

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 18, 2008

COMMISSIONERS PRESENT:

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

CASE 07-E-1343 – Petition of Marble River, LLC for an Order Granting Lightened Regulation and for an Original Certificate of Public Convenience and Necessity Under Public Service Law Section 68.

ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY,
AND PROVIDING FOR LIGHTENED REGULATION

(Issued and Effective June 19, 2008)

BY THE COMMISSION:

INTRODUCTION

By petition filed November 7, 2007 (and supplemented on March 27, May 7, and June 9, 2008) Marble River, LLC (Marble River or the Company) requested a Certificate of Public Convenience and Necessity (CPCN), pursuant to §68 of the Public Service Law (PSL), authorizing the construction and operation of a wind energy generating project proposed to be located in the Towns of Clinton and Ellenburg, Clinton County. The Company also requested an order providing for lightened regulation of it as an electric corporation.

In connection with its request for a CPCN, the Company moved for an expedited proceeding, pursuant to 16 NYCRR §21.10(a)(1), so that the hearing required by PSL §68 might be held before us on the application and any information filed by the parties, without oral testimony. The Company caused a notice of its petition and motion

to be published in the *Plattsburgh Press Republican*, a newspaper of general circulation in the vicinity of the proposed project, on November 11, 2007, pursuant to 16 NYCRR §21.10(a)(3). Within the ten-day period specified in 16 NYCRR §21.10(b)(2), which expired on November 21, 2007, no responses to the motion were filed. No public comments have been received in the subsequent period.

A notice of a petition for lightened regulation was published in the State Register on December 5, 2007 in conformance with §202(1) of the State Administrative Procedure Act (SAPA). No response to the notice was received within the SAPA §202(1)(a)(i) comment period, which expired on January 21, 2008.

On February 28, 2008, the Company provided additional information in response to inquiries of the Staff of the Department of Public Service (Staff). The Company's March 27, 2008 supplement provided details of the design and management of the proposed substation and transmission interconnection facilities. Its May 7, 2008 supplement provided information in response to discussions with Staff regarding deliverability of power under certain load conditions. On May 16, 2008 Marble River provided additional technical specifications and maintenance information regarding the wind energy turbines proposed for the project. The June 9, 2008 supplement addresses additional details of proposed facilities operation, inspection and maintenance.

THE PETITION

The Company is a Delaware limited liability corporation and is a joint venture of Horizon Wind Energy LLC (Horizon Wind) and AES-Acciona Energy NY, LLC. The petition states that Horizon Wind is an industry leader in the development, construction and operation of wind-powered electric generating facilities, with facilities in several states, which has an interest in both the Maple Ridge and the Madison facilities in New York. According to the Company, Horizon Wind has already developed more than 1000 megawatts (MW) of wind generation, and is developing several thousand MW in "a dozen states". The Company intends to commence construction as soon as possible and anticipates that its project will begin commercial operation near the end of 2009.

The Commission approved the transfer of Horizon Wind's ownership interest to Energias de Portugal S. A. (EDP). EDP acquired 100% of the share capital of Horizon Wind.¹ EDP is reportedly one of the leading generators of electricity from renewable resources globally. EDP reports that it also holds investments in gas utilities and electric generating facilities in Portugal, Spain and Brazil. AES-Acciona Energy NY, LLC (AES) is also a Delaware limited liability company formed as a joint venture co-owned by AES Corporation and Acciona, S.A., leading renewable energy and infrastructure companies. AES is actively developing nearly 300 MW at other wind project sites in New York State. AES also owns and operates several thermal generating facilities in New York State.

Description of Project

Marble River originally proposed the installation of 109 Gemesa wind turbines, each rated at 2 MW. Subsequently the Company explained that it intends to install up to 109 Suzlon 2.1 MW model S88, low-temperature version wind turbines. Thus, the rated project output has increased from 218 to up to 229 MW. In addition to up to 109 wind turbines, the project will include access roads, aboveground and underground electrical collection lines, an interconnection substation, a construction staging area, and a centrally located operations and maintenance facility. Project construction is anticipated to start July 1, 2008, with turbine installation scheduled for May 2009, and project completion by the end of 2009.

The turbine array will be predominantly located in the Town of Clinton. A substation will be located at Patnode Road near the proposed point of interconnection with the existing New York Power Authority (NYPA) 230 kV Willis – Plattsburgh transmission line. The maximum height for the tower and turbine configuration is 407 feet, measured when a rotor blade is at the top of its rotation. The wind turbines will be painted white or a pale color.

¹ Case 07-E-0462, Horizon Wind Energy LLC, f/k/a Zilkah Renewable Energy, and GS Wind Holdings LLC, Declaratory Ruling on Review of Transfer Transactions (issued June 26, 2007).

Stormwater and erosion control plans will minimize construction impacts. Following construction, disturbed areas will be restored to agricultural use in accordance with New York State Department of Agriculture and Markets (NYSA&M) Agricultural Protection Guidelines, or re-vegetated as appropriate to site conditions. Special construction and restoration measures within NYS-regulated wetlands will be specified in permits to be issued by the New York State Department of Environmental Conservation (DEC).

The Company has committed to comply with the requirements of our regulations regarding the protection of underground facilities (16 NYCRR Part 753); the Company also certified that it would become a member of Dig Safely New York and would require all contractors, excavators and operators associated with its facilities to comply with the underground facility protection regulations. Marble River has also committed to comply with the requirements of our regulations regarding identification and numbering of above ground utility poles (16 NYCRR Part 217).

In the Petition, the company provided details and descriptions of its proposed electric facilities, including features for facility security and public safety; a plan for quality assurance and control measures for facility design and construction; utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities; vegetation and facility maintenance standards and practices; emergency response plans for construction and operational phases; and complaint resolution measures. Facility design is proposed to conform to the National Electric Safety Code, as well as other relevant codes and standards applicable to facility siting, construction and operation. In supplemental information submitted in response to Staff information requests, the Company indicated that several turbines were moved to increase the offset from the existing NYPA bulk electric transmission lines and the planned Patnode Substation to be shared by Marble River LLC and NYPA. The relocation of turbines is in conformance with the guidance provided in our recent

decision in Case 07-E-0213 regarding setbacks from existing and proposed major transmission facilities operating at 115 kV or greater.²

Marble River intends to sell its project's output into the wholesale markets through bilateral contracts, and the spot markets administered by the New York Independent System Operator (NYISO) or adjacent control areas, such as New England or Ontario. The company intends to sell renewable energy credits or environmental attributes to buyers, such as the New York State Energy Research and Development Authority, green tag marketers and other buyers. In addition, the project intends to offer capacity, voltage support and ancillary services to the NYISO markets.

In its May 7, 2008 supplement, the Company reported that it has modeled a range of conditions and identified potential periods when local load conditions are low and transmission constraints may limit output of one or more generating units, including fossil-fueled and other renewable energy generators. The Company cited to studies by the NYISO that indicate that its project and other regional projects within the 2006 Class Year can be operated without significant impacts on NYPA hydro-electric or Saranac natural gas-fired generating facilities. Marble River reported that it is making a significant investment in transmission system facilities necessary to accommodate the additional new wind generation. Furthermore, Marble River insisted that additional investments it proposes to make to support implementation of a Special Protection System will allow planned generation interconnected to the NYPA Willis-Plattsburgh line to be delivered beyond the immediate area. According to the Company, the specific upgrades it will help to finance will enable the operation of the Bulk Power System so that it will continue to meet Northeast Power Coordinating Council Reliability Standards. Finally, the Company insisted that the project supports several goals of the Renewable Portfolio Standard proceeding and Commission policies; it suggests that we should not recognize other generators as having "vested rights to transmission" that would be inconsistent with de-regulation of generation.

² Case 07-E-0213, Sheldon Energy LLC, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued January 17, 2008).

Lightened Regulation

The Company requested that it be regulated under a lightened regulatory regime similar to the regimes that have been applied to other entities engaged in selling electric power exclusively at wholesale. According to the petition, the Company will sell the output of its project exclusively at wholesale and will not be a retail supplier of electricity.

DISCUSSION AND CONCLUSION

State Environmental Quality Review

Environmental review of the proposed facilities was conducted pursuant to the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law, with the Town Boards of Clinton and Ellenburg acting as co-lead agencies.³ 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 that agencies 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 impact, an environmental impact statement must be prepared by the lead agency or the applicant.

The company submitted to the Town Boards a Full Environmental Assessment Form (EAF). Based on review of the Full EAF, the Lead Agencies determined that the Marble River Project could have a significant impact, and, therefore, on January 17, 2006, issued a Positive Declaration of Environmental Significance, requiring the preparation of a Draft Environmental Impact Statement (DEIS).

On April 6, 2006, the Town Boards accepted a DEIS submitted by Marble River, issuing a Notice of Completion and starting a 60-day public comment period that included a public hearing and the receipt of comments. Notice of both the comment

³ No agency objected to the Boards' assuming the role of lead agency.

period and the public hearing was published in the Town's official paper. Notice was also mailed to each Involved Agency and published in the Environmental Notice Bulletin (ENB). The Town Boards received numerous comments on the DEIS during the public hearing and in writing.

In response to comments and changes in the project configuration, Marble River submitted a Supplemental DEIS (SDEIS) which was accepted by the Town Boards on July 25, 2007. A 60-day public comment period on the SDEIS ran until September 25, 2007. Public hearings on the SDEIS were held on August 27, 2007. Transcripts of the public hearings and copies of written comments are contained in the Final EIS (FEIS). The FEIS was accepted on January 16, 2008. A Notice of Completion was prepared and submitted to the ENB and the FEIS was circulated to Involved and Interested Agencies and to the public. On April 21, 2008, the Town Boards issued findings statements, and issued special use permits for the Marble River project.

Under SEQRA, the Town Boards as Lead Agency, and each other involved agency, must adopt a formal set of written findings based on the FEIS. The SEQRA Findings Statement of each agency must:

- (i) consider the relevant environmental impacts, facts, and conclusions disclosed in the FEIS;
- (ii) weigh and balance relevant environmental impacts with relevant social, economic, and other considerations;
- (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.⁴

Once the findings are adopted, the SEQRA process is completed, and the lead agency and involved agencies can begin to approve, approve with conditions, or disapprove the proposed project. Each involved agency must make its own SEQRA findings.

The Town Boards conducted the SEQRA review in parallel with the review of permit applications submitted by Marble River. The Towns have authority to approve, approve with conditions, or disapprove the applications.

The DEIS, the SDEIS and FEIS for the project 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, stormwater management, impacts of construction, and proposed general and specific mitigation measures. Potential cumulative impacts of the Marble River project and adjacent and nearby projects (Noble Clinton Windpark and Noble Ellenburg Windpark) were evaluated, including cumulative visual effects of the several projects as viewed from Lyon Mountain, the northern-most mountain site within the Adirondack Park, located approximately 11 miles south of the project area. While the total number of wind turbines visible from that scenic viewpoint will increase, the character of the landscape will not significantly change, and contrasts will not increase significantly.

The Towns determined that a large-scale wind power-generating project will result in significant economic benefits to the area. Moreover, the Towns concluded, based upon field investigations and review of the DEIS, the SDEIS and the FEIS, that the proposed action with the mitigation measures incorporated in the FEIS would minimize or avoid significant adverse environmental impact to the maximum extent practicable. 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;

⁴ 6 NYCRR §617.11(c) and (d).

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. Project-wide soil erosion and sediment control will be addressed in the Stormwater Pollution Protection Plan. Measures to minimize and mitigate wetlands impacts, including alternative configuration of the final access road locations and the potential reduction of several turbines, are under review and development by DEC and the US Army Corps of Engineers (ACOE), and will be finalized in permits to be issued by those agencies.

Historic Preservation Review

The State Historic Preservation Office (SHPO) of the New York State Office of Parks, Recreation and Historic Preservation is reviewing the proposed project pursuant to §106 of the National Historic Preservation Act. By letter of April 19, 2007, the SHPO stated that the project will have an adverse effect on historic 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 FEIS notes that historic resources in the project area are good examples of a range of architectural styles; however, none of the properties have been determined to be significant for their scenic or aesthetic qualities, and the introduction of wind turbines in the landscape will not impair the character or quality, or diminish public enjoyment or appreciation, of the historic resources.

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 ACOE is evaluating project wetlands impacts, and is conducting a §106 cultural resources impact evaluation for a visual Area of Potential Effect with a 5-mile radius centered on the project. There is a significant degree of overlap of the area of potential effect on historic resource impacts of the Marble River project with the areas of potential effect of the nearby Noble Environmental Power

projects in the Towns of Chateaugay, Clinton, and Ellenburg, which have each been permitted. The impacts expected to result from this project have been duly characterized and are under final consideration by SHPO. Offset mitigation plans have been developed and will be implemented pursuant to a Memorandum of Understanding between the SHPO, the ACOE and the Company. Thus, our responsibilities for consultation with the SHPO and consideration of cultural resources impacts have been satisfied.

Bird and Bat Impacts

In addition to the historic resources impacts discussed above, impacts on avian and bat species are anticipated due to facility operations. The FEIS identifies potential mortality estimates based on analysis of site conditions and operating experience at other wind-powered electric generation projects. The FEIS indicates that post-construction mortality reporting and an adaptive management strategy to address any adverse impacts to birds and bats that are revealed by these studies should be developed with additional input from the U.S. Fish and Wildlife Service and the New York State 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, as needed based on review and monitoring of impacts in the project area. Critical migratory periods and hours of highest risk of impact may be identified through a period of monitoring operations and impacts. Deterrent mechanisms and habitat manipulation near turbine locations hold potential for reducing wildlife collisions with operating turbines; they warrant additional evaluation as greater operational experience in the industry is gained. Based on operational experience, impact avoidance or minimization strategies appropriate to the facility site should be developed and implemented as appropriate to address potential significant impacts on avian and bat species.

We will therefore require the company to address the need for additional post-construction study, monitoring and analysis of impacts, and the development and implementation of a long-range strategy for adapting facility operations to address conservation of natural resources, such as birds and bats.

Emissions Reductions

The findings issued by the Town Boards potentially overstate the displacement of fossil-fueled generation due to operation of the wind generation facility. There will likely be some offset of other renewable generation due to operation of the new facility, including hydro-electric, other wind, and biomass units. The reductions at other sites are likely to occur at low-load conditions in the project area for limited periods when there is insufficient local load to consume all of the power generated and insufficient transmission capacity to export the balance. The reduced emission benefits are not, however, likely to be of such significance that they outweigh the multiple benefits that the addition of up to 229 MW of wind power proposed by Marble River will represent.

Other findings, as extensively discussed in the Findings Statement adopted by the Town Boards, are reasonable and appropriate. The additional impact mitigation requirements we will impose will ensure that impacts are minimized to the extent practicable, and that appropriate SEQRA findings may be made.

Public Convenience and Necessity

We are authorized to grant a CPCN 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 (16 NYCRR §21.3). 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 Company intends to provide electricity to the wholesale competitive market and has proposed to site the facilities to utilize a portion of the wind energy potential in New York State. The facilities are based on renewable resource technology, providing clean and renewable supplies of electricity to the wholesale energy market. Further, the proposed facilities will facilitate compliance with Executive Order 111

(issued by Governor George Pataki on June 30, 2001 and continued by Governor Eliot Spitzer on January 1, 2007 and by Governor David Paterson on March 20, 2008), which requires all New York State agencies to purchase 20% of their electricity from renewable energy sources by 2010. The proposed facilities also address the objectives identified in the 2002 State Energy Plan and 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. The proposed facilities will reportedly provide benefits that include positive economic impacts (such as increased revenues to municipalities and lease payments to landowners) and enhanced environmental quality (including potential reduction of emissions from fossil-fuel burning power plants).

In addition, the Company's parent is an experienced and financially viable developer of wind energy. Therefore, the facilities appear to be economically feasible and in the public interest.

The Company 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 NYPA. The Company has proposed plans for addressing coordination with, and avoiding interference with, other utility providers in its facility design, construction and operation controls, and for responding to complaints and inquiries. The Company has generally developed appropriate emergency response measures and facility maintenance standards for the life of the electric plant.

The Project area includes an electric bulk transmission facility, to which the Project will interconnect. The Company proposed to locate several wind turbines near the NYPA 230 kV Willis – Plattsburgh transmission line. Upon further consideration of the concerns for separation distances between the 407-foot tall turbine structures (including rotor blades at maximum tip height) and the bulk transmission lines, Marble River has agreed to adopt increased setback criteria to minimize the potential risk of accidental damage to the transmission facilities due to tower or blade failure near those

transmission lines. Turbines will be relocated or heights reduced to effectively implement a minimum setback distance of 1.5 times maximum turbine blade tip height from the center of turbine base to the nearest transmission facility component (conductor, pole, or related structural component). This setback distance corresponds with similar setbacks agreed to in previous proceedings.⁵

The proposed project purports to represent significant benefits in terms of development of an important wind energy resource. As the Company points out, the project area is highly ranked as a wind resource, and the location of the adjoining NYPA bulk transmission lines is propitious to delivery of the generated power to the grid. While the potential for limited seasonal displacement of other generation facilities is not a dispositive factor in this proceeding, we are concerned that decisions regarding some wind generating project benefits may not take specific account of displacement of other renewable energy generation. If one renewable generating project is displacing output from another renewable project, for even limited duration, then there may be only a limited net gain overall of clean, renewable energy that is deliverable to users. The inability to deliver to customers all the renewable energy produced in a given area may be considered to be only a transmission-related issue; however, in deciding whether we can make the finding required by PSL §68, we must consider this effect on the electric system along with other impacts and benefits associated with the project.

Marble River suggests that the benefits of its project may be more significant than the benefits of neighboring wind energy projects. It is not necessary to resolve which project is better or to make major conclusions about the timing or advancement of one project approval in relation to another. Every site is different to some degree, and every project will have specific benefits and impacts. What is important is that the consideration of benefits and impacts related to and resulting from each new project must be specific to the project for all issues, rather than generic. In the future, developers must make additional efforts to address the specific transmission system limitations and provide responsible representations of expected benefits and impacts in modeling and reporting on emissions reductions and purported cleaner air

⁵ See, e.g., Case 07-E-0213, Supra.

conditions resulting from project operations. Where new proposed renewable generation may result in displacement of other existing renewable generation, or in forcing a steam host to employ auxiliary steam production (with loss of the efficiency benefits of combined-cycle operation), then those effects should be reasonably qualified and quantified, and discussed in the context of the balancing of impacts and benefits resulting from siting the new generation facility.

The programmatic analyses of system performance and reliability in The Effects Of Integrating Wind Power On Transmission System, Planning, Reliability, And Operations Report⁶ included several recommendations for additional analyses and site-specific assessments that should be performed to address the addition of significant wind generation, including power flow analysis, thermal performance effects, facility re-dispatch, and mitigation requirements. Project developers should provide studies that model the impact of their projects on the transmission and generation in the area operating at full output. A report discussing the impacts on the transmission and sub-transmission systems should be provided, indicating how those impacts can be mitigated. The analyses provided by Marble River are effectively consistent with, or more detailed than, those provided by other wind generators that we have reviewed and approved in similar proceedings to date. On balance, therefore, we consider the benefits associated with the Company's proposed project to be greater than the adverse impacts, even though we believe some displacement of other renewable energy to be likely under certain conditions. In the future, however, we will appropriately ramp-up the analyses we expect to see in petitions filed pursuant to PSL §68.

In reviewing the Company's May 16, 2008 supplemental filing, Staff became concerned with issues of facility maintenance and safety certification of wind turbine blades. Review of literature indicated that the turbine manufacturer had instituted a recall and replacement program for the model V2 blades, precursor to the model V3 blades proposed for installation at the Project. The composite fiberglass V3 blades are

⁶ The Effects Of Integrating Wind Power On Transmission System, Planning, Reliability, And Operations Report on Phase 1: Preliminary System Reliability Assessment, and Report on Phase 2: System Performance Evaluation; 2004.

each 43.25 meters (approximately 141 feet) in length. Three blades attach to the rotor hub, and this arrangement is the mechanism for converting wind into rotational force that drives the electric generating turbines. The issue of fiberglass blade integrity is of concern because of the potential for cracking and other damage due to stresses induced by wind, lightning strikes, extreme weather conditions, and other factors. The Company provided the turbine manufacturer's recommended inspection and maintenance program, which calls for annual inspections and maintenance procedures to assess blade integrity and promote turbine performance. In response to Staff inquiries, Marble River provided a more robust monitoring, inspection and maintenance program. The company will inspect facilities following local lightning storms as soon as is safely possible. Continuous monitoring of Project facilities performance is available via the System Control and Data Acquisition (SCADA) program, which enables instantaneous identification of individual component performance, and tracking of ongoing performance efficiency. Monthly inspections of each turbine are planned in addition to manufacturer recommended semi-annual and annual maintenance programs. We will direct Marble River to pay additional attention to potential sources of wind turbine blade damage: extreme weather conditions such as damaging hail, abnormal wind or micro-burst conditions, and blade strikes should be addressed in inspection protocols. In addition, we will require the Company to report on the results of the manufacturer's presently on-going lifetime testing procedure, which should be completed after the start of initial site construction, but prior to the planned installation date for the actual wind turbine blades.

Based on the Company's representations and commitments to adopt and enforce reasonable measures within the proposed area of operations, and on the evidence presented in the petition and supplements, we conclude that the Company will provide safe, reliable and adequate service. We will, however, promptly take all necessary action to ensure that potential safety problems associated with turbine blades are expeditiously addressed. Substation design and accessibility, and constructability and operability of the collection lines will meet appropriate standards, and the connection to the transmission system will meet the requirements of NYPA and other regulatory organizations and will not prevent the safe and reliable operation of the transmission grid. The conditions we

will impose will help to ensure that the Company's commitments are kept and enable us to make the required statutory finding.

The Company satisfied the requirements of PSL §68 by filing a copy of its Certificate of Formation as an exhibit to its petition. Moreover, responsible company officials have verified that the Company has secured all municipal consents necessary for the use of town property that are required by law.

A hearing having been held on June 18, 2008, 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 the Company requests is similar to that afforded to other comparably-situated Exempt Wholesale Generators participating in wholesale electric markets. Its Petition 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. In the Carr Street and AES Orders,⁷ it was concluded that new forms of electric service providers participating in wholesale markets would be lightly regulated. Under this realistic appraisal approach, PSL Article 1 applies to Marble River 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). The Company, therefore, is subject to provisions, such as PSL §§ 11, 19, 24, 25 and 26 that prevent producers of electricity from taking actions that are contrary to the public interest.⁸

⁷ Case 98-E-1670, Carr Street Generating Station, L.P., Order Providing For Lightened Regulation (issued April 23, 1999) (Carr Street Order); Case 99-E-0148, AES Eastern Energy, L.P., Order Providing For Lightened Regulation (issued April 23, 1999) (AES Order).

⁸ The PSL §18-a assessment is applied against gross retail revenues. As long as CPP remains exclusively a wholesaler, there are no retail revenues and no assessment is collected.

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 Company. Certain provisions of Article 4 are also restricted to retail service.⁹ It was decided in the AES and Carr Street Orders that other provisions of Article 4 would pertain to wholesale generators.¹⁰ Application of these provisions was deemed necessary to protect the public interest. The Article 4 provisions, however, were implemented in a fashion that limited their impact in a competitive market, with the extent of scrutiny afforded a particular transaction reduced to the level the public interest required. Moreover, wholesale generators were allowed to fulfill their PSL §66(6) obligation to file an annual report by duplicating the report they were required to file under federal law. This analysis of Article 4 applies to the Company.

Regarding PSL §70, it was presumed in the AES Order 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."¹¹ 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.¹² The Company may avail itself of this protection.

⁹ See, e.g., PSL §66(12), regarding the filing of tariffs, required at our option; §66(21), regarding storm plans submitted by retail service electric corporations; §67, regarding inspection of meters; §72, regarding hearings and rate proceedings; §75, regarding excessive charges; and §76, regarding rates charged religious bodies and others.

¹⁰ PSL §68 provides for certification in connection with the construction of electric plant (unless such plant is reviewed pursuant to PSL Article VII) or with electricity sales made via direct interconnection with retail customers. PSL §69, §69-a and §70 provide for the review of security issuances, reorganizations, and transfers of securities, works or systems.

¹¹ AES Order, p. 7.

¹² In this context, 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 that adhere to the rendition of retail service do not pertain to the Company because it is engaged solely in the generation of electricity at wholesale.¹³ 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.

Most of the remaining provisions of Article 6 need not be imposed generally on wholesale generators.¹⁴ These provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers. So long as the wholesale generation market is effectively competitive, however, 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, market power issues may be addressed under PSL §110(1) and (2), which afford us jurisdiction over affiliated interests. The Company, however, reports that it does not plan to affiliate with a power marketer, foreclosing that avenue to the exercise of market power. Consequently, we will not impose the requirements of Article 6 on the Company except for §119-b; we will conditionally impose §110(1) and (2) to the extent necessary. The Company is reminded, however, that it

¹³ See, e.g., PSL §112, regarding enforcement of rate orders; §113, regarding reparations and refunds; §114, regarding temporary rates; §114-a, regarding exclusion of lobbying costs from rates; §116, regarding discontinuance of water service; §117, regarding consumer deposits; §118, regarding payment to an authorized agency; §119-a, regarding use of utility poles and conduits; and, §119-c, regarding recognition of tax reductions in rates.

¹⁴ 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 electric, gas, and water purchase contracts under §110(4).

remains subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed above and in previous orders.¹⁵ Included among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,¹⁶ to give notice of generation unit retirements,¹⁷ and to report personal injury accidents pursuant to 16 NYCRR Part 125.

The Commission orders:

1. The motion for an expedited proceeding on the non-contested application of Marble River LLC (the Company) is granted.
2. A Certificate of Public Convenience and Necessity is granted, authorizing the Company to construct and operate the Marble River Wind Power Project, the electric plant described in its petition (as supplemented) and in this Order, subject to the conditions set forth below.
3. The Company shall obtain all necessary federal, state, and local permits and approvals, and shall implement appropriate mitigation measures defined in such permits or approvals.
4. The Company shall submit final Site Plans and construction drawings for the project components, turbine sites, access roads, and electric lines associated with the Marble River Project to the Staff of the Department of Public Service (Staff) of the Environmental Certification and Compliance Section before the start of construction.
5. Before starting construction of the substation and transmission interconnection, not including minor activities required for testing and development of

¹⁵ See, e.g., Case 05-E-1095, TransCanada Power (Castleton) LLC, Declaratory Ruling on Transfer of Ownership Interests and Order Providing for Lightened Regulation (issued January 26, 2006).

¹⁶ 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).

¹⁷ Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

final engineering and design information, the Company shall provide to Staff of the Environmental Certification and Compliance and Bulk Electric Systems Sections: final design plans and profile drawings of the substation and the transmission interconnection; and proof of acceptance of the design by the New York Power Authority (NYPA).

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

7. The Company shall provide to Staff of the Environmental Certification and Compliance Section details of the final historic mitigation program plan together with a copy of any Memorandum of Agreement regarding finalization of the §106 National Historic Preservation Act review as implemented by the State Historic Preservation Officer.

8. 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, and complaint resolution measures, as presented in its Petition (as supplemented), its Environmental Impact Statement and this Order.

9. The Company shall maintain a wind turbine structure setback distance from NYPA transmission facilities, equal to no less than 1.5 times turbine blade tip height at maximum extension, measured from the center of the turbine tower to the nearest point of NYPA transmission facilities at any location including those proposed to be relocated in connection with the construction of the Patnode Substation;

10. The Company shall file with the Secretary to the Commission, within three days after commencement of commercial operation of the electric plant, an original and three copies of written notice thereof.

11. The Company shall design, construct and operate electric plant including electric collection lines in accordance with the Agricultural Mitigation Guidelines recommended by the New York State Department of Agriculture and Markets.

12. The Company shall continue to consult with the New York State Department of Environmental Conservation (DEC) and the U.S. Fish and Wildlife Service (FWS) in the preparation of a work plan for post-construction monitoring and mitigation of avian and bat impacts; a draft work plan for first season operations monitoring shall be submitted to Staff, DEC and FWS by September 1, 2009; a revised plan for additional post-construction monitoring approved by DEC shall be provided to Staff by January 1, 2010; a final report shall be presented upon conclusion of the post-construction monitoring studies; the final report shall include an adaptive management strategy, including identification of a commitment to employ necessary mitigation measures in the event that post-construction monitoring studies identify significant adverse impacts to populations of resident or migratory birds or bats from operation of the wind energy facilities; any disputes or unresolved issues regarding the studies or management plans shall be reported to the Commission for resolution.

13. 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 2007 Annual Transmission Reliability Assessment Study, and in accordance with the applicable and published planning and design standards and best engineering practices of NYISO, NYPA, 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 NYPA.

14. The Company shall work with NYPA, 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 NYPA), the system will have power system relay protection and appropriate communication capabilities to ensure that operation of the NYPA 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 NYPA, 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 NYPA criteria.

15. The Company shall operate the electric plant in accordance with the IA, approved tariffs and applicable rules and protocols of NYPA, 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.

16. The Company shall be in full compliance with the applicable reliability criteria of NYPA, 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 Commission and NYPA with a copy of the NYISO notice.

17. The Company shall file a copy of the following documents with the Secretary to the Commission:

- (a) all facilities agreements with NYPA, 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 authorized plant);

18. 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 NYPA 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 Staff of the Bulk Electric Systems Section and NYPA 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. 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 to the Commission, 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.

19. The Company shall work with NYPA 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 NYPA 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 NYPA transmission facility shall be documented by the Company and provided to Staff of the Bulk Electric Systems Section and NYPA prior to the installation of transmission equipment.

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

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

21. The Company shall call the Staff of the Bulk Electric Systems 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 Systems Staff and NYPA. 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 NYPA, NYISO and the NPCC to prevent any future occurrences.

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

23. 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.

24. 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 the Bulk Electric System Section Staff and NYPA, 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 NYPA 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.

25. Within 60 days after the issuance of this Order, the Company shall file with the Secretary to the Commission, Operation and Maintenance Plan(s) for the Electric Plant.

26. The Company shall file a report with the Secretary to the Commission, regarding implementation of the Special Protection System that is designed to mitigate possible overloads from certain transmission outages, as well as copies of all studies (now underway) 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 operations, the Company shall demonstrate through appropriate plans and procedural requirements that the relevant components of the Special Protection System will provide effective protection.

27. The Company shall maintain a log of the history of each wind turbine blade including date of manufacture, details of installation, inspections, lightning strikes, damage, maintenance and repairs. Each wind turbine blade shall be uniquely and serially numbered so that it can be monitored throughout its service life. The company shall promptly provide to Staff (Chief, Bulk Electric Systems Section) copies of the life testing studies conducted and certification standards for each wind turbine blade installed at any time during the life of the project hereby certified. The company shall provide to Staff,

for each wind turbine blade that is replaced or modified, certification that the blade meets appropriate design requirements and all current and applicable industry design and testing requirements.

28. The Company shall perform annually for the life of the facility a non-destructive and a visual inspection of each wind turbine blade, addressing both internal and external conditions. The Company shall file a report describing the testing procedures and summarizing the results of the annual inspection, in both an electronic and a paper version, with the Staff (Chief, Bulk Electric Systems Section) by the first of each succeeding year.

29. The Company shall provide monthly reports on all wind turbine blade inspections that were performed in the preceding month to Staff (Chief, Bulk Electric Systems Section). The reports shall discuss the reason for the inspections and report results of blade condition inspections, and shall include photographs and documentation of procedures and results.

30. The Company shall inspect the tower and wind turbine blades within 24 hours, as conditions allow, following any known lightning strike to the wind energy generating facility. If any visible damage is evident or there is an un-safe change in the performance of the turbine, the company shall shut the unit down and notify the Staff of the Bulk Electric Systems Section within one hour. The unit shall not be allowed to restart until a full inspection and non-destructive test is completed, indicating no structural degradation of the wind turbine blade assembly and the hub.

31. If a wind turbine blade failure, including but not limited to cracking, is observed, the Company shall within twelve hours notify the Staff of the Bulk Electric Systems Section and any interested agencies listed in the facility emergency plan.

- (a) The Company shall notify Staff and provide a report stating the type and extent of any damages to wind turbine blades. The damage to each blade shall be fully documented and photographs included in documentation filed with Staff.
- (b) The Company shall provide to Staff reports of all testing completed and certification from the manufacturer, or the manufacturer's

authorized representative, that the wind turbine blade still meets the design standards to which it was manufactured.

32. If it is determined that a potential safety problem exists with one or more wind turbines, the Company may be ordered to shut down any specific wind turbine(s); if such order is issued, the Company shall immediately shut down the specific wind turbine(s) until the safety issue is resolved and the order to cease operation is withdrawn.

33. 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.

34. This proceeding is continued pending compliance with clauses 4, 5, 10, 12, 17, 18, 19, 20, 25, 26, 27, 28 and 29, following compliance, it will be closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 07-E-1343 – Petition of Marble River 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 Towns of Clinton and Ellenburg, Clinton County is a Type I action. The Town Boards of the Towns acted as co-lead agencies and the Public Service Commission (the Commission) is an involved agency. The addresses of the lead agencies are: Town of Clinton, 23 Smith Road, Churubusco, New York 12923; and Town of Ellenburg, P.O. Box 21, Ellenburg Center, New York 12934; 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 Andrew Davis at (518) 486-2853, or to the Commission at the address above.

Description of Project

The project, proposed by Marble River LLC (the Company), will consist of up to 109 wind turbines, various access roads, overhead and 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 407 feet in total height.

The Draft Environmental Impact Statement (DEIS), Supplemental Draft Environmental Impact Statement (SDEIS) 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 Towns determined, based upon field investigations and review of the DEIS, the SDEIS and the FEIS, that the

proposed actions 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; facility phasing and design that avoid concentrating construction-related impacts in any one area; facility layout and location that avoid areas with concentrations of residents or sensitive environmental features; 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. The Towns 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 Staff (Staff), the Company provided additional information regarding facility engineering, construction and operation. Staff was particularly concerned with the details of turbine locations and facilities setbacks from, and project interconnection with, existing high-voltage electric transmission lines.

Cultural resources impacts review has advanced 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 (architectural and cultural heritage) within the area of potential effect. OPRHP indicated that consultation regarding potential mitigation to offset impacts should be continued. OPRHP explained that, due to the significant scale of wind turbine structures, visual contrasts are not readily minimized and historic resource settings may be adversely affected. The Company provided a resource inventory and a detailed analysis of archeological and historic resources impacts. Continued consultation with OPRHP regarding mitigation measures to minimize adverse effects resulted in development of an offset mitigation strategy and plan. Thus, cultural resources impacts have been analyzed 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 identifies potential mortality estimates based on analysis of site conditions and operating experience at other wind-powered electric generation projects. The FEIS indicates 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. 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.

The findings issued by the Town Boards probably overstate the displacement of fossil-fueled generation due to operation of the wind generation facility. Reductions at the sites of other renewable generation projects are likely to occur at low-load conditions in the project area for limited periods when there is insufficient local load to consume all of the power generated and insufficient transmission capacity to export the balance. The reduced emission benefits are not, however, likely to be of such significance that they outweigh the multiple benefits that the addition of up to 229 MW of wind power proposed by the Company will represent.

Other findings pursuant to the State Environmental Quality Review Act (SEQRA), as extensively discussed in the Findings Statements adopted by the Town Boards, 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.

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 adaptive management strategy discussed in the FEIS 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 to be 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