

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of High River Energy Center, LLC
for Order Granting a Certificate of Public
Convenience and Necessity and Establishing
a Lightened Regulatory Regime

CASE 21-E-_____

**PETITION FOR ORDER GRANTING
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND
ESTABLISHING A LIGHTENED REGULATORY REGIME**

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Albany, New York

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I. INTRODUCTION

High River Energy Center, LLC (“High River”) proposes to construct, own, and operate an approximately 90-megawatt (“MW”) solar electric generating facility in the Town of Florida, Montgomery County, New York (the “Project”). The Project will constitute “electric plant,”¹ classifying High River as an “electric corporation”² and, therefore, subjecting High River to the New York State Public Service Commission’s (“Commission”) jurisdiction.

High River hereby requests that the Commission: (i) grant a certificate of public convenience and necessity (“CPCN”) pursuant to Section 68 of the Public Service Law (“PSL”) authorizing the exercise of all municipal consents and franchises granted, and (ii) extend the lightened regulatory regime the Commission employs for competitive generation facilities operating wholly in the competitive wholesale markets, to High River and its operation of the Project.

¹ N.Y. PUB. SERV. LAW § 2(12) (McKinney 2021).

² *Id.* § 2(13).

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The Project was approved by the New York State Board on Electric Generation Siting and the Environment (“Siting Board”) under Article 10 of the PSL.³ However, a Section 68 CPCN from the Commission is still required for the Project. The Commission determined that “. . .the Siting Board’s issuance of a PSL Article 10 Certificate supplants the requirement for construction approval under PSL § 68, but not the requirements for Commission approval of its corporate formation and the exercise of any municipal ‘right, privilege or franchise.’”⁴

II. BACKGROUND

A. The Petitioner

High River is a limited liability company formed on August 25, 2017, in Delaware that will develop, own, operate, and maintain the Project. High River is a wholly-owned, indirect subsidiary of NextEra Energy Resources, LLC (“NextEra”), which is located in Juno Beach, Florida. NextEra has a portfolio of generating facilities (including wind, solar, natural gas, and nuclear energy resources) totaling more than 22,000 MW of capacity located in 37 states and

³ Case 17-F-0597, *High River Wind, LLC*, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions (Mar. 11, 2021) (“CECPN Order”).

⁴ Case 18-E-0399, *Cassadaga Wind LLC*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Nov. 15, 2018), at 12 (citations omitted) (“Cassadaga CPCN Order”).

Canada as of year-end 2019, is the world's largest generator of renewable energy from the wind and sun, and a world leader in battery storage.

NextEra is a subsidiary of NextEra Energy, Inc. (NYSE ticker: NEE), which is a Fortune 200 leading clean energy company included in the S&P 100 index, with consolidated revenues of approximately \$19.2 billion, approximately 49,300 MW of generating capacity, and approximately 14,800 employees in 38 states and Canada as of year-end 2019. Headquartered in Juno Beach, Florida, NextEra Energy, Inc. owns two electric companies in Florida: Florida Power & Light Company, which serves more than 5 million customer accounts in Florida and is the largest rate-regulated electric utility in the United States as measured by retail electricity produced and sold; and Gulf Power Company, which serves approximately 470,000 customers in eight counties throughout northwest Florida. NextEra Energy, Inc. has been recognized often by third parties for its efforts in sustainability, corporate responsibility, ethics and compliance, and diversity. NextEra Energy is ranked No. 1 in the electric and gas utilities industry on Fortune's 2020 list of "World's Most Admired Companies" and ranked among the top 25 on Fortune's 2018 list of companies that "Change the World."

B. The Project

The Project will occupy approximately 582.5 fenced-in acres within an overall 1,425-acre Project Area and generate 90 MW of renewable energy. The Project will consist of utility-scale arrays of solar photovoltaic ("PV") panels, which will generate electricity and supply it to New York State's bulk electric transmission system. In addition to the PV panels, the Project also includes facilities, including inverters, fencing, access roads, buried collection lines, laydown/staging areas, collection substation, and interconnection facilities (collectively, the "Project Components").

1. Statewide Benefits

The Siting Board found that the Project is consistent with the goals set forth in the State Energy Plan (“SEP”),⁵ the 2020 amendment to the SEP,⁶ the Clean Energy Standard (“CES”) adopted by the Commission,⁷ the Climate Leadership and Community Protection Act (“CLCPA” or “Climate Act”),⁸ the Order Adopting Modifications to the Clean Energy Standard (incorporating the goals of the Climate Act into the CES)⁹ and other State and regional policies.

High River has entered into a contract with the New York State Energy Research and Development Authority (“NYSERDA”) to deliver renewable energy on an annual basis to the wholesale electric market, administered by the New York Independent System Operator (“NYISO”), of which NYSEDA will purchase from High River the Renewable Energy Credits (“REC”) associated with these required energy deliveries.¹⁰ Thus, the Project is following the steps laid out in the CLCPA, SEP, and the CES to help achieve the State’s energy and greenhouse gas reduction goals.

As the Siting Board found, renewable resources are vital to New York’s energy future, “. . .providing resilient power, reducing fuel cost volatility, and lowering [greenhouse gas (“GHG”)] emissions.”¹¹ The SEP made renewable energy development a top priority, setting

⁵ *2015 New York State Energy Plan*, New York State Energy Planning Board (June 25, 2015) (“SEP”), available at <https://energyplan.ny.gov/-/media/nysenergyplan/2015-state-energy-plan.pdf>.

⁶ *The Energy to Lead: 2015 New York State Energy Plan: Climate Leadership and Community Protection Act Amendment*, New York State Energy Planning Board (2020) (“SEP Climate Act Amendment”).

⁷ 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 (Aug. 1, 2016) (“CES Order”).

⁸ Climate Leadership and Community Protection Act, 2019 N.Y. Sess. Laws Ch. 106 (McKinney) (“CLCPA”).

⁹ Case 15-E-0302, *supra*, Order Adopting Modifications to the Clean Energy Standard (Oct. 15, 2020) (“Modified CES Order”).

¹⁰ CECPN Order at 32.

¹¹ SEP at 69.

New York on the path to generate 50% of its electricity with renewable sources by 2030.¹²

Large-scale renewables help power New York’s economy and will serve as the backbone to the State’s power grid. They offer immediate benefits, including “. . .economic development and jobs for communities across the State, greater stability in customer bills, [and] cleaner air.”¹³

New York established renewable development at the forefront of its energy policy by implementing in the CES Order the renewable target in the SEP.¹⁴ The chief focus of the CES initiative is on building new renewable resource power generation facilities and reducing total emissions of air pollutants resulting from fossil fuel combustion. The CES Order provides for procurement of environmental attributes from large-scale renewables.

The State’s efforts to increase renewable generation have only accelerated within the past two years. In early 2019, Governor Cuomo announced that New York would more than double the amount of wind and solar energy generation being developed under the CES.¹⁵ The State then enacted one of the nation’s most ambitious climate laws in July 2019: the CLCPA, which ramps up the State’s renewable energy goals even further, increased “. . .the State’s renewable energy penetration goal to 70% by 2030, with 6 GW of solar generation by 2025” and 100% carbon-free electricity by 2040.¹⁶

The Project will advance New York’s emissions goals because it is a renewable energy resource. The Project will reduce GHG emissions and help combat the harmful effects of

¹² SEP at 112.

¹³ SEP at 70.

¹⁴ CES Order at 93–95.

¹⁵ *Governor Cuomo Announces Green New Deal Included in 2019 Executive Budget*, Governor Andrew M. Cuomo (Jan. 17, 2019), available at <https://www.governor.ny.gov/news/governor-cuomo-announcesgreen-new-deal-included-2019-executive-budget>.

¹⁶ See CLCPA §4 (amending PSL §66-p(2)); SEP Climate Act Amendment.

climate change, consistent with the SEP and CLCPA. The Project is expected to reduce annual emissions of CO₂ by approximately 49,754 tons, SO₂ by 11 tons, and NO_x by 15 tons.¹⁷

2. Local Benefits

The Project will also create numerous local benefits, which are described at length in the Article 10 record. Briefly, projections for direct local expenditures during Project development and construction are approximately \$13 million, with construction payroll being the highest at approximately \$9.8 million.¹⁸ The payroll estimate includes wages and salaries, employer-paid insurance costs, paid leave, and payroll taxes. Approximately 60% to 90% of the total payroll is expected to be paid to workers in the region. The estimated payroll associated with the creation of new full-time equivalent (“FTE”) jobs during Project operation is approximately \$259,556 per year.¹⁹ Approximately two and one half FTE jobs are expected to be filled each year over the thirty-year service life of the Project. During the operation of the Project, High River expects to spend approximately \$848,565 in total direct annual expenditures. High River expects that expenditures for materials and equipment costs will be spent locally. These benefits will inure to the Town and region without imposing fiscal costs. While many jobs will be created during construction, there will not be costs imposed on the Town because workers and their families do not typically relocate for construction jobs.²⁰

In addition to these benefits, the Project will inject money into the local economy continuously for many years. High River expects to pay participating landowners upwards of \$16 million over the life of the Project. Agreements for payments-in-lieu-of-taxes (“PILOTs”)

¹⁷ See CECPN Order at 34.

¹⁸ *Id.* at 36.

¹⁹ *Id.*

²⁰ *Id.*

have yet to be finalized, but High River expects to pay tax jurisdictions millions of dollars over the life of the Project. In addition, High River High River expects to negotiate a Host Community Agreement (“HCA”) with the Town, along with a twenty-year PILOT agreement with the Montgomery County Industrial Development Agency. Including PILOT and HCA payments, High River estimates the Town, Montgomery County, and the Greater Amsterdam School District will together realize payments totaling approximately \$11.4 million over the twenty-year life of the Project.²¹

III. HIGH RIVER MEETS THE REQUIREMENTS FOR A CPCN

Section 68 of the PSL provides in relevant part that “[n]o . . . electric corporation shall begin construction of a[n] . . . electric plant without first having obtained the permission and approval of the commission.” Further, “. . .no such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, . . . without first having obtained a certificate of public convenience and necessity issued by the commission.”

However, the applicability of this section has been narrowed for projects the construction of which has been authorized by a Certificate of Environmental Compatibility and Public Need. The Commission has held that for Article 10 projects “. . .the Siting Board’s issuance of a PSL Article 10 Certificate supplants the requirement for construction approval under PSL § 68, but not the requirements for Commission approval of its corporate formation and the exercise of any municipal ‘right, privilege or franchise.’”²²

²¹ *Id.* at 37.

²² Cassadaga CPCN Order at 12.

Under this narrow scope of review, PSL § 68 requires that “. . .the electric corporation seeking approval . . . provide a certified copy of its charter and a ‘verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.’”²³ Attached as Exhibit A hereto is a certificate of High River’s formation and good standing issued by the Delaware Department of State, and a Certificate of Authority from the New York State Department of State. Attached as Exhibit B to this Petition, High River submits verified statements of Kirk Crews and W. Scott Seeley, the President and Secretary of High River that required consents of the proper municipal authorities have been or will be received, to the extent that such consents are not otherwise preempted by Article 10. Because the Project will be located entirely on private property, the only municipal consents required are for road crossings. High River will require Road Use Agreements with the Town of Florida and Montgomery County. A copy of the executed agreements will be filed in this proceeding once finalized.

Finally, the Commission must determine High River’s “. . .ability to construct and operate the Facility.”²⁴ In considering its approval, the Commission examines “. . .the economic feasibility of the corporation, the corporation’s ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates, and whether issuance of a certificate is in the public interest.”²⁵

The question of whether construction and operation of the Project are in the public interest was answered in the affirmative by the Siting Board in the respective Article 10

²³ Cassadaga CPCN Order at 12.

²⁴ *Id.* at 20.

²⁵ *Id.* at 12.

certificate. Therefore, the Commission’s review under PSL § 68 should be limited to economic feasibility of the corporation and High River’s ability to finance improvements of the Project.

High River satisfies this standard. As described above, High River is a wholly-owned, indirect subsidiary of NextEra, which, as discussed above, has a portfolio of generating facilities totaling more than 22,000 MW, and is the world’s largest generator of renewable energy from the wind and sun. NextEra is a subsidiary of NextEra Energy, Inc., which has consolidated revenues of approximately \$19.2 billion, approximately 49,300 megawatts of generating capacity, and approximately 14,800 employees. Through its parent, High River has sufficient access to capital and knowledge to successfully develop and operate the Project.

High River intends to develop, finance, construct, and operate the Project as a merchant facility without relying 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 or through the award of competitive RFPs. In addition, the Project has a NYSERDA REC contract. Neither High River nor any of its affiliates have any retail customers in the State. The Commission has previously found that the scrutiny applicable to monopoly utilities may be reduced for companies like High River that operate in a competitive environment. Therefore, High River has “. . .demonstrated its financial viability and readiness to construct and operate the Facility, and that the issuance of a CPCN . . . is in the public interest.”²⁶

²⁶ Cassadaga CPCN Order at 25.

IV. HIGH RIVER REQUESTS THAT THE COMMISSION APPLY THE LIGHTENED REGULATORY REGIME FOUND APPROPRIATE FOR COMPETITIVE GENERATING FACILITIES THAT OPERATE WHOLLY IN THE WHOLESALE ELECTRIC MARKETS

High River requests that it be regulated under a lightened regulatory regime similar to the regimes the Commission has imposed on other independent power producers that sell electric energy exclusively at wholesale. The Commission first articulated its policy on the regulatory regime for competitive wholesale providers of electricity in its Wallkill Order.²⁷ There, the Commission found it appropriate to modify the regulatory procedures that were intended to apply to monopoly utilities when regulating generators operating in a competitive environment. The Commission established the regulatory requirements that should be imposed on wholesale electric service providers in its orders imposing lightened regulation on Carr Street Generating Station, L.P. and AES Eastern Enterprises, L.P.²⁸

In its Carr Street Order, the Commission found that the generator was subject to regulation as an electric corporation under PSL § 2(13) and was an entity engaged in the manufacture of electricity under PSL § 5(1)(b). As such, the generator was subject to the Commission's jurisdiction under PSL §§ 11, 19, 24, 25, and 26. The Commission also found that the generator was subject to certain provisions of Article 4, namely, PSL §§ 66(6), 68, 69, 69-a, and 70. The Commission noted, however, that, consistent with its Wallkill Order, the generator could fulfill its obligation to file an annual report, pursuant to PSL § 66(6), by submitting the information it is obliged to file with the Federal Energy Regulatory Commission.

²⁷ Case 91-E-0350, *Wallkill Generating Co., L.P.*, Order Establishing Regulatory Regime (Apr. 11, 1994) ("Wallkill Order").

²⁸ Case 98-E-1670, *Carr Street Generating Station, L.P.*, Order Providing For Lightened Regulation (Apr. 23, 1999) ("Carr Street Order"); Case 99-E-0148, *AES Eastern Energy, L.P. & AES Creative Resources, L.P.*, Order Providing For Lightened Regulation (Apr. 23, 1999) ("AES Eastern Order").

The Commission also stated it would presume that PSL § 70 regulation would not apply to transfers of ownership interests upstream from the parent of the regulated entity as long as there is no potential for the exercise of market power arising out of an upstream power transfer.

Finally, the Commission determined that most of the provisions of Article 6 do not apply to wholesale generators. Nonetheless, because the generator in the Carr Street Order would have its capacity marketed by an affiliated power marketer, the Commission ordered it to comply with PSL § 110(2), which gives the Commission access to books and records and the filing of reports in the event the affiliate relationship creates a market power issue. The Commission determined that PSL § 110(1), on reporting of stock ownership, did not apply to the generator because it was organized as a limited partnership.²⁹ The Commission also ordered the generator to comply with PSL § 119-b, regarding the protection of underground facilities from damage by excavators. As for the remainder of Article 6 requirements, the Commission determined that the provisions either do not pertain to wholesale generators or would unnecessarily hinder competitive wholesale generators by interfering with their flexibility to structure the financing and ownership of their facilities.³⁰

In its AES Eastern Order, the Commission applied the principles announced in its Carr Street Order, which was issued the same day. The Commission determined that, as a wholesale generator, Articles 1 and 4 of the PSL would be applied to the generator's operations, but with reduced scrutiny and less stringent filing requirements, and that most of Article 6 would not be imposed.

²⁹ The Commission has, however, stated that it would apply the reporting of stock ownership requirements of Section 110(1) to non-partnership entities. *See, e.g.*, Case 02-E-0362, *Flat Rock Windpower LLC*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Jun. 17, 2004).

³⁰ Carr Street Order at 9.

Here, the Commission should subject High River to lightened regulation for generators selling electricity in wholesale competitive markets. High River requests that the Commission apply the relevant sections of Articles 1 and 4 to its operation with the scrutiny and filing requirements consistent with Commission precedent, and that the Commission not impose Article 6 requirements, except for PSL § 119-b.

V. CONCLUSION

Based on the foregoing, High River respectfully requests that the Commission issue an order granting a CPCN and declaring that High River will be subject to the lightened regulatory regime, as described above, consistent with Commission precedent for similarly situated wholesale generators.

Respectfully submitted,

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Dated: June 25, 2021
Albany, New York

EXHIBIT A

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 "HIGH RIVER ENERGY CENTER, LLC", FILED IN THIS OFFICE ON THE TWENTY-FIFTH DAY OF AUGUST, A.D. 2017, AT 5:40 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

6522740 8100
SR# 20175898991

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

Authentication: 203123914
Date: 08-25-17

State of Delaware
Secretary of State
Division of Corporations
Delivered: 05:40 PM 08/25/2017
FILED: 05:40 PM 08/25/2017
SR 20175898991 - File Number 6522740

STATE OF DELAWARE
LIMITED LIABILITY COMPANY
CERTIFICATE OF FORMATION
OF
HIGH RIVER ENERGY CENTER, LLC

The undersigned, an authorized natural person, for the purpose of forming a limited liability company under the provisions and subject to the requirements of the laws of the State of Delaware (including Chapter 18, Title 6 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified, and referred to as the "Delaware Limited Liability Company Act"), hereby certifies that:

FIRST: The name of the limited liability company (hereinafter called the "limited liability company") is **High River Energy Center, LLC**.

SECOND: The address of the registered office and the name and address of the registered agent of the limited liability company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are:

NextEra Registered Agency, LLC
501 Carr Road, Suite 100
Wilmington, DE 19899

Executed this 25th day of August, 2017.

Melissa A. Plotsky
By: Melissa A. Plotsky
An Authorized Person

STATE OF DELAWARE
LIMITED LIABILITY COMPANY
CERTIFICATE OF FORMATION
OF

HIGH RIVER ENERGY CENTER, LLC

The undersigned, an authorized natural person, for the purpose of forming a limited liability company under the provisions and subject to the requirements of the laws of the State of Delaware (including Chapter 18, Title 6 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified, and referred to as the "Delaware Limited Liability Company Act"), hereby certifies that:

FIRST: The name of the limited liability company (hereinafter called the "limited liability company") is **High River Energy Center, LLC**.

SECOND: The address of the registered office and the name and address of the registered agent of the limited liability company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are:

NextEra Registered Agency, LLC
501 Carr Road, Suite 100
Wilmington, DE 19899

Executed this 25th day of August, 2017.


By: Melissa A. Plotsky
An Authorized Person

**State of New York
Department of State } ss:**

I hereby certify, that HIGH RIVER ENERGY CENTER, LLC a DELAWARE Limited Liability Company filed an Application for Authority pursuant to the Limited Liability Company Law on 08/31/2017. I further certify that so far as shown by the records of this Department, such Limited Liability Company is still authorized to do business in the State of New York.



*Witness my hand and the official seal
of the Department of State at the City
of Albany, this 20th day of May
two thousand and twenty-one.*

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

EXHIBIT B

VERIFICATION

STATE OF Florida)

SS.:

COUNTY OF Palm Beach)

Kirk Crews, being duly sworn, deposes and says that I am the President of High River Energy Center, LLC. I hereby verify that High River Energy Center, LLC has received or will receive the required consent of the proper municipal authorities, to the extent that such consents are not otherwise preempted by PSL Article 10 as fully described in the foregoing Petition.

High River Energy Center, LLC

By: _____

Name: Kirk Crews, II

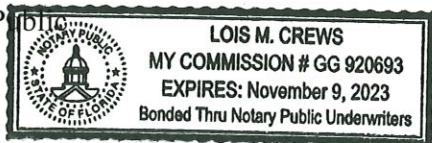
Title: President

Sworn to before me this

22nd day of June, 2021.

Lois M. Crews

Notary Public



VERIFICATION

STATE OF Florida)

SS.:

COUNTY OF Palm Beach)

W. Scott Seeley, being duly sworn, deposes and says that I am the Secretary of High River Energy Center, LLC. I hereby verify that High River Energy Center, LLC has received or will receive the required consent of the proper municipal authorities, to the extent that such consents are not otherwise preempted by PSL Article 10, as fully described in the foregoing Petition.

High River Energy Center, LLC


By: 

Name: W. Scott Seeley

Title: Secretary

Sworn to before me this

24th day of June, 2021.



Notary Public

