

May 27, 2022

**VIA ELECTRONIC FILING**

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

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

Dear Secretary Phillips:

Bluebird Renewable Energy, LLC (“BRE”) provides this response to the May 25, 2022 letter filed by Irene Weiser, Bob Wyman, and Brian Eden (collectively, the “Intervenors”) in response to Administrative Law Judge (“ALJ”) Costello’s May 18, 2022 e-mail requesting that parties identify any material issues of fact with respect to whether BRE’s proposed project (“Proposed Project”) as described in its November 24, 2021 petition (“Petition”) complies with the Climate Leadership and Community Protection Act (“CLCPA”).

In the Letter, the Intervenors state that they, “believe that there are material issues of fact that interfere with attainment of the CLCPA greenhouse gas reduction goals.”<sup>1</sup> However, nowhere in the Letter do the Intervenors actually identify any material issues of fact. Instead, they base this assertion on speculation that BRE’s Emissions Analyses<sup>2</sup> do not “account for all of the emissions that [they] should” without providing any justification as to how they have arrived at that conclusion.<sup>3</sup> Intervenors state that they “expect” that further information provided from BRE will demonstrate that the Proposed Project will result in higher emissions than the current situation, but provide no justification for the assertion. Intervenors also state that they plan to send BRE

---

<sup>1</sup> Case 21-G-0576, Verified Petition of Bluebird Renewable Energy, LLC for an Order Granting a Certificate of Public Convenience and Necessity and Establishing a Lightened Regulatory Regime, Response From Public Interest Parties Regarding CLCPA Compliance of Bluebird Renewable Energy Petition (filed May 25, 2022) at 1 (“Letter”).

<sup>2</sup> The Emissions Analyses referred to herein were originally filed under protective cover in the above-referenced proceeding on March 7, 2022. BRE filed an update to the Emissions Analyses, also under protective cover, on March 24, 2022. BRE publicly filed a portion of the Emissions Analyses on April 26, 2022.

<sup>3</sup> *Id.*

additional Information Requests (despite the fact that Intervenors have already proffered several Information Requests, to which BRE duly responded based on the relevance of the question and information within its possession) in order to make a determination on whether they need to file expert testimony.

The Letter does not comport with ALJ Costello's May 18 directive that parties "identify [material issues of fact] with specificity and indicate how [the party] intend[s] to develop those issues on the record." Instead, the Letter demonstrates that Intervenors are attempting to *find* material issues of fact by adding information to the already complete record. BRE submits that mere speculation that material issues of fact *may* exist *if* additional information is provided is insufficient grounds to require an evidentiary hearing and Intervenors' Letter is merely a delay tactic to prevent the Proposed Project from being referred to the Public Service Commission ("Commission") for approval.

Moreover, as BRE has raised several times in this proceeding, the information from the Emissions Analyses has been available to the Intervenors since March through the Protective Order. To the extent that the Intervenors had legitimate concerns with the potential emissions levels of the Proposed Project, the Intervenors could have, and indeed should have, executed the Protective Order, reviewed the Emissions Analyses, and proffered additional information requests in a timely manner. Instead, the Intervenors chose not to review the provided information and instead request an opportunity for additional discovery at the eleventh hour to, presumably, delay the Proposed Project from being approved.

Notwithstanding the foregoing, to advance the proceeding, BRE provides the following responses to the questions raised by the Intervenors in the Letter. For brevity, BRE has consolidated the questions into three general topics.

1. *Emissions Data for Current State of Operations*

Several of the Intervenors' questions seek information regarding the emissions levels for various components of the current operations at the Aurora Ridge and Sunnyside Farms (collectively, the "Farms"). As those projects are not owned or operated by BRE, BRE has limited ability to access information relating to the current emissions levels at the Farms. To the extent that there are additional emissions not accounted for in the analysis of current operations conducted by BRE, adding them would increase the percent reduction that BRE's Proposed Project will provide, thereby further supporting the case that the Proposed Project aligns with the CLCPA.

2. *Biogas Production Levels and Purification*

The Proposed Project will not result in an increase in biogas production over the current situation at the Farms. An increase in biogas production would require an increase in the cow herd headcount at the Farms. There will be no increase in cow herd headcount as a result of the Proposed Project, and therefore, there will be no increase in biogas production. As there will be no increase in biogas production, there will be no increase in emissions associated with biogas purification.

### 3. *Gas Transportation*

Information relating to the emissions associated with transporting the renewable natural gas (“RNG”) from Sunnyside Farm to the injection site were included in the Emissions Analyses filed by BRE on April 26, 2022 on page BRE139. The emissions calculations conservatively used two trucks per day to account for some instances where a truck would have to drive the route without a load of RNG because of trailer staging. BRE has no plan to increase the volume of gas produced beyond one truck per day delivered into the gas pipeline.

BRE included the anticipated fugitive emissions associated with its Proposed Project in the Emissions Analyses filed on April 26, 2022 on pages BRE132 and BRE133. The Proposed Project will not have any impact on the end-use of gas, gas demand, or the interstate pipeline itself. The RNG will be a one-for-one replacement of geologic natural gas in the interstate pipeline. As there will be no impact on the interstate pipeline, calculations relating to the emissions associated with the interstate pipeline are unnecessary. Moreover, the interstate pipeline is outside of the Commission’s jurisdiction and, therefore, such calculations are irrelevant to the Commission’s review of the Petition.

BRE has not specifically calculated the potential emissions associated with compressing and decompressing the RNG for use in the interstate pipeline. Further, such operations are outside the scope of the Commission’s jurisdiction for the reasons discussed above.

### 4. *Injection Station*

The proposed injection site will be located at an existing Corning facility, which will require facility upgrades for truck unloading and communications to accommodate the RNG from the Proposed Project. BRE will be solely responsible for all costs associated with these upgrades. Indeed, BRE has already paid for the upgrades required by Corning and is contractually obligated to cover any costs by Corning above what it has already paid. BRE will install all additional equipment at its own cost and expense. There will be absolutely no costs borne by ratepayers as a result of the Proposed Project.

BRE has not specifically calculated the potential emissions associated with the equipment that will be installed at the injection station. Due to the size of the equipment used for such operations, the anticipated emissions impacts are negligible and would not change the fact that the Proposed Project will result in material emissions reductions.

In short, BRE has amply demonstrated through all of its filings to date that its Proposed Project will result in significant net emissions reduction benefits. Therefore, any delays in its approval are to the detriment of not only the environment, but also to New York State as the Proposed Project is being delayed from contributing to achievement of the CLCPA goals. While these delays are also causing BRE material harm in the form of contractual damages, more concerning is the fact that the delays are harming the owners of the Farms who will not be compensated until the Proposed Project is under operation.

May 27, 2022

Page 4

For the foregoing reasons, BRE respectfully requests that ALJ Costello: (i) determine that the Letter filed by the Intervenors fails to establish that issues of material fact exist; (ii) determine that no additional process is needed; and (iii) refer the Petition to the Commission for approval.

Respectfully,

COUCH WHITE, LLP

*Devlyn C. Tedesco*

Devlyn C. Tedesco

cc: Hon. James Costello (via e-mail; w/ att.)  
Justin Fung, Esq. (via e-mail; w/ att.)  
All parties to Case 21-G-0576 (via e-mail; w/att.)