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August 30, 2021

Via email (gasnoe@townoffrankfort.com)

Hon. Michelle L. Phillips, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: **Case 18-E-0654 – Petition of Ball Hill Wind Energy, LLC for a
Certificate of Public Convenience and Necessity**

Dear Secretary Phillips:

Attached for filing pursuant to Paragraph 21 of the New York State Public
Service Commission is the Construction Report.

Please contact me if you have any questions or concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Dan A. Spitzer'.

Daniel A. Spitzer

DAS/af
Attachment

Ball Hill Wind Energy, LLC

c/o Northland Power Inc.
30 St. Clair Ave W
12th Floor
Toronto, Ontario M4V 3A1

August 27, 2021

Hon. Michelle L. Phillips, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

**Re: Case 18-E-0654 – Petition of Ball Hill Wind Energy, LLC for a
Certificate of Public Convenience and Necessity**

Pursuant to Ordering Paragraph 21 of the New York State Public Service Commission’s *Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation* (the “Order”), issued April 19, 2019, Ball Hill Wind Energy, LLC hereby submits this construction progress report.

As a first matter, as noted in the Order, the Ball Hill Wind Project (the “Project”) has been in development for nearly 15 years and construction commenced on April 28, 2021 in the Towns of Villenova and Hanover in Chautauqua County, New York. Northland Power, Inc. purchased the Project in mid-year 2020 (*see* Case 20-E-0240) and has spent the past year completing development tasks to prepare it for construction.

In the first quarter of 2021, the engineering, procurement, and construction contract (“EPC”) was awarded for construction of the Project. Project construction commenced with tree clearing at the site and was completed in the second quarter of 2021. Also in the second quarter of 2021, the EPC contractor began the clearing and grubbing necessary for civil construction to begin and, indeed foundation work required for turbines has also commenced.

The following additional work has proceeded:

1. Installation of laydown yard and trailers
2. Access Roads:
 - a. Top Soil Stripping: 80% of all access roads have been completed
 - b. Grading: 44% completed

- c. Aggregate/Cement Stabilization: 21% completed
- 3. Foundations:
 - a. Excavated: 1 foundation
 - b. Poured: 1 sub-foundation
- 4. Project Substation: 40% design level and anticipates start of construction late October 2021
- 5. Interconnection Substation: 90% design level with National Grid reviewing drawings at this time.
- 6. Collection: collection is scheduled to be done in the second quarter of 2022
- 7. Turbine Deliveries are expected in the third quarter of 2022
- 8. Turbine Erection will occur in the third to fourth quarters in 2022.

It is anticipated that all access roads, foundation excavations, and pouring of all foundations will be completed by November 2021. The collection, substations, and turbines will be completed in 2022 with a planned COD of November 2022.

Since this report indicates that construction will not be completed before the end of 2021, Ordering Paragraph 21 of the Order requires Ball Hill to include in this report an explanation of the circumstances contributing to the delay and a demonstration showing why construction should be permitted to proceed.

As a first matter, land use approvals for the Project granted by the Town of Villenova have been subject to ongoing litigation. In 2018, the Town of Villenova granted approval for modifications to the Project. Those approvals were challenged by Project opponents in an Article 78 proceeding entitled *McGraw et al v. Town of Villenova et al.*; Chautauqua County Index No. EK12018001343. The Project opponents alleged that the project modifications required a second supplemental environmental impact statement (“SEIS”), among other things. Supreme Court, Chautauqua County granted the petition and enjoined construction of the Project until further review under the State Environmental Quality Review Act (“SEQRA”) was completed. Ball Hill and the Town of Villenova appealed this decision, which the Appellate Division, Fourth Department overturned in 2020. *See McGraw v. Town of Villenova*, 186 A.D.3d 1014 (4th Dep’t 2020).¹ This litigation certainly contributed to the delay, as construction was enjoined for a time by Court order.

¹ It should be noted that while the appeal was pending, the Town of Villenova completed the further SEQRA review required by Supreme Court, even though it turned out to be unnecessary. Project opponents again sued over the Town of Villenova’s SEQRA findings, completed in 2019, but this time, Supreme Court dismissed the Verified Petition in its entirety. *See Davis et al. v. Town of Villenova et al.*; Chautauqua County Index No.:



In addition, the timing of the iREC contact was announced in February and was not signed until June 2021. Ball Hill delayed civil construction until the contract was signed by both parties. Further, Ball Hill selected Vestas as the turbine manufacturer and the Turbine Supply Agreement was signed in June 2021, which means that a delivery date in 2021 is unable to be met.

Based on the foregoing, the Project will not meet a 2021 COD, but based on construction progress and the status of the litigation, Ball Hill is confident that it will meet the November 2022 COD.

It is respectfully submitted that the delay was not the result of Northland Power. Construction not being completed before the end of 2021 is not unreasonable given the circumstances described above, particularly the injunction halting construction activities for a time. Based on the progress to date and the explanation set forth above, construction should be permitted to proceed.

Respectfully submitted,

Ball Hill Wind Energy, LLC

By: Jeffrey Nemeth
Name: Jeffrey Nemeth
Title: Authorized Signatory