

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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In the Matter of :
 :
HORSESHOE SOLAR ENERGY LLC :
 :
Application for Certificate of Public :
Convenience and Necessity and Petition to :
Establish Lightened Regulation and Approve :
Construction Financing :
----- X

Case No. 23-E-____

**PETITION OF HORSESHOE SOLAR ENERGY LLC
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY,
REQUEST FOR LIGHTENED REGULATION and PETITION
FOR APPROVAL OF CONSTRUCTION FINANCING**

Dated: October 26, 2023
Albany, New York

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Exhibit A – Certified copy of Horseshoe Solar Energy LLC’s Certificate of Formation in the State of Delaware

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Exhibit C – Officer’s Verification Statement

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I. INTRODUCTION

Horseshoe Solar Energy LLC (HSS or Applicant) intends to construct, own and operate the Horseshoe Solar Project, a photovoltaic solar energy generating facility with a maximum net nameplate capacity of 180 megawatts (MW) located in the Town of Caledonia, Livingston County and Town of Rush, Monroe County, New York (Project). When complete, the Project will deliver electricity into the electric transmission system operated by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) through a newly-constructed point of interconnection (POI) switchyard located adjacent to National Grid’s existing 115kV Golah Substation. Pursuant to Executive Law §94-c and its implementing regulations at 19 NYCRR Parts 900-1 through 900-15, on December 9, 2022, the State of New York Office of Renewable Energy Siting (ORES) granted

HSS a Siting Permit for a Major Renewable Energy Facility (Siting Permit) authorizing HSS to develop, design, operate, maintain, and decommission the Project.¹

Applicant petitions the New York State Public Service Commission (Commission) for an order and ruling: (i) granting HSS a Certificate of Public Convenience and Necessity (CPCN) pursuant to Section 68 of the Public Service Law (PSL); (ii) declaring that HSS and the Project will be governed by the Commission's well-established lightened regulatory scheme for competitive wholesale electric generators (Lightened Regulation), and (iii) authorizing, under PSL § 69, the Project's owners to enter into indebtedness, in an amount not to exceed Five hundred two million dollars (\$502,000,000), for financing the construction of the Project and for authority to pledge security interests in the Project as collateral for the repayment of that debt (Construction Financing). HSS requests that the Commission direct that the Section 68 public hearing be held on the papers pursuant to 16 NYCRR § 21.10, or in the alternative, waive the requirement for a hearing.

In applying Section 68 to applicants who have been issued a Siting Permit by ORES,² and consistent with Commission practice for facilities granted a Certificates of Environmental Compatibility and Public Need (CECPN) pursuant to PSL Article 10 or Article VII, the Commission limits the scope of its review under PSL § 68 to the applicant's ability to finance

¹ Documents associated with Applicant's Section 94-c application are maintained in the Department of Public Service's Document and Matter Management System (DMM). See Matter No. 21-02480, Application of Horseshoe Solar Energy LLC for a 94-c Permit for Major Renewable Energy Facility.

² Case 21-E-0345, Petition of Morris Ridge Solar Energy Center LLC for a Certificate of Public Convenience and Necessity Pursuant to Public Service Law Section 68, *Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation* (November 24, 2021) (*Morris Ridge Order*), at p. 8; Case 22-E-0343, Petition of Hecate Energy Cider Solar, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation, *Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Regulation, and Making other Findings* (December 16, 2022)(*Hecate Cider Order*).

the construction of, and to conduct the business of operating, the Project for the production of electricity for sale at wholesale into markets administered by the New York Independent System Operator (NYISO), and to its receipt of any required municipal consents.³ Determinations concerning public need and the avoidance, minimization and mitigation of environmental impacts were made by ORES and reported in the Decision of the Executive Director issued on December 9, 2022 and in the Siting Permit.⁴ HSS further requests that the Commission approve the pledge of interests in Project assets to support Construction Financing in light of the reduced level of scrutiny accorded under Lightened Regulation compared to that applicable to retail, monopoly utilities.⁵ Granting the CPCN, providing for Lightened Regulation, and authorizing Construction Financing are in the public interest because the Project will help meet New York State’s goals for increasing the availability of renewably generated electricity as set out in the *Climate Leadership and Community Protection Act of 2019 (CLCPA)*.⁶

II. THE APPLICANT

HSS is a Delaware limited liability company formed on November 13, 2018, for the purpose of developing, owning, and operating the Project. HSS is an affiliate and wholly owned

³ Case 14-F-0490, Application of Cassadaga Wind LLC for a Certificate of Environmental Compatibility and Public Need pursuant to Article 10 to Construct a Wind Energy Facility, *Order Granting Certificate of Environmental Compatibility and Public Need with Conditions* (January 17, 2018) (*Cassadaga Order*) at 114 (Declaring that the Commission should “only act on its police power functions related to the entity.”); Case 19-E-0287, Petition of Number Three Wind LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation, *Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation* (March 8, 2021) (*NTW Order*).

⁴ See e.g., *Morris Ridge Order*.

⁵ See Case 20-E-0361, *Petition of LS Power Grid New York Corp. I, et al. Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Regulation, and Approving Financing* (Jan. 21, 2021) (*LS Power Order*) at 14.

⁶ L. 2019, Ch. 106. The CLCPA includes a statewide mandate to reduce GHG emissions by at least 40 percent from 1990 levels by 2030 and by at least 85 percent from 1990 levels by 2050. Section 7(2) of the CLCPA requires an agency to determine whether its decisions “will interfere with the attainment of the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law.”

subsidiary of Invenergy Renewables LLC (Invenergy). Invenergy is a developer, owner and operator of utility scale renewable energy projects throughout North America. Invenergy-owned energy projects located in New York operate under the supervision and regulatory authority of the Commission and the Federal Energy Regulatory Commission (FERC). Invenergy and HSS management offices are in Chicago, Illinois; HSS's New York office is in Ithaca, NY.

Invenergy-owned projects provide wholesale electricity to the public using renewable resources consistent with both the federal government's policy of "hastening the widespread utilization of [renewable energy] systems," as declared in 42 USC § 9201, as well as the State of New York's aggressive renewable energy policies adopted into statute with the enactment of the CLCPA, which mandates that load-serving entities procure at least 70 percent of the State's electric load from renewable energy resources by 2030, and achieve zero emissions from electric demand by 2040.⁷ Invenergy and its affiliate companies have developed more than 110 renewable generating facilities in the United States, Canada, and Europe including four wind farms operating in the State: High Sheldon Wind Farm, with a nameplate capacity of 112.5 MW located in the Town of Sheldon, Wyoming County,⁸; Orangeville Wind Farm (f/k/a Stony Creek Wind Farm), with a nameplate capacity of 94 MW located in the Town of Orangeville, Wyoming County;⁹ Marsh Hill Wind Farm, with a nameplate capacity of 16.2 MW located in the Town of Jasper,

⁷ See, Case 22-M-0149, In the Matter of Assessing Implementation of and Compliance with the Requirements and Targets of the Climate Leadership and Community Protection Act, *Order on Implementation of the Climate Leadership and Community Protection Act* (issued May 12, 2022) (*Implementation Order*), at 3 (discussing CLCPA requirements.); Case 15-E-0302 – Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, *Order Adopting a Clean Energy Standard* (August 1, 2016).

⁸ See, Case 07-E-0213 – Sheldon Energy LLC, *Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation* (January 17, 2008).

⁹ Case 11-E-0351 – Petition of Stony Creek Energy LLC for a Certificate of Public Convenience and Necessity, to Establish Lightened Regulation and for Approval of Debt Financing.

Steuben County; and Number Three Wind Farm, with a nameplate capacity of 103.8 MW located in the Towns of Lowville and Harrisburg in Lewis County.¹⁰ In addition to the Project, Invenergy's affiliate companies are developing among other projects in the State, the Alle-Catt Wind Energy Project,¹¹ the Canisteo Wind Energy Project,¹² Bull Run Wind Energy Project, and the Bull Run Solar Project.¹³

HSS intends to construct, own, operate, and maintain all components of the Project, except for the POI switchyard, which will be constructed by HSS and transferred to National Grid, who will own, operate, and maintain the POI switchyard pursuant to a Large Generator Interconnection Agreement with National Grid and the NYISO.

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¹⁰ See, Case 16-F-0328 *Order Granting Certificate of Environmental Compatibility and Public Need with Conditions* (November 12, 2019) and Case 19-E-0287 *Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation* (March 8, 2021).

¹¹ See, Case 17-F-0282, Application of Alle-Cat Wind Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for a Proposed Wind Energy Project, *Order Granting Certificate of environmental Compatibility and Public Need, with Conditions* (June 3, 2020).

¹² See, Case 16-F-0205, Application of Canisteo Wind Energy, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction and Operation of the Canisteo Wind Energy Project Located in the Towns of Cameron, Canisteo, Greenwood, Jasper, Troupsburg, and West Union, Steuben County. *Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions* (March 13, 2020)

¹³ Information about the Bull Run Wind Energy Project and Bull Run Solar Project is available at the respective project websites: <https://bullrunwind.invenergy.com> and <https://bullrunsolar.invenergy.com/>.

III. RELATED PROCEEDINGS

Siting Permit

On July 20, 2020, HSS filed an application under PSL Article 10 seeking a Certificate of Environmental Compatibility and Public Need from the New York State Board on Electric Generation Siting and the Environment (Siting Board),¹⁴ which application was deemed by the Siting Board to comply with PSL 164 on June 30, 2021.¹⁵ Thereafter, in accordance with Executive Law § 94-c and 19 NYCRR § 900-3.2, HSS transferred its PSL Article 10 application to ORES on January 12, 2021.¹⁶

On December 9, 2022, ORES granted HSS a Siting Permit for a Major Renewable Energy Facility Pursuant to Executive Law § 94-c and its implementing regulations at 19 NYCRR Parts 900-1 through 900-15 authorizing HSS to develop, design, operate, maintain, and decommission the Project subject to site specific and uniform conditions.¹⁷ The Siting Permit includes a comprehensive summary of the review conducted in the ORES proceedings, including the proceedings originated under Article 10 of the PSL.¹⁸ The Siting Permit expressly authorizes the Commission to require HSS to obtain approvals, consents, and permits under PSL Sections 68 and 69, as applicable, subject to the understanding that the Commission “will not duplicate any issue

¹⁴ Case 18-F-0633, Application of Horseshoe Solar Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law for Construction of Horseshoe Solar Farm, a 180 MW Solar Electric Generating Facility Located in the Town of Caledonia, Livingston County and the Town of Rush, Monroe (Siting Board Application)

¹⁵ Case 18-F-0633, *supra*, Letter Ruling (issued June 30, 2021). As noted therein, the Siting Board Application ultimately consisted of the filings made on July 2, 2020, together with supplemental filings made on December 22, 2020, April 26, June 17 and June 28, 2021.

¹⁶ Matter 21-02480, *supra*, Article 10 to Section 94-c Transition Supplement Overview (filed December 23, 2021).

¹⁷ Matter 21-02480, *supra*, The New York State Energy and Siting Permit (issued December 9, 2022).

¹⁸ *Id.*

already addressed by [ORES] and will instead act only on its police power functions related to the entity....”¹⁹

HSS is preparing the compliance filings required by the Siting Permit and undertaking to obtain all necessary federal and federally-delegated permits.

IV. THE PROJECT

As described in the record of ORES Matter No. 21-02480 and the Siting Permit, the Project is a solar photovoltaic (PV) energy generating project located in the Town of Caledonia, Livingston County, and the Town of Rush, Monroe County, New York, consisting of approximately 600,000 solar panels mounted on tracking racks installed on land leased from owners of private property with a maximum generating capability of 180 megawatts (MW). HSS will operate the Project solely to generate power for delivery into the wholesale power market and will qualify as an Exempt Wholesale Generator under the Federal Power Act. Power from the Project will be delivered from the Project’s collection substation to the POI for delivery into the electric transmission system at National Grid’s existing 115kV Golah Substation. HSS has completed its application for interconnection service pursuant to the Open Access Transmission Tariff administered by the NYISO. HSS has accepted its interconnection cost allocation as part of the 2021 Class Year Facility Study and anticipates that it will execute a Large Generator Interconnection Agreement in November 2023. The Project’s anticipated in-service date is 2026.

The Project will generate significant positive socioeconomic impacts, including construction employment, permanent O&M jobs, lease payments to landowners, and a new source of revenue for schools, fire departments, and county and town governments. It will directly

¹⁹ Id. at Siting Permit Sec. 5.1(d)(1)

contribute significantly to New York State’s CLCPA targets by producing electricity emissions-free, low-cost, solar energy to New York’s energy market from 180 MW of generating capacity, which represents enough zero-emissions energy to power more than 43,000 homes. The Project will also protect the public health, safety, and environment by significantly reducing greenhouse gas emissions, including a reduction of over 125,335 tons of carbon dioxide (CO₂).

V. THE PROJECT MEETS THE COMMISSION’S STANDARDS FOR GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Section 68 of the PSL states, in pertinent part, that an electric corporation shall not begin construction of an electric plant without first receiving a CPCN.²⁰ The rules implementing PSL § 68 require an applicant to provide a description of the proposed facility; a showing that the planned facility is in the public interest and is economically feasible; proof that the applicant is able to finance the project and render adequate service to the public; and assurances that the entity has received all municipal consents that are required by law.²¹ Where, as here, a Project has been thoroughly reviewed pursuant Executive Law § 94-c, the determination made in such a proceeding “supplants the requirement for construction approval under PSL § 68, but not the requirement for Commission approval of the electric corporation’s corporate formation and exercise of any

²⁰ PSL § 68(1).

²¹ See, 16 NYCRR § 21.2(b); Case 21-E-0345, *supra*, *Morris Ridge Order* at 11; Case 20-E-0542, Petition of High Bridge Wind, LLC, *Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation* (Jan. 21, 2022) (*High Bridge Wind Order*) at 1; see also Case 22-E-0122, Petition of Excelsior Energy Center, LLC, *Order Granting Certificate of Public Convenience and Necessity and Providing For Lightened Regulation* (July 14, 2022) at 1; Case 19-E-0277, Petition of Baron Winds LLC, *Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation* (Apr. 23, 2020) (*Baron Winds Order*) at 1; see also Case 93-E-1073, Wallkill Generating Company, *Opinion and Order Granting Certificate of Public Convenience and Necessity* (August 12, 1994) (*Wallkill III*); Case 07-E-1343 – Marble River, LLC, *Order Granting Certificate of Public Convenience and Necessity, and Providing for Lightened Regulation* (June 19, 2008) at 11.

municipal, “right, privilege or franchise.”²² Accordingly, the focus of the Commission’s PSL § 68 review is limited to: (i) a determination that the applicant has the legal capacity to build the Project; (ii) confirming that the Applicant is properly registered to do business in New York State; (iii) ensuring that the entity has the financial ability to fund construction; and (iv) ensuring that the entity has the required municipal consents.²³

HSS meets the requirements for issuance of a CPCN.²⁴ The Project was thoroughly reviewed by ORES prior to issuance of the Siting Permit in a proceeding that generated a comprehensive record, based on significant public input. **Exhibit A** is a certified copy of HSS’ Certificate of Formation in the State of Delaware. **Exhibit B** is a certified copy of HSS’ Certificate of Authority under Section 805 of the Limited Liability Company Law. **Exhibit C** is the sworn statement of William S. Bradley, an officer of HSS with authority to bind HSS equivalent to that of a president and secretary of a corporation confirming that HSS has executed all required road use agreements with the affected municipalities that authorize the use of municipal roads and highways both for transportation purposes and to install buried electric lines in the municipal rights-of-way.

²² Case 21-E-0345, *supra*, *Morris Ridge Order* at 11; Case 20-E-0542, Petition of High Bridge Wind, LLC, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Jan. 21, 2022) (*High Bridge Wind Order*) at 1; *Cassadaga Order* at 114 (explaining that the Commission should “not duplicate the need and environmental compatibility issues”); *accord*, Case 10-E-0339, Petition of Hudson Transmission Partners, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation, *Order Providing For Lightened Rate Making Regulation*, slip op. at 6 (April 14, 2011)(Finding that issuance of a PSL Article VII Certificate “supplants the requirement for construction approval under PSL §68.”).

²³ See, e.g., *Morris Ridge Order* at 6-7; *High Bridge Wind Order* at 6-7.

²⁴ See, *Morris Ridge Order* at 12. The Commission also has confirmed that the requirements set forth in 16 NYCRR §§ 21.2 and 21.3, are largely inapplicable or otherwise wholly satisfied by an applicant’s receipt of a Siting Permit without need for duplication in the PSL § 68 proceeding. Sections 21.3(d) and (g) are inapplicable to projects that do not provide retail services.

A. The Project Promotes Competition and the State’s Goals for Renewable Energy and is Economically Feasible.

The Commission has ruled that a CPCN may be granted for a new electric generating facility “when its owner will sell power into the wholesale market to facilitate competition.”²⁵ HSS will operate the Project and conduct its business only in the wholesale power markets administered by NYISO and will sell Renewable Energy Credits (REC) pursuant to the New York State Energy Research and Development Authority (NYSERDA). HSS will not render retail utility service in any territory and has secured no authority to exercise any current or expired retail service franchise. Captive New York ratepayers cannot be harmed by the terms of HSS’ financial commitments because HSS and its parent corporation, Invenergy, will bear all of the financial risk associated with the Project.

B. HSS Has the Ability to Finance Construction of the Project.

Private developers seeking a CPCN meet the requirements of PSL § 68 by providing a description of the: “manner in which the costs of the plant to be constructed would be financed...”²⁶ DPS staff has interpreted this requirement as an obligation to demonstrate that the operation of the proposed facility “is economically feasible; it can support the financing necessary to sustain the jurisdictional facilities; and it can render safe, adequate and reliable service at reasonable rates (including rates constrained by operation of competitive market forces).”²⁷ The Commission has approved, as economically feasible, utility-scale renewable energy generation facilities on the grounds that the sponsor (i) is affiliated with an experienced and proven parent

²⁵ Case 01-E-1053 – CPCN 3rd Turbine, Inc., *Order Granting a Certificate of Public Convenience and Necessity* (September 28, 2001) at 2; see also Case 93-E-1023, *Petition of Wallkill Generating Company, Opinion and Order Granting Certificate of Public Convenience and Necessity* (issued Aug. 12, 1994) at 12.

²⁶ 21 NYCRR 21.3.

²⁷ See, e.g., *High Bridge Wind Order* at 9.

entity, (ii) will participate in competitive wholesale markets to sell energy, capacity, and ancillary services, and (iii) will have earnings from available revenue sources.²⁸

As the owner and operator of a privately financed wholesale generator, HSS will earn revenues from the sale of energy in the wholesale electricity markets and the sale of RECs to NYSEERDA directly or through participation in Clean Path New York's Tier 4 contract. These future revenues together with the experience of HSS' owner provide the assurance that the Project will be financed, constructed and brought into service.

Similar to other projects sponsored by Invenergy and its affiliates, HSS intends to develop, finance, construct, and operate the Project as an "exempt wholesale generator" and will sell its power at market-based rates and not rely on cost-of-service rates set by either a federal or state regulatory entity. It intends to sell capacity, electricity, and ancillary services through the wholesale competitive markets administered by the NYISO. HSS is a wholly owned subsidiary and affiliate of Invenergy, an experienced developer that has successfully built and financed thousands of MWs of generation, including four currently operating wind generation projects located in the State. Invenergy has committed to invest sufficient equity capital to ensure that the Project is constructed. Consistent with its prior experience, Invenergy and HSS plan to use a combination of third-party debt and equity to finance construction of the Project. Invenergy will identify a lender or group of lenders to provide a construction loan for the Project, which Invenergy may support with its own and other third-party equity funding to complete construction of the Project. Once the Project achieves mechanical completion, Invenergy may bring in additional

²⁸ See, Case 18-E-0399, Petition of Cassadaga Wind LLC for a Certificate of Public Convenience and Necessity, *Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation*, (November 15, 2018) at 19-20; and Case 21-E-0608 Petition of Astoria Generating Company, L.P. for Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law, *Order Approving Lightened Regulatory Regime, and Order for Expedited Proceeding, Order Granting Certificate of Public Convenience and Necessity and Making Other Findings* (June 17, 2022) at 14-15.

third parties to provide equity financing, including tax-equity financing, which will allow the Project to more efficiently utilize the federal tax benefits associated with renewable energy projects.

Invenergy is highly experienced in raising project level financing from the private capital markets in support of developing, constructing, and operating its energy projects. Since its inception in 2001, Invenergy has raised more than \$50 billion of financing and has worked with more than 60 financial institutions worldwide including institutions in the United States, Canada, Europe and Japan. Invenergy's financing relationships have included such institutions as Bank of America, MUFG (formerly Union Bank of California), GE Capital, JP Morgan, US Bank, Natixis, Santander, Rabobank and Morgan Stanley. In 2017, Invenergy was awarded the Latin America Renewables Power Finance 2016 Deal of the Year for its financing of Campo Palomas – a 70 MW wind farm in Uruguay. The construction and term financing were led by DNB and InterAmerican Investment Bank. Invenergy refinanced with an investment grade bond offering in the US private placement market in 2017.

Invenergy's commitment to HSS is evident in the record of the ORES proceeding. Invenergy has supplied the substantial funding necessary to acquire needed real estate, to contract for engineering and environmental consulting services and to initiate and pursue the extensive regulatory review proceedings as well as the funding needed to secure the rights to interconnection service. Invenergy's financial record and experience support the conclusion that the Project is economically feasible and financially viable.²⁹

²⁹ See, *Morris Ridge Order* at 9 (Finding that applicant's "commitment to the development of the [solar facility] is further evidenced by the actions taken as part of the PSL Article 10 and Executive Law § 94-c proceedings"); accord, Case 10-E-0197, NRG Astoria Power LLC, *Order Granting Certificate of Public Convenience and Necessity, Providing For Lightened Regulation and Approving Financing* (January 24, 2011) at 19–20; Case 10-E-0281 – Connecticut Municipal Electric Energy Cooperative, *Order Providing for Lightened Regulation and Approving Financing* (October 14, 2010) at 12–13.

VI. HSS MEETS THE COMMISSION'S REQUIREMENTS FOR REGULATION UNDER THE LIGHTENED REGULATORY REGIME

Applicant requests that the Commission grant HSS the lightened regulatory treatment it has applied to other competitive providers who sell electric energy exclusively at wholesale. Since 1994, the Commission has consistently determined that competitive wholesale electricity providers are subject to a lightened regulatory regime.³⁰ In 1999, the Commission determined that it was “no longer necessary or appropriate to apply some of the provisions of the Public Service Law to merchant plants... that operate exclusively in the wholesale market.”³¹ In 2021, the Commission acknowledged its long-standing precedent and confirmed that “new forms of electric service providers in competitive wholesale markets would be lightly regulated.”³² The Commission has continued this approach for other renewable energy facilities.³³

The lightened regulatory regime is applicable to a wholesale generator, like HSS, which is an “electric corporation” for purposes of PSL § 2(13), but not a traditional monopoly “utility company” or “public utility” for purposes of PSL § 2(33).³⁴ As discussed in *Wallkill*, *Carr* and *AES*, only certain provisions of Article 4 of the PSL are applicable to wholesale generators,³⁵

³⁰ See, Case 91-E-0350, Wallkill Generating Company L.P., *Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company and Notice Soliciting Comments* (August 21, 1991) (*Wallkill I Order*); *Order Establishing Regulatory Regime* (April 11, 1994) (*Wallkill II Order*); Cases 99-E-0633 and 99-G-0632, Southern Energy Bowline LLC, *Order Providing for Lightened Electric and Gas Regulation* (June 24, 1999).

³¹ See, Case 98-E-1670, Carr Street Generating Station, L.P., *Order Providing for Lightened Regulation* (April 23, 1999) (*Carr Order*); Case 99-E-0148, AES Eastern Energy, L.P., et al., *Declaratory Ruling on Lightened Regulation* (March 23, 1999) (*AES Order*).

³² *Morris Ridge Order* at 15-16.

³³ See, e.g., *Hecate Cider Order*; *NTW Order*.

³⁴ See, N.Y. PUB. SERV. LAW §§ 2(13), 2(33).

³⁵ The remaining provisions are inapplicable as they are restricted to retail customers. See, e.g. PSL § 66(12), regarding the filing of tariffs (which are required at the Commission’s option); § 66(21) regarding storm plans; § 67, regarding inspection of meters; § 72, regarding hearings and rate proceedings; § 75, regarding excessive charges; and § 76, regarding rates charged religious bodies and others.

including PSL §§ 66(6), 68, 69, 69-a and 70, and that matters pursuant to these provisions may be given reduced scrutiny by the Commission.

In *Carr*, the Commission applied PSL §§ 11, 19, 24, 25, and 26 to prevent producers of electricity from taking actions that are contrary to the public interest.³⁶ *Carr* provided that PSL § 18-A is applied against gross retail revenues, and thus, no assessment is collected for a wholesaler like HSS.³⁷ Since Article 2 of the PSL is also restricted by its terms to retail customers, it is inapplicable to wholesale generators like HSS. Also in *Carr*, the Commission chose not to apply the majority of Article 6 of the PSL to wholesale generators, stating that the public interest did not require the Commission to exercise oversight of the financial management of wholesale generators. Stock ownership reporting requirements, however, are required for non-partnership entities.³⁸ In *Athens* the Commission determined that PSL § 115, which details requirements for the competitive bidding of utility purchases, is discretionary and would not be imposed on wholesale generators³⁹. Provisions pertaining to retail service also do not apply.⁴⁰ PSL § 119-b is applicable because it provides for protection of underground facilities from damage done by excavators.

³⁶ See generally, *Carr Order*

³⁷ See, *Id.*

³⁸ Case 02-E-0362 – Flat Rock Windpower LLC, *Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation* (June 17, 2004).

³⁹ See, Case 99-E-1629, Athens Generating Company, L.P., *Order Providing for Lightened Regulation* (July 12, 2000)(*Athens*); LS Power Order, at 18-19, 26-27.

⁴⁰ See, *e.g.* PSL § 112, regarding judicial enforcement of rate-fixing orders; § 113, regarding reparations and refunds; § 114, regarding temporary rates; § 114-a, regarding rates not to include the cost of legislative lobbying; § 116, regarding discontinuance of water service to multiple dwellings; §117, regarding consumer deposits; § 118, regarding payment to an authorized payment agency; § 119-a, regarding use of utility poles, ducts, trenches and conduits; and § 119-c, regarding tax reduction to ratepayers.

HSS is not affiliated with a retail power marketer engaged in the retail sale of electricity in the NYISO market. Thus, HSS, as a wholesale generator need not be subject to the regulation of affiliated interests pursuant to Sections 110(1) and (2) of the PSL.⁴¹ PSL §§ 110(3) and (4) are also inapplicable because these provisions subject electric corporations to review of their operational and service contracts with affiliates, which “might inject a significant degree of uncertainty into their decision-making or discourage entry into the wholesale market.”⁴²

Other requirements of Article 6 of the PSL, such as Section 106, which requires approval for loans, and Section 107, which requires approval for the use of utility revenues for non-utility purposes, could unnecessarily hinder competitive wholesale generators like HSS by interfering with their flexibility in structuring the financing and ownership of their facilities, and thus, according to the Commission in *Carr*, are inapplicable.⁴³ Section 108 of the PSL, which provides for corporate merger and dissolution certificates, is generally inapplicable as well.⁴⁴

When evaluating requests for lightened regulation, the Commission considers issues of both vertical and horizontal market power. Neither HSS nor its parent companies or affiliates owns or controls a traditional franchised utility with captive ratepayers in New York, scheduling coordinators, reliability coordinators, electric or gas transmission or distribution providers; or fuel distribution resources within New York State. All installed capacity owned or controlled by HSS affiliates and their output are committed through long-term contracts and sold at wholesale,

⁴¹ See, *AES*, at 5; see also, Case 02-M-1443, *Sithe Independent Power Partners, L.P., Order Providing for Lightened and Incidental Regulation and Granting a Certificate of Public Convenience and Necessity* (January 23, 2003)

⁴² See, *Carr Order*, at 5-6

⁴³ *Id.*

⁴⁴ *Id.* (“Consequently, we will not impose the requirements of Article 6 on Carr Street, except for § 110(2) and § 119-b.”).

through the NYISO. HSS' contribution to the total installed capacity of the NYISO is de-minimis, representing 180 MW of the more than 39,000 MW in the New York control area. Together with affiliate companies, Invenergy's projects represent a total of 616 MW installed capacity, which is equal to 1.5% percent of the total installed capacity within the New York Control Area. Accordingly, HSS will exercise no horizontal market power.

HSS acknowledges that affiliate ownership of transmission assets through Invenergy's future participation in the CPNY project will result in affiliated entities owning both generation and transmission assets in New York, presenting a potential risk and rebuttable presumption of vertical market power.⁴⁵ This presumption is sufficiently rebutted upon a showing that the circumstances creating risk of vertical market power prevent its exercise, or because "reasonable means exist to mitigate market power."⁴⁶ In the alternative, HSS may show that "substantial ratepayer benefits" warrant the risk.⁴⁷ Both circumstances exist here and were evaluated in substantially identical circumstances by the Commission in granting the petition of an HSS affiliate, Number Three Wind LLC, for approval of a financing and tax equity transfer.⁴⁸

⁴⁵ See, Case 96-E-0090, Orange and Rockland Utilities Inc., Electric Rate Restructuring, *Statement of Policy Regarding Vertical Market Power* (July 17, 1998).

⁴⁶ Id; See also, Case 22-E-0122, Petition of Excelsior Energy Center, LLC, *Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation* (July 14, 2022), fn. 22.

⁴⁷ Id.; see also, Case 17-E-0016, Petition of TC Ravenswood, LLC, TC Ravenswood Services Corp. and Helix Generation for Expedited Approval of a Transfer and Financing Pursuant to Lightened Regulation, *Order Modifying Divestiture Requirements* (November 18, 2022) (Finding that "substantial ratepayer benefits, together with adequate mitigation measures, warrant overcoming the presumption against the simultaneous ownership of transmission and generation assets.") (*TC Ravenswood Order*).

⁴⁸ See, Case 22-E-0660, Petition of Number Three Wind LLC for an Order Approving Financing Pursuant to Section 69 of the New York State Public Service Law and a Declaratory Ruling Regarding Application of Section 70, *Order Approving Financing and Making Other Findings* (March 17, 2023) (*NTW Finance Order*) at 22-23. As relevant here, the Commission reviewed, in detail, the CPNY Project and its potential for creating vertical market power through Invenergy's ownership and participation. In that review, the Commission determined that the proposed structure does not create a risk for the exercise of market power, nor does it create a potential for harm to the interests of captive utility ratepayers.

The presumption of vertical market power is unwarranted because the circumstances under which the CPNY project will operate demonstrate that such power cannot be exercised by HSS, its parent, or any affiliate company. First, the purpose of the CPNY is to facilitate the delivery of upstate renewable generation from a specific portfolio of generators (including the Project) to NYISO Zone J. The CPNY project is an HVDC transmission line that will not be operated as an open access line on the AC transmission grid, preventing the possibility of causing harm to third-party generators through denial of access to an open access transmission line. Once constructed and placed into service, the line will be under the operational control of NYISO, and flows over it will be discretely metered and monitored to assure compliance with CPNY's Tier 4 contract. Such lack of operational control and the presence of continuous monitoring will make the exercise of vertical market power a practical impossibility.

Further reducing the risk of horizontal and vertical market power is the fact that CPNY and its generation suppliers, such as HSS, will function as though the generating sources are physically located in NYISO Zone J. The CPNY transmission facility will not function as an independent transmission resource with the risk that it could be used to discriminate between sources or customers. HSS' output will be committed under long-term contracts including its commitment to the CPNY Tier 4 REC NYSERDA contract, preventing manipulation of the market and eliminating the risk of vertical market power. Because renewable energy produced by HSS and committed to the CPNY Project will be delivered for sale into NYISO Zone J, it will create substantial ratepayer benefits.

VII. HSS REQUESTS APPROVAL OF CONSTRUCTION FINANCING

HSS seeks authority to pledge the ownership interest in the Project, in whole or in part, as collateral security for repayment of up to four-hundred thirty thousand dollars

(\$430,000)(Construction Financing). HSS requests that the Commission review and approve the requested Construction Financing in conjunction with the grant of Lightened Regulation. HSS will use the Proposed Construction Financing proceeds to complete construction of the Project.

The proposed Construction Financing will not alter the operation of HSS, the jurisdictional entity, which will continue to own and operate the Project as an indirect subsidiary of Invenergy Renewables. HSS requests approval of the - Construction Financings together with the flexibility to modify, without further Commission review or prior approval, the identities of the debt financing entities, payment terms, and relative amount financed, up to the requested limit. The Commission has previously granted similar requests for such flexibility and found that “the exercise of this financing flexibility will allow [the lightly regulated entity] to avoid disruption of its financing arrangements and enable it to operate effectively in competitive electric wholesale...markets.”⁴⁹ Granting such approval would be consistent with prior Commission orders. Similar to other lightly regulated entities operating in the wholesale market, New York’s captive ratepayers cannot be harmed because HSS will bear all financial risks.⁵⁰

VIII. CONCLUSION

WHEREFORE, based on the foregoing, Horseshoe Solar Energy LLC respectfully requests that the Commission:

1. Grant Applicant’s application for a CPCN pursuant to Section 68 of the PSL; and

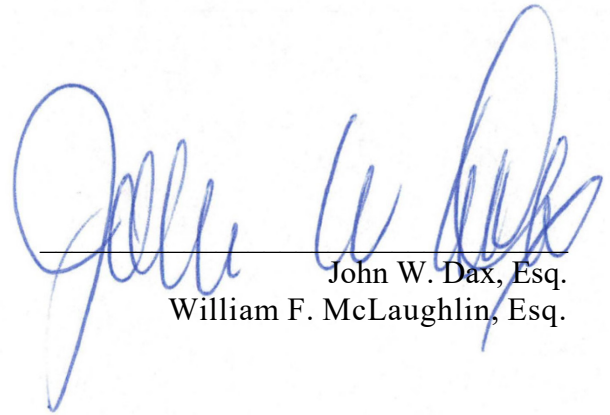
⁴⁹ See, Case 16-E-0552, Petition of CCI Rensselaer LLC, *Order Approving Financing and Transfers, and Ruling on Other Matters* (Jan. 25, 2017); *see also* Case 13-M-0305, Petition of Sithe/Independence Power Partners, L.P., *Order Approving Financing* (Oct. 21, 2013); Case 18-E-0032, Petition of Fortistar North Tonawanda Inc., *Order Approving Financings and Making Other Findings* (Apr. 20, 2018) (*Fortistar North Tonawanda Order*).

⁵⁰ See, *e.g.* Case 15-M- 0297, Petition of Sithe/Independence Power Partners, L.P., *Order Approving Financing* (Sept. 21, 2015).

2. Establish that HSS and the Project will be subject to the Commission's lightened regulation regime for competitive wholesale generators; and

3. Authorize HSS to proceed with the proposed Construction Financing

Dated: October 26, 2023
Albany, New York



John W. Dax, Esq.
William F. McLaughlin, Esq.



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wmclaugh@hodgsonruss.com

Attorneys for Horseshoe Solar Energy LLC

LIST OF EXHIBITS

Exhibit A – Certified copy of Horseshoe Solar Energy LLC’s Certificate of Formation in the State of Delaware

Exhibit B – Certified copy of Horseshoe Solar Energy LLC’s Certificate of Authority under Section 805 of the Limited Liability Company Law

Exhibit C – Officer’s Verification Statement

Exhibit A

Certified copy of Horseshoe Solar Energy LLC's
Certificate of Formation in the State of Delaware

Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "HORSESHOE SOLAR ENERGY LLC", FILED IN THIS OFFICE ON THE THIRTEENTH DAY OF NOVEMBER, A.D. 2018, AT 6:55 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

7146829 8100
SR# 20187621842

Authentication: 203895388
Date: 11-14-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

CERTIFICATE OF FORMATION
OF

Horseshoe Solar Energy LLC

This Certificate of Formation of Horseshoe Solar Energy LLC is being duly executed and filed by the undersigned, as an authorized person, to form a limited liability company pursuant to Section 18-201 of the Delaware Limited Liability Company Act.

FIRST: The name of the limited liability company formed hereby is

Horseshoe Solar Energy LLC

SECOND: The address of the registered office of the limited liability company in the State of Delaware is **1209 Orange St.**, in the City of **Wilmington**, County of **New Castle**, Zip Code **19801**. The name of the registered agent at such address upon whom process against this limited liability company may be served is **The Corporation Trust Company**.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation on this 13th day of November 2018.

By: /s/ Jason Weinberg
Name: Jason Weinberg
Title: Authorized Person

Exhibit B

Certified copy of Horseshoe Solar Energy LLC's
Certificate of Authority under Section 805 of the Limited
Liability Company Law

CERTIFICATE OF AUTHORITY UNDER SEC. 805 OF THE LIMITED LIABILITY COMPANY LAW

ENTITY NAME: HORSESHOE SOLAR ENERGY LLC

DOCUMENT TYPE: APPLICATION FOR AUTHORITY (FOR LLC)

COUNTY: LIVI

FILED:12/03/2018 DURATION:***** CASH#:181203000072 FILM #:181203000069
DOS ID:5451879

FILER:

EXIST DATE

JASON WEINBERG
1 SOUTH WACKER DRIVE
SUITE 1800
CHICAGO, IL 60606

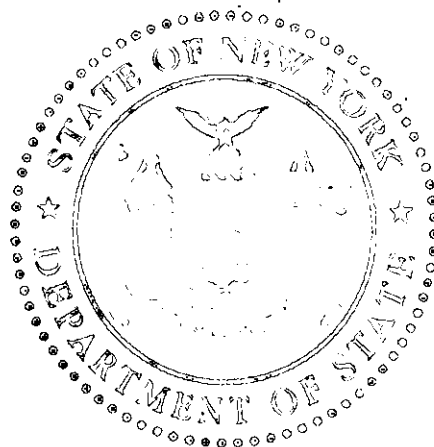
12/03/2018

ADDRESS FOR PROCESS:

C T CORPORATION SYSTEM
111 EIGHTH AVENUE
NEW YORK, NY 10011

REGISTERED AGENT:

C T CORPORATION SYSTEM
111 EIGHTH AVENUE
NEW YORK, NY 10011



The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the biennial statement is due will only be made via email. Please go to www.email.ebiennial.dos.ny.gov to provide an email address to receive an email notification when the Biennial Statement is due.

SERVICE COMPANY: C T CORPORATION SYSTEM - 07

SERVICE CODE: 07

FEES 285.00
FILING 250.00
TAX 0.00
CERT 0.00
COPIES 10.00
HANDLING 25.00

PAYMENTS 285.00
CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 285.00
OPAL 0.00
REFUND 0.00

11275854MP

DOS-1025 (04/2007)

Exhibit C

Officer's Verification Statement

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**


----- X
In the Matter of :
 :
HORSESHOE SOLAR ENERGY LLC :
 :
 : Case No. 23-E-____
Application for Certificate of Public Convenience :
and Necessity and Petition to Establish Lightened :
Regulation and Approve Construction Financing :
----- X

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)


OFFICER’S VERIFICATION STATEMENT

I, William S. Bradley, being duly sworn, deposes and says:

- 1. I am an Officer of Horseshoe Solar Energy LLC (HSS), and am authorized to make this Verification on behalf of HSS in a manner equivalent to a president/secretary of a corporation;
- 2. In accordance with Public Service Law Section 68 and regulations promulgated thereunder at 16 NYCRR 21.2(b), all required municipal consents have been secured for the above referenced project.



William S. Bradley
Authorized Officer
HORSESHOE SOLAR ENERGY LLC
C/O INVENERGY LLC

Sworn to before me this
26th day of October 2023


Notary Public

