

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Verified Petition of Bluebird Renewable Energy, LLC
for an Order Granting a Certificate of Public
Convenience and Necessity and Establishing
a Lightened Regulatory Regime

CASE 21-G-_____

**VERIFIED PETITION FOR AN ORDER GRANTING A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
AND ESTABLISHING A LIGHTENED REGULATORY REGIME**

COUCH WHITE, LLP

Attorneys for Bluebird Renewable Energy, LLC

Devlyn C. Tedesco

Leonard H. Singer

540 Broadway

Albany, New York 12201

Phone: (518) 426-4600

Facsimile: (518) 426-4600

dtedesco@couchwhite.com

lsinger@couchwhite.com

Dated: November 24, 2021
Albany, New York

Verified Petition of Bluebird Renewable Energy, LLC
for an Order Granting a Certificate of Public
Convenience and Necessity and Establishing
a Lightened Regulatory Regime

CASE 21-G-_____

**VERIFIED PETITION FOR AN ORDER GRANTING A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
AND ESTABLISHING A LIGHTENED REGULATORY REGIME**

INTRODUCTION

Bluebird Renewable Energy, LLC (“BRE”) is proposing to construct a renewable natural gas (“RNG”) project (the “Project”) in Cayuga County, New York. The Project will consist of certain facilities for the processing and transportation of biogas from anaerobic digesters located at two dairy farms to a processing facility located at one of the farms, and ultimately transportation of the processed gas for sale into the interstate pipeline. The Project includes a pipeline that will cross publicly owned rights-of-way in the Towns of Ledyard and Venice in Cayuga County. Once constructed, the Project will constitute “gas plant,”¹ classifying BRE as a “gas corporation”² and, therefore, subjecting BRE to the jurisdiction of the New York State Public Service Commission (“Commission”).³

Pursuant to Public Service Law (“PSL”) § 68, which prohibits any gas corporation from beginning construction of gas plant or exercising a franchise without first obtaining Commission

¹ PSL § 2(12).

² *Id.* at § 2(13).

³ Case 21-G-0358, Petition of DTE Renewable Holdings, LLC for a Declaratory Ruling Regarding Regulation of Facilities Used in Connection with the Business of Selling, Distributing or Furnishing of Gas in Enclosed Containers, Declaratory Ruling Regarding Jurisdiction (issued September 10, 2021) at 12-13 (“DTERH Ruling”).

approval, BRE respectfully requests that the Commission grant it a Certificate of Public Convenience and Necessity (“CPCN”) for the Project. Specifically, BRE hereby requests that the Commission: (i) issue a CPCN pursuant to PSL § 68 authorizing the construction of the Project and the exercise of all municipal consents and franchises granted; and (ii) extend to BRE and its operation of the Project the lightened regulatory regime the Commission has historically applied to competitive facilities operating wholly in competitive wholesale markets.

CORRESPONDENCE

Correspondence and communications concerning this filing should be directed to:

Devlyn C. Tedesco
Leonard H. Singer
Couch White, LLP
540 Broadway
Albany, NY 12201
T: (518) 426-4600
F: (518) 426-0376
dtedesco@couchwhite.com
lsinger@couchwhite.com

BACKGROUND

A. The Petitioner

BRE is a Delaware limited liability company that was formed to develop, construct, own, operate, and maintain the Project in the Town of Ledyard and Sunnyside Farm in the Town of Venice. BRE is a majority-owned subsidiary of DTE Renewable Holdings, LLC (“DTERH”), which, in turn, is a wholly owned, indirect subsidiary of DTE Energy Company (“DTE Energy”). REV LNG, LLC (“REV”), a leading renewable energy project development and mobile energy services company headquartered in Mendon, New York that specializes in providing its customers with innovative RNG solutions, is a minority member of BRE.

DTERH, together with its affiliates, is an industry leader in converting dairy cow waste into clean, sustainable RNG that positively impacts local environments and communities. DTERH owns and operates seven (7) dairy-based RNG facilities across the country with over \$250 million in assets. DTERH is currently constructing its eighth and ninth dairy-based facilities in South Dakota and Wisconsin, respectively. With decades of experience designing, engineering, constructing, and operating waste-to-energy systems, DTERH and its affiliates provide local utilities, industries, businesses, and consumers with an opportunity to convert methane into a renewable fuel supply. In short, dairy RNG facilities, such as the Project, demonstrate DTERH's commitment to both environmental stewardship and healthy economies.

DTE Energy is a Detroit-based, publicly traded, diversified energy company involved in the development and management of energy-related businesses and services nationwide. DTE Energy's operating units include an electric utility serving 2.3 million customers in Southeast Michigan and a natural gas utility serving 1.3 million customers in Michigan. The DTE Energy portfolio includes non-utility energy businesses focused on power and industrial projects, natural gas pipelines, gathering and storage, and energy marketing and trading. DTE Energy has more than 10,000 employees in utility and non-utility subsidiaries involved in a wide range of energy-related businesses.

Attached as **Exhibit A** hereto is a Certificate of Formation and Good Standing for BRE issued by the Delaware Department of State, and a Certificate of Good Standing from the New York State Department of State.

B. The Project

Aurora Ridge Dairy and Sunnyside Farm (collectively, the “Farms”) each own and operate existing anaerobic digesters that produce biogas that is currently used to produce electricity.⁴ The Project consists of collecting and transporting biogas from the Farms (purchasing it as it leaves each digester), conditioning it to remove impurities, compressing it, and loading it into tube trailers for ultimate delivery and injection into the natural gas pipeline system. Drawings depicting the proposed layout of the Project are attached hereto as **Exhibit B**.⁵

Aurora Ridge Dairy Pipeline

The Aurora Ridge Dairy pipeline will transport treated biogas from the anaerobic digester at the Aurora Ridge Dairy to the processing facility (described below) located at Sunnyside Farm (the “Aurora Ridge Pipeline”). It will be approximately 5.5 miles in length, and will traverse fields and back lots, generally along property lines within the Towns of Ledyard and Venice in Cayuga County. The route was designed to avoid, to the greatest extent practicable, sensitive environmental features and conflicts with existing uses of the affected properties, as discussed in further detail in Section IV, *infra*.

The biogas from the outlet of the anaerobic digester at the Aurora Ridge Dairy will be received and treated by a state-of-the-art biologically regenerated scrubber (“Scrubber”). Once the biogas has been treated by the Scrubber, it will be compressed and then chilled to reduce moisture content in order to avoid condensation of free liquids in the Aurora Ridge Pipeline. When

⁴ This petition pertains only to the Project facilities downstream of the digesters.

⁵ Portions of the drawings included in Exhibit B contain critical energy infrastructure information (“CEII”) and therefore have been redacted from this petition and are being concurrently filed with the Commission’s Records Access Officer with a request that they be protected from public disclosure pursuant to the Commission’s CEII regulations (16 NYCRR § 6-1.3).

the treated biogas reaches the processing facility at Sunnyside Farm, it will not yet be of “pipeline quality” and will have a composition of approximately 60% methane, 40% carbon dioxide and up to 100 parts per million (“ppm”) of hydrogen sulfide (“H₂S”).

The treated biogas in the Aurora Ridge Pipeline will be continuously monitored for H₂S levels. The Scrubber manufacturer guarantees H₂S levels below 100 ppm after the biogas has been processed by the Scrubber. BRE will implement standard operating procedures to monitor the gas and to take steps to address H₂S levels if they approach 100 ppm. In the event that H₂S levels reach 100 ppm or higher, the control system will notify the operator, automatically stop the flow of biogas into the Aurora Ridge Pipeline, and direct this biogas to a flare located at the Aurora Ridge Dairy. The biogas will be flared until the issue with the Scrubber can be resolved and the Scrubber can resume treating H₂S to levels below 100 ppm, at which point, the system will enable biogas to be reintroduced into the Aurora Ridge Pipeline.

Maintenance will be performed on the gas analyzer, H₂S treatment system, and associated equipment per the manufacturers’ recommended schedule. Maintenance and repair activities are expected to be minimally invasive and occur infrequently. No additional environmental impacts are anticipated as a result of the Project’s maintenance and repair activities. No biogas will be introduced into the pipeline if the Scrubber is not operational due to maintenance, repair, or other activities.

The Aurora Ridge Pipeline will be comprised of six-inch, high-density polyethylene (“HDPE”) pipe with a maximum operating pressure of approximately 30 pounds per square inch gauge (“PSIG”); however, the expected operating pressure is 5 PSIG. The volume of treated biogas flowing from the Aurora Ridge Dairy is anticipated to be approximately 245 standard cubic feet per minute (“SCFM”). The pipe used has been over-designed with a minimum wall thickness

of 0.602-inch rated to 160 PSIG. The pipe installation will include tracer wire and BRE will participate in the Dig Safely NY system. Leak surveys will be performed annually by a certified pipeline operator.

The Aurora Ridge Pipeline will be installed in accordance with 16 NYCRR § 255 using horizontal directional drilling (“HDD”). HDD was selected as the preferred installation method as it is the best approach to avoid impacts to the environment, existing surface conditions, subsurface agricultural infrastructure (drain tiles), and day-to-day farming operations. Moreover, BRE will install the Aurora Ridge Pipeline at least 60 inches below the surface to help protect it from any potential dig-ins or other damage, thereby ensuring the continued safe operation of the pipeline.

The Aurora Ridge Pipeline route traverses two (2) streams, two (2) combined wetland areas containing streams, and one (1) wetland without a stream, all of which will also be horizontally directionally drilled to avoid any disturbance to the features. BRE has requested a non-jurisdictional determination from the New York State Department of Environmental Conservation (“NYSDEC”) confirming that the Aurora Ridge Pipeline (and, indeed, the entire Project) will have no impacts on regulated wetlands and, therefore, that no further NYSDEC permitting will be required. All of these approvals for the proposed pipeline and RNG facilities are expected to be received promptly so as to permit construction to be commenced and completed as soon as feasible to allow the benefits of the Project to be expeditiously realized.

The Aurora Ridge Pipeline will also traverse land owned by three (3) landowners not associated with the Project. Those landowners have executed options on easements to allow for the construction, operation, and maintenance of the Aurora Ridge Pipeline. There are no residential structures within 150 feet of the proposed center line of the route. In addition, the

Aurora Ridge Pipeline will cross one (1) State highway, one (1) Cayuga County road, and three (3) town-owned roads. These road crossings will all be horizontally directionally drilled, rather than open cut. BRE has entered into agreements addressing certain issues relating to BRE's use of highways, roads, and related fee-owned land, rights-of-way or easements owned, operated and maintained by the County of Cayuga and the Town of Venice, Cayuga County in connection with the construction, operation and maintenance of the Project. The Town of Ledyard, Cayuga County, has determined that no permit is required for the Project in that municipality. Copies of the executed agreements (and communications from the Town of Ledyard disclaiming the need for a permit) are attached hereto as **Exhibit C**. Attached as **Exhibit D** to this Petition, BRE submits the verified statement of Kevin G. Dobson that the required consents of the proper municipal authorities to cross municipal property have been issued to BRE.

Sunnyside Farm Pipeline

The Sunnyside Farm pipeline will transport raw biogas from the Sunnyside Farm's digester to the processing facility (discussed in further detail, below) at a volume of 467 SCFM (the "Sunnyside Pipeline"). The total length of the Sunnyside Pipeline will be approximately 1500 feet. The Sunnyside Pipeline has been designed in a manner so that it will never leave the Sunnyside Farm property and will not cross any roads. Its design specifications will be identical to that of the Aurora Ridge Pipeline, except the biogas in the Sunnyside Pipeline will not be scrubbed prior to injection, as it will be processed in the processing facility discussed below.

Sunnyside Biogas Processing Facility

The biogas from the Farms will be processed into pipeline quality RNG at a conditioning unit located on a site leased from Sunnyside Farms ("Processing Facility"). The Processing Facility will consist of systems that will purify, compress, meter, and ensure the quality of the

processed gas. Biogas from the digester at Sunnyside Farm (via the Sunnyside Pipeline) will be scrubbed then combined with the scrubbed biogas from the Aurora Ridge Pipeline. Through a series of steps, the raw biogas will be purified to remove remaining H₂S and other non-methane constituents. The project uses state-of-the-art biologically regenerated scrubbers, one-use media polishing, and a pressure swing absorption (“PSA”) system to separate out the useful methane before it is compressed for eventual loading into tube trailers. A flare will be installed to combust the combined biogas streams in the event that the methane separation process is paused or produces RNG that will not meet pipeline quality specifications at the injection site.⁶ There will also be an office trailer with a control room and ancillary equipment to support the gas conditioning process described above.

Once it has been processed, the RNG will be compressed for loading into United States Department of Transportation-approved carbon fiber tube trailers that will then be used to truck the compressed RNG to a receipt point where it will be injected into an intrastate pipeline. BRE anticipates that the injection point will be the Corning Natural Gas Corporation (“Corning”) system near Caton, New York, approximately 70 miles from Sunnyside Farms. BRE currently anticipates that the Project will ship one (1) tube trailer per day. At the injection site, the RNG will be unloaded from the tube trailer. That process will include re-heating, filtering, drying, confirming quality, and metering before the gas enters the receiving pipeline.

Other Permits and Approvals

In order to construct and operate the Project, BRE requires several permits and approvals in addition to the CPCN requested herein. In order to occupy State-owned roads, BRE sought and

⁶ The flare is contemplated in the Project’s Air Facility Registration that was filed with the NYS Department of Environmental Conservation (“NYSDEC”).

obtained a Road Permit from the New York State Department of Transportation. As discussed above, the Project will have no impact on wetlands, and thus BRE has requested a non-jurisdictional letter from the NYSDEC. BRE has also filed an Air Facility Registration with the NYSDEC. In addition, BRE will seek a State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity. BRE has also filed a request for a Letter of No Objection from the United States Army Corps of Engineers.

BRE expects to receive all of the requisite permits and approvals by April 2022 to ensure that construction on the Project can be commenced and completed as soon as feasible to allow the benefits of the Project to be expeditiously realized.

ARGUMENT

I. BRE MEETS THE REQUIREMENTS FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

PSL § 68 provides in relevant part that “[n]o ...gas corporation shall begin construction of a ... gas plant without first having obtained the permission and approval of the commission,” and also that, “[n]o such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised [...] without first having obtained a certificate of public convenience and necessity [CPCN] issued by the commission.” In order to grant such CPCN, the Commission must find and determine that, “[...] such construction or such exercise of the right, privilege or franchise is convenient and necessary for the public service.” In determining whether the grant of a CPCN is in the public interest, the Commission will consider, *inter alia*, the, “[...] economic feasibility of the corporation, the corporation's ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates [...].”

The Commission has previously determined that the facilities comprising the Project are considered “gas plant,” and as such, that the owner of the Project is a “gas corporation” under the PSL.⁷ In making such a determination, the Commission directed DTERH to obtain approval under PSL § 68 prior to commencing construction on the Project.⁸

A. Economic Feasibility and Ability to Finance Improvements

As described above, BRE’s ultimate parent company is DTE Energy. DTE Energy is a stable and diverse energy company with a robust balance sheet that reflects the financial strength needed to construct, own, operate and decommission large scale energy projects in the ordinary course of its respective business.

DTE Energy is a publicly traded company with a current market capitalization of approximately \$21.8 billion and third quarter 2021 operating earnings (excluding non-recurring items, certain mark-to-market adjustments and discontinued operations) of \$334 million.⁹ Accordingly, through its parent company, BRE has sufficient access to capital and knowledge to successfully develop and operate the Project.

B. Ability to Render Safe and Adequate Service at Just and Reasonable Rates

As set forth above, BRE is owned by DTERH and REV, two entities with extensive experience owning and operating assets similar to the Project. Moreover, BRE’s ultimate parent company, DTE Energy, has a robust and diverse portfolio of energy projects and thousands of experienced, well-trained employees. BRE will leverage the expertise and resources of its parent

⁷ DTERH Ruling, *supra*, at 12-16.

⁸ *Id.* at 16.

⁹ DTE’s September 30, 2021 Form 10-Q Quarterly Report is available at <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000936340/5f8a8b9c-3cfe-4dd4-acdc-369c9c5ac88a.pdf>.

companies in constructing, operating, and maintaining the Project to ensure that it provides safe and adequate service.

Moreover, in designing, constructing, and operating the Project, BRE will adhere to all applicable industry standards and best practices. The Project will comply with national standards, including but not limited to:

- National Fire Protection Association code (“NFPA”) (fire code for facilities);
- National Electric Code (“NEC”) (electric code for facilities);
- Occupational Safety and Health Administration rules (“OSHA”) (general employee safety);
- American Society of Mechanical Engineers (“ASME”) guidance, including ASME Section VIII Div 1 (boilers and pressure vessel safety);
- Institute of Electrical and Electronics Engineers (“IEEE”) guidance (electrical safety);
- American Petroleum Institute (“API”) (engineering/safety best practices); and
- American National Standard Institute (“ANSI”) guidance, including ANSI B149.6 (2015) Part 3 (biogas utilization) and ANSI B31.3 (process piping).

With respect to BRE’s ability to offer just and reasonable rates, BRE intends to develop, finance, construct, and operate the Project as a merchant facility without relying on cost-of-service rates set by either a federal or State regulatory entity. It intends to sell the RNG gas into the interstate pipeline. Neither BRE nor any of its affiliates have any retail customers in New York State. The Commission has previously found that the scrutiny applicable to monopoly utilities may be reduced for companies like BRE that operate in a competitive environment.¹⁰

C. Project Benefits

In addition to BRE’s ability to finance the Project, operate it safely, and provide service in a manner that will not impact captive ratepayers, the Project will also offer significant benefits to

¹⁰ See, e.g., Case 12-G-0214, *et al.*, Petition of Bluestone Gas Corporation of New York for an Order Granting Certificate of Public Convenience and Necessity and Establishing a Lightened Regulatory Regime, Order Adopting the Terms Of A Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need and Certificate of Public Convenience and Necessity (issued September 21, 2012).

New York State, further underscoring that it is in the public interest. Specifically, the Project will benefit the participating farms and further New York State's goals of reducing greenhouse gas ("GHG") emissions, as set forth in the Climate Leadership and Community Protection Act, by reducing the release of methane and other pollutants into the atmosphere.¹¹ Further, the Project will reinforce the Farms' efforts to significantly reduce both carbon dioxide and sulfur dioxide emissions from their operations locally and provide a renewable energy product that offsets the equivalent consumption of fossil fuels. While the Farms' current arrangements for using the biogas they produce for electric production are helpful in reducing the use of fossil fuels for that purpose, depressed power prices and the approaching expiration of carbon credit contracts make conversion to production of pipeline quality RNG a more attractive option. The RNG royalty stream received by the Farms provides an economic incentive for them to continue to properly operate and maintain their manure digesters, which, in turn, will enhance those environmental benefits.

Moreover, construction of the Project is expected to generate thousands of local trade labor hours, provide several permanent, full-time on-site positions for RNG facility operations, and contribute to the regional economy through purchase of support services (snow removal, equipment repairs, specialty services, etc.).

The annual production from the Project is anticipated to be approximately 172,000 MMBtu of RNG. That production will be available as a one-for-one replacement of the equivalent amount of fossil-derived vehicle fuel since the RNG from the Project will participate in both the U.S. Federal Renewable Fuel Standard and the California Low Carbon Fuel Standard programs. The

¹¹ L. 2019, ch. 106.

Project's RNG will annually displace 926,143 gallons of diesel fuel consumed by the transportation market.¹²

For the reasons set forth herein, BRE has amply demonstrated that the Project is in the public interest. Accordingly, BRE's request for a CPCN satisfies all of the applicable requirements of PSL § 68.

II. Commission Regulation Requirements

As required by 16 NYCRR § 17.3, BRE sets forth in detail its compliance with applicable regulatory requirements below.

A. General Matters (16 NYCRR Part 17)

As required by 16 NYCRR § 17.1, and as stated above, a verification page executed by Kevin G. Dobson is attached hereto as Exhibit D. BRE's Certificate of Formation issued by the Delaware Department of State and Certificate of Good Standing from the New York State Department of State are attached hereto as Exhibit A.

B. Requirements for All Petitions (16 NYCRR § 21.2)

Pursuant to 16 NYCRR § 21.2(a), BRE states that New York State Electric and Gas Corporation ("NYSEG") provides retail gas service in the municipality in which the Project will be located. However, BRE will not provide retail natural gas service, and gas transmitted by the Pipeline will ultimately be injected into the interstate pipeline for sale.

In accordance with 16 NYCRR § 21.2(b), copies of the agreements with the Town of Venice and the County of Cayuga are attached as Exhibit C.

¹² United States Environmental Protection Agency: Energy and the Environment, Greenhouse Gas Equivalencies Calculator, available at <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>.

BRE has not previously received any authority from the Commission to exercise powers under any prior franchise or municipal consent within the meaning of 16 NYCRR § 21.2(c). With respect to 16 NYCRR § 21.2(d), no federal permits, license, or authorizations are required for the Project. BRE is awaiting a Letter of No Objection from the United States Army Corps of Engineers.

C. Evidence Under 16 NYCRR § 21.3

Under 16 NYCRR § 21.3 (a), an applicant is required to describe and give the population of the service territory in which proposes to exercise the CPCN and the dates when construction will begin and service will be provided. Inasmuch as the Project will provide natural gas exclusively at wholesale, BRE will not have a retail service territory. Nevertheless, the Project will be located within Cayuga County in the Towns of Ledyard and Venice. Upon information and belief, the population of the Town of Ledyard is approximately 1,900 and the population of the Town of Venice is approximately 1,300. BRE expects to commence construction of the Project in or about April 2022 and construction is expected to be complete in or about December 2022.

Regarding the requirements of 16 NYCRR § 21.3 (b), the Project is described in extensive detail in the Background section of this Petition, *supra*.

Because the development, financing, construction and operation of the Project is on an entrepreneurial basis with no reliance on cost-of-service rates set for BRE by either a federal or State regulatory entity, and will not be included in utility rate base, either directly or indirectly through a contractual arrangement with a regulated utility, the cost and revenue provisions of 16 NYCRR § 21.3(b-e) are inapplicable to BRE.¹³

¹³ Case 10-E-0077, Petition of Bayonne Energy Center, LLC for an Original Certificate of Public Convenience and Necessity for Permission and Approval to Operate as an Electric Corporation

Information responsive to the requirements of 16 NYCRR §§ 21.3 (f) and (g) is provided above.

III. BRE REQUESTS THAT THE COMMISSION APPLY THE LIGHTENED REGULATORY REGIME FOUND APPROPRIATE FOR FACILITIES THAT OPERATE IN THE WHOLESALE ELECTRIC MARKETS.

BRE requests that it be granted a lightened regulatory regime similar to the regulatory regimes the Commission has imposed on other gas corporations that operate exclusively at wholesale. The Commission first articulated its policy on the regulatory regime for competitive wholesale providers of electricity in its Wallkill Order.¹⁴ There, the Commission found it appropriate to modify the regulatory procedures that were intended to apply to monopoly utilities when regulating generators operating in a competitive environment. The Commission established the regulatory requirements that should be imposed on wholesale electric and gas service providers in its orders imposing lightened regulation on Carr Street Generating Station, L.P. and AES Eastern Enterprises, L.P.¹⁵

Within the State of New York, Order Granting Certificate of Public Convenience and Necessity (issued April 6, 2010) at 6.

¹⁴ Case 91-E-0350, Petition of Wallkill Generating Company L.P. For a Declaratory Ruling With Regard to its Sales of Electric Power or in the Alternative for a Certificate of Public Convenience and Necessity, Pursuant to Section 68 of the Public Service Law, Order Establishing Regulatory Regime (issued April 11, 1994) (“Wallkill Order”).

¹⁵ Case 98-E-1670, Petition of Carr Street Generating Station, L.P. for an Original Certificate of Public Convenience and Necessity and for a Declaratory Ruling on Regulatory Regime, Order Providing For Lightened Regulation (issued April 23, 1999) (“Carr Street Order”); Case 99-E-0148, AES Eastern Energy, L.P. & AES Creative Resources, L.P. - Petition for a Declaratory Ruling That Light-Handed Regulation Be Applied Concerning the Petitioner’s Purchase of Certain Electric Generating Assets From New York State Electric & Gas Corporation, Order Providing For Lightened Regulation (issued April 23, 1999) (“AES Eastern Order”); *See also* Bluestone Gas Order, *supra*; *See also*, 10-G-0462, DMP New York, Inc. and Laser Northeast Gathering Company, LLC – Petition for Order Granting a Certificate of Public Convenience

In its Carr Street Order, the Commission found that the petitioner was subject to regulation as an electric corporation under PSL § 2(13) and was an entity engaged in the manufacture of electricity under PSL § 5(1)(b). As such, it was subject to the Commission's jurisdiction under PSL §§ 11, 19, 24, 25, and 26. The Commission also found that the petitioner was subject to certain provisions of Article 4, namely, PSL §§ 66(6), 68, 69, 69-a, and 70. The Commission also stated it would presume that PSL § 70 regulation would not apply to transfers of ownership interests upstream from the parent of the regulated entity as long as there is no potential for the exercise of market power arising out of an upstream power transfer.

Finally, the Commission determined that most of the provisions of Article 6 do not apply to entities that operate at wholesale. Nonetheless, because the generator in the Carr Street Order would have its capacity marketed by an affiliated power marketer, the Commission ordered it to comply with PSL § 110(2), which gives the Commission access to books and records and the filing of reports in the event the affiliate relationship creates a market power issue. The Commission determined that PSL § 110(1), on reporting of stock ownership, did not apply to the generator because it was organized as a limited partnership.¹⁶ The Commission also ordered the generator to comply with PSL § 119-b, regarding the protection of underground facilities from damage by excavators. As for the remainder of Article 6 requirements, the Commission determined that the

and Necessity and Establishing a Lightened Regulatory Regime, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Rate Making Regulation (issued February 22, 2011).

¹⁶ The Commission has, however, stated that it would apply the reporting of stock ownership requirements of § 110(1) to non-partnership entities. See, *e.g.*, Case 02-E-0362, Petition of Flat Rock Wind Power, LLC for an Order That its Proposed Flat Rock Wind Generation Facility Will Be Subject Only to Lightened Regulation and for a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued June 17, 2004).

provisions either do not pertain to wholesale generators or would unnecessarily hinder competitive wholesale generators by interfering with their flexibility to structure the financing and ownership of their facilities.¹⁷

In its AES Eastern Order, the Commission applied the principles announced in its Carr Street Order, which was issued the same day. The Commission determined that, as a wholesale generator, Articles 1 and 4 of the PSL would be applied to the generator's operations, but with reduced scrutiny and less stringent filing requirements, and that most of Article 6 would not be imposed.

Here, the Commission should subject BRE to lightened regulation in the same manner as it has for entities operating in wholesale competitive markets. BRE requests that the Commission apply the relevant sections of Articles 1 and 4 to its operation with the scrutiny and filing requirements consistent with Commission precedent, and that the Commission not impose Article 6 requirements, except for PSL § 119-b.

IV. Environmental Review

Under the New York State Environmental Quality Review Act ("SEQRA"), Environmental Conservation Law Article 8, and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7), the Commission must determine whether the actions it is asked to approve could have a significant impact on the environment. As part of this review, the Commission must classify the proposed action as a Type I, Type II, or Unlisted Action. Under 6 NYCRR § 617.4(b)(6)(1), a Type I action is an action other than the construction of a residential facility that, "involves the physical alteration of 10 acres." The Project is anticipated to disturb approximately 11.45 acres, and is therefore considered a Type I action. Attached to this Petition as **Exhibit E** is a full

¹⁷ Carr Street Order, *supra*, at 9.

Environmental Assessment Form (“EAF”) to assist the Commission in conducting its environmental review. As described herein and demonstrated by the EAF, the Project will not have any significant environmental impacts and therefore does not require an Environmental Impact Statement (“EIS”).

Zoning/Land Use

The proposed Project is sited entirely in an agricultural district in either existing, previously disturbed agricultural fields or publicly owned road rights-of-way. Following construction, the right-of-way will be restored to either agricultural field or grassland. The Project will result in the loss of only 0.99 acres of agricultural land, and the addition of 0.90 acres of new impervious surfaces. A 25-foot-wide permanent right-of-way will be established to construct the pipeline, with additional work areas located along the alignment as required.

Environmental Impacts

To minimize environmental impacts, HDD will be used to install the Project under streams, roadways, and large drainage ditches. As a result of using HDD, there will be minimal displacement of soils and no impact to active farming operations occurring on the farms. No rare, threatened, or endangered plant or animal species have been identified in the vicinity of the Project, and it is not being sited in a designated significant natural community. In addition, no tree clearing will be needed for construction or operation of the Project. There will be limited vegetation clearing needed to construct the Project, however clearing will be limited to agricultural vegetation. All vegetation will be restored to pre-construction conditions once construction has been completed.

No wetlands or wetland buffer zones will be impacted by the Project. Although the Aurora Ridge Pipeline route traverses two (2) streams, two (2) combined wetland areas containing

streams, and one (1) wetland without a stream, the use of HDD will avoid any impacts to these features. BRE has requested a non-jurisdictional letter from the DEC to confirm that no jurisdictional wetlands will be impacted by the Project.

Historic/Archaeological Resources

The Project will not be located in the vicinity of any buildings or historical sites located on the National or State Register of Historic Places. Moreover, no archaeological or historic sites or resources have been identified on the Project site. Therefore, the Project will have no impacts on historic or archaeological resources.

Noise

The majority of the noise impacts associated with the Project will be temporary, construction impacts. During construction, it is anticipated that heavy equipment such as the HDD equipment will only be used between the hours of 6 AM to 6 PM, Monday through Friday from May 2022 to December 2022. No construction activities are expected to occur outside of the hours of 6 AM and 6 PM. During operations, most noise will be contained in structures. Any equipment that will be sited outdoors will have operational noise levels under 85 decibels.

Lighting and Visual Impact

The potential visual impacts of the Project are anticipated to be *de minimis*. The Aurora Ridge Pipeline and Sunnyside Pipeline will be sited entirely underground. Any aboveground equipment will be sited on the Farms in areas where similar industrial equipment already exists. There will be 8 new structures constructed for the Project, including an office trailer and equipment housing. The tallest structure, the Scrubber tower, will be 60 feet tall but will be sited among existing industrial equipment. Minimal lighting impacts are anticipated as result of the Project. There will be exterior lighting at the doorways of the structures and downlighting at the truck

loading station on a 23-foot pole. The closest occupied building, which is a residential structure, will be 300 feet from the lighting.

Air Quality

There will be minor air emissions associated with the Project. During construction, emission sources include temporary power sources. During operation, they include truck loading, boilers, and the elevated flare at Sunnyside Farms.

This information has been disclosed to the NYSDEC as part of BRE's application for a New York State Air Registration. The Project will not generate any methane or emissions from open-air operations.¹⁸ As discussed above, the Project's RNG will annually displace 926,143 gallons of diesel fuel consumed by the transportation market.

Stormwater and Wastewater

The Project will result in minor stormwater runoff, which will be handled in accordance with the State Pollutant Discharge Elimination System ("SPDES") Permit requested by BRE. Liquid waste generated by the Project's construction and operations will be pumped into tanks and disposed of at permitted facilities by the contractor. Any wastewater generated by the gas processing equipment will be diverted to the Farms' existing lagoons for beneficial reuse.

Hazardous and Solid Waste

The Project will not create any hazardous waste during construction or operations. While approximately one (1) ton per year of solid waste will be generated during construction and six (6) tons per year in operation, BRE will require its contractor to create and adhere to a recycling and

¹⁸ For clarity, while the Project that is the subject of this petition will not generate any methane, the existing anaerobic digesters at the Farms, which are not part of this Petition, do generate methane.

waste disposal minimization plan. Moreover, any solid waste will be recycled or disposed of in accordance with best practices.

Agency Correspondence

As part of Exhibit E, BRE is attaching correspondence from the NYS Office of Parks, Recreation, and Historic Preservation and the United States Department of the Interior that further demonstrates that the Project will not have any significant adverse environmental impacts.

Determination

As demonstrated herein, the Project will result in only minor, temporary environmental impacts. By installing the Aurora Ridge and Sunnyside Pipelines using HDD and siting the aboveground equipment on existing working farms, BRE has significantly reduced any impacts associated with the Project. Moreover, the benefits of the Project related to the community and environment, including revenues for the farms, carbon capture and removal, and diesel fuel displacement are compelling.

Not only will the construction and maintenance of the Project not result in any significant adverse impacts, the Project will provide air quality benefits by capturing and treating methane that would have otherwise been emitted into the atmosphere. As such, BRE respectfully requests that the Commission issue a determination of non-significance (negative declaration) and determine that the Project does not require an EIS.

CONCLUSION

Based on the foregoing, BRE respectfully requests that the Commission issue an order granting a CPCN and declaring that BRE will be subject to the lightened regulatory regime, as described above, consistent with Commission precedent for similarly situated wholesale generators.

Respectfully submitted,

COUCH WHITE, LLP

Attorneys for Bluebird Renewable Energy, LLC

Devlyn C. Tedesco

Devlyn C. Tedesco

Leonard H. Singer

540 Broadway

Albany, New York 12201

T: (518) 426-4600

F: (518) 426-0376

dtedesco@couchwhite.com

lsinger@couchwhite.com

Dated: November 24, 2021
Albany, New York