

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Verified Petition of Two Rivers Solar Farm, LLC, for an Order Granting a Certificate of Public Convenience and Necessity Pursuant to Public Service Law Section 68, Lightened Regulation, and Approval of Financing Pursuant to Public Service Law Section 69.

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Case: 25-E-\_\_\_\_\_

**VERIFIED PETITION OF TWO RIVERS SOLAR FARM, LLC, FOR  
AN ORDER GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND  
NECESSITY PURSUANT TO PUBLIC SERVICE LAW SECTION 68, LIGHTENED  
REGULATION, AND APPROVAL OF FINANCING PURSUANT TO  
PUBLIC SERVICE LAW SECTION 69**

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Dated: September 24, 2025

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AN ORDER GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND  
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PUBLIC SERVICE LAW SECTION 69**

On September 19, 2025, the New York State Office of Renewable Energy Siting and Electric Transmission (“ORES” or, the “Office”) issued a draft siting permit to Two Rivers Solar Farm, LLC (“Two Rivers” or “Petitioner”), for the construction of a 200-megawatt (MW) photovoltaic (PV) solar energy generation facility in the Towns of Brasher and Massena, St. Lawrence County, New York.<sup>1</sup> After obtaining a Siting Permit, Two Rivers remains responsible for obtaining a Certificate of Public Convenience and Necessity (“CPCN”) under Public Service Law (“PSL”) § 68 from the Public Service Commission (the “Commission”).<sup>2</sup> Two Rivers hereby files this petition respectfully requesting that the Commission issue (1) a CPCN to Two Rivers, pursuant to PSL § 68, (2) an Order finding that Two Rivers, as a wholesale electric market

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<sup>1</sup> Matter No. 23-02991: *Application of Two Rivers Solar Farm, LLC for a Major Renewable Energy Facility Siting Permit Pursuant to Article VIII of the New York State Public Service Law to Develop, Design, Construct, Operate, Maintain, and Decommission an up to 200-Megawatt (MW) Solar Energy Facility Located in the Towns of Massena and Brasher, ST. Lawrence County, Draft Permit (Issued September 19, 2025).*

<sup>2</sup> See 16 NYCRR § 1100-6.1(d)(1).

participant, is entitled to a lightened regulatory regime, (3) an Order approving a proposed financing involving debt payable at a term greater than 12 months, and (3) an Order finding that the public hearings by PSL § 68 be held before the Commission pursuant to 16 NYCRR § 21.10 (Expedited proceedings on non-contested applications).

Although ORES’ rules authorize the Commission to approve construction or operation of the Project through issuance of a CPCN, such authorization comes with “the understanding that the Commission will not duplicate any issue already addressed by the Office and will instead only act on its police power functions related to the entity as described in the body of [the] siting permit.”<sup>3</sup> As stated by the Commission, “[t]he granting of a CPCN... is an activity undertaken in relation to the Final Permit issued by ORES.”<sup>4</sup> Thus, the scope of this proceeding is limited. This proceeding should not duplicate the public need and environmental compatibility issues resolved in the PSL Article VIII proceeding and resultant permit.<sup>5</sup> In considering issuance of a CPCN, the Commission “shall consider 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.”<sup>6</sup>

As will be shown herein, Two Rivers has obtained all necessary local approvals and has sufficient financial resources to construct the Project and significant expertise to operate it. Two

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<sup>3</sup> 16 NYCRR § 1100-6.1(d)(1).

<sup>4</sup> Case 21-E-0345: *Petition of Morris Ridge Solar Energy Center, LLC, for a Certificate of Public Convenience and Necessity*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (November 24, 2021), at 13 (“Morris Ridge Order”).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 12.

Rivers will also operate the Project as a competitive wholesale generator. As such, the Commission's Order should also find, as has been done for numerous generators operating under similar circumstances, that Two Rivers is entitled to a lightened regulatory regime.

Lastly, Petitioner seeks authorization under PSL § 69 to enter into indebtedness up to \$401 million dollars or such amount as may be necessary in order to procure construction financing for the facility, with a maturity date of more than twelve (12) months. Boralex plans to finance the development and construction of Two Rivers through a mix of debt and equity capital. Development and pre-construction activities (e.g., tree clearing) will be funded with sponsor equity. Construction will be funded with a combination of debt facilities, tax equity, and sponsor equity. Boralex estimates that the latter will comprise between 10 and 20 percent of the total capital required for the construction of the Projects. Granting this request is in the public interest as it will provide Petitioner and its affiliates with continuing access to capital to construct the Facility and strengthen their ability to provide cost-effective, safe, and reliable service and construction of the Project itself will contribute to New York's renewable energy goals.

In conducting its review, Petitioner requests that the Commission waive the PSL § 68 general requirement for the Commission to hold a hearing in this proceeding, as such a waiver is consistent with the Commission's approach to PSL § 68 reviews in other CPCN proceedings involving renewable energy projects.<sup>7</sup> The PSL Article VIII review process generated a substantial record and there has already been ample opportunity for public input. Based on the public

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<sup>7</sup> See e.g. Case 07-E-1343: *Marble River, LLC*, Order Granting Order Granting Certificate of Public Convenience and Necessity, and Providing for Lightened Regulation (June 19, 2008); Case No. 07-E-1213, *Sheldon Energy LLC*, Order Granting and Amending Certificates of Public Convenience and Necessity and Providing for Lightened Regulation (January 17, 2008); Case 07-E-1258, *Noble Wethersfield Windpark*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (December 12, 2007).

comments and feedback that have been received to date through PSL Article VIII process, the Town and public are generally in support of the project and the construction, operation and benefits that are associated with the project and the commencement of Project construction in a timely manner. The record that has been established in the PSL Article VIII proceedings obviates the need for additional hearings to be held by the Commission on the CPCN, especially in light of the limited scope of the Commission's review, the general public support of the project to date, and all of the available options for public comments on the Petition to be provided. Therefore, the Commission should find that this Petition is entitled to an expedited proceeding pursuant to 16 NYCRR § 21.10. If a hearing is required, Petitioner requests that a public statement hearing be scheduled in satisfaction of the hearing requirements of PSL § 68 and if no comments or information, oral or written, raise any material issues of fact, that the Commission immediately rule, at the public statement hearing, that no evidentiary hearings be held.

Petitioner requests that a CPCN be issued expeditiously as the Project is consistent with the State's climate and renewable energy policies, and timely action on this Petition will ensure that the necessary approvals are in place to allow for the construction of the Project on the timeline that will allow it to contribute to keeping the State on track to meeting renewable energy targets.

## **I. BACKGROUND**

### **A. The Project**

The Facility is a solar photovoltaic energy generating project in the Towns of Brasher and Massena, St. Lawrence County, New York. The Facility will have a generating capacity of 200 MW alternating current and will be located on land leased and/or purchased from owners of private property within an approximately 3,168.4-acre area. Proposed Facility components include commercial-scale solar photovoltaic arrays, access roads, inverters, fencing, electric collection

lines, and electrical interconnection facilities. Two Rivers intends to construct, own, operate, and maintain all components of the Facility. The Facility will interconnect on-site to the New York Power Authority's 345 kV line HW2 from Haverstock substation to Willis E substation (which is currently operating at 230kV but is under construction to be upgraded to 345kV by 2025 in advance of Solar Facility interconnection) to deliver power to the New York State electricity grid.

The proposed Project will directly contribute significantly to New York State's Climate Leadership and Community Protection Act targets by producing up to 200 MW of renewable solar energy directly to New York's energy market. The Project will produce enough zero-emissions energy to power approximately 56,000 New York households. The Project will also create job opportunities, support economic growth, and protect public health, safety, and the environment by significantly reducing greenhouse gas emissions.

**B. The Parties**

**i. Two Rivers Solar, LLC**

Two Rivers is a special purpose entity created to own and operate the Facility. Two Rivers, a Delaware limited liability company is a wholly owned subsidiary of Boralex US Development LLC ("Boralex").

**ii. Boralex**

Boralex is a power producer whose core business is dedicated to the development and the operation of renewable energy power stations. Boralex develops, builds, and operates renewable energy power facilities in Canada, France, the United Kingdom, and the United States. A leader in the Canadian market and France's largest independent producer of onshore wind power, Boralex is recognized for its solid experience in optimizing its asset base in four power generation types – wind, hydroelectric, storage and solar. Boralex ensures sustained growth by leveraging the

expertise and diversification developed over 30 years. Boralex owns and operates approximately 3,268 MW of renewable power plants globally, including seven hydroelectric projects in New York State, and more than a hundred facilities in Canada and France. Boralex currently has 78 MW of operational projects in New York and 970 MW of proposed projects.

Boralex’s shares are listed on the Toronto Stock Exchange under the ticker symbol BLX. Boralex’s market capitalization as of August 25, 2025, is ~CAD \$3.0 billion. Boralex’s strong financial profile is underpinned by stable cash-flow generation, as 92% of Boralex’s generation capacity is contracted under long-term power purchase agreements at fixed or indexed prices with an average term remaining in the contracts of approximately 10 years—with 11 years in North America and 10 years in Europe (as of June 30, 2025). Boralex’s strong financial profile is documented in the latest annual report and quarterly results available on Boralex’s website: <https://www.boralex.com/investors/events-and-presentations/>.

## **II. PETITION FOR CPCN**

### **A. Standard for Issuing CPCN under PSL § 68**

Section 68 of the PSL generally requires electric corporations to obtain a CPCN from the Commission before commencing construction of an electric plant. The issuance of a siting permit by ORES supplants the requirements for construction approval under PSL §68, but Commission approval of corporate formation and exercise of any municipal “right, privilege or franchise” is still required.<sup>8</sup> However, for projects that are undergoing review through Article VIII, formerly Section 94-c, or have been issued siting permits from ORES, such as Two Rivers, such review will be limited with “the understanding that the [Commission] will not duplicate any issue already

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<sup>8</sup> See e.g., Case 19-E-0277, *Baron Winds, LLC Section 68 Petition*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued April 23, 2020); Morris Ridge CPCN Order.

addressed by [ORES] and will instead only act on its police power functions related to the entity as described in the body of this siting permit.”<sup>9</sup> Thus, the Commission’s review of the instant petition is limited in scope with respect to the approval of corporate formation and the exercise of any municipal “right, privilege or franchise” and should not duplicate the public need and environmental compatibility issues resolved in the PSL Article VIII proceeding and final siting permit in such review.

According to the Commission, before it may issue a CPCN, the electric corporation seeking approval must 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.”<sup>10</sup> In considering its approval, the Commission “consider[s] 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.”<sup>11</sup>

In conjunction with meeting the requirements specified in PSL § 68 as interpreted in the Cassadaga CPCN Order, Petitioner must also satisfy the requirements for CPCNs set forth in 16 NYCRR §§ 21.2 and 21.3. Consistent with the Cassadaga CPCN Order, and as demonstrated by the Commission’s determination in the Morris Ridge CPCN Order, the record developed in the PSL Article VIII proceeding, when viewed alongside supplemental information provided through this Petition and proceeding, is sufficient to satisfy the requirements of 16 NYCRR Part 21 and to

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<sup>9</sup> Matter No. 23-02991, *supra* fn 1, Draft Permit for a Major Renewable Energy Project, p. 6; *see also* Cassadaga CPCN Order, at 20.

<sup>10</sup> *See* Morris Ridge CPCN Order, at 12 (citing PSL § 68).

<sup>11</sup> *Id.*

provide a full evidentiary record.<sup>12</sup> Two Rivers requests that, as it did in the Morris Ridge CPCN Order, the Commission find that through this Petition and supplemental information provided during the course of this proceeding, and the record developed in the PSL Article VIII proceeding, sufficient information is available to satisfy the requirements of 16 NYCRR Part 21 and provide a full evidentiary record.

**B. Required Findings for Project under PSL § 68**

**i. Certified Charter**

Before the Commission can issue a CPCN, PSL § 68(1) requires the electric corporation seeking approval to submit “a certified copy of its charter.”<sup>13</sup> A copy of Petitioner’s Certificate of Formation, certified by the State of Delaware Secretary of State, Division of Corporations, is attached hereto as **Exhibit A**. Database records for Two Rivers demonstrating that the company is registered to do business in New York as a foreign limited liability company and that it has properly registered an agent for service of process is attached hereto as **Exhibit B**.

**ii. Consent of Municipal Authorities**

Pursuant to PSL § 68, Two Rivers is also required to provide the Commission with a “verified of the president and secretary of the corporation, showing that it has received the required franchise consent of the proper municipal authorities.”<sup>14</sup> Two Rivers will not provide utility service in any territory and does not require any municipal right or privilege under franchise. With respect to municipal rights-of-way, certain portions of the Facility’s collection and transmission lines will cross or otherwise be located on municipal right of ways (“ROWS”). The local laws of

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<sup>12</sup> *Id.* at 14.

<sup>13</sup> *See* Morris Ridge CPCN Order, at 12 (citing PSL § 68).

<sup>14</sup> PSL § 68(1); *see also* Morris Ridge CPCN Order, at 12.

the Towns of Brasher and Massena do not require Petitioner to enter into Host Community or Road Use Agreements to construct and operate the Project within municipal ROWs.<sup>15</sup>

Two Rivers does not have a president or secretary. In fulfillment of the requirement that the Commission ensure that the entity has received the necessary consents of the municipal authority for use of municipal property or public ROWs, Two Rivers has included as **Exhibit C** a verified statement of an authorized representative that the consents of the proper municipal authorities necessary for issuance of a CPCN have been received, to the extent that such consents are not preempted by PSL Article VIII. The Commission has accepted a verification from an authorized representative in situations where the project company does not have a president or secretary.<sup>16</sup>

As discussed in greater detail in Section III below, other information required by 16 NYCRR § 21.2 is not relevant because Two Rivers does not have an expired franchise and has not been granted any permit, license or authority by any Federal authority relative to the Project that will not be addressed in the ORES proceeding.

### **C. Evidence Relating to Economic Feasibility of Entity and Entity’s Ability to Finance Improvements**

Pursuant to PSL § 68, the Commission must to consider “the economic feasibility of the corporation, and the corporation’s ability to finance improvements of . . . an electric plant.”<sup>17</sup> Petitioner notes that the “the economic feasibility” and “ability to finance” requirements were meant to apply to monopoly utilities, whose unwise financial decisions were historically passed

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<sup>15</sup> See, Case No. 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.*

<sup>16</sup> See, Case 21-E-0502: *Petition of Flint Mine Solar, LLC*, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Regulation, and Making Other Findings (June 21, 2022).

<sup>17</sup> See also, Cassadaga CPCN Order, at 12.

on to ratepayers, and not to competitive generators who must compete in the marketplace, and who bear their own economic risks.<sup>18</sup> As set forth in Section IV below, numerous wholesale electric generators, including utility-scale solar generation facilities, have been granted lightened regulation by the Commission.<sup>19</sup> The Legislature’s decision to amend PSL § 68 in 2013 to require additional scrutiny of a utility’s financial fitness was intended to ensure that utilities awarded franchises as the sole retail provider (or one of a limited number of providers) have the resources necessary to respond to storms and outages expediently and otherwise fulfill their obligations to their customers.<sup>20</sup> Arguably, these amendments to PSL § 68 were not intended to address generation siting, since the consequences of a certified Project failing to compete effectively will fall almost entirely on the Facility’s owners and shareholders, obviating the need for Commission

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<sup>18</sup> See Case 07-E-0213: *Sheldon Energy LLC*, Order Granting and Amending Certificates of Public Convenience and Necessity, and Providing for Lightened Regulation, p. 15 (Jan. 17, 2008), in which the Commission held that strict financial oversight requirements for utilities “were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers.” Meanwhile, in the case of competitive market participants like the Applicant, the Commission holds that, “[s]o long as the wholesale generation market is effectively competitive, wholesale generators cannot raise prices even if their costs rise due to poor management. Moreover, imposing these requirements could interfere with wholesale generators’ plans for structuring the financing and ownership of their facilities. This could discourage entry into the wholesale market, or overly constrain its fluid operation, adversely affecting its operation to the detriment of the public interest.” Case 99-E-0974: *NRG Energy, Inc. and Oswego Harbor Power LLC Joint Petition for a Declaratory Ruling that Lightened Regulation be Applied to their Purchase of the Oswego Fossil Fuel Generating Plant from Niagara Mohawk Power Corporation*, Order Providing for Lightened Regulation (Oct. 21, 1999), at 5.

<sup>19</sup> See Wallkill Order, Carr Street Order, AES Order.

<sup>20</sup> PSL § 68 was amended in 2013 to add several new requirements for CPCN holders to demonstrate financial fitness to provide certain services to New York electric consumers. These amendments authorize the Commission to engage in additional scrutiny of a public utility’s internal organization and financial condition in situations where that utility obtains a franchise agreement under which it will serve as the only, or one of a limited number of, retail provider(s) available in a given area. In response to Hurricane Sandy and utility response, the 2013 legislation was enacted to expand the Commission’s authority to impose sanctions and revoke a CPCN for a utility’s service territory “based on findings of repeated violations . . . that demonstrate a failure of such corporation to continue to provide safe and adequate service.” PSL 68(2). See 2013 Sess. Law News of NY Ch. 57 (S.2607-D) (Approved March 29, 2013). Given the Commission’s longstanding preference for a lightened regulatory regime for competitive wholesale market participants who do not have captive ratepayers to fall back on, it does not appear that the additional financial oversight requirements in the amended Section 68 were intended to apply to competitive generators who must compete in the marketplace, and who bear their own risks in that marketplace. This is like other provisions of the Public Service Law that have been deemed inapplicable to wholesale electric generators. For those reasons, Petitioners believe the level of detail provided in this Petition is appropriate and proportional to the regulatory oversight of wholesale market participants which the Commission prefers.

oversight. Nevertheless, PSL Article VIII compels compliance with those aspects of PSL § 68 that are not addressed by the PSL Article VIII process, including “the economic feasibility of the corporation” and “the corporation’s ability to finance improvements of . . . an electrical plant.”

As discussed above, Petitioner’s parent companies have substantial experience in the construction and operation of utility-scale renewable electric generation facilities of all types, including solar. As discussed above, Boralex develops, builds, and operates renewable energy power facilities in Canada, France, the United Kingdom, and the United States. Boralex is a leader in the Canadian market and France’s largest independent producer of onshore wind power and is recognized for its 30-year experience in optimizing its asset base in wind, hydroelectric, storage and solar projects. Boralex owns and/or operates approximately 123 renewable generation facilities ranging from 1 MW to 272 MW, for a total net installed capacity of over 3 GW. Boralex owns and operates six hydroelectric projects (all in New York State), seven solar projects, and five wind projects in the United States, and more than a hundred facilities in Canada and France.

This record demonstrates that Petitioner’s parent companies have substantial experience in the construction and operation of competitive renewable energy projects all across the globe, and that experience will be leveraged to ensure that Two Rivers remains competitive and financially viable throughout its lifespan.

Two Rivers has not constructed the Project and therefore does not have any material assets or direct financing abilities. However, once the Facility receives necessary permits and approvals, the financing needed to construct the Facility will be obtained through balance sheet, construction loans or other financing mechanisms (*See* Section V, below). The cost of constructing the facility will be financed through Boralex’s robust balance sheet with tax equity investors entering the project ownership structure at or post-Notice To Proceed.

Evidence has demonstrated that the Project will be economically feasible. The Project will realize income from the sale of renewable energy certificates pursuant to a long-offtake agreement with NYSERDA. In 2024, NYSERDA awarded Two Rivers a Tier 1 contract (RESRFP24-1). Consistent with the discussion above, the owners of the Project are financially viable, and the Project itself will be economically feasible.

**D. Information About Petitioner’s Ability to Render Safe, Adequate and Reliable Service**

To the extent this standard applies to a wholesale generator, this element of the CPCN review has already been addressed as part of the PSL Article VIII review process and need not be duplicated with respect to the CPCN. The information to meet this standard has already been submitted to ORES in multiple PSL Article VIII Application exhibits, mainly Exhibit 6, *Public Health, Safety, and Security*, which includes an evaluation of all efforts made to avoid and minimize potential adverse impacts of the construction and operation of the facility, the interconnections, and related facilities on the environment, public health, and safety as well as site security and safety response plans.<sup>21</sup> Two Rivers’ ability provide adequate and reliable service was also assessed by ORES in its review and issuance of a siting permit, with relevant information addressed in Exhibit 17, *Consistency with Energy Planning Objectives*,<sup>22</sup> and Exhibit 21, *Electric System Effects and Interconnection*.<sup>23</sup>

Petitioner notes that, under a lightened regulatory regime, Two Rivers will remain subject to PSL requirements relating to matters such as enforcement, investigation, safety, reliability, system improvement, and other requirements under PSL Articles 1 and 4, to the extent these

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<sup>21</sup> See 16 NYCRR § 1100-2.7.

<sup>22</sup> See 16 NYCRR § 1100-2.18.

<sup>23</sup> See 16 NYCRR § 1100-2.22.

regulatory areas have been discussed in previous lightened regulation Orders.<sup>24</sup> Two Rivers anticipates that, as has been required of other lightly-regulated generators, it will be required to conduct tests for stray voltage on all publicly accessible electric facilities,<sup>25</sup> give notice of generation unit retirements,<sup>26</sup> and report personal injury accidents pursuant to 16 NYCRR Part 125. According to the Commission, “[t]hese conditions further ensure [lightly regulated generators] will render safe, adequate, and reliable service.” Compliance with these requirements will further ensure that Two Rivers will render safe, adequate and reliable services.

Two Rivers’ ability to finance Project improvements and to render safe, adequate and reliable service is further demonstrated by the economic feasibility and financial viability based on the financial strength of its parent company and its commitment to providing the financial support necessary for Two Rivers to construct and operate the Facility.<sup>27</sup>

#### **E. Evidence Demonstrating Petitioner’s Ability to Provide Just and Reasonable Rates**

Two Rivers will operate the Project on a merchant basis in competitive wholesale markets and will not serve captive retail customers. The “just and reasonable rates” factor was intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers, and is inapplicable in the context of a Project like Two Rivers.<sup>28</sup> The Commission has stated that “so long as the wholesale generation market is effectively

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<sup>24</sup> See e.g. Morris Ridge CPCN Order, at 19.

<sup>25</sup> *Id.* (citing Case 04-M-0519, *Safety of Electric Transmission and Distribution Systems*, Order Instituting Safety Standards [issued January 5, 2005], and Order on Petitions for Rehearing and Waiver [issued July 21, 2005]).

<sup>26</sup> *Id.* (citing Case 05-E-0889, *Generation Unit Retirement Policies*, Order Adopting Notice Requirements for Generation Unit Retirements [issued December 20, 2005]).

<sup>27</sup> See e.g. Morris Ridge CPCN Order, at 15; Cassadaga CPCN Order, at 25.

<sup>28</sup> See e.g. Morris Ridge CPCN Order, at 9, 18 (noting no retail service would be provided by the solar generator, and as such not required to demonstrate ability to provide just and reasonable rates); Cassadaga CPCN Order, p. 8 (noting no retail service will be provided by the wind energy generator).

competitive, wholesale generators complying with tariffs approved by the Federal Energy Regulatory Commission will provide just and reasonable rates and cannot raise prices even if their costs rise due to poor management.”<sup>29</sup> Moreover, the Commission has also acknowledged that “imposing these requirements could interfere with wholesale generators’ plans for structuring the financing and ownership of their facilities . . . [and] discourage entry into the wholesale market or introduce inefficiencies into market operations *to the detriment of the public interest.*”<sup>30</sup>

#### **F. Evidence/Documents Under Commission’s Regulations**

As previously stated herein, the Commission has adopted regulations identifying the evidence and documentation required to support CPCN petitions.<sup>31</sup> Based on the Morris Ridge CPCN Order and proceedings before the Commission in that case, evidence/documents addressed in a PSL Article VIII proceeding and issuance of a permit do not need to be duplicated/reproduced in a CPCN proceeding. Accordingly, we request that Two Rivers be treated similarly in this proceeding and duplication/reproduction of evidence/documents produced and thoroughly reviewed during the PSL Article VIII proceeding not be required here.

Furthermore, certain other regulatory requirements are inapplicable to competitive wholesale generation facilities such as the Two Rivers Project. With respect to subsections of 16 NYCRR § 21.2, the Petitioner notes that:

- (a) Two Rivers is not proposing to render utility service in any territory and accordingly the information required by this subsection is inapplicable.

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<sup>29</sup> See Morris Ridge CPCN Order, at 18; Cassadaga CPCN Order, at 24.

<sup>30</sup> See Morris Ridge CPCN Order, at 18.

<sup>31</sup> See 16 NYCRR § 21.2 and 21.3.

- (b) No franchises have been or will be granted to or by the municipalities in which the Project will be constructed. Therefore, no certified copies of franchises need to be submitted. As previously noted, no municipal consents are required to locate the Project collection lines in municipal ROWs nor to intersect access roads with town roads.
- (c) The Petitioner has not previously secured authority to exercise powers granted under a prior franchise that has expired; therefore, this provision also does not apply.
- (d) All permits, licenses or authorities by any Federal authority relative to this pending Petition will be addressed in the PSL Article VIII proceeding.

With respect to the subsections of 16 NYCRR § 21.3, Petitioner notes that:

- (a) Petitioner does not propose to exercise authority granted by a franchise in any territory, so this provision is not applicable. Information about the towns in which the Project is proposed to be constructed, and the approximate dates that construction will begin, has already been addressed in the PSL Article VIII proceeding.
- (b) A detailed description of the plant to be constructed, and its estimated costs, is provided in the PSL Article VIII Application and proceeding.
- (c) As discussed above, the Project will be financed mix of debt, tax equity, and sponsor equity. Pre-construction and development expenditures will be funded with sponsor equity (i.e., on Boralex's balance sheet). Construction expenditures will be funded with debt facilities—namely, a construction loan and a tax equity bridge loan—and the balance with sponsor equity. Boralex estimates that the latter will comprise around 15-25% of total construction costs.

- (d) Petitioner is not proposing to provide services for which retail rates would be charged, making this section inapplicable.
- (e) The estimated revenues to be derived from the Project will generally be derived from an off-take agreement with the NYSERDA and through sales of electricity into the wholesale market. The estimated expenses of operation of the Project for the first three years of service have been examined in the PSL Article VIII proceeding and can be found in the socioeconomic report in Application Exhibit 18.<sup>32</sup> Petitioner does not propose to provide service to residential, commercial or industrial customers in any territory. Therefore, the latter half of this provision is inapplicable.
- (f) Refer to Section II.C above for information responsive to this provision.
- (g) Petitioner is not proposing to provide services in this manner; these provisions regarding the availability of other services in this territory are inapplicable.

### **III. LIGHTENED REGULATORY SCHEME**

The Commission has interpreted the PSL in a manner that best achieves the statutory intent and objects of the legislation and advances the public interest. In doing so, the Commission has already concluded that new forms of electric service providers participating in competitive wholesale markets would be lightly regulated. In a series of Orders—the *Wallkill Order*,<sup>33</sup> the *AES*

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<sup>32</sup> The Commission has accepted estimated expenses for Project operations, as contained in Exhibits 4 and 18 of a Section 94-c application, in satisfaction of the requirements of 16 NYCRR § 21.3 (e). *See. e.g.*, Morris Ridge CPCN Order.

<sup>33</sup> *See* Case 91-E-0350: *In re Wallkill Generating Co.*, LP Order Establishing Regulatory Regime (April 11, 1994) (“Wallkill Order”).

*Order*<sup>34</sup> and the *Carr Street Order*<sup>35</sup>—the Commission outlined this “lightened regulatory regime” applicable to wholesale generation facilities which fall under the definition of “electric corporation” in PSL § 2(13), but which are not a traditional monopoly “utility company” or “public utility” under PSL § 2(23). This lightened regime has since been granted to numerous wholesale renewable electric generation facilities throughout the State.<sup>36</sup>

In the above referenced series of orders, the Commission determined that, under a lightened regulatory regime, certain requirements—which were developed to address monopoly utilities—do not apply to competitive wholesale electric providers, such as Two Rivers, that are operating in a competitive environment.<sup>37</sup> These items, which address rates, recordkeeping, internal financing and transactions among other subjects, including most of the provisions in PSL Articles 2, 4 (except § 68, 69, 69-a and 70) and 6 (except §§ 110(1), 110(2) and 119-b); PSL § 115 on competitive bidding; PSL § 72-a requiring that monthly fuel costs reports be filed and PSL §§ 106, 107, 108, 110(3) and 110(4), relating to loans, use of revenues, mergers, and certain types of contracts do not apply in this context.

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<sup>34</sup> Case 99-E-0148: *AES Eastern Energy LP*, Declaratory Ruling on Lightened Regulation (April 23, 1999) (“AES Order”).

<sup>35</sup> Case 98-E-1670: *Carr Street Generating Station LP*, Order Providing for Lightened Regulation (Apr. 23, 1999) (“Carr Street Order”); *See also* Case 07-E-0213: *Sheldon Energy LLC*, Order Granting and Amending Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Jan. 17, 2008) (noting those sections of the PSL applicable to retail service providers).

<sup>36</sup> *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, pp. 11-15 (June 17, 2004); Case 05-E-1634: *Noble Clinton Windpark I, LLC*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation, pp. 9-13 (Oct. 19, 2006); Case 11-E-0351: *Stony Creek Energy LLC*, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Rate Making Regulation and Approving Financing, pp. 37-41 (Dec. 15, 2011); Case 07-E-1343: *Marble River, LLC*, Order Granting Certificate of Public Convenience and Necessity, and Providing for Lightened Regulation, pp. 16-19 (June 19, 2008). *See also* Morris Ridge CPCN Order, pp. 15-20; Cassadaga CPCN Order, pp. 21-25.

<sup>37</sup> *See* Case 99-M-1722: *Applicability of Public Service Law Provisions to Competitive Entities*, Order Instituting Proceeding (Dec. 17, 1999).

Consistent with the *Wallkill*, *AES* and *Carr Street* Orders and various orders granting lightened regulation to renewable energy projects, including the recently issued Hecate Energy Cider Solar CPCN Order and Morris Ridge CPCN Order, the following limited provisions of the PSL should apply to Two Rivers as a wholesale generator: PSL §§ 11, 19, 24, 25, and 26, preventing electricity producers from taking actions contrary to the public interest; PSL § 66(6) and § 111 on annual reporting; PSL §§ 69 or 69-a involving issuance of securities or debt instruments, which requires approval of the Commission under a separate “reduced scrutiny” standard; PSL § 70 regarding transfer of property or direct ownership of the facility; PSL §§ 110(1) and (2); and PSL 119-b on protection of underground facilities.

Consistent with the Commission’s prior decisions, Two Rivers respectfully requests an Order of the Commission confirming that a lightened regulatory scheme shall be applied to its wholesale electric activities in the New York market and granting such other and further relief as it deems necessary or appropriate.

#### **IV. HORIZONTAL AND VERTICAL MARKET POWER**

The Two Rivers Project will generate up to 200 MW of electricity. Two Rivers, through its parent corporation, is also affiliated with approximately 78 MW of operating projects and an additional 770 MW of proposed projects in New York, not including the Two Rivers Project. See **Exhibit D** for a map and list of all operating and proposed projects in New York State.

After construction of the Two Rivers project, when added to the existing generation described above, Boralex’s aggregate operational generation in New York will rise to 278 MW. Accordingly, Boralex’s in-State operational generation amounts to less than 1% of NYISO’s

forecast of 2025 coincident summer peak demand for the New York Balancing Authority Area as a whole of 31,471 MW.<sup>38</sup>

Even taking into consideration all proposed and existing generation, Boralex's in-state generation would total 1,048 MW or 3.3% of 2025 coincident summer peak demand. The Commission has held in other cases that a total ownership share as high as 8.1% of NYISO installed capacity is insufficient to raise horizontal market power concerns.<sup>39</sup>

Any concern that Two Rivers' additional generation capability would somehow enable it to raise market prices to benefit other projects is precluded by both the energy price mitigation provisions of the NYISO's BAA and Market Services Tariff and by the fact that any changes in wholesale prices will provide no benefit to other projects, as their revenues will be fixed by their indexed REC agreements with NYSERDA.<sup>40</sup>

With respect to vertical market power, neither Two Rivers nor its Parent corporations own or control any traditional franchised utilities with captive customers in New York, nor do they or their affiliates own or control any transmission facilities in New York other than the limited interconnection equipment necessary to connect their generating facilities to the transmission grid. Neither entity or its affiliates is a scheduling coordinator, reliability coordinator, electric or gas transmission or distribution provider or balancing authority within (or into) the New York Control

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<sup>38</sup> See NYISO 2025 Load & Capacity Report at 24.

<sup>39</sup> Case 08-E-0410, *Petition of LS Power Development, LLC For a Declaratory Ruling Regarding the Acquisition of Common Stock, or in the Alternative, Approval Under Section 70 of The Public Service Law*, Declaratory Ruling on the Acquisition of Common Stock, slip op. at 8 (Issued and Effective May 27, 2008).

<sup>40</sup> Case 20-E-0481, *Petition of Mohawk Solar LLC for an Order Granting a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law and for an Order Granting Lightened Regulation*, Order Granting Certificate Of Public Convenience And Necessity And Providing For Lightened Regulation, slip op. at 17-18 (Issued and Effective September 14, 2021) (“The Indexed REC contract will reduce the incentive of the affiliates owning transmission and distribution to discriminate against non-affiliated generators because, while that discrimination could impact the price Mohawk Solar receives for its power, its overall profit remains relatively steady as the price it receives for RECs will go down as wholesale energy prices rise.”).

Area or has control over the provision of fuels used in generation within the State of New York. Accordingly, there are no vertical market power issues.

## **V. THE COMMISSION SHOULD APPROVE THE FINANCING**

Pursuant to PSL § 69, Commission authorization is required before an electric corporation may enter into indebtedness payable at a period of greater than twelve months.<sup>41</sup> In this instance, Petitioner seeks authorization to incur aggregate debt up to \$401 million dollars or such amount as may be necessary in order to procure construction financing for the facility, payable over a period of approximately eighteen (18) months. Two Rivers will operate the Project as a competitive wholesale generator, and as such, anticipates that the Commission will find, as has been done for numerous generators operating under similar circumstances, that Two Rivers is entitled to a lightened regulatory regime. Petitioner respectfully requests that the Commission review the instant petition with the reduced level of scrutiny afforded lightly regulated entities.

As noted above, Boralex plans to finance the development and construction of the Two Rivers Project through a mix of debt and equity capital. Boralex has provided and will continue to provide equity capital to fund all development activities associated with Two Rivers. Development activities include, for example, securing and executing lease and other property rights; obtaining permits; conducting resource assessments and feasibility studies; coordinating preliminary engineering designs; etc. This funding arrangement will continue until the start of major construction activities.

Construction will be funded with a combination of debt facilities, tax equity, and sponsor equity. Boralex estimates that sponsor equity will comprise between 10 and 20 percent of the total capital required for the construction of the project.

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<sup>41</sup> PSL § 69.

More specifically, Boralex plans to fund the construction of the Two Rivers Project through a combination of sponsor equity and debt facilities—namely, a construction-to-term loan facility and a tax equity bridge loan facility (together, the “Debt Facilities”). Boralex plans to source the Debt Facilities from a group of its core relationship banks who are active in the sector. Based on current market conditions and lender feedback, Boralex estimates that up to 90 percent of the construction costs could be funded with debt - or approximately \$401 million. The Debt Facilities will have a term of approximately 18 months, commensurate with the construction period for Two Rivers. Because the Debt Facilities are for a term greater than 12 months, Commission approval pursuant to PSL § 69 is required and by the instant Petition, Petitioner seeks authority to enter into this type of short-term indebtedness of up to \$401 million and/or guarantee and pledge ownership interests in itself and the Facility as collateral security for the repayment of this debt.

Petitioner further seeks 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 \$401 million dollar 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.”<sup>42</sup>

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

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<sup>42</sup> See, e.g., Case 11-M-0483, *Sithe/Independence Partners, L.P.*, "Order Approving Financing" (Dec. 21, 2011), at 4 ("Sithe Order").

by the terms of the proposed Financing described herein because Petitioner and its affiliates and investors bear all the financial risk associated with these financing arrangements. According to the Commission, "[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."<sup>43</sup> Such is the case here and Petitioner respectfully requests Commission approval of the Financing.

## **VI. CONCLUSION**

For the reasons set forth above, the Petitioner respectfully requests that the Commission issue (1) a CPCN to Two Rivers, pursuant to PSL § 68, (2) an Order finding that Two Rivers, as a wholesale electric market participant, is entitled to a lightened regulatory regime, (3) an Order approving the proposed Financing, and (4) an a finding that the public hearings by PSL § 68 be held before the Commission pursuant to 16 NYCRR § 21.10 (Expedited proceedings on non-contested applications).

Given the limited nature of the Commission's review, there is no need for hearings in this matter and comments can be submitted during the applicable timeframes. Petitioner respectfully requests that the CPCN be granted at the Commission's next monthly session at the latest, in order to avoid any delays to the start of construction.

Dated: September 24, 2025

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YOUNG / SOMMER LLC

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<sup>43</sup> *Id.*