

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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

Case 26-E-_____

**VERIFIED PETITION OF VALCOUR WETHERSFIELD NEWCO, LLC
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO PUBLIC SERVICE LAW SECTION 68, ORDER GRANTING
LIGHTENED REGULATION, AND ORDER FOR EXPEDITED PROCEEDING**

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Dated: August 24th, 2026
New York, New York

Pursuant to the Rules and Regulations of the Public Service Commission (the “Commission”), Valcour Wethersfield NewCo, LLC (“Wethersfield Wind” or “Petitioner”) hereby petitions the Commission to issue (1) a Certificate of Public Convenience and Necessity (“CPCN”) under Public Service Law (“PSL”) § 68; (2) an Order finding that Petitioner, as a wholesale electric market participant, is entitled to a lightened regulatory regime; and (3) an Order directing that the public hearing required by PSL § 68 be held before the Commission pursuant to 16 NYCRR § 21.10 (Expedited proceedings on non-contested applications).

With respect to lightened regulation, Petitioner notes that the existing Wethersfield wind energy facility and its affiliate entities have operated under a lightened regulatory regime since the Commission first granted such treatment in 2007. That lightened regulatory treatment was reviewed and confirmed during subsequent Section 70 proceedings in 2018 and 2021 and should be understood to transfer to the repowered Facility. Petitioner therefore requests lightened regulation only to the extent the Commission does not find that the prior regulatory approvals already confer such treatment on the repowered Facility.

Petitioner respectfully requests that the Commission issue an Order as soon as practicable.

I. BACKGROUND

a. The Parties

i. Valcour Wethersfield NewCo, LLC

Petitioner, a Delaware limited liability company formed on November 27, 2023, is a special purpose entity created to permit, construct, own, and operate the Wethersfield Wind Repowering Project (the “Project” or the “Facility”), a wind-powered electric generating facility with a nameplate generating capacity of up to 136 megawatts (“MW”) located in the Towns of

Eagle and Wethersfield, Wyoming County, New York. Petitioner is registered with the New York State Department of State to conduct business in New York, and its registered office is located at 80 State Street, Albany, NY 12207. Petitioner may be contacted at 23 Lost Nation Road, Churubusco, NY 12923.¹

The principal officers of Petitioner are James Marshall, Susan Harcourt, Woodward Rubin, Kleber Costa, Brian Cassutt, Weikko Wirta, Andrew Bergrud, Sean McBride, and Rob Richardson.

Petitioner is a wholly owned subsidiary of Valcour Repower DevCo, LLC, which in turn is a wholly owned subsidiary of ACE DevCo NC, LLC, which in turn is a wholly owned subsidiary of ACE Development Company, LLC, which in turn is a wholly owned subsidiary of AES Clean Energy Development, LLC.

ii. AES Clean Energy Development, LLC

AES Clean Energy Development, LLC (“AES Clean Energy”) was formed on January 4, 2021 through the merger of sPower and AES Distributed Energy LLC. AES Clean Energy is owned 75% by The AES Corporation (“AES”) and 25% by Alberta Investment Management Corporation (“AIMCo”), and serves as the development vehicle for all future renewable projects in the United States on behalf of AES and AIMCo.

iii. The AES Corporation

AES is a power generation and utility company based in Arlington, Virginia, that provides sustainable energy through a diverse portfolio of thermal and renewable generation facilities and

¹ Matter No. 23-03034, *Application of Valcour Wethersfield NewCo, LLC, for a Permit Pursuant to § 94-c of the New York Executive Law to Repower and Operate the Wethersfield Wind Repowering Project, a Major Renewable Energy Generation Facility Located in the Towns of Wethersfield and Eagle, Wyoming County, New York*, Draft Permit for a Major Renewable Energy Facility issued to Valcour Wethersfield NewCo, LLC (June 1, 2026) (“Draft Siting Permit”), at 1-4.

distribution businesses. AES was formed in 1981 and now has an international combined operating portfolio, and draws on over 30 years of experience in the renewable energy sector. AES currently owns two utility businesses in the United States (in Indiana and Ohio) and four utilities in El Salvador, had total revenues of \$12.2 billion in 2025, and owns and manages \$47 billion in total assets.

Across the United States, AES owns and operates an extensive generation portfolio of 34,740 MW currently in operation and 5,727 MW in generation capacity under construction.² AES's U.S. renewables portfolio, referred to as AES Clean Energy, 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).³

b. The Project

The Project is a repowering of an existing wind energy generating facility located in the Towns of Eagle and Wethersfield, Wyoming County, New York. The existing Wethersfield wind facility, which has been in operation since 2009 and consists of 84 turbines with a generating capacity of 126 MW, will be removed and replaced with new, advanced turbine technology consisting of up to 34 wind turbines with an increased nameplate capacity of up to 136 MW, extending the operating life of the facility for up to an additional 30 years and supplying a net increase of up to 10 MW of renewable energy to New York's power grid. The Project will consist of up to 34 wind turbines and associated components, a medium voltage electric collection system, gravel access roads, and temporary and/or permanent meteorological ("MET") tower(s). Portions of the gravel access roads and medium voltage collection system of the

² AES 2025 Annual Report at 79 (available at <https://www.aes.com/investors/reports-filings/financial-reports-summary>).

³ *Id.* at 16.

existing Wethersfield wind facility will be utilized in the Project where practicable and expanded or upgraded where necessary. The electrical collection system is located within the Towns of Wethersfield and Eagle.

The existing overhead collection lines, access roads, operations and maintenance (“O&M”) building, 34.5-kilovolt (“kV”) to 230 kV collection substation, and New York State Electric and Gas Corporation (“NYSEG”)-owned switchyard and point of interconnection (“POI”) will be reused, with upgrades as necessary.

The Project will interconnect through the existing POI at the NYSEG Liberty Street substation. The total nameplate capacity of the Project shall not exceed 136 MW.

The existing Wethersfield wind facility is owned and operated by Valcour Wethersfield Windpark, LLC, an affiliate of Petitioner. The Commission granted a CPCN and lightened regulation for the existing facility in 2007 to the original developer, Noble Wethersfield Windpark, LLC.⁴ Upstream ownership of that facility, along with that of the other five wind facilities in the Valcour portfolio, was subsequently transferred twice with Commission review under PSL § 70: first in 2018, in connection with the acquisition of the portfolio by affiliates of Cogentrix (at which time the project entities were renamed from “Noble” to “Valcour” Windpark entities),⁵ and again in 2021, when the Commission declared that no further review was required of the transfer of Cogentrix Valcour Wind Energy Holdings, LLC’s ownership interest in

⁴ Case 07-E-0258, *Petition of Noble Wethersfield Windpark, LLC for an Original Certificate of Public Convenience and Necessity and an Order Providing Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued Dec. 18, 2007).

⁵ Case 18-E-0564, *Petition of Noble Altona Windpark, LLC, Noble Bliss Windpark, LLC, Noble Chateaugay Windpark, LLC, Noble Ellenburg Windpark, LLC., Noble Wethersfield Windpark, LLC, and Zephyr Wind Energy, LLC for a Declaratory Ruling That Further Review of a Transfer of Upstream Ownership Interests is Not Required, or, in the Alternative, for Expedited Approval of the Transfer Pursuant to Section 70*, Declaratory Ruling on Transfer and Making Other Findings (issued Oct. 19, 2018) (“2018 Declaratory Ruling”).

Cogentrix Valcour Intermediate Holdings, LLC to AES Clean Energy Development, LLC.⁶ The 2018 transfer approval confirmed that “lightened regulation of the [Valcour] Wind Companies will continue,” and the 2021 Declaratory Ruling did not alter the lightened regulatory regime.⁷ The repowered Facility will be owned and operated by a separate special purpose entity, Valcour Wethersfield NewCo, LLC (the Petitioner), which was formed in 2023 to permit, construct, own, and operate the repowered Facility.

The Commission’s prior Section 68 and Section 70 reviews of the existing facility, as rehearsed above, addressed the same substantive regulatory considerations that apply to this Petition (namely, the economic feasibility of the project entity, the ability to finance construction and render safe, adequate, and reliable service, and the absence of horizontal or vertical market power concerns) and the repowering does not materially change the facts underlying those prior determinations. The repowered Facility will be operated in the same manner as the existing facility (as a merchant wholesale generator selling output exclusively at wholesale, without any retail customers or franchised service territory), will be operated by the same operator, and will be owned by the same upstream owners. Accordingly, the Commission’s prior Section 68 findings regarding the necessity and convenience of the Wethersfield wind facility for the public service, and its prior Section 70 findings regarding the absence of market power concerns and the continuation of lightened regulation, remain valid and should inform the Commission’s review of this Petition and may obviate the need for review of certain parts of this Petition.

⁶ Case 21-E-0434, *Joint Petition of Cogentrix Valcour Wind Energy Holdings, LLC, and AES Clean Energy Development, LLC, for a Declaratory Ruling That No Further Review is Required of Upstream Ownership Transfer, or in the Alternative, for Approval of the Proposed Transaction Pursuant to Section 70 of the Public Service Law*, Declaratory Ruling on Upstream Transfer Transaction (issued Nov. 23, 2021) (“2021 Declaratory Ruling”).

⁷ 2018 Declaratory Ruling at 13.

As the New York State Office of Renewable Energy Siting and Electric Transmission (“ORES” or the “Office”) found in the Draft Siting Permit, the Facility will directly contribute to New York’s Climate Leadership and Community Protection Act (“CLCPA”) targets by providing up to 136 MW of renewable energy, enough to power approximately 24,400 households in New York State, and the Facility will create job opportunities, support economic growth, and protect public health, safety, and the environment by reducing greenhouse gas emissions over the Facility’s lifetime.⁸ The Petitioner further estimates that the Facility will offset approximately 264,100 tons of carbon dioxide emissions annually.

The output of the Facility will be sold at wholesale on a merchant basis, and Petitioner expects to sell renewable energy certificates (“RECs”) to the New York State Energy Research and Development Authority (“NYSERDA”) pursuant to one agreement executed in 2024 and one agreement now under negotiation. Petitioner will obtain exempt wholesale generator status and market-based rate authorization from the Federal Energy Regulatory Commission (“FERC”) for the repowered Facility.

Petitioner submitted an application to ORES for a permit to construct and operate a Major Renewable Energy Facility pursuant to Article VIII of the PSL (“Article VIII”) (the “Application”) under DMM Matter No. 23-03034 on August 14, 2025.⁹ On June 1, 2026, ORES issued a Draft Siting Permit for the Facility.¹⁰ Petitioner files this Petition contemporaneously with that proceeding and before issuance of the final ORES siting permit.

⁸ Draft Siting Permit at subpart 2; *id.* at 1-4.

⁹ Matter No. 23-03034, *Application of Valcour Wethersfield NewCo, LLC for a Major Renewable Energy Facility Siting Permit Pursuant to Article VIII of the New York State Public Service Law*, Application (August 14, 2025). This proceeding was previously docketed under ORES Pre-Application Docket No. 23-00096.

¹⁰ See Draft Siting Permit, subpart 4.1(h). The Draft Siting Permit provides that the final siting permit will automatically expire if the Facility does not commence commercial operation within seven years from the date of issuance.

II. PETITION

a. **The Commission Should Grant a Certificate of Public Convenience and Necessity (“CPCN”) under PSL § 68**

i. ***The Commission’s Approval is Limited to Petitioner’s Corporate Formation and Exercise of Any Municipal Right***

PSL § 68 states, in pertinent part, that no electric corporation:

shall begin construction of a[n]... electric plant without first having obtained the permission and approval of the commission. No such corporation shall exercise any right or privilege... under any franchise heretofore granted but not heretofore actually exercised... without first having obtained a certificate of public convenience and necessity issued by the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together 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. The commission shall have power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is convenient and necessary for the public service.¹¹

The Commission has determined that “the issuance by ORES of a siting permit supplants the requirement for construction approval under PSL § 68, but not the requirement for Commission approval of [the electric corporation’s] corporate formation and the exercise of any municipal ‘right, privilege or franchise.’”¹² Although Article VIII and its implementing

¹¹ PSL § 68(1).

¹² 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 (issued Dec. 16, 2022) (“Cider Solar Order”) at 14-15; see also Case 21-E-0345, *Petition of Morris Ridge Solar Energy Center LLC for a Certificate of Public Convenience and Necessity Pursuant to Public Service Law Section 68*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued Nov. 24, 2021) (“Morris Ridge Order”) at 12.

regulations authorize the Commission to approve the construction or operation of the Facility pursuant to PSL §§ 68, 69, and 70, that authorization comes “with the understanding that the PSC 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 this siting permit.”¹³ The scope of this proceeding is therefore narrow and should “focus[] on the questions involving the readiness and feasibility of [the entity seeking the CPCN] to begin Facility construction” (i.e., the approval of corporate formation and the exercise of any municipal “right, franchise, or privilege”) and should not duplicate the public need and environmental compatibility issues that were resolved in the Article VIII proceeding.¹⁴ Because the repowered Facility replaces an existing wind facility that has already received a CPCN and has operated under lightened regulation for nearly two decades, many of the regulatory considerations that are weighed in considering a Petition pursuant to Section 68 have already been addressed. The Commission should decline to duplicate those prior reviews to the extent the facts underlying them remain unchanged.

Petitioner files this Petition while the Article VIII proceeding remains pending and asks the Commission to apply that limited review now, relying on the Draft Siting Permit and the record developed in DMM Matter No. 23-03034, consistent with the approach reflected in the Hoffman Falls Wind and Agricola Wind Section 68 proceedings. If a final ORES permit issues

¹³ Draft Siting Permit, subpart 4.1(d)(1).

¹⁴ The Commission recently confirmed this limited scope of review in its Order granting a CPCN to Agricola Wind, where it stated that its review “will not duplicate any issue already addressed by ORES” and ruled that commenter concerns regarding “human health, the environment, agricultural lands, visual impacts, habitat, wetlands, endangered species, and water quality” were “outside the scope of this proceeding and moot” because they had been addressed through the ORES process. Case 25-E-0555, *Petition of Agricola Wind, 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 and Providing for Lightened Regulation (issued July 17, 2026) (“Agricola Wind Order”) at 2, 11-12.

before the Commission acts, the construction-approval requirement will be supplanted as described above; in any event, the Commission's review should focus on the readiness and feasibility of the entity seeking the CPCN and not duplicate ORES's review.

Consistent with PSL § 68(1) and with the Office's actions in the recent Section 68 proceedings for Hoffman Falls Wind and Agricola Wind, an electric corporation proceeding through Article VIII and supported by a Draft Siting Permit must provide: (1) a certified copy of its charter, and (2) a "verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities."¹⁵ In considering whether to grant its approval, the Commission "shall consider the economic feasibility of the corporation, the corporation's ability to finance improvements of the... electric plant, render safe, adequate and reliable service, and provide just and reasonable rates, and whether issuance of the certificate is in the public interest."¹⁶

In conjunction with satisfying the specified requirements of PSL § 68, Petitioner must also satisfy the requirements for petitions for CPCNs set forth in 16 NYCRR §§ 21.2 and 21.3. Consistent with the Commission's precedent in its PSL § 68 review of Cassadaga Wind, many of these requirements are inapplicable to Petitioner because it will not provide utility service in any territory, and it does not require any municipal right or privilege under franchise;¹⁷ other requirements have been addressed or will be addressed through the Article VIII proceedings, Draft Siting Permit, and administrative record and need not be duplicated here.¹⁸

¹⁵ See Morris Ridge Order at 12 (citing PSL § 68).

¹⁶ *Id.*

¹⁷ 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 (issued Nov. 15, 2018) ("Cassadaga Wind Order") at 7-8.

¹⁸ See *id.* at 20 (establishing that "[t]his proceeding cannot duplicate the public need and environmental compatibility issues resolved in the Article 10 Order"); see also Case 25-E-0554, *Petition of Hoffman Falls Wind*

In the Cassadaga Wind Order, the Commission took notice of the record developed in the Article 10 proceeding because the Article 10 record included sufficient information to address the requirements of 16 NYCRR § 21.3.¹⁹ The information required by 16 NYCRR § 21.3(b) pertains to the project, the towns in which it will be located, and its costs and construction schedule. The Commission found that the information provided in Exhibits 3, 11 and 13 of Cassadaga Wind’s Article 10 application satisfied the requirements of this provision.²⁰ The information required by 16 NYCRR §§ 21.3(c) and (e) pertains to how the project will be financed, estimated project revenues, and estimated cost of operations for the first three years of service. The Commission found that the information provided in Cassadaga Wind’s petition for a CPCN pursuant to PSL § 68 and Exhibits 13 and 27 of its Article 10 application satisfied the requirements of this provision.²¹ Finally, the Commission found that 16 NYCRR §§ 21.3(d) and (g) were irrelevant because Cassadaga Wind would not provide any retail service.²² The Commission extended this rationale to projects seeking Section 94-c permits in Morris Ridge, and has continued to apply this rationale to projects proceeding under Article VIII, including the Hoffman Falls Wind and Agricola Wind projects.²³

Like Cassadaga Wind, Hoffman Falls Wind, and Agricola Wind, Petitioner will not engage in the retail sale of electricity, and the Article VIII proceeding has produced a substantial

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 Apr. 17, 2026) (“Hoffman Falls Wind Order”) at 15 (establishing the same in the Article VIII context).

¹⁹ Cassadaga Wind Order at 13.

²⁰ *Id.* at 8.

²¹ *Id.*

²² *Id.*

²³ See Agricola Wind Order and Hoffman Falls Wind Order.

record—including the Draft Siting Permit—on issues pertaining to environmental compatibility and public necessity that need not be duplicated here. As the Commission held in Agricola Wind, actions requiring a siting permit under Article VIII “are specifically listed as a Type II action exempt from review under the State Environmental Quality Review Act (SEQRA),” and accordingly, “a separate environmental review under SEQRA is not warranted in connection with the Petition.”²⁴ Accordingly, Petitioner requests that it be granted the same treatment as the petitioners in the Cassadaga Wind, Morris Ridge, and Agricola Wind proceedings. As such, Petitioner respectfully requests that the Commission take notice of the record developed in the Article VIII proceeding for the Facility and find that the information provided in the record of the Petitioner’s Article VIII Application, the Draft Siting Permit, and this Petition pursuant to PSL § 68 and 16 NYCRR §§ 21.2 and 21.3(b), (c), and (e), satisfies the requirements of 16 NYCRR Part 21 and provides a full evidentiary record.

ii. Petitioner's Certified Charter Demonstrates Petitioner's Business Registration

PSL § 68(1) requires that, before the Commission can issue a CPCN, the applicant must submit “a certified copy of the charter of such corporation.”²⁵ A copy of Petitioner’s Certificate of Formation, certified by the Delaware Secretary of State, is attached hereto as **Exhibit A**. Database records demonstrating that Petitioner 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, are attached hereto as **Exhibit B**.

²⁴ Agricola Wind Order at 11.

²⁵ See Morris Ridge Order at 12 (citing PSL § 68).

iii. Petitioner Has Received the Required Consent of the Proper Municipal Authorities

PSL § 68(1) requires Petitioner to provide a “verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.”²⁶

Petitioner 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”), certain portions of the Facility’s collection lines will cross municipal ROWs and certain access roads will intersect with municipal ROWs.²⁷

With respect to Host Community Agreements and Road Use Agreements, the Town of Wethersfield’s Local Law No. 1 of 2006 provides that a Host Agreement and Road Use Agreement must be entered into before a local license may issue.²⁸ However, as set forth in Petitioner’s Article VIII Application at Exhibit 24, these provisions are procedural in nature and are therefore superseded by Article VIII. Petitioner is nonetheless engaged in, and committed to, ongoing negotiations with the Town of Wethersfield to establish and execute a Host Community Agreement and Road Use Agreement.

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

²⁷ *See* Application at Exhibit 5 and Appendix 5-A (Civil Design Drawings). The Commission has found compliance with PSL § 68(1) where a petitioner obtained municipal consent only from those municipalities having a law, ordinance, or other requirement compelling such consent. *See, e.g.,* Cider Solar Order; 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) (“Brookside Solar Order”); 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 (issued June 12, 2025) (“Prattsburgh Wind Order”).

²⁸ Local Law No. 1 of 2006, Section VII(K), Section VII(L).

The Town of Eagle does not have a local law requiring a Host Community Agreement or Road Use Agreement as a precondition to the construction or operation of a wind facility permitted pursuant to Article VIII.

Outreach to both the Town of Wethersfield and the Town of Eagle began in 2022, and has included open houses and town meetings, as well as regular communication with the Towns' Supervisors. On or about October 5, 2024, the Applicant met with representatives of Wyoming County to discuss project details. Petitioner initiated local-law consultation with both the Town of Wethersfield and the Town of Eagle on January 28, 2025. On February 24, 2025, Petitioner sent written consultation materials to the Town of Eagle identifying applicable substantive local laws and describing the Facility's compliance with those provisions. Petitioner sent a similar letter to the Town of Wethersfield on March 6, 2025.²⁹

The Applicant has been in regular communication with both host towns and Wyoming County regarding road use, municipal infrastructure, and host-community benefits throughout the Article VIII process. The Draft Siting Permit requires host community benefits, including Payments in Lieu of Taxes ("PILOTs"), payments under a host community agreement, or other projects agreed to by the host community.³⁰

Host Community Agreements and Road Use Agreements are not municipal consents to exercise franchise rights within the meaning of PSL § 68(1).³¹ 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 municipality, such as where project components will occupy municipal

²⁹ Application, Exhibit 24 at 2-3.

³⁰ Draft Siting Permit, subpart 4.1(f).

³¹ See Cassadaga Wind Order at 7-8.

property on a permanent basis. The Commission has consistently found that a CPCN applicant need not obtain municipal consent to cross municipal roads or rights-of-way where the relevant municipality did not have a law, ordinance, or other requirement in place requiring the same.³² 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 preempted by Article VIII.³³

Petitioner has coordinated with the Towns of Eagle and Wethersfield and Wyoming County regarding the location of collection line crossings and where the Facility's access roads will intersect with town roads. As noted above, any Host Community Agreements or Road Use Agreement required by a town or county is a local permitting matter that does not constitute a municipal consent to exercise franchise rights under PSL § 68(1). Petitioner will provide the municipalities' and County's highway officials with final construction drawings that depict the location of the ROW crossings and access road intersections with municipal ROWs.

Exhibit C contains a verified statement of Emily Taylor, who has the authority to bind Petitioner, that all required consents of the proper municipal authorities necessary for issuance of a CPCN have been received, to the extent such consents are not preempted by Article VIII.³⁴

³² See Case 25-E-0554, *Petition of Hoffman Falls Wind LLC for a Certificate of Public Convenience and Necessity Pursuant to Public Service Law Section 68 and an Order Granting Lightened Regulation*, Petition (filed Sept. 3, 2025) ("Hoffman Falls Section 68 Petition") at 9 & fn.18 (citing *Penn-York Natural Gas Corp. v. Maltbie*, 164 Misc. 569, 723-73 (Sup. Ct. Albany Cnty., 1937) (explaining that "consent" in PSL § 68(1) refers to obtaining a franchise right and that "[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")).

³³ See Hoffman Falls Section 68 Petition at 11; see also Case 17-F-0282, *Application of Alle-Catt Wind Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for a Proposed Wind Energy Project, Located in Allegany, Cattaraugus, and Wyoming Counties, New York, in the Towns of Arcade, Centerville, Farmersville, Freedom, and Rushford*, Order Granting Petition, in Part, Subject to Conditions (issued Nov. 28, 2023) ("Alle-Catt Order") at 15 (upholding the Siting Board's finding that unreasonable delay by a municipality in granting a municipal consent constitutes cause for the Siting Board to withdraw authority delegated to that municipality to grant or withhold such consent).

³⁴ The Commission has accepted verified statements from managing members or other authorized persons of an LLC for purposes of PSL § 68(1). 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*, Letter Regarding Petition Compliance (issued July 1, 2022); Case 21-E-0502, *Petition of Flint Mine Solar, LLC for*

Petitioner is a limited liability company and, as such, does not have a president or secretary; rather, it is managed in a manner that permits an authorized person to bind the company in a manner equivalent to a president or secretary of a corporation.

As discussed in greater detail below, certain other information required by 16 NYCRR § 21.2 is not relevant because Petitioner 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 Article VIII proceeding.

iv. The Project is Economically Feasible and Petitioner is Able to Finance

Improvements

PSL § 68(1) requires the Commission to consider “the economic feasibility of the corporation, [and] the corporation’s ability to finance improvements of... [an] electric plant.”³⁵ Petitioner, through its parent companies and affiliates, has extensive experience with the development, financing, construction, operation, and ownership of utility-scale renewable energy projects. AES draws expertise from over 30 years of experience in the renewable energy sector and has an international combined operating portfolio of thermal and renewable generation and distribution businesses. AES and its affiliates already own and operate the six wind facilities in the Valcour portfolio in New York, including the existing Wethersfield facility, and therefore have direct operating experience with the very assets to be repowered.

While there is no formal financing agreement between AES and the Petitioner, AES will finance the development of the Project on its balance sheet. Financing needed to construct the Project will be obtained through a blend of equity, debt, and tax equity financing. Once the

an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation, CPCN Compliance Letter (issued May 3, 2022).

³⁵ PSL § 68(1); *see also* Cassadaga Wind Order at 12.

project achieves commercial operation, construction loan(s) will be replaced with tax credit monetization and a term loan. The Project will realize income from participation in wholesale markets administered by the New York Independent System Operator (“NYISO”) and from the sale of RECs pursuant to a long-term agreement with NYSERDA.

Petitioner’s commitment to the Facility is further evidenced by the actions it has taken in obtaining its Draft Siting Permit, including years of pre-application studies and the preparation of a comprehensive Article VIII Application, which the Petitioner expects will culminate in the issuance of the final Siting Permit no later than April 20, 2027, one year from the date ORES deemed the Application complete. The owner of the Project is financially viable and the Project itself will be economically feasible.

v. Petitioner is Able to Render Safe, Adequate, and Reliable Service

PSL § 68(1) requires the Commission to consider “the corporation’s ability to... render safe, adequate and reliable service.” The Commission has determined that applicants seeking siting permits remain subject to the PSL with regard to enforcement, investigation, safety, reliability, system improvements, and the applicable requirements of PSL Articles 1 and 4. Even under the lightened regulatory regime requested herein, Petitioner will remain subject to these conditions. According to the Commission, “these conditions further ensure [that lightly regulated entities] will render safe, adequate, and reliable service.”³⁶

³⁶ Cassadaga Wind Order at 25; *see also* Morris Ridge Order at 19. Petitioner’s ability to render safe, adequate, and reliable service is addressed in Petitioner’s Article VIII Application, including 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. Petitioner’s ability to provide adequate and reliable service is also addressed in Exhibit 17, Consistency with Energy Planning Objectives, and Exhibit 21, Electric System Effects and Interconnection. *See* 16 NYCRR §§ 1100-2.7, 1100-2.18, 1100-2.22.

Furthermore, the Commission has held that a lightly regulated generator's economic feasibility and financial viability demonstrate the generator's "ability to finance the improvements of the Facility and to render safe, adequate, and reliable service."³⁷ Thus, Petitioner's financial viability and the economic feasibility of the Project described above should be considered by the Commission in finding that Petitioner has demonstrated its ability to render safe, adequate, and reliable service.³⁸

vi. Petitioner Will Not Sell Electricity at Retail and, Thus, Need Not Provide Retail Service at Just and Reasonable Rates

PSL § 68 requires that the Commission consider Petitioner's ability to provide just and reasonable rates. The Project will not sell electricity at retail and, thus, the requirement to provide "just and reasonable rates" is inapplicable to Petitioner; rather, the competitive wholesale market ensures that rates to customers are just and reasonable. In the Cassadaga Wind Order, the Commission ruled that a wholesale wind energy generator that did not provide retail service would provide just and reasonable rates simply by participating in the wholesale market: "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."³⁹ The Commission extended this standard to wholesale generators seeking Section 94-c permits in Morris Ridge and has continued to apply it under Article VIII.⁴⁰ Petitioner will comply with approved FERC tariffs as a condition of its participation in the

³⁷ Hoffman Falls Wind Order at 16.

³⁸ Morris Ridge Order at 15; Cassadaga Wind Order at 25.

³⁹ Cassadaga Wind Order at 24.

⁴⁰ Morris Ridge Order at 17-18; Hoffman Falls Wind Order at 15-16.

wholesale market. Thus, consistent with Cassadaga Wind, Morris Ridge, the Commission should find that Petitioner has satisfied this requirement to the extent applicable.

vii. *The Issuance of a CPCN is in the Public Interest*

As ORES found in the Draft Siting Permit, the Facility will be required to comply with Article VIII and the applicable provisions of the Office’s regulations at 16 NYCRR subparts 1100-1 through 1100-15 (and the applicable uniform standards, site-specific conditions, and compliance filings) and, in so doing, will avoid, minimize, or mitigate “to the maximum extent practicable, potential significant adverse environmental impacts of the Facility.”⁴¹ ORES specifically found that the Facility contributes to New York’s CLCPA targets by providing up to 136 MW of renewable energy, enough to power approximately 24,400 households in New York State, and the Petitioner estimates that the Facility will provide the environmental benefits of offsetting 264,100 tons of carbon dioxide emissions each year. ORES also found in the Draft Siting Permit that the Facility will support job creation, economic growth, and protect public health, safety, and the environment by reducing greenhouse gas emissions over each year of the Facility lifetime.⁴²

The repowering also advances the public interest by extending the operating life of an existing generating site for up to an additional 30 years, maintaining the existing 126 MW and adding up to 10 MW of renewable generating capacity while reducing the number of turbines from the existing facility’s 84 turbines to up to 34. Moreover, the Project will provide host-

⁴¹ Draft Siting Permit at 1-2.

⁴² *Id.* at 3-4.

community benefits and is not located in or adjacent to a Disadvantaged Community (“DAC”), as defined in CLCPA § 7(3).⁴³

Because 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,” the Commission should adopt ORES’s findings in the Siting Permit when it is issued by ORES and find that the issuance of a CPCN for the Facility is in the public interest.⁴⁴

b. Petitioner Has Provided All Applicable Information Required to Satisfy 16 NYCRR

Part 21

As noted above, certain provisions of 16 NYCRR Part 21 are inapplicable to Petitioner as a wholesale generator that will not engage in retail sales to customers. In accordance with the Commission’s precedent in Cassadaga Wind, Morris Ridge, and Hoffman Falls Wind, and consistent with the Commission’s approach in the Hoffman Falls Wind and Agricola Wind proceedings in particular (in which the petitioners sought Section 68 relief while the applicable Article VIII proceedings were pending), the Commission should find that the record in the siting permit proceeding and the information provided by the petitioners to satisfy 16 NYCRR §§ 21.2 and 21.3(b), (c), and (e), is sufficient to satisfy the requirements of 16 NYCRR Part 21 and provides a full evidentiary record to the extent applicable.

i. 16 NYCRR § 21.2(a): Petitioner is not proposing to render utility service in any territory and thus, the information required by this subsection is inapplicable to Petitioner.

⁴³ The areas designated as disadvantaged communities by the Climate Justice Working Group can be identified in an interactive map available at: <https://www.nyserda.ny.gov/ny/Disadvantaged-Communities>.

⁴⁴ Draft Siting Permit, subpart 4.1(d)(1).

ii. 16 NYCRR § 21.2(b): Petitioner has neither been granted nor will be granted a franchise by or to the municipalities in which the Facility will be located. Thus, the requirement to provide certified copies of franchises is inapplicable to Petitioner. No municipal consents are required to locate portions of the Facility's collection lines under municipal ROWs, nor to intersect the Facility's access roads with town roads.

iii. 16 NYCRR § 21.2(c): Petitioner has not previously secured authority from the Commission to exercise the powers granted under an expired franchise; thus, the requirements of this subsection are inapplicable to Petitioner.

iv. 16 NYCRR § 21.2(d): Petitioner has not been granted any permit, license, or authority by any Federal authority relative to this Petition; thus, the requirements of this subsection are inapplicable to Petitioner. Any permits, licenses, or authorities required by Federal authorities relative to this Petition will be addressed in the Article VIII proceeding.

v. 16 NYCRR § 21.3(a): Petitioner does not propose to exercise authority granted by a franchise in any territory; thus, the requirements of this subsection are inapplicable to Petitioner. Information about the municipalities in which the Facility is proposed to be constructed and the approximate construction commencement date is provided in Petitioner's Article VIII Application.

vi. 16 NYCRR § 21.3(d): Petitioner does not propose to provide services for which retail rates would be charged; thus, the requirements of this subsection are inapplicable to Petitioner.

vii. 16 NYCRR § 21.3(e): The estimated revenues to be derived from the Facility will be derived from the sale of electricity into the wholesale market and the sale of RECs to NYSERDA pursuant to a long-term agreement. The estimated expenses for operating the Facility for the first three years of service are provided in Exhibit 18 of Petitioner's Article VIII Application and are

being evaluated by ORES within the permit application review process. Petitioner does not propose to provide service to residential, commercial or industrial customers in any particular service territory; thus, the requirement of this subsection to survey potential customers in such area is inapplicable to Petitioner.⁴⁵

viii. 16 NYCRR § 21.3(f): The facts upon which Petitioner relies to entitle it to exercise the rights and privileges petitioned for, including evidence of the economic feasibility of the enterprise, proof of Petitioner's ability to finance the Facility and render adequate service, and proof that the Facility is in the public interest are set forth in Section II(a) of this Petition.

ix. 16 NYCRR § 21.3(g): Petitioner does not propose to provide service in an area where similar services are being rendered and thus, this subsection is inapplicable to Petitioner.

III. THE COMMISSION SHOULD GRANT PETITIONER LIGHTENED REGULATORY TREATMENT

The Commission has held that “new forms of electric service providers participating in the competitive wholesale markets would be lightly regulated.”⁴⁶ The existing Wethersfield wind facility has operated under lightened regulation since the Commission granted such treatment in 2007, and that regulatory regime was reviewed and confirmed through two subsequent Section 70 transfer proceedings in 2018 and 2021. Petitioner requests that the Commission either (i) confirm that the lightened regulatory treatment previously granted to the existing Wethersfield wind facility transfers to the repowered Facility by operation of the prior approvals, or (ii) in the alternative, grant Petitioner lightened regulatory treatment consistent with its treatment of similarly situated wholesale electric generators who own merchant generation facilities that

⁴⁵ The Commission has accepted estimated expenses for facility operations, as contained in Exhibit 18 of a siting permit application, in satisfaction of the requirements of 16 NYCRR § 21.3(e). *See, e.g.*, Morris Ridge Order.

⁴⁶ Morris Ridge Order at 15-16.

operate in competitive markets in Cassadaga Wind, Morris Ridge, and Agricola Wind. In these cases, the Commission determined that a lightened regulatory regime is applicable to wholesale generation facilities that are “electric corporation[s]” for purposes of PSL § 2(13), but which are not traditional monopoly “utility company[ies]” or “public utilit[ies]” for purposes of PSL § 2(23).⁴⁷ This lightened regime has since been granted to numerous wholesale renewable generation facilities throughout the State, including each of the six existing Valcour wind facilities and, most recently, Prattsburgh Wind, Hoffman Falls Wind, and Agricola Wind.⁴⁸

The basis for lightened regulation of the existing Wethersfield wind facility has not changed: the facility sells output exclusively at wholesale, does not serve retail customers, and does not present market power concerns. The repowering extends the operating life of the existing facility and increases its nameplate capacity by a modest 10 MW, but does not alter the fundamental wholesale merchant operating model that justified the original grant of lightened

⁴⁷ See Case 91-E-0350, *In re Wallkill Generating Co.*, Order Establishing Regulatory Regime (issued April 11, 1994) (“Wallkill Order”); Case 99-E-0148, *Joint Petition of AES Eastern Energy, L.P. and AES Creative Resources, L.P. for a Declaratory Ruling that Light-Handed Regulation be Applied Concerning the Petitioners’ Purchase of Certain Electric Generating Assets from New York State Electric & Gas Corporation*, Declaratory Ruling on Lightened Regulation (issued Apr. 23, 1999) (“AES Order”); Case 98-E-1670, *Petition of Carr Street Generating Station, L.P. for an Original Certificate of Public Convenience and Necessity and for a Declaratory Ruling on Regulatory Regime*, Order Providing for Lightened Regulation (issued Apr. 23, 1999) (“Carr Street Order”); and Agricola Wind Order at 15 (citing Wallkill Order, AES Order, and Carr Street Order).

⁴⁸ See, e.g., Case 05-E-1634, *Petition of Noble Clinton Windpark I, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued Oct. 19, 2006); Case 06-E-0216, *Petition of Noble Altona Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued Nov. 9, 2006); Case 06-E-0135, *Petition of Noble Bliss Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued Nov. 9, 2006); Case 05-E-1633, *Petition of Noble Ellenburg Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued Nov. 9, 2006); Case 07-E-0257, *Petition of Noble Ellenburg Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued Nov. 19, 2007); Case 07-E-1258, *Petition of Noble Wethersfield Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued Dec. 12, 2007); Prattsburgh Wind Order; Hoffman Falls Wind Order; and Agricola Wind Order.

regulation. To the extent the Commission has already conducted (or declined to revisit) the required review of this facility’s eligibility for lightened regulation — both in the original 2007 Section 68 proceeding and in the subsequent 2018 and 2021 Section 70 proceedings — there is no need to duplicate that analysis here. The repowering does not change any of the facts associated with those prior reviews.

Should the Commission find it necessary to consider anew the repowered Facility’s eligibility for lightened regulatory treatment, such treatment is appropriate for Petitioner because Petitioner lacks horizontal and vertical market power. With respect to horizontal market power, the Facility will have a nameplate capacity of up to 136 MW and will replace an existing 126 MW facility, resulting in a net increase of only up to 10 MW. AES Project Companies are affiliated with 1,961.9 MW of operational, under construction, and/or permitted generation capacity in New York State.

Given that the wholesale energy markets administered by the New York Independent System Operator, Inc. (NYISO) have a total installed New York Control Area Summer (NYCA) 2025 capacity of approximately 37,699 MW, these large-scale operational and permitted AES Project Companies could account for up to 5.2% of the NYISO installed capacity.⁴⁹ This total is

⁴⁹ 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>) at 73. The NYISO 2025 Gold Book indicates a Summer 2025 installed capacity of 37,699 MW and Winter 2025-26 installed capacity of 39,971 MW. *Id.* The lower summer capacity number is used here as a conservative case. When the Commission last reviewed the Valcour portfolio in 2021, it found that AES Clean Energy and its affiliates would indirectly own or control approximately 744 MW of solar and wind generation in New York State, or approximately 1.7% of New York’s total resource capability for summer 2020, and that even the completion of AES Clean Energy’s then-pending 750 MW solar development pipeline would bring its New York interests to approximately 1,500 MW, or less than 4% of the State’s installed capacity — a level “insufficient to present an opportunity to exercise market power.” 2021 Declaratory Ruling at 10; *see also* Case 17-M-0735, *Joint Petition of Sithe/Independence Power Partners, L.P., Vistra Energy Corp., and Dynegy Inc. for a Declaratory Ruling*, Declaratory Ruling on Transfer and Making Other Findings (issued Feb. 27, 2018). For informational purposes, AES entities are also affiliated with approximately 1,710.9 MW of installed capacity in the multi-state control area operated by PJM Interconnection, L.L.C. (PJM) and approximately 203.0 MW of installed capacity in the ISO New England Inc. (ISO-NE) control area.

well below levels the Commission has previously found insufficient to raise market power concerns. For example, in a decision approving the merger of Constellation Energy Corporation and Calpine Corporation, the Commission found that the petitioners satisfied the Wallkill Presumption where the merger would result in a post-transaction market share of 9.7% of NYCA installed capacity.⁵⁰ Similarly, in *Generation Bridge Acquisition, LLC and NRG Energy, Inc.*, the Commission determined that a total post-transaction market share of 9% of NYCA installed capacity was insufficient to raise horizontal market power concerns.⁵¹

With respect to vertical market power, neither Petitioner nor its parent companies 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 other than the limited interconnection equipment necessary to connect their generating facilities to the transmission grid. Neither Petitioner nor any of 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, nor does any of them have control over the provision of fuels used in generation within New York State. Petitioner and its affiliates do not own or control any essential inputs to electricity products or electric power production in the NYISO control area.

⁵⁰ Case 25-E-0084, *Joint Petition of Constellation Energy Corporation and Calpine Corporation for a Declaratory Ruling Eschewing Further Review of Proposed Transaction or, in the Alternative, an Order Authorizing Transaction Pursuant to Section 70 of the New York Public Service Law*, Declaratory Ruling on Merger at 8, 14-15 (issued June 13, 2025) (authorizing, through application of the Wallkill Presumption, a post-transaction market share of total installed capacity of 9.7% and finding no resulting market power concerns); *see generally* Wallkill Order.

⁵¹ *See* Case 21-E-0196, *Joint Petition of Generation Bridge Acquisition, LLC and NRG Energy, Inc. for a Declaratory Ruling Eschewing Further Review of the Proposed Transaction or, in the Alternative, an Order Approving the Proposed Transaction Pursuant to Section 70 of the New York Public Service Law and Petition of Generation Bridge Acquisition, LLC for an Order Authorizing Financing Pursuant to Section 69 of the New York Public Service Law*, Order Approving Financing and Ruling on Transfer (issued Nov. 22, 2021) (finding that the Petitioners satisfied the Wallkill Presumption by demonstrating that the upstream transfer, resulting in control of 9% of NYCA installed capacity, does not confer the ability to exercise horizontal market power).

Valcour Wind Energy, LLC is an affiliate of Petitioner and a power marketer authorized to make wholesale sales within the ISO-NE and NYISO balancing authority areas, and may from time to time enter into marketing agreements regarding the output of affiliated generation. This Commission has found previously that Valcour Wind Energy, LLC's affiliation with, and marketing activity on behalf of, the existing Wethersfield facility do not create vertical market power concerns because Valcour Wind Energy, LLC does not directly own any generation or transmission facilities, nor does it control any unaffiliated generation capacity, and it should find similarly with respect to such affiliation and activity on behalf of Petitioner.⁵²

Requirements developed to address monopoly utilities do not apply to competitive wholesale providers such as Petitioner. These items, which address rates, recordkeeping, internal financing, and transactions, among other subjects, include most of the provisions of 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 monthly fuel cost reports; and PSL §§ 106, 107, 108, 110(3), and 110(4), relating to loans, use of revenues, mergers, and certain types of contracts.

Consistent with these decisions, and to the extent that the Commission does not understand the lightened regulatory regime that applies to the existing Wethersfield facility to transfer to the Project, Petitioner respectfully requests that the Commission issue an Order applying a lightened regulatory regime to Petitioner's activities as a wholesale electric generator in the New York market and granting such other and further relief as the Commission may determine is necessary or appropriate. Petitioner understands that, even under a lightened regulatory regime, it would be subject to the following sections of the PSL:

⁵² 2021 Declaratory Ruling at 4.

i. PSL Article 1 applies to Petitioner because it meets the definition of an electric corporation under PSL § 2(13) and will be engaged in the manufacture of electricity under PSL § 5(1)(b). Petitioner is therefore subject to provisions, such as PSL §§ 11, 19, 24, 25, and 26, that prevent producers of electricity from taking actions that are contrary to the public interest.

ii. Certain provisions of PSL Article 4, including but not limited to the provisions of PSL §§ 68, 69, and 70, would apply to all entities engaged in wholesale markets; however, the Commission may implement such provisions in a limited manner in competitive markets to the extent necessary to protect the public interest. For example, under PSL § 66(6), competitive providers of utility services subject to lightened ratemaking regulation satisfy annual report filing requirements through a format designed to accommodate their particular circumstances. Similarly, the scrutiny for approval of financing plans under PSL § 69 may be reduced for lightly regulated companies operating in a competitive environment, and up-stream transfers of ownership in lightly regulated companies are reviewed under PSL § 70 using presumptions established in Wallkill.

iii. PSL § 119-b, regarding the protection of underground facilities from damage by excavators, is applicable to all persons, including lightly regulated wholesale generators.

iv. Notwithstanding the above, in the event market power issues arise, they may be addressed under PSL § 110(1) and (2), which afford the Commission jurisdiction over affiliated interests. For lightly regulated wholesale generators, PSL § 110(1) and (2) shall apply only conditionally, to the extent a future inquiry into its relationships with an affiliate becomes necessary.

v. Finally, notwithstanding that it is lightly regulated, Petitioner and/or any other entities that exercise control over the Facility's operations remain subject to the PSL with respect to

matters such as enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, as with other wholesale generators that have been afforded a lightened regulatory regime. These requirements include obligations to conduct tests for stray voltage on all publicly accessible electric facilities, to give notice of generation unit retirements, and to report personal injury accidents pursuant to 16 NYCRR Part 125. In addition, the Draft Siting Permit requires Petitioner to comply with the Commission's regulations regarding identification and numbering of above-ground utility poles at 16 NYCRR Part 217, and to notify the New York State Department of Public Service, the serving utility, and ORES of any malfunction causing a significant reduction in the Facility's capability to deliver power for an extended duration. These conditions further ensure Petitioner will render safe, adequate, and reliable service.

**IV. THIS PETITION IS ENTITLED TO AN EXPEDITED PROCEEDING PURSUANT
TO 16 NYCRR § 21.10**

Petitioner requests that the Commission waive the general requirement of PSL § 68 that the Commission hold a hearing in this proceeding and instead hold such hearing "on the application and exhibits," consistent with the Commission's approach to PSL § 68 hearings for petitioners seeking Article 10, Section 94-c, and Article VIII siting permits; grant an expedited proceeding on a non-contested application pursuant to 16 NYCRR § 21.10; and find that no additional public statement hearing or evidentiary hearing is required. The Article VIII permitting review process generated a substantial record with ample opportunity for public input, and there is no need for this proceeding to duplicate those proceedings. Given the limited scope of the Commission's review, the record established in the Article VIII proceeding obviates the need for additional hearings to be held by the Commission on the CPCN.

Pursuant to 16 NYCRR § 21.10 (Expedited proceedings on non-contested applications), the Commission may hold a PSL § 68 hearing on the “application and exhibits, prepared testimony or other information as may be filed by the applicant or by any part of staff counsel, without oral testimony” when it appears to be in the public interest. The information that Petitioner is required to show at such hearing is set forth in 16 NYCRR § 21.3 and addressed in Section II(b) of this Petition. Accordingly, Petitioner requests that the Commission hold the PSL § 68 hearing on the papers comprising this Petition and the record developed in ORES Matter No. 23-03034, including the Draft Siting Permit and the Article VIII Application.

If a public statement hearing is required, Petitioner requests that such hearing be scheduled in satisfaction of the hearing requirements of PSL § 68, and that if no comments or information, oral or written, raise any material issues of fact, the Commission immediately rule, at the public statement hearing, that no evidentiary hearings be held, consistent with the Commission’s approach in Morris Ridge, Cider Solar, Brookside Solar, Prattsburgh Wind, and Hoffman Falls Wind.

The record generated in the Facility’s Article VIII proceeding is significant and the proceeding has provided ample opportunities for public involvement. As stated above, outreach by the Applicant to the Towns of Wethersfield and Eagle began in 2022, and has included open houses and town meetings, as well as regular communication with the Towns’ Supervisors. Petitioner initiated local-law consultation with the host towns on January 28, 2025, during which Petitioner met with the Towns of Eagle and Wethersfield to discuss the Project and its potential impacts on the community.⁵³ On February 24, 2025, Petitioner sent written consultation materials to the Town of Eagle identifying substantive local laws and providing an overview of

⁵³ Application, Exhibit 24 (Local Laws and Ordinances) at 1-3.

the Repowered Facility's compliance with those laws. On March 6, 2025, Petitioner sent a similar letter to the Town of Wethersfield.⁵⁴ Throughout the design of the Repowered Facility, Petitioner has worked to reduce the number of local-law waivers needed and to ensure that its requests are the minimum necessary. On June 1, 2026, ORES issued a Draft Siting Permit for the Facility; on August 5, 2026, a public comment hearing was held at Rita George Recreation Hall in Bliss, New York. The dates and results of any subsequent additional public comment hearings, issues statements, adjudicatory hearing, or other additional proceedings are yet to be confirmed.

Given the extensive public input provided for by the ORES permitting proceeding, the Commission should find that no PSL § 68 hearing is required; however, if the Commission determines that an additional hearing is required pursuant to PSL § 68 and if no comments or information received raise any material issues of fact, the Commission should find that no evidentiary hearings shall be held in this proceeding.

Finally, a comprehensive environmental review of the construction- and operation-related impacts of the Facility is being conducted as part of the Article VIII proceeding undertaken by ORES. Actions requiring a siting permit under Article VIII are excluded from the requirements of the State Environmental Quality Review Act. Accordingly, a separate environmental review under SEQRA is not warranted in connection with this Petition.

V. CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that the Commission issue: (1) a CPCN under PSL § 68; (2) an Order finding that Petitioner is entitled to a lightened regulatory regime; and (3) an Order directing that the public hearing required by PSL § 68 be held before the Commission pursuant to 16 NYCRR § 21.10 (Expedited proceedings on non-

⁵⁴ *Id.* at Appendix 24-B, correspondence dated February 24, 2025 and March 6, 2025.

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 by October 15th, 2026 in order to avoid any delays to the start of construction.

Dated: August 24th, 2026

Respectfully submitted,

A handwritten signature in blue ink, appearing to be "NS", written over a horizontal line.

Noah Shaw
Sarah Main
Walter M. Ramsden
Foley Hoag LLP
Attorneys for the Petitioner
1301 Avenue of the Americas
25th Floor
New York, NY 10019

EXHIBIT A

Certificate of Formation of Valcour Wethersfield NewCo, LLC,
certified by the Delaware Secretary of State

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "VALCOUR WETHERSFIELD NEWCO, LLC", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF NOVEMBER, A.D. 2023, AT 12:40 O'CLOCK P.M.



2672745 8100
SR# 20234058200

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature of Jeffrey W. Bullock in black ink, written over a horizontal line.

Jeffrey W. Bullock, Secretary of State

Authentication: 204669745
Date: 11-27-23

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:40 PM 11/27/2023
FILED 12:40 PM 11/27/2023
SR 20234058200 - File Number 2672745

CERTIFICATE OF FORMATION
OF
VALCOUR WETHERSFIELD NEWCO, LLC

This Certificate of Formation of Valcour Wethersfield NewCo, LLC is being executed by the undersigned for the purpose of forming a limited liability company pursuant to the Delaware Limited Liability Act.

1. The name of the limited liability company is:

Valcour Wethersfield NewCo, LLC

2. The address of its registered office in the State of Delaware is 251 Little Falls Drive, in the County of New Castle, City of Wilmington, Delaware 19808. The registered agent at such address is Corporation Service Company.

IN WITNESS WHEREOF, this Certificate of Formation has been executed on November 27, 2023, by the undersigned organizer.

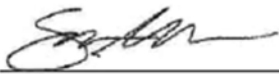
By: 
Sean McBride
General Counsel & Secretary

EXHIBIT B

New York State Department of State records evidencing Petitioner's authority
to do business in New York and registered agent for service of process

An official website of New York State.
[Here's how you know](#) ▾



Department of State

Division of Corporations

Entity Information

Return to Results

Return to Search

Entity Details



ENTITY NAME: VALCOUR WETHERSFIELD NEWCO, LLC

DOS ID: 7221116

FOREIGN LEGAL NAME: VALCOUR WETHERSFIELD NEWCO, LLC

FICTITIOUS NAME:

ENTITY TYPE: FOREIGN LIMITED LIABILITY COMPANY

DURATION DATE/LATEST DATE OF DISSOLUTION:

SECTIONOF LAW: LIMITED LIABILITY COMPANY - 802 LIMITED LIABILITY COMPANY LAW - LIMITED LIABILITY COMPANY LAW

ENTITY STATUS: ACTIVE

DATE OF INITIAL DOS FILING: 01/04/2024

REASON FOR STATUS:

EFFECTIVE DATE INITIAL FILING: 01/04/2024

INACTIVE DATE:

FOREIGN FORMATION DATE: 11/27/2023

STATEMENT STATUS: CURRENT

COUNTY: WYOMING

NEXT STATEMENT DUE DATE: 01/31/2028

JURISDICTION: DELAWARE, UNITED STATES

NFP CATEGORY:



ENTITY DISPLAY

[NAME HISTORY](#)

[FILING HISTORY](#)

[MERGER HISTORY](#)

[ASSUMED NAME HISTORY](#)

Service of Process on the Secretary of State as Agent

The Post Office address to which the Secretary of State shall mail a copy of any process against the corporation served upon the Secretary of State by personal delivery:

Name: CORPORATION SERVICE COMPANY

Address: 80 STATE STREET, ALBANY, NY, UNITED STATES, 12207

Electronic Service of Process on the Secretary of State as agent: Permitted

Chief Executive Officer's Name and Address

Name:

Address:

Principal Executive Office Address

Address:

Registered Agent Name and Address

Name:

Address:

Entity Primary Location Name and Address

Name:

Address:

Farmcorpflag

Is The Entity A Farm Corporation: NO

Stock Information

Share Value	Number Of Shares	Value Per Share
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EXHIBIT C

Verified Statement Regarding Municipal Consents

STATE OF NEW YORK PUBLIC SERVICE COMMISSION

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

Case 26-E-_____

STATE OF Colorado)
COUNTY OF Denver) ss:

VERIFIED STATEMENT

I, Emily Taylor, am Director of AES Wind Development, and am authorized to make this verified statement on behalf of Valcour Wethersfield NewCo, LLC, Petitioner in the above-entitled proceeding, in a manner equivalent to a president or secretary of a corporation. I hereby verify that Valcour Wethersfield NewCo, LLC has secured all municipal consents required by

Section 68 of the New York State Public Service Law for issuance of a Certificate of Public Convenience and Necessity, and not otherwise supplanted by Article VIII of the New York State Public Service Law, to construct and operate the Wethersfield Wind Repowering Project in the Towns of Eagle and Wethersfield, Wyoming County, New York. I have read the contents of the foregoing Petition and hereby verify that the statements therein contained are true and accurate to the best of my knowledge and belief as to Valcour Wethersfield NewCo, LLC.


Emily Taylor

Sworn to before me this 21st day of August, 2026.


Notary Public

AJANI SOUSOURAS - NESBITT NOTARY PUBLIC STATE OF COLORADO NOTARY ID# 20264027165 MY COMMISSION EXPIRES 07-08-2030
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