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May 27, 2022

VIA ELECTRONIC MAIL

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
Three Empire State Plaza, Agency Building 3
Albany, New York 12223-1350

re: Case 21-G-0576 - Verified Petition of Bluebird Renewable Energy, LLC for an Order Granting a Certificate of Public Convenience and Necessity and Establishing a Lightened Regulatory Regime

Dear Secretary Phillips:

I, Bob Wyman, provide this corrected response to the May 25, 2022¹ and May 27, 2022² letters filed by Bluebird Renewable Energy, LLC ("BRE") in the above captioned case.

In both of its letters, BRE states that no "issues of material fact" have been identified. Additionally, in its Letter of May 27, 2022, BRE claims that:

"The Letter [of the Public Interest Parties] does not comport with ALJ Costello's May 18 directive that parties "identify [material issues of fact] with specificity and indicate how [the party] intend[s] to develop those issues on the record."

Neither of these claims are correct. The Public Interest Parties, of which I am one, have consistently asserted that BRE's statements that their proposed system will reduce emissions, relative to the emissions of the existing system, are incorrect or, at least, subject to significant doubt. Additionally, in response to ALJ Costello's May 18 directive, several parties indicated an intent to develop this controversy concerning material facts on the record by filing discovery requests. The purpose of the discovery will be to obtain missing information which will be useful in preparing testimony, but that information is not absolutely needed to establish that BRE's claims of material fact are false.

Given the May 25, 2022 statements by Public Interest Parties, it is clear that they have identified, as required:

A Material Issue of Fact: BRE's claim of reduced emissions is false.

The method for developing the Issue: Discovery, testimony, etc.

¹Case 21-G-0576, Response From Bluebird Renewable Energy, LLC Regarding CLCPA Compliance of Bluebird Renewable Energy Petition (filed May 25, 2022).

²Case 21-G-0576, Response of Bluebird Renewable Energy, LLC to May 25, 2022 Response of Public Interest Parties (filed May 27, 2022)

I believe that this satisfies the ALJ's requirements, as stated in his May 18 directive.

BRE indicates in its May 27, 2022 Letter that the Intervenor's statement of intent to pursue the normal discovery procedures in this case is an indication that no issue of fact exists. BRE claim that, by seeking additional information for the record, intervenors are "attempting to find material issues of fact by adding information to the already complete record." This is not true and is a mis-reading of the response to ALJ Costello.

The existing record, although incomplete, already establishes that BRE's claim of emissions reductions is false. No additional information is required to support the development of testimony that establishes and explains the incorrectness of BRE's claims. The desire to seek discovery is motivated not by a desire to prove that an issue of fact exists, but rather to ensure that the issue and relevant facts are as well established in the record as possible. The desire is not to discover information needed to make testimony possible, but rather to increase the quality and correctness of at least some of the testimony which will certainly be submitted, when the time for such testimony arrives.

While ALJ Costello's May 18 directive required only that parties identify how they "intend to develop those issues [of material fact] on the record," BRE seems to believe that a proper response would have been more than a mere description of method, but rather full testimony which actually develops the issues. Of course, this is not what the ALJ required. The ALJ spoke to method and intent, he did not state a requirement that the full argument be presented. He did not require that we submit testimony, only that we explain how we would prepare to submit that testimony and what issues of material fact might be addressed by that testimony.

The time for testimony is some time after the successful conclusion of a procedural conference, not now. In fact, our May 25, 2022 response to the ALJ went farther than it needed to by actually providing a simplified outline of the argument that I expect will appear in testimony, whatever additional fruits of discovery may be enjoyed.

Although this should not be necessary, as a courtesy and in response to BRE's apparent desire to see the clearly identified issue of material fact further elaborated before the proper time for doing so, I will attempt to once-again state the argument in as simple a means as I can:

BRE proposes replacing one system with another. Each of these two systems can be described as having three functional parts:

1. RNG Production, using anaerobic digesters
2. Transportation of RNG to an end-use application
3. Consumption (burning) of RNG in the end-use application

For the sake of argument, and, in the absence of needed information, it is useful to accept a hypothetical that the emissions produced by Parts 1 and 3 of each system will be roughly similar. (Note: There will, in fact, be differences, but those differences can be ignored if our only intent is to show the root of concern with the material facts presented in BRE's proposal.) In any case, such an assumption is useful since BRE, while it has documented the Part 3 emissions of the current system, has provided no information concerning the Part 3 emissions of

their proposed system. Thus, insufficient data exists upon which to base a comparison of the two systems in full.

Thus, the key difference between the two systems involves that sub-system, Part 2, which transports RNG from its point of generation to its end-use.

Part 2 of the existing system, the RNG transportation system, consists of an on-site pipe that transports RNG from the anaerobic digester to the point of end-use: the biogas engines used to generate electricity. It is likely that emissions due to leakage from this pipe are and will remain minimal.

Part 2 of the BRE proposed system includes a several mile long pipeline, gas cleaning systems, gas flaring equipment, gas compression system, trucks, injection equipment, an interstate pipeline system, and a variety of other components. Certainly, this more complex transportation system will be the source of much higher emissions than a simple pipe from the anaerobic digester to current system's on-site electricity generators! BRE has provided some information concerning their Proposed Part 2 emissions, however, they have been silent on many of its anticipated emissions. (e.g. They say nothing about emissions that will occur after injection of the RNG into the gas transmission and distribution system.)

Even though there is missing data that should be the subject of discovery requests, if we assume the hypothetical that the two systems will produce similar emissions from their Parts 1 and 3, the fact that emissions from the proposed Part 2 will undoubtedly be higher than those from the current system's Part 2 ensures the reasonableness of our belief that BRE's proposed system will produce higher, not lower emissions. This is true even though the full emissions from the proposed system's Part 2 have not been disclosed.

This necessary and unavoidable relationship between emissions for the current system ($Emissions_c$) and emissions from the proposed system ($Emissions_p$) is expressed more formally in Equation 1:

Given:

$$Emissions_c = Emissions_{1c} + Emissions_{2c} + Emissions_{3c}$$

$$Emissions_p = Emissions_{1p} + Emissions_{2p} + Emissions_{3p}$$

If:

$$: Emissions_{1c} \sim Emissions_{1p} \tag{1}$$

$$Emissions_{2c} < Emissions_{2p}$$

$$Emissions_{3c} \sim Emissions_{3p}$$

Then:

$$Emissions_p > Emissions_c$$

Of course, the two systems' Part 1 emissions would only be similar if, in fact, the volume of RNG produced in the proposed system is the same as that produced in the current system and if the performance characteristics of the two Part 1 systems remain the same. Thus, it is appropriate to pursue discovery in order to determine if the current and proposed RNG production rates will, in fact, be similar.

The comparison between current and proposed systems appears to have produced a conclusion that emissions would be reduced only because the accounting for the current system included emissions from the Part 3, end-use, consumption of the RNG while the emissions accounting for the proposed system did not include any accounting for end-use emissions. Such a comparison is incomplete and invalid. If end-use emissions are included in the baseline of a comparison, they must also be included in the proposed system accounting. Thus, discovery is needed to determine what emissions should be expected from the end-use of RNG in the proposed system.

I believe that it has been adequately established that there is an issue of material fact and that several parties have stated an intent to develop the issue through discovery, testimony, and the other mechanisms normally employed in such a case. BRE's claims to the contrary are unfounded and should be rejected. I request that the ALJs proceed by scheduling a Procedural Conference, and authorize the filing of Discovery Requests, so that we may resume consideration of this case and the development of its record.

Respectfully submitted,

Bob Wyman, Individual

cc: Hon. James Costello
Active Parties