STATE OF NEW YORK
PUBLIC SERVICE COMMISSION
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**KCE NY 2, LLC**

Case No. 22-E-0488

Revised Verified Petition of KCE NY2, LLC for a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law; an Order Granting a Lightened Regulatory Regime; and an Order for Expedited Proceeding.

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REVISED PETITION OF KCE NY 2, LLC
FOR
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO SECTION 68 OF THE PUBLIC SERVICE LAW;
AN ORDER GRANTING A LIGHTENED REGULATORY REGIME;
AND ORDER FOR EXPEDITED PROCEEDING

## I. INTRODUCTION

KCE NY 2, LLC ("KCE NY 2") is proposing to construct, own, and operate an energy storage facility called the KCE NY 2 Project ("Project"), to be located on Tax Map Parcel No. 26-1-57.221, which is located north of Route 17k between the intersection with Stone Castle Road and Browns Road, in the Town of Montgomery, Orange County, New York, land owned by John and Marybeth Olsen. The Project is comprised of forty-one inverter and medium voltage transformer containers with a total capacity of 169 megawatts ("MW") and up to one hundred sixty-four battery container installations with a total capacity of 300 megawatt hours ("MWh"). KCE NY 2 respectfully submits this Revised Verified Petition, with supporting documents, to the New York State Public Service Commission (the "Commission") seeking (1) a Certificate of Public Convenience and Necessity ("CPCN") pursuant to Public Service Law ("PSL") Section 68 and regulations promulgated thereunder at 16 New York Code of Rules and Regulations

("NYCRR") Part 21, allowing development of the Project, (2) an order approving a lightened regulatory regime consistent with previous Commission orders involving Exempt Wholesale Generators ("EWG"), and (3) an order for an expedited proceeding pursuant to 16 NYCRR Section 21.10 (collectively, the "Revised Petition" or "Petition").

## II. THE PETITIONER

The Project will be constructed, owned, and operated by KCE NY 2, LLC, a limited liability company formed in the State of Delaware and authorized to do business in the State of New York (a copy of the KCE NY 2, LLC Corporate Formation Documents is attached hereto as **Exhibit A**). KCE NY 2, LLC is a wholly owned project company of Key Capture Energy ("KCE"). KCE is an independent developer of utility-scale battery storage projects based in Albany, New York. KCE has a team of experienced clean energy experts who have grown some of the world's largest renewable energy companies. With a focus on meeting the needs of the electric grid while working closely with partner utilities, landowners, and local stakeholders, KCE is focused on developing energy storage projects throughout North America. KCE currently has a development pipeline of ~4 GW consisting of projects ranging from 2-300 MW. KCE operates the largest portfolio of utility-scale battery storage projects in New York State including KCE NY 1, a 20 MW project in Stillwater, New York and KCE NY 3, a 3 MW project in Pomona, New York.[1] KCE also owns a large portfolio of operating projects in Texas including KCE TX 2, KCE TX 7 and KCE TX 8, all 9.9 MW projects, and KCE TX 11 a 50 MW project. Additionally, KCE is currently constructing multiple projects including KCE NY 6, a 20 MW project in Blasdell, NY and 5 projects in Texas with a combined nameplate capacity of 298 MW.

[1] The Stillwater and Pomona projects are the only utility-scale battery projects that KCE currently operates in New York.

KCE is wholly owned by SK E&S Co., Ltd, a global clean energy and solution provider headquartered in Seoul, the Republic of Korea. SK E&S Co., Ltd is an affiliate of SK group which is one of Korea's top three business conglomerates and has market capitalization of over $13 billion USD. SK companies have a publicly stated goal to invest an additional $30 billion in clean energy technologies in the U.S. by the end of 2025.

The KCE NY 2 Project will sell its energy, capacity and ancillary services through the wholesale electricity market administered by the New York Independent System Operator ("NYISO"). KCE NY 2 has not and will not have any retail customers, nor does it presently own any transmission or distribution facilities other than certain interconnection infrastructure.

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## III. THE PROJECT

The Project location and site plan is attached as **Exhibit B**. The Project will include the following components:

Inside the Project Fence

- One Hundred Sixty-Four (164) battery containers
- Forty-One (41) inverter and medium voltage transformer containers
- Six (6) auxiliary transformers

Inside the Project Substation

- One (1) 115kV three phase disconnect switch
- Six (6) 115kV surge arresters
- Three (3) 115kV Potential Transformers
- One (1) 115kV circuit breaker
- One (1) main power transformer: adjusts electrical voltage between local transmission grid and project system
- One (1) 34.5kV three phase gang operated disconnect switch
- Four (4) 34.5kV circuit breakers
- Thirty (30) 34.5kV surge arresters
- Thirty-Six (36) 34.5kV single phase hookstick switches
- Three (3) 34.5kV voltage transformer for relaying
- Three (3) 34.5kV Current transformers for relaying
- Four (4) 34.5kV fuse cutouts
- One (1) 34.5kV station power transformer
- Three (3) 34.5kV metering current transformers by utility
- Three (3) 34.5kV metering voltage transformers by utility
- One (1) 34.5kV utility revenue meter
- Insulators and bus work
- One equipment enclosure to house protective relay panels and controls
- Lightning masts arranged to ensure lightning will not cause damage to the electrical equipment
- Control and power cables
- Steel structures

Gen-Tie and Connecting Project Segments

- Five (5) Buried underground 34.5kV power cables
- One (1) DF-80, class H3 utility pole
- Two (2) DF-75, class H1 utility poles
- One (1) DF-75, class 1 utility pole
- One (1) laminated/ steel utility pole
- One (1) DF-70, class 1 utility pole
- One (1) DF-70, class H1 utility pole
- 24 Core Optical Ground Wire (OPGW)
- 3 phase 115kv conductor: 1351.5 KCMIL 54/19 ACSR "martin"
- 3/8" 7-strand EHS static wire

**Interconnection**

KCE NY 2 initiated an Interconnection Request with NYISO and Central Hudson Gas & Electric ("CHGE") in January 2018 (Queue #683). KCE NY 2 received a System Reliability Impact Study in March 2019 which did not indicate any issues with interconnecting the Project at

the proposed location. KCE NY 2 entered the 2021 Class Year and showed no System Deliverability Upgrades ("SDUs") on the NYISO's Class Year 2021 Facility Studies Preliminary Deliverability Analysis Draft Report. A Large Generator Interconnection Agreement (LGIA) for KCE NY 2 was fully executed on 9/30/2022. The project will predominately utilize existing infrastructure and connect to the 115 kV CHGE Coldenham Substation owned by CHGE via an overhead gen-tie line. Electric service for auxiliary components of the proposed facility will be taken from the CHGE point of interconnection. The proposed facility will not require any other utilities.

**Construction and Schedule**

It is anticipated that construction of the Project will begin in February 2023 and continue for approximately ten (10) months. Site preparation will include grading and drainage, laying conduit and communication cables, and site pads and access road work. The inverter and medium-voltage transformer, and battery containers will be transported to the sites intact and installed on helical piles. The project substation installation will include main power transformer (MPT) foundation and integration (alarms, control, auxiliary power, etc.), 14' x 32' control house, lightning masts, high voltage and medium voltage breakers and switchgear. It will also include the supervisory control and data acquisition ("SCADA") system installation and associated controls of the substation. Gen-tie line installation will include suspension insulators, dead end assembly, conductor, optical ground wire, grounding, foundations, and structures.

**Financing**

KCE estimates total costs of the Project at approximately $150 million, which KCE expects to finance through a combination of equity and third-party debt. KCE and its affiliates have an

extensive record of successfully developing, financing, constructing, and operating BESS facilities in New York and elsewhere in the U.S.

**Decommissioning**

As part of the local review with the Town of Montgomery Planning Board, KCE NY 2 submitted a draft decommissioning plan to the Town (attached hereto as **Exhibit F**). KCE NY 2 is committed to providing the Town with a bond/letter of credit to cover the cost of removal of the facility in the event that the facility is abandoned for a period of one year or longer. As part of the local review, the Town of Montgomery will review the estimated cost of decommissioning and will be required to approve of the security amount that will be on file with Town. The battery energy storage equipment will be housed in compartmentalized units that can be removed, hauled away, recycled and otherwise properly disposed. The financial security will be obtained prior to construction and proof of security will be filed with the Commission subsequent to the Commission's Order in this proceeding. The Decommissioning Plan provides a detailed plan for ensuring that the facility stie is restored to at least its present condition in the event the facility ceases to operate or is abandoned for a period of one year or more.

## IV. REGULATORY REVIEW

The proposed Project will require certain Federal, State, and local permits and approvals as summarized in Table 1 below:

Table 1 Summary of Permit Approvals and Agencies Involved

| Agency | Permit/Approval | | Agency Action |
|---|---|---|---|
| **Federal** | USACE | Section 404 Wetland Permit for Battery Storage footprint and Gen Tie-Route | Pre-application review in October 2022; planned submission mid-November 2022 |

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|---|---|---|---|
| **New York State** | New York State Public Service Commission | Section 68 Certificate of Public Convenience and Necessity and lightened regulation | Approval pending |
| | New York Independent Service Operator | Large Generator Interconnection Procedures | Fully executed on 9/30/2022 |
| | New York State Department of Environmental Conservation (NYSDEC) | Natural Heritage Program, threatened and endangered species inventory review | Consultation identified Indiana Bats within 2 miles of the Project. Tree removal to only occur from October 1 to March 31. Initial tree clearing completed March 2020. |
| | | State Pollution Discharge Elimination Standards (SPDES) General Permit for Stormwater Discharges from Construction Activity<br><br>DEC Article 24 Wetland Permit<br><br>Section 401 Water Quality Certification | Notice of Intent to be filed Fourth Quarter 2022<br><br>Article 24 Permit approved March 18, 2020. Extension Request Pending 3rd quarter 2022.<br><br>Section 401 WQC approved March 18, 2020. Extension Request Pending 3rd quarter 2022. |
| | New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) | Section 106 Cultural and Historic Resources / New York State Historic Preservation Act Review and Consultation 14.09 | Letter of No Effect issued on September 19, 2022 |
| | New York State Department of Transportation | Commercial Access Highway Work Permit | In process |
| **Town of Montgomery** | Town Planning Board | Planning Board declared lead agency for State Environmental | Coordinated review of a Type 1 action. |

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| | | Quality Review Act (SEQRA) on August 8, 2022. | |
| | Town Planning Board | Site Plan Review and Special Use Permit required per local law No. 4 of 2022. | Site-specific design review and approval for installation of BESS |
| | Town Zoning Board of Appeals | Area Variances required for the height of the lightning masts, static poles and gen-tie poles. | ZBA to consider whether variance request provides an essential service and whether there are compelling reasons economic or otherwise to grant request. |
| | Coldenham Fire District | Letter of No Objection | Technology Management and Emergency Access and Operations review completed on June 1, 2022. |

As part of the local approval process with the Town of Montgomery, KCE has submitted a full environmental assessment form (EAF) (attached hereto as **Exhibit C**) along with a number of supporting documents relating to potential environmental impacts from the Project, including a sound study report, landscaping plan, erosion and sediment control and storm water management plans. The Town of Montgomery Planning Board declared itself lead agency on August 8, 2022 and circulated its Notice of Intent to be Lead Agency to all involved and interested agencies on August 18, 2022. The Project site has previously been reviewed by the Town Planning Board in accordance with SEQR and received a negative declaration for a similar site plan and battery energy storage use in October 2019. Originally, there were two (2) battery energy storage projects on the same parcel; a copy of that negative declaration is attached to this Revised Petition. Given the changes to the initial projects (most notably combining KCE NY 2 and NY 11 to just KCE NY 2) the Town Planning Board is considering all application materials and will ultimately make

another SEQR decision. As of the date of this Revised Petition, the Petitioner is waiting for additional written comments from the Town's Engineer as well as the Town's Planning consultant. It is anticipated that the Planning Board will review the revised site plan and reissue a negative declaration for the Project on or around December 2022.

## V. NEED FOR THE PROJECT

The Project is contemplated by and in furtherance of the Commission's Order Establishing Energy Storage Goal and Deployment Policy (Case 18-E-0130). On December 13, 2018, the PSC established a statewide energy storage goal of installing up to 3,000 MW of qualified energy storage systems by 2030, with an interim objective of deploying 1,500 MW by 2025. On January 5, 2022, during her State of the State address, Governor Hochul called for New York to double its Energy Storage goal to 6,000 MW by 2030.

In addition to the requirements in the CLCPA, the New York State Climate Action Council ("CAC"), a 22-member committee charged with preparing a scoping plan to achieve the State's bold clean energy and climate agenda, released the draft scoping plan and the comment period started as of January 1, 2022. That draft scoping plan describes a need to target higher levels of energy storage:

> A portfolio of energy storage technologies will be needed as intermittent renewable energy generation penetration increases. Existing and newer, long-duration, storage will be needed to maintain reliability as the State approaches 2040; however, these technologies will need to be deployed well before 2040 to reach the State's goals.
>
> In 2018, the PSC issued a landmark energy storage order based on the Energy Storage Roadmap. The Order established a 3,000 MW energy storage goal by 2030 and included deployment mechanisms to achieve the target. However, the goal was established based on a 50% renewable target for 2030. The new Climate Act targets will require significantly higher levels of energy storage as exemplified in the recent Power Grid Study which identified a need for more than 15 GW of energy storage. The Order also included $350 million in bridge incentives to accelerate the energy storage market, including solar-plus-storage projects with NY-Sun and another $53 million in RGGI funds. As of December 2021, these funds have been

almost fully allocated. Though the Order was a significant step forward for the energy storage market in New York, deployment needs are most certainly greater than initially envisioned and these existing programs will be insufficient to meet the expanding need.

In summary, it is clear that energy storage is a key component for New York State to achieve its clean energy goals. Approval of this project is not only necessary from a public policy standpoint, but will ensure grid stability in the Town of Montgomery and Orange County.[2] This facility will be able to provide peak capacity, energy and ancillary services, and ultimately offset more carbon-intensive peaker plant generation. "The Commission has recognized that energy storage is an area in which utilities have the potential to develop alternative solutions to achieve non-wire alternatives to address peak load and system reliability and contributed to the State's energy storage goals at the same time."[3]

## VI. ENVIRONMENTAL REVIEW OF THE PROJECT

As demonstrated in the EAF and as discussed below, the Project will not result in any significant adverse environmental impacts under SEQRA. Below is a brief discussion of the potential impacts relevant to the Project:

***Land Use and Zoning***

Land use and zoning for the Project site will be considered through review of the local Town of Montgomery land use laws, including Local Law No. 4 of 2022 (A Local Law Regulating Battery Energy Storage Systems) and the Town Zoning Law. Pursuant to Local Law No. 4 of 2022, the Project is a permitted use in the zoning district subject to site plan review and special use permit

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[2] *See* Town of Montgomery Battery Storage Law § 235-11(A)(2) ("The use of energy storage systems provides sustainable electricity and energy for heating and/or cooling, and other uses that are powered by electricity and is an integral component of the Town of Montgomery's current and long-term sustainability goals.")

[3] Cases 18-E-0130, 16-M-0411, 14-E-0301, Order Approving Energy Storage Resource Participation in Wholesale Markets (August 16, 2022) ("Moreover, the 2022 "State of Storage in New York" Report noted that 56 MW utility-owned energy storage projects are deployed or contracted for non-wires alternatives as directed under the Reforming the Energy Vision Initiative").

approval from the Town Planning Board. As part of the planning review process, the Town will review appropriate setbacks, screening/visibility, location of infrastructure, site access, signage, lighting, safety enclosure, and noise.

The Project will be compatible with the agricultural land use that surrounds the Project site, however, there will be temporary, construction-related impacts, as well as permanent impacts such as concrete slab foundations, fencing and installation of utility infrastructure. During Project operation, additional impacts to land use are not anticipated. Other than occasional maintenance and repair activities, the Project should not interfere with ongoing land use (e.g. farming activities north of the project site and nearby utility infrastructure including a transmission corridor and existing substation). The presence of battery storage containers may also limit or prevent the conversion of agricultural land to seasonal or permanent residential use, or other types of development.

The Town does not require a Road Use Agreement, or other municipal consent to construct and operate the Project. There are no underground or overhead ROW crossings or access roads to Town roads. **Exhibit E** contains a verified statement of KCE's Chief Financial Officer, who has the authority to bind KCE NY 2 LLC to a representation that all required consents of the proper municipal authorities necessary for issuance of a CPCN have been received.

***Community Facilities and Services***

During construction, the number of construction workers will not displace or alter public or publicly funded community facilities or services. During operation, the facility will be unmanned and therefore will have no impact on community facilities or services.

***Cultural Resources***

A cultural resources review was conducted under the New York State Historic Preservation Office (SHPO) Environmental Review Program. SHPO reviewed a Phase 1AB Cultural Resources Investigation commissioned by KCE NY 2. Based on this review, SHPO determined that no historic properties, including archaeological and/or historic resources, will be affected by the Project and issued a Determination of No Effect on May 31, 2019. KCE NY 2 submitted a new review request to OPRHP on July 12, 2022 regarding updates to limits of disturbance and layout.

***Visual Resources***

The visibility and visual impact of the Project will not be highly visible based on existing vegetation at the site and proposed landscaping. The lightning mast and gen-tie poles (which are the tallest structures proposed) will be consistent with the existing transmission corridor that is nearby and will not have a major impact on any visual resources in the town. As part of the local review, the Town Planning Board must review and approve of the proposed landscaping plan and sound wall which will mitigate any potential visual impacts.

***Air Emissions/Traffic and Transportation***

During construction, there will be limited traffic from construction workers and deliveries of materials. Parking and staging areas, as shown on the site plan, will accommodate deliveries to avoid any impact to local traffic. During operation, there will be no impact to air emissions, traffic or transportation. There are no emissions from the facility. The facility will be unmanned and therefore have no impact on traffic or transportation.

***Noise***

To study potential sound impacts from the Project, a Noise Impact Assessment was performed. The study included an analysis of an existing, recent background sound level survey; and a computer modeling analysis of future inverter, transformer and BESS container generated

noise. The Project has been designed to include a sound barrier which will ensure that the Project sound levels are in accordance with the local zoning law which establishes a limit at the property line.

The facility is located in close proximity to Route 17k, which is a heavily traveled commercial corridor. In sum, the anticipated noise that will be produced by the Project will not be a significant environmental impact.

***Geology and Soils***

Project components have been sited to avoid or minimize (to the maximum extent practicable) temporary and permanent impacts to geology and soils. The Project is not anticipated to result in any significant impacts to geology and it is not anticipated that any bedrock will be encountered during installation and construction.

***Water Resources***

During construction, potential direct or indirect impacts to wetlands and surface waters may occur as a result of the installation of access roads, buried electrical interconnects, installation of utility poles, and use of temporary workspaces but have been avoided or minimized to the maximum extent practicable. Erosion and sediment control will be used during construction, and after the Project facility is operational, stormwater will be managed in accordance with a detailed SWPPP.

The Project is located in close proximity to the Tin Brook. Impacts to Tin Brook have been avoided in the design of the grading, and construction fencing/silt fence will be installed to protect the brook. Impacts to the wetlands on the property have been reduced as much as practicable by adjusting the design away from the wetlands. During construction, construction fencing and/or silt fence will be installed to mark the permitted encroachment to the wetlands. Impacts to the

PFO wetland between the two parts of the project will be avoided by installing the conductors utilizing Horizontal Directional Drilling (HDD) methods. Contractor will be required to abide by the requirements of the approved SWPPP to control erosion and sediment during construction.

***Wildlife and Habitat Resources***

According to our response from the New York Natural Heritage Program there are no rare plant species or unique natural communities known to occur with the Project Site, except for the Indiana bat which has been documented at a non-winter location within 2 miles of the Project Site. The main impact of concern for bats is the removal of potential roost trees. To account for this concern, the Project will only conduct tree removal from October 1 to March 31, which is one of the reasons for the expedited relief requested in this Petition. Tree clearing and site preparation work are required to commence in February 2023 in order to complete tree clearing by March 31 and abide by this tree clearing restriction. Otherwise, construction and operation impacts to listed, threatened, and endangered species are not anticipated.

***Socioeconomic Impacts and Environmental Justice***

The Project will have both direct and indirect positive economic effects on the town, county and school district, as well as on the individual landowners participating in the Project. These effects will commence during construction and continue throughout the operating life of the Project. In the short term, benefits will include additional employment and expenditures associated with construction of the Project. In the long term, the operating phase of the Project will generate significant additional revenue potentially in excess of approximately $4 million dollars to the local community through a PILOT agreement, Host Community Agreement and lease payments to participating landowners. The Project is not located in a Potential Environmental Justice Area as defined by NYSDEC.

## VII. DISCUSSION

### A. THE COMMISSION SHOULD GRANT KCE NY 2, LLC A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE PROJECT

Under PSL Section 68 and the criteria listed in 16 NYCRR 21.3, KCE NY 2 in its application for a CPCN must demonstrate that the Project "is convenient and necessary for the public service." Specifically, KCE NY 2 must provide to the Commission a description of the Project to be constructed and of the manner in which the cost of the Project is to be financed, as well as "evidence of economic feasibility of the enterprise, proof of the applicant's ability to finance the project and to render adequate service and that the proposal is in the public interest."

By this Verified Petition, KCE NY 2 has presented a detailed description of the Project and provided the necessary proof of incorporation. The Petition outlines and describes the financing of the project and establishes that Key Capture Energy is an experienced developer and operator of energy storage projects. Based on the documentation provided, the Applicant has established the economic wherewithal to finance the Project and to render safe, adequate, and reliable services. Important public benefits will result from this project, including providing reliable and clean energy at peak demand, while meeting the State's public policy goals for increased renewable energy and developing a clean energy grid. "The CLCPA requires, inter alia, that a State agency, in considering and issuing permits, licenses, and other administrative approvals and decisions, consider whether such decisions are 'inconsistent with or will interfere with the attainment of statewide greenhouse gas emissions limits.' . . . In this case, granting a CPCN to construct and operate the [KCE NY 2] Project will directly further the CLCPA's goal of achieving 3,000 MW of statewide energy storage capacity by 2030."[4]

[4] Case 21-E-0628, Astoria Generating Company, L. P., Order Granting Certificate of Public Convenience and Necessity (June 16, 2022).

KCE NY 2 will be operating in a competitive wholesale market and will not pose a cost risk to ratepayers. KCE NY 2 respectfully requests that the Commission grant the project a CPCN pursuant to Public Service Law § 68.

### B. THE COMMISSION SHOULD ISSUE AN ORDER PROVIDING FOR LIGHTENED REGULATION OF THE PROJECT

KCE NY 2 LLC respectfully requests that the Project be regulated under a lightened regulatory regime as has been consistently applied by the Commission to independent power producers in the wholesale electric market for over twenty years.[5]

Ultimately, the Commission issued an Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation to Ravenswood Development,[6] noting that "the Commission thus concluded previously that new forms of electric service providers participating in competitive markets would be lightly regulated."[7] Furthermore, it should be noted that "notwithstanding that it is lightly regulated, [KCE NY 2] is reminded that it and any other entities that exercised control over Storage Facility Operations remain subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement."[8]

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[5] Id.; Case 19-E-0122, Ravenswood Development, LLC, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (October 17, 2019) (See also Petition citing Case 10-E-0042, *AES ES Westover,* LLC, Order Providing for Lightened Regulation and Approving Financing (May 14, 2010) (phased energy storage project); Case 11-E-0593, *Cricket Valley Energy Center, LLC*, Order Granting a Certificate of Public Convenience and Necessity and Establishing Lightened Ratemaking Regulation (Feb. 14, 2013); Case 05-E-0098, *Caithness Long Island, LLC,* Order Granting a Certificate of Public Convenience and Necessity, Providing for Lightened Regulation and Approving Financing (Nov. 15, 2006); Case 04-E-0428, *NYC Energy, LLC*, Order Granting A Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (July 9, 2004); Case 01-E-1716, *KeySpan-Port Jefferson Energy Center, LLC*, Order Providing for Lightened Regulation (March 7, 2002); Case 99-E-0148, *AES Eastern Energy, L.P. and AES* 28 *Creative Resources, L.P.*, Order Providing for Lightened Regulation (April 23, 1999); Case 98- E-1670, *Carr Street Generating Station, L.P.*, Order Providing for Lightened Regulation (April 23, 1999); Case 91-E-0350, *Wallkill Generating Company, L.P.*, Order Establishing Regulatory Regime (April 11, 1994))."

[6] Case 19-E-0122, Ravenswood Development LLC (October 17, 2019)

[7] Id. at p. 29

[8] Id. at p. 33

Based on the above precedence in similar proceedings, KCE NY 2, LLC respectfully requests that the Project be regulated under a lightened regulatory regime as has been consistently applied by the Commission to independent power producers in the wholesale market.

## C. THE COMMISSION SHOULD GRANT EXPEDITED PROCEEDING FOR PUBLIC HEARING WITHOUT ORAL TESTIMONY

As part of this proceeding, KCE NY 2, LLC herein moves pursuant to 16 NYCRR Section 21.10(a) for an expedited proceeding for its Petition for a CPCN and for an order directing that the public hearing required by PSL Section 68 be held before the Commission on the Petition and its exhibits, testimony or other information, as may be filed by KCE NY 2, LLC, other party or Commission staff, without oral testimony (the "Motion"). The Commission may grant a motion for an expedited proceeding pursuant to 16 NYCRR Section 21.10 upon finding that (1) notice of the Motion and the Petition has been published in a newspaper of general circulation in the area in which a project is located (a copy of the proposed public notice is attached as Exhibit D); (2) the movant has served a copy of the Motion and notice on those parties entitled to receive a copy of the underlying petition; (3) no party has submitted, within 10 days of the date of publication of such notice, a written objection stating substantive reasons for opposition to the Petition; and (4) the granting of the expedited proceeding is in the public interest.

The Applicant will provide the Commission with proof of publication and proof of service as required as soon as they are completed. Based on the public review of this project to date (and overall lack of any public opposition), the Applicant does not anticipate that there will be any opposition to this request. The proposed site is well screened and, in general, the public is in support of renewable energy projects that are sited with minimal impacts to the surrounding neighborhood and the environment. An expedited proceeding is in the public interest, and we respectfully request that this be granted by the Commission.

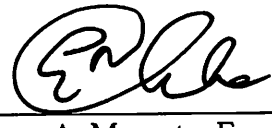
In addition, as mentioned above, an expedited proceeding is necessary to ensure Project construction can commence with enough time to complete tree clearing prior to March 31, 2023, in order to minimize potential impacts to Indiana bats and we respectfully request that the Commission grant this request on this basis as well.

## VIII. CONCLUSION

Based on the foregoing, KCE NY 2, LLC respectfully requests that the Commission find that the construction, operation, and maintenance of the storage facility will not result in significant environmental impacts and therefore issue an Order (1) granting a CPCN pursuant to PSL Section 68; (2) providing for lightened regulation, and (3) directing that the public hearing required by PSL Section 68 be held without oral testimony.

Revised: November 4, 2022

Respectfully submitted,



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Accompanying Documents

Exhibit A – Corporate Formation Documents [See Original Filing, filed 8/18/22]
Exhibit B – Revised Site Plan
Exhibit C – Revised Full Environmental Assessment Form
Exhibit D – Draft Newspaper Notification [See Original Filing, filed 8/18/22]
Exhibit E – Verified Statement of Municipal Consent [See Revised Statement, filed 9/28/22]
Exhibit F – Draft Decommissioning Plan [See Original Filing, filed 8/18/22]
Exhibit G – SEQR Negative Declaration issued October 2019

**VERIFICATION**

STATE OF NEW YORK )
) ss:
COUNTY OF ALBANY )

Taylor Quarles, being duly sworn, deposes and says: that he is an officer of KCE NY 2, LLC; that he has read the foregoing Revised Petition and knows the contents thereof; and that the same is true to his own knowledge except as to matters set forth therein upon information and belief, and as those matters he believes them to be true.

Name: Taylor Quarles
Title: Officer
Company: KCE NY 2, LLC

Sworn to before me this
4 day of November, 2022

NOTARY PUBLIC
Ann Woodford
Statement of Authority
Albany Cty exp. 10/17/2026