

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of Agricola Wind LLC, for a Certificate of Public Convenience and Necessity Pursuant to Public Service Law Section 68 and an Order Granting Lightened Regulation.

Case 25-E-_____

**PETITION OF AGRICOLA WIND LLC, FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY PURSUANT TO PUBLIC SERVICE LAW
SECTION 68**

James A. Muscato
Jessica Ansert Klami
Young / Sommer LLC
500 Federal Street
5th Floor
Troy, NY 12180
(518) 438-9907
jmuscato@youngsommer.com
jklami@youngsommer.com

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I. INTRODUCTION

On November 8, 2024 Agricola Wind LLC (“Agricola Wind” or “Petitioner”) submitted an application for a major renewable energy facility (“Application”) to the State of New York Office of Renewable Energy Siting and Electric Transmission (“ORES” or the “Office”) pursuant to New York State Public Service Law (“PSL”) Article VIII (“Article VIII”).¹ The Petitioner is proposing to construct the Agricola Wind Project (“the Project” or “the Facility”), an approximately 99-megawatt (“Mw”) wind energy generation facility to be located in the Towns of Venice and Scipio, Cayuga County, New York (the “Facility” or “Project”).

Agricola Wind hereby submits this petition to respectfully request that the Public Service Commission (the “Commission”) issue (1) a Certificate of Public Convenience and Necessity (“CPCN”) to Agricola Wind, pursuant to PSL § 68, (2) an Order finding that Agricola Wind, as a wholesale electric market participant, has demonstrated that it meets the Commission’s standards and is entitled to treatment under the Commission’s lightened regulatory regime, which is tailored

¹ Matter No. 23-03002, *Application of Agricola Wind LLC for a Permit Pursuant to Article VIII of the New York State Public Service Law for Major Renewable Energy Facility*.

to the nature of wholesale electric market participants, consistent with long-standing Commission precedent for similarly situated entities, and (3) an Order finding that the public hearings by PSL § 68 be held before the Commission pursuant to 16 NYCRR § 21.10 (Expediated proceedings on noncontested applications).

Petitioner requests that this Petition be reviewed contemporaneously with the Article VIII application and that a CPCN be issued expeditiously, as the Project aligns with the State’s climate and renewable energy policies and timely action will ensure the Project is constructed in time to support the State’s renewable energy targets.

Article VIII authorizes the Commission to approve the construction or operation of the Facility through the issuance of a CPCN.² This authorization comes with “the understanding that the PSC will not duplicate any issues 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 [a] siting permit.”³ Thus, the scope of this proceeding is limited to essentially the same issues set by the Siting Board in the Cassadaga Article 10 proceeding.⁴ In Cassadaga, the Siting Board stated that “[t]he scope of this proceeding is narrow” and should “focus[] on the questions involving the readiness and feasibility of [the entity seeking the CPCN] to begin Facility construction.”⁵ Initially applied in the context where a Section 68 petitioner had been issued a PSL Article 10 Certificate, this standard of review has also been applied in cases where ORES has granted a siting permit under Article VIII’s predecessor, Executive Law Section 94-c.⁶ There is no need for this proceeding to, nor should it,

² See 16 NYCRR 1100-6.1.

³ See 16 NYCRR 1100-6.1; See also DMM No. 21-00759, Prattsburgh Wind Siting Permit, at 26, issued September 24, 2024.

⁴ 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 (Nov. 15, 2018), at 20 (Cassadaga CPCN Order).

⁵ *Id.* at 20.

⁶ See e.g. 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

duplicate the public need and environmental compatibility issues that will be resolved through the Article VIII proceeding. Instead, the Commission's review should be focused on Agricola Wind's ability to construct and operate the Facility.⁷

As will also be shown herein, Agricola Wind has submitted its application to ORES and can obtain all necessary local approvals for the issuance of a CPCN and has sufficient financial resources to construct the Project and significant expertise to operate it. In addition, Agricola Wind will be operating the Project as a competitive wholesale generator, and as such Agricola Wind's ownership, construction and operation of the Facility is entitled to be subject to a lightened regulatory regime, consistent with long-standing Commission precedent.⁸

Finally, 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 Section 68 reviews in other CPCN proceedings involving renewable energy projects.⁹ The Article VIII review process will generate a substantial record and there will be ample opportunity for public input provided under the Article VIII review process. The record being established in the 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. Therefore, the Commission should find that this Petition is entitled to an expediated proceeding pursuant to 16 NYCRR §21.10. If a hearing is required, Petitioner requests that a public

Convenience and Necessity, Providing for Lightened Regulation, and Making Other Findings (Cider Solar CPCN Order) (issued December 16, 2022); Case 21-E00345, *Morris Ridge Solar Energy Center, LLC Section 68 Petition*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Morris Ridge CPCN Order) (issued November 24, 2021).

⁷ *Id.*

⁸ See Section IV below.

⁹ 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).

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.

II. BACKGROUND

A. The Project

The Facility is a wind energy generating project located in the Towns of Scipio and Venice, Cayuga County, New York. The Facility has a total interconnection capacity not to exceed 99 megawatts (“MW”). The Facility is proposed to include up to 24 wind turbines, as well as an associated medium voltage collection system, two permanent meteorological (“MET”) towers, an aircraft detection lighting system (“ADLS”), temporary construction laydown areas, a temporary concrete batch plant, a medium voltage-to-transmission voltage collection substation, a point of interconnection (“POI”) switchyard, a short 115- kilovolt (“kV”) gen-tie line that will connect the Facility to the high voltage electrical grid, gravel access roads, and an operations and maintenance (“O&M”) facility. The Facility will interconnect to the New York power grid via a point of interconnection (“POI”) switching station that will connect to the existing Wright Avenue to Milliken 115-kV transmission line, owned, and operated by New York State Electric and Gas Corp (“NYSEG”).

The Facility will be a significant contribution to the State’s CLCPA targets through the production of up to 99 MW of renewable energy, sufficient to power more than 17,777 New York households with zero-emission electricity.

B. The Parties

i. Agricola Wind LLC

Agricola Wind LLC is a special purpose entity created to own and operate the Agricola Wind facility. Agricola Wind LLC, a New York limited liability company, is a wholly-owned subsidiary of Liberty Renewables Inc. (“Liberty”).

ii. Liberty Renewables Inc.

Liberty Renewables Inc. (“Liberty”) is a renewable energy company based in Albany, NY whose mission is to build, own, and operate wind energy projects throughout New York State. Liberty Renewables was founded in 2019 and was acquired by Copenhagen Infrastructure V (“CI V”) in 2024. CI V is a pooled investment vehicle managed by Copenhagen Infrastructure Partners P/S (“CIP”).¹⁰ Liberty is a CIP managed portfolio company focused on wind energy development in New York State.

iii. Copenhagen Infrastructure Partners

Founded in 2012, Copenhagen Infrastructure Partners P/S (“CIP”) is a global leader in energy infrastructure investments, specializing in developing and constructing large, complex projects that shape the future of energy. The funds managed by CIP focus on investments in wind, solar PV, biomass and energy-from-waste, transmission and distribution, reserve capacity, storage, advanced bioenergy, and Power-to-X.

CIP manages 13 funds and has to date raised approximately \$36 billion for investments in energy and associated infrastructure from approximately 180 international institutional investors. CIP has projects in more than 30 countries and more than 2,500 employees across platforms and projects globally. CIP’s North American headquarters is located in New York City.¹¹

III. PETITION FOR CPCN

A. Standard for Issuing CPCN under PSL § 68

¹⁰ <https://www.cip.com/funds/flagship-funds/>

¹¹ <https://www.cip.com/about-cip/cip-offices/>

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.¹² However, for projects that are undergoing review through Article VIII, formerly Section 94-c, or have been issued siting permits from ORES, such as Agricola Wind, such review will be limited with “the understanding that the [Commission] will not duplicate any issue already 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.”¹³ 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 ORES 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.”¹⁴ 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.”¹⁵

¹² 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.

¹³ Matter No. 21-00749, *supra*, Siting Permit for a Major Renewable Energy Facility (Siting Permit), p. 27; see also Cassadaga CPCN Order, at 20.

¹⁴ See Morris Ridge CPCN Order, at 12 (citing PSL § 68).

¹⁵ *Id.*

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 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 provide a full evidentiary record.¹⁶ Agricola Wind 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 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.”¹⁷ A copy of Petitioner’s Agricola Wind LLC Certificate of Formation, is attached hereto as **Exhibit A**.

ii. Consent of Municipal Authorities

Pursuant to PSL § 68(1), Agricola Wind is required to provide the Commission with a “verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.”

Agricola Wind 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 (“ROWs”),

¹⁶ *Id.* at 14.

¹⁷ *See* Morris Ridge CPCN Order, at 12 (citing PSL § 68).

the Facility's collection lines will *not* be constructed "in" municipal roads or ROWs. All roads that will be crossed by collection are "highways-by-use" and the Town does not have deeded rights to the bed of the road. Instead, the lines will cross beneath the ROWs at a depth within privately held land. To the extent collection lines will be permanently located on privately held land, Agricola Wind will obtain easements from the respective landowners. Because the lines will not be located in municipal roads or ROWs, but only beneath them on private lands, Agricola Wind does not seek, nor require, any municipal right or privilege to occupy municipal property.

Municipal consent in the context of PSL § 68(1) is only required where a CPCN applicant seeks a municipal right or privilege from the relevant municipality¹⁸ such as where project components will occupy municipal property. The Commission's precedent is consistent with this position.¹⁹ In several CPCN proceedings the Commission has found that a CPCN applicant need not obtain municipal consent to cross municipal roads or ROWs where the relevant municipality did not have a law, ordinance, or other requirement in place requiring the same.²⁰ This notion is

¹⁸ See *Penn-York Natural Gas Corp. v. Maltbie*, 164 Misc. 569, 723-73 (Sup. Ct. Albany Cnty., 1937) (explaining the term "consent" in PSL § 68(1) is used in reference to obtaining a franchise right and as such "[t]hese consents are not mere permits for temporary or extraordinary uses of public property, but they are such a permanent occupation that . . . they come within what is intended to be described in the [PSL] as a franchise").

¹⁹ Agricola Wind recognizes that the Commission has addressed the issue of municipal consent in the context of crossing municipal roads and ROWs in a Section 68 proceeding commenced by Niagara Mohawk Power Corporation. See *Petition of Niagara Mohawk Power Corporation for Approval, Pursuant to Section 68 of the Public Service Law, to Construct Gas Plant in the Town and Village of Corinth, Saratoga County*, 1995 N.Y. PUC LEXIS 100 (Apr. 21, 1995) ("No municipal consent is required . . . since all facilities will be located on private property and no public roads or [ROWS] will be crossed").

²⁰ See e.g., 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 (issued Dec. 16, 2022) (finding Hecate complied with Section 68(1) when it only obtained municipal consent from municipalities that had laws, ordinance, or other requirements compelling such consent); Case 24-E-0411, *Petition of Brookside Solar, LLC for a Certificate of Public Convenience and Necessity, Pursuant to Public Service Law Section 68, and an Order Granting Lightened Regulation*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued Dec. 23, 2024) (finding Brookside Solar complied with Section 68(1) when it only obtained municipal consent from municipalities that had laws, ordinance, or other requirements compelling such consent); Case 24-E-0641, *Petition of Prattsburgh Wind, LLC, for a Certificate of Public Convenience and Necessity, Pursuant to Public Service Law Section 68, and Granting Lightened Regulation; and an Order Approving Financing Pursuant to Section 69 of the New York State Public Service Law*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation, and Approving Financing

further consistent with the premise that a municipality may only provide consent to the extent it possesses the authority to do so.

Moreover, any attempt by a municipality to condition a crossing on the issuance of a local highway work, street opening, or traffic safety permit is squarely preempted by Article VIII.²¹ The Siting Board recently reaffirmed this principal in its *Alle-Catt Wind* decision, finding that Cattaraugus County’s Local Law No. 11, which required permits for the use of County roads, was procedural in nature and therefore preempted by PSL Article 10 (now Article VIII).²² The Siting Board held that Article 10 provided a comprehensive regulatory scheme and expressly preempted local procedural requirements that could otherwise delay or block a certificated facility. In that case, the Board determined that allowing the County to require permits for road use would give it impermissible veto power over the project, contrary to the legislator’s intent to establish a uniform siting process without unreasonable delay.

This precedent reinforces that municipalities cannot require separate approvals, consents, or permits for the crossing or use of their roads in connection with projects proceeding under Article VIII. Accordingly, because Agricola Wind’s collection lines will not be located in municipal roads or ROWs but only beneath them on private lands, and because any local permitting requirements for road use or crossings are preempted, municipal consent is not required here.

(issued June 12, 2025) (finding Prattsburgh Wind complied with Section 68(1) when it only obtained municipal consent from municipalities that had laws, ordinance, or other requirements compelling such consent).

²¹ Here, the Town of Venice requires a Road Use Agreement (“RUA”) for purposes of obtaining a special use permit where “roads and [ROWs] will be used in the construction or reconstruction” of a wind system. (*See* Town of Venice, LL 2 of 2024 § 8(7) (discussing the requirements for obtaining a special use permit to construct a wind energy conversion system). It does not require consent for the mere subsurface crossing of lines beneath municipal roads or ROWs on private land. The Town of Scipio does not require consent by law, ordinance, or other requirement for the crossing of municipal roads or ROWs.

²² *Application of Alle-Catt Wind Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10*, Case 17-F-0282, Order Granting Petition, in Part, Subject to Conditions (issued November 28, 2023) (the RUA Order)

Agricola Wind has nevertheless voluntarily consulted with the municipalities through the ORES process regarding the location of collection line crossings and will continue to voluntarily coordinate with the municipalities. Petitioner provided the Towns with a Road Use Agreement (“RUA”) in February 2024 and has been working with the Towns to come to a mutually agreeable RUA.²³ Further, Agricola Wind will provide the municipalities’ Highway Superintendent with final construction drawings that depict the location of any crossings.

Exhibit B contains a verified statement of Timothy Evans, who has the authority to bind Agricola Wind, that all required consents of the proper municipal authorities necessary for issuance of a CPCN have been received. Agricola Wind is a Limited Liability Company (“LLC”) and as such does not have a president or secretary; it is managed by a sole member who has the authority to bind the LLC in a manner equivalent to a president or secretary of a corporation.²⁴

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

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

²³ The Towns provided edits on November 19, 2024, Agricola provided additional edits in January and February 2025, Towns provided additional comments in April 2025. Agricola and the Towns meet in person on May 8, 2025 to discuss the RUA and Agricola provided a revised RUA back to the Towns on July 21, 2025. To date the Towns have not provided an update on the most recent version.

²⁴ The Commission has accepted verified statements from managing members of an LLC for the purposes of PSL § 68(1). *See e.g.* Case 21-E-0502, *Petition of Flint Mine Solar, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation*, CPCN Compliance Letter (May 3, 2022) (DMM Item No. 6); 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*, Letter Regarding Petition Compliance (July 01, 2022) (DMM Item No. 4).

Pursuant to PSL § 68, the Commission must consider “the economic feasibility of the corporation, and the corporation’s ability to finance improvements of . . . an electric plant.”²⁵ Petitioner notes that the “the economic feasibility” and “ability to finance” requirements were meant to apply to monopoly utilities, whose financial decisions were historically passed on to ratepayers, and not to competitive generators who must compete in the marketplace, and who bear their own economic risks.²⁶ As set forth in Section IV below, numerous wholesale electric generators, including utility-scale solar generation facilities, have been granted what the Commission calls lightened regulation.²⁷ 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.²⁸ Arguably, these amendments to PSL § 68 were not intended to

²⁵ See also, Cassadaga CPCN Order, at 12.

²⁶ 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.

²⁷ See Wallkill Order, Carr Street Order, AES Order.

²⁸ 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

address generation siting, since the consequences of a certified facility failing to compete effectively will fall almost entirely on the Facility’s owners and shareholders, obviating the need for Commission oversight. Nevertheless, Article VIII compels compliance with those aspects of PSL § 68 that are not addressed by the Article VIII process, including “the economic feasibility of the corporation” and “the corporation’s ability to finance improvements of . . . an electrical plant.”

Petitioner and its affiliates have substantial experience in the construction and operation of utility-scale electric generational facilities of all types, including wind. Liberty’s development team has over 20 years of experience in developing projects and has 1.3 gigawatts of wind energy under development with plans to have approximately 400 megawatts operational by 2030. Liberty’s development team is committed to supporting rural economic growth through its projects and in addition to Agricola Wind, Liberty is developing the Hoffman Wind project, a proposed 100 MW facility in Madison County. Between Agricola Wind and Hoffman Wind the two projects are expected to generate over \$120 million in local investments and over 100 full-time construction jobs.

In 2024, CI V acquired Liberty integrating its portfolio of approximately 1.3 gigawatts of wind projects into CIP’s extensive renewable energy investments. As mentioned above, CIP is the world’s largest dedicated fund manager specializing in greenfield renewable energy investments. In March 2025, CI V exceeded €12 billion in capital commitments focusing on large-scale greenfield renewable energy infrastructure projects like Agricola and Hoffman. CIP has established itself globally in the development, construction and operation of wind projects with a diverse global portfolio of onshore wind projects including the Monegros Wind Farms in Spain,

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.

which consists of 12 onshore wind farms with a total authorized capacity of 487.4 MW and an expected annual power generation of approximately 1,400 GWh²⁹.

This record demonstrates that Petitioner and its affiliates have substantial experience in the construction and operation of competitive renewable energy projects across the globe, and that experience will be leveraged to ensure that Agricola Wind remains competitive and financially viable throughout its lifespan.

Agricola Wind has not constructed the Facility and therefore does not have any material assets or third-party financing. However, once the Project has received all necessary permits and approvals, the financing needed to construct the Facility will be obtained through a combination of sponsor equity, third-party construction loans or other financing mechanisms. The cost of constructing the Facility will be financed through a combination of construction loans (based on the projected cash flows and tax credits of the project) and equity from its affiliates' fund. Once the project reaches COD, the construction loans will be replaced with a tax credit monetization and a term loan.

Evidence has demonstrated that the Facility will be economically feasible. The Facility will realize income from the sale of renewable energy certificates pursuant to a long-term power purchase agreement, which provides comfort to third-party lenders to begin the construction of the Facility. Agricola Wind's commitment to the development of the Facility is further evidenced by the actions it has taken as part of obtaining its siting permit from ORES, which includes conducting years of pre-application environmental studies and preparing a comprehensive application. Consistent with the discussion above, its affiliates of Agricola Wind are financially viable and the Facility itself will be economically feasible.

²⁹ <https://monegroswindfarms.com/en/about-us>

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

To the extent Petitioner’s ability to render safe, adequate and reliable service applies to a wholesale generator, this element of the CPCN review will be addressed as part of the 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 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.³⁰ Agricola Wind’s ability to 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*,³¹ and Exhibit 21, *Electric System Effects and Interconnection*.³²

Petitioner notes that, under the Commission’s lightened regulatory regime, Agricola Wind 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 regulatory areas have been discussed in previous lightened regulation Orders.³³ Agricola Wind 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,³⁴ give

³⁰ See 16 NYCRR § 1100-2.7; Matter No. 23-03002, *Application of Agricola Wind LLC*, Exhibit 6 (filed Nov. 8, 2024).

³¹ See 16 NYCRR § 1100-2.18; Matter No. 23-03002, *Application of Agricola Wind LLC*, Exhibit 17 (filed Nov. 8, 2024).

³² See 16 NYCRR § 1100-2.22; Matter No. 23-03002, *Application of Agricola Wind LLC*, Exhibit 21 (filed Nov. 8, 2024).

³³ See e.g. Morris Ridge CPCN Order, at 19.

³⁴ *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]).

notice of generation unit retirements,³⁵ 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 Agricola Wind will render safe, adequate and reliable services.

Agricola Wind’s ability to finance improvements of the Facility 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 affiliate company and its commitment to providing the financial support necessary for Agricola Wind to construct and operate the Facility.³⁶

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

Agricola Wind will operate the Facility on a merchant basis in competitive wholesale markets and will not serve captive retail customers. The “just and reasonable rates” factor under PSL Section 68 was intended to prevent financial manipulation or financial decisions that could adversely impact rates charged by monopoly providers, and is inapplicable in the context of a wholesale generation facility like Agricola Wind.³⁷ The Commission has stated that “so long as the wholesale generation market is effectively 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.”³⁸ Moreover, the Public Service Commission has also acknowledged that “imposing these requirements could interfere with wholesale generators’ plans for structuring the financing and ownership of their

³⁵ *Id.* (citing Case 05-E-0889, *Generation Unit Retirement Policies*, Order Adopting Notice Requirements for Generation Unit Retirements [issued December 20, 2005]).

³⁶ *See e.g.* Morris Ridge CPCN Order, at 15; Cassadaga CPCN Order, at 25.

³⁷ *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).

³⁸ *See* Morris Ridge CPCN Order, at 18; Cassadaga CPCN Order, at 24.

facilities . . . [and] discourage entry into the wholesale market or introduce inefficiencies into market operations *to the detriment of the public interest.*”³⁹ In light of the foregoing, the “just and reasonable rates” criterion under PSL Section 68 is inapplicable to Agricola Wind’s ownership and operation of the Facility, which will participate exclusively in competitive wholesale markets and not serve retail customers. The Commission has consistently recognized that wholesale generators operating under FERC-approved tariffs in competitive markets are not subject to traditional rate regulations, and that imposing such requirements would undermine market efficiency and deter investment. Accordingly, no further review under this standard is warranted.

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.⁴⁰ Based on the Morris Ridge CPCN Order and proceedings before the Commission in that case, evidence and documents addressed in the Article VIII permitting process do not need to be duplicated or reproduced in a CPCN proceeding. Accordingly, we request that Agricola Wind be treated similarly in this proceeding and duplication or reproduction of evidence and documents produced and thoroughly reviewed during the Article VIII proceeding not be required herein.

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

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

³⁹ See Morris Ridge CPCN Order, at 18.

⁴⁰ 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 Facility will be constructed. Therefore, no certified copies of franchises need to be submitted.
- (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 Article VIII proceeding.

With respect to the subsections of 16 NYCRR § 21.3 (a through g), 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 Facility is proposed to be constructed, and the approximate dates that construction will begin, has already been or will be addressed in the Article VIII proceeding.
- (b) A detailed description of the plant to be constructed, and its estimated costs, is provided in the Article VIII Application and proceeding.
- (c) As discussed above, the cost of constructing the Facility will be financed through a combination of construction loans (based on the projected cash flows and tax credits of the project) and equity capital from CI V.
- (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 Facility will generally be derived from an off-take agreement and through sales of electricity into the wholesale market. The estimated expenses of operation of the Facility for the first three years of service have been examined in the Article VIII proceeding and can be found in the socioeconomic

report in Application Exhibit 18.⁴¹ Petitioner does not propose to provide service to residential, commercial or industrial customers in any territory. Therefore, the latter half of this provision related to the estimate of the number of prospective customers is inapplicable.

(f) Refer to Section III.C above for information related to the economic feasibility and proof of the Petitioner’s ability to finance the project and render adequate service.

(g) Petitioner is not proposing to provide services in the manner contemplated by this section; these provisions regarding the availability of other services in this territory are inapplicable.

IV. 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*,⁴² the *AES Order*⁴³ and the *Carr Street Order*⁴⁴—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

⁴¹ The Commission has accepted estimated expenses for facility 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.

⁴² *See* Case 91-E-0350: *In re Wallkill Generating Co., LP* Order Establishing Regulatory Regime (April 11, 1994) (“Wallkill Order”).

⁴³ Case 99-E-0148: *AES Eastern Energy LP*, Declaratory Ruling on Lightened Regulation (April 23, 1999) (“AES Order”).

⁴⁴ 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).

utility” under PSL § 2(23). This lightened regime has since been granted to numerous wholesale renewable electric generation facilities throughout the State.⁴⁵

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 Agricola Wind, that are operating in a competitive environment.⁴⁶ 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.

Consistent with the *Wallkill*, *AES* and *Carr Street* Orders and various orders granting lightened regulation to renewable energy projects, including the issued Hecate Energy Cider Solar CPCN Order and Morris Ridge CPCN Order, the following limited provisions of the PSL should apply to Agricola Wind 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

⁴⁵ 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.

⁴⁶ See Case 99-M-1722: *Applicability of Public Service Law Provisions to Competitive Entities*, Order Instituting Proceeding (Dec. 17, 1999).

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, Agricola Wind 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.

V. HORIZONTAL AND VERTICAL MARKET POWER

The Agricola Wind Project will have the capacity to generate up to 99 MW of electricity. Agricola Wind, through its affiliates, is also affiliated with the 100 MW Hoffman Falls Wind project, which is also seeking an Article VIII siting Permit. An affiliate of CI V is currently developing Vineyard Mid-Atlantic, LLC (Lease Area OCS-A 0544), one of six offshore wind lease areas within the New York Bight Wind Energy Area and is expected to become operational post 2030.

After construction of the Agricola Wind project, when added to the proposed and existing generation described above, Agricola Wind’s affiliate corporations’ aggregate onshore wind generation in New York will rise to 199 MW. Accordingly, their in-State generation (proposed and operating) amounts to approximately .6% of NYISO’s forecast of 2024 baseline summer coincident peak demand forecasts for the New York Balancing Authority Area (BAA)⁴⁷, which is at levels previously found insufficient to create horizontal market power⁴⁸.

⁴⁷ New York Independent Systems Operator, Gold Book, 2024 Load and Capacity Data, (The NYCA Baseline Summer Coincident Peak Demand Forecast is 31,541 MW).

⁴⁸ An entity’s horizontal market power relates to its share of power plants (market share) in relation to the total size of power plants participating in the market. *See, e.g.*, EIF Ruling; MACH Gen Order. *See, e.g.*, Case 04-E-1364, Sithe Energies, Inc., Declaratory Ruling on Review of Stock Transfers (issued January 14, 2005) (Declaratory Ruling finding that the merger of Dynegy and Sithe, which resulted in an approximately 7% market share, did not present an opportunity to exercise market power); Case 08-E-0410, LS Power Development LLC, Declaratory Ruling on the Acquisition of Common Stock (issued May 27, 2008)(Declaratory Ruling finding that LS Power’s

With respect to vertical market power, neither Agricola Wind nor its affiliated 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 Area (NYCA) 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.

In New York, neither Liberty nor CIP nor their subsidiaries own transmission facilities, any public utility with a franchised service territory, or any essential inputs to electricity products or production.

With respect to adjacent markets, through its affiliates CIP is associated with several facilities in the PJM and ISO-NE markets, however these facilities do not own or control any operating transmission facilities other than limited interconnection facilities needed to connect to the grid and are not affiliated with any public utility with a franchised electric service territory. Accordingly, there are no horizontal market power issues.

VI. CONCLUSION

For the reasons set forth above, the Petitioner respectfully requests that the Commission issue (1) a CPCN authorizing Agricola Wind to construct and operate the wind energy generating facility, and (2) an Order providing for lightened regulation.

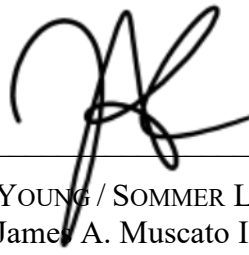
Given the limited nature of the Commission's review, there is no need for hearings in this matter and comments can be submitted during the applicable timeframes. Petitioner respectfully

proposed acquisition of additional interests in Calpine Corporation, which resulted in an approximately 8.1% market share, also did not present an opportunity to exercise market power).

requests that the CPCN be granted at the Commission's next monthly session in order to avoid any delays to the Project's start of construction.

Dated: September 3, 2025

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JM' with a stylized flourish, positioned above a horizontal line.

YOUNG / SOMMER LLC
James A. Muscato II
Jessica Ansert Klami
500 Federal Street, 5th Floor
Troy, New York 12180
Phone: (518) 438-9907
Attorneys for Agricola Wind, LLC