STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Verified Joint Petition of Bluestone Wind, LLC and Ball Hill Wind Energy, LLC, for an Order Approving Financing Pursuant to Section 69 of the New York State Public Service Law	Case 21-E-

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VERIFIED JOINT PETITION OF BLUESTONE WIND, LLC AND BALL HILL WIND ENERGY, LLC, FOR AN ORDER APPROVING FINANCING PURSUANT TO SECTION 69 OF THE NEW YORK STATE PUBLIC SERVICE LAW

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I. INTRODUCTION

Bluestone Wind, LLC ("Bluestone Wind") and Ball Hill Wind Energy, LLC ("Ball Hill Wind" and together with Bluestone Wind the "Petitioners"), the owners and operators of jurisdictional wind electric generating facilities in New York State, hereby petition the New York State Public Service Commission ("Commission") pursuant to Section 69 of the New York Public Service Law ("PSL"), for authorization to extend the maturity date of certain short-term indebtedness of up to $381,177,543.80, including the authority to guarantee and to pledge ownership interests in the jurisdictional facilities owned by Petitioners as collateral security for the repayment of up to $400,000,000 in debt (the "Financing") and, after construction is complete, additional restructuring such that a non-controlling and non-managing interest in the Projects will be held by tax equity investors whose investment will be used to repay all or part of the tax equity bridge loan(s).

Petitioners' request for authorization under PSL § 69 to extend the maturity date of its short-term indebtedness of $381,177,543.80 and authorize total debt in the sum of $400,000,000 is in the public interest because it will strengthen Petitioners' creditworthiness by allowing Petitioners and their affiliates to cross-collateralize debt. It will also provide Petitioners and their affiliates with continuing access to capital to construct the renewable energy facilities, for their operations, and will enhance and strengthen their ability to provide cost-effective, safe, and reliable service.

Petitioners hereby request that the Commission expedite, to the extent possible, its review of the instant Petition and grant the rulings requested herein on or before the Commission's November 2021 session because Petitioners' current short-term indebtedness matures on June 29, 2022, and a ruling after the November 2021 session may not provide sufficient time to restructure and extend that maturity date.

II. DESCRIPTION OF PETITIONERS

A. Bluestone Wind, LLC.

Bluestone Wind is a Delaware limited liability company and an indirect wholly-owned subsidiary of Northland Power New York Wind LLC ("Northland"), which in turn is an indirect wholly-owned subsidiary of Northland Power Inc. Bluestone Wind is a development company formed to develop, own, and operate a 111.8 MW wind energy generation facility to be located in the Towns of Windsor and Sanford, Broome County, New York (the "Bluestone Wind Project").

On December 16, 2019, the New York State Board on Electric Generation Siting and the Environment ("Siting Board") granted Bluestone Wind a Certificate of Environmental Compatibility and Public Need ("CECPN"), on conditions, pursuant to Article 10 of the PSL. The CECPN Order conditionally authorizes Bluestone Wind to construct and operate the Bluestone Wind Project. On April 9, 2020, the Siting Board denied petitions for rehearing challenging the grant of the CECPN Order.[1]

On July 17, 2020, the Commission issued its "Declaratory Ruling on Review of Transfer Transaction," finding that the proposed transfer of upstream ownership interests in, *inter alia*, Bluestone Wind, from Calpine Corp. to Northland required no further review under PSL § 70.[2]

On December 18, 2020, the Commission issued an order (i) granting a Certificate of Public Convenience and Necessity ("CPCN") to Bluestone Wind pursuant to Section 68 of the Public

[1] Case 16-F-0559, *Bluestone Wind, Order on Rehearing* (Apr. 9, 2020).

[2] Case 20-E-0230, *Joint Petition of Bluestone Wind, LLC, Calpine Wind Holdings, LLC & Northland Power New York Wind LLC, for a Declaratory Ruling that No Further Review is Required of Upstream Ownership Transfer, or in the Alternative, for Approval of the Proposed Transfer Transaction Pursuant to § 70 of the Public Service Law*, "Declaratory Ruling on Review of Transfer Transaction" (Jul. 17, 2020) ("Bluestone Section 70 Order").

Service Law; and, (ii) granting Bluestone Wind status under the Commission's lightened regulatory regime.[3] In so doing, the Commission noted, "Bluestone plans to finance construction of the Facility through a combination of balance sheet, construction loans, or other financing mechanisms,"[4] and that because the Bluestone Wind, Ball Hill Wind, and High Bridge Projects represented Northland's first projects in the United States, the combined acquisitions by Northland "would not raise potential horizontal market power issues."[5]

B. Ball Hill Wind Energy, LLC.

Ball Hill Wind is a Delaware limited liability company and an indirect wholly-owned subsidiary of Northland Power New York Wind LLC, which in turn is an indirect wholly-owned subsidiary of Northland Power Inc. Ball Hill Wind is a development company formed to develop, own, and operate a 107.5 MW wind energy generation facility in the Towns of Villenova and Hanover, Chautauqua County, New York (the "Ball Hill Wind Project" and together with the Bluestone Wind Project, the "Projects").

On December 20, 2016, the Siting Board ruled that the Ball Hill Wind Project was exempt from the requirement to obtain a CECPN.[6]

On April 18, 2019, the Commission granted Ball Hill Wind's request for a CPCN and granted Ball Hill Wind status under the Commission lightened regulatory regime.[7]

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[3] Case 19-E-0121, *Petition of Bluestone Wind, LLC for an Order Granting a Certificate of Public Convenience and Necessity Pursuant to Public Service Law 68 and for an Order Granting Lightened Regulation*, "Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation" (Dec. 18, 2020) ("Bluestone Section 68 Order").

[4] *Id*. at 10.

[5] *Id*. Similarly, the Commission reiterated in the Section 68 Order that Northland's affiliation with Northland Power Energy Marketing (US) Inc., "does not pose the potential for the exercise of horizontal or vertical market power. *Id*. at 12.

[6] *See generally* Case 16-F-0289, *Petition of Ball Hill Wind Energy, LLC for Declaratory Ruling that a Certificate is Not Required Under Section 162(4)(d) of the Public Service Law*, "Declaratory Ruling Concerning Jurisdiction Over Proposed Generating Facility" (Dec. 20, 2016) ("Ball Hill Jurisdictional Order").

[7] *See generally* Case 18-E-0654, *Petition of Ball Hill Wind Energy, LLC for a Certificate of Public Convenience and Necessity*, "Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation" (Apr. 18, 2019) ("Ball Hill Section 68 Order").

On August 17, 2020, the Commission issued its "Declaratory Ruling on Review of Transfer Transaction," finding that the proposed transfer of upstream ownership interests in, *inter alia*, Ball Hill Wind, from RES Americas Development, Inc. to Northland required no further review under PSL § 70.[8]

C. Northland Power New York Wind LLC (Petitioners' Indirect Owner).

Northland is a Delaware limited liability company and an indirect wholly-owned subsidiary of Northland Power Inc. ("Northland Power"). Northland Power is a publicly traded company on the Toronto stock exchange (TSX: NPI), based in Toronto, Canada, that develops, builds, owns and operates power infrastructure assets. In the United States, Northland Power currently owns the 111.8 MW Bluestone Wind Project, the 107.5 MW Ball Hill Wind Project, and also owns the approximately 100 MW High Bridge Project. Northland also owns generation assets operating or under construction in Canada, Germany, Netherlands, and Mexico, and projects under development in Taiwan, Korea, and Japan. The power generation assets owned by Northland Power are based on wind, natural gas, biomass, and solar technologies.

As of July 1, 2021, Northland Power owns or has a gross economic interest in 2,681 MWs (2,266 MW net) of operating generating capacity. The 2,681 MWs of operating capacity is comprised of the following projects: (i) three offshore wind projects in Europe (1,184 MWs), (ii) two natural gas-fired projects in Saskatchewan, Canada (346 MWs), and (iii) solar, wind and thermal projects in Ontario and Quebec, Canada (1,151 MWs). Northland Power also has a pipeline of renewable energy projects in construction or advanced development which consists of: (i) the Bluestone, Ball Hill, and High Bridge Projects in New York, (ii) a 130 MW solar facility in

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[8] *See generally* Case 20-E-0240, *Joint Petition of Ball Hill Wind Energy, LLC, RES America Developments, Inc. & Northland Power New York Wind LLC, for Approval of the Proposed Transaction Pursuant to Section 70 of the Public Service Law*, "Declaratory Ruling of Transfer Transaction" (Aug. 17, 2020) ("Ball Hill Section 70 Order").

Mexico and (iii) the 1,044 MW Hai Long offshore wind project in Taiwan. In 2020, Northland Power acquired Empresa de Energía de Boyacá, a regulated power distribution utility located in Colombia serving 480,000 customers.

Northland Power also has an indirect ownership interest in Northland Power Energy Marketing (US) Inc. ("NPEMUS"). NPEMUS is a corporation that is incorporated under Ontario provincial law. Northland Power is the sole shareholder of NP Energy Services Holdings Inc., an Ontario corporation, which is the sole shareholder of NPEMUS. NPEMUS engages in the purchase and sale of electric energy in the United States wholesale energy markets. NPEMUS does not own or control electric generation, transmission, or distribution facilities in the United States and does not hold a franchise, service territory or native load obligation within the United States or Canada. NPEMUS has received market-based rate authorization, authorizing its sale of wholesale of electric capacity, energy, and certain ancillary services from the Federal Energy Regulatory Commission ("FERC").[9]

Northland operates the New York Projects described above as a competitive generator in the ISO-administered wholesale markets.[10]

III. THE COMMISSION SHOULD AUTHORIZE THE FINANCING

Pursuant to PSL § 69, Commission authorization is required before an electric corporation may enter into indebtedness payable at periods of more than twelve months.[11] In this instance, Petitioners seek permission to extend the maturity date of short-term indebtedness 381,177,543.80 until December 31, 2024, or a period greater than twelve months, and seek authorization to incur

[9] *See* FERC Docket No. ER19-1069-000.
[10] In the Bluestone Section 68 Order, the Commission reiterated that Northland's affiliation with Northland Power Energy Marketing (US) Inc., "does not pose the potential for the exercise of horizontal or vertical market power. *See* Bluestone Section 68 Order at 12.
[11] *See* PSL § 69.

aggregate debt in the sum of $400,000,000 Petitioners and their facilities are subject to lightened regulation because they are wholesale electric generators producing renewable electric energy in competitive environment. Thus, the scrutiny applicable to monopoly utilities under PSL § 69 may be reduced.[12]

Petitioners recently closed on a financial transaction with the Bank of Montreal and other Lenders whereby the Lenders have agreed to provide senior secured construction loan facilities, tax equity bridge loan facilities, letters of credit and a term loan facility in connection with the development, construction, operation, and maintenance of the Projects. This indebtedness is structured such that the initial maturity date is June 29, 2022, or a date less than twelve months from closing.[13] The Lenders have allowed Northland the option, however, to convert this indebtedness to long-term debt upon receipt of Commission approval to do so.[14]

By the instant Petition, Petitioners thus seek authority to extend the maturity date of this short-term indebtedness of up to $381,177,543.80 and/or guarantee and pledge ownership interests in themselves and their jurisdictional facilities as collateral security the repayment of up to

[12] *See*, *e.g*., Case 11-M-0483, *Sithe/Independence Partners, L.P.*, "Order Approving Financing" (Dec. 21, 2011) ("Sithe Order").

[13] *Everett v. Phillips*, 261 AD 1082, 1082 (2d Dep't) (held, "The notes of the Long Island Lighting Company and the refunding thereof were all made for periods of less than twelve months; therefore, they were not illegal and section 69 of the Public Service Law was neither violated nor circumvented"), *aff'd* 288 NY 227 (1942).

[14] Prior to the initial closing, a new holding company, Bluestone Ball Hill Seller, LLC, was established that is directly, wholly-owned by Northland Power New York Wind LLC, which itself will remain indirectly wholly-owned by Northland Power Inc. The holding company, Bluestone Wind Holdings, LLC has been eliminated so that Bluestone Wind and Ball Hill Wind are directly, wholly-owned, by Bluestone Ball Hill Seller, LLC. This Intra-Corporate Restructuring will not change the ultimate owner of Bluestone Wind or Ball Hill or Northland Power's percentage ownership in either Project. In reviewing proposed intra-corporate transactions, the Commission has long held that such intra-corporate restructuring does not require review under PSL § 70 because they do not affect the ultimate ownership of the operating company and/or its jurisdictional facilities. *See Horizon Wind Energy, LLC*, "Declaratory Ruling on Review of an Intra-Company Restructuring Transaction" (Feb. 14, 2006); *see also* Case 07-E-0584, *NRG Energy, Inc.*, "Declaratory Ruling of an Intra-Corporate Transaction" (Jul. 23, 2007), at 3-4. ("NRG Ruling"). Specifically, the Commission has on numerous occasions declared that "[i]nserting a holding company into an ownership structure upstream from lightly-regulated entities that operate electric plant does not amount to a transfer under PSL § 70 because there is no change in the identity of the ultimate ownership." *NRG Ruling* at 3-4. That is exactly what has occurred here.

$381,177,543.80 in debt payable over more than twelve (12) months.[15] To allow some flexibility, the total debt that Petitioners may incur or guarantee together will not exceed $400,000,000. The proposed debt is in the public interest because it will strengthen Petitioners' creditworthiness by allowing they and their affiliates to cross-collateralize debt. It will provide Petitioners and their affiliates with continuing access to capital to construct the Projects, for their operations, and will strengthen Petitioners' ability to provide cost-effective, safe, and reliable service. The proposed debt is thus both for a statutory purpose (*i.e.*, the construction and operation of two, state-of-the-art wind electric generating facilities) and in the public interest.[16]

In addition, Petitioners seek the flexibility to modify or refinance, without prior Commission approval, this indebtedness, including the identity of the financing entities, payment terms, and the amount financed, up to the $400,000,000 limit. The Commission routinely grants such requests by lightly-regulated wholesale generators, *i.e.*, "[g]iven that [Petitioners are] regulated lightly, [they] are afforded the flexibility to modify, without our prior approval, the identity of the financing entities, payment terms, and amount financed" because "[t]he exercise of financing flexibility will allow [Petitioners] to avoid disruption of its financing arrangements and enable it to operate more effectively in competitive electric wholesale . . . markets."[17]

As the Commission routinely finds relative to proposed financings for lightly-regulated entities operating in a competitive environment, captive New York ratepayers cannot be harmed by the terms of the proposed Financing described herein because Petitioners and their affiliates and investors bear all the financial risk associated with these financing arrangements. As the

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[15] *See, e.g.*, Case 08-G-0708, *Petition of Corning Natural Gas Corporation for Authority, Pursuant to PSL Section 69, to Issue Long-Term Indebtedness in the Principal Amount of $ 6,000,000 for the Purpose of Refunding Existing Obligations and Financing New Construction*, "Order Authorizing the Issuance of Long-Term Indebtedness" (Issued Sept. 18, 2008) ("Corning is authorized to convert its short-term loan of $ 6.0 million into a long-term debt in order to refinance higher cost debt and support the Company's planned construction projects.").

[16] *See, e.g.*, *NRG Order* at 3.

[17] *Sithe Order* at 4.

Commission has previously held in analogous circumstances, "[a]dditional scrutiny is not required to protect captive New York ratepayers, who cannot be harmed by the terms arrived at for this financing because [the project's owners and/or investors] bear[] the financial risk associated with [their] financial arrangements."[18] That is exactly the case here.

The Commission should therefore approve the Financing under PSL § 69.[19]

IV. STATE ENVIRONMENTAL QUALITY REVIEW ACT

Under the State Environmental Quality Review Act ("SEQRA"), Article 8 of the New York Environmental Conservation Law and its implementing regulations at 6 NYCRR Part 617 and 16 NYCRR § 7), the Commission must determine whether certain actions it funds, approves, or undertakes may have a potentially significant impact on the environment. The Financing does not meets the definition of a Type I or Type II action under SEQRA and is therefore appropriately designated as SEQRA "Unlisted" actions. Accordingly, it is proper for the Commission to declare itself SEQRA "lead agency," to classify the action as above-stated, to conduct an environmental assessment, and to determine the environmental significance of the proposed action Financing Approval.

To facilitate the Commission's environmental assessment, Petitioners submit herewith as Exhibit 1 a Short Environmental Assessment Form with Part I completed, describing, and evaluating the potential impact, if any, of the transactions described herein.

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[18] *Id*.

[19] Petitioners reserve the option to restructure their debt such that a non-controlling, non-managing interest may be held by upstream tax equity owners whose investment will be used to repay all or part of the debt contemplated herein. Management of the Bluestone and Ball Hill Facilities will always remain under Northland Power's control. Whether viewed under PSL §69 or §70, such tax equity transactions involving no change in operational control of jurisdictional facilities nor ultimate ownership thereof fall outside the scope of Commission jurisdiction, and well within the "[t]he exercise of financing flexibility [necessary to] allow [Petitioners] to avoid disruption of its financing arrangements and enable it to operate more effectively in competitive electric wholesale . . . markets." *Sithe Order* at 4.

No significant adverse environmental effects will result from the Financing. The environmental impacts associated with the initial construction and operation of the Projects were reviewed by the Siting Board in Petitioners' respective CECPN and/or SEQRA proceedings and Orders. There will be no changes to the approved Projects as a result of the transactions described herein. Following consummation of the Financing, the Bluestone and Ball Hill Facilities will continue to be subject to the conditions specified in their respective CECPN and/or SEQRA proceedings and Orders. As such, the Financing will not cause any new environmental impacts and, thus, the Commission should adhere to its precedent in such matters and issue a negative declaration of environmental significance.

V. CONCLUSION

For all the foregoing reasons, Petitioners respectfully request that the Commission issue an Order:

1. Authorizing Petitioners to enter into indebtedness of up to $381,177,543.80 million payable over more than twelve (12) months, including the authority to guarantee and pledge ownership interests in, and the jurisdictional facilities owned by, Petitioners as collateral security for the repayment of up to $400,000,000 in debt; and

2. Issuing a negative declaration of environmental significance under SEQRA.

DATED: July 23, 2021

Respectfully submitted,

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VERIFICATION

MIKE CRAWLEY, being duly sworn according to law, upon his oath, deposes and says:

1. I am the Chief Executive Officer of Northland Power Inc., and Northland Power New York Wind LLC. I am authorized to make this Verification on behalf of Northland Power New York Wind LLC and its subsidiary companies Bluestone Wind, LLC and Ball Hill Wind Energy, LLC.

2. I have read the contents of the foregoing Petition and hereby verify that the statements therein contained are true and accurate to the best of my knowledge and belief as to Northland Power New York Wind, LLC, Bluestone Wind, LLC, Ball Hill Wind Energy, LLC, and Northland Power Inc.

MIKE CRAWLEY

Sworn to and subscribed before me
this 13th day of July, 2021

NOTARY PUBLIC