NEW YORK STATE
PUBLIC SERVICE COMMISSION

Petition of High River Energy Center, LLC, for an Order Approving Financing Pursuant to Section 69 of the Public Service Law	**Case No. 24-E-_______**

PETITION FOR AN ORDER APPROVING FINANCING PURSUANT TO SECTION 69 OF THE PUBLIC SERVICE LAW

I. Introduction

High River Energy Center, LLC ("High River" or "Petitioner") submits this Petition for approval of debt financing pursuant to Section 69 of the New York State Public Service Law ("PSL"). Specifically, High River requests authorization to be included in a portfolio debt financing along with other renewable energy assets to enter into indebtedness of up to $800 million in the aggregate including the authority to guarantee such indebtedness, to pledge ownership interests in, and to grant security interests in and mortgages on, the jurisdictional assets owned by, High River as collateral security for the repayment of indebtedness, as more fully described herein.[1] In addition, High River seeks flexibility to modify, without prior New York Public Service Commission ("Commission") approval, the identity of the financing entities, payment terms, and the amount financed, up to the proposed $800 million limit.

The proposed portfolio debt financing, which will have an aggregate principal amount of $800 million, enhances geographic and off-taker diversity and reduces default risk driven by single asset underperformance. The proposed financing will either be executed in the commercial bank

[1] The parent of High River will pledge the membership interests in High River as collateral security for such indebtedness. As explained herein, the internal reorganization to identify or, if necessary, create the parent will occur prior to financing.

market or via a private placement which will require structural features that result in or would be expected to result in an investment grade rating.

The proceeds of the proposed financing will be used for general corporate purposes, including but not limited to reimbursement and funding of capital expenditures, operation and maintenance expenses, and other general day-to-day business expenses associated with the construction and operation of the approximately 90 megawatt ("MW") High River solar facility in Montgomery County ("Solar Project"). As the Commission has held, the Solar Project will contribute to the development of renewable resources in the State, consistent with the Climate Leadership and Community Protection Act ("CLCPA") requirements and greenhouse gas emission reduction objectives.[2] As the Commission recognized, the Solar Project is expected to reduce annual emissions of CO_2 by approximately 49,754 tons, SO_2 by 11 tons, and NOx by 15 tons.[3] The proposed financing will also strengthen High River's ability to provide cost-effective, safe, and reliable service. Therefore, as set forth more fully herein, the proposed financing is in the public interest.

II. Description of the Petitioner

High River is a Delaware limited liability company formed on August 25, 2017, to develop, own, operate, and maintain the Solar Project. High River is an "electric corporation" that will be engaged in the manufacture of electricity under Section 2(13) and 5(1)(b) of the PSL. High River is an indirect wholly-owned subsidiary of NextEra Energy Resources, LLC ("NextEra"), which, together with its affiliated entities, is the world's largest generator of renewable energy from the wind and sun and a world leader in battery storage. As of December 31, 2023, NextEra had

[2] Case 21-E-0357, *Petition of High River Energy Center, LLC for Order Granting a Certificate of Public Convenience and Necessity and Establishing a Lightened Regulatory Regime*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation, (December 17, 2021) ("CPCN Order") at 13.
[3] *Id*.

approximately 30,600 MW of total net generating capacity including approximately 30,080 MW of net generating capacity across 41 states and 520 MW of net generating capacity in 4 Canadian provinces. NextEra, in turn, is an indirect wholly-owned subsidiary of NextEra Energy, Inc. ("NextEra Energy"), one of the largest electric power and energy infrastructure companies in North America and a leader in the renewable energy industry.

On March 11, 2021, the New York State Board on Electric Generation Siting and the Environment ("Siting Board") issued an order granting High River a Certificate of Environmental Compatibility and Public Need, pursuant to PSL Article 10, to construct and operate an approximately 90 MW solar generating facility in the Town of Florida, Montgomery County.[4] The Siting Board directed High River prior to the commencement of construction, to comply as required with the requirements of PSL Section 68. Thereafter, on December 17, 2021, the Commission: (1) issued a CPCN to High River authorizing the construction and operation of an approximately 90 MW solar generating facility in Montgomery County; and (2) granted High River a lightened regulatory regime applicable to its wholesale electric operations.[5] In the CPCN Order, the Commission concluded that it was appropriate for the approval of financing plans under PSL Section 69 to be reviewed under lightened regulation.[6]

III. Description of the Solar Project

The Solar Project will occupy approximately 582.5 fenced-in acres within an overall 1,425-acre Project Area and generate up to 90 MW of solar energy. The Solar Project will consist of utility-scale arrays of solar photovoltaic ("PV") panels, which will generate electricity and supply it to New York State's bulk electric transmission system. In addition to the PV panels, the Solar

[4] Case 17-F-0597, *High River Energy Center, LLC – Article 10 Proceeding*, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (March 11, 2021).
[5] *See* CPCN Order.
[6] *Id*. at 15.

Project also includes facilities, such as inverters, fencing, access roads, buried collection lines, laydown/staging areas, a collection substation, and the Interconnection Facilities. The Interconnection Facilities will connect the Solar Project with National Grid's existing, adjacent Stoner-Rotterdam #12 115-kV transmission line. The Solar Project is estimated to be in commercial operations on August 1, 2024.

IV. Description of the Proposed Financing

NextEra is the current indirect owner of 100% of the membership interests in High River. NextEra proposes to consummate a secured portfolio financing ("Portfolio Financing") with a wholly owned subsidiary as a borrower ("Portfolio Borrower") that would own up to ten renewable projects, including High River. To provide diversification to the financing parties, the portfolio of projects to be financed (the "Portfolio Projects") would be comprised of solar energy generating assets, energy storage assets, and wind energy generating assets. A portfolio financing structure enhances geographic and off-taker diversity and reduces default risk driven by single asset underperformance.

The Portfolio Financing will consist of long-term debt provided by institutional investors or asset managers, or a syndicated credit facility provided by commercial banks and other financial institutions, up to an aggregate principal amount of $800 million. The facility will include sculpted principal amortization based on a target debt service coverage ratio customary in the industry and include either a bullet maturity at the end of 5-10 years or be structured to fully amortize over a period between 15-25 years. The net revenues of High River over the term are projected to support up to a principal amount of $80 million from the aggregate principal amount of the financing.

Prior to the financing, NextEra would consummate an internal only reorganization of certain wholly-owned companies so that High River and the other companies intended to be part of the Portfolio Financing would become subsidiaries of the Portfolio Borrower (the "Project Company Guarantors"). High River, along with the Project Company Guarantors, would guarantee, jointly and severally, the indebtedness incurred under the Portfolio Financing and to secure such indebtedness would grant security interests in, and mortgages on, the Portfolio Projects. In addition, the collateral will include a pledge of the membership interests in the Portfolio Borrower and each Project Company Guarantor.[7] The Portfolio Financing would be cross-collateralized.

The proceeds of the borrowings under the Portfolio Financing will be used (a) to reimburse NextEra and its affiliates for the costs incurred to develop, construct, own, and operate the Solar Project, including to fund reserves for future debt service and operating and maintenance expenses required by the Portfolio Financing; (b) to make a distribution to NextEra and its affiliates; and (c) for general corporate purposes.

V. The Portfolio Financing is in the Public Interest and Should be Approved

Pursuant to Public Service Law § 69, Commission authorization is necessary for an electric corporation to enter into indebtedness payable at periods of more than 12 months. As stated above, High River is subject to a lightened regulatory regime. As the Commission held in the CPCN Order, "the scrutiny for approval of financing plans under PSL §69 may be reduced for lightly regulated companies operating in a competitive environment…"

[7] Because the reorganization is wholly internal no approval under Section 70 of the Public Service Law is required. The Commission has held that changing layers of internal corporate structures where all entities remain wholly-owned by an existing owner in that structure does not amount to a transfer under PSL § 70. *See* Case 06-E-1106, et al., *PPM Energy Inc., et al.*, Declaratory Ruling on Regulation of Intra-Corporate and Other Transactions (Oct.19, 2006); *see also* Case 21-E-0485, *Joint Petition of Generation Bridge II, LLC et al.*, Order Approving Financing and Transfer, With Conditions, and Making Other Findings at 23 (Feb. 18, 2022); *see also* Case 22-E-0660, *Petition of Number Three Wind, LLC*, Order Approving Financing and Making Other Findings, (March 17, 2023). As described above, the ultimate ownership of High River will not change as a result of the internal reorganization because NextEra will continue to be the ultimate owner.

Approval of the requested Portfolio Financing is consistent with Commission precedent. In Case 20-E-0361, the Petitioner sought approval under § 69 for flexible financing authorization, up to a maximum amount of $478 million to fund construction and on-going operational needs for a proposed project. The Commission held that flexible financing authorization for lightly regulated entities "need not be subject to an in-depth analysis. Instead, by relying on the representations Petitioners make in their Financing Petition, prompt regulatory action is possible."[8] The Commission held that the proposed financing "would be for a statutory purpose to support the Project and does not appear contrary to the public interest."[9] As other lightly-regulated entities, High River should be "afforded broad latitude to determine the amount and type of debt that is needed to support corporate operations."[10]

Similar to the facts presented in the LS Power Order, the financing proposed by High River is for a statutory purpose and in the public interest. As stated above, the proceeds of the proposed debt offering would be used by the Portfolio Borrower for general corporate purposes, including, but not limited to, reimbursement of costs related to the construction, operation, and maintenance of the Solar Project, and other associated general day-to-day business expenses. Approval of the proposed financing will strengthen High River's ability to provide safe and reliable service from the Solar Project, make ready capital available to fund operations, provide High River with

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[8] See Case 20-E-0361 et. al., *Petition of LS Power Grid New York, LLC and LS Power Grid New York Corporation I for Approval of Financing Under Lightened Regulation Pursuant to Section 69 of the Public Service Law*, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Regulation, and Approving Financing (January 21, 2021) at 25 ("Consistent with Commission precedent, the scrutiny applicable to monopoly utilities may be reduced for lightly regulated companies....) ("LS Power Order"); *see also* Case 15-E-0743, *Petition of New York Transco LLC for an Order Providing Lightened Regulation, Order Providing for Lightened Rate Making Regulation and Approving Financing* (April 21, 2016) at 11 ("[The Commission] need not make an in-depth analysis of proposed financing transactions. Instead, by relying on representations made in a petition, prompt regulatory action may be possible.").
[9] LS Power Order at 25.
[10] Case 17-E-0016, *Petition of TC Ravenswood, LLC, TC Ravenswood Services Corp. and Helix Generation for Expedited Approval of a Transfer and Financing Pursuant to Lightened Regulation*, Order Approving Transfer Subject to Acceptance of Conditions and Making Other Findings (April 19, 2017) at 4 ("Ravenswood Transfer Order").

continuing access to capital for its operations and working capital needs, and assist the State in meeting its CLCPA requirements and greenhouse gas emission reduction objectives.[11]

In addition, High River should be granted the flexibility to modify, without prior Commission approval, the identity of the financing entities, payment terms, and the amount financed, up to the proposed $800 million limit. This flexibility is needed so that High River may quickly modify or refinance its financing facilities to take advantage of changing market conditions. Approval of this request is consistent with Commission precedent that has been routinely granted to other lightly regulated entities seeking Commission approval for proposed financings.[12]

VI. Environmental Quality Review Act

Pursuant to the Commission's regulations at 16 NYCRR §§ 7.2(a) and 7.2(b)(2)(v), PSL Section 69 approval of a securities issuance is a Type 2 action for which no further environmental review of the Financing is required under the New York State Environmental Quality Review Act.[13]

VII. Correspondence and Communications

All communications and correspondence with respect to this Joint Petition should be addressed to the following:

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[11] *See e.g.*, Case 15-E-0041, *Petition of CCI Roseton LLC for Approval of Debt Financing Pursuant to Public Service Law Section 69*, Order Approving a Transfer Transaction and a Financing and Making Other Findings (issued April 17, 2015) at 2, 7 (holding that a financing to be used for "improvements made and to be made…,and [for] working capital" constitute uses that "appear[] to be for a statutory purpose and do[] not appear contrary to the public interest.").

[12] *See* Case 22-E-0183, *Petition of Flint Mine Solar LLC and DESRI Flint Mine Development*, LLC for an Order Approving Financing Pursuant to Section 69 of the New York State Public Service Law, Order Approving Financing (July 15, 2022) at 9 ([t]his flexibility will avoid disrupting the financing arrangements and enable the entities to operate more effectively in competitive wholesale electric markets, thereby promoting the efficient development of these markets.) *see also* Case 18-E-0032, *Petition of Fortistar North Tonawanda Inc.*, Order Approving Financing and Making Other Findings (issued April 20, 2018) at 6-7 ("FNT Financing Order"); *see also* Ravenswood Transfer Order at 34.

[13] *See* 16 NYCRR §§7.2(a), 7.2(b)(2)(v); and see Case 20-E-0361, supra, LS Power Order; *see also* FNT Financing Order at 6, fn 8.

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VIII. Conclusion

WHEREFORE, for the reasons stated above, High River respectfully requests that the Commission approve the requested debt financing set forth herein under PSL Section 69.

Respectfully submitted,

James S. King

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Attorney for: High River Energy Center, LLC

Dated: June 28, 2024

NEW YORK STATE
PUBLIC SERVICE COMMISSION

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Case No. 24-E-______

VERIFICATION

STATE OF FLORIDA)
) ss:
COUNTY OF PALM BEACH)

ANTHONY PEDRONI, being duly sworn, deposes, and states as follows:

1. I am a Vice President of High River Energy Center, LLC ("High River") and I am authorized to sign this verification on behalf of High River.
2. I have reviewed the foregoing Petition, and the statements of fact contained therein and the transactions addressed in the Petition are true and correct to the best of my knowledge, information, and belief.

____
Anthony Pedroni
Vice President
High River Energy Center, LLC

Sworn to before me this
28 day of June, 2024.

Jennifer Reynoso

Notary Public State of Florida
Jennifer Reynoso
My Commission HH 091424
Expires 02/21/2025

Notary Public, State of Florida
My commission Expires on:
2-21-25