

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 11, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard

CASE 20-E-0033 - Joint Petition of Flat Rock Windpower II, LLC;
Flat Rock Windpower LLC, and PPM Roaring Brook,
LLC for Approval Pursuant to Public Service Law
70 to Transfer Partial Ownership Interests in a
230-kV Transmission Line.

CASE 03-T-0515 - Application of Flat Rock Wind Power, LLC for a
Certificate of Environmental Compatibility and
Public Need for the construction of an
Approximately 10.3 Mile Long 230 Kilovolt
Electric Transmission Line in the Towns of
Martinsburg and Watson, Lewis County.

ORDER APPROVING TRANSFERS

(Issued and Effective June 12, 2020)

BY THE COMMISSION:

INTRODUCTION

On January 21, 2020, Flat Rock Windpower LLC (Flat Rock), Flat Rock Windpower II LLC (Flat Rock II), and PPM Roaring Brook LLC (Roaring Brook) (collectively, the Petitioners) filed a joint petition requesting approval to transfer partial ownership interests in an existing 10.3 mile 230 kilovolt (kV) transmission line between the Rector Road substation and National Grid's Chases Lake substation (the Transmission Line). The Transmission Line is currently owned by

Flat Rock and Flat Rock II and is used to deliver the output from their wind generating facilities. Flat Rock and Flat Rock II propose to transfer a portion of their ownership interests in the Transmission Line to Roaring Brook, which would also use the line to deliver electric power from its 79.7 megawatt (MW) wind generating facility that is currently being developed.

Petitioners request that the Public Service Commission (Commission) approve, pursuant to Public Service Law (PSL) §70, the proposed transfers of ownership interests in the Transmission Line from Flat Rock and Flat Rock II to Roaring Brook. Petitioners also request to transfer, in accordance with Section 121(2) of PSL Article VII, an interest in the Certificate of Environmental Compatibility and Public Need (Article VII Certificate) that authorized the construction and operation of the Transmission Line. As discussed below, the Commission approves the proposed transfers of interests in the Transmission Line to Roaring Brook.

THE PETITION

The Petitioners

The Petitioners explain that Flat Rock is incorporated under the laws of the State of Delaware and is the owner and operator of a 231 MW wind generating facility in Lewis County, New York (referred to as the Maple Ridge Facility). The Commission granted Flat Rock a lightened regulatory regime in connection with its ownership and operation of the Maple Ridge Facility that is used to make wholesale sales into the energy markets administered by the New York Independent System Operator, Inc. (NYISO).¹

¹ Case 02-E-0362, Flat Rock Windpower LLC, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued June 17, 2004).

Flat Rock II is similarly incorporated in Delaware, and has been afforded a lightened regulatory regime in connection with its ownership and operation of a 90.8 MW wind electric generating facility in Lewis County, New York (referred to as the Maple Ridge II Facility).² Flat Rock II sells the output from Maple Ridge II facility into the NYISO-administered wholesale energy markets.

Petitioners note that the Commission granted the Article VII Certificate to Flat Rock and Flat Rock II in 2004.³ Flat Rock and Flat Rock II currently own approximately 72 percent and 28 percent ownership interests, respectively, in the Transmission Line.⁴ Petitioners also explain that Flat Rock and Flat Rock II are jointly owned by Avangrid Renewables LLC (Avangrid Renewables) and EDP Renewables North America LLC.

Roaring Brook is incorporated under the laws of the State of Oregon and is also a subsidiary of Avangrid Renewables. Petitioners indicate that, on October 1, 2019, Roaring Brook commenced construction of a 79.7 MW wind generating facility in the Town of Martinsburg, Lewis County, New York (referred to as the Roaring Brook Facility), which is in the vicinity of the Maple Ridge Facility and the Maple Ridge II Facility.

As Petitioners report, the Roaring Brook Facility was originally granted local zoning approvals by the Town of

² Case 04-E-0643, et al., Flat Rock Windpower II LLC, Order Providing For Lightened Regulation and Declaratory Ruling Concerning Transfer of Ownership Interests (issued December 20, 2004).

³ Case 03-T-0515, Flat Rock Wind Power, LLC, Opinion and Order Adopting Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need (issued April 12, 2004).

⁴ On May 29, 2020, Petitioners filed supplemental information specifying the current ownership interests and amounts that are proposed to be transferred.

Martinsburg in 2009 and that amendments to the project were approved in 2010, 2015, and 2019, in compliance with the State Environmental Quality Review Act (SEQRA). The Roaring Brook Facility would connect to the New York State electric grid via a currently permitted 6.4 mile overhead 34.5 kV transmission line interconnecting with an existing busbar at the Rector Road substation, as well as the existing Transmission Line, which extends 10.3 miles between the Rector Road substation to the Chases Lake Interconnection Station in the Town of Watson, New York. Once in commercial operation, Petitioners explain that Roaring Brook will be a competitive wholesale generator that sells electric power from the project into the NYISO-administered markets.

Proposed Transfers

In order to facilitate energy deliveries from the Roaring Brook Facility, Flat Rock and Flat Rock II propose to sell partial ownership interests in the Transmission Line such that Roaring Brook would own a 19.86 percent proportionate share based on the nameplate capacity of the three generating facilities. After the transfer, Flat Rock and Flat Rock II would own approximately 57.5 percent and 22.6 percent ownership interests, respectively, in the Transmission Line. Petitioners request that the Commission find that the transfer is in the public interest and approve such transfers pursuant to PSL §70, taking into consideration the reduced level of scrutiny applied to transfers of electric plant by lightly regulated wholesale generators. Petitioners assert that the facts and circumstances of the proposed transfer and the limited use of the Transmission Line warrant a reduced level of scrutiny.

Furthermore, Petitioners state that there are no market power risks associated with the transfer since there would be essentially no change in its current use. As further

explained, the Transmission Line would be used solely as a means for interconnecting the Roaring Brook, Maple Ridge, and Maple Ridge II Facilities to the transmission grid. Petitioners affirm that the transfers will not change the use, operation, or maintenance of the Transmission Line.

According to Petitioners, the upstream ownership would be practically the same, since Roaring Brook is a subsidiary of Avangrid Renewables, which is one of the two current upstream owners of Flat Rock and Flat Rock II. Petitioners explain that neither Roaring Brook nor the Flat Rock entities serve captive utility ratepayers, and that the companies will bear full responsibility for the costs of operating and maintaining the Transmission Line, so there is no risk of harm to captive utility ratepayers.

In addition, Petitioners request approval to transfer an interest in the Article VII Certificate pursuant to PSL §121(2), which 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 to abide with all provisions of the Article VII Certificate. Lastly, Petitioners request that the Commission approve the transfers expeditiously, as the Roaring Brook Facility received a contract award in 2018 from the New York State Energy Research and Development Authority and must achieve commercial operation by the end of 2020.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on March 18, 2020 [SAPA No. 20-E-0033SP1].

The time for submission of comments pursuant to the Notice expired on May 18, 2020. No comments were received.

LEGAL AUTHORITY

Under PSL §70, no gas or electric corporation may “transfer or lease its franchise, works or system or any part of such franchise, works or system” without first receiving written Commission consent. PSL §121(2) authorizes the Commission to approve the transfer of an Article VII certificate if the transferee agrees to comply with its terms, limitations, and conditions.

DISCUSSION AND CONCLUSION

Environmental Quality Review

Under SEQRA, Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7), State agencies must determine whether the actions they are authorized to approve may have a significant adverse impact on the environment. The transfer of a Certificate pursuant to PSL Article VII is a Type II action not subject to review under SEQRA.⁵ However, the transfer of facility ownership does not meet the definition of either Type I or Type II actions that are contained in 6 NYCRR §§ 617.4, 617.5, and 16 NYCRR § 7.2, so it is classified as an “unlisted” action requiring SEQRA review. Other than our approval of the action proposed here, no additional State or local permits are required at this time, so a coordinated review under SEQRA is not needed. We will assume Lead Agency Status under SEQRA and conduct an environmental assessment.

⁵ 6 NYCRR 617.5(c)(32) and (44).

On June 4, 2020, Petitioners filed a supplement to the joint petition to include a Part 1 Short Environmental Assessment Form (EAF) regarding the action. Parts 2 and 3 of the EAF were prepared by Department of Public Service Staff for the Commission's consideration.⁶ After considering the EAF, the record in this proceeding, and the criteria for determining significance listed in 6 NYCRR §617.7(c), it is concluded that the transfer of ownership and continued operation of the exiting Transmission Line will not have a significant adverse impact on the environment since there will be no physical changes to the Transmission Line or changes to its operation. The Transmission Line is currently used to deliver the output from wind generating facilities owned by Flat Rock Windpower LLC and Flat Rock Windpower II LLC, and PPM Roaring Brook LLC's additional utilization to deliver the output from its wind generating facility under development is consistent with the current use, as Petitioners certify in the Part 1 EAF. Accordingly, we adopt a negative declaration pursuant to SEQRA. A Notice of Determination of Significance for this unlisted action is attached. Because no adverse environmental impacts were found, no public notice requesting comments is required or will be issued. The completed EAF will be retained in our files.

Ownership and Certificate Transfers

Under PSL §70(1), Commission approval is required before an electric corporation may transfer ownership interests in electric plant, such as the Transmission Line. The Commission uses a public interest standard in its review of

⁶ 6 NYCRR §617.6(a)(3).

proposed transfers under PSL §70.⁷ In conducting a review under PSL §70 that pertains to a lightly regulated electric corporation operating in wholesale electric markets, we examine the potential for harm to captive ratepayer interests.⁸

The Commission finds that the proposed transfers are within the public interest based on the facts and circumstances. The Transmission Line will serve solely to interconnect wind generating facilities participating in competitive wholesale markets. As Petitioners point out, the use of the Transmission Line by Roaring Brook will result in incremental renewable energy generation that will contribute to the State's clean energy mandates. Once in commercial operation, Roaring Brook will be a competitive wholesale generator and sell electric power through the NYISO competitive markets.

Moreover, the transfers do not pose a potential harm to captive ratepayers, as Flat Rock, Flat Rock II, and Roaring Brook do not serve captive utility ratepayers and will bear full responsibility for the costs of operating and maintaining the Transmission Line. Further, the proposed transfers will not result in an increased risk that Avangrid Renewables, partial owner of the Flat Rock entities and sole owner of Roaring Brook, could unduly exercise inappropriate horizontal or vertical

⁷ See, Case 10-M-0186 et al., Alliance Energy Renewables, LLC, et al., Order Approving Transfers Upon Conditions and Making Other Findings (issued July 23, 2010) at 17. Case 17-E-0016, TC Ravenswood, LLC et al., Order Approving Transfer Subject to Acceptance of Conditions and Making Other Findings (issued April 19, 2017) at 3-4; Case 16-E-0574, Energy Capital Partners I, LP et al., Order Approving Transfers and Making Other Findings (issued February 23, 2017) at 12.

⁸ See, Case 18-G-0771, Selkirk Cogen Partners, L.P., Order Approving Transfer and Making Other Findings (issued June 18, 2019).

market power or otherwise harm the interests of captive ratepayers of fully regulated utilities.

With respect to the Article VII Certificate, Roaring Brook states its intent to abide by all terms, limitations, and conditions contained therein. Roaring Brook's affirmative agreement to comply with these provisions will be required by filing, within 30 days, a verified statement by a corporate officer agreeing to be bound by the Article VII Certificate provisions.⁹ The inclusion of Roaring Brook as an Article VII Certificate holder, along with Flat Rock and Flat Rock II, will not result in a change in the operation of the Transmission Line. Moreover, the three entities will individually and collectively be required to fulfill compliance with the Article VII Certificate provisions and the Commission's regulations. For the foregoing reasons, the Commission approves the proposed transfers of ownership interests from Flat Rock and Flat Rock II to Roaring Brook, and a transfer to include Roaring Brook as one of the Article VII Certificate holders.

The Commission orders:

1. Flat Rock Windpower LLC and Flat Rock Windpower II LLC shall be authorized to transfer partial ownership interests in the existing 10.3 mile 230 kilovolt (kV) transmission line, which is located between the Rector Road substation and National Grid's Chases Lake substation, to PPM Roaring Brook LLC, as described in the body of this Order.

2. Within 30 days of the date of issuance of this Order, PPM Roaring Brook LLC shall inform the Secretary to the

⁹ Case 03-T-0515, Flat Rock Wind Power, LLC, Opinion and Order Adopting Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need (issued April 12, 2004).

Commission in writing of the date on which the transfers authorized in the preceding clause were or will be completed.

3. The transfer to PPM Roaring Brook LLC, as a joint holder of the Certificate of Environmental Compatibility and Public Need that was issued in Case 03-T-0515 on April 12, 2004, is approved, as described in the body of this Order.

4. PPM Roaring Brook LLC shall file, within 30 days after the date of issuance of this Order, a verified statement by a corporate officer agreeing to be bound by all terms, limitations, and conditions contained in the Certificate of Environmental Compatibility and Public Need (Certificate), issued in Case 03-T-0515 on April 12, 2004, including any amendments made to the Certificate.

5. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

6. Case 03-T-0515 shall be reopened for the limited purpose of transferring the Certificate of Environmental Compatibility and Public Need (Certificate) to include Roaring Brook LLC as a joint Certificate holder. These proceedings shall be closed upon compliance with Ordering Clause Nos. 2 and 4 above.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 20-E-0033 - Joint Petition of Flat Rock Windpower II, LLC; Flat Rock Windpower LLC, and PPM Roaring Brook, LLC for Approval Pursuant to Public Service Law 70 to Transfer Partial Ownership Interests in a 230-kV Transmission Line.

CASE 03-T-0515 - Application of Flat Rock Wind Power, LLC for a Certificate of Environmental Compatibility and Public Need for the construction of an Approximately 10.3 Mile Long 230 Kilovolt Electric Transmission Line in the Towns of Martinsburg and Watson, Lewis County.

NOTICE OF DETERMINATION OF SIGNIFICANCE
(NEGATIVE DECLARATION)

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the transfers of partial ownership interests, from Flat Rock Windpower LLC and Flat Rock Windpower II LLC to PPM Roaring Brook LLC, related to the existing 10.3 mile 230 kilovolt transmission line, which is located between the Rector Road substation and National Grid's Chases Lake substation (the Transmission Line). This is based upon the determination, pursuant to regulations implementing Article 8 of the Environmental Conservation Law contained in 6 NYCRR Part 617, that such action will not have a significant effect on the environment. The action contemplated is an Unlisted Action, as defined in 6 NYCRR §617.2.

The action will not result in a significant impact on the environment since there will be no physical changes to the existing Transmission Line or changes to its operation. The Transmission Line is currently used to deliver the output from wind generating facilities owned by Flat Rock Windpower LLC and Flat Rock Windpower II LLC, and PPM Roaring Brook LLC's additional utilization to deliver the output from its wind

generating facility under development is consistent with the current use.

The address of the Public Service Commission, the Lead Agency for purposes of environmental quality review for this action, is Three Empire State Plaza, Albany, New York 12223-1350. For further information, please contact Paul J. Darmetko Jr. via email at Paul.Darmetko@dps.ny.gov or via phone at (518) 486-2426, or by mail to the address above.

MICHELLE L. PHILLIPS
Secretary