STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on September 15, 2011

COMMISSIONERS PRESENT:

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

CASE 11-E-0253 – First Wind Holdings LLC, First Wind Northeast Company LLC, Northeast Wind Partners LLC, CSSW Holdings LLC, CSSW LLC, CSSW Cohocton Holdings LLC, New York Wind LLC, Canandaigua Power Partners LLC, Canandaigua Power Partners II LLC and Northeast Wind Holdings LLC – Joint Petition for a Declaratory Ruling that Public Service Law §70 Does Not Apply to Proposed Transactions.

ORDER APPROVING TRANSFER, IMPOSING REPORTING REQUIREMENTS, AND MAKING OTHER FINDINGS

(Issued and Effective September 21, 2011)

BY THE COMMISSION:

BACKGROUND

In a petition filed on May 18, 2011 and supplemented on July 26, 2011 (July 26 Filing), First Wind Holdings LLC (First Wind), First Wind Northeast Company LLC, Northeast Wind Partners LLC (NE Partners), CSSW Holdings LLC, CSSW LLC, CSSW Cohocton Holdings LLC, New York Wind LLC, Canandaigua Power Partners LLC (CPP I), Canandaigua Power Partners II LLC (CPP II) and Northeast Wind Holdings LLC (NEW Holdings)(collectively, the Petitioners) request issuance of a Declaratory Ruling finding that the transfer of ownership interests in wind generation facilities need not be reviewed under Public Service Law (PSL) §70. Upon consummation of the transfer transaction, CPP I and

II, the respective owners of the adjacent Cohocton and Dutch Hill wind generation facilities located in the Town of Cohocton, New York, totaling 125 MW in size, will be merged into new companies. Moreover, NEW Holdings will acquire from First Wind a 49% indirect interest in CPP I and II and their wind generation assets. First Wind will retain the remaining 51% indirect ownership interest.

In conformance with State Administrative Procedure Act (SAPA) §202(1), notice of the petition was published in the State Register on June 22, 2011. The SAPA §202(1)(a) period for submitting comments in response to the notice expired on August 8, 2011. Cohocton Wind Watch (CWW) timely filed comments in opposition to the Petition. The Petitioners responded to CWW in their July 26 Filing.[1]

POSITIONS OF THE PARTIES

The Petition

Describing First Wind, the Petitioners explain that it indirectly owns all of the interests in CPP I and II through a series of affiliates.[2] First Wind also owns indirectly Niagara Wind Power LLC, which owns and operates a 20 MW wind facility located in Lackawanna, New York that is an alternate energy production qualifying facility (QF) under PSL §2(2-b) exempt from PSL regulation, other than under PSL Article VII, pursuant

[1] The Petitioners' unauthorized filing will be considered because it contributes towards development of a complete record in this proceeding and is not prejudicial.

[2] CPP I and II are lightly regulated under the PSL. Case 07-E-0138, Canandaigua Power Partners LLC, Order Granting Certificates of Public Convenience and Necessity, Providing For Lightened Regulation and Approving Financing (issued August 16, 2007); see also Case 07-E-1003, Canandaigua Power Partners II LLC, Order Providing For Lightened Regulation and Approving Financing (issued January 17, 2008)(CPCN and Light Regulation Orders).

to PSL §§2(4) and (13).[3] Besides those interests in facilities selling generation into the New York Independent System Operator, Inc. (NYISO) markets, First Wind owns, in the adjoining Independent System Operator–New England, Inc. (ISO-NE) market, indirect interests in wind projects totaling 224 MW in size, as well as indirect interests in other wind projects located in the western U.S.

First Wind itself, the Petitioners continue, is in turn owned by various individual and institutional investors, with D.E. Shaw MWP Acquisition Holdings LLC (Shaw) and Madison Dearborn Capital Partners IV, L.P. (MDCP) each holding 46% of its voting interests. MDCP also owns indirectly interests in Astoria Generating Company, L.P. (Astoria Gen), the owner and operator of the generation facilities located in New York City that are described in the First and Second Astoria Gen Rulings.[4]

Turning to NEW Holdings, the Petitioners state it is currently an indirect, wholly-owned subsidiary of Emera, Inc. (Emera), but report that Emera plans to sell 25% of its interests in NEW Holdings to Algonquin Power & Utilities Corporation (Algonquin). Emera also owns 7.15% of Algonquin, and plans to increase its ownership stake up to approximately 15% through stock purchases.

While Emera does not own, directly or indirectly, any generation capacity in New York, it owns interests in generation facilities outside of New York and adjacent markets that total

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[3] See Case 10-E-0260, Steel Winds LLC, Declaratory Ruling on Restoration of Qualifying Facility Status (issued July 19, 2011)(Steel Winds Order).

[4] Case 07-E-0332, Astoria Generating Company, L.P., Declaratory Ruling on Review of a Merger Transaction (issued May 22, 2007)(Second Astoria Gen Ruling); Case 05-E-1341, Astoria Generating Company, L.P., Order Approving Transfer and Financing and Making Other Findings (issued February 15, 2006)(First Astoria Gen Ruling).

approximately 4,000 MW. It also owns substantial or entire interests, either directly or indirectly, in electric utility delivery companies located in Maine and Nova Scotia, Canada and a transmission line connecting New Brunswick, Canada to Wiscasset, Maine. For its part, Algonquin owns and operates a diversified portfolio of renewable electric generation and utility distribution businesses in North America. Within the NYISO footprint, Algonquin subsidiaries own small hydroelectric facilities totaling about 10 MW in size. In markets adjacent to the NYISO, Algonquin holds ownership interests in about 73 MW of generation in ISO-NE and about 11 MW of generation in PJM Interconnection LLC (PJM).

The Petitioners divide the proposed transaction into two components. Describing the first component, they announce that, after a series of internal corporate restructurings at First Wind, NEW Holdings will acquire a 49% interest in NE Partners, a company intermediate in the First Wind corporate structure that will own indirectly all the interests in CPP I and II. After the acquisition, NEW Holdings will have the right to appoint two of the five managers of NE Partners, with First Wind retaining the right to appoint the remaining three managers. Nonetheless, the Petitioners claim that NEW Holdings will not be able to exercise control over the management of the Cohocton and Dutch Hill wind facilities, a responsibility that they say will remain with First Wind. Describing the second component of the transaction, the Petitioners state that CPP I and II will be merged into new companies, temporarily denominated as “CPP HoldCo” and “CPP HoldCo II” (“CPPH I and II”), which will own the Cohocton and Dutch Hill wind facilities, respectively.

In discussing the first component of the transaction, the Petitioners claim that no PSL §70 review need be conducted of the acquisition of ownership interests in NE Partners by NEW Holdings because the transaction falls within the purview of the presumption adopted in the Wallkill Order.[5] There, the Petitioners assert, it was decided that no PSL §70 regulation would adhere to a transfer of an ownership interest in a parent entity upstream from affiliates owning and operating competitive electric generating facilities situated in New York, unless there was the potential for harm to the interests of captive utility ratepayers sufficient to overcome the presumption. The Petitioners maintain that there is no potential for harm here because the upstream transaction will not result in the exercise of horizontal or vertical market power.

Analyzing horizontal market power, the Petitioners calculate that even if aggregated, all of the generation in New York owned by First Wind and NEW Holdings amounts to less than 1% of the 37,416 MW NYISO market, a de minimis amount. Analyzing vertical market power, the Petitioners state that no affiliate of either First Wind or NEW Holdings owns or controls any electric transmission or delivery facilities within New York, or exercises a substantial influence over inputs, like fuel, into the production of generation supply within New York. As a result, the Petitioners ask that it be decided that PSL §70 does not apply to the acquisition transactions whereby NEW Holdings will acquire its 49% indirect interest in CPP I and II.

Turning to the second component of the transaction, the Petitioners claim no jurisdiction should be asserted over the merger of CPP I and II into “CPPH I and II,” because it is merely an internal corporate reorganization. According to the Petitioners, jurisdiction over such intra-corporate

[5] Case 91-E-0350, Wallkill Generating Company, Order Establishing Regulatory Regime (issued April 11, 1994).

reorganizations was disclaimed in the NRG Rulings.[6] The Petitioners also point out that leases and transfers of property among affiliates of lightly-regulated generation companies are not reviewed under §70.[7] Finally, the Petitioners request that lightened regulation of the Cohocton and Dutch Hill wind facilities be continued after the transaction is consummated.

CWW's Comment

According to CWW, the Petitioners' filing is riddled with discrepancies, omissions and misnomers; the structuring of the transactions is excessively convoluted; and, the transactions are premised upon questionable assumptions. CWW believes that the transfers therefore pose the potential for harm to ratepayers.

CWW claims that it is difficult to trace, through First Wind's ownership structure after consummation of the transaction, the identity of the companies that will actually control operation of CPP I and II and their wind generation facilities. CWW complains further that the descriptions of the transfers and the entities involved that the Petitioners provide in their filing here differ from the descriptions presented in filings the Petitioners have made before the Federal Energy Regulatory Commission (FERC). CWW perceives that the re-naming of CPP I and II into "CPPH I and II" is not consistent with the naming of those companies in other documents. The purpose of

[6] Case 05-E-1582, NRG Energy, Inc., Declaratory Ruling on Review of a Intra-Corporate Dissolution Transaction (issued January 26, 2006); Case 07-E-0584, NRG Energy, Inc., Declaratory Ruling on Review of an Inter-Corporate Transaction (issued July 23, 2007).

[7] Case 10-E-0042, AES Westover, Order Granting a Certificate of Public Convenience and Necessity (issued April 15, 2010); Case 09-G-0490, Alliance Energy Transmissions, LLC, Declaratory Ruling on Review of a Transfer Transaction and Order Providing For Lightened Regulation (issued November 17, 2009).

the re-naming, CWW adds, is unexplained. The outcome of these uncertainties, CWW argues, is that it is difficult to determine if market power is being exercised, particularly market power over the provision of generation from renewable resources.

CWW is also concerned that the impact of the financial arrangements attending the transaction is not sufficiently disclosed. CWW maintains that the Petitioners have not demonstrated that the premise for the approval of the financing arrangements stated in the Light Regulation Orders -- that captive ratepayers would not be harmed because CPP I and II bear all the financial risk associated with those financings -- remains valid. As a result, CWW contends that a Declaratory Ruling should not be granted to the Petitioners here and that instead a full review should be conducted under §70. They believe that such a review might uncover circumstances that would justify withholding approval of the transaction.

<u>The July 26 Filing</u>

In the July 26 Filing, the Petitioners announce that the transaction has been restructured. NEW Holdings will no longer acquire 49% of the interests in NE Partners; instead, that intermediate affiliate in the First Wind organizational structure will be dissolved and cease to exist upon consummation of the transaction. The role NE Partners would have played in the transaction will be assigned a new intermediate subsidiary, whose name has not yet been determined, but is temporarily denominated as “JV HoldCo.” That entity will be inserted into First Wind’s organizational structure at a point where it will own indirectly all of the interests in the Cohocton and Dutch Hill wind farms. NEW Holdings will then acquire 49% of “JV HoldCo,” subject to the same terms and conditions as were planned for its acquisition of 49% of NE Partners.

The Petitioners also provide additional detail on First Wind's affiliation with generation ownership interests in wholesale electric markets adjacent to New York through MDCP and Shaw, the investors that each hold a 46% investment interest in First Wind. They report that MDCP holds a substantial investment interest in the indirect parent of Astoria Gen, as detailed in the First Astoria Gen Ruling, but that the Astoria Gen parent recently divested all of its interests in generation located in ISONE markets, as detailed in the Third Astoria Gen Ruling.[8] Shaw, they relate, has not invested in any interests in generation in markets located adjacent to New York.

Responding to CWW, the Petitioners concede that the organizational charts submitted in this proceeding differ from the organization charts submitted to FERC, and that the naming of the subsidiaries involved in the transfers has not always been consistent. The Petitioners explain, however, that most of the distinctions are attributable to the charting of fewer intermediate First Wind subsidiaries in the FERC filing than the filing here, because FERC filing regulations did not require the presentation of those subsidiaries in the charts submitted to it. Any other distinction in names, the Petitioners maintain, result from the use of the temporary "CPPH I and II" and "JV HoldCo" appellations.

In the July 26 Filing, the Petitioners present new organizational charts showing the ownership structure for "CPPH I and II" after the transfers are consummated. Once the transfers are distilled into final form, the Petitioners relate, the temporary appellations will be replaced with permanent names, and final documents of formation governing the powers and duties of the companies involved will be obtained.

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[8] Case 11-E-0306, Astoria Generating Company, L.P., Order Approving Transfer (issued August 23, 2011).

Notwithstanding the temporary appellations, the Petitioners assert, “CPPH I and II” will succeed to all of the property, rights, and obligations of CPP I and II after the merger of the latter into the former. However named, the Petitioners elaborate, “CPPH I and II” will remain as wholly-owned subsidiaries within the First Wind organizational structure. As a result, the Petitioners reiterate their contention that the conversion of the membership interests in CPP I and II into the membership interests in “CPPH I and II” is not a transfer of ownership interests in the Cohocton and Dutch Hill wind facilities within the meaning of PSL §70.

Premised upon these explanations, the Petitioners ask that CWW’s arguments be rejected. The Petitioners believe that they have adequately identified the entities that will participate in the organizational structure for the ownership of the Cohocton and Dutch Hill wind facilities after the transaction has been consummated. They also volunteer to submit documents of formation once the companies currently denominated with temporary appellations are formally organized and named. The Petitioners also point out that CWW previously questioned of the existing ownership structure for the Cohocton and Dutch Hill wind facilities, but were unable to obtain relief in the CPCN and Light Regulation Orders. Finally, the Petitioners ask that consideration of their petition be expedited to avoid what they describe as undue delay in the consummation of the transfers.

DISCUSSION AND CONCLUSION

Issuance of a Declaratory Ruling

The Petitioners have not justified issuance of a Declaratory Ruling in this proceeding. Their claim that the merger of CPP I and II into “CPPH I and II” should not be reviewed under PSL §70 lacks merit. Moreover, that merger transfer is sufficiently intertwined with NEW Holdings's purchase of 49% of the indirect interests in CPP I and II to remove that component of the transaction from the ambit of the presumption established in the Wallkill Order, and to require that it be reviewed under PSL §70 as well.

The Petitioners rely upon the NRG Rulings for the proposition that the merger of CPP I and II into "CPPH I and II" is an intra-corporate reorganization outside of the scope of PSL §70. The intra-corporate reorganizations at issue in those Rulings, however, did not affect the identity of the companies that directly owned electric plant. Instead, they were performed upstream from those owners. Moreover, no new owners that did not previously hold interests in the ownership structures acquired them during those reorganizations.

Here, the Petitioners are proposing the merger of CPP I and II, the current direct owners of the Cohocton and Dutch Hill wind facility assets, into new companies under new documents of formation. Those companies will replace CPP I and II, which will cease to exist.[9] The Petitioners admit that upon the merger all of the property CPP I and II own will be transferred to "CPPH I and II," and all asset ownership rights currently vested in CPP I and II will be vested in "CPPH I and II" instead. Moreover, another feature of the transaction is that a new indirect owner -- NE Holdings -- will acquire 49% of the indirect interests in "CPPH I and II."

It is well established that a full PSL §70 review is conducted whenever ownership interests in electric plant or the direct owners of electric plant are transferred to another

[9] Contrary to the Petitioners' allegation, the merger transfer is not analogous to the transfer of property interests between affiliates that continue to occupy their existing positions in an organizational structure.

entity.[10] The merger of CPP I and II into “CPPH I and II” is clearly such a transfer transaction.

The PSL §70 review of that transaction will also extend to NEW Holdings’ acquisition of 49% of ownership interests upstream from CPP I and II. While normally those transfers might qualify for Wallkill presumption treatment, it is apparent that the NEW Holdings acquisition transfers are tied to the merger of CPP I and II into “CPPH I and II.” As a result, the transfers do not consist of two separate components or a reorganization, but are instead a complex intertwined restructuring of the direct and indirect ownership of the Cohocton and Dutch Hill wind farms. Consequently, the Petitioners’ contention that the merger of CPP I and II into “CPPH I and II” is an intra-corporate reorganization is rejected, a Declaratory Ruling will not be issued here under the Wallkill Order or otherwise,[11] and a full review of the entire transfer transaction will be conducted under PSL §70(1).

Environmental Quality Review

Under the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR §617 and 16 NYCRR §7), we

[10] Case 04-E-0789, Great Lakes Power, Inc., Order Approving Transfers and a Financing and Making Other Findings (issued September 22, 2004).

[11] Contrary to the Petitioners’ interpretation, a Wallkill Order review does not result in a finding that PSL §70 does not apply to an upstream transfer transaction; instead, the finding made is that such a transaction will not be reviewed further. See Case 10-E-0193, Mirant Corporation, Declaratory Ruling on Review of An Ownership Transfer Transaction (issued July 20, 2010); Case 05-E-0834, MACH Gen LLC and New Athens Generating Company LLC, Declaratory Ruling on Review of Ownership Interest Transfers (issued September 6, 2005)(MACH Gen Ruling); Case 00-E-1585, Sithe Energies, Inc., Order on Review of Stock Transfer and Other Transactions (issued November 16, 2000).

must determine whether the actions we are authorized to approve may have a significant impact on the environment. Other than our approval of the action proposed here, no additional state or local permits are required, so a coordinated review under SEQRA is not needed. We will assume Lead Agency status under SEQRA and conduct an environmental review.

SEQRA requires applicants to submit a complete EAF describing and disclosing the likely impacts of the actions they propose.[12] The Petitioners have submitted a narrative and short-form EAF Part 1 that substantially comply with this requirement.

The proposed action over which we have jurisdiction is the transfer of indirect and direct ownership interests in CPP I and II to new owners. The proposed action does not meet the definition of Type 1 or Type 2 actions listed in 6 NYCRR §§617.4, 617.5 and 16 NYCRR §7.2, so it is classified as an “unlisted” action requiring SEQRA review. After review of the petition we conclude, based on the criteria for determining significance listed in 6 NYCRR §617.7(c), that there will be no changes to the operation of the generation facilities underlying the proposed transfer will result in adverse environmental impacts. Our Staff has completed the short-form EAF Part 2.

As Lead Agency, we determine that the proposed action will not have a significant impact on the environment and adopt a negative declaration pursuant to SEQRA. Because no adverse environmental impacts were found, no public notice requesting comments is required or will be issued. A negative declaration concerning this unlisted action is attached. The completed EAF will be retained in our files.

<u>The Transfer Transaction</u>

In conducting a review under PSL §70 that pertains to a lightly-regulated electric corporations like First Wind and

[12] 6 NYCRR §617.6(a)(3).

CPP I and II operating in wholesale electric markets, we examine any affiliations, including those with fully-regulated New York utilities or power marketers, that might afford opportunities for the exercise of market power or pose the potential for other harms detrimental to captive ratepayer interests. When reviewed with the reduced scrutiny applicable under lightened regulation, the ownership transfers the Petitioners propose are in the public interest, subject, however, to reporting conditions that will result in the submission of accurate information on the organizational structure for the entities that will own and control operation of the Cohocton and Dutch Hill wind farms after the transaction is consummated.[13]

The transaction does not pose the potential for the exercise of horizontal market power. After the transaction is consummated, the combination of the indirect ownership interests of First Wind and NEW Holdings within NYISO markets will amount to only 135 MW, a de minimis amount. Further combining that market share with the market share held by Astoria Gen, affiliated with First Wind through MDCP's ownership interest in both, will not substantially enhance Astoria Gen's market share. That share will remain insufficient to pose the potential for the exercise of horizontal market power for the reasons discussed in the Second and Third Astoria Gen Rulings. Consequently, market concentration in New York wholesale generation markets will not increase cognizably as a result of the transaction.

Moreover, the combination of First Wind's ownership interests in generation in the PJM and ISO-NE markets adjacent

[13] The Petitioners' request that consideration of their petition be expedited is denied, because the substantial modifications to the complex initially-proposed transactions they made in their July 26 Filing, submitted over two months after the initial filing, required extended and careful evaluation.

to the NYISO market with the interests of NEW Holdings in those markets amounts to only about 308 MW, a de minimis amount, given the size of those markets and, again, an amount that does not substantially enhance Astoria Gen's existing market share upon affiliation through MDCP. Therefore, the transaction does not pose the potential for the exercise of market power in the combined NYISO and adjacent markets, again for the reasons discussed in the Second and Third Astoria Gen Rulings.

The proposed transaction does not pose the potential for the exercise of vertical market power. After the transaction is consummated, neither First Wind nor its NEW Holdings affiliates will exercise control over electric delivery facilities in New York (other than interconnections). The affiliation through Emera with ownership of such facilities in eastern New England is too remote from New York to affect NYISO markets. First Wind and NEW Holdings also will not exercise substantial influence over inputs, like fuel, into the production of generation supply within New York and do not report any affiliations with power marketers. As a result, those avenues to the undue exercise of vertical market power are foreclosed.

Upon consummation of the transaction, NEW Holdings will become a New York electric corporation, because it will be able to substantially influence the operation of the Cohocton and Dutch Hill wind farms through its indirect ownership interests.[14] That NEW Holdings owns 49% of the indirect interests in those wind facilities, and may appoint two of the five managers of "JV HoldCo" amply demonstrates that it could be able to affect the management of "CPPH I and II." Through them,

[14] See Case 08-M-0659, Regulation of Ownership Interests in Electric and Steam Corporations, Order Establishing Presumption and Closing Proceedings Without Prejudice (issued September 21, 2010).

it could be able to influence the operation of the Cohocton and Dutch Hill wind facilities.

NEW Holdings, however, is affiliated with an experienced generation facility owners, appears sufficiently capitalized, and promises to continue the existing arrangements for operation of the Cohocton and Dutch Hill wind generation facilities. The transfer does not otherwise pose the potential for harm to captive ratepayer interests. The transaction that the Petitioners propose is therefore approved, subject, however, to the following.

Reporting conditions are necessary to ensure that the upstream ownership of the Cohocton and Dutch Hill wind farms can be traced, and the entities responsible for their operation can be identified. To achieve that goal, the Petitioners shall file the documents of formation for the entities that will permanently replace the temporarily-named “CPPH I and II” and “JV HoldCo” placeholders within 15 days of their effective date, but prior to closing of the transaction. Moreover, within 10 days following that closing, the Petitioners are required to file an organizational chart showing the final organizational structure for the Cohocton and Dutch Hill wind farms identifying all upstream owners and their interests. The Petitioners shall also at that time detail all ownership interests of more than 10% in NEW Holdings and describe fully the interests of Algonquin and Emera in that entity and in each other.

With these requirements in place, the identity of the direct and indirect owners of the Cohocton and Dutch Hill wind facilities will be adequately established, alleviating the concerns CWW raises as to their proper identification. Upon that proper identification, CWW’s complaint that the transaction is unduly complex lacks merit. Similarly complex ownership structures have been approved previously.[15] CWW's theory on the potential for the exercise of market power over renewables was previously rejected in the Steel Winds Order, and its reiteration of the theory here is similarly unpersuasive. CWW's other arguments, regarding financing and operation of the facilities, are speculative or unsupported and are rejected.

After the transfers are consummated, lightened ratemaking regulation of the 125 MW Cohocton and Dutch Hill wind generation facilities owned indirectly by First Wind, NEW Holdings and "JV HoldCo", and directly by "CPPH I and II," will continue in accordance with the CPCN and the Light Regulation Orders.[16] First Wind, NEW Holdings, "JV HoldCo," and "CPPH I and II" are reminded that, under lightened regulation, the Cohocton and Dutch Hill generation facilities and the entities controlling their operations remain subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed in the Light Regulation Order and other previous orders.[17] Included among these requirements are the obligations to conduct tests for

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[15] See Case 09-E-0863, Astoria Energy LLC, Declaratory Ruling on Review of Ownership Transfer Transactions (issued March 26, 2010); Case 07-E-0288, Astoria Energy LLC, Declaratory Ruling on Review of An Ownership Interest Transfer and Making Other Findings (issued May 22, 2007); MACH Gen Ruling.

[16] The PSL 66(6) annual report requirement that pertains to lightly regulated entities is under review pursuant to the Notice Soliciting Comments issued June 3, 2011 in Case 11-M-0294; any revisions to the requirement adopted in that proceeding will adhere to "CPPH I and II."

[17] See, e.g., Case 09-M-0251, Saranac Power Partners, L.P., Order Providing for Lightened Regulation of an Electric Corporation and Making Findings on Steam Corporation Regulation (issued June 19, 2009).

stray voltage on all publicly accessible electric facilities,[18] to give notice of generation unit retirements,[19] and to report personal injury accidents pursuant to 16 NYCRR Part 125.

The Commission orders:

1. The transfers of the ownership interests in the generation facilities described in the petition filed in this proceeding and in the body of this Order are approved.

2. The Petitioners in this proceeding shall file the documents of formation described in the body of this Order within 15 days of their effective date and prior to the closing of the transaction described in Ordering Clause No. 1, and shall also file, within 10 days of that closing, an organizational chart showing the final organizational structure and the identity of the ownership interests described in the body of this Order.

3. The deadlines provided for in this Order may be extended as the Secretary may require.

4. This proceeding is continued but shall be closed by the Secretary after the compliance filing required above has been reviewed, unless the Secretary finds good cause to continue the proceeding further.

By the Commission,

Jaclyn A. Brilling
Digitally Signed by Secretary
New York Public Service Commission

JACLYN A. BRILLING
Secretary

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[18] Case 04-M-0159, Safety of Electric Transmission and Distribution Systems, Order Instituting Safety Standards (issued January 5, 2005) and Order on Petitions for Rehearing and Waiver (issued July 21, 2005).

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

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 11-E-0253 – First Wind Holdings LLC, First Wind Northeast Company LLC, Northeast Wind Partners LLC, CSSW Holdings LLC, CSSW LLC, CSSW Cohocton Holdings LLC, New York Wind LLC, Canandaigua Power Partners LLC, Canandaigua Power Partners II LLC and Northeast Wind Holdings LLC – Joint Petition for a Declaratory Ruling that Public Service Law §70 Does Not Apply to Proposed Transactions.

NOTICE OF DETERMINATION OF
NON-SIGNIFICANCE

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission of the transfer of ownership interests in the Cohocton and Dutch Hill wind generation facilities totaling 125 MW located in the Town of Cohocton, New York, owned by First Wind Holdings LLC indirectly and Canandaigua Power Partners LLC and Canandaigua Power Partners II LLC (CPP I and II) directly, based on our determination, in accordance with Article VIII of the Environmental Conservation Law, that such action will not have a significant adverse affect on the environment. The exercise of this approval constitutes an "unlisted" action, as is defined in 6 NYCRR §617.2(ak).

Based on our review of the record, we find that the proposed action, which will lead to the ownership of 49% of the 125 MW Cohocton and Dutch Hill wind generation facilities by Northeast Wind Holdings LLC indirectly, and to the direct ownership of those facilities by as-yet unnamed companies, instead of by the existing indirect and direct owners, will not have a significant adverse environmental impact. A change in the identity of the ownership of the wind generation facilities will not otherwise cause any physical alterations to the generation facilities or their surroundings.

The address of the Public Service Commission, the Lead Agency for the purposes of the environmental quality review of this project, is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Leonard Van Ryn at (518) 473-7136 or at the address above.

JACLYN A. BRILLING
Secretary