

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on December 15, 2011

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
Maureen F. Harris  
Robert E. Curry, Jr.  
James L. Larocca

CASE 11-E-0351 - Petition of Stony Creek Energy LLC for a  
Certificate of Public Convenience and  
Necessity, to Establish Lightened Regulation  
and for Approval of Debt Financing.

ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY, PROVIDING FOR LIGHTENED  
RATE MAKING REGULATION AND APPROVING FINANCING

(Issued and Effective December 15, 2011)

TABLE OF CONTENTS

INTRODUCTION.....1

    THE PETITION.....3

        The Petitioner.....3

        The CPCN Request.....4

        The Lightened Regulation Request.....5

        The Financing Approval Request.....5

COMMENTS AND PUBLIC STATEMENTS.....6

MOTION, NOTICE AND RESPONSES.....10

DISCUSSION AND CONCLUSION.....15

    State Environmental Quality Review.....15

    Historic Preservation Review.....18

    Procedural Matters.....19

        Obligations of Lead and Involved Agencies  
        Under SEQRA.....19

        Need for Additional Information and  
        Evidentiary Hearing.....25

    Public Convenience and Necessity.....27

    Electric Regulation.....37

    Project Financing.....41

    The Commission Orders .....42

FINDINGS STATEMENT

APPENDIX

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on December 15, 2011

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
Maureen F. Harris  
Robert E. Curry, Jr.  
James L. Larocca

CASE 11-E-0351 - Petition of Stony Creek Energy LLC for a  
Certificate of Public Convenience and  
Necessity, to Establish Lightened Regulation  
and for Approval of Debt Financing.

ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY, PROVIDING FOR LIGHTENED  
RATE MAKING REGULATION AND APPROVING FINANCING

(Issued and Effective December 15, 2011)

BY THE COMMISSION:

INTRODUCTION

By Petition filed July 5, 2011<sup>1</sup>, Stony Creek Energy LLC  
(Stony Creek or Petitioner) seeks a license (a Certificate of  
Public Convenience and Necessity [CPCN]) authorizing the  
construction of a wind energy facility with a generating  
capacity of up to 94.4 Megawatts (MW) in the Town of Orangeville  
(Orangeville or Town), Wyoming County, pursuant to §68 of the  
Public Service Law (PSL).<sup>2</sup> Petitioner also seeks the

---

<sup>1</sup> The petition was supplemented on September 8 and 30,  
October 27, November 2 and 9, and December 1, 2011.

<sup>2</sup> The project was subject to an environmental review pursuant to  
the State Environmental Quality Review Act (SEQRA) that was  
conducted by the Town as lead agency (as further discussed  
below).

establishment of a lightened regulatory regime and requests approval of its debt financing plans.

Notice of the Petition for Lightened Regulation and Financing Approval was published in the State Register on July 27, 2011, in conformance with State Administrative Procedure Act (SAPA) §202(1), which provides for notice and comments regarding activities defined as rules. The SAPA §202(1)(a) period for submitting comments in response to the notice expired on September 12, 2011; 14 commenters expressed their views by such deadline, 10 of which commented on the lightened regulation request or the request for debt financing approval. Thereafter, 12 additional commenters submitted public comments regarding the petition.<sup>3</sup> On August 4, September 13 and November 10, 2011, Stony Creek submitted responses to the public comments.

Between September 2 and 12, 2011, representatives of Clear Skies Over Orangeville (CSOO or Clear Skies),<sup>4</sup> Ms. Lynn Lomanto, Cobble Hill Airport, and R&R Aero requested party status; such requests were unopposed and are granted.<sup>5</sup>

Pursuant to an August 18, 2011 notice, public statement hearings concerning the Petition were held before Administrative Law Judge (ALJ) Michelle L. Phillips in Warsaw, New York on September 14, 2011. At the hearings, a total of 22 speakers made statements on the record (including both parties and non-parties); in addition, some of them submitted documents to the ALJ.

---

<sup>3</sup> The names of those who submitted comments are listed in an Appendix to this order.

<sup>4</sup> CSOO had also submitted comments in the SEQRA review conducted by Orangeville.

<sup>5</sup> According to 16 NYCRR §4.3(b)(1) the Petitioner is also a party.

THE PETITION

The Petitioner

Stony Creek is a Delaware limited liability company and a wholly-owned subsidiary of Invenergy Wind North America LLC (Invenergy), which is an affiliate of Invenergy LLC. Petitioner states that new membership layers in Stony Creek Energy will be created for tax equity partners if and when tax equity financing is used.

Invenergy has developed, financed and constructed over 20 wind generation projects throughout North America and Europe totaling over 2,200 MW of capacity. Facilities in operation include the 112.5 MW High Sheldon Wind Farm that an Invenergy subsidiary operates in the Town of Sheldon, Wyoming County, New York. High Sheldon Wind Farm is the only electric generating capacity owned or controlled by Invenergy in the New York Independent System Operator (NYISO) market. Invenergy owns or controls generating capacity in the PJM Interconnection market totaling 439.5 MW.<sup>6</sup>

The petition includes a certified copy of Stony Creek's certificate of formation in the State of Delaware, a certified copy of its certificate of authority to do business in New York as a foreign limited liability company and a certified copy of its certificate of publication in New York State. A supplement to the petition contains a verified statement of an official of the Petitioner that all required consents as to the use of municipal property have been obtained.

Stony Creek proposes to sell the output of the Facility into the wholesale markets through bilateral contracts and the spot markets administered by NYISO or adjacent control

---

<sup>6</sup> Of Invenergy's six wind facilities operating in the PJM Interconnection market, one is in West Virginia and five are in Illinois.

areas such as New England or Ontario. The Petitioner will sell renewable energy credits (RECs) or environmental attributes to buyers such as the New York State Energy Research and Development Authority (NYSERDA), green tag marketers and other buyers. For the first ten years of operation, Stony Creek will sell 95 percent of the Facility's RECs to NYSERDA, under an REC contract awarded under NYSERDA RFP 2226. In addition, the Petitioner will offer to sell capacity, voltage support and ancillary services in the NYISO markets.

#### The CPCN Request

The electric plant for which the Petitioner seeks a CPCN is proposed to consist of 59 wind turbine generators, each with a capacity of 1.6 MW and a maximum height of 427 feet, as well as supporting infrastructure and equipment, including: turbine foundations; service and access roads; an electricity collection system with pad mounted transformers; a metal operations and maintenance (O&M) building approximately 4,000 square feet in size; and a 34.5-kV to 230-kV Facility substation, which will connect the project to an existing 230 kV transmission line owned by New York State Electric & Gas Corporation (NYSEG).<sup>7</sup>

According to the petition, Stony Creek's facility will further New York State's policies by promoting competition while providing renewable, emission-free electric generation to the State. Further, Stony Creek states that, the proposed facility will be interconnected to the New York Transmission System with no adverse impact to system reliability. Construction and

---

<sup>7</sup> Stony Creek anticipates entering into an Interconnection Agreement with the NYISO and NYSEG and is negotiating with NYSEG an Engineering and Procurement Agreement covering design and procurement work related to the interconnection.

operation of the facility are economically feasible in light of the contract with NYSERDA and other programs adopted to promote wind development. The facility is backed by Invenergy, which has the expertise and resources to successfully finance, construct and operate the facility. The Petitioner requests a waiver of the requirement to provide a generator-specific deliverability study,<sup>8</sup> it later supplemented its petition by providing some additional information.

#### The Lightened Regulation Request

Stony Creek seeks a lightened regulatory regime similar to that found appropriate for other independent power producers engaged in selling electricity at wholesale. Petitioner cites Commission precedent in support of its request. Stony Creek is not affiliated with a retail power marketer engaged in the retail sale of electricity in the NYISO market.

#### The Financing Approval Request

To date, Stony Creek has been funded with development equity supplied by its parent, Invenergy. Development equity will continue to support the facility through the initial phases of construction. Once major construction is underway, construction will be funded through a combination of parent equity and a construction loan from one or more financial institutions in an amount not-to-exceed \$240,000.00. In addition to providing construction funds, the loan proceeds will be used to fund letters of credit to secure Stony Creek's

---

<sup>8</sup> Case 09-E-0497, In the Matter of Generator-Specific Energy Deliverability Study Methodology, Order Prescribing Study Methodology (issued October 20, 2009) (Deliverability Study Order).

obligations to NYSERDA and NYSEG. The loan will be secured by a mortgage on all facility assets.

After construction is complete, Stony Creek's ownership will likely be restructured such that a significant ownership interest will be held by tax equity owners whose investment will be used to repay all or part of the construction loan. Management of the facility will remain under Invenergy's control.

The contemplated debt financing will enable Stony Creek to create the benefits associated with the facility and, accordingly, it argues, the public interest will be promoted by its approval. Citing Commission precedent, Petitioner also requests that the financing approval include the flexibility typically extended to lightly-regulated entities to modify, without prior Commission approval, the identity of the financing entities, payment terms, and the amount financed up to \$240,000.00.

#### COMMENTS AND PUBLIC STATEMENTS

Public comments on the petition were received, including 68 letters submitted via electronic mail, and record statements at the public statement hearings held in Warsaw on September 14, 2011.<sup>9</sup> The comments received cover a wide range of issues in seven broad topic areas: environmental, public health, infrastructure impacts, real property impacts, siting review sufficiency, safety and public interest.

Commenters raise several environmental issues. Regarding turbine operational impacts, they express concern as to noise, shadow flicker and visual impacts on non-participating

---

<sup>9</sup> Some commenters submitted more than one piece of correspondence.



residents and landowners. Regarding land use impacts, commenters discuss turbine location conflicts with private airstrip and public airspace use, residential impacts from industrial project operation, recreational impacts due to noise, and visual impacts and claimed turbine hazards. On the issues of wetland and wildlife impacts, commenters address effects on rare, threatened and endangered species, bird and bat mortality levels, the sufficiency of the wildlife monitoring plan, the claimed failure to fully analyze wetland impacts, the suitability of sites for wetland mitigation and herbicide impacts. Concerning water resources impacts, they discuss construction and operational effects on public water supply sources and on private wells, impacts on stream habitat and herbicide effects. Regarding pollutant emissions, commenters express a concern that the operation of wind energy facilities increases emissions from baseload plants due to cycling and standby operation, thus increasing acid rain and smog. Regarding project alternatives, they claim that the alternatives of hydro-electric facilities and nuclear plants, smaller turbines or fewer turbines and energy conservation and demand side management measures were not studied as alternatives to the proposed facility.

Comments received include several relating to safety issues. Concerns raised include the view that the turbine setback distances are not sufficient in relation to residential areas, private property, and natural gas pipelines. Comments also raise concerns relating to lighting protection given the turbine locations in proximity to those areas. Concerns also relate to safety and transportation, specifically addressing the proximity of turbine locations from public roadways, how the turbines may affect public air-space at existing local air

strips, and the potential impact of the turbines on low-elevation flights at those airstrips.

Other comments cover concerns of physical hazards based on the turbine locations, including ice throw, turbine collapse, and fire hazards resulting from the turbines. Comments received also discuss concerns with public health issues. Commenters raise concerns about turbine noise and shadow flicker that could lead to sleep disturbance, stress and anxiety. Several comments received discuss Wind Turbine Syndrome; a book was submitted on this topic.<sup>10</sup> With respect to Wind Turbine Syndrome, commenters describe impacts that may occur to persons based on audible and inaudible noise from the turbines and may result in disruption of the human vestibular system and related sleep loss, stress and anxiety reactions. Another health concern raised related to bat mortality, with commenters noting that, with a reduced bat population there may be an increase in the mosquito population and a greater likelihood in the prevalence of the West Nile Virus.

Several comments received discuss the project's potential to affect local infrastructure. The concerns raised included interference with radar and telecommunications resources, the use of roadways, and potential effects on gas transmission pipeline safety.

Commenters report concerns with the project on property interests. Concerns discuss the potential for property devaluation and potential difficulties with selling commenters' homes, if desired, and to relocate. Comments discuss a variety of impacts that may occur in residential areas.

---

<sup>10</sup> Nina Pierpoint, MD, PhD, Wind Turbine Syndrome: A Report on a Natural Experiment (K-Selected Books 2009).

Many of the comments received relate to the sufficiency of the siting review process. Concerns raised included alleged conflicts of interest by local decision-makers, SEQRA and Environmental Impact Statement (EIS) sufficiency, the review of cumulative impacts, consideration of alternative arrangements in the siting process that was not provided for, sufficiency of review of project changes, a concern that there was no supplemental Draft EIS, and that project layout changes made since the Draft EIS were not fully discussed in the Final EIS and that the public accordingly did not have the opportunity to fully review such changes.

Comments received cover a variety of topics relating to the public interest. Commenters raise concerns about the subsidization of wind energy, that such subsidies increase costs to taxpayers and ratepayers, and that wind project development reduces regional employment. The comments voice concerns with the efficiency of wind energy, stating that intermittent power increases the inefficiencies of baseload generating plants that may ultimately cause air emissions to increase rather than decrease. The commenters discuss the impact of siting wind facilities on the community "fabric", reporting about the divisions that occur between families and friends based on their positions on hosting a wind facility in a community. The comments demonstrate a concern with the corporate financing and the viability of the project. The commenters contend that the business plan is vague and profitability of such a facility is questionable. They opine that the project is not necessarily the "best deal for the community" and that a municipal project was not considered.

Commenters also submitted comments relating to reliability. The comments assert that there is a potentially dramatic increase in indigenous New York State gas supply

pending and that the gas will support reliable and clean electricity generation. The commenters opine that the Stony Creek project will displace other renewable generation on interconnected transmission lines, and that the project is really about profit rather than providing reliable clean energy. Commenters also urge consideration of alternatives to investments of public funds (including RECs and tax subsidies) in subsidizing wind projects, the promotion of co-generation facilities, distributed generation, load management and demand side management. Commenters state that energy efficiency could displace wind projects with no adverse impacts. Finally, several comments ostensibly related to Stony Creek's request for a lightened regulatory regime note that subsidies and special treatment for large corporations should not be continued, that tax subsidies for large wind projects should no longer be permissible and urge that the Commission reject Stony Creek's request.

MOTION, NOTICE AND RESPONSES

On October 17, 2011, CSOO filed a Motion for Evidentiary Hearing and for Additional Information. It explains the basis of the motion as "the inability of the Commission to rely on seriously deficient Draft and Final [EISs] issued by the Town Board of the Town of Orangeville as lead agency to support findings required of the Commission as an involved agency under the State Environmental Quality Review Act".<sup>11</sup> The motion requests a directive that Stony Creek provide additional information "regarding noise and wildlife impacts" and "addressing...the failure of the applicant to demonstrate that generated electricity will be deliverable without displacing other non- or low-emissions generators, and...the failure of the

---

<sup>11</sup> Motion, p. 2.

applicant to demonstrate that substantial emissions offsets would result from the project".<sup>12</sup> The motion also asks for a decision "scheduling pre-filed testimony of the parties' experts, and scheduling an evidentiary hearing on the additional information and pre-filed testimony".<sup>13</sup>

According to CSOO, the Commission must certify that potentially significant noise impacts and the extensive habitat destruction and taking of protected wildlife species identified in the course of the lead agency's environmental impact review have been avoided or minimized to the maximum extent practicable. It offers to prove through an acoustic expert that Stony Creek's alleged failures to comply with accepted noise protocols and methodologies will result in exceeding Orangeville's noise limits for wind facilities. Clear Skies also offers to show through an expert that Stony Creek has failed to identify wildlife and wildlife habitat impacts throughout the project area and to evaluate the cumulative impacts to wildlife that can be expected to result from operation of four commercial wind farms in close proximity of each other within Wyoming County.

CSOO opines that the Petitioner has failed to demonstrate that energy from its proposed facility would be deliverable without displacing other low-emissions generators, as required by the Commission.<sup>14</sup> CSOO contends that, if a new renewable generator like Stony Creek would be unable to contribute to load (because it would receive no preference over existing renewables and must-run generators), the Commission should conclude that there is insufficient public need for the

---

<sup>12</sup> Motion, pp. 2, 3.

<sup>13</sup> Motion, p. 2.

<sup>14</sup> Case 09-E-0497, supra.

new facility. Clear Skies asserts that generator-specific load levels should be addressed in order for Stony Creek to qualify for a waiver of the deliverability study requirement. CSOO claims that, because the lead agency did not consider a generator specific-deliverability study, its conclusions about the balance of potential impacts and public benefits cannot be relied on.

According to Clear Skies, Stony Creek has failed to demonstrate sufficient emission reduction benefits to establish a public need for its project. It argues that none of the involved agencies in the SEQRA review of Stony Creek's project analyzed reduced emissions from fossil-fired energy facilities, particularly in the vicinity of Wyoming County. It also maintains that, while the lead agency acknowledged the value of a life cycle analysis of emissions generated by the project, no such analysis was provided. CSOO claims, therefore, that Stony Creek should be required to provide additional information to evaluate the reduction in pollutant emissions resulting from the operation of its project, as well as the project's life cycle emissions, including the emissions from manufacturing and transportation of the turbines.

In its response to the motion (filed on October 25, 2011), the Petitioner alleges that the motion was untimely. It refers to the comment period pursuant to SAPA §202(1)(a) as being applicable to this proceeding, given that no deadline for the filing of motions is established in 16 NYCRR §3.6.

Stony Creek contends that the motion is an improper collateral attack on the lead agency's acceptance of the Final EIS, stating that the project's noise impact and impacts on wildlife were addressed in the Final EIS. It maintains that these issues are not encompassed by the finding of public convenience and necessity required by PSL §68, citing 16 NYCRR

§21.3. It acknowledges that, as an involved agency, the Commission must make its own SEQRA findings, but states that the Commission must consider the relevant environmental impacts, facts and conclusions disclosed in the Final EIS, in accordance with 6 NYCRR §617.11(d).

According to the Petitioner, Clear Skies' motion raises no material issues regarding deliverability and public need. Stony Creek asserts that the Final EIS includes an analysis of deliverability, that the petition (as supplemented) provides additional information and that CSOO misinterprets the Commission's Deliverability Study Order. Citing a recent Commission decision,<sup>15</sup> the Petitioner claims that CSOO's public benefit contention represents a misreading of the Commission's precedent regarding the granting of CPCN. Stony Creek states further that Clear Skies cites no authority for its argument that a life cycle analysis of emissions generated by the project is a PSL §68 prerequisite.

On October 27 and November 2, 2011, Stony Creek supplemented its petition regarding, inter alia, operational noise issues and deliverability study methodology. In a notice issued on November 4, 2011, the Secretary stated that these supplements bear on whether evidentiary hearings are required and how the record should be completed and evidence considered pursuant to the requirements of SAPA Article 3.<sup>16</sup> The notice established November 10, 2011 as the deadline by which any party might comment, object, or otherwise respond to the supplements.

---

<sup>15</sup> Case 07-E-1343, Marble River, LLC, Order Granting Amendment to Certificate of Public Convenience and Necessity (issued June 21, 2011).

<sup>16</sup> SAPA §401(1) provides, in pertinent part: "when licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning adjudicatory proceedings apply."

In a timely response to the notice, CSOO argues that the interpretation of the Deliverability Study Order "is an appropriate subject for a hearing, since exploring the meaning and effect of the Order adds to the completeness of the record."<sup>17</sup> It claims that Stony Creek should be required to model a circumstance where all existing or contracted wind is at 100 percent, and all hydro at 99 percent. CSOO avers that "some of the plants that must be backed down to accommodate the project in Stony Creek's study are low-emissions natural gas plants, a result that the Study Order seeks to avoid." It cites the Indeck Olean facility as an example of a facility that would need to be backed down to zero percent when Stony Creek generates at full capacity.

CSOO continues to maintain the opinions it espoused in its motion. In particular, it asserts that, rather than asking the Commission to reopen the SEQRA process, its view is that, without an adequate record from the lead agency, the Commission cannot certify that the requirements of SEQRA have been met. CSOO also argues that, without evidence that the project would offset fossil fuel emissions (taking into account life cycle emissions) the project is not in the public interest.

In answer to CSOO's November 10, 2011 response, Stony Creek filed a reply on November 14, 2011.<sup>18</sup> Stony Creek asserts that CSOO's response primarily constitutes an unauthorized reply to the Petitioner's response to CSOO's motion, though acknowledging that it contains some discussion of information provided in the October 27, 2011 supplement. The Petitioner reiterates that Clear Skies' SEQRA argument is without merit and

---

<sup>17</sup> Response, p. 2.

<sup>18</sup> While Stony Creek's reply was not authorized by the November 4<sup>th</sup> notice, it advances the record and will be considered.



maintains that nothing in the Deliverability Study Order supports CSOO's contention that low-emission natural gas plants be grouped with renewable facilities in its effort to minimize the displacement of power production from existing renewable facilities due to new wind facilities. Stony Creek asserts that it is illogical for Clear Skies to argue both that its proposed facility is not in the public interest because the project's operation will displace production from an existing natural gas-fueled plant and that the Petitioner has not demonstrated that its facility will displace fossil fuels.

#### DISCUSSION AND CONCLUSION

##### State Environmental Quality Review

Environmental review of the proposed facility was conducted pursuant to SEQRA, Article 8 of the Environmental Conservation Law (ECL). The purpose of SEQRA and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7) is to incorporate consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQRA requires agencies to determine whether the actions they are requested to approve may have a significant impact on the environment. If it is determined that an action may have a significant adverse environmental impact, an EIS must be prepared by the lead agency or the applicant.

Stony Creek submitted an Environmental Assessment Long Form for the facility to the Town along with its application for a Special Use Permit. Pursuant to the coordinated review provisions of SEQRA, the Town sought to be, and was designated as, the lead agency reviewing this Type I action. On December 10, 2009, Orangeville determined that an EIS would be required

for the facility. Based on the written scope received from the Town, Stony Creek submitted a Draft EIS to the Town on February 5, 2010. On February 18, 2010, the Town accepted the Draft EIS as consistent with the written scope, issued a Notice of Completion, and established a comment period and a public hearing schedule. Notice of the comment period and the public hearing was published in the Town's official newspaper. Notice was mailed to each involved agency, including the Commission, and was published in the Department of Environmental Conservation's (DEC) Environmental Notice Bulletin. The Town held a public hearing on the Draft EIS on March 25, 2010. The public comment period on the Draft EIS concluded on April 23, 2010.

Based on comments submitted to the Town in response to the Draft EIS, Stony Creek made changes and adjustments to the proposed facility design and layout plans, and provided details of the revised project with supporting studies in a Final EIS. The Final EIS was accepted by the Town on July 12, 2011, and Orangeville issued a findings statement on August 11, 2011. A special use permit was issued for facility construction by the Town on that date.<sup>19</sup>

Under SEQRA, the Town Board as lead agency, and each other involved agency, must adopt a formal set of written findings based on the Final EIS. The SEQRA Findings Statement of each agency must:

- (i) consider the relevant environmental impacts, facts, and conclusions disclosed in the Final EIS
- (ii) weigh and balance relevant environmental impacts with relevant social, economic, and other considerations;

---

<sup>19</sup> The special use permit and road use agreement were provided in a supplement to the petition.

- (iii) provide the rationale for the agency's decision;
- (iv) certify that the requirements of 6 NYCRR Part 617 have been met; and,
- (v) certify that, consistent with social, economic, and other essential considerations, and considering the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures identified as practicable.<sup>20</sup>

Once the findings are adopted, the SEQRA process is completed, and the lead agency and involved agencies may decide to approve, approve with conditions, or disapprove the proposed project.

The Town Board conducted the SEQRA review in parallel with the review of permit applications submitted by Stony Creek.<sup>21</sup>

Both the Draft and Final EISs for the project analyzed potential environmental impacts due to project construction and operation on land use, compliance with land use plans and zoning, visual resources, socioeconomic issues, traffic and transportation (including air transportation), air quality, noise (audible and low-frequency), soils, geology, terrestrial and aquatic ecology, wildlife (including threatened and endangered species), effects on communications facilities, surface and groundwater resources, stormwater management, impacts of construction, safety considerations, cultural and

---

<sup>20</sup> 6 NYCRR §617.11(c) and (d).

<sup>21</sup> Department of Public Service (DPS) Staff participated in review of, and comment on, the SEQRA documents, including Request for Lead Agency Determination, the Draft Scoping Document, and the DEIS, and also reviewed the FEIS (including the Lead Agency's response to comments), the findings statement and local permits issued for the project.

historic resources, and proposed general and specific mitigation measures for a variety of impacts. Potential cumulative impacts of the Stony Creek project and nearby projects (Noble Weathersfield Windpark and the High Sheldon Windfarm) were evaluated.

The Town determined that a large-scale wind power-generating project would result in significant economic benefits to the Town and the regional area as well as, environmental benefits to the state. Moreover, Orangeville concluded, based upon field investigations and review of the Draft and Final EISs, that the proposed action with the mitigation measures incorporated in the Final EIS, would minimize or avoid significant adverse environmental impacts to the maximum extent practicable. The mitigation measures discussed in the Final EIS include: compliance with conditions and any mitigation measures required by any federal, state, and local permits and approvals; implementation of appropriate mitigation measures defined in such permits or approvals; use of minimum setbacks from residences to limit noise, visual and public safety impacts; and, employment of environmental monitors to assure compliance with all environmental commitments and permit requirements. Measures to mitigate soil compaction and mixing in agricultural fields have been identified and are requirements of local permits.

#### Historic Preservation Review

The State Historic Preservation Office (SHPO) of the New York State Office of Parks, Recreation and Historic Preservation reviewed the proposed project pursuant to §106 of the National Historic Preservation Act. By letter of June 2, 2011, the SHPO stated that the project would have an adverse effect on cultural resources. SHPO further found that an

evaluation of mitigation to offset the project impacts to cultural properties should be undertaken in consultation with the appropriate state or federal agencies.

The requirements of §14.09 of the Parks, Recreation and Historic Preservation Law (regarding consultation with state agencies) are supplanted where a full evaluation of potential cultural resource impacts is performed pursuant to §106 of the National Historic Preservation Act. The US Army Corps of Engineers (ACOE) has evaluated project wetlands impacts, and conducted a §106 cultural resources impact evaluation for a Visual Area of Potential Effect with a 5-mile radius centered on the project. The nature of impacts expected to result from this project has been duly characterized. Offset mitigation plans have been developed and will be implemented pursuant to a Memorandum of Understanding between the SHPO, the ACOE and the Petitioner.<sup>22</sup> Thus, with the §106 review completed, our responsibilities for consultation with the SHPO and consideration of cultural resources impacts have been satisfied.

### Procedural Matters

#### Obligations of Lead and Involved Agencies under SEQRA

As noted above, five entities are parties to this proceeding; 26 other entities submitted public comments. The record in this case consists of the petition (as supplemented in response to questions from DPS Staff and the views expressed by parties and non-parties), documents filed by parties, comments submitted by non-parties, the transcript of two public statement hearings, and notices issued by the Secretary.

---

<sup>22</sup> The Petitioner provided copies of permits and SEQRA findings received from DEC, ACOE determinations and a Memorandum of Agreement for Mitigation of Adverse Impacts on Historic Properties, in a supplement dated December 1, 2011.

In deciding whether to grant a CPCN, the Commission considers issues relating to public convenience and necessity. Because of its approval authority under PSL §68, the Commission is an involved agency for purposes of SEQRA review. As such, our role in that review is limited. The Commission may not generally require the preparation of SEQRA documents in connection with proposed actions.<sup>23</sup> However, we must make a written findings statement that, inter alia, weighs and balances relevant environmental impacts with social, economic, and other considerations and provides a rationale for our decision.<sup>24</sup> In making such a decision, we may consider the views expressed by parties and non-parties, but must rely primarily on the Final EIS prepared by the lead agency and give serious consideration to environmental issues.<sup>25</sup>

Most of the comments received relate to environmental matters already considered by the lead agency in the SEQRA process and addressed in the Final EIS.<sup>26</sup> The predominant concerns of both parties and non-parties appear to center on: turbine noise and its effects on non-participating residents and property values; impacts on wildlife, including rare, threatened and endangered species; potential impacts on water resources, including public water supply sources; and the question of whether wind farm operation actually reduces emissions of pollutants from fossil-fueled base-load power plants. Parties

---

<sup>23</sup> See 6 NYCRR §617.6(b)(3)(iii).

<sup>24</sup> ECL §8-0109(8) and 6 NYCRR §617.11(c) and (d).

<sup>25</sup> Nash Metalware Co., Inc. et al. v. New York City, 14 Misc. 3d 1211a (S.Ct. NY Co., 2006).

<sup>26</sup> The Final EIS addressed satisfactorily most of the issues that DPS Staff identified for the Draft EIS scope, including potential impacts on existing utility facilities, safety impacts, substation noise, and emissions reductions due to facility operation.

and commenters also express dissatisfaction with the process of reviewing project changes between the Draft and Final EIS stages, as well as with the resolution of many other issues. The lead agency is, however, responsible for taking a hard look at the relevant areas of environmental concern,<sup>27</sup> then making findings on that basis. By contrast, an involved agency has a more limited role regarding SEQRA matters and relies primarily upon the lead agency's review and issuance of a Final EIS.<sup>28</sup>

In reviewing the petition, DPS Staff has pursued clarification and resolution of certain environmental matters dealt with in the Final EIS that relate to aspects of wind turbine safety and project reliability, substation facility design and security, impacts on public water supply sources, and deliverability of energy generated by the proposed facility. Nevertheless, the review of environmental issues is primarily the responsibility of the lead agency. As part of its review of the impacts of electric generating facilities, the lead agency must also ensure that any Final EIS include "a demonstration that the facility will satisfy electric generating capacity needs or other electric systems needs in a manner reasonably consistent with the most recent state energy plan..."<sup>29</sup>

Operational noise from wind turbine facilities was identified in the EIS scoping document adopted by the Lead Agency; was analyzed in the Draft EIS; and was analyzed again in the Final EIS for project modifications. The Town found and determined that the project, as designed, would comply with its

---

<sup>27</sup> Jackson v. NY Urban Dev. Corp., 67 N.Y.2d 400, 417(1986).

<sup>28</sup> Matter of Turkewitz v. Planning Board of City of New Rochelle, 24 A.D.3d 790, 791 (2d Dep't 2005); Matter of Gordon v. Rush, 299 A.D.2d 20, 29 (2d Dep't 2002), aff'd 100 N.Y.2d 236 (2003).

<sup>29</sup> ECL §8-0109 (2)(h).

zoning requirements for wind facilities. The Final EIS presents responses to public comments, acknowledges that some residents may be more sensitive to noise effects than others, and concludes that overall project benefits outweigh project impacts. While the Town's noise restriction does not specify standards for consideration of sub-audible (low frequency) noise impacts, this topic was discussed in the Draft and Final EISs, as well as in the Petitioner's October 27, 2011 supplement to its petition.

CSOO argues that the noise criteria applied in licensing reviews conducted pursuant to PSL Articles VII and X have traditionally required more strict measurement and performance criteria than those which were adopted by the Town in its zoning code or were considered in the Final EIS. The provisions under PSL §68, however, are not in the nature of comprehensive siting requirements. Rather, the criteria applicable under §68 include a verification that the municipality on whose property part of the facility would be located has granted its consent to construct the electric plant.<sup>30</sup> Primary siting responsibility, therefore, is at the local level. The requirements of SEQRA, including development of an EIS that addresses the adopted Scoping Requirements,<sup>31</sup> and issuance of findings based on the Final EIS, fall principally on the lead agency. The appropriate time for arguing for a particular measurement and performance standard, or comparing two methodologies, is at the EIS scoping stage before the lead agency.

---

<sup>30</sup> Matter of Penn-York Natural Gas Corporation v. Maltbie, 164 Misc. 569 (S.Ct. Albany Co., 1937).

<sup>31</sup> The Scoping Document indicated that the EIS would assess conformance with the noise level stated in the Town Zoning Requirement and/or the DEC noise policy.



Potential impacts on wildlife, including rare, threatened and endangered species, are considered in the EIS. The comments and pleadings filed express dissatisfaction with the depth and extent of studies performed by Stony Creek. Issues regarding impacts to wildlife were, however, addressed by the lead agency and are also within the jurisdiction of the DEC, which is an involved agency in the SEQRA review of this project. Stony Creek has proposed a post-construction monitoring plan for project impacts on birds and bats, which was acknowledged in the Final EIS and Lead Agency Findings Statement. Appropriate conditions for wildlife monitoring and habitat restoration and impact mitigation are within the purview of the DEC permits and were addressed in SEQRA findings and permits issued by DEC on November 30, 2011.

The environmental review conducted pursuant to SEQRA and that relating to PSL §68 review overlap to some extent; however, our primary focus under §68 relates to statewide and regional concerns, as well as to the protection of public infrastructure and services. Potential impacts on water resources, including surface water supply, garnered many comments, including one filed by the Village of Attica, which we find appropriate for our review, particularly given our expertise with respect to impacts of construction on public infrastructure. The Village of Attica water supply reservoir, which serves the Village, portions of the Town of Alexander, and the Attica Correctional facility, adjoins the northeastern portion of the Stony Creek project area, and is located approximately 2,000 feet down slope of one turbine, with five wind turbine sites located within the reservoir watershed area. Due to the public interest in this municipal water supply for an area outside of the Town, DPS Staff closely reviewed the Petitioner's proposed spill prevention plan criteria, stormwater

and erosion control plans, soils criteria and engineering limitations. Based on its expertise, DPS Staff identified potential refinements to the plans that would add greater degrees of protection of the public water supply resource. In response to a DPS Staff inquiry, Stony Creek has adopted additional protection criteria and will specify appropriate responsibilities including deployment of additional erosion control devices, consideration of seasonal conditions and installation timing, and clarification of responsibilities for maintaining spill prevention kits to control and contain fuel, oil, and similar fluids that have the potential to affect water quality in receiving waterbodies in the event of accidents.

The air quality impacts associated with plant operation are also statewide or regional in character. Those impacts were addressed by the lead agency's review. The Draft EIS estimated the pollution that would be avoided if Stony Creek's project were in operation and discussed the assumptions and off-set factors used in developing the estimate. In section 5.1 of its findings statement, the lead agency concluded that, even after considering the impacts and life-cycle emissions associated with the construction and operation of the facility, the project is expected to have a long-term beneficial impact on regional air quality and to eliminate significant levels of pollutant emissions by displacing electricity generation from other sources. The record compiled in this proceeding does not include additional analyses of potential emissions reductions and the consequent decrease in adverse air quality impacts.

On the basis of our consideration of the relevant environmental impacts presented in the Final EIS and our review of the documents filed by parties, the comments submitted by

non-parties, and responses to these materials,<sup>32</sup> we conclude that we can make the findings required by ECL §8-0109(8) and 6 NYCRR 617.11(c) and (d).

Need for Additional Information and Evidentiary Hearing

CSOO's motion seeks two forms of relief: a requirement that Stony Creek provide additional information and a directive that an evidentiary hearing be held. Both branches of the motion were explicitly premised on the allegation that we could not rely on seriously deficient Draft and Final EISs to support the SEQRA findings we must make as an involved agency. As such, CSOO does not appear to raise issues within the scope of PSL §68, as distinct from those subject to SEQRA review. This is particularly so regarding noise impacts and impacts on wildlife. It is also true with respect to the issues relating to project benefits and energy deliverability.

Stony Creek's claim that CSOO's motion is untimely because it was filed after the deadline for submitting comments specified pursuant to SAPA §202(1)(a) is not a basis for rejecting the motion. The comment period cited was provided pursuant to Article 2 of SAPA, so the comment period deadline applied only in connection with the rule making aspects of the petition (regarding lightened regulation and project financing). It does not pertain to the licensing aspect of the petition, the request for a CPCN that is governed by Articles 3 and 4 of SAPA.

CSOO's motion seeking the provision of additional information is denied on the merits. First, CSOO is incorrect that the Draft EIS, Final EIS and lead agency's findings statement lack sufficient information on the four topics it

---

<sup>32</sup> CSOO's motion and Stony Creek's response will be discussed in the next section.

addresses. Second, at DPS Staff's request and in response to the views of parties and non-parties, Stony Creek has provided additional information on these topics as supplements to its petition. Additional information on the topics discussed by CSOO is therefore available for our consideration. Thus, contrary to Clear Skies' claim in its response to the November 4 notice, there is no need for hearings to complete the record on deliverability.

CSOO's motion seeking an evidentiary hearing is likewise denied on the merits. To the extent the topics addressed by CSOO are within the scope of the environmental review under SEQRA, CSOO has not shown that an evidentiary hearing is required and no statute, regulation or case law mandates that an involved agency conduct such a hearing. To the extent that the issue of energy deliverability is within the scope of PSL §68, CSOO addresses only the interpretation of our Deliverability Study Order in claiming that there should be no waiver of that Order. Clear Skies further bases its arguments on the hypothesis that the proposed facility would not be able to provide capacity or deliver energy into the electric system, rather than challenging the facts provided by the Petitioner. Inasmuch as CSOO raises no issue of material fact, but only an issue of interpretation, its request does not warrant an evidentiary hearing. Similarly, its challenge regarding project benefits does not dispute any facts presented, but rather relates to the appropriateness of the policy of the Commission and State favoring facilities providing renewable energy. Arguments about Commission and state policies can be addressed through written comments on those policies in an appropriate forum.

CSOO did not specifically ask to cross-examine Petitioner's experts on issues within the scope of PSL §68.

Indeed, the claims it raises are not factual ones subject to testing through cross-examination. Moreover, by avowing its purpose in filing its motion to be the development of a record beyond that compiled by the lead agency--without which it claims we cannot certify that the requirements of SEQRA have been met--CSOO's focus is clearly on the requirements of SEQRA and not on those of PSL §68. Had Clear Skies sought cross-examination then it might well have been denied under SAPA §306(1). Thus, we find that an evidentiary hearing is not required by SAPA Articles 3 and 4.

Public Convenience and Necessity

We are authorized to grant certification to an electric corporation pursuant to PSL §68, after due hearing and upon a determination that the construction of electric plant is necessary and convenient for the public service. Our rules establish pertinent evidentiary requirements for a CPCN application.<sup>33</sup> The rules require a description of the plant to be constructed and of the manner in which the cost of such plant is to be financed, evidence that the proposed plant is in the public interest and is economically feasible, and proof that the applicant is able to finance the project and render adequate service.

To date, we have not granted a CPCN if the turbine model proposed to be constructed did not have Type Certification from a third-party certification entity. DPS Staff therefore requested that Stony Creek provide third-party turbine Type Certification for the General Electric (GE) 1.6-100 turbine model proposed for this project.<sup>34</sup> The Petitioner's response

---

<sup>33</sup> 16 NYCRR §21.3.

<sup>34</sup> This model is not yet in production.

indicates that the GE 1.6-100 model turbine is currently undergoing Type Certification review by TUV-Nord, a reputable certification agency. In lieu of third-party Type Certification, Stony Creek presented a Mechanical Loads Assessment review prepared by GE for the 1.6-100 turbine, the model proposed to be deployed at the Orangeville site. That confidential assessment demonstrated that three turbines require operational curtailment during infrequent intervals when certain wind conditions develop.

A third-party certification review of facility engineering design, performance and manufacturing process is generally relied upon by wind industry insurance providers. Type Certification for the turbines provides an assurance that the turbine design and manufacturing process conform to appropriate codes and industry standards (those of the International Electrotechnical Commission) and that expected performance standards for characteristics such as noise and power output should be achieved. Type Certification helps to ensure that safety and reliability issues are addressed in turbine design, manufacturing process and operational maintenance programs.<sup>35</sup> We will condition our approval of the proposed electric plant on: (a) receipt of third-party turbine Type Certification prior to turbine installation; (b) manufacturer's assurance that turbine and facility construction and operational plans address all substantive conditions of such Type Certification and (c) receipt of third-party Project Certification (or equivalent), which relates to the specific

---

<sup>35</sup> As Orangeville noted in section 18.5 of its Findings Statement (in a discussion of blade throw and tower collapse at p. 54): "Chances of [wind turbine] failures are mitigated by use of [turbines] that are certified by an independent agency as meeting appropriate design requirements."

site conditions encountered by the project, within one year of turbine operation.

Given our previously-expressed concern about set-back requirements,<sup>36</sup> DPS Staff requested that the turbine manufacturer's setback recommendations documentation be provided. Stony Creek provided a confidential document for the 1.6-100 turbine model from GE, which indicates that an 885-foot setback is generally appropriate from roadways, residences and places of public assembly.<sup>37</sup> The policy recommends review by GE for any locations not meeting those requirements. The project layout involves one turbine site which is located less than the recommended setback distance from a dwelling (Robert White property) and is within 200 feet from the seasonally-used Bantam Road. The Town Zoning Board of Appeals reviewed this turbine location and issued a variance from the Town setback requirement for the roadway. The variance was silent on the issue of whether the town setback requirements were applicable to the Robert White dwelling. Eight other turbine sites are located within the manufacturer-recommended 885-foot setback distance from public roadways.<sup>38</sup>

Despite DPS Staff's request to do so, Stony Creek has not yet presented the project setback inconsistencies to the turbine manufacturer for its review and recommendation, pursuant to the manufacturer's turbine setback policy. There are no

---

<sup>36</sup> Case 07-E-0213, Sheldon Energy LLC, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued January 17, 2008)(Sheldon Energy Order).

<sup>37</sup> The 885-foot figure, while contained in a document claimed to be confidential, is public and was cited in comments in this proceeding.

<sup>38</sup> Those locations conform to the Town setback requirement of 1.2 times maximum turbine height from roadway centerline.

uniform New York State standards for large-scale wind turbine location, other than in relation to electric transmission lines as established in the Sheldon Energy Order. In lieu of such standards, we have regularly relied on third-party turbine certification reviews, industry standards, and manufacturer's recommended practices and procedures, in granting CPCN for wind energy facilities pursuant to PSL §68. Moreover, the Town Special Use Permit and Site Plan Conditions require that facility construction be done "in accordance with all applicable local, state and federal regulations, industry standards, and [wind energy collection device] manufacturer recommendations".<sup>39</sup> The Petitioner has not demonstrated conformance with the manufacturer's setback review recommendations for the eight turbines located less than 885 feet from public roads (turbines T-8, -9, -11, -12, -13, -25, -27, and -28), or turbine T-28 which is located less than 885 feet from a dwelling. We will condition construction of the turbines mentioned above upon Stony Creek's provision of a demonstration of review and approval by GE and proof of liability insurance commensurate with industry standards. If GE disagrees with Stony Creek regarding the location of any of the turbines, we will decide whether to allow installation of the affected turbine(s) at a location(s) proposed by Stony Creek. These conditions are necessary to help to ensure the protection of public safety.

At DPS Staff's request, Stony Creek reviewed foundation design specifications for the proposed GE 1.6-100 turbine generally, as well as soil conditions and corrosion potential of concrete and steel materials at two specific locations in the project area. The Final EIS included a typical

---

<sup>39</sup> Town of Orangeville Town Special Use Permit and Site Plan Conditions, August 11, 2011; Clause 16.2.16; p. 28.



turbine foundation design for the originally-proposed turbines, rather than for the modified project design. In a supplement to the petition, Stony Creek provided foundation design figures and specifications for the selected turbine with 80 meter hub height, as proposed for this project. Stony Creek also reviewed the available soils information and criteria in applicable concrete industry standards and ASTM codes for corrosive potential, and has stipulated that it will apply results of geotechnical sampling at turbine sites in final design specifications, and will abide by the appropriate design criteria and standards to minimize corrosion potential for all of its turbine foundations.

Issues of turbine location and effect of turbine operation on aircraft safety and the potential for accidents involving collisions with wind turbines have been raised by parties who are owners of two private air fields (Cobble Hill Airport and R&R Aero) located in close proximity to the proposed wind farm. These issues include: hazards to safe operation of aircraft and airfields, reliability of turbines and the interconnected grid in the event of collisions, liability in the event of accidents, and conflicts with existing land use.

Stony Creek provided confirmation of review of the turbine locations by the Federal Aviation Administration (FAA). The FAA issued determinations that the Stony Creek locations do not pose aviation hazards. The airfields were not listed as public airports by FAA at the time of its recent review of the turbine locations. Stony Creek also provided an analysis to demonstrate that the only New York State requirements for obstructions near small airfields relate to criteria applicable to siting or expanding new airfields near tall structures or other obstructions. Stony Creek's analysis demonstrates that, even if those criteria were applied to the wind turbine

locations, the appropriate minimum clear zones are maintained and actually exceeded by significant margins. The owners of the airfields remain dissatisfied with the showing, suggesting that their recent action to register their pre-existing airfields with FAA should lead to revision of the FAA determination. The New York State Department of Transportation advised DPS Staff that obstructions near public airports are not prohibited and that it periodically reviews and reports location and height information of obstructions near public airports to the FAA for publication in guidance documents used by pilots for navigation purposes. While Stony Creek did provide additional information regarding this issue in a supplement to the petition, the Final EIS already included consideration of air transportation safety and addressed the comments of these airfield owners.

Stony Creek has designed turbine locations to minimize co-location issues near high-pressure natural gas transmission pipelines and adopted appropriate design, testing and maintenance criteria for mitigating potential turbine lightning-protection and grounding equipment effects on those transmission facilities. The Petitioner has committed to working with transmission pipeline owners to apply design and installation measures to minimize impacts related to installation of underground electric collection system wires across the gas pipeline rights-of-way. Stony Creek and its contractors will participate in the Dig Safely New York program to minimize potential conflicts with underground utility structures during project construction.

The Town Special Use Permit and Site Plan Conditions include provisions for coordinating work with NYSEG to minimize service disruptions during construction that may affect overhead electric wires. The wind turbine layout avoids co-location issues with existing overhead electric transmission facilities.

In response to comments by DPS Staff, Stony Creek has also agreed to modify its proposed construction specifications for installation of trench breakers on sloping areas traversed by underground electrical collection system cables.<sup>40</sup> This measure will reduce the potential for subsurface 'piping' erosion, trench line settling, and subsequent surface erosion problems.

DPS Staff requested that Stony Creek identify quality assurance and quality control (QA/QC) standards for project construction. The Petitioner provided a brief description of its QA/QC program and indicated that it would review and approve contractor QA/QC programs. We will require that the approved QA/QC Plan be maintained throughout construction, and be available for review on an as-needed basis by DPS Staff inspectors.

In response to DPS Staff inquiries regarding the project switchyard, substation and interconnection facilities, Stony Creek provided preliminary plans and equipment listings for substation and switchyard facilities and site grading and erosion control plans. We will direct that plan details be revised to address three issues: (a) fencing and gate designs must be provided to demonstrate site security provisions; (b) an appropriate gate at Operations and Maintenance (O&M) building entry drive must be indicated; and, (c) station and O&M building exterior entry lighting must be revised to indicate full cut-off fixtures with no drop-down optics, in accordance with general performance criteria for assuring worker safety, and for light trespass control. Installation of fencing, gates or permanent exterior lighting at the substation, switchyard or O&M building

---

<sup>40</sup> Stony Creek had earlier proposed adopting the DPS spacing and installation specifications for trench breakers, but had omitted specifications for other than the steepest slopes.

may not commence until the director of the Office of Energy Efficiency and the Environment has reviewed and accepted revised plan and detail pages regarding these items, based on relevant economic, engineering or environmental factors. DPS Staff indicates its satisfaction with the preliminary aspects of switchyard and substation construction, including site grading and erosion control plan details; thus we will allow these aspects of substation construction to commence because, as Stony Creek explained in its October 27, 2011 letter transmitting the third supplement to its petition, construction of the substation is on the critical path to facility operation, in part due to the nature of the construction and in part because the Petitioner must coordinate with NYSEG in scheduling a line outage to complete the tie-in work and testing. Stony Creek has agreed to present additional station design figures, as approved by NYSEG, as facility construction advances.

As previously noted, Stony Creek supplemented its petition to provide information regarding energy deliverability. It showed that a full energy deliverability study pursuant to the Deliverability Study Order is not necessary because, even under light load conditions (when the demand for electricity is low and the supply of electricity is relatively high), production from its proposed facility would not back down energy produced by existing renewable and must run generators.<sup>41</sup> CSOO's apparent contention that the Deliverability Study Order related to low-emission fossil-fueled generating facilities generally,

---

<sup>41</sup> Stony Creek performed a load flow study using the NYISO's 2016 light load base case (which contains the assumptions as to how generators would be dispatched under light load dispatch) to perform the deliverability analysis. It provided the results in two forms: a single line diagram of the result, and a printout of every line, substation, load and generation assumption.

and not to "must run" facilities in particular, is without merit. Clear Skies cited the Indeck Olean facility as an example of a low-emission fossil-fueled facility that would be backed down, but did not claim that it was a "must run" facility within the meaning of the Deliverability Study Order.<sup>42</sup>

The Petitioner intends to provide electricity to the wholesale competitive market and has proposed to site the facility to utilize a portion of the wind energy potential in New York State. The facility is based on renewable resource technology, providing clean and renewable supplies of electricity to the wholesale energy market. Further, the proposed facility will facilitate compliance with objectives in the 2009 State Energy Plan, and Executive Orders 24 and 111. The proposed facility also addresses the objectives identified in the Renewable Portfolio Standard Proceeding, Case 03-E-0188. These objectives include stimulating economic growth, increasing energy diversity, and promoting a cleaner, healthier environment.<sup>43</sup> The proposed facility will provide benefits that include positive economic impacts (such as increased revenues to municipalities and lease payments to landowners) and enhanced

---

<sup>42</sup> As such, it appears that the "must run" status of Indeck Olean is not a material fact subject to procedures for "official notice" under SAPA §306(4). Indeed, Indeck Olean is not a "must run" facility given DPS Staff's knowledge that the facility's owner bids every day in the NYISO market and the facility may not be chosen to run. The facility apparently has an auxiliary boiler to produce steam for a nearby industrial customer when not chosen by the NYISO to provide electricity.

<sup>43</sup> Mrs. Lomanto (a party to this proceeding) questioned New York's policies favoring wind project development and one commenter objected to the use of government money to stimulate wind energy facility development; however, these matters are outside the scope of this proceeding.

environmental quality (including potential reduction of emissions from fossil-fuel burning power plants). We find that the Petitioner's parent is an experienced and financially viable developer of wind energy, and that the facility appears to be economically feasible and in the public interest.

The Petitioner has committed to complying with the relevant design, construction and operational requirements of the National Electric Safety Code, other applicable engineering codes, standards and requirements, and the standards and policy requirements of NYSEG. The Petitioner has proposed plans for addressing coordination with, and avoiding interference with, other utility providers in its facility design, construction and operations controls, and for responding to complaints and inquiries. The Petitioner has generally developed appropriate emergency response measures and facility maintenance standards for the life of the electric plant.

Based on the Petitioner's representations and commitments to adopt and enforce reasonable measures within the proposed area of operations, and the evidence presented in the petition and supplements, we conclude that the Petitioner will provide safe, reliable and adequate service.<sup>44</sup> The conditions we will impose will help to ensure that the Petitioner's commitments are kept and enable us to make the required statutory finding.

The Petitioner satisfied the requirements of PSL §68 by filing a copy of its Certificate of Formation as an exhibit to its petition. Moreover, a responsible official has verified

---

<sup>44</sup> Mrs. Lomanto's claim, based on an article by the American Traditions Institute contending that wind energy is not reliable, does not challenge the information provided by Stony Creek and is rejected.

that the Petitioner has secured all municipal consents necessary for the use of town property that are required by law.

A hearing having been held on September 14, 2011, we find, as required by PSL §68, that the construction of the proposed Project is necessary and convenient for the public service.

### Electric Regulation

The lightened regulatory regime that Stony Creek requests be applied to its wholesale electric operations is similar to that afforded to other comparably-situated wholesale generators participating in competitive electric markets. Several commenters stated their opposition to this request and one called it an aggressive tactic of a large corporation, but no one explained why we should depart from our precedent. The Petitioner's request is therefore granted, to the extent discussed below.

In interpreting the PSL, we have examined what reading best carries out the statutory intent and advances the public interest. Consequently, in the Carr Street and Wallkill Orders, it was concluded that new forms of electric service providers participating in wholesale markets would be lightly regulated.<sup>45</sup> Under this approach, PSL Article 1 applies to the Petitioner, because it meets the definition of an electric corporation under PSL §2(13) and is engaged in the manufacture of electricity under PSL §5(1)(b). It is therefore subject to provisions, such as PSL §§11, 19, 24, 25 and 26, that prevent producers of

---

<sup>45</sup> Case 98-E-1670, Carr Street Generation Station, L.P., Order Providing for Lightened Regulation (issued April 23, 1999)(Carr Street Order); Case 91-E-0350, Wallkill Generating Company, Order Establishing Regulatory Regime (issued April 11, 1994)(Wallkill Order).

electricity from taking actions that are contrary to the public interest.<sup>46</sup>

All of Article 2 is restricted by its terms to the provision of service to retail residential customers, and so is inapplicable to wholesale generators like the Petitioner. Certain provisions of Article 4 are also inapplicable because they are restricted to retail service.<sup>47</sup>

It was decided in the Carr Street and Wallkill Orders that the remaining provisions of Article 4 would pertain to wholesale generators.<sup>48</sup> Application of these provisions is deemed necessary to protect the public interest. The Article 4 provisions, however, are implemented in a fashion that limits their impact on the operations of competitive electric markets. Required filings are reviewed with the scrutiny commensurate to the level the public interest requires. Moreover, wholesale generators have been allowed to fulfill their PSL §66(6) obligation to file an annual report by duplicating the report

---

<sup>46</sup> The PSL §18-a assessment is imposed on PSL-jurisdictional gross intrastate revenues; so long as Stony Creek sells exclusively at wholesale, there are no PSL-jurisdictional revenues and no assessment is collected.

<sup>47</sup> See, e.g., PSL §§66(12)(optional tariff filings); §66(21) (retail electric corporation storm plans); §67 (inspection of meters); §72 (hearings and rate proceedings); §72-a (reporting increased fuel costs); §75(excessive charges); and, §76 (rates charged religious bodies and others).

<sup>48</sup> PSL §68 provides for certification of the construction of new plant or of electricity sales made via direct interconnection with retail customers. PSL §69, §69-a and §70 provide for the review of securities issuances, reorganizations, and transfers of securities and works or systems.



they were required to file under federal law.<sup>49</sup> This analysis of Article 4 applies to the Petitioner.

Regarding PSL §69, prompt regulatory action is possible through reliance on representations concerning proposed financing transactions. 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 financing arrangements.<sup>50</sup>

Regarding PSL §70, it was presumed in the Carr Street and Wallkill Orders that regulation would not "adhere to transfer of ownership interests in entities upstream from the parents of a New York competitive electric generation subsidiary, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption."<sup>51</sup> In those Orders, however, wholesale generators were also advised that the potential for the exercise of market power arising out of an upstream transfer would be sufficient to defeat the presumption and trigger PSL §70 review. The Petitioner may avail itself of this presumption. Under PSL §§66(9) and (10), we may require access to records sufficient to ascertain whether the presumption remains valid.

Turning to PSL Article 6, several of its provisions adhere only to the rendition of retail service. These provisions do not pertain to the Petitioner because it is

---

<sup>49</sup> The PSL §66(6) annual report requirement that pertains to lightly regulated entities is under review pursuant to the Notice Soliciting Comments issued June 3, 2011 in Case 11-M-0294; any revisions to the requirement adopted in that proceeding will adhere to Stony Creek.

<sup>50</sup> See Case 01-E-0816, Athens Generating Company, L.P., Order Authorizing Issuance of Debt (issued July 30, 2001).

<sup>51</sup> Carr Street Order, p. 8; Wallkill Order, p. 9.

engaged solely in the generation of electricity for wholesale.<sup>52</sup> Moreover, application of PSL §115, on requirements for the competitive bidding of utility purchases, is discretionary and will not be imposed on wholesale generators. In contrast, PSL §119-b, on the protection of underground facilities from damage by excavators, adheres to all persons, including wholesale generators.

The remaining provisions of Article 6 need not be imposed generally on wholesale generators.<sup>53</sup> These provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers. In comparison, 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 market, or overly constrain its fluid operation, to the detriment of the public interest.

As discussed in the Carr Street Order, however, market power issues may be addressed under PSL §§110(1) and (2), which afford us jurisdiction over affiliated interests. The

---

<sup>52</sup> See, e.g., PSL §112 (rate order enforcement); §113 (reparations and refunds); §114 (temporary rates); §114-a (lobbying costs in rates); §117 (consumer deposits); §118 (bill payments via an agency); §119-a (use of utility poles and conduits); and §119-c (tax benefits in rates).

<sup>53</sup> These requirements include approval of: loans under §106; the use of utility revenues for non-utility purposes under §107; corporate merger and dissolution certificates under §108; contracts between affiliated interests under §110(3); and, water, gas and electric purchase contracts under §110(4).

Petitioner has not reported any affiliation with a power marketer, foreclosing that avenue to the exercise of market power. Consequently, we impose the requirements of §§ 110(1) and (2) on the Petitioner only conditionally, to the extent a future inquiry into its relationships with affiliates becomes necessary.

Finally, notwithstanding that it is lightly regulated, Stony Creek is reminded, that it and the entities that exercise control over the operations of its wind generation facility remain subject to the Public Service Law 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 above and in previous orders.<sup>54</sup> Included among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,<sup>55</sup> to give notice of generation unit retirements,<sup>56</sup> and to report personal injury accidents pursuant to 16 NYCRR Part 125.

#### Project Financing

Approval of the Petitioner's financing plans is appropriate under lightened regulation.<sup>57</sup> The scrutiny

---

<sup>54</sup> See, e.g., Case 09-M-0251, Saranac Power Partners, L.P., Order Providing for Lightened Regulation of an Electric Corporation and Making Findings on Steam Corporation Regulation (issued June 19, 2009).

<sup>55</sup> Case 04-M-0159, Safety of Electric Transmission and Distribution Systems, Order Instituting Safety Standards (issued January 5, 2005) and Order on Petitions for Rehearing and Waiver (issued July 21, 2005).

<sup>56</sup> Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

<sup>57</sup> Several commenters expressed their opposition to the Petitioner's request, but only in conclusory terms.

applicable to monopoly utilities may be reduced for lightly-regulated companies like Stony Creek that operate in a competitive environment. As a result, we need not make an in-depth analysis of the proposed financing transactions. Instead, by relying on the representations the Petitioner makes in its filing, prompt regulatory action is possible.

The proposed financing appears to be for a statutory purpose and does not appear contrary to the public interest, and is approved up to a maximum amount of \$240,000.00 in debt financing. Given that Stony Creek operates in competitive wholesale markets, it is afforded the flexibility to modify, without our prior approval, the identity of the financing entities, payment terms, and amount financed under the transactions, up to the \$240,000.00 limit.<sup>58</sup> Affording the Petitioner this financing flexibility avoids disruption of its financing arrangements and enables it to operate more effectively in competitive wholesale electric markets, thereby promoting the efficient development of these markets. Captive New York ratepayers cannot be harmed by the terms of this financing because Stony Creek bears all the financial risk associated with this financial arrangement.

The Commission orders:

1. The Motion for Evidentiary Hearing and for Additional Information filed by Clear Skies Over Orangeville on October 17, 2011 is denied.

---

<sup>58</sup> See, e.g., Case 10-E-0593, Mirant Bowline LLC, Order Authorizing Issuance of Debt (issued February 23, 2011); Case 03-E-1181, Dynegy Danskammer LLC and Dynegy Roseton LLC, Order Authorizing Entry Into Credit Facility and Issuance of Secured Notes (issued November 26, 2003).

2. A Certificate of Public Convenience and Necessity is granted, authorizing Stony Creek Energy, LLC (the Company) to construct and operate the electric plant described in its petition (as supplemented) and in the body of this Order, subject to the conditions set forth below.

3. The Company and its affiliates shall comply with the Public Service Law in conformance with the requirements set forth in the body of this Order.

4. The financing arrangements described in the petition and discussed in the body of this Order are approved, up to a maximum amount of \$240,000.00.

5. The Company shall obtain all necessary federal, state, and local permits and approvals.

6. Before installation of wind turbines may commence, the Company shall provide to the Secretary:

- (a) proof of receipt of third-party turbine Type Certification;
- (b) manufacturer's assurance that turbine and facility construction and operational plans address all substantive conditions of such Type Certification; and,
- (c) proof of liability insurance in an amount commensurate with industry standards.

7. Within one year after the commencement of commercial operation of the facility, the Company shall provide to the Secretary proof of receipt of third-party Project Certification (or equivalent).

8. Before starting construction of the switchyard, substation and transmission interconnection facilities (not including minor activities required for testing and development of final engineering and design information, site grading or erosion control), the Company shall provide to Staff of the

Department of Public Service (DPS Staff): final design plans and profile drawings of the switchyard, substation and transmission interconnection; and proof of acceptance of the design by New York State Electric & Gas Corporation (NYSEG). Such plans may be submitted by component design sequentially as per approvals by NYSEG.

9. Before installation of fencing, gates or permanent exterior lighting at the substation, switchyard or O&M building may commence, the Company shall provide revised plan and detail pages as follows for review and acceptance by the director of the Office of Energy Efficiency and the Environment, based on relevant economic, engineering or environmental factors:

- (a) provide fencing and gate designs to demonstrate site security provisions;
- (b) add gate at O&M building entry drive; and,
- (c) revise O&M building exterior entry lighting to indicate full-cutoff fixtures with no drop-down optics, as per general performance criteria for assuring worker safety, and for light trespass control.

10. Before installation of turbines T-8, -9, -11, -12, -13, -25, -27, and -28 may commence, the Company shall file with the Secretary a demonstration of review and approval by GE and proof of liability insurance commensurate with industry standards. If the manufacturer disagrees with the Company regarding the location of any of these turbines, the Company may seek Commission approval of the installation of the affected turbine(s) at a location(s) proposed by the Company.

11. The Company shall submit to DPS Staff final site plans and construction drawings for the project components,

turbine sites, access roads, and electric lines associated with the project before the start of construction of those affected components.

12. The authorized electric plant shall be subject to inspection by authorized representatives of DPS Staff pursuant to §66(8) of the Public Service Law.

13. The Company shall incorporate, and implement as appropriate, the standards and measures for engineering design, construction, inspection, maintenance and operation of its authorized electric plant, including features for facility security and public safety, utility system protection, plans for quality assurance and control measures for facility design and construction, utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities, vegetation and facility maintenance standards and practices, emergency response plans for construction and operational phases, as presented in its Petition, its Environmental Impact Statement and this Order.

14. The Company shall apply the following standards for transmission facilities protection:

- (a) the Company shall design, install and maintain ground grids at the base of each wind turbine within 600 feet of gas transmission pipelines to be in full conformance with IEEE 80 to provide an impedance less than 25 ohms;
- (b) the Company shall undertake annual testing of the wind turbine grounding grids within 600 feet of high-pressure gas transmission facilities, and report any results of that testing to the affected gas transmission company and to DPS staff of the Safety and the Bulk Transmission Systems sections;

- (c) to minimize risk to the electric bulk transmission system, the Company shall maintain a minimum turbine setback distance from the NYSEG electric transmission facility to which the authorized electric plant is connected, equal to not less than 1.5 times turbine tip height at maximum extension, measured from the center of the turbine tower to the nearest existing electric transmission line structure component, whether tower or conductor.

15. The Company shall file with the Secretary, within three days after commencement of commercial operation of the electric plant, written notice of such commencement.

16. The Company shall design, engineer, and construct facilities in support of the authorized electric plant as provided in the System Reliability Impact Study (SRIS) approved by the New York Independent System Operator (NYISO), the Transmission Planning Advisory Subcommittee (TPAS), the NYISO Operating Committee, and the NYISO Class Year 2010 Annual Transmission Reliability Assessment Study, and in accordance with the applicable and published planning and design standards and best engineering practices of NYISO, NYSEG, the New York State Reliability Council (NYSRC), Northeast Power Coordinating Council (NPCC), North American Electric Reliability Council (NERC) and successor organizations, depending upon where the facilities are to be built and which standards and practices are applicable. Specific requirements shall be those required by the NYISO Operating Committee and TPAS in the approved SRIS and by the Interconnection Agreement (IA) and the facilities agreement with NYSEG.

17. The Company shall work with NYSEG, and any successor Transmission Owner (as defined in the NYISO



Agreement), to ensure that, with the addition of the electric plant (as defined in the IA between the Company and NYSEG), the system will have power system relay protection and appropriate communication capabilities to ensure that operation of the NYSEG Transmission System is adequate under NPCC Bulk Power System Protection Criteria, and meets the protection requirements at all times of the NERC, NPCC, NYSRC, NYISO, and NYSEG, and successor Transmission Owner (as defined in the NYISO Agreement). The Company shall ensure compliance with applicable NPCC criteria and shall be responsible for the costs to verify that the relay protection system is in compliance with applicable NPCC, NYISO, NYSRC and NYSEG criteria.

18. The Company shall operate the electric plant in accordance with the IA, approved tariffs and applicable rules and protocols of NYSEG, NYISO, NYSRC, NPCC, NERC and successor organizations. The Company may seek subsequent review of any specific operational orders at the NYISO, the Commission, the Federal Energy Regulatory Commission, or in any other appropriate forum.

19. The Company shall be in full compliance with the applicable reliability criteria of NYSEG, NYISO, NPCC, NYSRC, NERC and successors. If it fails to meet the reliability criteria at any time, the Company shall notify the NYISO immediately, in accordance with NYISO requirements, and shall simultaneously provide the Secretary and NYSEG with a copy of the NYISO notice.

20. The Company shall file a copy of the following documents with the Secretary:

- (a) all facilities agreements with NYSEG, and successor Transmission Owner throughout the life of the plant (as defined in the NYISO Agreement);
- (b) the SRIS approved by the NYISO Operating Committee;

- (c) any documents produced as a result of the updating of requirements by the NYSRC;
- (d) the Relay Coordination Study, which shall be filed not later than four months prior to the projected date for commencement of commercial operation of the facilities; and a copy of the manufacturers' "machine characteristics" of the equipment installed (including test and design data);
- (e) a copy of the facilities design studies for the Electric Plant, including all updates (throughout the life of the plant);
- (f) a copy of the IA and all updates or revisions (throughout the life of the plant); and
- (g) if any equipment or control system with different characteristics is to be installed, the Company shall provide that information before any such change is made (throughout the life of the plant);

21. The Company shall obey unit commitment and dispatch instructions issued by NYISO, or its successor, in order to maintain the reliability of the transmission system. In the event that the NYISO System Operator encounters communication difficulties, the Company shall obey dispatch instructions issued by the NYSEG Control Center, or its successor, in order to maintain the reliability of the transmission system.

- (a) After commencement of construction of the authorized Electric Plant, the Company shall provide DPS Staff and NYSEG with a monthly report on the progress of construction and an update of the construction schedule, and file copies of current construction

progress reports during all phases of construction. In the event the Commission determines that construction is not proceeding at a pace that is consistent with Good Utility Practice, and that a modification, revocation, or suspension of the Certificate may therefore be warranted, the Commission may issue a show cause order requiring the Company to explain why construction is behind schedule and to describe such measures as are being taken to get back on schedule. The Order to Show Cause will set forth the alleged facts that appear to warrant the intended action. The Company shall have thirty days after the issuance of such Order to respond and other parties may also file comments within such period.

Thereafter, if the Commission is still considering action with respect to the Certificate, a hearing will be held prior to issuance of any final order of the Commission to amend, revoke or suspend the Certificate. It shall be a defense in any proceeding initiated pursuant to this condition if the delay of concern to the Commission:

1. arises in material part from actions or circumstances beyond the reasonable control of the Company (including the actions of third parties);
2. is not in material part caused by the fault of the Company; or
3. is not inconsistent with a schedule that constitutes Good Utility Practice.

(b) The Company shall file with the Secretary, no more than four months after the commencement of construction, a detailed progress report.

Should that report indicate that construction will not be completed within twelve months, the Company shall include in the report an explanation of the circumstances contributing to the delay and a demonstration showing why construction should be permitted to proceed. In these circumstances, an order to show cause will not be issued by the Commission, but a hearing will be held before the Commission takes any action to amend, revoke or suspend the Certificate.

- (c) For purposes of this condition, Good Utility Practice shall mean any of the applicable acts, practices or methods engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability and safety. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region in which the Company is located. Good Utility Practice shall include, but not be limited to, NERC criteria, rules, guidelines and standards, NPCC criteria, rules, guidelines and standards, NYSRC criteria, rules,

guidelines and standards, and NYISO criteria, rules, guidelines and standards, where applicable, as they may be amended from time to time (including the rules, guidelines and criteria of any successor organization to the foregoing entities). When applied to the Company, the term Good Utility Practice shall also include standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility.

- (d) Except for periods during which the authorized facilities are unable to safely and reliably convey electrical energy to the New York transmission system (e.g., because of problems with the authorized facilities themselves or upstream electrical equipment) the Company's electric plant shall be exclusively connected to the New York transmission system over the facilities authorized herein.

22. The Company shall work with NYSEG system planning and system protection engineers to discuss the characteristics of the transmission system before purchasing any system protection and control equipment related to the electrical interconnection of the Project to the NYSEG transmission system. This discussion is designed to ensure that the equipment purchased will be able to withstand most system abnormalities. The technical considerations of interconnecting the electric plant to the NYSEG transmission facility shall be documented by the Company and provided to DPS Staff and NYSEG prior to the installation of transmission equipment. Updates to the

technical information shall be furnished as available (throughout the life of the plant).

23. The Company shall work with NYSEG engineers and safety personnel on testing and energizing equipment in the authorized substation. A testing protocol shall be developed and provided to NYSEG for review and acceptance. A copy shall be provided to DPS Staff following NYSEG's approval. The Company shall make a good faith effort to notify DPS Staff of meetings related to the electrical interconnection of the Project to the NYSEG transmission system and provide the opportunity for DPS Staff to attend those meetings. The Company shall provide a copy of the testing design protocol to DPS Staff of the Bulk Electric System Section.

24. The Company shall call the Bulk Electric System Section within six hours to report any transmission related incident that affects the operation of the Electric Plant. The Company shall submit a report on any such incident within seven days to the Bulk Electric System Staff and NYSEG. The report shall contain, when available, copies of applicable drawings, descriptions of the equipment involved, a description of the incident and a discussion of how future occurrences will be prevented. The Company shall work cooperatively with NYSEG, NYISO and the NPCC to prevent any future occurrences.

25. The Company shall make modifications to its Interconnection Facility, if it is found by the NYISO or NYSEG to cause reliability problems to the New York State Transmission System. If NYSEG or the NYISO bring concerns to the Commission, the Company shall be obligated to address those concerns.

26. If, subsequent to construction of the authorized electric plant, no electric power is transferred over such plant for a period of more than a year, the Commission may consider the amendment, revocation or suspension of the Certificate.

27. In the event that an equipment failure of the authorized Electric Plant causes a significant reduction in the capability of such Plant to deliver power, the Company shall promptly provide to DPS Staff of the Bulk Electric System Section and NYSEG copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs. The Company shall report monthly to the Staff and NYSEG on the progress of any repairs. If such equipment failure is not completely repaired within nine months of its occurrence, the Company shall provide a detailed report to the Secretary to the Commission, within nine months and two weeks after the equipment failure, setting forth the progress on the repairs and indicating whether the repairs will be completed within three months; if the repairs will not be completed within three months, the Company shall explain the circumstances contributing to the delay and demonstrate why the repairs should continue to be pursued.

28. (a) At least 60 days before the planned commencement of commercial operations, the Company shall file with the Secretary, Operation and Maintenance Plan(s) for the Electric Plant.

(b) The Company shall provide complete documentation of its emergency procedures and list of emergency contacts, to DPS Staff in the Bulk Electric System Section; an updated copy shall be provided annually with documentation of any modifications.

29. The Company shall file a report with the Secretary, regarding implementation of any special protection system which is designed to mitigate possible overloads from certain transmission outages, as well as copies of all studies

that support the design of such system. In addition, the company shall provide all documentation for the design of special protection system relays, with a complete description of all components and logic diagrams. Prior to commencement of commercial operations, the Company shall demonstrate, in a filing with the Secretary, by means of appropriate plans and procedural requirements, that the relevant components of any special protection system will provide effective protection.

30. The Secretary, at her sole discretion, may extend the deadline specified in ordering clause 21(b).

31. This proceeding is closed, pending compliance with clauses 7 and 15.

By the Commission,

JACLYN A. BRILLING  
Secretary



STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 11-E-0351 - Petition of Stony Creek LLC for an Order Granting Lightened Regulation and for an Original Certificate of Public Convenience and Necessity Under Public Service Law Section 68.

FINDINGS STATEMENT

This statement was prepared in accordance with Article 8 of the Environmental Conservation Law. The construction of a wind generation electric plant in the Town of Orangeville (the Town), Wyoming County is a Type I action. The Town acted as lead agency and the Public Service Commission (the Commission) is an involved agency. The address of the lead agency is: Town of Orangeville, 3529 Route 20A Warsaw, NY 14569; the address of the Commission is Jaclyn A. Brillling, Secretary, New York State Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350. Questions may be directed to the Commission at the address above.

Description of Project

The project, proposed by Stony Creek Energy LLC (the Company), will consist of up to 59 wind turbines, various access roads, underground electrical lines, a 2-acre interconnection substation, a construction staging area, and a centrally located operations and maintenance facility. The wind turbines will range up to 430 feet in total height.

The Draft Environmental Impact Statement (DEIS), and Final Environmental Impact Statement (FEIS) analyzed potential environmental impacts on land use and zoning, visual resources, socioeconomic issues, traffic and transportation, air quality,

noise, soils, geology, terrestrial and aquatic ecology including threatened and endangered species, effects on communications facilities, storm water management, impacts of construction, and proposed general and specific mitigation measures. The Town determined, based upon field investigations and review of the DEIS and the FEIS, that the proposed action with the mitigation measures incorporated in the FEIS minimize or avoid significant environmental impact to the maximum extent possible. The mitigation measures discussed in the FEIS include: compliance with conditions and any mitigation measures required by any federal, state, and local permits and approvals; implementation of appropriate mitigation measures defined in such permits or approvals; setbacks to limit noise, visual and public safety impacts; and employment of environmental monitors to assure compliance with all environmental commitments and permit requirements. The Town determined that a large-scale wind power-generating project will result in significant environmental and economic benefits to the area.

As requested by Department of Public Service (DPS) Staff, the Company provided additional information regarding facility engineering, construction and operation. DPS Staff was particularly concerned with matters related to facility safety and reliability, construction and operation.

Cultural resources impacts review has been completed pursuant to §106 of the National Historic Preservation Act. The Office of Parks, Recreation and Historic Preservation (OPRHP) indicated that the project would have an "adverse effect" on cultural resources (relating to architectural and cultural heritage) within the area of potential effect. A plan to offset impacts to cultural resources was developed through consultation pursuant to §106, and adopted by the relevant federal agency and the OPRHP. Upon implementation of that plan, cultural resources

impacts and mitigation will be addressed in the context of §106 review, and no further action pursuant to Parks, Recreation and Historic Preservation Law §14.09 is necessary.

Impacts on avian and bat species are anticipated due to facility operations. The FEIS identified potential mortality estimates based on analysis of site conditions and operating experience at other wind-powered electric generation projects. The FEIS indicated that post-construction mortality reporting and an adaptive management strategy to minimize significant impacts should be developed with additional input from the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation (DEC). This approach is appropriate to the mitigation of adverse wildlife effects, provided that the adaptive management strategy is required to be implemented in facility operations. Critical periods of potential highest risk, land cover management opportunities, or similar adaptive management strategies, may be identified by monitoring mortalities and operations. Results will indicate impact avoidance, or minimization strategies, appropriate to the facility sites. Permits issued by DEC on November 30, 2011 contain post-construction monitoring requirements, and mandate development of adaptive management strategies as appropriate to results of monitoring.

Other findings pursuant to the State Environmental Quality Review Act (SEQRA), as extensively discussed in the Findings Statement adopted by the Town Board, are reasonable and appropriate. Those findings consider the relevant environmental impacts, facts and conclusions as discussed in the FEIS. Significant benefits identified in the FEIS will accrue to the local community through increased employment, payment of taxes, Payments In Lieu of Tax, and Host Community Agreement incentive payments. The FEIS identified a long-term beneficial impact on

air quality due to electricity generation without any emissions to atmosphere, and potential displacement of emissions from fossil-fuel based generation. Initiatives of New York State are served by the increased availability of renewable electricity to be provided by the wind facilities. Findings issued by the DEC regarding stream, wetland and wildlife impacts are also reasonable and appropriate.

The potential benefits identified in the FEIS outweigh the potential adverse effects that will result from construction and operation of the proposed wind generation facilities. The mitigation measures proposed are reasonable responses to identified impacts, and will avoid or minimize the identified adverse effects to the extent practicable. Offset measures to the identified adverse effects on historic resources will provide for the establishment or enhancement of historic preservation programs in the project vicinity, and will advance the understanding, appreciation and preservation of historic resources and historic values in the community. Implementation of the post-construction monitoring and adaptive management strategy required by the DEC will minimize adverse impacts on wildlife species.

The Commission certifies that the requirements of SEQRA have been met, based on the procedural measures administered by the Lead Agency, the input of involved agencies, and the substantive mitigation of adverse effects based on facility design and the requirements of the agencies' findings, the various permits issued, and the requirements of the Certificate of Public Convenience and Necessity. The Commission also certifies that, consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and

that adverse environmental impacts will be avoided or minimized to the maximum extent practicable because of the incorporation of conditions requiring appropriate mitigation measures in the Certificate of Public Convenience and Necessity.

JACLYN A. BRILLING  
Secretary



## Appendix

### List of Commenters

Those submitting public comments are listed below:

1. Accardi, David
2. Barton Mary Kay
3. Bassett, David
4. Davis, Barbara
5. Dickinson, Daryl
6. Dickinson, Mary
7. Evans, Cindy
8. Evans, Ralph
9. Heppner, Ronald
10. Hittner, Don
11. Humphrey, Peter
12. Jensen, Kathleen
13. Jensen, Paul
14. Klatte, John
15. MacWilliams, Debra L.
16. Makson, Linda
17. Mazurek, Janice
18. Moultrap Steven
19. Moultrap, Colleen
20. Nevinger, James R.
21. Nevinger, Mary
22. Rood, Reo
23. Slowinski, Richard
24. White, L. Robert
25. Wilkinson, Nyla
26. Village of Attica