

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of Bluestone Wind, LLC for an Order
Granting a Certificate of Public Convenience and
Necessity Pursuant to Public Service Law Section
68 and for an Order Granting Lightened Regulation

19-E-_____

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CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO
PUBLIC SERVICE LAW SECTION 68 AND FOR AN ORDER GRANTING
LIGHTENED REGULATION**

James A. Muscato II, Esq.
Steven D. Wilson, Esq.
Attorneys for Petitioner
Young/Sommer LLC
5 Palisades Drive, Suite 300
Albany, NY 12205
Phone: (518) 438-9907 x 243
jmuscato@youngsommer.com

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I. INTRODUCTION

On September 18, 2018, Bluestone Wind, LLC (“Bluestone Wind” or “Petitioner”) submitted an application, pursuant to Article 10 of the New York Public Service Law (PSL) (the “Article 10 Application”), for a Certificate of Environmental Compatibility and Public Need (“CECPN”) from the New York State Board on Electric Generation Siting and the Environment (“Siting Board”) to construct a wind energy facility in the Towns of Sanford and Windsor, Broome County (the “Project” or “Facility”) (Case No. 16-F-0559). Based on the Siting Board’s Order in the Cassadaga Article 10 proceeding, however, the Public Service Commission (the “Commission”) holds that, “issuance of a PSL Article 10 Certificate supplants the requirement for construction approval under PSL §68, but not the requirements for Commission approval of its corporate formation and the exercise of any municipal ‘right, privilege or franchise.’”¹

¹ Case 18-E-0399: *Petition of Cassadaga Wind LLC for a Certificate of Public Convenience and Necessity, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation* (Nov. 15, 2018) (“Cassadaga CPCN Order”). The Commission’s position stems from the Siting Board’s Order granting Cassadaga Wind LLC a CECPN for the Cassadaga Wind Project. *See* Case 18-E-0399: *Petition of Cassadaga Wind LLC for a Certificate of Public Convenience and Necessity, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions* (Jan. 7, 2018), at 133-114.

Accordingly, in anticipation of the Siting Board's issuance of a CECPN to Bluestone Wind in September 2019,² including the condition that Bluestone Wind obtain a Certificate of Public Convenience and Necessity ("CPCN") from the Commission, Bluestone Wind hereby files this petition respectfully requesting that the Commission issue (1) a CPCN to Bluestone Wind pursuant to PSL § 68, and (2) an Order finding that Bluestone Wind, as a wholesale electric market participant, is entitled to a lightened regulatory regime.

Although the Siting Board has not yet issued a CECPN for the Bluestone Wind Project, Petitioner requests that this petition be considered concurrently with the Article 10 proceeding in order to avoid unnecessary delays that could result if, alternatively, both proceedings were to be considered consecutively. Petitioner must receive its CPCN at the same time it receives its CECPN, or at the Commission's next monthly session after issuance of the CECPN, to ensure that it can commence construction by November 1, 2019. Road construction and tree clearing must commence by November 1, 2019, so that the Project can be completed and commence commercial operation by December 31, 2020. If the Project does not enter commercial operation by this date, it will lose its production tax credit thereby jeopardizing its economic viability.

Based on a recent Order of the Commission, "[t]he scope of this proceeding is narrow" and "focuses on questions involving the readiness and feasibility of [Bluestone Wind] to begin Facility construction. This proceeding cannot duplicate the public need and environmental compatibility issues resolved in the Article 10 Order. The Commission's review instead is primarily concerned

² The application was found to comply with PSL § 164 on December 27, 2018. *See* Case 16-F-0559: *Application of Bluestone Wind, LLC for a Certificate of Environmental Compatibility and Public Need*, Letter from Chairman Rhodes to Mr. Muscato Regarding Application Compliance (December 27, 2018). Pursuant to PSL § 165(4), a final decision by the Siting Board on an application should be issued within twelve months from the date that the application is found to comply with PSL § 164.

with [Bluestone Wind’s] ability to construct and operate the Facility.”³ As will also be shown herein, Bluestone Wind has sufficient financial resources to construct the Project and significant expertise to operate it. Accordingly, issuance of a certificate is in the public interest.

Bluestone Wind will also operate the Project as a competitive wholesale generator. As such, the Commission Order should also find, as has been done for numerous generators operating under similar circumstances, that Bluestone Wind is entitled to a lightened regulatory regime.

Lastly, Petitioner requests that the Commission waive the general requirement in PSL § 68 that the Commission hold a hearing in this proceeding consistent with the Commission’s approach to Section 68 reviews in other CPCN proceedings involving wind projects.⁴ The CECPN review process will inevitably generate a voluminous record, including multiple public statement hearings in the Project area, numerous formal and informal public comment periods, multiple days of public hearings, and extensive briefing and submissions by numerous parties. The record established in the Article 10 proceeding obviates the need for an additional hearing on the CPCN, particularly given the limited scope of the Commission’s review. In the alternative, Petitioner requests that the Administrative Law Judge assigned to this proceeding establish as early as possible a defined period for discovery and submission of additional, relevant information obtained through discovery or otherwise. If a hearing is required, Petitioner requests that a public statement hearing be scheduled in satisfaction of the hearing requirements of PSL § 68 and if no comments or

³ Case 18-E-0399: *Petition of Cassadaga Wind LLC for a Certificate of Public Convenience and Necessity*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Nov. 15, 2018), at 20 (“Cassadaga CPCN Order”).

⁴ *See, e.g.*, Case 07-E-1343: *Marble River, LLC*, Order Granting Certificate of Public Convenience and Necessity, and Providing for Lightened Regulation (June 19, 2008); Case No. 07-E-1213: *Sheldon Energy LLC*, Order Granting and Amending Certificates of Public Convenience and Necessity and Providing for Lightened Regulation (Jan. 17, 2008); Case 07-E-1258: *Noble Wethersfield Windpark*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Dec. 12, 2007).

information, oral or written, raise any material issues of fact, that the no evidentiary hearings be held.⁵

II. BACKGROUND

A. The Project

Bluestone Wind is proposing to construct a wind energy facility consisting of up to 33 wind turbines with a maximum capacity of up to 124 MW. The Project will be in the Towns of Sanford and Windsor, Broome County, New York, on a site that straddles the border between the two towns.

In addition to the wind turbines, the Facility will include access roads, a collection substation, a point of interconnection (“POI”) substation, an operation and maintenance (“O&M”) building, permanent meteorological towers and other ancillary facilities and equipment. Electricity from wind turbines will be collected via underground lines and transmitted to a new collection substation. The collection substation will be located near a new POI substation, which is situated next to an existing transmission substation owned by New York State Electric and Gas (“NYSEG”). The POI substation will connect to NYSEG’s existing Afton to Stilesville 115 kV transmission line in the Town of Sanford. Ownership and control of the POI substation will be turned over to NYSEG once construction is complete.

The Petitioner submitted an Application for CECPN to the Siting Board for the Bluestone Wind Project on September 18, 2018. The Siting Board issued a compliance determination for the Application on December 27, 2018.

⁵ See, e.g. Cassadaga CPCN Order, at 4.

B. The Parties

i. Bluestone Wind, LLC

The Petitioner, Bluestone Wind, is a limited liability company organized under the laws of the State of Delaware for the purpose of constructing, owning and operating the Facility. Bluestone Wind is a wholly-owned subsidiary of Calpine Corporation (“Calpine”).

A copy of Bluestone Wind’s Certificate of Formation is attached to this Petition as Exhibit A. Confirmation that Bluestone Wind is registered to do business in New York and identifying the entity designated for service of process is attached as Exhibit B.

ii. Calpine Corporation

Calpine is a Delaware corporation. Calpine, through its subsidiaries, is engaged in the development, financing, acquisition, ownership and operation of independent power production facilities across 17 states and Canada. It is the nation’s largest generator of electricity from natural gas and it is the 10th largest producer of electricity generally, with a fleet of 79 power plants in operation and under construction, representing approximately 27,000 megawatts (“MW”) of generation capacity in the United States and Canada. The company, which has approximately 2,300 employees, is also the nation’s largest generator of electricity from geothermal, operating 13 plants at The Geysers in northern California with a total generating capacity of 725 MW.

Although Calpine’s power plant fleet is among the cleanest in the nation, Calpine recognizes the importance of encouraging renewable energy development. In addition to The Geysers geothermal energy projects in California, Calpine is developing the 124 MW Bluestone Wind Energy Project and a second wind energy facility in Chenango County, New York, known as the High Bridge Wind Project, anticipated to generate approximately 100 MW of electricity.

Within New York State, Calpine is the upstream parent to three companies that own and operate three electric generating facilities on Long Island with an aggregate capacity of 184 MW: Bethpage Energy Center 3, LLC (82 MW Bethpage Power Plant, Units 6 and 7); CPN Bethpage 3rd Turbine, Inc. (47 MW Bethpage Power Plant, Unit 5); and TBG Cogen Partners (55 MW Bethpage Power Plant, Units 1-3). Each of these facilities is operated as a wholesale generator in the wholesale energy market administered by the New York Independent System Operator (“NYISO”).

In addition, Calpine also indirectly owns two companies that own and operate “qualifying facilities” (“QFs”) under the Public Utility Regulatory Policies act of 1978 (“PURPA”). Specifically, Calpine indirectly owns: (1) KIAC Partners, which leases and operates an approximately 121 MW QF at Kennedy International Airport in Jamaica, Queens; and (2) Nissequogue Cogen Partners, which owns and operates and approximately 47 MW QF in Stony Brook, New York.

Calpine also indirectly owns the following companies that make retail sales of electricity and/or natural gas in New York: Calpine Energy Solutions, LLC (“CES”), Champion Energy Services, LLC (“Champion), and North American Power and Gas, LLC (“NAPG”). These companies are wholly-owned subsidiaries of Calpine. Neither Calpine nor its affiliates have control over the supply of fuels used in generation within New York.

Calpine does not own or control any traditional franchised utilities with captive customers, and neither it nor its affiliates owns or controls any transmission facilities in New York other than the limited interconnection equipment necessary to connect their generating facilities to the transmission grid. Neither Calpine nor its affiliates is a scheduling coordinator, reliability coordinator, electric or gas transmission or distribution provider or balancing authority within (or

into) the New York Control Area (“NYCA”) or has control over the provision of fuels used in generation within the State of New York.

With respect to adjoining control areas, Calpine currently owns, or is affiliated with, companies that control approximately 1,918 MW of generation capacity in the Independent System Operator (ISO) New England, Inc. (“ISO-NE”) control area and approximately 5,690 MW of generation capacity in the PJM Interconnection, L.L.C. (“PJM”) control area.

Calpine is indirectly and wholly-owned by Volt Parent, LP, a limited partnership organized under Delaware law, as limited partner, which, in turn, is directly and wholly-owned by: (i) Volt Parent GP, LLC (“Volt Parent GP”), a limited liability company organized under Delaware law, as general partner ; (ii) AI Holdings (BVI) L.P. (“AI Holdings LP”) as limited partner;⁶ (iii) CPPIB Calpine Canada Inc. (“CPPIB Calpine”);⁷ and (iv) various passive limited partner investors. The passive investors have only those limited consent and veto rights necessary to protect their economic investments and do not have any rights to make decisions or participate in the day-to-day operations of any of Volt Parent, LP’s subsidiaries or affiliates, consistent with the limited rights of other ownership interests the Commission has found to be passive.⁸ Volt Parent GP is an indirect and wholly-owned subsidiary of ECP ControlCo, LLC (“ECP”) such that Calpine currently is controlled indirectly by ECP, CPPIB Calpine and AI Holdings LP.

⁶ Through certain intra-corporate reorganizations in 2018, Access Industries, Inc. transferred its limited partnership interests in Volt Parent LP first to an affiliate, AI International Holdings LLC, and then to AI Holdings LP. No review of the intra-corporate reorganization was required under PSL § 70 because ultimate ownership of Volt Parent LP (and ultimately Calpine) did not change. Both AI Holdings LP and Access Industries, Inc. are under the exclusive control of the same single, natural person. *See* Case 07-E-0584: *NRG Energy, Inc.*, Declaratory Ruling on Review of an Intra-Corporate Transaction (July 23, 2007), at 4 (finding that “intra-corporate transactions that [do] not affect ultimate ownership [fall] outside the ambit of PSL §70”).

⁷ *See* Case 18-E-0256: *Joint Petition of Calpine Corporation and CPPIB Calpine Canada Inc. for a Declaratory Ruling*, Declaratory Ruling on Transfer and Making Other Findings (June 18, 2018).

⁸ *See, e.g.*, Case 16-E-0068: *Astoria Generating, L.P., et al.*, Declaratory Ruling on Transfer Transaction (Apr. 26, 2016); Case 06-E-1106: *PPM Energy, Inc., et al.*, Declaratory Ruling on Regulation of Intra-Corporate and Other Transactions (Oct. 19, 2006); Case 07-E-0462: *Horizon Wind Energy, LLC*, Declaratory Ruling on Review of Transfer Transactions (June 26, 2007); Case 07-E-1283: *Noble Clinton Windpark I, LLC*, et al., Declaratory Ruling on Review of an Ownership Interest Transfer (Dec. 18, 2007).

iii. ECP

ECP is a Delaware limited liability company that is controlled by five individual persons and is focused on the development and acquisition of, and investment in, energy infrastructure assets, and related ownership, operation and management of these assets, including electric generation and inputs to electric generation in North America.⁹

ECP does not own or control any traditional franchised utilities with captive customers, and neither it nor its affiliates own or control any transmission facilities other than limited and discrete equipment necessary to interconnect individual generating facilities to the transmission grid or limited and discrete transmission facilities used to interconnect generating facilities to the transmission grid. Besides through its interests in Calpine, none of ECP or any of its affiliates is a scheduling coordinator, reliability coordinator, retail marketer, electric or gas transmission or distribution provider or a balancing authority within (or into) the NYCA or has control over the provision of fuels used in generation within the State of New York.

Besides through its interests in Calpine, ECP does not own, nor is it affiliated with, any generation in New York, the ISO-NE control area or in the PJM control area.¹⁰

iv. AI Holdings LP

AI Holdings LP is a limited partnership organized under the laws of the British Virgin Islands. Other than through its interest in Calpine, AI Holdings LP is not affiliated with any

⁹ A more complete description of the recent acquisition of Calpine can be found in several recent declaratory rulings approving the transfer of its upstream ownership. *See* Case No. 17-E-0601, *Calpine Corporation and ECP ControlCo, LLC*, Declaratory Ruling on Transfer and Making Other Findings (Dec. 19, 2017); Case No. 17-E-0805, *Calpine Corporation and Access Industries, Inc.*, Declaratory Ruling and Transfer and Making Other Findings (Feb. 27, 2018).

¹⁰ On February 12, 2019, ECP transferred 100% of its ownership interests in Wheelabrator Technologies Inc. (“WTI”). The Federal Energy Regulatory Commission approved the transaction on December 6, 2018. *See* FERC Docket EC19-14-000: *Wheelabrator Technologies, Inc.*, Order Authorizing Disposition of Jurisdictional Facilities (Dec. 6, 2018, 165 FERC ¶ 62,141). As a result of this transaction, ECP no longer owns any generation in the NYISO, PJM or ISO-NE control areas except through its interest in Calpine. A list of the facilities transferred is contained in Exhibit 1 to the petition filed in Case 18-E-0256.

electric generating facilities in the NYCA or its neighboring control areas (PJM and ISO-NE). Moreover, AI Holdings LP does not own or control any traditional franchised utilities with captive customers, and neither it nor its affiliates own or control any transmission facilities in any relevant market. Besides through its interests in Calpine, none of AI Holdings LP or any of its affiliates is a scheduling coordinator, reliability coordinator, retail marketer, electric or gas transmission or distribution provider or a balancing authority within (or into) the NYCA or has control over the provision of fuels used in generation within the State of New York.

v. CPPIB Calpine

CPPIB Calpine is a Canadian corporation and wholly owned subsidiary of Canada Pension Plan Investment Board (“CPPIB”), a professional investment management organization based in Toronto, Canada, that invests the assets of the Canadian Pension Plan to the extent funds are not needed to pay current benefits. CPPIB has invested in shares, membership interests, partnership interests and other voting interests in numerous private and public companies, including regulated electric utilities and other public utilities engaged in generation, transmission, or distribution or sale of electric energy.

Other than through its interest in Calpine, CPPIB Calpine is not affiliated with any electric generating facilities in the NYCA or its neighboring control areas (PJM and ISO-NE). Besides through its interests in Calpine, none of CPPIB Calpine or any of its affiliates is a scheduling coordinator, reliability coordinator, retail marketer, electric or gas transmission or distribution provider or a balancing authority within (or into) the NYCA or has control over the provision of fuels used in generation within the State of New York

III. PETITION FOR CPCN

A. Standard for Issuing CPCN under PSL § 68

Section 68 of the PSL generally requires electric corporations to obtain a CPCN from the Commission before commencing construction of an electric plant. In the Cassadaga CECPN Order, however, the Siting Board considered the applicability of PSL § 68 to generating facilities certified under Article 10.¹¹ Despite arguments made by Cassadaga that obtaining a CPCN under PSL § 68 would be duplicative of the Article 10 certification process, the Siting Board concluded that the subject matter of the two approvals is different and that Article 10 is not designed to encompass all aspects of regulating electric corporations.¹² Consistent with the Cassadaga CECPN Order, the Commission determined that the Siting Board’s issuance of a PSL Article 10 Certificate supplants the requirement for construction approval under PSL §68, but not the requirements for Commission approval of its corporate formation and the exercise of any municipal “right, privilege or franchise.”¹³ According to the Commission, before it may issue a CPCN, the electric corporation seeking approval must provide a certified copy of its charter and a “verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.”¹⁴ In considering its approval, the Commission “consider[s] the economic feasibility of the corporation, the corporation’s ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates, and whether issuance of a certificate is in the public interest.”¹⁵

¹¹ See Case 14-F-0490: *Application of Cassadaga Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a Wind Energy Project*, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions (Jan. 17, 2018), at 110-114 (“Cassadaga CECPN Order”).

¹² *Id.*

¹³ Cassadaga CPCN Order, at 12.

¹⁴ *Id.*

¹⁵ *Id.*

In conjunction with meeting the requirements specified in PSL § 68 as interpreted in the Cassadaga CPCN Order, Petitioner must also satisfy the requirements for CPCNs set forth in 16 NYCRR §§ 21.2 and 21.3. Consistent with the Cassadaga CPCN Order, many of these requirements will be addressed as part of the Applicant’s Article 10 review and need not be duplicated here. Petitioners request that, as it did in the Cassadaga CPCN Order, the Commission find that “[t]hrough [this] Petition and supplemental information provided during the course of this proceeding, and the record developed in the Article 10 proceeding, sufficient information is available to satisfy the requirements of 16 NYCRR Part 21 and to provide a full evidentiary record.”¹⁶

B. Required Findings for Project under PSL § 68

i. Certified Charter

PSL § 68(1) requires that, before the Commission can issue a CPCN, the applicant must submit “a certified copy of the charter of such corporation.”¹⁷ A copy of Bluestone Wind, LLC’s Certificate of Incorporation, certified by the Delaware Secretary of State, is attached hereto as Exhibit A. Database records for Bluestone Wind, LLC demonstrating that the company is registered to do business in New York as a foreign limited liability company and that it has properly registered an agent for service of process is attached hereto as Exhibit B.

ii. Consent of Municipal Authorities

PSL § 68 also requires that the Petitioner provide a “verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.”¹⁸

¹⁶ *Id.* at 14.

¹⁷ *See also*, Cassadaga CPCN Order, at 12.

¹⁸ PSL § 68(1); *see also* Cassadaga CPCN Order, at 12.

Bluestone Wind will not provide utility service in any territory and does not require any municipal right or privilege under franchise. With respect to municipal rights-of-way, certain portions of the Facility’s collection lines will cross or otherwise be located on municipal rights-of-way (“ROW”). Accordingly, the only municipal consents required to construct and operate the facility are granted in the Host Community Agreements (HCA)/Road Use Agreements (RUA) with the host municipalities. As discussed in greater detail in Section III below, other information required by 16 NYCRR § 21.2 is not relevant because Bluestone Wind does not have an expired franchise or been granted any permit, license or authority by any Federal authority relative to the Facility that was not addressed in the Article 10 proceeding.

In fulfillment of the requirement that the Commission ensure that the entity has received the necessary consents of the municipal authority for use of municipal property or public ROWs, Bluestone Wind has included as Exhibit C a verified statement of its president and secretary that required consents of the proper municipal authorities have been or will be received, to the extent that such consents are not preempted by Article 10. Bluestone Wind also has included as Exhibit D a copy of the RUA executed with the Town of Sanford. Bluestone Wind anticipates executing an RUA with the Town of Windsor by the time the Siting Board issues a CECPN to the Project. Bluestone Wind will file in this proceeding a copy of the RUA with the Town of Windsor when it is executed.

C. Evidence Relating to Economic Feasibility of Entity and Entity’s Ability to Finance Improvements

Section 68 requires the PSC to consider “the economic feasibility of the corporation, and the corporation’s ability to finance improvements of . . . an electric plant.”¹⁹ Preliminarily, Petitioner Bluestone Wind notes that the “the economic feasibility” and “ability to finance”

¹⁹ See also, Cassadaga CPCN Order, at 12.

requirements were meant to apply to monopoly utilities, whose unwise financial decisions were historically passed on to ratepayers, and not to competitive generators who must compete in the marketplace, and who bear their own economic risks.²⁰ As set forth in Section IV below, numerous wholesale electric generators, including utility-scale wind generation facilities, have been granted lightened regulation by the Commission.²¹ The Legislature's decision to amend PSL § 68 in 2013 to require additional scrutiny of a utility's financial fitness was intended to ensure that utilities awarded franchises as the sole retail provider (or one of limited number of providers) have the resources necessary to respond to storms and outages expeditiously and otherwise fulfill their obligations to their customers.²² They arguably were not intended to address generation siting, since the consequences of a certified facility failing to compete effectively will fall almost entirely

²⁰ See Case 07-E-0213: *Sheldon Energy LLC*, Order Granting and Amending Certificates of Public Convenience and Necessity, and Providing for Lightened Regulation, p. 15 (Jan. 17, 2008), in which the Commission held that strict financial oversight requirements for utilities “were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers.” Meanwhile, in the case of competitive market participants like the Applicant, the Commission holds that, “[s]o long as the wholesale generation market is effectively competitive, wholesale generators cannot raise prices even if their costs rise due to poor management. Moreover, imposing these requirements could interfere with wholesale generators' plans for structuring the financing and ownership of their facilities. This could discourage entry into the wholesale market, or overly constrain its fluid operation, adversely affecting its operation to the detriment of the public interest.” Case 99-E-0974: *NRG Energy, Inc. and Oswego Harbor Power LLC Joint Petition for a Declaratory Ruling that Lightened Regulation be Applied to their Purchase of the Oswego Fossil Fuel Generating Plant from Niagara Mohawk Power Corporation*, Order Providing for Lightened Regulation (Oct. 21, 1999), at 5.

²¹ See Wallkill Order, Carr Street Order, AES Order.

²² PSL § 68 was amended in 2013 to add a number of new requirements for CPCN holders to demonstrate financial fitness to provide certain services to New York electric consumers. These amendments authorize the Commission to engage in additional scrutiny of a public utility's internal organization and financial condition in situations where that utility obtains a franchise agreement under which it will serve as the only, or one of a limited number of, retail provider(s) available in a given area. In response to Hurricane Sandy and utility response, the 2013 legislation was enacted to expand the PSC's authority to impose sanctions and revoke a CPCN for a utility's service territory “based on findings of repeated violations . . . that demonstrate a failure of such corporation to continue to provide safe and adequate service.” PSL 68(2). See 2013 Sess. Law News of NY Ch. 57 (S.2607-D) (Approved March 29, 2013). Given the Commission's longstanding preference for a lightened regulatory regime for competitive wholesale market participants who do not have captive ratepayers to fall back on, it does not appear that the additional financial oversight requirements in the amended Section 68 were intended to apply to competitive generators who must compete in the marketplace, and who bear their own risks in that marketplace. This is similar to other provisions of the Public Service Law that have been deemed inapplicable to wholesale electric generators. For those reasons, Petitioners believe the level of detail provided in this Petition is appropriate and proportional to the regulatory oversight of wholesale market participants which the Commission prefers.

on the Facility's owners and shareholders, obviating the need for Commission oversight. Nevertheless, the Cassadaga CECPN Order compels compliance with those aspects of PSL § 68 that are not addressed by the Article 10 process, including "the economic feasibility of the corporation" and "the corporation's ability to finance improvements of . . . an electrical plant."

Petitioner's parent companies have substantial experience in the construction and operation of utility-scale electric generation facilities of all types, including wind. As previously noted, Calpine Corporation is the nation's largest generator of electricity from natural gas and its 10th largest producer of electricity generally. The company maintains a fleet of 79 power plants in operation and under construction, representing approximately 27,000 MW of generation capacity.

Likewise, ECP, which recently acquired Calpine, has substantial experience in the development, construction and operation of competitive energy projects. The collective experience of Calpine and ECP will help ensure the success of the Bluestone Wind Project throughout its lifespan.

Consistent with the discussion of Calpine and its parent companies above, the owners of the Facility are financially viable and the Facility itself is economically feasible.

Bluestone Wind LLC has not constructed the Bluestone Wind Facility and does not therefore have any assets or direct financing abilities. However, once the Project receives the permits and approvals, the financing needed to construct the Facility will be obtained through balance sheet, construction loans or other financing mechanisms.

Available evidence shows that the Facility is economically feasible. The Petitioner has multiple years of meteorological data showing that the location of the Facility is suitable for wind energy generation. The Facility will realize income from the sale of energy pursuant to a long-term off-take agreement [with an unaffiliated third party?] and the sale of "green attributes." Of

particular note, in March 2018, the New York State Energy Research and Development Authority (“NYSERDA”) issued an award to Bluestone Wind for the construction of the Facility including 6.2 MW of energy storage, the first time a large-scale renewable project has included an energy storage component in New York.

D. Information About Petitioner’s Ability to Render Safe, Adequate and Reliable Service

To the extent this standard applies to a wholesale generator, this element of the CPCN review is essentially addressed as part of the Article 10 process and need not be duplicated with respect to the CPCN. This standard is addressed in multiple exhibits of the Article 10 Application, including Exhibits 5, 8, 10, 15, 18, and 34, and inherent in the Siting Board’s findings under PSL § 168.

In addition, even under a lightened regulatory regime, Bluestone Wind will remain subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed in previous lightened regulation Orders. Bluestone Wind anticipates that, like other lightly regulated generators, it will be required to conduct tests for stray voltage on all publicly accessible electric facilities, to give notice of generation unit retirements, and to report personal injury accidents pursuant to 16 NYCRR Part 125.²³ According to the Commission, “[t]hese conditions further ensure [lightly regulated generators] will render safe, adequate, and reliable service.”²⁴

In addition, in the Cassadaga CPCN Order, the Commission also determined that Cassadaga’s economic feasibility and financial viability “demonstrate Cassadaga’s ability to finance improvements of the Facility and to render safe, adequate and reliable service.”²⁵

²³ See Cassadaga CPCN Order, at 25.

²⁴ *Id.*

²⁵ *Id.* at 20.

Bluestone Wind’s economic feasibility and financial viability are demonstrated in Section III.C and the Commission should, as it did in the Cassadaga CPCN Order, find that Petitioner has demonstrated its ability to render safe, adequate and reliable service.

E. Evidence Demonstrating Petitioner’s Ability to Provide Just and Reasonable Rates

The “just and reasonable rates” factor is inapplicable to the Bluestone Wind Facility, which is a wholesale generation facility that will not be selling electricity at retail. *See* Cassadaga CPCN Order, p. 8 (noting no retail service will be provided by the wind energy generator). According to the Commission, “so long as the wholesale generation market is effectively competitive, wholesale generators complying with tariffs approved by the Federal Energy Regulatory Commission. . . will provide just and reasonable rates and cannot raise prices even if their costs rise due to poor management.”²⁶

F. Evidence/Documents Under Commission’s Regulations.

As previously noted, the PSC has adopted regulations identifying the evidence and documentation required to support CPCN petitions. *See* 16 NYCRR § 21.2 and 21.3. Consistent with the Cassadaga Order, evidence/documents addressed pursuant to the Article 10 CECPN process need not be duplicated here. Moreover, certain other requirements of the regulations are inapplicable to competitive wholesale generation facilities such as the Bluestone Wind Project.

With respect to subsections of 16 NYCRR § 21.2, the Petitioner notes that:

- (a) Bluestone Wind, LLC is not proposing to render utility service in any territory. As a result, the information required by this subsection is inapplicable.
- (b) No franchises have been or will be granted to or by the municipalities in which the Facility will be constructed. Therefore, no certified copies of franchises need to be submitted. As

²⁶ Cassadaga CPCN Order, at 24.

previously noted, all permissions to locate the Facility collection lines in municipal ROWs are addressed via HCAs and/or RUAs with the Towns of Sanford and Windsor.

- (c) The Petitioner has not previously secured authority to exercise powers granted under a prior franchise that has expired; therefore, this provision does not apply.
- (d) All permits, licenses or authorities by any Federal authority relative to the pending petition will be addressed in the Article 10 proceeding.

With respect to subsections of 16 NYCRR § 21.3, Petitioner notes that:

- (a) Petitioner does not propose to exercise authority granted by a franchise in any territory, so this provision is not applicable. Information about the towns in which the Facility is proposed to be constructed, and the approximate dates that construction will begin, is addressed in the Article 10 Application and proceeding.
- (b) A detailed description of the plant to be constructed, and its estimated costs, is provided in the Article 10 Application and proceeding.
- (c) As discussed above, the cost of constructing the Facility will be financed through balance sheet liquidity, a construction loan or other financial mechanism.
- (d) Petitioner is not proposing to provide services for which retail rates would be charged, making this section inapplicable.
- (e) The estimated revenues to be derived from the Facility will generally be derived from an off-take agreements including a contract with the NYSERDA and/or through sales of electricity into the wholesale market. The estimated expenses of operation of the Facility for the first three years of service were already addressed in the Article 10 application process and can be found in the socioeconomic report in Application Exhibit 27. Petitioner

does not propose to provide service to residential, commercial or industrial customers in any territory. Therefore, the latter half of this provision is inapplicable.

(f) See Section III.C above for information responsive to this provision.

(g) Petitioner is not proposing to provide services in this manner; these provisions regarding the availability of other services in this territory are inapplicable.

IV. Lightened Regulatory Regime

Since deregulation of New York’s electric system, the Commission has increasingly emphasized the need for more competition in the market, and the need to ensure that existing statutes and regulations do not hinder competition by imposing unnecessary regulation on non-monopoly market participants who are not interfacing with utility consumers directly. Specifically, the Commission has held that for competitive wholesale generators, unlike generation facilities proposed by a traditional monopoly utility, “additional scrutiny is not required to protect captive New York ratepayers, who cannot be harmed by the terms arrived at for these financings because lightly-regulated participants in competitive markets bear the financial risk associated with their financial arrangements.”²⁷ “So long as the wholesale generation market is effectively competitive, or market mitigation measures yield prices aligned with competitive outcomes, wholesale generators cannot raise prices even if their costs rise due to poor management. Moreover, “imposing these requirements . . . could interfere with wholesale generators’ plans for structuring the financing and ownership of their facilities. This could discourage entry into the wholesale

²⁷ See, e.g., Case 10-E-0501: *Petition of CPV Valley LLC for a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law, Approval of Financing Pursuant to Section 69, and Approval of a Lightened Regulatory Regime*, Order Granting Certificate of Public Convenience and Necessity (May 9, 2014), at 23 (hereinafter “CPV Valley Order”).

market, or introduce inefficiencies into the operation of that market, to the detriment of the public interest.”²⁸

To that end, in a series of Orders—the *Wallkill Order*,²⁹ the *AES Order*³⁰ and the *Carr Street Order*³¹—the Commission outlined a “lightened regulatory regime” applicable to wholesale generation facilities which fall under the definition of “electric corporation” in PSL § 2(13), but which are not a traditional monopoly “utility company” or “public utility” under PSL § 2(23). This lightened regime has since been granted to numerous wholesale renewable electric generation facilities, including wind energy projects, throughout the State.³² Most recently, the Commission granted lightened regulation to the Cassadaga Wind Project, the first project to receive a CECPN since the passage of Article 10.³³

Under this lightened regulatory regime, the Commission has concluded that certain requirements—which were developed to address monopoly utilities—do not apply to competitive wholesale electric providers, such as Bluestone Wind, that are operating in a competitive environment.³⁴ These items, which address rates, recordkeeping, internal financing and transactions among other subjects, including most of the provisions in PSL Articles 2, 4 (except §

²⁸ CPV Valley Order, p 21.

²⁹ See Case 91-E-0350: *In re Wallkill Generating Co., LP* Order Establishing Regulatory Regime (April 11, 1994) (“Wallkill Order”).

³⁰ Case 99-E-0148: *AES Eastern Energy LP*, Declaratory Ruling on Lightened Regulation (April 23, 1999) (“AES Order”).

³¹ Case 98-E-1670: *Carr Street Generating Station LP*, Order Providing for Lightened Regulation (Apr. 23, 1999) (“Carr Street Order”); See also Case 07-E-0213: *Sheldon Energy LLC*, Order Granting and Amending Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Jan. 17, 2008) (noting those sections of the PSL applicable to retail service providers).

³² See, e.g., Case 02-E-0362: *Flat Rock Windpower LLC*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation, pp. 11-15 (June 17, 2004); Case 05-E-1634: *Noble Clinton Windpark I, LLC*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation, pp. 9-13 (Oct. 19, 2006); Case 11-E-0351: *Stony Creek Energy LLC*, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Rate Making Regulation and Approving Financing, pp. 37-41 (Dec. 15, 2011); Case 07-E-1343: *Marble River, LLC*, Order Granting Certificate of Public Convenience and Necessity, and Providing for Lightened Regulation, pp. 16-19 (June 19, 2008).

³³ See Cassadaga CPCN Order, pp. 21-25.

³⁴ See Case 99-M-1722: *Applicability of Public Service Law Provisions to Competitive Entities*, Order Instituting Proceeding (Dec. 17, 1999).

68, 69, 69-a and 70) and 6 (except §§ 110(1), 110(2) and 119-b); PSL § 115 on competitive bidding; PSL § 72-a requiring that monthly fuel costs reports be filed and PSL §§ 106, 107, 108, 110(3) and 110(4), relating to loans, use of revenues, mergers, and certain types of contracts.

Consistent with the *Wallkill*, *AES* and *Carr Street* Orders and various orders granting lightened regulation to wind energy projects, including the recently issued Cassadaga CPCN Order, the following limited provisions of the PSL should apply to Bluestone Wind as a wholesale generator: PSL §§ 11, 19, 24, 25, and 26, preventing electricity producers from taking actions contrary to the public interest; PSL § 66(6) and § 111 on annual reporting; PSL §§ 69 or 69-a involving issuance of securities or debt instruments, which requires approval of the Commission under a separate “reduced scrutiny” standard; PSL § 70 regarding transfer of property or direct ownership of the facility; PSL §§ 110(1) and (2); and PSL 119-b on protection of underground facilities.

Bluestone Wind is affiliated with three companies that make retail sales of electricity and/or natural gas in the New York region: CES, Champion and NAPG. According to the Commission, an affiliation with a power marketer “raises potential market power issues beyond these present where a wholesaler is not so affiliated, because [the wholesale generator] could acquire market power through its affiliations.”³⁵ As noted above, no affiliate of Bluestone Wind has control over the supply of fuels used in generation within New York. Regardless, the Commission has determined, that “[t]hese issues may be addressed through PSL §§110(1) and (2), which afford [the Commission] jurisdiction over affiliated interests.”³⁶

³⁵ Case 98-E-1670: *Carr Street Generating Station, L.P.*, Order Providing for Lightened Regulation (April 23, 1999), at 10.

³⁶ *Id.*

Consistent with these prior decisions, Bluestone Wind respectfully requests an Order of the Commission confirming that a lightened regulatory regime will apply to its activities as a wholesale electric generator in the New York market, and granting such other and further relief as the Commission may determine is necessary or appropriate in furtherance of the relief sought herein.

V. Horizontal and Vertical Market Power

The Bluestone Wind Project will generate up to 124 MW of electricity. Bluestone Wind is also affiliated with the proposed High Bridge Wind Project, a 100 MW project in Chenango County, New York, that is under development by High Bridge Wind, LLC, another wholly-owned subsidiary of Calpine Corporation. After construction of both the Bluestone Wind Project and the High Bridge Wind Project, Calpine's aggregate generation will rise to only 643 MW. None of Calpine's parent companies own any generation in the NYISO, PJM or ISO-NE control areas. Accordingly, Calpine's in-State generation amounts to less than 3% of New York's total installed generation, which is below levels previously found insufficient to create horizontal market power.³⁷

Neither Calpine nor its parent companies own or control any traditional franchised utilities with captive customers in the NYCA or its neighboring control areas, nor do they or their affiliates own or control any transmission facilities other than the limited interconnection equipment necessary to connect their generating facilities to the transmission grid in the NYCA or its neighboring control areas. None of Calpine, its parent companies or any of their respective affiliates is a scheduling coordinator, reliability coordinator, electric or gas transmission or distribution provider or balancing authority within (or into) the NYCA or has control over the

³⁷ See, e.g., EIF Ruling; MACH Gen Order.

provision of fuels used in generation within the State of New York. Accordingly, there are no vertical market power issues.

VI. CONCLUSION

For the reasons set forth above, the Petitioner respectfully requests that the Commission issue (1) a CPCN authorizing Bluestone Wind to construct and operate the wind energy generating facility which is the subject of a CECPN application in Case 16-F-0559, and (2) an Order providing for lightened regulation.

Given the limited nature of the Commission's review, there is no need for hearings in this matter and comments can be submitted during the applicable timeframes.

Petitioner further respectfully requests that the CPCN be granted contemporaneously with the CECPN issued by the Siting Board or at the Commission's next monthly session.

Dated: February 20, 2019

Respectfully submitted,

/s/ James A. Muscato

YOUNG / SOMMER LLC
Attorneys for Bluestone Wind LLC
James A. Muscato II, Esq.
Steven D. Wilson, Esq.
Five Palisades Drive
Albany, New York 12205
Phone: (518) 438-9907

VERIFICATION

William Whitlock, being duly sworn according to law, upon his oath, deposes and says:

1. I am Vice President of Bluestone Wind, LLC and I am authorized to make this Verification on behalf of Bluestone Wind, LLC.
2. I have read the contents of the foregoing Petition and hereby verify that the statements contained therein are true and correct to the best of my knowledge and belief.

William Whitlock

Sworn to and subscribed before me
This 13 day of February, 2019

Maricela Serrano
Notary Public

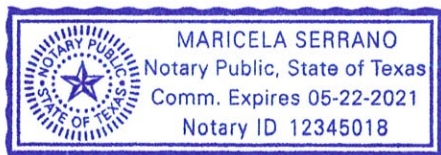


EXHIBIT A

CORPORATION SERVICE COMPANY

www.cscglobal.com

CSC- Sacramento
Suite 150N
2710 Gateway Oaks Drive
Sacramento, CA 95833
800-222-2122
916-641-5151 (Fax)

Matter# Not Provided

Order# 073311-5

Project Id :

Order Date 03/22/2016

Entity Name: BLUESTONE WIND, LLC
Jurisdiction: DE - Secretary of State
Request for: Incorporation/Formation Filing
File#: 5995483
File Date: 03/22/2016
Result: Filed

Ordered by NANCY HOANG at CALPINE CORPORATION

Thank you for using CSC. For real-time 24 hour access to the status of any order placed with CSC, access our website at www.cscglobal.com.

If you have any questions concerning this order or CSCGlobal, please feel free to contact us.

Mai Lou Her
mher1@cscinfo.com

The responsibility for verification of the files and determination of the information therein lies with the filing officer; we accept no liability for errors or omissions.

Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "BLUESTONE WIND, LLC", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF MARCH, A.D. 2016, AT 2:37 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

5995483 8100
SR# 20161795695

Authentication: 202029505
Date: 03-23-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

CERTIFICATE OF FORMATION
OF
LIMITED LIABILITY COMPANY

FIRST. The name of the limited liability company is Bluestone Wind, LLC.

SECOND. The address of its registered office in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. The name of its Registered Agent at such address is Corporation Service Company.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Formation of Bluestone Wind, LLC this 22nd day of March, 2016.

BY: /s/Kelvin Chung
Authorized Person(s)

NAME: Kelvin Chung
(Type or Print Name)

EXHIBIT B

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through January 14, 2019.

Selected Entity Name: BLUESTONE WIND, LLC
Selected Entity Status Information
Current Entity Name: BLUESTONE WIND, LLC
DOS ID #: 4922006
Initial DOS Filing Date: MARCH 31, 2016
County: ALBANY
Jurisdiction: DELAWARE
Entity Type: FOREIGN LIMITED LIABILITY COMPANY
Current Entity Status: ACTIVE

Selected Entity Address Information
DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)
C/O CORPORATION SERVICE COMPANY
80 STATE STREET
ALBANY, NEW YORK, 12207-2543

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

*Stock Information

# of Shares	Type of Stock	\$ Value per Share
No Information Available		

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
MAR 31, 2016	Actual	BLUESTONE WIND, LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

EXHIBIT C

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

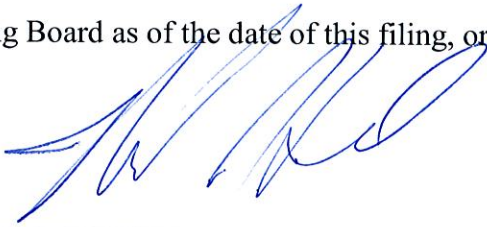
Petition of Bluestone Wind, LLC for an Order
Granting a Certificate of Public Convenience and
Necessity Pursuant to Public Service Law Section
68 and for an Order Granting Lightened Regulation

19-E-_____

STATE OF Texas)
COUNTY OF Harris) ss.

VERIFIED STATEMENT

I, John B. (Thad) Hill, President for Bluestone Wind, LLC in the above-entitled proceeding, and I, W. Thaddeus Miller, Secretary for Bluestone Wind, LLC in the above-entitled proceeding, each verify that Bluestone Wind, LLC has secured, or will secure, all municipal consents required by law, and not otherwise preempted by Article 10 of the Public Service Law, to construct and operate the Bluestone Wind Project. Such consents have been submitted to the Siting Board as of the date of this filing, or will be submitted as future compliance filings.



John B. (Thad) Hill, President



W. Thaddeus Miller

Sworn to before me this 13th
Day of February, 2019

Sworn to before me this 13th
Day of February, 2019

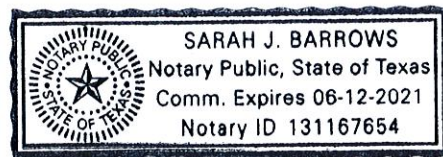
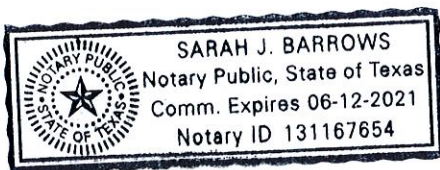

Notary Public
Notary Public

EXHIBIT D

ROAD USE AGREEMENT

This Road Use Agreement (the "**Agreement**") is entered into this ___ day of _____, 201_ ("**Effective Date**") between Bluestone Wind, LLC, a Delaware limited liability company, having offices at 717 Texas Avenue, Suite 1000, Houston, Texas 77002 hereinafter "**Company**", and the Town of Sanford, a municipal corporation having offices at 91 Second St., Sanford, NY 13754, hereinafter "**Municipality**". The Company and Municipality are each a "**Party**" and referenced together as the "**Parties**".

RECITALS

WHEREAS, Bluestone has been developing a wind-powered electric generating facility located in the Towns of Sanford and Windsor, in Broome County, New York (the "**Bluestone Wind Project**"); and

WHEREAS, Bluestone intends to engage in the initial construction of the Bluestone Wind Project (the "**Construction Phase**"), periodic repair and maintenance of the Bluestone Wind Project (each instance referred to herein as a "**Maintenance Period**") and decommissioning activities (the "**Decommissioning Phase**") (collectively, the "**Bluestone Construction Activities**"); and

WHEREAS, in connection with the Bluestone Construction Activities, Company may necessarily need to (i) traverse the Municipality's highways, roads, bridges, culverts and related fee owned land, rights-of-way or easements owned or maintained by the Municipality (collectively "**Roads**") with Company operated heavy machinery weighing in excess of 18,001 lbs. (consisting of certain trucks, construction machinery and equipment and other related items operated by the Company during the Bluestone Construction Activities) (collectively referred to herein as "**Company's Heavy Vehicles**"), (ii) transport personnel, parts, equipment, facilities and materials on the Roads, (iii) widen certain Roads, install temporary turning radii, and other temporary construction easement rights-of-way and make certain modifications and improvements (both temporary and permanent) to such Roads (including without limitation to certain culvers, bridges, road shoulders and other related fixtures) to permit equipment and material to pass, (iv) place certain electrical collection and transmission and communication cables, conduit and other wires and cables (collectively, "**Cables**") for the Bluestone Wind Project in close proximity to or under or across certain Roads, (v) place footings, foundations, towers, poles, crossarms, guy lines and anchors, circuit breakers, junction boxes and other machinery and equipment related to the Cables (all of the foregoing, collectively, "**Utility Poles**") in close proximity to certain Roads, and (vi) carry out other related activities (the uses described in clauses (i) through (vi) are the "**Permitted Uses**"); and

WHEREAS, Company acknowledges that the nature of Bluestone Construction Activities may cause damage to said Roads; and

WHEREAS the Municipality seeks guarantees and assurances from Company that Company will pay and/or otherwise indemnify the Municipality for any Damage (as defined herein) to the Roads arising from its activities.

NOW, THEREFORE, in consideration of these promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and the Municipality, each intending to be legally bound, agree as follows:

1. Rights and Responsibilities of the Parties.

a. Company agrees that it shall be responsible for ensuring that all debris, garbage, and waste upon Roads related to Bluestone Construction Activities are disposed of in the appropriate manner and be responsible for obtaining any applicable approvals, permits and/or orders that are not granted under this Agreement.

b. Except under emergency circumstances, Company shall use commercially reasonable efforts to not block or obstruct or interfere with the flow of traffic in both lanes of traffic for any more than ten minutes at a time. Company agrees that any proposed temporary Road closings will be properly coordinated in advance with the Municipality. Longer term closures, if required, shall be coordinated with the Municipality in writing at least 48 hours prior to the closing. The Company shall be responsible for complying with any and all applicable New York State and federal laws concerning traffic control requirements for every activity that will impact the flow of traffic.

c. The term "**Company**" shall include its employees, agents, vendors, contractors, subcontractors, and/or haulers. Company shall require that each and every employee, agent, vendor, contractor, subcontractor, and hauler will comply with the terms and conditions of this Agreement, and the Company shall be responsible for any failure of each and every employee, agent, vendor, contractor, subcontractor, and hauler that fails to comply with the terms of this Agreement.

d. The Municipality designates the Town of Sanford Road Committee, which shall consist of the Highway Superintendent and at least one, but no more than two, Town of Sanford Board member ("**Road Committee**") as the entity that shall, unless otherwise limited or conditioned herein, have authority to act on behalf of the Municipality.

e. The Company agrees that it shall undertake the Bluestone Wind Project, Bluestone Construction Activities and each of its Permitted Uses at all times in accordance with applicable state, federal and non-superseded local laws, rules and regulations, including without limitation, Article 10 of the Public Service Law and the terms, conditions, limitations and modifications of any certificate it is awarded pursuant thereto.

f. The term "**Period of Use**" shall mean the Construction Phase, any Maintenance Period or the Decommissioning Phase.

g. For the purposes of clarity, the parties agree that the "**Decommissioning Phase**" shall commence with the beginning of decommissioning activities and end upon the completion of the decommissioning of the Bluestone Wind Project pursuant to the conditions set forth in the Certificate of Environmental Compatibility and Public Need Pursuant issued by the New York State Board on Electric Generation Siting and the Environment for Case Number 16-F-0559

("Certificate").

2. Company Use.

Provided Company is not in default beyond any applicable cure period but subject to Section 21(b), Municipality hereby grants Company the right to use, improve, upgrade, construct, and repair and encroach into the Roads for the Permitted Uses during any Period of Use. Subject to the requirements of this Agreement, the Municipality hereby specifically grants Company during Periods of Use the right to:

a. Heavy Hauls. Use, traverse, improve, upgrade, construct and repair the Roads listed on Exhibit A-1 and depicted on Exhibit A-2 using Company's Heavy Construction Vehicles and other vehicles to transport personnel, parts, equipment, facilities and materials on, over and across the Roads. The routes depicted on Exhibit A-1 and A-2 will include allowable routes for Company's Heavy Construction Vehicles when returning through the Municipality after heavy components have been delivered.

b. Installation of Underground Cables. Use and encroach into the Roads and public rights-of-way as shown on Exhibit B-1 for the purposes of the installation, ownership and operation of underground Cables under, or in close proximity to the Roads and public rights-of-way, subject to the following:

- (1) Except for Cables that cross under the Roads, all Cables shall be placed outside of public rights-of-way and as far from the road surface as possible, except upon prior written approval of the Municipality.
- (2) For Cables that cross under the Roads, Company may cut an "open trench" across gravel and unimproved roads, and the trench will be backfilled, compacted and raked to return it to conditions equal or better to those prior to the commencement of work. No such open trench shall be cut in any Road, unless first approved in writing by the Municipality, except in the event of an emergency in which case the Road Committee may approve in writing the use of an open trench.
- (3) Company will bore under paved roads, and all boring pits and ditch excavation will be backfilled, compacted and raked to return it to conditions equal or better to those prior to commencement of work. The highest point of any such boring by Company must be at a minimum depth of 48" below the lowest point of the following: (i) Road; or (ii) drainage ditch at the selected crossing location. No such boring shall be drilled under any Road except in the locations set forth in the Exhibits to this Agreement.
- (4) Each boring or cut across a Road will be identified by general location and also by centerline coordinate, and upon the completion of construction, Company will provide an as-built location.

c. Installation of Overhead Cables. Use Roads and public rights-of-way for the purposes of the installation, ownership and operation of overhead Cables over, across and in close proximity to certain Roads and public rights-of-way as shown on Exhibit B-2. Overhead Cables will be designed and constructed in accordance with National Electric Safety Code (“NESC”) governing the clearance requirements above the roadway. Under no circumstances shall any poles used for the installation of Overhead Cables encroach into Roads or public rights-of-way, unless first approved in writing by the Municipality.

d. Utility Poles. Use Roads and public rights-of-way for the purposes of the installation, ownership and operation of Utility Poles as shown on Exhibits B-1 and B-2, subject to the following:

- (1) Overhead utility poles will be situated on the “back side of the side ditch” away from Roads, outside of the public right-of-way and as far from the road surface as possible provided, however, that guy wires may be located in a public right-of-way subject to the prior written approval of the Road Committee.

e. Temporary Construction Easements and Turning Radii. Use, traverse, improve, upgrade, widen, construct the Roads and rights-of-way shown on Exhibit C for purposes of making certain modifications and improvements (both temporary and permanent) to such Roads (including without limitation to certain culverts, bridges, road shoulders and other related fixtures) to permit equipment and material associated with the Bluestone Wind Project to pass. All such modifications and improvements must be constructed in accordance with local laws and regulations.

f. Driveways. Use and encroach into Roads and other rights-of-way shown on Exhibit D for purposes of installing driveways or entrances into or from certain Roads subject to the following:

- (1) Each driveway entrance from a Road will have a coordinate that will be transmitted in an electronic GIS format (ESRI shape file or equivalent) to the Highway Superintendent.
- (2) Each driveway shall be constructed in accordance with local laws and regulations governing driveways (including without limitation Local Law #1 of 2012 entitled “A Local Law of the Town of Sanford Regulating Driveway Design Standards”, as amended and in existence at the time of construction), and as may be necessary to maintain proper drainage of the Roads, the right-of-way, and other adjoining property located outside the right-of-ways, including the installation of a culvert pipe upon request of the Highway Superintendent. Company agrees to submit a permit application under said Local Law and that it shall be responsible to maintain any culverts that are longer than thirty feet (30’).

g. Subsequent Relocation of Improvements. If, from time to time, Municipality should determine, in its sole discretion, that it will widen a Road or otherwise modify the public right-of-way in a manner that impacts Company's Permitted Uses hereunder, upon notice from Municipality, Company shall, at Company's sole cost, as soon as reasonably possible, relocate any of the improvements to allow the Municipality's modifications; provided, however that any underground Cables installed in accordance with Section 2(b) shall not be need to be relocated.

3. Approval of Locations of Permitted Uses; Issuance of Permits.

a. Following the Effective Date but prior to the delivery of the Exhibits contemplated in Section 3(c) below or commencement of Company's Permitted Uses during each new Period of Use, Company and Highway Superintendent shall meet and confer regarding the routes to be used for Company's Heavy Vehicles engaged in the Company's activities, the precautions to be taken to protect health and safety, and the proposed locations of the other improvements contemplated under this Agreement.

b. The Municipality may retain an engineer (the "Municipal Engineer") to assist in the Municipality's review of Company's draft Exhibits submitted pursuant to Section 3(c) and Company's other documents, reports and plans submitted hereunder. Pursuant to Section 3(g), Company shall pay for all of Municipality's documented out of pocket costs and expenses reasonably related to the implementation of this Agreement (including the reasonable fees of the Municipality's attorney and Municipal Engineer) (hereinafter referred to as "Professional Fees").

c. After meeting with Highway Superintendent, but no later than sixty (60) days prior to the commencement of Permitted Uses hereunder during each new Period of Use, the Company will provide to the Highway Superintendent for his review draft Exhibits A-1, A-2, B-1, B-2, C and D showing the proposed use of Roads and the locations of the planned infrastructure within the Roads and other Municipality rights-of-way, as well as any additional information related thereto that is reasonably requested by Municipality. Within thirty (30) days of the Highway Superintendent's receipt of said draft Exhibits, the Municipality shall either (a) approve said draft Exhibits, which approval shall not be unreasonably withheld, conditioned or delayed, or (b) provide Company with reasonable revisions to said draft Exhibits, which revisions shall not be unreasonably withheld, conditioned or delayed. In the event that the Parties are not able to resolve a dispute regarding the Municipalities requested revisions to the Exhibits, the Parties agree to promptly meet to resolve any such disputes. Once approved, the Exhibits shall be attached to this Agreement as the final Exhibits and Company shall not deviate from the routes and improvements established thereby unless approved by the Municipality or Road Committee as set forth herein. For each Maintenance Period and the Decommissioning Phase, to the extent new Exhibits are needed, each new set of Exhibits approved pursuant to this Section shall wholly replace Exhibits from the prior Period of Use.

d. Following the acceptance of the final Exhibits for any Period of Use, the Parties recognize that variations to the location of the improvements, or that other routes, may become necessary to use due to various reasons.

- (1) Should any Roads not listed or shown on Exhibits A-1 and A-2 be expected

by Company to be used by Company's Heavy Vehicles, at least thirty (30) days prior to the commencement of such use, the Company shall notify the Road Committee in writing, conduct the necessary surveys and pre-use inspections under this Agreement and add the Roads to Exhibit A-1 and A-2, subject to the prior written approval of the Municipality, which approval shall not be unreasonably withheld, conditioned or delayed. In the event Company deviates from the Road route designated in, or added by the Company to, Exhibits A-1 and A-2, in addition to any other remedies available to Municipality herein, the Highway Superintendent may request and Company shall immediately upon receipt of such request cease and desist such deviation.

- (2) In the event that the Company's Heavy Vehicles need to use Roads not listed or shown on Exhibits A-1 and A-2 in an emergency, the Company shall provide telephonic notice to the Highway Superintendent and may only use said Roads on a temporary basis until such emergency has ended. In the event that Company determines that said Roads will be use on a permanent basis, Company shall comply with the terms of Section (d)(1) above.
- (3) If Company needs to materially vary the type, method or locations of any improvements shown on Exhibits B-1, B-2, C or D, Company shall provide a revised Exhibit to the Road Committee for review and approval, which shall not be unreasonably withheld, conditioned or delayed. Except in the event of an emergency, Road Committee shall complete the review within thirty (30) days.

e. Upon approval of the Exhibits as described above and submission of the permit application referenced in Section 2(f)(2) above, Municipality shall issue, if necessary, any encroachment, crossing, driveway or other similar permits for Company's encroachment into the public right of way. Except for the foregoing, no other permits or approvals, including without limitation for the use of Heavy Vehicles on Roads, will be required from the Municipality for the Permitted Uses hereunder.

f. At all times during the Term of this Agreement, Company shall keep Municipality apprised of the timing of its Permitted Uses, including, without limitation, notice of its anticipated and actual start and stop dates for Periods of Use for the Bluestone Construction Activities and identification of subcontractors using Heavy Vehicles to be used by Company. Company shall provide such information promptly upon Municipality's request. Company agrees to cooperate in good faith with Municipality with respect to such time periods, which cooperation shall include but not be limited to coordinating the timing of Company's use, repair or improvement of the Roads with similar activities of the Municipality and other heavy haulers or developers within the Municipality who are subject to Municipality's road use local laws or road use agreements.

g. The Company agrees to reimburse Municipality for its reasonable Professional Fees. The Municipality may draw upon the Professional Fees Escrow Account described in

Section 3(h)(1) to pay such Professional Fees; provided, however, upon Company's request, Municipality shall detail the costs, fees, expenses and any other bills incurred to or by the Municipality for the Professional Fees. If Company reasonably and in good faith disputes a payment made from the Escrow Account, then the Parties shall abide by the procedure set forth herein for dispute resolution in Section 7 below.

h. Establishment of Escrow Accounts. Prior to Company's submittal of the draft Exhibits set forth in Section 3(c), the Company shall:

- (1) Deposit the sum of twenty-five thousand dollars (\$25,000.00) in an escrow account to be established by the Municipality to secure the payment of Professional Fees ("**Professional Fees Escrow Account**"). If at any time the balance in such account is reduced to one-third or less of its initial amount, the Town Clerk shall advise Company, and Company shall deposit additional funds in such account to bring its balance up to the amount of the initial deposit within fifteen (15) days of Company's receipt of written request therefor. The balance of the Professional Fees Escrow Account shall be returned to the Company within thirty (30) days of the end of the Term.
- (2) Deposit the sum of \$100,000.00 in a separate escrow account to be established by the Municipality to secure the payment of costs for emergency repairs of Immediately Dangerous Damage, as set forth in Section 6(b) below ("**Emergency Repairs Escrow Account**"). If at any time the balance in such account is reduced to one-third or less of its initial amount, the Town Clerk shall advise Company, and Company shall deposit additional funds in such account to bring its balance up to the amount of the initial deposit within fifteen (15) days of Company's receipt of written request therefor. The balance of the Emergency Repairs Escrow Account shall be returned to the Company within thirty (30) days of the end of the Term.

i. Nothing in this Agreement shall be construed as granting permission or rights to Company to infringe, use or encroach upon the land of private landowners. Any right or permission granted to Company by the terms of this Agreement to infringe, use or encroach upon land within the Town of Sanford shall be limited to land owned by Municipality and shall be subject to Company obtaining from private landowners within the Town all legal and/or equitable permissions and rights necessary to infringe, use or encroach upon privately owned land.

j. In consideration for the additional wear and tear on the Municipality's highway vehicles and equipment due to Damage repairs the Municipality expects to complete during the course of the Term, Company agrees to pay to the Municipality \$250,000.00 for the specific purpose of the Municipality purchasing a new full-size motor grader for the highway department within fifteen (15) days prior to the commencement of the Construction Period.

4. **Reinforcement Activities.**

The Parties acknowledge that certain Roads to be used by Company in connection with the Bluestone Construction Activities may need to be upgraded or otherwise repaired to correct deficiencies or inadequacies. Prior to each Period of Use, if the Company identifies deficiencies or inadequacies in the Roads relative to the Bluestone Construction Activities, Company shall notify the Highway Superintendent of its planned construction to reinforce and improve the Roads as necessary to correct such deficiencies or inadequacies ("**Reinforcement Activities**"). The Municipality's approval of the proposed Reinforcement Activities shall not be unreasonably withheld, conditioned or delayed. Municipality shall complete its review of the Reinforcement Activities within thirty (30) days of its receipt of the proposed Reinforcement Activities. Upon the Municipality's approval of said plans, the Company shall perform the Reinforcement Activities. Company's performance of the Reinforcement Activities on the Roads shall be conducted so as to minimize the effects on local transportation and shall be coordinated with the Highway Superintendent with respect to its planned construction (if any) affecting the Roads.

5. **Road Surveys and Routes.**

a. Prior to the commencement of Road use activities by Company's Heavy Vehicles during any new Period of Use, at Company's cost, Company shall prepare a suitable video survey of the Roads ("**Pre Construction Report**") identified in identified Exhibits A-1 and A-2 to this Agreement and conduct physical testing of such Roads, including but not limited to, core sampling, falling weight deflectometer and other testing methods, to calculate the actual strength and remaining life of the Roads ("**Physical Roadway Testing**") and shall provide a copy of the video and the Physical Roadway Testing results to the Highway Superintendent at no cost to the Municipality.

b. The Company shall in good faith notify the Highway Superintendent when a Period of Use has concluded and within sixty (60) days thereafter, the Company shall, at Company's cost, prepare a post-construction video Road survey ("**Post Construction Report**") and post-construction Physical Roadway Testing of the Roads identified Exhibits A-1 and A-2 to this Agreement, as well as a report detailing any Damage arising from the Bluestone Construction Activities or other Permitted Uses of the Company ("**Damage Report**").

c. Immediately following the completion of a Post Construction Report and Damage Report, Company will provide the Highway Superintendent with the Post Construction Report and Damage Report, including a copy of the video and results of the post-construction Physical Roadway Testing.

d. The parties shall comply with and repeat the procedures and requirements set forth in Sections 3, 4 and 5 for each Period of Use. Notwithstanding the foregoing, after the Construction Phase and when Company is not operating within a Period of Use, in the event the Bluestone Wind Project requires immediate, emergency repair, which repair is unscheduled, and strict compliance with the time frames of Section 3, 4 and 5 is not possible, then Company shall provide written notice thereof to the Town with as soon as possible, and if prior written notice is not possible given circumstances, then Company need only provide prior telephonic notice to the

Municipality that it will be utilizing the Roads. Under these circumstance only, Company may commence such use without the necessity of the pre-use reports and testing, but shall provide the Post-Construction Report and Damage Report as required and otherwise comply with the provisions of this Agreement.

6. Road Damage.

a. Notwithstanding anything to the contrary in this Agreement, including the definition of the terms "Damage" or "Damages" as described in this Section 6(a), Company shall be obligated to return the Roads identified in identified Exhibits A-1 and A-2, and any other Roads which were damaged by the Bluestone Construction Activities or other Permitted Uses of Company, to an equal or better condition than prior to commencement of the Bluestone Construction Activities. The terms "Damage" or "Damages" as used in this Agreement shall include, but not necessarily be limited to, accelerated deterioration, cracking, imprinting, pitting, tracking, buckling or asphalt and road base damage, damage to culverts, bridges and/or drainage facilities. The terms "Damage" or "Damages" shall not include injuries to the Roads that (1) were present prior to the Company's use thereof by Company's Heavy Vehicles as evidenced by the results of pre-use inspection(s) and report(s); (2) occurred after repairs to the Road were made, at a time Company's Heavy Vehicles were not in use by the Company on the Road and that were not a result of Company's defective repair work; (3) are the result of ordinary wear and tear. With regards to Damage to Roads used by Company's Heavy Vehicles, notwithstanding anything in this Agreement to the contrary, Company shall only be liable for reasonable costs, fees, expenses and any other reasonable bills incurred to or by the Municipality to repair Damage to Roads, and the Municipality agrees that the remedies related to Damages to Roads and repair thereof set forth herein shall be the sole remedies for such Damages.

b. If any Damage occurs to Roads by the use of Roads by Company's Heavy Vehicles or by Company's other Permitted Uses and such Damage is, in the reasonable opinion of the Municipal Engineer and/or Road Committee, an immediate danger to the public using said Road ("**Immediately Dangerous Damage**"), the Municipal Engineer and/or Highway Superintendent shall provide telephonic notice to the Company that there is an Immediately Dangerous Damage to a Road or Roads. In the event that the Company does not immediately undertake the necessary emergency repairs, the Municipality may retain necessary contractors and subcontractors, undertake immediate emergency repairs to said Road and draw upon the Emergency Repairs Escrow Account to cover the costs associated with such emergency repairs. The Municipality shall then provide the Company with documentation detailing the completed repairs and any additional repairs that may be required. Immediately Dangerous Damage includes any condition that in the opinion of the Municipal Engineer (and/or Road Committee) creates a safety risk if not repaired within the next five (5) days. In the event Company becomes aware of any potential Immediately Dangerous Damage, it shall immediately notify the Road Committee of the particulars of such Damage, which the Municipality shall thereafter inspect and, if warranted, repair in the manner described above.

c. Notwithstanding the provisions of Section 6(b), within 45 days following the submittal of the Post Construction Report, post-construction Physical Roadway Testing and Damage Report (if any), the Municipality must notify Company in writing if the Municipality believes Damages to the Roads (other than those which are identified in Company's Damage Report) arise

from Bluestone Construction Activities or other Permitted Uses of Company.

d. Except in the case of Immediately Dangerous Damage covered by Section 6(b), within fifteen (15) days after a receipt of any written notice of allegation of Damage from the Municipality, Company shall notify the Road Committee in writing of its agreement or disagreement with the allegations.

e. Concurrent with Company's response in Section 6(d), Company shall also notify Municipality whether it elects to undertake all or some of the repairs, including retention of necessary contractors and subcontractors and will coordinate such activities with the Road Committee.

f. Except in the case of Immediately Dangerous Damage covered by Section 6(b), with respect to any repairs that are not in dispute and that Company elects not to perform hereunder, Company shall reimburse Municipality for the undisputed repair costs incurred by the Municipality within thirty (30) days after receipt of the invoice. The Municipality's charges shall be based on Municipality maintained time and material cost records, which shall be made available to Company for review upon request. Municipality billing rates shall be those established by the Municipality and shall be uniformly applied to all customers.

g. If Company reasonably disputes the invoice, scope of repair, need for repair or its liability for the repair, Company shall pay any and all amounts not in dispute and Company shall provide a written statement as to its basis for contesting the disputed amount(s) within the same 15-day period. In the event of a dispute, then both Parties shall abide by the dispute resolution procedures set forth in Section 7 below.

h. The manner of repair of any Road Damage described in this Agreement shall be at the reasonable discretion of the Road Committee consistent with the Road or bridge standards that are otherwise applicable throughout the Municipality for the type of road or bridge involved being a guide. The Company shall be required to pay for and install road base materials or surfaces to a condition equal to or better than existed prior to the alleged Damage caused by the Company. By way of example, should Damage occur to an unpaved Road, the Company will not be required to pave such Road. The Parties agree that the roadway repairs will consist of those repair techniques identified in Exhibit E, provided however, the Parties agree that the repair techniques may change in the future and further agree to cooperate in good faith to amend Exhibit E to take into account reasonable advances in repair techniques in consultation with the Municipal Engineer and/or Road Committee.

~~i. Company warrants that all repairs to Damage that it completes under this Agreement (but not those repairs completed solely by Municipality) shall withstand and sustain normal wear and tear for a period of 1 year from the issuance of a Completion Letter. This one year warranty period shall not be deemed to be renewed, or deemed to recommence, upon the second repair of a particular Damage previously repaired by the Company.~~

j. Promptly, upon completion of any repairs required in this Section, the Highway Superintendent will issue a letter in the form of Exhibit F (the "Completion Letter") accepting the repairs and, subject to the Company's warranty in Section 6(i), release the Company from

Damages that may occur from normal wear and tear until the next time period of use by Company's Heavy Vehicles for each Road. To the extent Damage is not identified, subject to the Company's warranty in Section 6(i), such letter from the Highway Superintendent will release the Company from the responsibility of repairing Damages of each of the Roads identified in Exhibit A-1 and A-2 during each applicable time period of non-use by Company's Heavy Vehicles. Notwithstanding anything to the contrary herein or in any Completion Letter, no release from liability shall apply the extent of Roads used by Company's Heavy Vehicles during time periods which have not been agreed to under this Agreement.

7. Dispute Resolution

If a Party has a dispute with the other Party regarding or in connection with this Agreement, then such Party will notify the other Party in writing of such dispute. Before resorting to litigation, the Parties shall use reasonable efforts to settle such dispute through representatives of the Parties for a period of at least thirty (30) days, during which time the parties shall have at least one (1) in-person meeting. Any litigation related to this Agreement shall be initiated before a court of competent jurisdiction located in the State of New York. For the purposes of clarity, in the event a cure period applies pursuant to Section 19, no dispute resolution obligation shall apply until after the expiration, or alleged expiration, of such cure period.

8. Bonding

a. For every Period of Use and for one (1) year following the day that the Highway Superintendent issues the last Completion Letter for such Period of Use (or if no such letter is issued because no Damage was identified or repaired, then the last day of the Period of Use), and also during (and for one (1) year thereafter) any other time period for which Company has been authorized pursuant to this Agreement to use, repair, reinforce or excavate the Roads, Company shall obtain and deliver to the Municipality a bond in the amount of Five Million Dollars (\$5,000,000.00) during the Construction Phase. The Bond amount for any other Period of Use, including the Decommissioning Phase, shall be established by the Parties prior to the commencement of the Company using the Roads for that Period of Use and the amount shall be commiserate with bond amounts for similar projects in the State of New York occurring at that particular time. In the event that the Parties cannot agree on an amount prior to the time the Company needs to use the Roads for a Period of Use, the following shall apply:

- (i) Company will provide a bond in the amount of One Million Dollars (\$1,000,000.00) during a Maintenance Period and, thereafter, will pay for an independent engineer selected by the Town and licensed in the State of New York to determine the amount of the Bond for that specific Maintenance Period. If the independent engineer determines that the amount of the Bond should be greater than One Million Dollars (\$1,000,000.00), then the Company shall obtain an additional Bond (or increase the original Bond) to the new amount and if the independent engineer determines that the amount of the Bond should be less than One Million Dollars (\$1,000,000.00), then Bond amount shall be reduced to the new amount.
- (ii) Company will provide a bond in the amount of Five Million Dollars (\$5,000,000.00) during the Decommissioning Period and, thereafter, will pay for an

independent engineer selected by the Town and licensed in the State of New York to determine the amount of the Bond for the Decommissioning Period. If the independent engineer determines that the amount of the Bond should be greater than Five Million Dollars (5,000,000.00), then the Company shall obtain an additional Bond (or increase the original Bond) to the new amount and if the independent engineer determines that the amount of the Bond should be less than Five Million Dollars (\$5,000,000.00), then Bond amount shall be reduced to the new amount.

b. Each Bond shall be executed by an insurance company with an AM Best Rating of A-/9 or better and authorized to do business in the State of New York.

c. Each Bond shall be released by the Municipality at the expiration of the applicable warranty period as set forth in Section 6(i).

d. Company shall be listed as principal with the instrument benefiting the Municipality, as obligee and shall be conditioned that the Company will comply with the terms and conditions of this Agreement. The original bond shall be delivered to the appropriate Municipal employee or supervisor.

e. In the event that the Company does not undertake repairs, fails to properly complete repairs or reimburse the Municipality in the time allotted under Section 6 above and the Emergency Repairs Escrow Account has been depleted, the Municipality shall be authorized to demand payment from and against any bond to recover any amounts due from the Company for repairs to the Roads and/or bridges. Upon receipt of the monies, the Municipality will proceed with completing the required repairs. Nothing in this subsection will prevent the Municipality from proceeding by way of a civil action to obtain compliance and abate the default.

f. In the event the Bond contains a stated termination date, then Company shall renew or obtain a new Bond in the agreed upon amount no later than 30 days prior to the stated termination date. Should Company convey any or all of its interest in this Agreement, then the new owner will obtain a Bond to comply with this Agreement.

g. The Bond is to guarantee reimbursement to the Municipality for all reasonable costs of labor, material and equipment expenses the Municipality may incur in repairing any Road consistent with the provisions of this Agreement.

h. The cancellation of any Bond will not release the Company from its obligation to meet all of the requirements of this Agreement.

i. Nothing in this Section 8 shall be construed to result in a waiver of any rights of the Company, bonding company or insurance institution issuing a bond to dispute or challenge any claims for payment by the Municipality for alleged Damage to its Roads.

j. The Municipality shall take all action and execute such documents as are reasonably requested by Company to evidence the release of the Bonds as contemplated in this Section 8.

9. Indemnification and Insurance.

Upon the Effective Date, Company shall purchase and maintain insurance of the following types and form during the Term, and the Company shall ensure that its vendors, contractors, subcontractors, and/or haulers obtain and maintain the types and forms of insurance during the Term that are reasonable. Company shall furnish Municipality with certificates of insurance and endorsements of all required insurance, as may be reasonably requested.

a. Company shall maintain, at its own cost and expense, a minimum level of commercial general liability insurance of five million dollars (\$5,000,000) for each occurrence, and ten million dollars (\$10,000,000) in the aggregate. Insurance coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form or claims made form. Company agrees that it will include the Municipality as an additional insured. Coverage for the additional insured shall apply as primary and non-contributing before any other insurance, including any deductible, maintained by, or provided to, the additional insured. All insurers shall have at least an A - (VII) or better rating by A.M Best and be qualified to do business in the jurisdiction where the Project is located. Company shall maintain CGL coverage for itself and all additional insured throughout the Term of this Agreement, and for at least two (2) years after the termination of this Agreement.

b. Company shall have Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, at the premises where the work is performed. Employers' Liability insurance shall not be less than five hundred thousand dollars (\$500,000) for injury or death each accident

c. Company shall provide 30 days' notice to the Municipality prior to cancellation of any coverage.

d. Indemnification by the Municipality. The Municipality hereby releases and agrees to indemnify and hold harmless Company, its members and Affiliates and its and their officers, directors, contractors, subcontractors, employees, successors and assigns (hereinafter collectively "Company Wind Releasees") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the Company Wind Releasees arising out of or resulting from the Municipality's negligent or willful misconduct in the course of Municipality's completion of any Road repairs under this Agreement. More particularly, but without in any way limiting the foregoing, the Municipality hereby releases the Company Wind Releasees and agree to indemnify and hold harmless the Company Wind Releasees from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any Road by the Municipality, its respective employees, agents, representatives or contractors or its respective employees, agents or representatives.

e. Indemnification, Waiver and Forbearance. To the fullest extent permitted by law, Company shall defend, indemnify and hold harmless the Municipality, its agents, officers, board members and employees from and against all claims, damages, losses and expenses (including

reasonable attorneys' fees), arising out of or resulting from Company's breach of this Agreement, Damage to the Roads, or Company's negligent or willful misconduct in the course of Company's completion of Road repairs under this Agreement. With respect to injuries to persons for whom Company has secured the payment of compensation as provided under the New York Workers' Compensation Law and which Company has agreed in this section to provide indemnification to the Municipality, this provision shall be construed as one by which the Company has expressly agreed to contribution or indemnification of the Municipality within the meaning of New York Workers' Compensation Law § 11. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist as to any party or person described in this section. In any and all claims against Municipality or any of its agents or employees by any employee of Company, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Company under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. So long as the Company materially complies with the terms and provisions of this Agreement, the Municipality further agrees that it shall not seek, obtain or enforce punitive damages, including, but not limited to treble damages set forth in New York Highway Law Section 320 for Damages to the Roads, and that Damages successfully remediated pursuant to this Agreement shall not be considered damages subject to the provisions of New York Highway Law Section 320. Notwithstanding anything to the contrary herein, but subject to the waiver of rights under Highway Law § 320, the Municipality has not waived any and all other rights and remedies that may be available and applicable under the New York State, local and federal law, including but not limited to, the New York Highway Law, Town Law and General Municipal Law.

f. **No Consequential Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT IT IS THE INTENT THAT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ITS RELATED PERSONS, FOR CLAIMS FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY NATURE CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED UPON NEGLIGENCE, STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

10. Captions and Headings.

Captions and headings throughout this agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this agreement nor in any way affect this Agreement.

11. Modifications.

This Agreement cannot be changed orally, but only by agreement in writing signed by the Parties against whom enforcement of the change, modification or discharge is sought or by its duly authorized agent.

12. Severability; No Waiver.

If any provision of this Agreement, or any portion of any provision of this Agreement, is declared null and void, such provision or such portion of a provision shall be considered separate and apart from the remainder of this Agreement, which shall remain in full force and effect. The waiver by any Party hereto of a breach or violation of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation.

13. Governing Law.

This Agreement shall be governed and construed in accordance with the laws of the State of New York.

14. Binding Effect/Assignment.

a. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns.

b. Company may, without the consent of the Municipality, assign this Agreement or any or *all* of its rights, interests or obligations under this Agreement to (i) an affiliate of Company, (ii) an entity to which Company has conveyed or leased the Bluestone Wind Project, or (iii) any corporation, partnership, limited liability company or other business entity that acquires all or substantially all of the assets used in connection with the Bluestone Wind Project; provided further that, assignee agrees in writing to be bound by the terms of this Agreement. Company or the assignee shall provide notice of the assignment of this Agreement prior to assignee using the Roads pursuant to the terms of this Agreement.

c. Company may, without the consent of the Municipality, pledge, mortgage, grant a security interest in, or otherwise collaterally assign this Agreement or any or all of its rights, interests and obligations under this Agreement to any lender or equity provider providing financing for the Bluestone Wind Project as security for Company's obligations under the financing agreements (including a trustee or agent for the benefit of its lenders) (a "**Permitted Collateral Assignee**"). In connection with any such collateral assignment to a Permitted Collateral Assignee, the Municipality shall, upon the request of Company, deliver to Company and the Permitted Collateral Assignee without delay a consent agreement in a form reasonably requested by Company and the Permitted Collateral Assignee and which shall contain customary provisions.

15. Entire Agreement.

The entire agreement of the Parties is contained in this Agreement. No promises, inducements or considerations have been offered or accepted except as herein set forth. This Agreement supersedes any prior oral or written agreement, understandings, discussion, negotiations, and offers of judgment or statements concerning the subject matter thereof. The parties hereto agree to execute and deliver such other documents and to perform such other acts

as may, from time to time, be reasonably required to give full force and effect to the intent and purpose of this Agreement.

16. Counterparts.

This Agreement may be entered in counterparts, each of which will be considered an original, and all of said counterparts shall together constitute one and the same instrument which may be sufficiently evidenced by one counterpart.

17. Authority of Parties.

The individuals who have executed this Agreement on behalf of the respective Parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.

18. Notice.

a. Except where telephonic notice is required in Section 3(d)(2) and Section 6(b) and when providing telephonic notice to the other Party in the event of an emergency, any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (1) upon hand delivery, or (2) on the first day following delivery via a nationally registered United States overnight courier service. Prior to the commencement of Road use activities by Company's Heavy Vehicles, Company shall provide a telephone number in writing to the Municipality and Highway Superintendent where a Company representative will be available 24 hours a day and, thereafter, Highway Superintendent shall provide a telephone number to the Company. The Parties agree that whenever there is an emergency situation, the Party shall provide telephonic notice to the other Party in a reasonable amount of time following the emergency.

b. For purposes of this Agreement only, any notices to the Parties, other than telephonic notices, shall be directed to the Parties as set forth below:

For Company: Bluestone Wind, LLC
717 Texas Avenue, Suite 1000
Houston, TX 77002
Attention: Land Department

With a copy to: Bluestone Wind, LLC
717 Texas Avenue, Suite 1000
Houston, TX 77002
Attn: Chief Legal Officer

For Municipality: Town of Sanford
91 Second St.
Deposit, NY 13754
Attn: Town Supervisor

For Highway Superintendent: Town of Sanford Highway Superintendent
91 Second St.
Deposit, NY 13754

With a copy to: Coughlin & Gerhart, LLP
99 Corporate Drive
Binghamton, NY 13904
Attn: Brady Begeal

The Parties may change their notice addresses upon written notice to the other Party using a method set forth in this Section 18.

19. Cure.

a. In the event the Municipality believes a default in the obligations of the Company under this Agreement has occurred, Municipality shall give Company written notice of such alleged default and the Company shall have thirty (30) days (or ten (10) days for alleged defaults which are already subject to an express time period, such as, for example, Company's obligation to replenish escrow funds in Section 3(h)), or longer if the Agreement expressly allows for a longer cure period, from the receipt of such notice to cure such alleged default, except that should the nature of the alleged default be such that it cannot be reasonably cured within such thirty (30) days, Company shall commence and diligently continue cure activities within such thirty (30) days and shall have a reasonable amount of time after the expiration of the thirty (30) (or ten (10) day period to cure such alleged default, provided however, such additional cure period shall not exceed one hundred and twenty (120) days. No cure period shall apply to a default that requires immediate attention pursuant to Section 6 of this Agreement. Notwithstanding anything in this Section 19 to the contrary, the Company shall have a reasonable amount of time to cure an alleged default with regard to its obligations regarding disposal of debris and the blockage of traffic.

b. In the event the Company believes a default in the obligations of the Municipality under this Agreement has occurred, Company shall give Municipality written notice of such alleged default and Municipality shall have thirty (30) days (or ten (10) days for alleged defaults which are already subject to an express time period, such as, for example, Municipality's obligation to return the balance of escrow funds in Section 3(h)) or longer if the Agreement expressly allows for a longer cure period from the receipt of such notice to cure such alleged default, except that should the nature of the alleged default be such that it cannot be reasonably cured within such thirty (30) days, Municipality shall commence and diligently continue cure activities within such thirty (30) days and shall have a reasonable amount of time after the expiration of the thirty (30) day period to cure such alleged default, provided however, such additional cure period shall not exceed one hundred and twenty (120) days.

20. Further Assurances

Each Party agrees to reasonably cooperate with the other Party's reasonable use of Roads.

21. Term.

a. The term of this Agreement shall become effective as of the date first written above and shall remain in effect, unless terminated earlier in accordance with this Agreement, until the date that is thirty (30) days after the date on which the Bluestone Wind Project facilities are decommissioned in accordance with this Agreement ("Term").

b. Municipality agrees that the Company's right to place Cables and Utility Poles and other infrastructure as permitted herein in the Roads and in the Municipality's right of way shall be irrevocable during the Term.

22. Restoration and Decommissioning

Unless otherwise agreed by Municipality, Company shall restore to the original condition all temporary construction easements and turning radii within 180 days after Company's delivery of the Post Construction Report during the Decommissioning Phase. Prior to the end of the Term of this Agreement, Company shall remove the above-ground Cables and Utility Poles. Company shall be permitted to leave in place all underground Cables and other infrastructure buried to depth of 48 inches or greater, otherwise Company shall remove such facilities prior to the end of the Term of this Agreement. With respect to underground Cables and other underground infrastructure left in place after the Term such infrastructure may be removed by the Town at its sole discretion. Company shall be permitted to leave in place all Road improvements, driveways and curb cuts.

23. Intentionally Omitted

24. Force Majeure

a. Force Majeure Event Defined. As used in this Agreement, "Force Majeure Event" means causes or events that are beyond the reasonable control of, and without the fault or negligence of, the Party claiming such Force Majeure Event, including, without limitation, natural disasters; fire; lightning strikes; earthquake; acts of God; unusually or unseasonably severe actions of the elements such as snow, floods, hurricanes, or tornadoes; causes or events affecting the performance of third-party suppliers of goods or services to the extent caused by an event that otherwise is a Force Majeure Event under this Section 24; sabotage; terrorism; war; riots or public disorders; strikes or other labor disputes; and actions or failures to act (including expropriation and requisition) of any governmental agency, to the extent such cause or event prevents or delays performance of any obligation imposed on the Party claiming such Force Majeure Event (other than an obligation to pay money).

b. Applicability of Force Majeure Event. No Party will be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

- (1) the non-performing Party will give the other Parties written notice

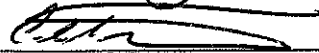
within forty eight (48) hours of the commencement of the Force Majeure Event, with details to be supplied within fourteen (14) calendar days after the commencement of the Force Majeure Event further describing the particulars of the occurrence of the Force Majeure Event;

- (2) the delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;
- (3) the Party whose performance is delayed or prevented will proceed with commercially reasonable efforts to overcome the events or circumstances preventing or delaying performance and will provide a written report to the other Parties during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions and the expected date by which performance will no longer be affected by the Force Majeure Event; and
- (4) when the performance of the Party claiming the Force Majeure event is no longer being delayed or prevented, that Party will give the other Parties written notice to that effect.

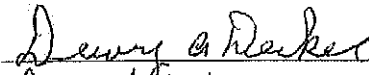
[signature page to follow]

IN WITNESS WHEREOF, Company and the Municipality have caused their respective, duly authorized officers to execute this Agreement under seal as of the day and year first above written.

Bluestone Wind, LLC 

By: 
Name: Caleb Stephenson
Title: Vice President
Date: July 10, 2018

Town of Sanford

By: 
Name: Dewey A. Decker
Title: Town Supervisor
Date: July 10, 2018

List of Exhibits – To be provided by Company at a later date as set forth in the Agreement

- Exhibit A-1: List of Roads
- Exhibit A-2: Map of Roads
- Exhibit B-1: Locations of Underground Cables
- Exhibit B-2: Locations of Overhead Cables and Utility Poles
- Exhibit C: Locations of Temporary Construction Easements and Turning Radii
- Exhibit D: Location of Driveways and Curb Cuts
- Exhibit E: Repair Techniques
- Exhibit F: Road Inspection and Release Completion Letter

Exhibit A-1
List of Roads
[To be Provided Prior to Construction]

Exhibit A-2

Map

[To be Provided Prior to Construction]

Exhibit B-1

Locations of Underground Cables

[To be Provided Prior to Construction]

Exhibit B -2
Locations of Overhead Cables and Utility Poles
[To be Provided Prior to Construction]

Exhibit C

Locations of Temporary Construction Easements and Turning Radii

[To be Provided Prior to Construction]

Exhibit D

Location of Driveways and Curb Cuts

[To be Provided Prior to Construction]

Exhibit E

Repair Techniques

Paved Surface:

Base Repair (hot mix areas)	Surface Repair (Gouges, track marks)	Base Repair (cold mix areas)
Mill four inches in depth to the limits of the repair as field located	Chip seal in accordance with NYDOT Section 405 full lane width in the area of the surface	Mill four inches in depth to the limits of the repair as field located
Install two inches of NYDOT Section 402 19 mm hot mix	NYDOT hot mix (shim) may be applied in areas of minor depressions at the Town's direction	Install four inches of NYDOT Section 405 cold mix bituminous pavement, Type 2 and chip seal the surface using limestone chip seal
Install two inches of NYDOT		Seal surface in accordance with NYDOT Section 405
Seal edges with NYDOT joint sealant		

Hot/Cold mix areas: Prior to use of the Roads by Company's Heavy Vehicles, Municipality shall notify Company as to which paved Roads are hot mix areas and which are cold mix areas. If Company has an objection as to whether a Road is a hot mix area or a cold mix area, it can provide evidence of the contrary with a core sample of the Road. The results of the core sample shall be conclusive evidence regarding hot mix or cold mix area.

Exception: if base failure area requires excavation and stone, a reasonable field determination will be made for depth and size of the repair. Also, field adjustments for paved surfaces and base may be made upon mutual agreement.

Chip Seal Surface:

Loss of surface material:	Base Repair:(excess rutting or base failure)
Install NYDOT Section 410 Bituminous Surface Treatment in areas where existing surface material loss occurs.	Profile the roadway by a full depth reclamation in four to eight inch lifts using a calcium chloride binder
Spot chip seal repairs will be applied on an as needed basis using limestone chip	Install a NYDOT double chip seal over the reprofiled area using limestone chip seal

Aggregate and Dirt Surfaces:

Regrade and reshape rutted aggregate and dirt surfaces	Apply dust control as determined to be necessary. Water or commercial dust control
Repair ditch lines as necessary	Furnish and install 4 inches of crusher run aggregate in the areas of repair.

Scope of repairs will be field inspected and compared to the existing conditions as recorded by Road video collected prior to the start of the use of each Road by Company's Heavy Vehicles. A copy will be provided to the Municipality for use of comparison to the Municipality video should the Municipality choose to prepare its own video record.

Should temperatures or seasonal restrictions apply, the Municipality may elect to waive temperature and seasonal restrictions or delay the repairs until Section 402 and 410 specifications can be met.

Notifications:

1. Company will notify and provide updates to the Municipality of the project schedule and the approximate time periods Company's Heavy Vehicles will be using the Municipality's Roads
2. Company will request a pre-use inspection of the Roads listed in the Road Use Agreement by the Municipality Representatives and Company representatives for identification of any existing Road damage prior to the time period of use by Company's Heavy Vehicles.
3. Company will request a post-use inspection of the roads listed in the Road Use Agreement by the Municipal Representatives and Company representatives for identification of any new Road damage associated with the time period of use by Company's Heavy Vehicles.

Completion:

Upon completion of the construction of the Bluestone Wind Project, Company will contact the Municipality to schedule the final inspection of the Roads listed in the Road Use Agreement for release of the Roads from the Road Use Agreement and/or identification of repairs.

Exhibit F

Road Inspection and Release

Whereas the Town of Sanford has inspected and approved the necessary repairs on _____ Road
(the "Road") on _____ 20 _____.

The Town of Sanford hereby releases Company, according to the terms of the Road Use
Agreement dated _____ 20 _____, from any future repairs on the Road
from the following date: _____ 20 _____.

Town of Sanford
