

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

Case: 25-E-_____

**PETITION OF OXBOW HILL SOLAR, LLC, FOR AN ORDER GRANTING A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO
PUBLIC SERVICE LAW § 68 AND LIGHTENED REGULATION**

James A. Muscato
Steven D. Wilson
YOUNG / SOMMER LLC
500 Federal Street, 5th Floor
Troy, NY 12180
Phone: 518.438.9907
Email: jmuscato@youngsommer.com

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On July 10, 2025, the New York State Office of Renewable Energy Siting and Electric Transmission (“ORES” or, the “Office”) issued a Final Siting Permit to Oxbow Hill Solar, LLC (“Oxbow Hill” or “Petitioner”), for the construction of the Oxbow Hill Solar Energy Project, a 140 megawatt (“MW”) solar electric generating Project in the Town of Fenner, Madison County, New York (the “Project” or “Facility”).¹ After obtaining a Siting Permit, Oxbow Hill remains responsible for obtaining a Certificate of Public Convenience and Necessity (“CPCN”) under Public Service Law (“PSL”) § 68 from the Public Service Commission (the “Commission”).² Oxbow Hill hereby files this petition respectfully requesting that the Commission issue (1) a CPCN to Oxbow Hill, pursuant to PSL § 68, (2) an Order finding that Oxbow Hill, as a wholesale electric market participant, is entitled to a lightened regulatory regime, and (3) an Order finding that the public hearings by PSL § 68 be held before the Commission pursuant to 16 NYCRR § 21.10 (Expedited proceedings on non-contested applications).

¹ Matter No. 23-00060: *Application of Oxbow Hill Solar, LLC for a 94-c Permit for Major Renewable Energy Facility*, Siting Permit (July 10, 2025).

² See 16 NYCRR § 1100-6.1(d)(1).

Although ORES’s rules authorize the Commission to approve construction or operation of the Project through issuance of a CPCN, such authorization comes with “the understanding that the Commission will not duplicate any issue already addressed by the Office and will instead only act on its police power functions related to the entity as described in the body of [the] siting permit.”³ As stated by the Commission, “[t]he granting of a CPCN... is an activity undertaken in relation to the Final Permit issued by ORES.”⁴ Thus, the scope of this proceeding is limited. This proceeding should not duplicate the public need and environmental compatibility issues resolved in the 94-c proceeding and resultant siting permit.⁵ In considering issuance of a CPCN, the Commission “shall consider the economic feasibility of the corporation, the corporation’s ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates, and whether issuance of a certificate is in the public interest.”⁶

As will be shown herein, Oxbow Hill has obtained all necessary local approvals and has sufficient financial resources to construct the Project and significant expertise to operate it.⁷ Oxbow Hill will also operate the Project as a competitive wholesale generator. As such, the

³ 16 NYCRR § 1100-6.1(d)(1).

⁴ Case 21-E-0345: *Petition of Morris Ridge Solar Energy Center, LLC, for a Certificate of Public Convenience and Necessity*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (November 24, 2021), at 13 (“Morris Ridge Order”).

⁵ *Id.*

⁶ *Id.* at 12.

⁷ Oxbow Hills’ indirect owner is the same indirect owner of the Bear Ridge Solar Project, Cypress Creek Renewables. Bear Ridge Solar LLC was granted a CPCN and lightened regulation in Case 24-E-0138: *Petition of Bear Ridge Solar, LLC, for a Certificate of Public Convenience and Necessity, Pursuant to Public Service Law Section 68, and for an Order Granting Lightened Regulation*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (November 19, 2024).

Commission's Order should also find, as has been done for numerous generators operating under similar circumstances, that Oxbow Hill is entitled to a lightened regulatory regime.

Petitioner further respectfully requests that the Commission waive the PSL § 68 general requirement for the Commission to hold a hearing in this proceeding, as such a waiver is consistent with the Commission's approach to PSL § 68 reviews in other CPCN proceedings involving renewable energy projects.⁸ The § 94-c/Article VIII review process generated a substantial record and there has already been ample opportunity for public input provided under the § 94-c/Article VIII review process. The record that has been established in the § 94-c/Article VIII proceeding 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, and all of the available options for public comments on the Petition to be provided. In addition, expeditious action by the Commission on this petition would enable the Project to commence construction and enter commercial operation sooner to more quickly satisfy various milestones associated with interconnections as well as incentives necessary to make the Project viable. Therefore, the Commission should find that this Petition is entitled to an expedited proceeding pursuant to 16 NYCRR § 21.10.

If a hearing is required, Petitioner requests that a public statement hearing be scheduled in satisfaction of the hearing requirements of PSL § 68 and if no comments 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.

⁸ 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).

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 renewable energy targets.

I. BACKGROUND

A. The Project

The Project is a solar photovoltaic energy generating project in the Town of Fenner, Madison County, New York, consisting of the following major components: PV arrays and their rack/support systems; direct current collection lines and communication cables connecting the arrays to inverters; inverters with their supporting platforms equipped with control electronics and step-up transformers; buried alternating current medium voltage collection lines; security fencing and gates around each PV array; gravel access roads; temporary laydown areas; medium voltage to transmission voltage collection substation with associated equipment and fenced areas; overhead 115 kilovolt line to connect the collection substation to the point of interconnection (POI); an expansion of the existing Fenner Wind Power Project (Fenner Wind) Substation to accommodate the POI; and an operations and maintenance building. The Facility will interconnect to National Grid's existing 115 kV Fenner Wind Substation by a 115 kV overhead line between the Facility's collection substation and the Fenner Wind Substation, which connects with National Grid's Onieda-Fenner and Fenner-Cortland 115 kV lines. According to the Siting Permit, the total nameplate capacity of the Project cannot exceed 140 MW.

The proposed Project will directly contribute significantly to New York State's Climate Leadership and Community Protection Act targets by producing up to 140 MW of renewable solar energy directly to New York's energy market. The Project will produce enough zero-emissions

energy to power approximately 23,000 New York households. The Project 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. Oxbow Hill Solar, LLC

Oxbow Hill is a special purpose entity created to own and operate the Project. Oxbow Hill, a Delaware limited liability company, is a wholly owned subsidiary of Cypress Creek Renewables, LLC.

In 2022, the New York State Energy Research and Development Authority (“NYSERDA”) selected the Facility as a Tier 1 award recipient in its sixth annual request for proposals under the Clean Energy Standard (RESRFP22-1). The initial award was mutually terminated, and Oxbow Solar will participate in a future Tier 1 solicitation. Oxbow Solar fully expects that it will be selected in a future solicitation and, thereafter, the Project will generate revenue through sales of energy into the NYISO wholesale markets and through the sale of renewable energy credits to NYSERDA under a Renewable Energy Services (“RES”) Agreement.

ii. Cypress Creek Renewables

Founded in 2014, Cypress Creek is among the largest independent fully integrated solar energy platforms in the United States, specializing in developing, owning, and operating solar and storage assets. Focused on utility-scale and distributed solar projects, along with collocated and stand-alone storage, Cypress Creek has commercialized over 12 GW since inception and currently operates approximately 5 GW of assets for their internal fleet and customers across 21 states. The Company has an expansive national footprint with approximately 400 employees who are managed by a highly regarded leadership team with decades of development and operating

experience. Cypress Creek is a mission-driven company, focused on developing cost-competitive renewable energy and powering a green and sustainable future.

In New York, Cypress Creek is the indirect owner of the Bear Ridge Solar Project, an approximately 100 MW Solar Project located in the Towns of Cambria and Pendleton, Niagara County, New York.⁹ In addition, Cypress Creek is the indirect owner of other project companies involved in greenfield development of solar projects in the State.

In 2021, Cypress Creek was acquired by EQT Infrastructure, a global investment organization with its principal offices in Sweden. At the time of the Cypress Creek acquisition, EQT had more than EUR 67 billion in assets under management across 26 active funds. EQT funds have portfolio companies in Europe, Asia-Pacific and the Americas with approximately EUR 269 billion total assets under management and more than 650,000 employees across portfolio companies. A copy of EQT's Annual Sustainability Report published in 2025 containing financial statements, can be located at <https://eqtgroup.com/shareholders/reports-and-presentations>.

EQT is committed to building upon the success of Cypress Creek by making investments in operational, organizational, digital and sustainability initiatives to help the Company continue expanding and differentiating. EQT will leverage its extensive global experience of partnering with renewable energy and sustainability driven businesses, and network of global EQT advisors, to support Cypress Creek in its next phase of growth, as the Company continues to execute on its objective of becoming the most reputable sustainable energy company in the market.

⁹ Case 24-E-0138: *Petition of Bear Ridge Solar, LLC, for a Certificate of Public Convenience and Necessity, Pursuant to Public Service Law Section 68, and for an Order Granting Lightened Regulation, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation* (November 19, 2024).

II. PETITION FOR CPCN

A. Standard for Issuing CPCN under PSL § 68

Section 68 of the PSL generally requires electric corporations to obtain a CPCN from the Commission before commencing construction of an electric plant. The issuance of a siting permit by ORES supplants the requirements for construction approval under PSL §68, but Commission approval of corporate formation and exercise of any municipal “right, privilege or franchise” is still required.¹⁰ However, for projects that are undergoing review through Article VIII, formerly Section 94-c, 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.”¹¹ Thus, the Commission’s review of the instant petition is limited in scope with respect to the approval of corporate formation and the exercise of any municipal “right, privilege or franchise” and should not duplicate the public need and environmental compatibility issues resolved in the 94-c/Article VIII 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.”¹² 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

¹⁰ 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.

¹¹ Matter No. 22-00024, *supra* fn. 1, Siting Permit for a Major Renewable Energy Project, p. 9; see also Cassadaga CPCN Order, at 20.

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

whether issuance of a certificate is in the public interest.”¹³ In addition, the Commission has reviewed the corporate status of Cypress Creek in the *Bear Ridge Solar* proceeding and found that the grant of the CPCN to Bear Ridge Solar LLC is in the public interest. For all of the reasons cited to in the *Bear Ridge Solar Order*, the Commission should find that the grant of the CPCN to Oxbow Hill is in the public interest.

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.¹⁴ Oxbow Hill 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/Article VIII 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.”¹⁵ A copy of Petitioner’s Certificate of

¹³ *Id.*

¹⁴ *Id.* at 14.

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

Formation, certified by the State of Delaware Secretary of State, Division of Corporations, is attached hereto as **Exhibit A**. NYS Department of State records for Oxbow Hill 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 are attached hereto as **Exhibit B**.

ii. Consent of Municipal Authorities

PSL § 68 also requires that Oxbow Hill provide a “verified statement of the president and secretary of the corporation, showing that it has received the required franchise consent of the proper municipal authorities.”¹⁶ This has been interpreted by the Commission to include potential municipal consents related to the location of facility components in land owned by the municipality or in municipal rights of ways (“ROW”).

Oxbow Hill will not provide utility service in any territory and does not require any municipal right or privilege under any franchise. With respect to municipal ROWs, certain portions of the Facility’s collection lines will cross or otherwise be located on municipal ROWs. The Town of Fenner does not require a Road Use Agreement, or other municipal consent to construct and operate the Project.¹⁷ Nevertheless, Oxbow Hill will work with the municipalities to provide any required construction drawings that depict the location of the underground ROW crossings and access road intersections with municipal ROWs.

¹⁶ PSL § 68(1); *see also* Cassadaga Order, at 12.

¹⁷ Consistent with the Commission’s order in the Cider Solar proceeding, the statutory requirements of PSL §68 are satisfied, and a CPCN may be issued, where a host municipality does not have any local code, ordinance, or other permit requirement for the use of municipal roads or ROWs. *See* Case 22-E-0343: *Petition of Hecate Energy Cider Solar, LLC*, Order Granting Certificate of Public Convenience and Necessity, Provided for Lightened Regulation, and Making Other Findings (Dec. 16, 2022).

Oxbow Hill does not have a president or secretary. In fulfillment of the requirement that the Commission ensure that the entity has received the necessary consents of the municipal authority for use of municipal property or public ROWs, Oxbow Hill has included as **Exhibit C** a verified statement of an authorized representative that the 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 94-c. The Commission has accepted a verification from an authorized representative in situations where the project company does not have a president or secretary.¹⁸

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.”¹⁹ 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.²⁰ As set forth in Section III below, numerous wholesale electric

¹⁸ See, Case 21-E-0502: *Petition of Flint Mine Solar, LLC*, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Regulation, and Making Other Findings (June 21, 2022).

¹⁹ See also, Cassadaga CPCN Order, at 12.

²⁰ See Case 07-E-0213: *Sheldon Energy LLC*, Order Granting and Amending Certificates of Public Convenience and Necessity, and Providing for Lightened Regulation, p. 15 (Jan. 17, 2008), in which the Commission held that strict financial oversight requirements for utilities “were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers.” Meanwhile, in the case of competitive market participants like the Applicant, the Commission holds that, “[s]o long as the wholesale generation market is effectively competitive, wholesale generators cannot raise prices even if their costs rise due to poor management. Moreover, imposing these requirements could interfere with wholesale generators’ plans for structuring the financing and ownership of their facilities. This could discourage entry into the wholesale market, or overly constrain its fluid operation, adversely affecting its operation to the detriment of the public interest.” Case 99-E-0974: *NRG Energy, Inc. and Oswego Harbor Power LLC Joint Petition for a Declaratory Ruling that Lightened Regulation be Applied to their Purchase of the Oswego Fossil Fuel Generating Plant from Niagara Mohawk Power Corporation*, Order Providing for Lightened Regulation (Oct. 21, 1999), at 5; see also, Case 24-E-0138: *Petition of Bear Ridge Solar, LLC, for a Certificate of Public Convenience and Necessity, Pursuant to Public Service Law Section 68, and for an Order Granting Lightened Regulation*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (November 19, 2024).

generators, including utility-scale solar generation facilities, have been granted lightened regulation by the Commission, and Cypress Creek’s Bear Ridge Solar project specifically.²¹ 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.²² Arguably, these amendments to PSL § 68 were not intended to address generation siting, since the consequences of a certified Project failing to compete effectively will fall almost entirely on the 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, including solar. Cypress Creek is an integrated solar and storage company. Cypress Creek’s

²¹ See Wallkill Order, Carr Street Order, AES Order.

²² 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.

current portfolio includes over 12,000 MW of developed solar and storage projects and over 5,000 MW under management across 21 states. Cypress Creek possesses the project development experience, technical expertise, financial resources, and commitment to deliver the planned Oxbow Hill Solar Project. Thus, 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 Oxbow Hill remains competitive and financially viable throughout its lifespan.

Oxbow Hill has not constructed the Facility and does not therefore have any assets or direct financing abilities. However, upon receipt of the necessary permits and approvals, the Facility will be financed through Cypress Creek's robust balance sheet. Prior to Notice To Proceed ("NTP"), CCR will secure construction debt capital for the Facility, and a tax equity investor will enter the ownership structure for the Facility.

Oxbow Hill anticipates the Project will generate income from the sale of renewable energy certificates pursuant to a long-term RES Agreement with NYSERDA. Generation from the Oxbow Hill Facility will be sold into the NYISO wholesale markets.

Consistent with the discussion of Cypress Creek above and the determinations by the Commission in the *Bear Ridge Order*, the upstream owners of the Facility are financially viable. At or before NTP, the Facility will have confirmed all capital expenditures, and revenue streams and can then be confirmed as economically feasible as part of the diligence required to secure financing.

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.²³ Oxbow Hill's ability provide adequate and reliable service was also assessed by ORES in its review and issuance of a siting permit, with relevant information addressed in Exhibit 17, *Consistency with Energy Planning Objectives*,²⁴ and Exhibit 21, *Electric System Effects and Interconnection*.²⁵

Petitioner notes that, under a lightened regulatory regime, Oxbow Hill 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.²⁶ Oxbow Hill 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,²⁷ give notice of generation unit retirements,²⁸ 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 Oxbow Hill will render safe, adequate and reliable services.

²³ See 16 NYCRR § 1100-2.7.

²⁴ See 16 NYCRR § 1100-2.18.

²⁵ See 16 NYCRR § 1100-2.22.

²⁶ See e.g. Morris Ridge CPCN Order, at 19.

²⁷ *Id.* (citing Case 04-M-0519, *Safety of Electric Transmission and Distribution Systems*, Order Instituting Safety Standards [January 5, 2005], and Order on Petitions for Rehearing and Waiver [July 21, 2005]).

²⁸ *Id.* (citing Case 05-E-0889, *Generation Unit Retirement Policies*, Order Adopting Notice Requirements for Generation Unit Retirements [December 20, 2005]).

Oxbow Hill’s ability to finance Project improvements and to render safe, adequate and reliable service is further demonstrated by the economic feasibility and financial viability based on the financial strength of its parent company and its commitment to providing the financial support necessary for Oxbow Hill to construct and operate the Facility.²⁹

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

Oxbow Hill will operate the Project on a merchant basis in competitive wholesale markets and will not serve captive retail customers. The “just and reasonable rates” factor was intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers, and is inapplicable in the context of a Project like Oxbow Hill.³⁰ 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.”³¹ 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.*”³²

²⁹ See Case 24-E-0138: *Petition of Bear Ridge Solar, LLC, for a Certificate of Public Convenience and Necessity, Pursuant to Public Service Law Section 68, and for an Order Granting Lightened Regulation*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (November 19, 2024); see e.g. Morris Ridge CPCN Order, at 15; Cassadaga CPCN Order, at 25.

³⁰ 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).

³¹ See Morris Ridge CPCN Order, at 18; Cassadaga CPCN Order, at 24.

³² See Morris Ridge CPCN Order, at 18.

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.³³ 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, Petitioner requests that it be treated similarly in this proceeding and duplication/reproduction of evidence/documents produced and thoroughly reviewed during the Section 94-c proceeding not be required herein.

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

- (a) Oxbow Hill is not proposing to render utility service in any territory and accordingly the information required by this subsection is inapplicable.
- (b) No franchises have been or will be granted to or by the municipalities in which the Project will be constructed. Therefore, no certified copies of franchises need to be submitted. As previously noted, no municipal consents are required to locate the Project collection lines in municipal ROWs nor to intersect access roads with town roads.
- (c) The Petitioner has not previously secured authority to exercise powers granted under a prior franchise that has expired; therefore, this provision also does not apply.

³³ See 16 NYCRR § 21.2 and 21.3.

(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 Project 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 Project will be financed through Cypress Creek’s robust balance sheet upon receipt of the necessary permits and approvals. At or prior to Notice To Proceed (“NTP”), CCR will secure construction debt capital 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 Project will generally be derived from an off-take agreement with the NYSERDA and through sales of electricity into the wholesale market. The estimated expenses of operation of the Project for the first three years of service have been examined in the 94-c proceeding and can be found in the socioeconomic report in Application Exhibit 18.³⁴ Petitioner does not propose providing service to

³⁴ The Commission has accepted estimated expenses for Project operations, as contained in Exhibits 4 and 18 of a Section 94-c application, in satisfaction of the requirements of 16 NYCRR § 21.3 (e). *See. e.g.*, Morris Ridge CPCN Order.

residential, commercial or industrial customers in any territory. Therefore, the latter half of this provision is inapplicable.

(f) Refer to Section II.C above for information responsive to this provision.

(g) Petitioner is not proposing to provide services in this manner; these provisions regarding the availability of other services in this territory are inapplicable.

III. LIGHTENED REGULATORY SCHEME

The Commission has interpreted the PSL in a manner that best achieves the statutory intent and objects of the legislation and advances the public interest. In doing so, the Commission has already concluded that new forms of electric service providers participating in competitive wholesale markets would be lightly regulated. In a series of Orders—the *Wallkill Order*,³⁵ the *AES Order*³⁶ and the *Carr Street Order*³⁷—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.³⁸

³⁵ See Case 91-E-0350: *In re Wallkill Generating Co.*, LP Order Establishing Regulatory Regime (April 11, 1994) (“Wallkill Order”).

³⁶ Case 99-E-0148: *AES Eastern Energy LP*, Declaratory Ruling on Lightened Regulation (April 23, 1999) (“AES Order”).

³⁷ 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).

³⁸ 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

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 Oxbow Hill, that are operating in a competitive environment.³⁹ 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.

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 Oxbow Hill 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, Oxbow Hill respectfully requests an Order of the Commission confirming that a lightened regulatory scheme shall be applied to its

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.

³⁹ *See* Case 99-M-1722: *Applicability of Public Service Law Provisions to Competitive Entities*, Order Instituting Proceeding (Dec. 17, 1999).

wholesale electric activities in the New York market and granting such other and further relief as it deems necessary or appropriate.

IV. HORIZONTAL AND VERTICAL MARKET POWER

The Oxbow Hill Project will generate up to 140 MW of electricity. Oxbow Hill, through its parent corporation, is also affiliated with approximately 22.6 MW of operating projects and approximately 245 MW of proposed projects in New York. See **Exhibit D** for a list of all operating and proposed projects in New York State. The list includes the Bear Ridge Solar Project, which is proposed to commence construction in 2026 and will be operational no later than 2028.

After construction of the Oxbow Hill project, when added to the existing generation described above including Bear Ridge Solar, Cypress Creek's aggregate generation in New York will rise to 162.6 MW. Accordingly, Cypress Creek's in-State operational generation amounts to less than 1% of NYISO's forecast of 2025 coincident summer peak demand for the New York Balancing Authority Area (BAA) as a whole of 31,471 MW.⁴⁰ Even considering Cypress Creek's approximately 245 MW of proposed projects, Cypress Creek's total in-state generation would only total 407.6 MW, or approximately 1.2 % of the 2025 coincident summer peak demand.

The Commission has held in other cases that a total ownership share as high as 8.1% of NYISO installed capacity is insufficient to raise horizontal market power concerns.⁴¹ Any concern that Cypress Creek'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

⁴⁰ See NYISO 2025 Load & Capacity Report at 24.

⁴¹ 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).

will provide no benefit to other projects, as their revenues will be fixed by their indexed REC agreements with NYSERDA.⁴²

With respect to vertical market power, neither Oxbow Hill 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.

V. CONCLUSION

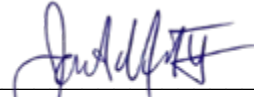
For the reasons set forth above, the Petitioner respectfully requests that the Commission issue (1) a CPCN to Oxbow Hill, pursuant to PSL § 68, (2) an Order finding that Oxbow Hill, as a wholesale electric market participant, is entitled to a lightened regulatory regime, and (3) an Order finding that the public hearings by PSL § 68 be held before the Commission pursuant to 16 NYCRR § 21.10 (Expedited proceedings on non-contested applications).

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

⁴² 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.”).

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: August 21, 2025



James A. Muscato
Steven D. Wilson
YOUNG / SOMMER LLC
Attorneys for Oxbow Hill Solar, LLC