STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Joint Petition of Holtsville Energy Storage, LLC, Savion, LLC, and Holtsville New Energy Ventures LLC For a Declaratory Ruling Under the Wallkill Presumption or, in the Alternative, Approval of Transfer of Ownership Interests in Battery Energy Storage System Pursuant to Public Service Law Section 70.

Case: 26-E-_____

JOINT PETITION OF HOLTSVILLE ENERGY STORAGE, LLC, SAVION, LLC, AND HOLTSVILLE NEW ENERGY VENTURES LLC FOR A DECLARATORY RULING UNDER THE WALLKILL PRESUMPTION OR, IN THE ALTERNATIVE, APPROVAL OF TRANSFER OF OWNERSHIP INTERESTS IN BATTERY ENERGY STORAGE SYSTEM PURSUANT TO PUBLIC SERVICE LAW SECTION 70

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On October 13, 2023, the Public Service Commission (the "Commission") issued a Certificate of Public Convenience and Necessity to Holtsville Energy Storage, LLC ("HES" or "Project Company"), authorizing the construction, ownership, and operation of an approximately 110-megawatt ("MW") battery energy storage system ("BESS") located in the Hamlet of Holtsville, Town of Brookhaven, Suffolk County, New York (the "Holtsville Project").[1] Savion, LLC ("Savion" or the "Seller") owns 100% of the issued and outstanding membership interest in HES. In an upcoming transaction, Holtsville New Energy Ventures LLC ("Holtsville" or the "Buyer") will acquire 100% of the ownership interests in HES from Savion (the "Proposed Transaction").

Construction has not commenced on the Holtsville Project. However, consistent

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[1] Case 23-E-0142: *Petition of Holtsville Energy Storage, LLC for a Certificate of Public Convenience and Necessity, Granting a Lightened Regulatory Regime, and Expedited Proceeding*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (October 13, 2023).

with the Commission's holding in the *Cassadaga Wind* Section 70 proceeding,[2] the issuance of the CPCN to HES by the Commission triggers the requirement under PSL §70 for Commission review and either a ruling or approval of the transfer of "electric plant" as contemplated in the Proposed Transaction between HES's upstream parent, Savion and the Buyer, Holtsville.

Pursuant to Section 70 of the Public Service Law ("PSL") and Part 8 of the Commission's rule (16 NYCRR Part 8), HES, Savion and Holtsville (together the "Joint Petitioners") hereby file this Petition with the Commission for a declaratory ruling finding that, pursuant to the *Wallkill* Presumption, no further review of the Proposed Transaction is required under PSL § 70.[3]

In the alternative, Joint Petitioners request that the Commission issue an Order approving the Proposed Transaction. The Commission should, after applying the reduced level of scrutiny afforded lightly regulated generators, review the Proposed Transaction under PSL § 70 using the "public interest" standard.[4] The Proposed Transaction does not create any potential for harm to the interests of ratepayers because the Project will operate in a competitive market and has no captive ratepayers. In addition, Holtsville, upon completion of the Proposed Transaction, will be managed by Nofar USA, an experienced owner and operator of a diverse portfolio of generating assets including battery storage assets, with gigawatts of projects in operation or under development throughout the United States and is qualified to

[2] *See* Case 18-E-0333: *Petition of Cassadaga Wind LLC, et. Al. for a Declaratory Ruling the Public Service Law Section 70 Does Not Apply to a Proposed Acquisition or That No Further Review if the Acquisition is Required, Declaratory Ruling on Transfer Transactions* (July 17, 2018).

[3] *See* Case 9l-E-03 50: *Wallkill Generating Company, L.P.*, Order Establishing Regulatory Regime (April 11, 1994) ("*Wallkill* Order"). The presumption adopted by the Commission in its Wallkill Order is known, and is referred to herein, as the "*Wallkill* Presumption."

[4] *See* PSL § 70(1).

safely and adequately operate the Holtsville Project. Accordingly, Joint Petitioners request continued lightened regulatory treatment of HES post-transaction.

Lastly, Joint Petitioners respectfully request that the Commission rule expeditiously on the instant Joint Petition and no later than the Commission's October session. As discussed further below, closing of the Proposed Transaction will not occur until certain conditions precedent, including a positive Commission ruling on this Petition, are satisfied. Any unnecessary delay in the consummation of the Proposed Transaction could delay development of the Holtsville Project. The Holtsville Project is consistent with New York's Climate Leadership and Community Protection Act ("CLCPA") encouraging the development of energy storage assets at critical locations on the New York State electric grid and therefore, expeditious review and approval of the Proposed Transaction is warranted and in the public interest.

I. THE PROJECT AND THE PARTIES

A. The Holtsville Project

The Holtsville Project, to be located on three parcels of land located at 5276 Expressway Drive South, Morris Avenue and 178 Morris Avenue in the unincorporated hamlet of Holtsville, Town of Brookhaven, Suffolk County, State of New York, is a 110-megawatt (MW) battery energy storage system capable of providing the local grid with frequency regulation, voltage control, and emergency backup power. When discharging stored energy, it is anticipated that the Holtsville Project will be capable of powering ±18,000 homes for approximately four hours.

The Town of Brookhaven Planning Board performed a State Environmental Quality and Review Act ("SEQRA") review, determined that the Project is an "unlisted" action under SEQRA and adopted a negative declaration by resolution dated January 23, 2023.

B. Holtsville Energy Storage, LLC and Savion, LLC

HES is a limited liability company formed in the State of Delaware and authorized to

do business in the State of New York. By order dated October 13, 2023, the Commission granted HES a certificate of public convenience and necessity ("CPCN") under PSL §68 for the construction of the Holtsville Project and lightened regulation under the PSL.[5]

HES is a wholly-owned subsidiary of Savion. Savion is currently one of the largest and most technologically advanced utility-scale solar and energy storage companies in the United States. Savion, headquartered in Kansas City, Missouri, is a Shell Group portfolio company currently managing five operational solar assets with a combined capacity of 591 MW. None of these Projects are located in New York, New England or Pennsylvania. In addition, Savion has a further 35.8 GW of solar and energy storage projects in development, with 110 current projects in various phases located across 28 U.S. states. With more than 180 employees, Savion is committed to the transformation of the electric grid to renewable sources.

C. Holtsville New Energy Ventures LLC

Holtsville New Energy Ventures LLC is a newly formed special purpose entity established to acquire and own the Holtsville Project through the purchase of one hundred percent (100%) of the issued and outstanding membership interests in HES. Holtsville is owned 90% by Nofar USA and 10% by YSG Land Holdings. YSG Land Holdings is wholly owned by YSG Operating Company LLC.

Upon completion of the Proposed Transaction, Holtsville will be managed by Nofar USA, a subsidiary of O.Y. Nofar Energy Ltd., a publicly traded, independent power producer operating across ten countries with fully integrated capabilities in renewable energy

[5] *See* Case 23-E-0142: *Petition of Holtsville Energy Storage, LLC for a Certificate of Public Convenience and Necessity, Granting a Lightened Regulatory Regime, and Expedited Proceeding*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (October 13, 2023).

development, engineering, EPC management, construction oversight, asset management and energy trading. Since 2021, Nofar USA has created a diversified renewable energy platform comprising approximately 89 projects across the United States in CA, TX, NC, SC, AL, NY, MA, and CT, totaling approximately 1.67 GWdc of solar capacity and 1.59 GWdc of battery energy storage across operating, construction and development assets. In 2026, Nofar USA completed the acquisition of Pine Gates Renewables' Carlyle Portfolio comprised of 979 MWdc of utility scale solar projects, including ±754 MWdc of operating assets with 106 MWdc Foley Solar Project, which recently achieved commercial operation, and the 225 MWdc Lavender Solar Project, currently under construction.

Beyond its U.S. operations, the Nofar Group has developed one of Europe's largest independent battery energy storage platforms, including the operational 209 MWh Stendal BESS project in Germany, the operational 60 MWh Buxton BESS project in the United Kingdom, the 624 MWh Cellarhead project under construction in the United Kingdom, and approximately 10.8 GWh of additional battery storage projects under development across the UK, Italy, Romania, Spain, Poland and Greece.

Overall, the Nofar Group manages a global renewable energy platform of approximately 30 GW across North America, Europe and Israel, providing Holtsville New Energy Ventures LLC with the financial strength, technical expertise and proven experience to develop, finance, construct, own and operate utility-scale renewable energy and battery energy storage projects.

II. THE PROPOSED TRANSACTION

The Proposed Transaction will occur pursuant to the terms of a Membership Interest Purchase Agreement between Savion and Holtsville. At the closing of the Proposed Transaction, one hundred percent (100%) of the membership interests in HES will be

transferred from Savion to Holtsville. The transfer of membership interests is subject to the Holtsville Project reaching certain development milestones and receiving all necessary consents. Following closing of the Proposed Transaction, neither Seller nor any of its affiliates will own any interest in HES and will hold no ownership interest in the Holtsville Project. Organizational charts depicting the Ownership structure of HES before and after the proposed transaction are provided in Exhibit A hereto.

III. ANALYSIS AND DISCUSSION

A. The Commission Should Apply the Wallkill Presumption to the Proposed Transaction and Find That No Further Review Under PSL § 70 is Warranted

Pursuant to 16 NYCRR § 8.1, declaratory rulings may be issued with respect to, *inter alia*, "the applicability to any person, property, or state of facts of any rule or statute enforceable by the commission or the validity of any such rule" and "whether any such action by the commission should be taken pursuant to a rule." Here, the Joint Petitioners seek a Commission ruling eschewing further review of the Proposed Transaction, which, as noted *supra,* involves the transfer of one hundred percent (100%) of the ownership interests in HES to the Buyer, under PSL § 70. Accordingly, the requested relief squarely fits within the Commission's powers under 16 NYCRR § 8.1.

Section 70 of the PSL states that no electric corporation "shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation . . . without the written consent of the commission."[6] The Commission has interpreted this statute over time to reflect lightened regulation policies and applied a lower level of scrutiny when assessing transfers between merchant generators. As noted above, the

[6] PSL § 70(1).

Commission issued an order granting a CPCN pursuant to PSL § 68 and a lightened regulatory regime on October 13, 2023.[7] Accordingly, Joint Petitioners request that the *Wallkill* Presumption be applied to the Proposed Transaction.[8]

In the *Wallkill* Order, the Commission established a presumption that further review under PSL § 70 of ownership interests in entities upstream from the parents of a New York competitive electric generation subsidiary is not required "unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption."[9] Under the *Wallkill* Presumption, such transactions are reviewed only if there is the potential (i) for the exercise of market power or (ii) other harm to the interests of captive New York ratepayers.[10]

The Commission should determine that the *Wallkill* Presumption applies to the Proposed Transaction and find that no further review under PSL § 70 is required. Here, the Proposed Transaction involves the transfer of one hundred percent (100%) ownership interests in the Project Company from Savion to the Buyer.[11] This transfer poses no harm to captive ratepayers. Because the Holtsville Project will operate as a merchant generating facility and

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[7] *See* Case 23-E-0142: *Petition of Holtsville Energy Storage, LLC for a Certificate of Public Convenience and Necessity, Granting a Lightened Regulatory Regime, and Expedited Proceeding*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (October 13, 2023).

[8] *See*, *e.g.,* Case 98-E-1670: *Carr Street Generation Station, L.P.*, Order Providing For Lightened Regulation (August 23, 1999), at 5-6 ("Carr Street Order") (finding that "it is no longer necessary or appropriate to apply some of the provisions of the Public Service law to merchant plants…that operate exclusively in the wholesale market"); Case 21-E-0122: *Verified Petition of East River ESS, LLC for an Expedited Order Granting a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law and Establishing a Lightened Regulatory Regime*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (June 21, 2021), at 18 ("The Commission has thus concluded that new forms of electric service providers participating in competitive wholesale markets would be lightly regulated").

[9] *See Wallkill* Order at 10.

[10] *See* Case 18-E-0333: *Cassadaga Wind LLC*, Declaratory Ruling on Transfer Transaction (July 17, 2018).

[11] The Commission has determined that the transfer of 100% of the ownership interests in a project company is an upstream transaction qualifying for application of the *Wallkill* Presumption. See Case 24-E-0637: *Joint Petition of Moraine Solar Energy Center, LLC, Tracy Solar Energy Center, LLC, Homer Solar Energy Center, LLC, EDF-RE US Development, LLC, and ACE DevCo NC, LLC for a Declaratory Ruling that No Further Review is Required for an Upstream Ownership Transfer of Solar Generating Facilities or, in the Alternative, Approval Pursuant to Public Service Law Section 70*, Declaratory Ruling on Transfer (February 14, 2025) (stating "The Proposed Transaction is a transfer of an upstream owner's interests in the Project Companies. EDR-RE and ACE DevCo have entered into three Membership Interests Purchase and Sale Agreements (MIPSA), one for each of the Project Companies. Under the terms of each MIPSA, ACE DevCo will purchase from EDFRE 100 percent of the outstanding equity interests in each Project Company").

will not serve captive ratepayers, all the financial obligations of the generating facility will be borne by its owners, not captive ratepayers.

The Proposed Transaction will not result in opportunities for the improper exercise of market power in New York. At 110 MW with a four-hour duration, the Holtsville Project represents .003 percent of NYISO's 2026 summer installed generating capacity of 37,420 MW and .003 percent of NYISO's 2026 winter installed generating capacity of 39,971 MW.[12] The Commission has held in other cases that a total ownership share as high as 8.1 percent of NYISO installed capacity is insufficient to raise horizontal market power concerns.[13]

Any concern that Holtsville's acquisition of the limited storage capability of the Holtsville Project would somehow enable it to raise market prices to benefit other projects held by Holtsville or Nofar 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 any such projects, as their revenues will be fixed by their indexed REC agreements with NYSERDA.[14] Because HES does not own any facilities for the transmission of electricity (other than its own interconnection facilities) and because it does not own any facilities for the supply of natural gas or other fuels for generation, Holtsville's acquisition of HES will not create or enhance vertical market power in any way.

Holtsville, as managed by Nofar, an experienced owner of BESS throughout the United

[12] *See* NYISO 2026 Load & Capacity Report at 24.

[13] 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 (May 27, 2008).

[14] 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 (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.").

States and is qualified to safely construct and adequately operate such facilities. By facilitating the development of the Holtsville Project, the Proposed Transaction contributes towards New York's public policy targets, codified in the CLCPA, to have 6 GW of battery energy storage by 2030.

B. In the Alternative, the Commission Should Apply the Reduced Level of Scrutiny Afforded Competitive Entities and Approve the Proposed Transaction as in the Public Interest.

Section 70 of the PSL states that no electric corporation "shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation . . . without the written consent of the commission." PSL § 70(1). Joint Petitioners respectfully request that the Commission approve the Proposed Transaction under PSL §70 applying the reduced level of scrutiny applicable to lightly regulated generators. The Commission approved a lightened regulatory regime for HES on October 13, 2023.

The Commission reviews proposed transactions under PSL §70 using a "public interest" standard.[15] For lightly regulated entities, the level of scrutiny accorded to PSL § 70 transfers is reduced, and the Commission reviews the transfer only for the potential to exercise market power or otherwise cause harm to captive ratepayers. Specifically, the Commission has stated that:

> "[i]n conducting a review under §70 that pertains to a lightly-regulated electric corporation operating in wholesale electric markets, we examine any affiliations, including those with fully regulated New York utilities or power marketers, that might afford opportunities for the exercise of market power or pose the potential for other harms detrimental to captive ratepayer interests."[16]

The Proposed Transaction fully satisfies the Commission's standard of review for lightly

[15] *See* PSL § 70(1).

[16] *See* Case 10-M-0186: *Alliance Energy Renewables, LLC, et al*., Order Approving Transfers Upon Conditions and Making Other Findings (July 23, 2010), at 17.

regulated entities. The Proposed Transaction does not create any potential for harm to the interests of captive utility ratepayers because the Holtsville Project will operate in a competitive market and have no captive ratepayers.

As discussed above, the Proposed Transaction does not present an opportunity for the improper exercise of horizontal or vertical market power in New York.

C. The Commission Should Grant Continued Lightened Regulatory Treatment

Consistent with the Commission's previous Order granting lightened regulation for HES, the Holtsville Project should continue to be subject to lightened regulation after consummation of the Proposed Transaction. As stated above, the Holtsville Project has not yet been constructed, and thus, is not yet in operation. Post-transaction, the Holtsville Project will be operated in the competitive wholesale markets. Accordingly, following the closing of the Proposed Transaction, the Commission should continue the lightened regulation of the Holtsville Project, consistent with its precedent and prior orders regarding the same.

D. New York State Administrative Procedure Act

Pursuant to Section 202 of the Administrative Procedure Act ("SAPA"), Commission consideration under PSL § 70 requires notice in the New York State Register and a 60-day public comment period must be set. Exhibit B hereto is a draft form of notification for publication pursuant to SAPA.

E. If Applicable, the Commission Should Issue a Negative Declaration Under the State Environmental Quality Review Act.

Under the State Environmental Quality Review Act ("SEQRA"), codified at Article 8 of the New York Environmental Conservation Law ("ECL"), and its implementing regulations at 6 NYCRR § 617 *et seq.* and 16 NYCRR § 7 *et seq.*, the Commission must determine whether "actions" as defined therein it undertakes or approves may have a

significant adverse effect on the environment.

If the Commission decides that SEQRA review is required here, the Proposed Transaction is appropriately classified as an "unlisted" action under SEQRA, as it does not meet the definition of a Type I or Type II action listed in 6 NYCRR § § 617.4, 617.5 or 16 NYCRR § 7.2. Accordingly, it would be proper for the Commission to assume the role of SEQRA "lead agency" and proceed with the requisite review process, which includes conducting an environmental assessment and determining the significance of the action proposed. A short Environmental Assessment Form (EAF) with Part 1 completed, describing and evaluating the potential impact, if any, of the Proposed Transaction, is attached hereto as Exhibit C to facilitate the Commission's assessment.

The Proposed Transaction will cause no significant adverse environmental effect. The Holtsville Project itself has already undergone a comprehensive environmental review by the Town of Brookhaven Planning Board and the Commission in the HES's CPCN proceeding. Even if the Holtsville Project was already constructed, a transfer of membership interests could not cause any physical alterations to the operations of the Holtsville Project or its surroundings. Once the Proposed Transaction is consummated, the BESS will continue to be developed, constructed, operated and, eventually, decommissioned in accordance with the Town's site plan approval, HES's CPCN, and the conditions thereto, as well as any forthcoming relevant environmental permits, and all other applicable laws and regulations. As such, the Proposed Transaction will not cause new environmental impacts. In keeping with Commission precedent holding that transfers of upstream ownership interests in lightly regulated electric corporations, such as the transfers contemplated by the Proposed Transaction, will not result in any significant adverse environmental impacts, the Commission should issue a negative declaration and undertake no further environmental review of the

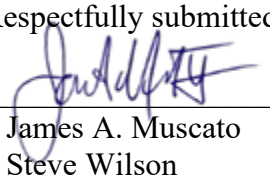
Proposed Transaction.[17]

IV. CONCLUSION

For all the foregoing reasons, Joint Petitioners respectfully request that the Commission issue a declaratory ruling finding that no further review of the Proposed Transaction is required under PSL § 70. In the alternative, Joint Petitioners request that the Commission issue an Order finding that the Proposed Transaction is in the public interest and thus warrants approval under PSL § 70. Joint Petitioners further request that the Commission continue lightened regulatory treatment for HES after consummation of the Proposed Transaction.

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[17] *See e.g.,* Case 15-E-0580: *Joint Verified Petition of Upstate New York Power Producers, Inc.; Cayuga Operating Company, LLC; Somerset Operating Company, LLC; and Riesling Power LLC for Expedited Approval Pursuant to Section 70 of the New York State Public Service Law and Related Approvals,* Order Approving Transfer (February 25, 2006), at 11-12; Case 15-E-0208: *Saranac Power Partners, L.P. – Petition for a Declaratory Ruling Disclaiming the Need to Review a Transfer of a 5% Ownership Interest, or, in the Alternative, an Order Approving the Transfer,* Order Approving a Transfer Transaction and Making Other Findings (August 17, 2015), at 6-7.