

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Petition of Yellow Barn Solar, LLC, for an Order Granting a Certificate of Public Convenience and Necessity Pursuant to Public Service Law § 68 and Lightened Regulation.

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Case: 25-E-\_\_\_\_\_

**PETITION OF YELLOW BARN SOLAR, LLC, FOR AN ORDER GRANTING A  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO  
PUBLIC SERVICE LAW § 68 AND LIGHTENED REGULATION**

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On December 16, 2024, the New York State Office of Renewable Energy Siting and Electric Transmission (“ORES” or, the “Office”) issued a Draft Permit to Yellow Barn Solar, LLC (“Yellow Barn” or “Petitioner”), for the construction of the Yellow Barn Solar Energy Project, a 160 megawatt (“MW”) solar electric generating Project in the Towns of Groton and Lansing, Tompkins County, New York (the “Project” or “Facility”).<sup>1</sup> Pursuant to Public Service Law (“PSL”) Article VIII, the Office must issue a final Siting Permit by October 15, 2025.<sup>2</sup>

After obtaining a Siting Permit, Yellow Barn remains responsible for obtaining a Certificate of Public Convenience and Necessity (“CPCN”) under PSL § 68 from the Public Service Commission (the “Commission”).<sup>3</sup> Yellow Barn hereby files this petition respectfully requesting that the Commission issue (1) a CPCN to Yellow Barn, pursuant to PSL § 68, and (2) an Order

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<sup>1</sup> Matter No. 23-02986: *Application of Yellow Barn Solar, LLC for a 94-c Permit for Major Renewable Energy Facility, Draft Permit* (December 16, 2024).

<sup>2</sup> PSL § 143(8).

<sup>3</sup> See 16 NYCRR § 1100-6.1(d)(1).

finding that Yellow Barn, as a wholesale electric market participant, is entitled to a lightened regulatory regime.

Although ORES’ rules authorize the Commission to approve construction or operation of the Project through issuance of a CPCN, such authorization comes with “the understanding that the Commission will not duplicate any issue already addressed by the Office and will instead only act on its police power functions related to the entity as described in the body of [the] siting permit.”<sup>4</sup> As stated by the Commission, “[t]he granting of a CPCN... is an activity undertaken in relation to the Final Permit issued by ORES.”<sup>5</sup> Thus, the scope of this proceeding is limited. This proceeding should not duplicate the public need and environmental compatibility issues resolved in the Executive Law § 94-c, now Article VIII, proceeding and resultant siting permit.<sup>6</sup> In considering issuance of a CPCN, the Commission “shall consider the economic feasibility of the corporation, the corporation’s ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates, and whether issuance of a certificate is in the public interest.”<sup>7</sup>

As will be shown herein, Yellow Barn has obtained, to the extent required, all necessary local approvals and has sufficient financial resources to construct the Project and significant expertise to operate it. Yellow Barn will also operate the Project as a competitive wholesale generator. As such, the Commission’s Order should also find, as has been done for numerous

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<sup>4</sup> 16 NYCRR § 1100-6.1(d)(1).

<sup>5</sup> Case 21-E-0345: *Petition of Morris Ridge Solar Energy Center, LLC, for a Certificate of Public Convenience and Necessity*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (November 24, 2021), at 13 (“Morris Ridge Order”).

<sup>6</sup> *Id.*

<sup>7</sup> PSL § 68; *see also*, Case 24-E-0138: *Petition of Bear Ridge Solar, LLC, for a Certificate of Public Convenience and for an Order Granting Lightened Regulation*, Order Granting Certificate of Public Convenience and Necessity and Providing For Lightened Regulation (November 19, 2024), at 7.

generators operating under similar circumstances, that Yellow Barn is entitled to a lightened regulatory regime.

As the Project's Siting Permit has already been issued and commencement of construction is expected to commence in December 2025, Petitioner respectfully requests that the Commission grant the requested relief expeditiously. In addition Petitioner requests that a public statement hearing be scheduled in satisfaction of the hearing requirements of PSL § 68 and, if no comments or information, oral or written, raise any material issues of fact, immediately rule, at the public statement hearing, that no evidentiary hearings be held, as the Project is consistent with the State's climate and renewable energy policies. Timely action on this Petition will ensure that the necessary approvals are in place to allow for the construction of the Project on the timeline that will allow it to contribute to keeping the State on track to meeting renewable energy targets.

## **I. BACKGROUND**

### **A. The Project**

The Facility is a 160 MW solar photovoltaic (PV) energy generating project in the Towns of Groton and Lansing, Tompkins County, New York, consisting of the following major components: photovoltaic bifacial solar panels on a single-axis tracking racking system installed on steel driven posts; 8-foot tall agricultural style solar array fencing with self-locking gates; underground direct current (DC) electrical and communication cables connecting the panels to decentralized inverters; skid mounted medium voltage power station inverters and their foundations; underground medium voltage alternating current (AC) 34.5 kV collection cables connecting the inverters to the collection substation; a 115/34.5 kV collection substation and associated equipment enclosed with chain link fencing; a 115 kV POI switchyard substation and associated equipment enclosed with chain link fencing; access roads; temporary construction

laydown areas; planting modules; and ancillary features. The Facility will interconnect to National Grid's existing 115 kV transmission line #975 between the Milliken and Etna substations through a new 115 kV transmission line connecting the POI switchyard station and the existing offsite transmission line. According to the Siting Permit, the total nameplate capacity of the Facility shall not exceed 160 MW.

The proposed Solar Facility will directly contribute to New York's Climate Leadership and Community Protection Act targets by producing up to 160 MW of renewable solar energy directly to New York's energy market. According to the application, the Facility will produce enough zero-emissions energy to power approximately 40,900 households in New York State. The Facility will also create job opportunities, support economic growth, and protect public health, safety, and the environment by significantly reducing greenhouse gas emissions.

**B. The Parties**

**i. Yellow Barn Solar, LLC**

Yellow Barn is a special purpose entity created to own and operate the Yellow Barn Solar Energy Center. Yellow Barn, a Delaware limited liability company, is a wholly owned subsidiary of Lydian Energy LLC ("Lydian").<sup>8</sup>

In 2024, the New York State Energy Research and Development Authority ("NYSERDA") selected the Facility as a Tier 1 award recipient in its sixth annual request for proposals under the Clean Energy Standard (RESRFP24-1). The Yellow Barn Solar Facility will generate revenue through sales of energy into the NYISO wholesale markets and through the sale of renewable energy credits to NYSERDA under a Renewable Energy Services ("RES") Agreement.

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<sup>8</sup> At the time the Application was filed for a Siting Permit under former Executive Law § 94-c, Yellow Barn was an affiliate of CS Energy Devco, LLC. Lydian acquired 100% of the ownership interests in Yellow Barn in November 2024.

**ii. Lydian Energy**

Lydian is an independent power producer engaged in developing, constructing, and operating utility-scale solar projects and battery energy storage systems in key markets across the United States. Lydian was founded in 2023 and is backed by Excelsior Energy Capital. More specifically, Lydian is 100% owned by Excelsior Renewable Energy Investment Fund II LP (“Excelsior Fund II”), and is the first, and only, portfolio company of Excelsior Fund II. The total capital commitment for Excelsior Fund II closed in April 2025 with just over \$1 billion in total capital commitments.

The Lydian team represents hundreds of years of combined experience in renewables development, origination, engineering, construction and asset management. Across the United States, Lydian has 700 MW of solar generation and battery storage under construction, 2,235 MW in middle-stage development, and 1,702 in late-stage development. A map showing Lydian’s projects is attached as **Exhibit A**.

Founded in 2017, Excelsior has two active funds totaling over \$1.5 billion of equity capital. Excelsior is a renewable infrastructure fund focused on middle market investments in wind, solar and battery storage plants and businesses across North America. The Excelsior team also brings over 100 years of combined experience and a comprehensive set of strategic, financial, legal and operational expertise.

**II. PETITION FOR CPCN**

**A. Standard for Issuing a CPCN Under PSL § 68**

Section 68 of the PSL generally requires electric corporations to obtain a CPCN from the Commission before commencing construction of an electric plant. The issuance of a siting permit by ORES supplants the requirements for construction approval under PSL §68, but Commission

approval of corporate formation and exercise of any municipal “right, privilege or franchise” is still required.<sup>9</sup> However, for projects that are undergoing review through Article VIII, formerly Section 94-c, such as Yellow Barn, such review will be limited with “the understanding that the [Commission] will not duplicate any issue already addressed by [ORES] and will instead only act on its police power functions related to the entity as described in the body of this siting permit.”<sup>10</sup> Thus, the Commission’s review of the instant petition is limited in scope with respect to the approval of corporate formation and the exercise of any municipal “right, privilege or franchise” and should not duplicate the public need and environmental compatibility issues resolved in the 94-c/Article VIII proceeding and final siting permit in such review.

According to the Commission, before it may issue a CPCN, the electric corporation seeking approval must provide a certified copy of its charter and a “verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.”<sup>11</sup> In considering its approval, the Commission “consider[s] the economic feasibility of the corporation, the corporation’s ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates, and whether issuance of a certificate is in the public interest.”<sup>12</sup>

In conjunction with meeting the requirements specified in PSL § 68 as interpreted in the Cassadaga CPCN Order, Petitioner must also satisfy the requirements for CPCNs set forth in 16 NYCRR §§ 21.2 and 21.3. Consistent with the Cassadaga CPCN Order, and as demonstrated by

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<sup>9</sup> See e.g., Case 19-E-0277: *Baron Winds, LLC Section 68 Petition*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (April 23, 2020).

<sup>10</sup> Matter No. 23-02986, *supra* fn. 1, Draft Siting Permit for a Major Renewable Energy Project, p. 9; see also Cassadaga CPCN Order, at 20.

<sup>11</sup> See Morris Ridge CPCN Order, at 12 (citing PSL § 68).

<sup>12</sup> *Id.*

the Commission’s determination in the Morris Ridge CPCN Order, the record developed in the Section 94-c proceeding, when viewed alongside supplemental information provided through this Petition and proceeding, is sufficient to satisfy the requirements of 16 NYCRR Part 21 and to provide a full evidentiary record.<sup>13</sup> Yellow Barn requests that the Commission find, as it did in the Morris Ridge CPCN Order, that through this Petition and supplemental information provided during the course of this proceeding, and the record developed in the Section 94-c proceeding, sufficient information is available to satisfy the requirements of 16 NYCRR Part 21 and provide a full evidentiary record.

**B. Required Findings Under PSL § 68**

**i. Certified Charter**

Before the Commission can issue a CPCN, PSL § 68(1) requires the electric corporation seeking approval to submit “a certified copy of its charter.”<sup>14</sup> A copy of Petitioner’s Certificate of Formation, certified by the State of Delaware Secretary of State, Division of Corporations, is attached hereto as **Exhibit B**. A certificate from the NYS Department of State demonstrating that Yellow Barn is registered to do business in New York as a foreign limited liability company and that it has properly registered an agent for service of process is attached hereto as **Exhibit C**.

**ii. Consent of Municipal Authorities**

Pursuant to PSL § 68, Yellow Barn is also required to provide the Commission with a “verified of the president and secretary of the corporation, showing that it has received the required franchise consent of the proper municipal authorities.”<sup>15</sup> Yellow Barn will not provide utility service in any territory and does not require any municipal right or privilege under franchise. With

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<sup>13</sup> *Id.* at 14.

<sup>14</sup> *See* Morris Ridge CPCN Order, at 12 (citing PSL § 68).

<sup>15</sup> PSL § 68(1); *see also* Morris Ridge CPCN Order, at 12.

respect to municipal rights-of-way, certain portions of the Facility’s collection and transmission lines will cross or otherwise be located on municipal right of ways (“ROWS”). The local laws of the Towns of Groton and Lansing do not require Petitioner to enter into a Host Community Agreement (“HCA”) or Road Use Agreement (“RUA”) to construct and operate the Project within municipal ROWs.<sup>16</sup> Nevertheless, the Permittee will enter an HCA and RUA with both Towns.

The Town of Groton local law requires that Petitioner obtain a Road Work Permit for buried cables along Town Right-of-Ways.<sup>17</sup> Petitioner anticipates that the requirements of the Road Work Permit will be incorporated into the RUA with the Town of Groton and no separate permit will be required. Petitioner will file the Town of Groton RUA in this proceeding once it is executed.

Based on precedent, however, the Commission need not wait for Petitioner to receive all requisite consents to commence review of this Petition. For example, on December 10, 2024, White Creek Solar LLC filed with the Commission a petition for an Order granting a CPCN and lightened regulation.<sup>18</sup> In its petition, White Creek advised the Commission that the host

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<sup>16</sup> See Case No. 22-E-0343: *Petition of Hecate Energy Cider Solar, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation.*

<sup>17</sup> Town of Groton Town Code § 367.8 “To the extent reasonably practicable, all utility connections for any Large-Scale Solar Energy Systems shall be placed underground, depending upon the appropriate soil conditions, shape and topography of the site and any requirements of the National Electrical Code utility. Electrical transformers for utility connections may be above ground if required by the utility provider. For overhead powerlines and utility power pole installation, ensure that pole placement and the height of the wire will not Interfere with the ability to access lands with harvest equipment. Buried Utilities along Town Right-of-Ways are subject to a Commercial Road Work Permit.”

<sup>18</sup> Case 24-E-0682: *Petition of White Creek Solar LLC*, Petition (Filed December 10, 2024); see also Case 20-E-0551: *Petition of New York Transco LLC for an Expedited Order Granting it a Certificate of Public Convenience and Necessity*, Order Granting Certificate of Public Convenience and Necessity and Confirming Lightened Regulation (February 23, 2021). On November 5, 2020, New York Transco LLC filed a petition (the “Transco Petition”) for a CPCN to allow the exercise of rights and privileges granted under certain municipal road crossing agreements associated with development of the Knickerbocker to Pleasant Valley transmission upgrade project. In the Transco Petition, petitioner stated that it was still in the process of obtaining 5 of 11 road crossing agreements, which would be filed upon receipt. Despite not having obtained all requisite municipal consents, the proceeding continued with a public statement hearing being held and a ruling on process issued. After issuance of the ruling on process, petitioner filed the remaining RUAs and a One-Commissioner Order granting a CPCN was issued four days later. Here, Petitioner is awaiting execution of RUAs from only two municipalities. Accordingly, the Commission can reasonably commence review of the instant Petition, including holding a public statement hearing and ruling on process, prior to submission of remaining municipal consents. Petitioner will file the executed RUAs prior to the Commission’s issuance of an order granting a CPCN.

municipalities' local laws required RUAs. White Creek further advised the Commission that it was currently negotiating the RUAs with the municipalities and that White Creek would file the executed RUAs prior to the Commission's issuance of an order granting a CPCN. A public statement hearing and procedural conference were held before the Administrative Law Judge on April 24, 2025, and a Ruling on Process was issued on May 20, 2025. Accordingly, this proceeding may proceed in the absence of an executed RUA with the Town of Groton.

Yellow Barn does not have a president or secretary. In fulfillment of the requirement that the Commission ensure that the entity has received the necessary consents of the municipal authority for use of municipal property or public ROWs, Yellow Barn has included as **Exhibit D** a verified statement of an authorized representative that the consents of the proper municipal authorities necessary for issuance of a CPCN have been received, to the extent that such consents are not preempted by Article VIII. The Commission has accepted a verification from an authorized representative in situations where the project company does not have a president or secretary.<sup>19</sup>

As discussed in greater detail in Section III below, other information required by 16 NYCRR § 21.2 is not relevant because Yellow Barn does not have an expired franchise and has not been granted any permit, license or authority by any Federal authority relative to the Project that will not be addressed in the ORES proceeding.

### **C. Evidence Relating to Economic Feasibility of Entity and Entity's Ability to Finance Improvements**

Pursuant to PSL § 68, the Commission must to consider “the economic feasibility of the corporation, and the corporation's ability to finance improvements of . . . an electric plant.”<sup>20</sup>

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<sup>19</sup> See, Case 21-E-0502: *Petition of Flint Mine Solar, LLC*, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Regulation, and Making Other Findings (June 21, 2022).

<sup>20</sup> See also, Cassadaga CPCN Order, at 12.

Petitioner notes that the “the economic feasibility” and “ability to finance” requirements were meant to apply to monopoly utilities, whose unwise financial decisions were historically passed on to ratepayers, and not to competitive generators who must compete in the marketplace, and who bear their own economic risks.<sup>21</sup> As set forth in Section IV below, numerous wholesale electric generators, including utility-scale solar generation facilities, have been granted lightened regulation by the Commission.<sup>22</sup> The Legislature’s decision to amend PSL § 68 in 2013 to require additional scrutiny of a utility’s financial fitness was intended to ensure that utilities awarded franchises as the sole retail provider (or one of a limited number of providers) have the resources necessary to respond to storms and outages expediently and otherwise fulfill their obligations to their customers.<sup>23</sup> Arguably, these amendments to PSL § 68 were not intended to address

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

<sup>22</sup> See Wallkill Order, Carr Street Order, AES Order.

<sup>23</sup> PSL § 68 was amended in 2013 to add several new requirements for CPCN holders to demonstrate financial fitness to provide certain services to New York electric consumers. These amendments authorize the Commission to engage in additional scrutiny of a public utility’s internal organization and financial condition in situations where that utility obtains a franchise agreement under which it will serve as the only, or one of a limited number of, retail provider(s) available in a given area. In response to Hurricane Sandy and utility response, the 2013 legislation was enacted to expand the Commission’s authority to impose sanctions and revoke a CPCN for a utility’s service territory “based on findings of repeated violations . . . that demonstrate a failure of such corporation to continue to provide safe and adequate service.” PSL 68(2). See 2013 Sess. Law News of NY Ch. 57 (S.2607-D) (Approved March 29, 2013). Given the Commission’s longstanding preference for a lightened regulatory regime for competitive wholesale market participants who do not have captive ratepayers to fall back on, it does not appear that the additional financial oversight requirements in the amended Section 68 were intended to apply to competitive generators who must compete in the marketplace, and who bear their own risks in that marketplace. This is like other provisions of the Public Service Law that have been deemed inapplicable to wholesale electric generators. For those reasons, Petitioners believe the level of detail provided in this Petition is appropriate and proportional to the regulatory oversight of wholesale market participants which the Commission prefers.

generation siting, since the consequences of a certified Project failing to compete effectively will fall almost entirely on the Facility’s owners and shareholders, obviating the need for Commission oversight. Nevertheless, Section 94-c compels compliance with those aspects of PSL § 68 that are not addressed by the 94-c process, including “the economic feasibility of the corporation” and “the corporation’s ability to finance improvements of . . . an electrical plant.”

As discussed above, Petitioner’s parent company has a team of developers, builders, and operators with hundreds of years of combined experience in the construction and operation of utility-scale renewable electric generation facilities of all types, including solar. Lydian develops, builds, and will operate renewable energy and storage facilities across the United States. Lydian currently has approximately 4.6 gigawatts of renewable generation and storage in development in the United States. As noted above, Lydian is owned 100% by Excelsior Renewable Energy Investment Fund II LP (“Fund II”), which currently has a total capital commitment with just over \$1 billion.

In 2024 the New York State Energy Research and Development Authority (“NYSERDA”) awarded selected the Yellow Barn project under NYSEDA’s eighth annual solicitation under the Clean Energy Standard, RESRFP24-1. NYSEDA also selected the York Run Solar project, Lydian’s other New York project in development, under RESRFP24-1.

This record demonstrates that Petitioner’s parent company has substantial experience in the construction and operation of competitive renewable energy projects, and that experience will be leveraged to ensure that Yellow Barn remains competitive and financially viable throughout its lifespan.

Yellow Barn has not constructed the Project and therefore does not have any material assets or direct financing abilities. However, once the Project has received all necessary permits and

approvals for construction, the financing needed to construct the Project will be obtained through Lydian. After the start of construction, Lydian will secure construction debt financing for the Facility.

Evidence demonstrates that the Project will be economically feasible. The Project will realize income from the sale of renewable energy certificates pursuant to a long-offtake agreement with NYSERDA. Consistent with the discussion above, the owners of the Project are financially viable, and the Project itself will be economically feasible.

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

To the extent this standard applies to a wholesale generator, this element of the CPCN review has already been addressed as part of the 94-c review process and need not be duplicated with respect to the CPCN. The information to meet this standard has already been submitted to ORES in multiple 94-c Application exhibits, mainly Exhibit 6, *Public Health, Safety, and Security*, which includes an evaluation of all efforts made to avoid and minimize potential adverse impacts of the construction and operation of the facility, the interconnections, and related facilities on the environment, public health, and safety as well as site security and safety response plans.<sup>24</sup> Yellow Barn’s ability provide adequate and reliable service was also assessed by ORES in its review and issuance of a siting permit, with relevant information addressed in Exhibit 17, *Consistency with Energy Planning Objectives*,<sup>25</sup> and Exhibit 21, *Electric System Effects and Interconnection*.<sup>26</sup> Although Yellow Barn’s ownership has changed, the information and plans contained in the these exhibits has not.

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<sup>24</sup> See 16 NYCRR § 1100-2.7.

<sup>25</sup> See 16 NYCRR § 1100-2.18.

<sup>26</sup> See 16 NYCRR § 1100-2.22.

Petitioner notes that, under a lightened regulatory regime, Yellow Barn will remain subject to PSL requirements relating to matters such as enforcement, investigation, safety, reliability, system improvement, and other requirements under PSL Articles 1 and 4, to the extent these regulatory areas have been discussed in previous lightened regulation Orders.<sup>27</sup> Yellow Barn anticipates that, as has been required of other lightly-regulated generators, it will be required to conduct tests for stray voltage on all publicly accessible electric facilities,<sup>28</sup> give notice of generation unit retirements,<sup>29</sup> and report personal injury accidents pursuant to 16 NYCRR Part 125. According to the Commission, “[t]hese conditions further ensure [lightly regulated generators] will render safe, adequate, and reliable service.” Compliance with these requirements will further ensure that Yellow Barn will render safe, adequate and reliable services.

Yellow Barn’s ability to finance Project improvements and to render safe, adequate and reliable service is further demonstrated by the economic feasibility and financial viability based on the financial strength of its parent company and its commitment to providing the financial support necessary for Yellow Barn to construct and operate the Facility.<sup>30</sup>

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

Yellow Barn will operate the Project on a merchant basis in competitive wholesale markets and will not serve captive retail customers. The “just and reasonable rates” factor was intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates

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<sup>27</sup> See e.g. Morris Ridge CPCN Order, at 19.

<sup>28</sup> *Id.* (citing Case 04-M-0519, *Safety of Electric Transmission and Distribution Systems*, Order Instituting Safety Standards [January 5, 2005], and Order on Petitions for Rehearing and Waiver [July 21, 2005]).

<sup>29</sup> *Id.* (citing Case 05-E-0889, *Generation Unit Retirement Policies*, Order Adopting Notice Requirements for Generation Unit Retirements [December 20, 2005]).

<sup>30</sup> See e.g. Morris Ridge CPCN Order, at 15; Cassadaga CPCN Order, at 25.

charged by monopoly providers, and is inapplicable in the context of a Project like Yellow Barn.<sup>31</sup> The Commission has stated that “so long as the wholesale generation market is effectively competitive, wholesale generators complying with tariffs approved by the Federal Energy Regulatory Commission will provide just and reasonable rates and cannot raise prices even if their costs rise due to poor management.”<sup>32</sup> Moreover, the Commission has also acknowledged that “imposing these requirements could interfere with wholesale generators’ plans for structuring the financing and ownership of their facilities . . . [and] discourage entry into the wholesale market or introduce inefficiencies into market operations *to the detriment of the public interest.*”<sup>33</sup>

#### **F. Evidence/Documents Under Commission’s Regulations**

As previously stated herein, the Commission has adopted regulations identifying the evidence and documentation required to support CPCN petitions.<sup>34</sup> Based on the Morris Ridge CPCN Order and proceedings before the Commission in that case, evidence/documents addressed in a Section 94-c/Article VIII proceeding and issuance of a siting permit do not need to be duplicated/reproduced in a CPCN proceeding. Accordingly, Petitioner requests that Yellow Barn be treated similarly in this proceeding and duplication/reproduction of evidence/documents produced and thoroughly reviewed during the Section 94-c/Article VIII proceeding not be required herein.

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<sup>31</sup> See e.g. Morris Ridge CPCN Order, at 9, 18 (noting no retail service would be provided by the solar generator, and as such not required to demonstrate ability to provide just and reasonable rates); Cassadaga CPCN Order, p. 8 (noting no retail service will be provided by the wind energy generator).

<sup>32</sup> See Morris Ridge CPCN Order, at 18; Cassadaga CPCN Order, at 24.

<sup>33</sup> See Morris Ridge CPCN Order, at 18.

<sup>34</sup> See 16 NYCRR § 21.2 and 21.3.

Furthermore, certain other regulatory requirements are inapplicable to competitive wholesale generation facilities such as the Yellow Barn Project. With respect to subsections of 16 NYCRR § 21.2, the Petitioner notes that:

- (a) Yellow Barn is not proposing to render utility service in any territory and accordingly the information required by this subsection is inapplicable.
- (b) No franchises have been or will be granted to or by the municipalities in which the Project will be constructed. Therefore, no certified copies of franchises need to be submitted. As previously noted, no municipal consents are required to locate the Project collection lines in municipal ROWs nor to intersect access roads with town roads.
- (c) The Petitioner has not previously secured authority to exercise powers granted under a prior franchise that has expired; therefore, this provision also does not apply.
- (d) All permits, licenses or authorities by any Federal authority relative to this pending Petition will be addressed in the 94-c proceeding.

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

- (a) Petitioner does not propose to exercise authority granted by a franchise in any territory, so this provision is not applicable. Information about the towns in which the Project is proposed to be constructed, and the approximate dates that construction will begin, has already been addressed in the 94-c proceeding.
- (b) A detailed description of the plant to be constructed, and its estimated costs, is provided in the 94-c Application and proceeding.
- (c) As discussed above, the Project will be financed through construction debt.

- (d) Petitioner is not proposing to provide services for which retail rates would be charged, making this section inapplicable.
- (e) The estimated revenues to be derived from the Project will generally be derived from an off-take agreement with the NYSERDA and through sales of electricity into the wholesale market. The estimated expenses of operation of the Project for the first three years of service have been examined in the 94-c proceeding and can be found in the socioeconomic report in Application Exhibit 18.<sup>35</sup> Petitioner does not propose providing service to residential, commercial or industrial customers in any territory. Therefore, the latter half of this provision is inapplicable.
- (f) Refer to Section II.C above for information responsive to this provision.
- (g) Petitioner is not proposing to provide services in this manner; these provisions regarding the availability of other services in this territory are inapplicable.

### **III. REQUEST FOR LIGHTENED REGULATION**

The Commission has interpreted the PSL in a manner that best achieves the statutory intent and objects of the legislation and advances the public interest. In doing so, the Commission has already concluded that new forms of electric service providers participating in competitive wholesale markets would be lightly regulated. In a series of Orders—the *Wallkill Order*,<sup>36</sup> the *AES Order*<sup>37</sup> and the *Carr Street Order*<sup>38</sup>—the Commission outlined this “lightened regulatory regime”

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<sup>35</sup> The Commission has accepted estimated expenses for Project operations, as contained in Exhibits 4 and 18 of a Section 94-c application, in satisfaction of the requirements of 16 NYCRR § 21.3 (e). *See. e.g.*, Morris Ridge CPCN Order.

<sup>36</sup> *See* Case 91-E-0350: *In re Wallkill Generating Co., LP* Order Establishing Regulatory Regime (April 11, 1994) (“Wallkill Order”).

<sup>37</sup> Case 99-E-0148: *AES Eastern Energy LP*, Declaratory Ruling on Lightened Regulation (April 23, 1999) (“AES Order”).

<sup>38</sup> Case 98-E-1670: *Carr Street Generating Station LP*, Order Providing for Lightened Regulation (Apr. 23, 1999) (“Carr Street Order”); *See also* Case 07-E-0213: *Sheldon Energy LLC*, Order Granting and Amending Certificate of

applicable to wholesale generation facilities which fall under the definition of “electric corporation” in PSL § 2(13), but which are not a traditional monopoly “utility company” or “public utility” under PSL § 2(23). This lightened regime has since been granted to numerous wholesale renewable electric generation facilities throughout the State.<sup>39</sup>

In the above referenced series of orders, the Commission determined that, under a lightened regulatory regime, certain requirements—which were developed to address monopoly utilities—do not apply to competitive wholesale electric providers, such as Yellow Barn, that are operating in a competitive environment.<sup>40</sup> These items, which address rates, recordkeeping, internal financing and transactions among other subjects, including most of the provisions in PSL Articles 2, 4 (except § 68, 69, 69-a and 70) and 6 (except §§ 110(1), 110(2) and 119-b); PSL § 115 on competitive bidding; PSL § 72-a requiring that monthly fuel costs reports be filed and PSL §§ 106, 107, 108, 110(3) and 110(4), relating to loans, use of revenues, mergers, and certain types of contracts do not apply in this context.

Consistent with the *Wallkill*, *AES* and *Carr Street* Orders and various orders granting lightened regulation to renewable energy projects, including the recently issued Hecate Energy Cider Solar CPCN Order and Morris Ridge CPCN Order, the following limited provisions of the PSL should apply to Yellow Barn as a wholesale generator: PSL §§ 11, 19, 24, 25, and 26,

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Public Convenience and Necessity and Providing for Lightened Regulation (Jan. 17, 2008) (noting those sections of the PSL applicable to retail service providers).

<sup>39</sup> See, e.g., Case 02-E-0362: *Flat Rock Windpower LLC*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation, pp. 11-15 (June 17, 2004); Case 05-E-1634: *Noble Clinton Windpark I, LLC*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation, pp. 9-13 (Oct. 19, 2006); Case 11-E-0351: *Stony Creek Energy LLC*, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Rate Making Regulation and Approving Financing, pp. 37-41 (Dec. 15, 2011); Case 07-E-1343: *Marble River, LLC*, Order Granting Certificate of Public Convenience and Necessity, and Providing for Lightened Regulation, pp. 16-19 (June 19, 2008). See also Morris Ridge CPCN Order, pp. 15-20; Cassadaga CPCN Order, pp. 21-25.

<sup>40</sup> See Case 99-M-1722: *Applicability of Public Service Law Provisions to Competitive Entities*, Order Instituting Proceeding (Dec. 17, 1999).

preventing electricity producers from taking actions contrary to the public interest; PSL § 66(6) and § 111 on annual reporting; PSL §§ 69 or 69-a involving issuance of securities or debt instruments, which requires approval of the Commission under a separate “reduced scrutiny” standard; PSL § 70 regarding transfer of property or direct ownership of the facility; PSL §§ 110(1) and (2); and PSL 119-b on protection of underground facilities.

Consistent with the Commission’s prior decisions, Yellow Barn respectfully requests an Order of the Commission confirming that a lightened regulatory scheme shall be applied to its wholesale electric activities in the New York market and granting such other and further relief as it deems necessary or appropriate.

#### **IV. HORIZONTAL AND VERTICAL MARKET POWER**

The Yellow Barn Project will generate up to 160 MW of electricity. Yellow Barn, through its parent corporation, is also affiliated with the York Run Solar Project, a 90 MW solar generating facility proposed in Groton and Lansing, New York. See map attached as **Exhibit A**.

After construction of the Yellow Barn and Yellow Barn projects, Lydian’s aggregate generation in New York will be 250 MW. Accordingly, Lydian’s in-State operational generation amounts to less than 1% of NYISO’s forecast of 2024 coincident summer peak demand for the New York Balancing Authority Area (BAA) as a whole of 31,471 MW.<sup>41</sup>

The Commission has held in other cases that a total ownership share as high as 8.1 percent of NYISO installed capacity is insufficient to raise horizontal market power concerns.<sup>42</sup> Any concern that Yellow Barn’s generation capability would somehow enable it to raise market prices

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<sup>41</sup> See NYISO 2025 Load & Capacity Report at 24.

<sup>42</sup> Case 08-E-0410, *Petition of LS Power Development, LLC For a Declaratory Ruling Regarding the Acquisition of Common Stock, or in the Alternative, Approval Under Section 70 of The Public Service Law*, Declaratory Ruling on the Acquisition of Common Stock, slip op. at 8 (Issued and Effective May 27, 2008).

to benefit other projects is precluded by both the energy price mitigation provisions of the NYISO's BAA and Market Services Tariff and by the fact that any changes in wholesale prices will provide no benefit to other projects, as their revenues will be fixed by their indexed REC agreements with NYSERDA.<sup>43</sup>

With respect to vertical market power, neither Yellow Barn, nor its parent, own or control any traditional franchised utilities with captive customers in New York, nor do they or their affiliates own or control any transmission facilities in New York other than the limited interconnection equipment necessary to connect their generating facilities to the transmission grid. Neither entity or its affiliates is a scheduling coordinator, reliability coordinator, electric or gas transmission or distribution provider or balancing authority within (or into) the New York Control Area ("NYCA") or has control over the provision of fuels used in generation within the State of New York. Accordingly, there are no vertical market power issues.

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<sup>43</sup> Case 20-E-0481, *Petition of Mohawk Solar LLC for an Order Granting a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law and for an Order Granting Lightened Regulation*, Order Granting Certificate Of Public Convenience And Necessity And Providing For Lightened Regulation, slip op. at 17-18 (Issued and Effective September 14, 2021) ("The Indexed REC contract will reduce the incentive of the affiliates owning transmission and distribution to discriminate against non-affiliated generators because, while that discrimination could impact the price Mohawk Solar receives for its power, its overall profit remains relatively steady as the price it receives for RECs will go down as wholesale energy prices rise.").

**V. CONCLUSION**

For the reasons set forth above, the Petitioner respectfully requests that the Commission issue (1) a CPCN to Yellow Barn, pursuant to PSL § 68, and (2) an Order finding that Yellow Barn, as a wholesale electric market participant, is entitled to a lightened regulatory regime.

Given the limited nature of the Commission's review, Petitioner respectfully requests that the CPCN be granted no later than the Commission's November session in order to avoid any delays to the start of construction.

Dated: July 31, 2025

Respectfully submitted,

/s/ ***Steven D. Wilson***

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