STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of Tracy Solar Energy Center, LLC for an Order Granting a Certificate of Public Convenience and Necessity Pursuant to Public Service Law § 68 and Lightened Regulation.

Case: 26-E-_____

PETITION OF TRACY SOLAR ENERGY CENTER, LLC FOR AN ORDER GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO PUBLIC SERVICE LAW § 68 AND LIGHTENED REGULATION

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On January 9, 2023, the New York State Office of Renewable Energy Siting and Electric Transmission ("ORES" or, the "Office") issued a Siting Permit to Tracy Solar Energy Center LLC ("Tracy Solar" or "Petitioner") for the construction of the Tracy Solar Energy Center, a 119 MW solar electric generating project in the Towns of Clayton and Orleans, Jefferson County, New York (the "Project").[1] After obtaining a Siting Permit, Tracy Solar 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").[2] Tracy Solar hereby files this petition respectfully requesting that the Commission issue (1) a CPCN to Tracy Solar, pursuant to PSL § 68, (2) an Order finding that Tracy Solar, as a wholesale electric market participant, is entitled to a lightened regulatory regime, 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).

[1] Matter No. 21-00962: *Application of Tracy Solar Energy Center, LLC for a 94-c Permit for Major Renewable Energy Facility*, Siting Permit (Issued January 9, 2023) ("Permit Order").

[2] *See* 16 NYCRR § 1100-6.1(d)(1).

As the Project's Siting Permit has already been issued to Petitioner, 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 its renewable energy targets.

Although ORES's 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."[3] As stated by the Commission, "[t]he granting of a CPCN… is an activity undertaken in relation to the Final Permit issued by ORES."[4] Thus, the scope of this proceeding is limited. This proceeding should not duplicate the public need and environmental compatibility issues resolved in the 94-c proceeding and resultant siting permit.[5] 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."[6]

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[3] 16 NYCRR § 1100-6.1(d)(1).

[4] 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").

[5] *Id*.

[6] *Id*. at 12.

As will be shown herein, Tracy Solar has obtained all necessary local approvals and has sufficient financial resources to construct the Project and significant expertise to operate it. Tracy Solar 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 Tracy Solar is entitled to a lightened regulatory regime.

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 PSL § 68 reviews in other CPCN proceedings involving renewable energy projects.[7] The permitting review process generated a substantial record and there has already been ample opportunity for public input provided under the permitting review process. Based on the public comments and feedback that have been received through permitting process, the Town and public comments 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 permitting 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, 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

[7] *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).

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.

I. BACKGROUND

A. <u>The Project</u>

The Project is a solar photovoltaic energy generating project located in the Towns of Clayton and Orleans, Jefferson County, New York, that consists of the following major components: PV solar panels and their single axis tracker racking systems; direct current and communications cables connecting the panels to multiple decentralized inverters; the inverters, with their support platforms, control electronics, and step-up transformers; buried alternating current medium-voltage collector circuits; fencing and gates around each array of panels; access roads; temporary laydown/construction support areas; a 34.5 kilovolt (kV) to 115 kV voltage collection substation, with control building, associated equipment and fenced areas; a new 115 kV Point of Interconnection switchyard with associated equipment and fenced area (to be owned by National Grid) adjacent to National Grid's existing 115 kV Thousand Island-to-Coffeen Street Transmission Line; and an operations and maintenance building. According to the Project's Siting Permit, the total nameplate capacity of the Project shall not exceed 119 MW.

The Project components will be located on a Project site of approximately 1,450 acres, comprised of 16 contiguous parcels of leased private land owned by separate landholding entities. The total Project footprint is limited to approximately 864 acres, which includes both temporary and permanent disturbances and comprises the limit of disturbance, and the final fenced area during operation.

The proposed solar Project will directly contribute significantly to New York State's CLCPA targets by producing up to 119 MW of emissions-free, low-cost, renewable solar energy to New York's energy market. The Project will produce enough zero-emissions energy to power more than 27,000 homes in New York State and contribute to the reduction of greenhouse gas emissions statewide consistent with the CLCPA, and the New York State Energy Plan and Renewable Energy Standard. The Project will also create job opportunities, support economic growth, and protect the public health, safety, and environment by significantly reducing greenhouse gas emissions.

B. <u>The Parties</u>

i. Tracy Solar Energy Center, LLC

Tracy Solar is a special purpose entity created to own and operate the Tracy Solar Energy Center. Tracy Solar, a Delaware limited liability company is a wholly owned subsidiary of ACE DevCo NC, LLC ("ACE DevCo"), which in turn is a wholly owned subsidiary of the ACE Development Company, LLC ("ACE").[8] ACE is an asset development holding company, which in turn is a majority owned subsidiary of AES Clean Energy Development, LLC ("AES-CED").

ii. AES Clean Energy Development, LLC

On February 1, 2021, specifically identified projects in the sPower and AES Renewable Holdings development platforms were merged to form AES Clean Energy Development, LLC ("AES-CED").[9] Prior to the merger, sPower (formerly known as Sustainable Power Group, LLC) was owned by a joint venture between The AES Corporation ("AES") and Alberta Investment

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[8] On February 14, 2025, the Commission declared that a transaction with EDF RE US Development LLC did not require Commission approval for the transfer of the Moraine Solar LLC, Homer Solar, LLC and Tracy Solar LLC solar projects, which total an additional 303 MWs of projects in New York development. (*See* Case No. 24-E-0637, *Joint Petition of Moraine Solar Energy Center, LLC, Tracy Solar Energy Center, LLC, Home 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*). ACE DevCo acquired Tracy Solar from EDF-RE US Development, LLC, on April 4, 2025.

[9] AES 2021 Annual Report, pg. 19 available at https://s26.q4cdn.com/697131027/files/doc_financials/2021/ar/AES-2021-AR-10-K.pdf.

Management Corporation ("AIMCo"). Subsequent to the closing of the transaction, AES holds a 75% ownership interest in AES-CED, and AIMCo holds the remaining 25% minority interest.[10]

This merged renewable energy platform has brought together sPower's and AES' differentiated capabilities in the solar, wind, and energy storage industries to accelerate energy transitions. AES-CED now serves as AES' development vehicle for all future renewable projects in the United States.[11] AES-CED offers an expanded portfolio of innovative solutions based on cutting-edge technologies that are designed to accelerate energy futures.

iii. The AES Corporation

Incorporated in 1981, The AES Corporation ("AES") is a Fortune 500 global energy company accelerating the future of energy. AES is a power generation and utility company, providing affordable, sustainable energy through a diverse portfolio of generation facilities and distribution businesses. Operating across four continents, and fourteen countries, with a global workforce of approximately 9,100 people, AES is working together with its stakeholders to improve lives by delivering the greener, smarter energy solutions that the world needs.[12] AES is organized into four market-oriented Strategic Business Units ("SBUs"): Renewables (solar, wind, energy storage, hydro, biomass and landfill gas); Utilities (AES Indiana, AES Ohio and AES El Salvador); Energy Infrastructure (natural gas, LNG, coal, pet coke, diesel and oil); and New Energy Technologies (the development of green hydrogen, Fluence, and Uplight).

[10] AIMCo's 25% minority interest is held along with certain partnership rights, though currently not in effect, that would enable AIMCo to exit in the future. *See* AES 2021 Annual Report.

[11] AES 2024 Annual Report, pg. 17, *available at*, https://www.aes.com/investors/reports-filings/financial-reports-summary.

[12] AES 2025 Annual Report, pg. 5, *available at*, https://www.aes.com/investors/reports-filings/financial-reports-summary.

AES owns six utility businesses that distribute power to 2.7 million customers.[13] AES owns and operates a generation portfolio of 34,740 gross MW currently in operation and 5,727 MW in generation capacity under construction.[14] In 2025 AES signed or was awarded 4 GW of renewables under long-term power purchase agreements.[15] Its two utility businesses in the U.S., AES Indiana and AES Ohio, include a generation capacity totaling over 4,056 MW.[16]

AES's U.S. renewables portfolio, referred to as AES Clean Energy, which includes AES-CED, includes 10,961 MW of generation capacity across the U.S., with another 3,031 MW under construction, including 1,542 MW of wind, 939 MW of solar, and 550 MW of energy storage, as of the end of 2025.[17]

AES has more than two decades of experience working in New York, dating back to the beginning of its operations in New York in 1999, and has worked to help the State lead the adoption of solar, solar-plus-storage, and standalone storage at the community and utility-scale. In 2023 the New York State Energy Research and Development Authority ("NYSERDA") awarded AES ten wind and solar project across New York state totaling 1.2 GW of renewable energy generation under a large-scale renewable Request for Proposals.[18] AES has 71 operational projects with just over 832 total operational megawatts across New York. In New York, neither AES nor its subsidiaries own transmission facilities, any public utility with a franchised service territory, or any essential inputs to electricity products or production.

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[13] *Id*., at pg. 8.

[14] *Id*.

[15] *Id*.

[16] *Id*., at pg. 22.

[17] AES 2025 Annual Report, pg. 16.

[18] https://www.aes.com/press-release/aes-awarded-12-gw-clean-energy-projects-new-york

AES is well capitalized and has excellent access to capital. As of the 2025 fiscal year, AES had $12.2 billion in total revenue and $52 billion in total assets owned and managed.[19]

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.[20] However, for projects that are undergoing review under former Executive Law § 94-c, or have been issued siting permits from ORES, such as Tracy Solar, 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."[21] 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 94-c 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

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[19] AES 2025 Annual Report, pg. 5.

[20] *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 (April 23, 2020); Morris Ridge CPCN Order.

[21] Matter No. 21-00752, *supra*, Siting Permit for a Major Renewable Energy Project(Siting Permit), p. 9; *see also* Cassadaga CPCN Order, at 20.

municipal authorities."[22] 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."[23] Here, the Commission has already examined the ability of Tracy Solar's upstream ownership to satisfy these requirements in the *Hemlock Ridge Solar* and *Brookside Solar* proceedings and found that the grant of the CPCN is in the public interest. (*See* fn 9)

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 ORES permitting 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.[24] Tracy Solar 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 permitting proceeding, sufficient information is available to satisfy the requirements of 16 NYCRR Part 21 and provide a full evidentiary record.

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

[23] *Id.*

[24] *Id.* at 14.

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."[25] 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**. A Certificate of Good Standing from the NYS Department of State 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, Tracy Solar 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."[26] Tracy Solar 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 Project's collection and transmission lines will cross or otherwise be located on municipal right of ways ("ROWs"). The local laws of the Towns of Clayton and Orleans do not require Petitioner to obtain local road permits or to enter into a Road Use Agreement in lieu of those permits to construct and operate the Project within municipal ROWs.[27]

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

[26] PSL § 68(1); *see also* Morris Ridge CPCN Order, at 12.

[27] *See*, 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, Providing for Lightened Regulation, and Making Other Findings (December 16, 2022) (issuing CPCN where petitioner would not provide any utility service in any territory and did not require any municipal right or

Exhibit C contains the verified statements of President James Marshall and Secretary Sean McBride, who have the authority to bind Tracy Solar, that all required 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 NY Public Service Law Article VIII.

As discussed in greater detail in Section III below, other information required by 16 NYCRR § 21.2 is not relevant because Tracy Solar 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."[28] 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 on to ratepayers, and not to competitive generators who must compete in the marketplace, and who bear their own economic risks.[29] As set forth in Section IV below, numerous wholesale electric

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privilege under franchise); *see also* Case 25-E-0541, *Petition of Oxbow Hill Solar, LLC for an Order Granting a Certificate of Public Convenience and Necessity*, *Pursuant to Public Service Law Section 68, and Lightened Regulation*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (March 23, 2026).

[28] *See also*, Cassadaga CPCN Order, at 12.

[29] *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*

generators, including utility-scale solar generation facilities, have been granted lightened regulation by the Commission.[30] 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.[31] 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 Project's owners and shareholders, obviating the need for Commission oversight. Nevertheless, the Public Service Law compels compliance with those aspects of PSL § 68 that are not addressed by the ORES permitting 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. AES develops, builds, and operates renewable energy and storage facilities across

Purchase of the Oswego Fossil Fuel Generating Plant from Niagara Mohawk Power Corporation, Order Providing for Lightened Regulation (Oct. 21, 1999), at 5.

[30] *See* Wallkill Order, Carr Street Order, AES Order.

[31] 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.

the United States. The generation capacity of the systems owned and/or operated under AES includes 10,961 MW of generation capacity across the U.S., with another 3,031 MW under construction, including 1,542 MW of solar, 939 MW of wind, and 550 MW of energy storage.[32]

In 2023 the New York State Energy Research and Development Authority ("NYSERDA") awarded AES ten wind and solar project across New York state totaling 1.2 GW of renewable energy generation under a large-scale renewable Request for Proposals.[33] AES has 71 operational projects which total just over 832 operational megawatts across New York.[34] AES is well capitalized and has excellent access to capital. As of the 2025 fiscal year, AES had $12.2 billion in total revenue and $52 billion in total assets owned and managed.[35]

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 Tracy Solar remains competitive and financially viable throughout its lifespan.

Tracy Solar has not constructed the Project and therefore does not have any material assets or direct financing abilities. However, once the Project has received all necessary permits and approvals for construction, the financing needed to construct the Project will be obtained through AES' robust balance sheet. After the start of construction, AES will secure construction debt for the Project, and a tax equity investor will enter the ownership structure for the Project. The cost of constructing the Project will be financed through its parent companies' robust balance sheet with tax equity structures, as has been the successful case for financing of a majority of solar projects

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[32] AES 2025 Annual Report, pg. 16.

[33] https://www.aes.com/press-release/aes-awarded-12-gw-clean-energy-projects-new-york

[34] https://www.aes.com/new-york.

[35] AES 2025 Annual Report, pg. 5.

under AES-CED, with tax equity investors entering the project ownership structure around the commercial operations date ("COD").

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.[36] 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 permitting 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 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.[37] Tracy Solar's 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*,[38] and Exhibit 21, *Electric System Effects and Interconnection*.[39] Although Tracy Solar's upstream ownership has changed, the information and plans contained in the these exhibits has not.

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[36] https://www.governor.ny.gov/news/governor-hochul-announces-nations-largest-ever-state-investment-renewable-energy-moving

[37] *See* 19 NYCRR § 900-2.7.

[38] *See* 19 NYCRR § 900-2.18.

[39] *See* 19 NYCRR § 900-2.22.

Petitioner notes that, under a lightened regulatory regime, Tracy Solar 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.[40] Tracy Solar 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,[41] give notice of generation unit retirements,[42] 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 Tracy Solar will render safe, adequate and reliable services.

Tracy Solar's 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 Tracy Solar to construct and operate the Project.[43]

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

Tracy Solar 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

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[40] *See e.g.* Morris Ridge CPCN Order, at 19.

[41] *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]).

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

[43] *See e.g.* Morris Ridge CPCN Order, at 15; Cassadaga CPCN Order, at 25.

charged by monopoly providers, and is inapplicable in the context of a Project like Tracy Solar.[44] 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."[45] 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*."[46]

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.[47] Based on the Morris Ridge CPCN Order and proceedings before the Commission in that case, evidence/documents addressed in the permitting process and issuance of a siting permit do not need to be duplicated/reproduced in a CPCN proceeding. Accordingly, we request that Tracy Solar be treated similarly in this proceeding and duplication/reproduction of evidence/documents produced and thoroughly reviewed during the Section 94-c proceeding not be required herein.

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

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[44] *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).

[45] *See* Morris Ridge CPCN Order, at 18; Cassadaga CPCN Order, at 24.

[46] *See* Morris Ridge CPCN Order, at 18.

[47] *See* 16 NYCRR § 21.2 and 21.3.

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

(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 elsewhere.

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 ORES proceeding.

(b) A detailed description of the plant to be constructed, and its estimated costs, is provided in the permitting Application and proceeding.

(c) As discussed above, the Project will be financed through AES's robust balance sheet. After the start of construction, AES will secure construction debt for the Project, and a tax equity investor will enter the ownership structure for the Project.

(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 ORES proceeding and can be found in the socioeconomic report in Application Exhibit 18.[48] 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 III.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*,[49] the *AES*

[48] 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.

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

Order[50] and the *Carr Street Order*[51]—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.[52]

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 Tracy Solar, that are operating in a competitive environment.[53] 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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[50] Case 99-E-0148: *AES Eastern Energy LP*, Declaratory Ruling on Lightened Regulation (April 23, 1999) ("AES Order").

[51] 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).

[52] *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.

[53] *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 Tracy Solar 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, Tracy Solar 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

As noted above, AES currently has 832 MW of operational generation in New York. Operational projects include six large-scale wind projects, with a total nameplate capacity of 612 MW.[54] In addition to Tracy Solar, AES also has seven other projects that have received a CPCN as follows:

- Moraine Solar Project (94 MW),
- White Creek Solar project (135 MW),
- Homer Solar Energy Center (90 MW),
- Somerset Solar Project (152 MW),

[54] The six facilities include the facilities known as the Bliss Windpark (100.5 MW); the Wethersfield Windpark (126 MW); the Chateaugay Windpark (106.5 MW); the Altona Windpark (97.5 MW); the Clinton Windpark (100.5 MW); and the Ellenburg Windpark (81 MW). The remainder of the 806 MW is comprised of small-scale projects.

- Hemlock Ridge Solar Project (200 MW),
- Brookside Solar Project (100 MW), and
- Riverside Solar Project (100 MW).

Adding the Tracy Solar project (119 MW) to existing generation and these late-stage projects, AES's aggregate generation in New York will rise to 1,822 MW (871 + 832 + 119). Accordingly, AES' in-State operational generation will amount to approximately 4.8% of New York Control Area Summer 2025 installed capacity of 37,699 MW and 4.5% of Winter 2025 installed capacity of 39,971 MW.[55]

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.[56] Any concern that Tracy Solar's 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.[57]

With respect to vertical market power, neither Tracy Solar or 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

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[55] NYISO 2025 Gold Book, *available at* https://www.nyiso.com/documents/20142/2226333/2025-Gold-Book-Public.pdf/088438e1-02f1-5316-211b-dbca17c01b4b?t=1745932590307.

[56] 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).

[57] 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.").

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.

V. CONCLUSION

For the reasons set forth above, the Petitioner respectfully requests that the Commission issue (1) a CPCN to Tracy Solar, pursuant to PSL § 68, (2) an Order finding that Tracy Solar, as a wholesale electric market participant, is entitled to a lightened regulatory regime, 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).

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: April 28, 2026

Respectfully submitted,

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