STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of	:	
NUMBER THREE WIND ENERGY LLC	:	Case 19-E-0287
Petition of Number Three Wind LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation.	:	

SUPPLEMENT TO PETITION OF NUMBER THREE WIND ENERGY LLC FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PETITION TO ESTABLISH LIGHTENED REGULATION

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Albany, New York

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On April 17, 2019, Number Three Wind LLC (NTW or Applicant) submitted its verified Application for Certificate of Public Convenience and Necessity (CPCN) authorizing the construction and operation of an electric generating facility located in Lewis County, New York (Proposed Facility) (Petition).[1] As noted in the Petition, certain agreements to use municipal roads remained outstanding at that time, and the Proposed Facility was undergoing a comprehensive review by the New York State Board on Electric Generation Siting and the Environment (Siting Board) in Case 16-F-0328 − Application of Number Three Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction of a Wind Project Located in Lewis County.[2] On May 16, 2019, the Department of Public Service staff (DPS

[1] Case 19-E-0287 − Petition of Number Three Wind LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation.

[2] On November 12, 2019, the Siting Board completed its review of the Proposed Project and issued its *Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions* (CECPN).

Staff) identified two deficiencies in the Petition,[3] inclusive of the outstanding road use agreements and related certifications.

As NTW explained in its Petition, no portion of the Proposed Facility will be located on municipal-owned property other than in or over roads maintained by Lewis County and the Towns of Denmark, Harrisburg and Lowville.[4] Attached hereto, as **Exhibit A**, is the Road Use Agreement (RUA) executed by NTW and the respective municipalities. Attached hereto, as **Exhibit B**, is a verified statement of the President and Secretary of NTW certifying that the company has obtained all of the consents NTW is required to obtain from the local municipalities. The Town of Denmark is a party to the RUA solely because NTW and its contractors will use its roads for transporting equipment to the facility site in the Towns of Harrisburg and Lowville.

The other deficiency noted by DPS Staff concerned the strength of the evidence demonstrating NTW's financial ability to construct and operate the Proposed Facility.

NTW meets the economic requirements necessary for receiving a CPCN because of its status as a wholly owned subsidiary of Invenergy Wind Development North America LLC (IWDNA) and an affiliate of Invenergy LLC (Invenergy), its executed contract with the New York State Energy Research and Development Agency (NYSERDA), and the future operation of the Proposed Facility as a privately financed wholesale generator. In similar proceedings, the Commission has explained that private developers seeking a CPCN meet the requirements of PSL § 68 by providing a description of the: "manner in which the costs of the plant to be constructed

[3] NTW submits this Supplement to supply (i) the certification required by PSL § 68 that the necessary municipal consents have been obtained and (ii) additional information requested by Department of Public Service (DPS) staff in a letter from NYS Department of Public Service, Francis T. Dwyer to Secretary Kathleen Burgess dated May 16, 2019 (DMM #2) (May 16 Deficiency Letter).

[4] Petition at 9.

would be financed…"[5] DPS staff has interpreted this requirement for merchant facilities as obligating an applicant to demonstrate that the operation of the Proposed Facility:

> is economically feasible; it can support the financing necessary to sustain the jurisdictional facilities; and it can render safe, adequate and reliable service at reasonable rates (including rates constrained by operation of competitive market forces).[6]

More recently, the Commission has clarified that this narrow requirement does not include the "potential profitability" of the Proposed Facility, but only the "economic feasibility of the corporation."[7] On this reasoning, the Commission has approved, as economically feasible, wind generation facilities similar to the Proposed Facility on the grounds that the proponent (i) was affiliated with an experienced and proven parent entity, (ii) that the project would participate in competitive wholesale markets to sell energy, capacity, and ancillary services, and (iii) that the developer had entered into long-term agreement for the sale of environmental attributes.[8]

Similar to other projects sponsored by Invenergy and its affiliates, NTW intends to develop, finance, construct, and operate the Proposed Facility as a merchant facility and will not rely on

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[5] Case 11-E-0593 – Cricket Valley Energy Ctr., LLC, *Order Granting Certificate of Public Convenience and Necessity and Establishing Lightened Ratemaking Regulation*. (February 14, 2013), at 10–11; *see also* Case 07-E-1343 – Marble River, LLC, *Order Granting Certificate of Public Convenience and Necessity, and Providing For Lightened Regulation* (June 19, 2008), at 11; Case 07-E-0138 – Canandaigua Power Partners, LLC, *Order Granting Certificates of Public Convenience and Necessity, Providing For Lightened Regulation and Approving Financing* (August 6, 2007), at 13; Case 11-E-0351 – Petition of Stony Creek Energy LLC for a Certificate of Public Convenience and Necessity, to Establish Lightened Regulation and for Approval of Debt Financing, *Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Rate Making Regulation and Approving Financing* (December 15, 2011).

[6] Case 15-M-0365 – Proceeding on Motion of the Commission Regarding Policies, Procedures and Filing Standards under Lightened Ratemaking Regulation, *Staff Whitepaper on Implementing Lightened Ratemaking Regulation* (November 4, 2015), at 23–24.

[7] Case 19-E-0277 – Petition of Baron Winds, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation, *Ruling on Process* (March 16, 2020), at 4.

[8] *See* e.g., Case 19-E-0277 – Petition of Baron Winds, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation at 8 (April 23, 2020); Case 18-E-0654 – Petition of Ball Hill Wind Energy, LLC for a Certificate of Public Convenience and Necessity, *Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation*, (Issued and Effective April 18, 2019).

cost-of-service rates set by either a federal or state regulatory entity. It intends to sell capacity, electricity, and ancillary services through the wholesale competitive markets administered by the New York Independent System Operator, Inc. (NYISO). Also, as explained in the Petition, NTW has executed a long-term contract with the NYSERDA for the sale of environmental attributes. The Project was selected in the 11th Main Tier Solicitation held by NYSERDA and awarded a contract for the sale of Renewable Energy Credits (RECs) on a competitive basis.[9]

NTW itself, is a wholly-owned subsidiary of IWDNA and affiliate of Invenergy, an experienced development group. The Invenergy group of companies has successfully built and financed thousands of MWs of generation, including three currently operating wind generation projects located in the State. Invenergy and its affiliates, in turn, have committed to invest sufficient capital to ensure that the Proposed Facility is constructed. Consistent with its prior experience, Invenergy and NTW plan to use a combination of third-party debt and equity to finance construction of the Proposed Facility. Efforts will include identifying and arranging a lender or group of lenders to provide a construction loan for the Proposed Facility, which may be combined with equity provided directly by Invenergy and other third-party equity sufficient to complete construction of the Proposed Facility. Once the Proposed Facility achieves commercial operation, Invenergy may contract with an additional third-party to provide tax-equity financing that will allow the Proposed Facility to more efficiently utilize the federal tax benefits associated with renewable energy projects of this type. Proceeds from the tax equity financing would then be used to offset a portion of the capital previously provided by Invenergy and its lenders. Invenergy typically arranges its financing on a non-recourse basis, which means that Invenergy does not

[9] This contract was awarded on a competitive basis under RFP 3257, Renewable Portfolio Standard Program Purchase of Renewable Energy Attributes.

provide an explicit guarantee for repayment of the project debt. As such, financing for the operation of the project is typically structured with several cash reserve accounts that can be used to mitigate certain risks identified by the private lenders.

As noted in the Petition, Invenergy is highly experienced in raising corporate and project level financing in support of developing, constructing, and operating its energy projects. Since its inception in 2001, Invenergy has raised more than $30 billion of financing and has worked with more than 60 financial institutions worldwide including the United States, Canada, Europe and Japan. Invenergy's financing relationships have included such institutions as Bank of America, MUFG (formerly Union Bank of California), GE Capital, JP Morgan, US Bank, Natixis, Santander, Rabobank and Morgan Stanley. In 2017, Invenergy was awarded the *Latin America Renewables Power Finance 2016 Deal of the Year* for its financing of Campo Polomas – a 70 MW farm in Uruguay. The construction and term financing were led by DNB and InterAmerican Investment Bank. Invenergy refinanced with an investment grade bond offering in the US private placement market in 2017. Also in 2016, Invenergy received the *North America Conventional Power 2016 Deal of the Year* for its financing of the Lackawanna Energy Center – a 1,480 MW combined cycle natural-gas fired facility in Pennsylvania (PJM Interconnect).[10] Lackawanna was financed in 2016 with $1 billion senior secured credit facilities provided by four lead banks (MUFG, BNP, Prudential and GE EFS) and 11 additional lenders. Equity for Lackawanna closed in 2016 through a preferred equity structure with First Reserve (now dba Blackrock).

Examples of Invenergy's commitment to NTW are readily discerned within the Siting Board proceeding under Article 10, including all financing necessary to acquire the Proposed

[10] Public descriptions of projects developed by Invenergy and its partners may be viewed on the company's website at: https://invenergyllc.com/.

Facility's needed real estate, to contract for engineering services and to initiate and pursue the extensive Siting Board proceedings and the financing needed to secure interconnection.[11] The Commission should conclude that NTW is fully capable of financing the construction and operation of the Proposed Facility.

This conclusion also is consistent with the Commission's previous determination that generating facilities operating in a competitive environment, like NTW, are subject to lesser scrutiny than monopoly utilities who serve retail customers.[12] Like the owners and developers of previously constructed facilities, neither NTW nor any of its affiliates serve retail customers in the State of New York. Captive New York ratepayers cannot be harmed by the terms of NTW's financial commitments because NTW, its parent corporation IWDNA and its affiliate Invenergy, will bear all of the financial risk associated with the Proposed Facility.

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[11] *See e.g.* Case 19-E-0277, Petition of Baron Winds, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation at *8 (April 23, 2020)(recognizing that the record developed in a corresponding Article 10 proceeding provided sufficient information to satisfy the requirements of 16 NYCRR Part 21 and to provide a full evidentiary record.).

[12] See Case 10-E-0197 – NRG Astoria Power LLC, *Order Granting Certificate of Public Convenience and Necessity, Providing For Lightened Regulation and Approving Financing* (January 24, 2011), at 19–20; Case 10-E-0281 – Connecticut Municipal Electric Energy Cooperative, *Order Providing for Lightened Regulation and Approving Financing* (October 14, 2010), at 12–13.

For the reasons described above, the Commission should find that NTW is economically feasible and financially viable based on Invenergy's financial commitment to providing the support necessary for NTW to construct and operate the Proposed Facility and that NTW satisfies the statutory prerequisites for the grant of a CPCN.

Dated: December 10, 2020
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Respectfully submitted,

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LIST OF EXHIBITS

Exhibit A − Road Use Agreement

Exhibit B − Verified Statements of the President and Secretary