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Via Electronic Filing

Hon. Nicholas Planty
Administrative Law Judge
Office of Hearings and Alternative Dispute Resolution
New York State Department of Public Service
Empire State Plaza, Agency Building 3
Albany, NY 12223-1350

Re: Case No. 25-E-0554: Petition of Hoffman Falls Wind LLC, for an Order Granting a Certificate of Public Convenience and Necessity Pursuant to Public Service Law § 68 and Lightened Regulation.

Dear Judge Planty:

On behalf of Hoffman Falls Wind LLC (“Petitioner”), we respectfully submit this letter in lieu of brief in response to the December 2, 2025, brief filed by the Towns of Fenner, Eaton, Nelson, and Smithfield (the “Towns”). As explained below, the Towns’ filing does not raise any material issues of fact and provides no basis to delay or limit Commission action on the Petition of Hoffman Falls Wind for an Order Granting a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to Public Service Law (“PSL”) § 68 and Lightened Regulation. Instead, the Towns present several misunderstandings of Section 68, Article VIII and municipal consent requirements as explained below. Because the Applicant has satisfied all requirements of PSL § 68 and no municipal consents are required, Petitioner is entitled to issuance of a CPCN and lightened regulation.

I. Procedural Background

Petitioner is proposing to construct the Hoffman Falls Project (“the Project” or “the Facility”), an approximately 100-megawatt (“MW”) wind energy generation facility to be located in the Towns of Towns of Fenner, Nelson, Eaton and Smithfield, Madison County, New York. In addition to the CPCN, Petitioner is contemporaneously seeking a siting permit from the Office of Renewable Energy Siting and Electric Transmission (“ORES”) under PSL Article VIII (*See Application of Hoffman Falls Wind LLC*, DMM Matter No. 23-02976).

Petitioner submitted an application to ORES on February 15, 2024, and ORES determined the Article VIII application complete on December 20, 2024. In accordance with Article VIII, ORES is required to issue a decision on the final siting permit within one year of the completeness determination, i.e., no later than **December 20, 2025**. Given the current status of this proceeding, the Commission *could not* act prior to the ORES Siting Permit, so any question with respect to this issue is moot.

Petitioner has requested that the CPCN Petition be reviewed contemporaneously with the Article VIII application and that a CPCN be issued expeditiously following issuance of the ORES Siting Permit, as the Project aligns with the State's climate and renewable energy policies and timely action will ensure the Project is constructed in time to support the State's renewable energy targets. Other projects have similarly submitted CPCN petitions prior to the issuance of their state siting permit or certificate. (See *High Bridge Wind* [20-E-0542]; *Mohawk Solar* [20-E-0481]; *Baron Winds* [19-E-0277]; *Hecate Energy Cider Solar* [22-E-0343]).

PSL § 68 ordinarily requires an electric corporation, such as Hoffman Falls, to obtain a CPCN before constructing an electric plant. In the Article VIII context, however, ORES's exclusive siting authority supplants the Commission's traditional scope in PSL § 68 proceedings. The Commission retains jurisdiction over corporate formation and other residual police-power functions, but for projects subject to Article VIII, the scope of Section 68 review has been determined to be narrow.¹ Consistent with long-standing Commission precedent, the Commission's evaluation should not duplicate matters to be addressed by ORES, including environmental impacts or other siting issues. Rather, Section 68 review is confined to the limited areas of authority that remain within the Commission's purview.

II. Summary

The Towns' brief presents no legal or procedural barrier to the Commission's continued review of the Section 68 Petition. The Towns' prematurity argument will be moot within days, as ORES is required to issue the final Article VIII siting permit imminently, and the Commission's narrow jurisdiction under PSL §68 does not overlap with the substantive siting determinations ORES must make. Likewise, the Towns' assertion of a municipal consent right misapprehends the limited scope of PSL §68, which requires only franchise-type consent, circumstances not present here. Finally, while Hoffman Falls continues to negotiate road use agreements with the Towns, those voluntary contracts fall outside the Commission's authority in this proceeding and are immaterial to the discrete findings required under PSL §68. For these reasons, the Commission may continue its review in the ordinary course, without delay and without prejudice to any parallel Article VIII process.

III. Legal Argument

¹ Case 18-E-0399, *Petition of Cassadaga Wind LLC for a Certificate of Public Convenience and Necessity*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Nov. 15, 2018) (hereinafter *Cassadaga Wind CPCN Order*).

i. *The Towns' Prematurity Argument is Moot as a Practical Matter*

As an initial matter, given that a final siting permit decision is due within days of the filing of this Letter, the Towns' prematurity arguments are likely to become moot as a practical matter. By the time the Commission is prepared to act on the Section 68 Petition, the Article VIII determination will already have been issued. Regardless, the absence of a final siting permit at this point does not affect the Commission's ability to review the pending Petition under PSL §68 and in particular for Your Honor to determine that no issues require adjudication in a Ruling on Process. The record in the underlying ORES proceeding was closed on September 25, 2025,² and none of the adjudicated issues relate to the findings the Commission must make pursuant to Section 68.³ Therefore, the Article VIII record is already well developed and available to the Commission.

Overall, because the Article VIII permit will be issued before the Commission takes action, and because none of the ORES issues overlap with or condition the findings required under PSL §68 the Towns' prematurity argument lacks merit. The Section 68 Petition is squarely before the Commission and may be evaluated without regard to the precise timing of ORES's final determination.

In addition, there is no harm or prejudice in allowing the Section 68 proceeding to move forward and for Your Honor to address the lack of material issues of fact necessitating a hearing. The Project cannot be constructed, or even commence site work, without first obtaining a final siting permit from ORES. ORES must affirmatively determine that the Project satisfies all applicable safety, engineering, environmental, and mitigation standards before any construction may occur. Thus, even if the Article VIII record evolved in ways that refine siting conditions or impose additional requirements, those changes would be fully captured and enforced through the ORES permit and would not alter the Commission's narrower Section 68 determination. The Commission can therefore appropriately defer to ORES on these matters and still find that approval of the CPCN is in the public interest.

The Commission can make the required findings and determine that the Project is in the public interest based on its contribution to the State's CLCPA mandates, its ability to render safe and reliable service, and the environmental and public health benefits associated with displacing fossil-fuel generation. ORES will conduct its separate review on the record in the Siting Permit matter. Given the narrow scope of PSL § 68 and the absence of any overlapping findings, there is no procedural barrier preventing the ALJ from issuing a recommendation on process at this stage.

² Case 23-02976, *Application of Hoffman Falls Wind, LLC for a Major Renewable Energy Facility Siting Permit Pursuant to Article VIII of the New York State Public Service Law*, Notice of Closure of Hearing Record, (DMM Item No. 187).

³ Commission review is confined to its police power functions related to three discrete issues: (1) the petitioner's corporate organization and financial wherewithal to construct and operate the project; (2) the ability to provide safe and adequate service; and (3) whether issuance of the certificate is in the public interest

This approach is also consistent with the CLCPA’s mandate for timely development of renewable-energy facilities. Requiring projects to complete the Article VIII process before initiating or concluding CPCN review would add months of delay, contrary to the State’s climate-policy framework.

Accordingly, Your Honor should issue a Ruling on Process and the Commission should act expeditiously on this CPCN Petition.

ii. *Consent Authority Under Town Law §64(7) Does Not Create a Consent Requirement Under PSL §68*

“PSL § 68 prohibits an electric corporation from constructing [an] electric plant, *or from exercising any right or privilege under any franchise*, until it receives the Commission's approval in a CPCN.”⁴ (emphasis added)

PSL §68(1) requires a CPCN applicant to submit a “verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.” Given the scope of the Commission’s jurisdiction under §68, the “required consent” referenced in this provision concerns only those situations in which the applicant seeks to exercise a right or privilege that constitutes a franchise. As the Commission and courts have recognized, the term “consent” in §68 is synonymous with the granting of a franchise-type authorization.⁵

Accordingly, municipal consent under PSL §68 is triggered only where a project requires a franchise right or privilege, not by general road management authority.⁶ Thus, the proper inquiry is not whether the Towns possess any general authority over their roads, but whether Hoffman Falls seeks to exercise a municipal right or privilege equivalent to a franchise, which alone would trigger the “required consent” provision in PSL §68. In this case, Hoffman Falls Wind will not provide electric service within any municipal territory and does not seek any municipal franchise rights therefore no municipal consents are required.

Instead, the Towns rely on Town Law §64(7) and Article IX, Section 2(c)(6) of the New York State Constitution to assert a consent right over the use of Town roads (i.e. driving on top of the roads). While §64(7) includes franchising authority, that provision is limited to the grant of actual franchise rights, which the Petitioner is not seeking here. The reminder of the provisions referred by the Town authorize municipalities to adopt local laws concerning the care, management, and use of their highways and property, they do not generally create the type of

⁴ *Petition of Ball Hill Wind Energy, LLC for a Certificate of Public Convenience and Necessity*, Case 18-E-0654, Issued April 18, 2009.

⁵ As the court explained in *Penn-York Natural Gas Corp. v. Maltbie*, the terms “consent” and “franchise” are used interchangeably in the context of PSL §68 to describe this narrow category of rights. *Penn-York Natural Gas Corp. v. Maltbie*, 164 Misc. 569, 571 (Sup Ct. 1937) (“petitioner transports gas in this State crosses public streets and highways at 132 points and in two places runs longitudinally in highways for 1,613 feet and 718 feet respectively”).

⁶ Consent is only required from a “municipality on whose property part of the facility would be located”. See *Petition of Ball Hill Wind Energy, LLC for a Certificate of Public Convenience and Necessity*, Case 18-E-0654, Issued April 18, 2009.

franchise “required consent” contemplated by PSL §68. Any general authority the Towns may have to regulate their roads and the constitutional implications derived therefrom, is distinct from, and does not equate to, the franchise-type consent that §68 addresses. To put it simply, the NYPSC has never held that it regulates weight, width and other traffic related use restrictions under the PSL §68 authority, as argued by the Towns.

Moreover, even if the Towns’ road-use authority were relevant, any attempt by a municipality to condition use of the road on the issuance of a local highway work, street opening, or traffic safety permit is squarely preempted by Article VIII. The Siting Board recently reaffirmed this principal in its *Alle-Catt Wind* decision, holding that Cattaraugus County’s Local Law No. 11, which required permits for the use of County roads, was procedural in nature and therefore preempted by PSL Article 10 (now Article VIII).⁷ The Siting Board found that Article 10 established a comprehensive regulatory scheme and expressly preempted local procedural requirements that could otherwise delay or block a certificated facility. In that case, the Board determined that allowing the County to require permits for road use would give it impermissible veto power over the project, contrary to the legislator’s intent to establish a uniform siting process without unreasonable delay.

To summarize, the Facility’s collection lines will *not* be constructed “in” municipal roads or municipal rights-of-way (“ROWs”). All roads that will be crossed by collection are “highways-by-use” and the Town does not have deeded rights to the bed of the road. Instead, the lines will cross beneath the ROWs at a depth within privately held land. To the extent collection lines will be permanently located on privately held land, Hoffman Falls Wind will obtain easements from the respective landowners and no further municipal consents from the Town are required.

iii. *The Petitioner will Continue to Work with the Towns to Reach Agreement on a RUA*

As the Towns’ Brief notes, Petitioner and the Towns are in the process of negotiating roads use agreements (“RUAs”). An RUA is a voluntary contract between a developer and a municipality that typically provides the Town assurances regarding use, repair and maintenance of roads and rights-of-way. Developers typically enter into a RUA with the host municipality for the use and repair of roads, even in situations where this is not required by local law. Voluntarily entering some form of agreement with the host municipality memorializes a developer’s rights and responsibilities with respect to making repairs/improvements to local roads. It is also advantageous to municipalities to enter into some form of agreement so that the municipality can be assured that the developer will repair roads at developer’s cost.

But this is immaterial to the limited issues in front of the Commission under Section 68, particularly given the broad preemption authority under Article VIII. Municipalities cannot require

⁷ *Application of Alle-Catt Wind Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10*, Case 17-F-0282, Order Granting Petition, in Part, Subject to Conditions (issued November 28, 2023).

separate approvals, consents, or other permits for the crossing or use of their roads in connection with projects proceeding under Article VIII.⁸

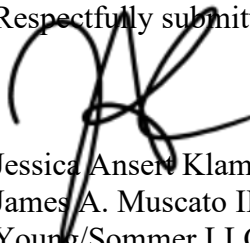
IV. Conclusion

For the reasons set forth above, the Towns' objections do not provide a basis to delay Your Honor's Ruling on Process, as none of the Towns' concerns reflect material issues of fact necessitating an adjudicatory hearing. In addition, the Towns have not identified a legal basis to disrupt the Commission's processing of the Section 68 Petition. The impending issuance of the Article VIII determination renders the Towns' prematurity claim effectively moot, and the Commission's limited jurisdiction under PSL §68 does not require, nor contemplate, consideration of issues squarely reserved to ORES. The Towns' reliance on general road-management authority cannot create a franchise-level consent requirement especially where Article VIII expressly preempts local permitting. And while Hoffman Falls remains committed to finalizing an RUA with the Towns, such voluntary agreements are not "municipal consent" do not bear on the Commission's analysis in this proceeding.

Accordingly, the Section 68 review may proceed in parallel with the Article VIII process, focused solely on the issues within the Commission's jurisdiction and consistent with the State's interest in timely advancing renewable energy projects.

Please feel free to contact our office if you have any questions regarding the above.

Respectfully submitted,



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Cc: Active Party List in Case No. 15-F-0122 as of December 12, 2025 (via DMM and Email)

⁸ *Petition of Alle-Catt Wind Energy LLC for an Original Certificate of Public Convenience and Necessity and to Establish Lightened Regulation and Approve Construction Financing*, Case 23-E0391, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Ratemaking Regulation, and Approving Financing (Issued June 24, 2024).