

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Joint Petition of Flat Rock Windpower, LLC, Flat Rock  
Windpower II LLC, and PPM Roaring Brook, LLC,  
Pursuant to Public Service Law Section 70 to Transfer  
Partial Ownership Interests in a 230-kV Transmission Line

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Case 20-E-\_\_\_\_\_

**JOINT PETITION OF FLAT ROCK WINDPOWER, LLC, FLAT ROCK  
WINDPOWER II LLC, AND PPM ROARING BROOK, LLC, PURSUANT TO  
PUBLIC SERVICE LAW SECTION 70 TO TRANSFER PARTIAL OWNERSHIP  
INTERESTS IN A 230-KV TRANSMISSION LINE**

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*Attorneys for Joint Petitioners*

Dated: January 21, 2020

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Flat Rock Windpower LLC (“Flat Rock”), and Flat Rock Windpower II LLC (“Flat Rock II”), are the owners of a 231 megawatt (“MW”) wind farm in Lewis County, New York (the “Maple Ridge Facility”),<sup>1</sup> and a 90.8 MW wind farm, also in Lewis County (the “Maple Ridge II Facility”),<sup>2</sup> respectively, and joint owners of a 10.3 mile 230 kV transmission line from the Rector Road substation to National Grid’s Chases Lake substation (the “Transmission Line”).<sup>3</sup> Avangrid Renewables, LLC (“Avangrid Renewables”) and EDP Renewables North America LLC (“EDPR NA”) jointly own both Flat Rock and Flat Rock II.

PPM Roaring Brook, LLC (“Roaring Brook”), a subsidiary of Avangrid Renewables, is developing a 79.7 MW wind electric generating project in the Town of Martinsburg, Lewis

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<sup>1</sup> See Case 02-E-0362: *Petition of Flat Rock Wind Power, LLC for an Order that its Proposed Flat Rock Wind Generation Facility Will be Subject Only to Lightened Regulation and for a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (June 17, 2004).

<sup>2</sup> See *id.*

<sup>3</sup> The Public Service Commission (the “Commission”) issued a certificate of environmental compatibility and public need for the Transmission Line in 2004. Case 03-T-0515: *Application of Flat Rock Wind Power, LLC for a Certificate of Environmental Compatibility and Public Need*, Opinion and Order Adopting Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need (April 12, 2004) (“CECPN Order”).

County, New York, in the vicinity of the Maple Ridge and Maple Ridge II Facilities (“Roaring Brook Project”). The Roaring Brook Project will tie-in to the New York State electric grid via a proposed 34.5 kV transmission line to an existing busbar at the Rector Road substation. In order to facilitate the delivery of electricity to the Chases Lake interconnection station via the existing 230 kV line, Roaring Brook proposes to purchase rights from Flat Rock and Flat Rock II to own a proportionate share and utilize the existing Transmission Line.

Pursuant to Section 70 of the Public Service Law (“PSL”), Flat Rock, Flat Rock II and Roaring Brook (together, the “Joint Petitioners”) hereby file this joint verified petition requesting Commission approval of the transfer of a 19.86% ownership interest in the Transmission Line from Flat Rock and Flat Rock II to Roaring Brook to connect the Roaring Brook Project to the transmission grid (the “Transfer”). Taking into consideration the reduced level of scrutiny applied to transfers of electric plant by lightly-regulated wholesale generators, Joint Petitioners respectfully request that the Commission find that the Transfer is in the public interest and approve the Transfer pursuant to PSL § 70. In addition, the Roaring Brook project is a 2018 NYSERDA Renewable Energy Credit Contract awardee and must achieve commercial operation by the end of 2020. Therefore, Joint Petitioners request that the Commission expeditiously approve the Transfer.

## **I. BACKGROUND**

### **A. The Parties**

#### **i. Flat Rock**

Flat Rock is a Delaware limited liability company and owner/operator of the Maple Ridge Facility. Flat Rock is a lightly-regulated wholesale generator<sup>4</sup> and sells the generation from the

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<sup>4</sup> See Case 02-E-0362: *Petition of Flat Rock Wind Power, LLC for an Order that its Proposed Flat Rock Wind Generation Facility Will be Subject Only to Lightened Regulation and for a Certificate of Public Convenience and*

Maple Ridge Facility into the markets administered by the New York Independent System Operator (“NYISO”).

Maple Ridge is a joint venture between EDP Renewables North America LLC (“EDPR NA”) (based in Houston, Texas) and Avangrid Renewables (based in Portland, Oregon). EDPR NA and Avangrid Renewables, or related entities, worked together to develop, finance, construct, and sell the power from Maple Ridge wind farm.

ii. Flat Rock II

Flat Rock II is a Delaware limited liability company and owner/operator of the Maple Ridge II Facility. Flat Rock II is also a lightly-regulated wholesale generator<sup>5</sup> and sells the generation from the Maple Ridge II facility into the markets administered by the NYISO.

Maple Ridge is also a joint venture between EDPR NA and Avangrid Renewables.

iii. Roaring Brook

Roaring Brook is a limited liability company duly created and existing under the laws of the State of Oregon. Roaring Brook is developing the Roaring Brook Project located in the Town of Martinsburg, in Lewis County, NY. The Roaring Brook Project was originally granted local zoning approvals by the Town of Martinsburg in 2009 and amendments to the Project were approved in 2010, 2015 and 2019. A Draft Environmental Impact Statement (“EIS”) was prepared in 2008 followed by a Supplemented EIS in 2009. A Final EIS and SEQRA Findings Statement were issued by the Town of Martinsburg Planning Board on the original project in 2010. Subsequent changes to the Project were reviewed under SEQRA, most recently in 2019, resulting

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*Necessity Pursuant to Section 68 of the Public Service Law, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (June 17, 2004).*

<sup>5</sup> See Case 04-E-0643: *Petition of Flat Rock Windpower II LLC for an Order that the Company will be Regulated Under a Lightened Regulatory Regime*, Order Providing For Lightened Regulation and Declaratory Ruling Concerning Transfer of Ownership Interests (December 20, 2004).

in a SEQRA Negative Declaration issued on March 20, 2019. The Commission was an involved agency during the SEQRA review for the Project.

As originally approved in 2009, the Roaring Brook project proposed the installation of approximately five miles of buried electrical line and 3.5 miles of overhead transmission line to a point of interconnection/ collection substation located off Lee Road. However, in 2018, PPM Roaring Brook proposed an amendment to the Roaring Brook Project to shift the location of the overhead collection line to the existing Rector Road substation. The change in location was reviewed and approved by the Town of Martinsburg Planning Board which determined the change minimized potential environmental impacts as it utilizes existing transmission infrastructure compared with the original proposed route.

The current permitted project design calls for construction and operation of 20 turbines, including twelve (12) Siemens-Gamesa (SG) 4.5-145 wind turbines (rated capacity of 4.5 megawatts [MW]), three (3) SG 4.2-145 wind turbines (rated capacity of 4.2 MW), and five (5) Gamesa 2.6-114 wind turbines (rated capacity of 2.625 MW), located on approximately 5,280 acres of private land and 6.4 miles of overhead 34.5 kV collection line interconnecting at the Rector Road substation. The Roaring Brook Project obtained all necessary approvals and amended approvals and commenced construction on October 1, 2019. Upon achieving commercial operation, Roaring Brook will be a competitive wholesale generator and sell generation from the project into the markets administered by the NYISO.

As noted above, Roaring Brook is a subsidiary of Avangrid Renewables.

B. The Transmission Line

The Transmission Line transmits power from the Maple Ridge Facilities' collection station at Rector Road to an interconnection facility and onto the Niagara Mohawk Power Corporation

(“NMPC”) #11 230 kV Adirondack-Porter Transmission Line. The Transmission Line is a 230 kV electric transmission line starting at the point within the Rector Road Substation in the Town of Martinsberg, Lewis County, New York at which the 230 kV buswork from the Maple Ridge Facility connects to the 230 kV buswork from the Maple Ridge II Facility and extending for approximately 10.3 miles to Switch 103 within the Chases Lake Interconnection Station in the Town of Watson in Lewis County and owned by National Grid. The interconnection facility is located next to the New York Power Authority 765 kV Massena-Marcy Transmission Line for the purposes of interconnecting with the NMPC #11 230 kV Adirondack-Porter Line.

The Transmission Line was constructed by Flat Rock entirely within newly established rights-of-way obtained by Flat Rock through easements from private landowners. The right-of-way originates at the Rector Road 230 kV Substation and terminates at the interconnection facility.

The Transmission Line consists of 75 tower structures and a three-phase, single circuit 230 kV line transmitting power from the Rector Road Substation to the interconnection facility.

A. The Transaction

Flat Rock and Flat Rock II are parties to a Joint Ownership Agreement pursuant to which both parties agree to joint ownership of the Transmission Line. Flat Rock and Flat Rock II also hold rights, as tenants in common, in certain non-exclusive perpetual easements (the “Easements”) and a Substation Lease for substation property (the “Substation Property” and together with the Easements, the “Real Property”). The Roaring Brook project does not propose any changes to the Article VII Transmission Line and no new built facilities are proposed for the Transmission Line.

Flat Rock, Flat Rock II and Roaring Brook have entered into an Purchase Option Agreement under which Sellers have agreed to grant Roaring Brook an exclusive option to purchase (i) a 19.86% undivided ownership interest in the Transmission Line to allow for the

interconnection of the Roaring Brook wind project to the transmission grid, and (ii) a 19.86% undivided property interest in the Real Property.

The Transmission Line will be operated and maintained by Flat Rock as Operator pursuant to a Joint Operating Agreement.

## II. DISCUSSION

### A. The Transfer is in the Public Interest and Should be Approved Pursuant to PSL § 70

Under PSL § 70, Commission approval is required before an electric corporation may transfer ownership interests in electric plant. Pursuant to PSL § 70, “[n]o gas corporation or electric corporation shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the commission.”<sup>6</sup> As noted above, Flat Rock and Flat Rock II are both lightly regulated electric corporations. Accordingly, Commission approval is required for the Transfer. However, in approving lightened regulation for both entities, the Commission stated that the provisions of PSL Article 4 were to be “implemented in a fashion that limited their impact in a competitive market with the extent of scrutiny afforded a particular transaction reduced to the level the public interest required.”<sup>7</sup> Here, the facts and circumstances surrounding the Transfer and the limited use of the Transmission Line warrant a reduced level of scrutiny.

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<sup>6</sup> PSL § 70(1).

<sup>7</sup> Case 02-E-0362: *Petition of Flat Rock Wind Power, LLC for an Order that its Proposed Flat Rock Wind Generation Facility Will be Subject Only to Lightened Regulation and for a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (June 17, 2004); *See also* Case 18-G-0771: *Petition of Selkirk Cogen Partners, L.P. and SABIC Innovative Plastics, LLC for a Declaratory Ruling Concerning the Transfer of Ownership of a Gas Pipeline, or, in the Alternative Approval Pursuant to Section 70 of the Public Service Law*, Order Approving Transfer and Making Other Findings (June 18, 2019) (stating, in the case of a petition to transfer of an Article VII certificate, that the Commission’s review processes have been adapted over time to accommodate lightened ratemaking regulation policies) (“Selkirk Order”).

The Commission has adopted a standard of review for the transfer of Article VII certificates, generally the same as those used in the case of a transfer of electric generating facilities. According to the Commission, “[e]ntities subject to lightened regulation operate in competitive markets and, therefore, must support § 70 transfer requests with a demonstration that the transaction will not present the purchaser with the opportunity to exercise either horizontal or vertical market power, or otherwise harm the interests of captive ratepayers of fully-regulated utilities.”<sup>8</sup>

Here, there are no market power risks associated with the Transfer as there is essentially no change in its current use. The Transmission Line is, and will continue to be, solely used for the transmission of power from wind projects to the transmission grid. The proposed Transfer will not change this use or the manner in which the Transmission Line is operated and maintained. The only change proposed is that there will now be three, rather than two, wind projects utilizing the line – all under the essentially the same upstream ownership.

The Transmission Line will continue to serve as a dedicated connection for the Facilities, which participate in competitive wholesale electricity markets. Neither Roaring Brook nor the Flat Rock entities serve captive utility ratepayers, and the companies will bear full responsibility for the costs of operating and maintaining the Transmission Line pursuant to various agreements they have negotiated and executed. The proposed transfer of Transmission Line ownership interests thus presents no risk of harm to captive utility ratepayers.

It should also be noted that the Transfer is in the public interest because it avoids construction of additional transmission facilities to transmit power from the Roaring Brook windfarm to the transmission grid. By utilizing the existing Transmission Line, the Transfer is

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<sup>8</sup> Selkirk Order, at 10.

therefore consistent with the Commission's longstanding policy of avoiding unnecessary duplication of facilities.<sup>9</sup>

In addition, the use of the Transmission Line for the Roaring Brook Project will facilitate the develop of a NYSERDA contracted renewable energy resource and help contribute to the State's clean energy mandates in the Climate Leadership and Community Protection Act and Clean Energy Standard.

B. The Commission Should Approve the Transfer of Ownership Interests in the Transmission Line Pursuant to PSL § 121(2)

PSL § 121(2) states that "[a] certificate may be transferred, subject to the approval of the commission, to a person who agrees to comply with the terms, limitations and conditions contained therein." Roaring Brook affirms, as part of this petition, to abide with all provisions of the Certificate.

The Commission has also held that "[i]mplicit in the Commission's consideration of cases involving Certificate transfers . . . is a requirement that the transferee possess the requisite qualifications and abilities to fulfill a Certificate's conditions and Commission regulations."<sup>10</sup> As discussed above, Roaring Brook is only purchasing a 19.86% interest in the Transmission Line with Flat Rock and Flat Rock II retaining ownership of the remaining interests. Operation of the Transmission Line will remain unchanged. Nevertheless, Roaring Brook is a subsidiary of Avangrid Renewables, one of the current upstream owners of Flat Rock and Flat Rock II.

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<sup>9</sup> See Case 88-E-003: *New York State Electric & Gas Corporation - Complaint Against Niagara Mohawk Power Corporation Relative to Duplicative Electric Service to Abbott Laboratories in the Town of Cheektowaga*, Order Adopting Recommended Decision (May 24, 1989).

<sup>10</sup> Selkirk Order, at 6-7; see also Case 96-T- 0466: *Joint Petition of Empire State Pipeline, Empire State Pipeline Company, Inc., St. Clair Pipeline Company, Inc., and Energyline Corporation for Approval to transfer Energyline's co-tenant interests in the Joint Venture known as Empire and in Empire's Certificate of Environmental Compatibility and Public Need to Empire State Pipeline Company and St. Clair Pipeline Company, Inc.*, Approved As Recommended by Staff (August 28, 1996).

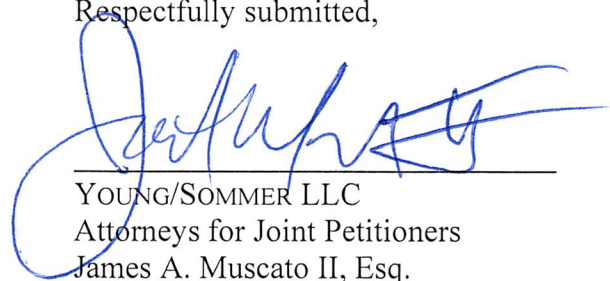
For this reason, and those above, the Commission should approve the transfer of ownership interests in the Transmission Line under PSL §121(2).

### **III. CONCLUSION**

For the foregoing reasons, Joint Petitioners respectfully request that the Commission find that the Transfer is in the public interest and expeditiously approve the Transfer under PSL § 70.

Dated: January 21, 2020

Respectfully submitted,

A handwritten signature in blue ink, appearing to be "James A. Muscato II", is written over a horizontal line.

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