmental resources.
  
75. The Certificate Holder shall confine construction and subsequent maintenance for its Project Components to the Facility site and approved additional work areas, as delineated in approved

construction plans (SEEP documents or equivalent). If a local contractor is used for the work, the local contractor's facility may also be used as a marshaling yard.

76. The Certificate Holder shall organize and conduct monthly site-compliance inspections for DPS Staff as requested during construction through final completion of the Facility site. A designated official or representative from the Towns shall also be invited to attend.

### **Environmental**

77. A spill kit shall be readily available during construction. Any leaks must be stopped and cleaned up immediately.
78. Any excess construction materials shall be removed to a facility duly authorized to receive such material. No burying of excess construction materials will be allowed.
79. Cleared vegetation and slash will not be buried or burned.
80. Tree and vegetation clearing shall be limited to the minimum necessary for Facility construction and operation.
81. In connection with vegetation clearing, the Certificate Holder shall:
  - a) comply with the provisions of 6 NYCRR Part 192, Forest Insect and Disease Control, and ECL § 9-1303 and any quarantine orders issued thereunder;
  - b) not create a maximum wood chip depth greater than three inches, except for chip roads (if applicable), nor store or dispose wood chips in wetlands, within stream banks, delineated floodways, or active agricultural fields (unless directed and preferred by landowner)
82. The Certificate Holder shall restore disturbed areas, ruts, and rills to original or final grades and conditions with permanent re-vegetation and erosion controls appropriate for those locations unless the SEEP specifies otherwise. Disturbed roadways shall be restored to their original preconstruction condition or improved unless otherwise agreed upon with landowner.
83. All fill shall consist of clean soil, sand or gravel that is free of the following substances: asphalt, slag, fly ash, broken concrete, demolition debris, garbage, household refuse, tires, woody materials including tree or landscape debris, and metal objects. Reasonable efforts will be made to use fill materials that are visually free of invasive species.
84. To control the spread of invasive insects, the Certificate Holder shall provide training for clearing and construction crews to identify the Asian Longhorned Beetle and the Emerald Ash Borer and other invasive insects of concern listed per NYSDEC Part 575 Regulations as a potential problem at the project site. If these insects are found, they must be reported to the DEC as soon as practicable.

### **Threatened and Endangered Species**

85. All tree clearing activities shall be allowed between November 1 to March 31 without restrictions. From April 1 to October 31, the following restrictions will be implemented, unless otherwise agreed to with DEC and DPS staff:
- a) The Certificate Holder shall leave uncut all snag and cavity trees, as defined under Department of Environmental Conservation (DEC) Program Policy ONRDLF-2 Retention on State Forests, unless their removal is necessary for protection of human life and property. When necessary, snag or cavity trees may be removed after being cleared by an Environmental Monitor or onsite biologist who shall conduct a survey for bats exiting at or within the tree. This survey should begin 1/2 hour before sunset and continue until at least 1 hour after sunset or until it is otherwise too dark to see emerging bats. Unoccupied snag and cavity trees in the approved clearing area shall be removed within 24-hours of observation;
  - b) The Certificate Holder shall leave uncut all known and documented roost trees and any trees within a 150-foot radius of a documented summer occurrence;
  - c) If any bats are observed flying from a tree, or from a tree that has been cut, tree clearing activities within 150 feet of the tree shall be suspended and DEC Wildlife Staff shall be notified as soon as possible. The Certificate Holder shall have an Environmental Monitor present on site during all tree clearing activities. If any bat activity is noted, a stop work order for tree clearing shall immediately be issued and shall remain in place until such time as DEC and DPS Staffs have been consulted and both agencies authorize resumption of work.
86. **Grassland Bird Protection Measures** - All temporary disturbance or modification of grassland bird habitat that occurs as a result of construction activities will be restored to pre-existing grassland habitat conditions by re-grading and re-seeding with an appropriate native seed mix after construction activities are completed unless otherwise specified by landowner. These areas will include, but are not limited to temporary roads, material and equipment staging and storage areas, crane and turbine pads, and electric line rights of way.
87. **Record All Observations of T&E Species** - During construction, restoration, maintenance, and operation of the Project and associated facilities, the Certificate Holder shall maintain a record of all observations of New York State-listed T&E species as follows:
- a) **Construction:** During construction, the on-site environmental monitors and environmental compliance manager identified in the SEEP will be responsible for recording observations of any T&E species.
  - b) **Post-construction:** An environmental contractor will be responsible for recording observations of any T&E species during wildlife surveys, which will be reported as required in the Post Construction Avian and Bat Monitoring and Adaptive Management Plan.
  - c) **Operation and Maintenance:** During regular operation and maintenance, the Certificate Holder will be responsible for training operation and maintenance staff to

focus on successfully identifying the following bird species: bald eagle, short-eared owl (*Asio flammens*), northern harrier (*Circus hudsonius*), and upland sandpiper (*Bartramia longicauda*). The Certificate Holder will keep a record of observations of these species.

- d) **Reporting Requirements:** All reports of T&E species will include the following information: species; number of individuals; age and sex of individuals (if known); observation date(s) and time(s); GPS coordinates of each individual observed (if operation and maintenance staff do not have GPS available the report must include the nearest turbine number and cross roads location); behavior(s) observed; identification and contact information of the observer(s); and the nature of and distance to any Project construction, maintenance or restoration activity.

## 88. Discovery of T&E Nests or Dead, Injured or Damaged Species

- a) Excluding bald eagles and golden eagles, if a nest of a federally- or State-listed T&E bird species' nest is discovered at any time during the life of the Project within the Facility Site, the following actions shall be taken:
- (i) DEC and DPS shall be notified within forty-eight (48) hours of discovery and prior to any further disturbance around the nest;
  - (ii) the nest(s) or nest tree(s) will not be approached under any circumstances unless authorized by DPS in concurrence with DEC.
- b) If a nest or communal roost (defined as a tree with 4 more eagles observed perched) of a bald eagle or golden eagle is discovered at any time during the life of the Project within the Facility Site, the following actions shall be taken:
- (i) DEC and DPS shall be notified within twenty-four (48) hours of discovery and verification of the nesting species or breeding behavior and prior to any further disturbance around the nest roost,
  - (ii) the nest(s), nest tree(s) or communal roost will not be approached under any circumstances unless authorized by DPS in concurrence with DEC.
- c) If any dead, injured, or damaged federally- or State-listed T&E species, or their eggs or nests thereof are discovered at any time during the life of the Project within the Facility Site, the Certificate Holder will immediately (within twenty-four (24) hours) contact DEC (and United States Fish and Wildlife Service (USFWS), if federally listed species) to arrange for recovery and transfer of the specimen(s). If a qualified biologist is on site, the following information pertaining to the find shall be recorded, to the best extent possible:
- i. species;
  - ii. age and sex of the individual(s), if known;
  - iii. date of discovery of the animal or nest;
  - iv. condition of the carcass, or state of the nest or live animal;
  - v. GPS coordinates of the location(s) of discovery;

- vi. name(s) and contact information of the person(s) involved with the incident(s) and find(s);
- vii. weather conditions at the site for the previous forty-eight (48) hours;
- viii. photographs, including scale and of sufficient quality to allow for later identification of the animal or nest; and
- ix. an explanation of how the mortality/injury/damage occurred, if known.

Each record will be made available for DEC/USFWS to keep. If the discovery is followed by a non-business day, the Certificate Holder will ensure all the information listed above, to the extent known, is properly documented for transfer. DPS shall also be notified if any dead, injured, or damaged federally- or State-listed T&E species, or their eggs or nests thereof are discovered.

### ***Wetlands and Streams, Vegetation, and Invasive Species***

- 89. The Certificate Holder shall perform all construction, operation and maintenance in a manner that avoids and minimizes adverse impacts to waterbodies, wetlands, and the one hundred (100) foot adjacent areas associated with all State-regulated wetlands.
- 90. The Certificate Holder shall notify DEC within 24 hours of discovery if there is a discharge to a wetland or waterbody known to be a violation of New York Water Quality Standards.
- 91. All work in protected streams is prohibited from October 1 through May 31 in cold water fisheries.
- 92. The Certificate Holder shall conduct all work in streams in dry conditions, using appropriate water handling measures to isolate work areas and direct stream flow around the work area.
- 93. To the extent practicable, buried utilities shall be installed using trenchless methods when traversing wetland and waterbodies. If a trenchless installation method is not practicable, other crossing methods such as open cut or direct burial shall be utilized in accordance with the methods within the Site Engineering and Environmental Plan for the Construction of the Deer River Wind Project.
- 94. Open cut trenching for the installation of underground utilities in wetlands and waterbodies shall be conducted in one continuous operation and shall not exceed the length that can be completed in one day.
- 95. If a bridge is not practicable for temporary or permanent stream crossings, a culvert crossing will be utilized for stream crossings and shall meet the NYSDEC and US Army Corps of Engineers requirements.
- 96. All equipment and machinery shall be stored and safely contained more than one hundred (100) feet from wetlands and waterbodies at the end of each work day unless moving the equipment will cause additional environmental impact.
- 97. Fuel tanks or other chemical storage tanks shall be appropriately contained and located a minimum of three hundred (300) feet away from any wetland or waterbody. If the minimum setback cannot

be achieved, storage shall be in accordance with the Site Engineering and Environmental Plan for the Construction of the Deer River Wind Project.

98. All mobile equipment, excluding dewatering pumps, must be fueled, repaired, or maintained in a location at least one hundred (100) feet from wetlands and waterbodies, to the maximum extent practicable or unless moving the equipment will cause additional environmental impact. Dewatering pumps operated closer than one hundred (100) feet from the stream bank, wetland, or waterbody, must be within a secondary containment large enough to hold the pump and accommodate refueling.
99. Spillage of fuels, waste oils, other petroleum products or hazardous materials shall be reported to DEC's Spill Hotline (1-800-457-7362) within 2 hours, in accordance with the DEC Spill Reporting and Initial Notification Requirements Technical Field Guidance. DPS Staff shall also be notified of all reported spills.
100. Turbid water resulting from dewatering operations shall not be allowed to enter any wetland, stream or water body. Water resulting from dewatering operations shall be discharged directly to settling basins, filter bags, or other approved device. All necessary measures shall be implemented to prevent any substantial visible increase in turbidity or sedimentation downstream of the work site.
101. All disturbed soils within regulated freshwater wetlands and the associated adjacent areas must be seeded with a native seed mix or crops consistent with existing agricultural uses. Mulch shall be maintained until the disturbed area is stabilized.
102. Restoration of state regulated wetlands and NYS-regulated adjacent areas to pre-construction contours must be completed within 48 hours of final backfilling of the trench unless the SEEP specifies different grading:
  - a) Immediately upon completion of grading, the area shall be seeded with an appropriate species mix.
  - b) Restored areas shall be monitored annually for five years or until a suitable vegetative cover has been reestablished, whichever is obtained first, unless the invasive species baseline survey indicates a smaller percentage of appropriate species exists prior to construction.
103. Cut vegetation in wetlands may be left in place (drop and lop or piled in dry or seasonally saturated portions of freshwater wetlands and 100-foot adjacent areas to create wildlife brush piles).
104. Installation of underground collection lines in wetlands shall be performed using the methods indicated in the Site Engineering and Environmental Plan ("SEEP") for the Construction of the Deer River Wind Project.
105. Installation of access roads through streams and wetlands shall be performed using the methods, indicated in the Site Engineering and Environmental Plan for the Construction of the Deer River Wind Project".



106. Concrete batch plant operations and concrete washout areas shall be located a minimum of three hundred (300) feet away from any wetland or waterbody. If the minimum setback cannot be achieved, the SEEP shall provide justification and demonstrate that impacts to wetlands and waterbodies from concrete batch plants and concrete washout areas shall be avoided or minimized to the maximum extent practicable.
107. Disturbed streams shall be restored to equal width, depth, gradient, length and character as the pre-existing stream channel and tie in smoothly to the profile of the stream channel upstream and downstream of the disturbance. All disturbed stream banks shall be mulched within (2) days of final grading, stabilized with 100% natural or biodegradable fiber matting, and seeded with an appropriate riparian seed mix specified in the SEEP. Disturbed vegetation shall be replaced with appropriate native shrubs, live stakes, or tree plantings as site conditions and facility design allow, as appropriate for consistency with existing land uses.
108. Trees shall not be felled into any stream.
109. The Certificate Holder shall be responsible for checking all culverts and assuring that they are not crushed or blocked during construction and restoration of the Project. If a culvert is blocked or crushed, or otherwise damaged, the Certificate Holder shall repair the culvert or replace it with alternative measures appropriate to maintaining proper drainage.
110. During periods of work activity, flow immediately downstream of the work site shall equal flow immediately upstream of the work site.
111. Any in-stream structures placed in a stream must not create a drop height greater than 6 inches.
112. Following installation of underground facilities, wetlands and State-regulated wetland adjacent areas shall be stabilized within 48 hours of final backfilling of the trench and restored to pre-construction contours as soon as practicable, but no later than 14 days of final backfilling. Immediately upon completion of grading, and as consistent with existing land uses, the area shall be seeded with a seed mix of native plants specified in the SEEP that is appropriate for wetlands and upland areas adjacent to wetlands. Overall vegetative cover in restored areas shall be monitored for a minimum of 5 years or until an 80% cover of plants with the appropriate wetland indicator status has been reestablished over all portions of the restored area. Invasive species growth in the restored areas shall be monitored for a minimum of 5 years. The proportion of invasive species in the wetlands and State-regulated wetland adjacent areas cannot exceed the proportion that existed immediately prior to the start of construction as described in the baseline invasive species survey. If, after one complete growing season, the 80% cover requirement has not been established or the proportion of invasive species has increased, the Certificate Holder shall consult with DEC and prepare a "Wetland Planting Remedial Plan" (WPRP) and shall submit the WPRP to DEC and DPS for acceptance prior to implementation.
113. The Certificate Holder shall work with DEC to develop a Wetland Mitigation Plan and shall submit the Wetland Mitigation Plan for DEC acceptance within six months of the commencement of construction. If mitigation is provided through an approved in-lieu fee program, a final letter of credit availability from an approved wetland mitigation bank, along with document of payment, will be provided at that time, pursuant to 16 NYCRR § 1002.4.

## VII. Facility Operation

114. The Certificate Holder shall operate the Facility in accordance with the Interconnection Agreement, approved tariffs and applicable rules and protocols of National Grid, NYISO, NYSRC, NPCC, NERC and successor organizations.
115. The Certificate Holder shall operate the Facility in full compliance with the applicable reliability criteria of National Grid, NYISO, NPCC, NYSRC, NERC and successors. If the Certificate Holder fails to meet the reliability criteria at any time, the Certificate Holder shall notify the NYISO immediately if required by the NYISO requirements, and shall simultaneously provide the Board, or the Commission after the Board's jurisdiction has ceased, by filing with the Secretary and National Grid a copy of the NYISO notice.
116. The Certificate Holder shall obey unit commitment and dispatch instructions issued by NYISO, or its successor, in order to maintain the reliability of the transmission system. In the event that the NYISO encounters communication difficulties, the Certificate Holder shall obey dispatch instructions issued by the National Grid Control Center, or its successor, in order to maintain the reliability of the transmission system.
117. Good Utility Practices:
  - a) The Certificate Holder shall abide by Good Utility Practice, which shall include, but not be limited to, NERC, NPCC, NYSRC, and NYISO criteria, rules, guidelines and standards, including the rules, guidelines and criteria of any successor organization to the foregoing entities.
  - b) When applied to the Certificate Holder, the term Good Utility Practice means the standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility.
  - c) Except for periods during which the authorized facilities are unable to safely and reliably convey electrical energy to the New York transmission system (e.g., because of problems with the authorized facilities themselves or upstream electrical equipment), the Facility shall be exclusively connected to the New York transmission system via the facilities identified and authorized in these conditions.
118. The Certificate Holder shall work with National Grid engineers and safety personnel on testing and energizing equipment in the authorized interconnection and collection substations. If National Grid's testing protocol is not used, a testing protocol shall be developed and provided to National Grid for review and acceptance. The Certificate Holder shall file with the Secretary a copy of the final testing design protocol within 30 days of National Grid's acceptance.
119. The Certificate Holder shall notify DPS Staff of meetings related to the electrical interconnection of the project to the National Grid transmission system and provide the opportunity for DPS Staff to attend those meetings.

120. Transmission Related Incidents:

- a) The Certificate Holder shall call the DPS Bulk Electric System Section within a reasonable time to report any transmission related incident that affects the operation of the Facility.
- b) The Certificate Holder shall file with the Secretary a report on any such incident within seven days and provide a copy of the report to National Grid. The report shall contain, when available, copies of applicable drawings, descriptions of the equipment involved, a description of the incident and a discussion of how future occurrences will be prevented.
- c) The Certificate Holder shall work cooperatively with National Grid, NYISO, NYSRC, NERC and the NPCC to prevent any future occurrences.

121. If National Grid or the NYISO bring concerns to the Commission, the Certificate Holder shall be obligated to address those concerns and shall make any necessary modifications to its Interconnection Facility if the NYISO or National Grid find such facilities are causing, or have caused, reliability problems to the New York State Transmission System.

122. If, subsequent to construction of the Facility, no electric power is generated and transferred out of such plant for a period of more than a year, the Commission may consider advising the Siting Board that the amendment, revocation or suspension of the Certificate may be appropriate.

123. Facility Malfunction:

- a) In the event that a malfunction of the Facility causes a significant reduction in the capability of such Facility to deliver power, the Certificate Holder shall promptly file with the Secretary and provide to NATIONAL GRID copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs.
- b) The Certificate Holder shall provide monthly reports to the Secretary and NATIONAL GRID on the progress of any repairs.
- c) If such equipment failure is not completely repaired within nine months of its occurrence, the Certificate Holder shall provide a detailed report to the Secretary, setting forth the progress on the repairs and indicating whether the repairs will be completed within one year of the date of failure. Wind turbines shall be decommissioned if they are non-operational for a period of one year and a day. However, if the Certificate Holder is expecting delays due to a part manufacturer or complications regarding the repair of non-operational turbine(s), it shall petition the Secretary for an extended amount of time if it is expected that certain turbine(s) will not be in operation for more than one year and a day. The petition shall include an explanation of the circumstance and an estimation of the amount of time it will take to repair the turbine(s).

124. In the event of a fire or other catastrophic event involving a wind turbine and its associated equipment, the DPS Chief of Bulk Electric Systems shall be notified no later than 12 hours following such an event.
125. The Certificate Holder shall have an inspection program for the wind turbine blades and other turbine components. Logs shall be maintained on site identifying any major damage, defects or any other problems with the wind turbine blades, or indicating that no such damage, defect or problem was found. The Logs shall summarize maintenance and inspection activities performed and the repairs undertaken.
126. The Certificate Holder has not asserted that it has the power of eminent domain to acquire real property or demonstrated that the feasibility of the Project relies in any way upon the Certificate Holder or any other entity having the power of eminent domain or exercising the power of eminent domain to acquire permanent or temporary real property rights for the Facility or for any of the access roads, construction staging areas or interconnections necessary to service the Facility. By granting this Certificate to the Certificate Holder, an entity in the nature of a merchant generator and not in the nature of a fully regulated public utility company with an obligation to serve customers, the Siting Board is not making a finding of public need for any particular parcel of land such that a condemnor would be entitled to an exemption from the provisions of Article 2 of the New York State Eminent Domain Procedure Law (“EDPL”) pursuant to Section 206 of the EDPL. As a condition of this Certificate, the Certificate Holder shall not commence any proceedings or cause any other entity having the power of eminent domain to commence any proceedings under the EDPL to acquire permanent or temporary real property rights for the Facility or for any of the access roads, construction staging areas or interconnections necessary to service the Facility without an express amendment to this Certificate authorizing such granted by the Siting Board.
127. Unless extended by order of the Commission, this Certificate will automatically expire in seven years from the date of issuance of this Certificate (the “Expiration Date”) unless the Certificate Holder has completed construction and commenced commercial operation of the Facility prior to said Expiration Date.