

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

---

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

---

Case 25-E-\_\_\_\_\_

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

James A. Muscato  
Jessica Ansert Klami  
Young / Sommer LLC  
Executive Woods  
Five Palisades Drive  
Albany, New York  
(518) 438-9907  
jmuscato@youngsommer.com  
jklami@youngsommer.com

Dated: April 1, 2025

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

---

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

---

Case 25-E-\_\_\_\_\_

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

**I. INTRODUCTION**

On October 18 and 19, 2021, Riverside Solar, LLC (“Riverside Solar” or “Petitioner”) submitted an application for a major renewable energy facility (“Application”) to the State of New York Office of Renewable Energy Siting (“ORES” or the “Office”) pursuant to New York State Executive Law §94-c<sup>1</sup> (“Section 94-c” or “94-c”).<sup>2</sup> On July 14, 2022, the Office determined that the Application, together with the Application Supplements filed on various dates between February 23, 2022 through July 8, 2022, was complete and in compliance with Section 94-c(5)(b) and 19 NYCRR §§ 900-4.1(c) and (g).<sup>3</sup> On September 12, 2022, a Draft Permit was issued, and

---

<sup>1</sup> Effective April 20, 2024, the Renewable Action through Project Interconnection and Deployment (RAPID) Act (L 2024, ch 58, part O) repealed Executive Law § 94-c, repealed the current Public Service Law article VIII, and enacted a new Public Service Law article VIII entitled “Siting of Renewable Energy and Electric Transmission” (Article VIII) (see RAPID Act §§ 2, 11). The RAPID Act also transferred ORES from the Department of State to the Department of Public Service, continuing all existing functions, powers, duties, and obligations of the Office under the former Executive Law § 94-c, and adding new functions, powers, duties, and obligations related to major electric transmission siting (see id. §§ 3, 4).

<sup>2</sup> Matter No. 21-00752, *Application of Riverside Solar, LLC for a 94-c Permit for Major Renewable Energy Facility*.

<sup>3</sup> The PSC is respectfully directed to the Notice of Complete Application (DMM Item No. 54) for a more complete description of the Section 94-c proceedings in Matter No. 21-00752.

then on January 9, 2023, Petitioner was issued its final Siting Permit for the construction and operation of the Riverside Solar Project (the “Facility” or “Project”).<sup>4</sup>

Riverside Solar hereby submits this petition to respectfully request that the Public Service Commission (the “Commission”) issue (1) a CPCN to Riverside Solar, pursuant to PSL § 68, (2) an Order finding that Riverside 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 noncontested applications).

As the Facility’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 it’s renewable energy targets.

Although the former Section 94-c implementing regulations<sup>5</sup> authorize the Commission to approve the construction or operation of the Facility through the issuance of a CPCN, this authorization comes with “the understanding that the PSC will not duplicate any issues already addressed by the Office and will instead only act on its police power functions related to the entity as described in the body of [a] siting permit.”<sup>6</sup> Thus, the scope of this proceeding is limited to essentially the same issues set by the Siting Board in the Cassadaga Article 10 proceeding.<sup>7</sup> In Cassadaga, the Siting Board stated that “[t]he scope of this proceeding is narrow” and should

---

<sup>4</sup> The PSC is respectfully directed to the Siting Permit (DMM Item No. 77) for a description of the full procedural background of the Section 94-c proceedings in Matter No. 21-00752.

<sup>5</sup> 19 NYCRR § 900-6.1(d)(1).

<sup>6</sup> Riverside Solar Siting Permit, at pp. 9-10.

<sup>7</sup> Case 18-E-0399, *Petition of Cassadaga Wind LLC for a Certificate of Public Convenience and Necessity*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Nov. 15, 2018), at 20 (“Cassadaga CPCN Order”).

“focus[] on the questions involving the readiness and feasibility of [the entity seeking the CPCN] to begin Facility construction.”<sup>8</sup> Initially applied in the context where a Section 68 petitioner had been issued a PSL Article 10 Certificate, this standard of review has more recently been applied in cases where ORES has granted a siting permit under Executive Law § 94-c.<sup>9</sup> There is no need for this proceeding to, nor should it, duplicate the public need and environmental compatibility issues that have already been resolved through the Section 94-c proceeding, as those are already addressed in the issued Siting Permit. Instead, the Commission’s review should be focused on Riverside Solar’s ability to construct and operate the permitted Facility.<sup>10</sup>

As will also be shown herein, Riverside Solar has obtained all necessary municipal consents for the issuance of a CPCN and has sufficient financial resources to construct the Project and significant expertise to operate it. Riverside Solar will be operating the Project as a competitive wholesale generator. As such, the Commission Order should also find, as it has previously done for numerous generators operating under similar circumstances, that Riverside Solar’s ownership, construction and operation of the Facility is entitled to be subject 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 Section 68 reviews in other CPCN proceedings involving renewable

---

<sup>8</sup> *Id.* at 20.

<sup>9</sup> See e.g. Case 22-E-0343, *Petition of Hecate Energy Cider Solar, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation*, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Regulation, and Making Other Findings (Cider Solar CPCN Order) (issued December 16, 2022); Case 21-E00345, *Morris Ridge Solar Energy Center, LLC Section 68 Petition*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Morris Ridge CPCN Order) (issued November 24, 2021).

<sup>10</sup> *Id.*

energy projects.<sup>11</sup> The Section 94-c review process has generated a substantial record and there has already been ample opportunity for public input provided under the Section 94-c review process. Based on the public comments and feedback that have been received through Section 94-c 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 Facility construction in a timely manner. The record that has been established in the Section 94-c 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 expediated 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 or information, oral or written, raise any material issues of fact, that the Commission immediately rule, at the public statement hearing, that no evidentiary hearings be held.

## **II. BACKGROUND**

### **A. The Project**

The Facility is a utility-scale solar photovoltaic (PV) energy generating project located in the Towns of Lyme and Brownville, Jefferson County, New York. The Facility has a nameplate capacity of 100 megawatts (MW), and consists of the following major components: PV solar panels supported by single axis tracker racking system; direct current (DC) and communications cables connecting the panels to multiple decentralized inverters; power inverters, inclusive of

---

<sup>11</sup> 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).

support platforms, control electronics and step-up transformers; 34.5 kV buried alternating current (AC) medium voltage collector circuits; fencing and gates surrounding each array of panels; permanent access roads; temporary laydown construction support areas; a collection substation including a 34.5 kV to 115 kV step-up transformer, system protection equipment, control house, security fencing and lighting and associated infrastructure.

The Facility will interconnect to the existing National Grid Lyme Tap Line off the Thousand Islands – Coffeen Street 115 kV transmission line #4 through a new 115 kV overhead transmission line from the collection substation. The Facility will be a significant contribution to the State’s New York’s Climate Leadership and Community Protection Act (“CLCPA”) targets through the production of up to 100 MW of renewable energy, sufficient to power approximately 16,500 New York households with zero-emission electricity. The Facility will also create job opportunities, support economic growth, and protect public health, safety, and the environment by significantly reducing greenhouse gas emissions.

## **B. The Parties**

### **i. Riverside Solar, LLC**

Riverside Solar, LLC is a special purpose entity created to own and operate the Riverside Solar Facility. Riverside Solar, LLC, 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”). ACE is an asset development holding company<sup>12</sup>, which in turn is a majority owned subsidiary of AES Clean Energy Development, LLC (“AES-CED”).

---

<sup>12</sup> Prior to commercial operations, Riverside Solar, LLC will be transferred to a separate AES controlled upstream owner for purposes of tax equity financing.

**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”).<sup>13</sup> 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 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.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup> AES is

---

<sup>13</sup> AES 2021 Annual Report, pg. 19 available at [https://s26.q4cdn.com/697131027/files/doc\\_financials/2021/ar/AES-2021-AR-10-K.pdf](https://s26.q4cdn.com/697131027/files/doc_financials/2021/ar/AES-2021-AR-10-K.pdf).

<sup>14</sup> 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.

<sup>15</sup> AES 2024 Annual Report, pg. 17 available at <https://www.aes.com/investors/reports-filings/financial-reports-summary>

<sup>16</sup> AES 2024 Annual Report, pg. 7 available at <https://www.aes.com/investors/reports-filings/financial-reports-summary>

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).

AES owns six utility businesses that distribute power to 2.7 million customers.<sup>17</sup> AES owns and operates a generation portfolio of 32,109 gross MW currently in operation and 4,942 MW in generation capacity under construction.<sup>18</sup> In 2024 AES signed or was awarded 4.4 GW of renewables under long-term power purchase agreements.<sup>19</sup> Its two utility businesses in the U.S., AES Indiana and AES Ohio, include a generation capacity totaling over 3,500 MW.<sup>20</sup>

AES’s U.S. renewables portfolio, referred to as AES Clean Energy, which includes AES-CED, includes 8,927 MW of generation capacity across the U.S., with another 3,306 MW under construction, including 1,524 MW of solar, 500 MW of wind, and 1,282 MW of energy storage.<sup>21</sup> AES Clean Energy also has a 7.3 GW of projects, expected to come online through 2025.<sup>22</sup>

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.<sup>23</sup> AES has 61 operational projects with just

---

<sup>17</sup> AES 2024 Annual Report, pg. 7 available at <https://www.aes.com/investors/reports-filings/financial-reports-summary>

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at pg. 8.

<sup>20</sup> *Id.* at pg. 10.

<sup>21</sup> AES 2024 Annual Report, pg. 17 available at <https://www.aes.com/investors/reports-filings/financial-reports-summary>

<sup>22</sup> *Id.*

<sup>23</sup> <https://www.aes.com/press-release/aes-awarded-12-gw-clean-energy-projects-new-york>

over 806 total operational megawatts across New York.<sup>24</sup> 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.

AES is well capitalized and has excellent access to capital. As of the 2024 fiscal year, AES had \$12.3 billion in total revenue and \$47 billion in total assets owned and managed.<sup>25</sup>

### **III. 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.<sup>26</sup> However, for projects that are undergoing review through Article VIII, formerly Section 94-c, or have been issued siting permits from ORES, such as Riverside 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.”<sup>27</sup> Thus, the Commission’s review of the instant

---

<sup>24</sup> See Exhibit E for an attached map for a list of all operating and proposed projects in New York State; On Friday, 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*). Together with AES’s other operational projects in New York, AES and its affiliates would control approximately 1,110 MW.

<sup>25</sup> AES 2024 Annual Report, pg. 7 available at <https://www.aes.com/investors/reports-filings/financial-reports-summary>

<sup>26</sup> See e.g., Case 19-E-0277, *Baron Winds, LLC Section 68 Petition*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued April 23, 2020); Morris Ridge CPCN Order.

<sup>27</sup> Matter No. 21-00752, *supra*, Siting Permit for a Major Renewable Energy Facility (Siting Permit), p. 9; see also Cassadaga CPCN Order, at 20.

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 municipal authorities.”<sup>28</sup> 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.”<sup>29</sup>

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 Section 94-c 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.<sup>30</sup> Riverside 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 Section 94-c

---

<sup>28</sup> See Morris Ridge CPCN Order, at 12 (citing PSL § 68).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 14.

proceeding, sufficient information is available to satisfy the requirements of 16 NYCRR Part 21 and provide a full evidentiary record.

## **B. Required Findings for Project under PSL § 68**

### **i. Certified Charter**

Before the Commission can issue a CPCN, PSL § 68(1) requires the electric corporation seeking approval to submit “a certified copy of its charter.”<sup>31</sup> A copy of Riverside Solar’s Certificate of Formation, certified by the State of Delaware Secretary of State, Division of Corporations, is attached hereto as **Exhibit A**. Database records for Riverside Solar 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, Riverside 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.”<sup>32</sup> Riverside 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 Facility’s collection and transmission lines will cross or otherwise be located on municipal right of ways (“ROWS”). Neither the Town of Brownville nor the Town of Lyme local laws require Petitioner to enter into Host Community or Road Use Agreement to construct and operate the Project within municipal ROWs.<sup>33</sup> Nevertheless, Riverside Solar has coordinated with the Towns of Brownville and Lyme on the location of collection line crossings and where the Project’s access roads will intersect with town

---

<sup>31</sup> See Morris Ridge CPCN Order, at 12 (citing PSL § 68).

<sup>32</sup> PSL § 68(1); see also Morris Ridge CPCN Order, at 12.

<sup>33</sup> See, Petition of Hecate Energy Cider Solar, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation, Case No. 22-E-0343.

roads and has entered into Road Use Agreements (“RUA”) with the Towns. Riverside Solar will provide the municipalities’ Highway Superintendent with final construction drawings that depict the location of ROW crossings and access road intersections within municipal ROWs in accordance with the RUAs. **Exhibit C** contains a copy of the executed RUAs.

**Exhibit D** contains the verified statements of President Bernerd Da Santos and Secretary Sean McBride, who have the authority to bind Riverside 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 Section 94-c or Article VIII.

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

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

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.”<sup>34</sup> 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.<sup>35</sup> As set forth in Section IV below, numerous wholesale electric

---

<sup>34</sup> See also, Cassadaga CPCN Order, at 12.

<sup>35</sup> 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

generators, including utility-scale solar generation facilities, have been granted lightened regulation by the Commission.<sup>36</sup> 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.<sup>37</sup> Arguably, these amendments to PSL § 68 were not intended to address generation siting, since the consequences of a certified facility failing to compete effectively will fall almost entirely on the Facility's owners and shareholders, obviating the need for Commission oversight. Nevertheless, Section 94-c compels compliance with those aspects of PSL § 68 that are not addressed by the 94-c 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,

---

effectively competitive, wholesale generators cannot raise prices even if their costs rise due to poor management. Moreover, imposing these requirements could interfere with wholesale generators' plans for structuring the financing and ownership of their facilities. This could discourage entry into the wholesale market, or overly constrain its fluid operation, adversely affecting its operation to the detriment of the public interest." Case 99-E-0974: *NRG Energy, Inc. and Oswego Harbor Power LLC Joint Petition for a Declaratory Ruling that Lightened Regulation be Applied to their Purchase of the Oswego Fossil Fuel Generating Plant from Niagara Mohawk Power Corporation*, Order Providing for Lightened Regulation (Oct. 21, 1999), at 5.

<sup>36</sup> See Wallkill Order, Carr Street Order, AES Order.

<sup>37</sup> 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.

including solar. AES develops, builds, and operates renewable energy and storage facilities across the United States. The generation capacity of the systems owned and/or operated under AES includes 8,927 MW of generation capacity across the U.S., with another 3,306 MW under construction, including 1,524 MW of solar, 500 MW of wind, and 1,282 MW of energy storage.<sup>38</sup> AES also has 7.3 GW of projects, expected to come online through 2025.<sup>39</sup>

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.<sup>40</sup> AES has 61 operational projects which total just over 806 operational megawatts across New York.<sup>41</sup> AES is well capitalized and has excellent access to capital. As of the 2024 fiscal year, AES had \$12.3 billion in total revenue and \$47 billion in total assets owned and managed.<sup>42</sup>

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 Riverside Solar remains competitive and financially viable throughout its lifespan.

Riverside Solar has not constructed the Facility 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 Facility will be obtained through AES’ robust balance sheet. After the start of construction, AES will secure construction debt for the Facility, and a tax equity investor will enter the ownership structure for the Facility.

---

<sup>38</sup> AES 2024 Annual Report, pg. 17 available at <https://www.aes.com/investors/reports-filings/financial-reports-summary>

<sup>39</sup> *Id.*

<sup>40</sup> <https://www.aes.com/press-release/aes-awarded-12-gw-clean-energy-projects-new-york>

<sup>41</sup> <https://www.aes.com/new-york>. See Exhibit E.

<sup>42</sup> AES 2024 Annual Report, pg. 7 available at <https://www.aes.com/investors/reports-filings/financial-reports-summary>

The cost of constructing the Facility 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 under AES CED, with tax equity investors entering the project ownership structure at or post commercial operations date ("COD").

Evidence has demonstrated that the Facility will be economically feasible. The Facility will realize income from the sale of renewable energy certificates pursuant to a long-offtake agreement with NYSERDA<sup>43</sup>. Riverside Solar's commitment to the development of the Facility is further evidenced by the actions it has taken as part of obtaining its siting permit from ORES. Consistent with the discussion above, the owners of the Facility are financially viable and the Facility 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 94-c 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 94-c 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.<sup>44</sup> Riverside 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,

---

<sup>43</sup> <https://www.governor.ny.gov/news/governor-hochul-announces-nations-largest-ever-state-investment-renewable-energy-moving>

<sup>44</sup> See 19 NYCRR § 900-2.7; Matter No. 21-00752, *Application of Riverside Solar, LLC*, Exhibit 6 (filed Oct. 18, 2021).

*Consistency with Energy Planning Objectives*,<sup>45</sup> and Exhibit 21, *Electric System Effects and Interconnection*.<sup>46</sup>

Petitioner notes that, under a lightened regulatory regime, Riverside 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.<sup>47</sup> Riverside 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,<sup>48</sup> give notice of generation unit retirements,<sup>49</sup> 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 Riverside Solar will render safe, adequate and reliable services.

Riverside Solar’s ability to finance improvements of the Facility and to render safe, adequate and reliable service is further demonstrated by the economic feasibility and financial viability based on the financial strength of its parent company and its commitment to providing the financial support necessary for Riverside Solar to construct and operate the Facility.<sup>50</sup>

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

---

<sup>45</sup> See 19 NYCRR § 900-2.18; Matter No. 21-00752, *Application of Riverside Solar, LLC*, Exhibit 17 (filed Oct. 18, 2021; revised Feb. 23, 2022).

<sup>46</sup> See 19 NYCRR § 900-2.22; Matter No. 21-00752, *Application of Riverside Solar, LLC*, Exhibit 21 (filed Oct. 18, 2021).

<sup>47</sup> See e.g. Morris Ridge CPCN Order, at 19.

<sup>48</sup> *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]).

<sup>49</sup> *Id.* (citing Case 05-E-0889, *Generation Unit Retirement Policies*, Order Adopting Notice Requirements for Generation Unit Retirements [issued December 20, 2005]).

<sup>50</sup> See e.g. Morris Ridge CPCN Order, at 15; Cassadaga CPCN Order, at 25.

Riverside Solar will operate the Facility on a merchant basis in competitive wholesale markets and will not serve captive retail customers. The “just and reasonable rates” factor was intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers, and is inapplicable in the context of a facility like Riverside Solar.<sup>51</sup> 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.”<sup>52</sup> 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.*”<sup>53</sup>

#### **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.<sup>54</sup> Based on the Morris Ridge CPCN Order and proceedings before the Commission in that case, evidence/documents addressed in a Section 94-c and issuance of a siting permit do not need to be duplicated/reproduced in a CPCN proceeding. Accordingly, we request that Riverside 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.

---

<sup>51</sup> 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).

<sup>52</sup> See Morris Ridge CPCN Order, at 18; Cassadaga CPCN Order, at 24.

<sup>53</sup> See Morris Ridge CPCN Order, at 18.

<sup>54</sup> See 16 NYCRR § 21.2 and 21.3.

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

- (a) Riverside 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 Facility will be constructed. Therefore, no certified copies of franchises need to be submitted. As previously noted, no municipal consents are required to locate the Facility collection lines in municipal ROWs nor to intersect access roads with town roads. However, the Petitioner has entered into RUAs with the municipalities.
- (c) The Petitioner has not previously secured authority to exercise powers granted under a prior franchise that has expired; therefore, this provision also does not apply.
- (d) All permits, licenses or authorities by any Federal authority relative to this pending Petition will be addressed in the 94-c proceeding.

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 Facility is proposed to be constructed, and the approximate dates that construction will begin, has already been addressed in the 94-c proceeding.
- (b) A detailed description of the plant to be constructed, and its estimated costs, is provided in the 94-c Application and proceeding.

- (c) As discussed above, the Facility will be financed through AES's robust balance sheet. After the start of construction, AES will secure construction debt for the Facility, and a tax equity investor will enter the ownership structure for the Facility.
- (d) Petitioner is not proposing to provide services for which retail rates would be charged, making this section inapplicable.
- (e) The estimated revenues to be derived from the Facility will generally be derived from an off-take agreement with the NYSERDA and through sales of electricity into the wholesale market. The estimated expenses of operation of the Facility for the first three years of service have been examined in the 94-c proceeding and can be found in the socioeconomic report in Application Exhibit 18.<sup>55</sup> 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.

#### **IV. LIGHTENED REGULATORY SCHEME**

The Commission has interpreted the PSL in a manner that best achieves the statutory intent and objects of the legislation and advances the public interest. In doing so, the Commission has already concluded that new forms of electric service providers participating in competitive

---

<sup>55</sup> The Commission has accepted estimated expenses for facility operations, as contained in Exhibits 4 and 18 of a Section 94-c application, in satisfaction of the requirements of 16 NYCRR § 21.3 (e). *See, e.g.*, Morris Ridge CPCN Order.

wholesale markets would be lightly regulated. In a series of Orders—the *Wallkill Order*,<sup>56</sup> the *AES Order*<sup>57</sup> and the *Carr Street Order*<sup>58</sup>—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.<sup>59</sup>

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 Riverside Solar, that are operating in a competitive environment.<sup>60</sup> 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.

---

<sup>56</sup> See Case 91-E-0350: *In re Wallkill Generating Co., LP* Order Establishing Regulatory Regime (April 11, 1994) (“Wallkill Order”).

<sup>57</sup> Case 99-E-0148: *AES Eastern Energy LP*, Declaratory Ruling on Lightened Regulation (April 23, 1999) (“AES Order”).

<sup>58</sup> 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).

<sup>59</sup> 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.

<sup>60</sup> 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 Riverside 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, Riverside 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.

## **V. HORIZONTAL AND VERTICAL MARKET POWER**

The Riverside Solar Project will generate up to 100 MW of electricity. Riverside Solar, through its parent corporation, is also affiliated with approximately 806 MW of operating projects and 3,095 MW of proposed projects in New York. See **Exhibit E** for an attached map for a list of all operating and proposed projects in New York State.

After construction of the Riverside Solar project, when added to the existing generation described above, AES’ aggregate generation in New York will rise to 906 MW. Accordingly, AES’ in-State operational generation amounts to less than 3% of NYISO’s forecast of 2024

coincident summer peak demand for the New York Balancing Authority Area (BAA) as a whole of 31,541 MW.<sup>61</sup>

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.<sup>62</sup> Any concern that Riverside 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.<sup>63</sup>

With respect to vertical market power, neither Riverside 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 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.

## **VI. CONCLUSION**

---

<sup>61</sup> See NYISO 2024 Load & Capacity Report at 24.

<sup>62</sup> 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).

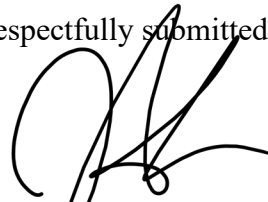
<sup>63</sup> Case 20-E-0481, *Petition of Mohawk Solar LLC for an Order Granting a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law and for an Order Granting Lightened Regulation*, Order Granting Certificate Of Public Convenience And Necessity And Providing 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.").

For the reasons set forth above, the Petitioner respectfully requests that the Commission issue (1) a CPCN authorizing Riverside Solar to construct and operate the solar energy generating facility which has been granted a Siting Permit in Section 94-c Matter No. 21-00752, and (2) an Order providing for lightened regulation.

Given the limited nature of the Commission's review, there is no need for hearings in this matter and comments can be submitted during the applicable timeframes. Petitioner respectfully 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 1, 2025

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JM', written over a horizontal line.

YOUNG / SOMMER LLC  
James A. Muscato II  
Jessica Ansert Klami  
Executive Woods  
Five Palisades Drive  
Albany, New York 12205  
Phone: (518) 438-9907  
*Attorneys for Riverside Solar, LLC*