

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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In the Matter of the Petition of Marble River, LLC
Requesting an Order to Modify a Certificate Under
Public Service Law § 68 and for an Order that the
Proposed Marble River Wind Generation Facility Will
Continue to be Subject Only to “Lightened
Regulation,”
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Case 07-E-1343

**PETITION OF MARBLE RIVER, LLC FOR AN
ORDER GRANTING THE MODIFICATION OF A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY (“CPCN”) UNDER PSL SECTION 68 AND FOR
AN ORDER CONTINUING “LIGHTENED REGULATION”**

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February 7, 2011

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PUBLIC SERVICE COMMISSION

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In the Matter of the Petition of Marble River, LLC
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I. INTRODUCTION AND SUMMARY

On June 19, 2008, the N.Y. Public Service Commission (“Commission”) issued Marble River, LLC, (“Petitioner” or “Marble River”) a certificate of public convenience and necessity (“CPCN”) pursuant to Public Service Law (“PSL”) § 68 and 16 N.Y.C.R.R. § 21.1 to allow construction and operation of the proposed Marble River Wind Farm in the Towns of Clinton and Ellenburg in Clinton County, New York, (“Marble River Wind Facility” or “Modified Facility”).¹ Pursuant to the Rules of Procedure of the Commission, Marble River hereby petitions the Commission for an order modifying the previously issued CPCN to allow for the construction and operation of the Modified Facility as described below. In addition, Marble River seeks an order declaring that the Modified Facility will continue to be regulated under a lightened regulatory regime consistent with the Commission's previous decision in this proceeding and with other orders providing for lightened regulation for wholesale generators.²

¹ See Case No. 07-E-1343, *Petition of Marble River LLC*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation, Issued June 19, 2008 (“Marble River Order”).

² See generally, Case No. 07-E-0243, *Sheldon Energy LLC*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation, Issued January 17, 2008; Case No. 07-E-0138, *Petition of Canandaigua Power Partners LLC*, Order Granting Certificates of Public Convenience and Necessity, Providing for Lightened Regulation and Approving Financing, Issued August 16, 2007; Case No. 05-E-1633, *Petition of Noble Ellenburg Windpark, LLC*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation, Issued November 9, 2006; Case No. 05-E-1634, *Petition of Noble Clinton Windpark I, LLC*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation, Issued October 19, 2006; Case No. 02-E-0362, *Petition of Flat Rock Windpower LLC*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation, Issued June 17, 2004.

The *Marble River* Order authorized Petitioner to construct and operate a Modified Facility consisting of 109 S88 (2.1 MW) Suzlon turbines for a maximum generating capacity of up to 230 MW. Petitioner requests a modification of the Certificate to authorize the construction and operation of 72 Vestas V112 (3.0 MW) turbines with a maximum generating capacity of up to 216 MW. Other Facility modifications include:

- A decrease in the project area from 17,000 acres to approximately 11,500 acres;
- A decrease in the length of proposed access roads from 48 miles to 19 miles;
- A decrease in the length of underground electrical collection lines and minor modifications in the routing of these lines from 55 miles to 38 miles;
- The removal of all 13.6 miles of overhead electrical collection lines;
- Minor modifications to the location of some of the “remaining” 72 turbines to address the Towns setback requirements and requirements by the U.S. Army Corps of Engineers (“USACE”) and New York State Department of Environmental Conservation (“NYSDEC”) as a part of wetland and stream disturbance permit review; and
- An increase in the overall height of the turbine from 407 to 492 feet.

A map showing the locations of wind turbines and accompanying infrastructure authorized in the *Marble River* Order, compared to the modified layout proposed herein, is provided as Attachment 1.

Petitioner hereby moves and requests expedited approval of this petition pursuant to 16 N.Y.C.R.R. § 21.10, on the grounds that the expeditious completion of this proceeding is in the public interest and will allow Petitioner to begin construction of the Modified Facility in the Spring of 2011.³

³ As required by Section 21.10(a)(3) of the Commission’s Regulations (16 NYCRR § 21.10(a)(3)), within 14 days of the filing of this Petition, Marble River will publish a notice of this application for an amended CPCN in the Plattsburgh Press Republican and the North Countryman, newspapers of general circulation in the Towns of Clinton
Footnote Continued on Next Page

Public Service Law § 68 authorizes the Commission to grant a CPCN to an electric corporation upon a determination that the construction of the electric plant is necessary and convenient for public service. The Commission's rules establish further evidentiary requirements for a CPCN application.⁴ 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. The Commission previously found in the *Marble River* Order that the Facility is economically feasible and in the public interest. The modifications to the Facility proposed herein are principally aimed at maximizing project efficiencies in order to reduce construction and operational costs while continuing to minimize environmental impacts to the maximum extent practicable. The Vestas V112 turbine is the latest state-of-the-art turbine produced by Vestas and has been designed to maximize energy production at sites with wind speeds between 6.5 mps and 8.5 mps, such as those at the Project site in Clinton and Ellenburg. The size and efficiency of the Vestas V112 turbine, compared with the Suzlon turbine, has allowed Marble River to significantly reduce the number of turbines at the Project site while increasing the overall energy production anticipated from the facility due to the more efficient use of the region's wind resource.⁵ Therefore the Modified Facility continues to be economically feasible.

In addition, as recognized by the Commission in the *Marble River* Order, the proposed

and Ellenburg. The proposed notice is attached as Attachment 2 hereto.

⁴ See 16 NYCRR §21.3.

⁵The increase in energy production is due to the increased hub height and longer rotor diameter of the V112 turbine. The increased height allows the V112 turbine to access higher wind speeds and the greater rotor diameter allows the turbine to capture more of the wind. Energy production is proportional to the cube of the wind speed, increasing output. As a result, each turbine will produce more energy at any given location than the S88, with its lower hub height and small windswept area.

Modified Facility is a wind-powered electric-generating facility that will provide a significant source of renewable energy to the New York power grid. Since the *Marble River* Order, the Commission has recently expanded the Renewable Portfolio Standard (“RPS”) program to increase the proportion of renewable electricity consumed in New York from 25 percent to 30 percent by 2015.⁶ The Commission has recognized the many benefits associated with development of renewable energy projects and the need to transition from primary reliance on large, centralized fossil fuel plants.⁷

The Modified Facility also responds to objectives identified in the 2009 State Energy Plan (New York State Energy Planning Board, 2009) and Executive Orders 24 and 111. These objectives include stimulating economic growth, increasing energy diversity, and promoting a cleaner and healthier environment. The benefits of the Modified Facility, as with the original Facility approved by the Commission, include positive impacts on socioeconomics (e.g., increased tax revenues to local municipalities and lease revenues to participating landowners), a diversification of New York’s electric generating sources, a reduction in fuel price volatility and the addition of an electric generating source that produces zero emissions, thereby benefiting ecological and water resources as well as human health. Thus, the Modified Facility continues to be in the public interest.⁸

Expedited approval will allow construction of the Modified Facility to commence during the construction season of 2011, giving a much needed boost to Clinton County and also allowing for the purchase of wind turbine generators at a favorable time in the wind industry

⁶ Case No. 03-E-0188 *Proceeding on Motion of the Commission Regarding a Retail Portfolio Standard*, Order Establishing New RPS Goal and Resolving Main Tier Issues, Issued January 8, 2010.

⁷ See *Id.* at page 12.

⁸ Moreover, despite the reduction in the size of the Facility, the Petitioner has committed to retaining the levels of investment in the community as committed to in the original project proposal.

business cycle. At the same time, expedited approval is important for Marble River to potentially qualify for federal incentives based on construction milestones established under Section 1603 of subdivision B of the American Recovery and Reinvestment Act of 2009.⁹

II. FACILITY DEVELOPER

A. Marble River, LLC

The Commission found in the *Marble River* Order that Petitioner and its parents are experienced and financially viable developers of wind energy. The Modified Facility developer is the same as identified in the original petition and clarified in the August 12, 2008 letter to the Commission. Marble River, LLC, continues to be a limited liability company, headquartered at 52 James St, 4th Floor, Albany, New York 12207, organized under the laws of State of Delaware.¹⁰ Clinton County Wind Farm LLC is the 100% owner of Marble River LLC. Horizon Wind Energy LLC is the 100% owner of Clinton County Wind Farm LLC and is an indirect owner of Marble River LLC.

B. Horizon Wind Energy LLC

Horizon Wind Energy continues to be an industry leader in the development, construction and operation of wind-powered electric generation facilities with a strong history of commitment to quality. Since the *Marble River* Order, Horizon Wind Energy has commissioned more than 2,000 MW of wind farms operating in Minnesota, Iowa, Oklahoma, Washington, Indiana, Illinois, Kansas, and Oregon. With over 20 offices and 20 wind farms across the United States, Horizon Wind Energy has developed more than 3700 MW and operates over 3300 MW of wind farms. In New York, Horizon Wind Energy is the co-owner of the Maple Ridge Wind Farm, a

⁹ The Production Tax Credit was extended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Dec. 17, 2010, H.R. 4853 / Public Law 111-312.

¹⁰ The Certificate of Formation was provided with the original application and is again attached as Attachment 3.

322 MW facility located in Lewis County, New York, and the owner of the Madison Wind Farm, an 11 MW facility in Madison County, New York. Horizon Wind Energy is developing a number of other sites in New York State that may be suitable for wind generation facilities having an aggregate of approximately 600 MW of wind power generating capacity.

On June 26, 2007, the Commission approved the transfer of the ownership interests of Horizon Wind Energy to EDP Renewables S.A. ("EDPR"), a global leader in the renewable energy sector.¹¹ EDPR has undertaken exceptional renewable energy development in recent years. Its installed capacity increased three-fold between 2006 and 2009, becoming the third largest wind energy company in the world. EDPR is listed on the Euronext Lisbon Stock Exchange. Energias de Portugal, S.A. ("EDP"), the parent company of EDPR, is a vertically-integrated utility company, headquartered in Lisbon, Portugal. EDP has over 13,500 MW of installed generation capacity in the Iberian Peninsula and approximately 9.7 million customers. EDP also has investments in gas utilities, namely two local gas distribution companies in the Iberian Peninsula, and a strategic stake in Naturgas, the second largest gas operator in Spain. In addition to its Iberian assets, EDP also has significant investments in electricity generation and distribution assets in Brazil where it holds over 62% of Energias do Brasil, a company listed on the São Paulo stock exchange with a market capitalization of approximately USD \$4 billion. In the renewable energy business, EDP currently owns over 1,700 MW of generation capacity worldwide.

Petitioner and its parents are experienced and financially viable developers of wind energy. Therefore, as the Commission found in the *Marble River* Order, Petitioner is able to

¹¹ Case No. 07-E-0462 *Horizon Wind Energy LLC, f/k/a Zilkha Renewable Energy and GS Wind Holdings LLC*, Declaratory Ruling on Review of Transfer Transactions, Issued June 26, 2007.

finance the Project and, as described in further detail below and in the attachments, able to render adequate service.

III. COMMUNICATIONS

Correspondence and communications concerning this filing should be directed to:

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(713) 265-0372
(713) 265-0365 (fax)

IV. THE MODIFIED FACILITY

The regional location of the Modified Facility is depicted on the map attached as Attachment 1. The size of the project area has decreased from 17,000 acres to approximately 11,500 acres. Largely, the remaining turbine locations within the project area have not changed significantly from the previously identified locations. As described in the *Marble River* Order,

the Modified Facility will be located in the Towns of Clinton and Ellenburg, Clinton County, New York. The Modified Facility is located in an area on the Churubusco plateau, generally around the Hamlet of Churubusco, in the Town of Clinton, New York. The southern boundary of the project area runs east to west 1 mile north of the Village of Ellenburg Center in Ellenburg, New York. The northern boundary of the project area runs east to west approximately just south of the Canadian border.

The Modified Facility will include up to 72 wind turbines with 58 turbines proposed in the Town of Clinton and 16 turbines proposed within the Town of Ellenburg. Within the Town of Ellenburg, 10 turbines are proposed north of State Route 190; and an additional 6 turbines are proposed south of State Route 190. Within the Town of Clinton, 20 turbines are proposed south of State Route 11, 13 turbines are proposed north of State Route 11 and south of Looby Road, and an additional 25 turbines are proposed north of Looby Road. These turbines are situated in generally the same locations as identified in the *Marble River* Order. However there were minor modifications to some wind turbine locations in order to meet Town setback requirements and the setback requirements established in the USACE and NYSDEC wetland and stream disturbance permits (See copies of the USACE and NYSDEC permits in attachment 4). These minor modifications are indicated in the map attached as Attachment 1.

Each Vestas V112 turbine has a generating capacity of 3.0 MW and will include a 112-meter (367 foot) diameter, three-bladed rotor mounted on a 94-meter (308 foot) tall steel pole tower (total maximum height of 150 meters (492 feet)). To-scale drawings and specifications for the Vestas V112 turbine are presented in Attachment 5. The Vestas V112 turbine is a state-of-the-art turbine designed for low and medium wind speed sites. The turbine delivers high productivity due to its large swept area, higher rotor efficiency and better serviceability and

reliability, which in turn improves availability. The attachments to this Petition provide further information on the Vestas V112 turbine and include monitoring, inspection and maintenance programs. The revised layout continues to meet the Commission's 1.5 times setback from existing and proposed major transmission facilities operating at 115 kV or greater described in Case 07-E-0213.¹²

Other modifications to the Facility infrastructure include approximately 19 miles of gravel access road, and approximately 38 miles of underground electrical collection lines, a lay-down yard and an Operations and Maintenance ("O&M") facility. This is a reduction from the 48 miles of gravel access road, and 55 miles of electric collection lines authorized in the *Marble River* Order. No changes to the lay-down yard or Operations & Maintenance ("O&M") facility are proposed. The access roads, underground electrical collection lines, temporary lay-down yard, and O&M facility will be installed as permitted in the *Marble River* Order and in the Draft Environmental Impact Statement. In addition, as authorized in the *Marble River* Order, three 94-meter tall, self supporting (unguyed) wind measurement towers will be installed in the Town of Clinton.

As described in the *Marble River* Order, a Point of Interconnection ("POI") Station, approximately 200 feet x 350 feet in size, will continue to be located at the New York Power Authority (NYPA) 230 kilovolt (kV) transmission line easement area. Neighboring this station to the north, Marble River will construct two 34.5 kV collector stations, each approximately 136 feet x 173 feet. Each collector station will have ten collector bays laid out so as to accommodate eight collector circuits, including two spare bays. The POI station and collection stations,

¹² Case No. 07-E-0243, *Sheldon Energy LLC*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation, Issued January 17, 2008.

previously described in Section 2.5 of the DEIS and SEIS, were similarly approved and permitted in the *Marble River* Order and no modifications are proposed.

A Feasibility Study Agreement with NYPA [dated March 22, 2007] initiated the utility's review of the Facility's interconnection plan and system reliability impacts. The System Reliability Impact Study (SRIS) for the interconnection of the Facility to NYPA's 230 kV Willis to Plattsburg transmission facility has been reviewed by the utility and the Transmission Planning Advisory Subcommittee (TPAS) and the Operating Committee (OC) of the NYISO. The NYISO Class Year 2006 Facility Study has been completed. Marble River accepted the proposed cost allocations and has since funded and substantially completed the common system upgrade facilities. The Modified Facility is not anticipated to affect previous conclusions regarding the reliability and interconnection of the Modified Facility to the New York State electricity grid. Marble River is in discussions with the NYISO regarding these project modifications and the submission of a non-material change request and it is anticipated that this will be submitted in the beginning of 2011.

As noted by the Commission in the *Marble River* Order, the project area is highly ranked as a wind resource, and the Modified Facility continues to take advantage of this resource. The Facility modifications accommodate changed circumstances in the economy and the wind industry, which have occurred since the Commission issued the Certificate in 2008. The most significant changes in circumstances are the economic downturn in the fall of 2008, and the concomitant sharp drop in energy prices, which have rendered many proposed wind projects uneconomical. The modifications proposed by Marble River are principally aimed at maximizing project efficiencies in order to reduce construction and operational costs while continuing to minimize environmental impacts to the maximum extent practicable. To this end,

Marble River proposes to reduce the project size, consolidate infrastructure and optimize the output of the facility in a manner that will avoid any additional significant adverse impacts as compared to the original project while taking maximum advantage of the wind resource in the project area.

Marble River intends to commence construction of the Modified Project in the spring of 2011 and anticipates the Modified Facility will be ready to begin commercial operation by the end of 2012. As stated in the original petition, Petitioner will not sell retail electricity and thus will operate exclusively in the wholesale market. The Modified Facility will sell energy, capacity, and possibly ancillary services into the wholesale generation market. In April 2010, Horizon Wind Energy LLC was awarded a contract by the New York State Energy Research and Development Authority (NYSERDA) to sell renewable energy credits ("RECs"), the clean environmental attributes of wind power, for ten years from the Modified Facility.

As stated in the original petition, during construction, an on-site Facility construction manager housed in an on-site construction trailer will be responsible for the day-to-day administration of all construction agreements as well as site safety and security. This individual ultimately will report to Marble River management locally or to the Horizon Wind Energy Headquarters in Houston, Texas as it relates to policies, procedures and guidance. Upon completion of construction, there will be several full-time on-site Facility managers taking the place of the construction manager. Operations staff will have an office in a permanent on-site operations building and have on-going responsibility for operation and maintenance as well as site safety and security. This staff will ultimately report to Horizon Wind Energy's Northeast Regional Operations office in Lowville, New York.

Petitioner asserts it will fulfill all of the commitments made in the *Marble River* Order.

Petitioner commits to comply with the requirements of the Commission's regulations regarding the protection of underground facilities (16 NYCRR Part 753) and that the Petitioner will become a member of Dig Safely New York. Petitioner will require all contractors, excavators and operators associated with its facilities to comply with all requirements of the Commission's regulations regarding identification and numbering of above ground utility poles (16 NYCRR Part 217). Petitioner continues to commit to complying with the relevant design, construction and operation requirements of the National Electric Safety Code, other applicable engineering codes, standards and requirements, and the standards and policy requirements of NYPA. Petitioner's plans for addressing coordination with, and avoiding interference with, other utility providers in the Modified Facility design, construction and operation controls for responding to complaints and inquiries remain the same as identified in the *Marble River* Order. The Commission previously noted that Petitioner's emergency response measures and facility maintenance standards were appropriate and will be continued with respect to the Modified Facility other than those specific measures applicable to the Vestas V112 turbine.

Based on the continuation of the commitments made in the *Marble River* Order along with the information provided on the Vestas V112 turbine, Petitioner respectfully requests that the Commission find that the Company will provide safe, reliable and adequate service.

V. SEQRA REVIEW AND OTHER AGENCY PERMITS FOR THE MODIFIED FACILITY

On October 14, 2010, the Towns of Clinton and Ellenburg, as lead agencies for the coordinated review under SEQRA (collectively referred to as the "Towns"), issued a negative declaration concluding that the Modified Facility would not have a significant impact on the

environment.¹³ The Towns' negative declaration is attached hereto as Attachment 6. The basis for the Towns negative declaration was the analysis provided in the Environmental Impact Assessment Report ("EIAR") (attached hereto as Attachment 7) and the standard provided in the SEQRA regulations in 6 NYCRR 617.7(e). In addition, the Towns issued amendments to the special use permits previously granted to the project and waiver/variance for the height of the turbines.

As part of the modification of the Facility, Petitioner is applying for modifications of the NYSDEC and USACE permits, which are anticipated to be filed in February 2011. Special construction and restoration measures, including a wetlands mitigation plan, similar to those in the issued permits will be specified and implemented by Petitioner. In addition, Petitioner remains committed to the post-construction bird and bat evaluations identified in the *Marble River Order* and the SEQRA record for the original Facility proposal subject to the revised deadlines anticipated to be established by NYSDEC in the amended wetlands permit.

As identified in the *Marble River Order*, stormwater and erosion control plans will be implemented to minimize construction impacts. Following construction, disturbed areas will be restored to agricultural use in accordance with New York State Department of Agriculture and Markets Protection Guidelines, or re-vegetated as appropriate to site conditions.

The State Historic Preservation Office ("SHPO") is reviewing the modifications to the Facility pursuant to § 106 of the National Historic Preservation Act. Previously, a Memorandum of Agreement ("MOA") was entered into among SHPO, USACE and Petitioner. The MOA is attached as Attachment 8. Regarding the visibility analysis, it is anticipated that the overall

¹³ The PSC Staff has acknowledged receipt of the above mentioned SEQRA documents and provided comments to the Lead Agencies on August 31, 2010.

reduction in the number of turbines will mitigate the change in height for the remaining turbines. Petitioner will continue to work with SHPO and USACE to modify the MOA and implement the mitigation measures identified therein as necessary.

VI. MARBLE RIVER REQUESTS THAT THE COMMISSION GRANT IT A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (“CPCN”).

The Modified Facility satisfies the requirements for a CPCN that are set forth in PSL § 68 and 16 N.Y.C.R.R. §§ 21.2 and 21.3. The regulations require an applicant to show that its plant is in the public interest, that the enterprise is economically feasible, that the applicant is able to finance the Modified Facility and that it is able to render adequate service. As noted above, the Commission found in the *Marble River* Order that the Facility is in the public interest, that the enterprise is economically feasible, that the Petitioner is able to finance the Facility and that it is able to render adequate service. The Facility modifications noted in this Petition should not change the Commission’s conclusions that Petitioner satisfies the requirements of PSL § 68 and 16 N.Y.C.R.R. §§ 21.2 and 21.3. The Modified Facility meets the requirements for a CPCN, is in the public interest, and should be approved on an expedited basis.

The municipalities, in which the Marble River Facility will be located, have not been granted a franchise to provide electric service since the Commission issued the *Marble River* Order. The Modified Facility will not be using municipal property for any portion of the Facility and, as such, no permission for the use of municipal property is required from the Towns of Clinton and Ellenburg. Petitioner is complying with the Wind Facilities Law for the respective Towns and was issued amended permits for the construction and operation of the Modified Facility in October 2010.

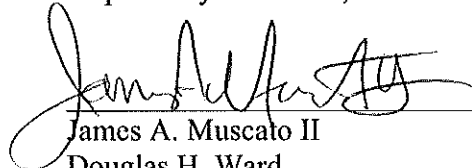
VII. MARBLE RIVER, LLC REQUESTS THAT IT CONTINUE TO BE REGULATED CONSISTENTLY WITH THE LIGHTENED REGULATION FOUND APPROPRIATE FOR OTHER WHOLESALE GENERATORS

In the *Marble River* Order, the Commission found it appropriate to grant Petitioner “lightened regulation” similar to that afforded other comparably-situated Exempt Wholesale Generators. Petitioner requests that the Commission continue to find lightened regulation to be appropriate and apply those provisions of the Public Service Law deemed applicable to wholesale generators as identified in the *Marble River* Order.

VIII. CONCLUSION

Marble River respectfully requests that the Commission issue an order: (1) declaring that Marble River will be continue to be subject to a lightened regulatory regime; (2) modifying the PSL Section 68 CPCN for Marble River to construct the Modified Facility and associated transmission interconnection facilities; and (3) granting such other and further relief as the Commission may determine is necessary or appropriate in furtherance of the relief sought by Marble River.

Respectfully submitted,


James A. Muscato II
Douglas H. Ward
Attorneys for Marble River LLC

DATED: February 7, 2011
Albany, New York

VERIFICATION

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

Brian Lammers, being duly sworn, deposes and says:

I am the principal of Marble River LLC and am fully familiar with the facts presented in the Petition for an Order granting "Lightened Regulation" and for a Certificate of Public Convenience and Necessity.

I have read the foregoing Petition and know the contents thereof. All of the facts asserted in the above referenced petition are true and accurate to the best of my knowledge.



Brian Lammers

Sworn to, before me, this 4th
day of February 2011

Mary A. Ovick Notary Public

