BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Petition of Zephyr Wind Energy, LLC for a Declaratory Order Regarding Financing Approval or an Order Approving Financing under Section 69 of the New York State Public Service Law	Case No. 18-E-____

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PETITION FOR A DECLARATORY RULING OR AN ORDER APPROVING FINANCING UNDER SECTION 69 OF THE PUBLIC SERVICE LAW

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Dated: October 18, 2018

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PETITION FOR A DECLARATORY RULING OR AN ORDER APPROVING FINANCING UNDER SECTION 69 OF THE PUBLIC SERVICE LAW

I. INTRODUCTION

Zephyr Wind Energy, LLC ("Zephyr") hereby petitions the New York State Public Service Commission ("Commission") for a declaratory ruling confirming that the Commission's approval of indebtedness under Section 69 of the New York Public Service Law ("PSL") for six wind project companies will continue after Zephyr acquires all of the ownership interests in the project companies and clarifying that the scope of such approval includes indebtedness incurred to finance Zephyr's acquisition and operation of the project companies (the "Financing"). In the alternative, Zephyr requests that the Commission approve the Financing under PSL § 69.

The six wind project companies are Noble Altona Windpark, LLC ("Noble Altona"); Noble Bliss Windpark, LLC ("Noble Bliss"); Noble Chateaugay Windpark, LLC ("Noble Chateaugay"); Noble Clinton Windpark I, LLC ("Noble Clinton"); Noble Ellenburg Windpark, LLC ("Noble Ellenburg"); and Noble Wethersfield Windpark, LLC (individually, "Noble Wethersfield" and collectively with Noble Altona, Noble Bliss, Noble Chateaugay, Noble Clinton, and Noble Ellenburg, the "Wind Project Companies"). The Commission ruled on Zephyr's petition for declaratory ruling that its acquisition of 100% of the indirect ownership interests in the Wind Project Companies required no further review under PSL § 70 (the "Acquisition") and that the lightened regulation previously imposed on the Wind Project Companies would continue post-Acquisition.[1] Zephyr proposes to enter into credit facilities pursuant to which the Wind Project Companies and their assets will be pledged to secure the debt to finance the Acquisition and operation of the six wind projects once it obtains the Commission's approval of this Petition.

Petitioners hereby request that the Commission expedite, to the extent possible, its review of the instant Petition and grant the approval requested herein as soon as possible.

II. BACKGROUND

A. ZEPHYR WIND ENERGY, LLC

At the closing of the Acquisition, Zephyr will own 100% of the indirect ownership interests in the Wind Project Companies. Zephyr will be controlled by Cogentrix Zephyr Holdings, L.L.C. ("Cogentrix Zephyr"), which will either directly own all of the membership interests of Zephyr or will indirectly own all such interests through one or more wholly owned special purpose subsidiaries formed for the sole purpose of holding a direct or indirect equity interest in Zephyr.

Cogentrix Zephyr will have two members: (1) Carlyle Power CPP II Zephyr, L.L.C. ("Carlyle CPP II Zephyr"), which will own a majority of the membership interests, and control the right to designate a majority of the board members, of Cogentrix Zephyr, and (2) Carlyle Power Partners II-C, L.P. ("CPP II-C"). Carlyle CPP II Zephyr will be managed by its members (collectively, and together with CPP II-C, the "CPP II Fund Vehicles"). The CPP II Fund

[1] *See* Case 18-E-0564, *Noble Altona Windpark, LLC et al.*, Petition (Aug. 31, 2018); *Final October 18, 2018 Agenda*, N.Y.S. Pub. Serv. Comm'n (Oct. 17, 2018), at 6, http://www3.dps ny.gov/W/PSCWeb.nsf/a8333dcc1f8dfec0852579bf005600b1/2654334b210cff95852579e4005f837d/$FILE/pr18088%20-%20Final%20Agenda.pdf.

Vehicles are investment fund vehicles sponsored and managed by The Carlyle Group, L.P. ("The Carlyle Group") or affiliates thereof.

Each of the CPP II Fund Vehicles has as its general partner CPP II General Partner, L.P. ("CPP II GP"). The general partner of CPP II GP is TC Group CPP II, L.L.C., whose managing member is TC Group Sub L.P. ("TC Group Sub"). The general partner of TC Group Sub is TC Group, L.L.C., a wholly-owned direct subsidiary of Carlyle Holdings I L.P. ("Holdings I LP"). The general partner of Holdings I LP is Carlyle Holdings I GP Sub L.L.C., a wholly-owned direct subsidiary of Carlyle Holdings I GP Inc., which, in turn, is a direct subsidiary of The Carlyle Group.

The Carlyle Group is a global alternative investment management firm that is a publicly traded entity listed on NASDAQ. No unitholder of The Carlyle Group owns 10% or more of the publicly traded units of The Carlyle Group. Three individuals, William E. Conway, Jr., Daniel A. D'Aniello, and David Rubenstein, each owns more than 10% of Carlyle Group Management LLC, the general partner of The Carlyle Group.

B. THE WIND PROJECT COMPANIES

1. NOBLE ALTONA WINDPARK, LLC

Noble Altona, a Delaware limited liability company, owns and operates the Altona Project, an approximately 97.5 MW wind energy facility located in the Town of Altona in Clinton County, New York. The Altona Project is interconnected with transmission facilities that are owned by the New York Power Authority ("NYPA") and are under the operational control of the New York Independent System Operator, Inc. ("NYISO"). The output of the Altona Project is sold into the NYISO markets.

2. NOBLE BLISS WINDPARK, LLC

Noble Bliss, a Delaware limited liability company, owns and operates the Bliss Project, an approximately 100.5 MW wind energy facility located in the Town of Eagle in Wyoming County, New York. The Bliss Project is interconnected with transmission facilities that are owned by the Village of Arcade, New York, and the output is sold into the NYISO markets.

3. NOBLE CHATEAUGAY WINDPARK, LLC

Noble Chateaugay, a Delaware limited liability company, owns and operates the Chateaugay Project, an approximately 106.5 MW wind energy facility located near the Town of Chateaugay in Franklin County, New York. The Chateaugay Project is interconnected with transmission facilities that are owned by NYPA and are under the operational control of the NYISO, and the output is sold into the NYISO markets.

4. NOBLE CLINTON WINDPARK I, LLC

Noble Clinton, a Delaware limited liability company, owns and operates the Clinton Project, an approximately 100.5 MW wind energy facility located in the Town of Clinton in Clinton County, New York. The Clinton Project is interconnected with transmission facilities that are owned by NYPA and are under the operational control of the NYISO, and the output is sold into the NYISO markets.

5. NOBLE ELLENBURG WINDPARK, LLC

Noble Ellenburg, a Delaware limited liability company, owns and operates the Ellenburg Project, an approximately 81 MW wind energy facility located in the Town of Ellenburg in Clinton County, New York. The Ellenburg Project is interconnected with transmission facilities that are owned by NYPA and are under the operational control of the NYISO, and the output is sold into the NYISO markets.

6. NOBLE WETHERSFIELD WINDPARK, LLC

Noble Wethersfield, a Delaware limited liability company, owns and operates the Wethersfield Project, an approximately 126 MW wind energy facility located near the Town of

Wethersfield in Wyoming County, New York. The Wethersfield Project is interconnected with transmission facilities that are owned by New York State Electric and Gas Corporation and are under the operational control of the NYISO, and the output is sold into the NYISO markets.

III. THE COMMISSION SHOULD ISSUE A DECLARATORY RULING CONFIRMING THAT ITS PRIOR APPROVAL OF INDEBTEDNESS UNDER PSL § 69 FOR THE WIND PROJECT COMPANIES WILL CONTINUE AFTER THE ACQUISITION AND CLARIFYING THAT THE SCOPE OF SUCH APPROVAL INCLUDES INDEBTEDNESS INCURRED TO FINANCE THE ACQUISITION AND OPERATION OF THE WIND PROJECT COMPANIES.

In an order issued on September 25, 2006, the Commission authorized Noble Clinton, Noble Altona, Noble Ellenburg, and Noble Bliss to pledge their assets to secure up to $700 million in debt.[2] In an order issued on March 24, 2008, the Commission authorized Noble Altona, Noble Wethersfield, and Noble Chateaugay to pledge their assets to secure up to $1.475 billion in debt.[3] In the 2006 and 2008 Orders, the Commission approved, consistent with past precedent involving financing approval for other lightly regulated electric corporations, flexibility to change, without its prior approval, financing entities, payment terms, or the amount financed up to $700 million and $1.475 billion respectively.[4] In both orders, the Commission stated that its approval "is conditioned, in that the financing may be used only for the construction and operation of a generation project authorized in the applicable [certificate of public convenience and necessity]."[5]

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[2] Case 06-E-0843, *Noble Clinton Windpark I, LLC et al*., Order Approving Financing Subject to a Condition (Sept. 25, 2006) ("2006 Order").
[3] Case 08-E-0231, *Noble Altona Windpark, LLC et al*., Order Approving Financing Subject to a Condition (Mar. 24, 2008) ("2008 Order").
[4] 2006 Order at 5; 2008 Order at 9.
[5] *Id.*

As with the continuation of lightened regulation for the Wind Project Companies[6] and financing approval for other companies following the transfer of upstream ownership interests,[7] the Commission should declare that the $700 million financing approval for Noble Clinton, Noble Ellenburg, and Noble Bliss and the $1.475 billion financing approval for Noble Altona, Noble Wethersfield, and Noble Chateaugay will continue following the Acquisition. Continuation of financing approval is appropriate because "[c]aptive New York ratepayers cannot be harmed by the terms of the contemplated financing because [the Wind Project Companies] and their affiliates bear all the financial risk associated with their financial arrangements."[8]

The Commission should also clarify that the scope of its financing approval includes the use of debt—up to $700 million for Noble Clinton, Noble Ellenburg, and Noble Bliss, and up to $1.475 billion for Noble Altona, Noble Wethersfield, and Noble Chateaugay—for the purpose of acquiring and operating the Wind Project Companies. The Financing is essentially a refinancing of the debt that the Commission approved for purposes of financing the construction and of operation of the six wind projects. Upon consummation of the Acquisition, the existing debt approved by the Commission will be paid and new debt will be issued to pay Zephyr the Acquisition cost and provide the necessary working capital to operate the Wind Project Companies.

[6] *See* Case 18-E-0564, *Noble Altona Windpark, LLC et al.*, Petition (Aug. 31, 2018); *Final October 18, 2018 Agenda*, N.Y.S. Pub. Serv. Comm'n (Oct. 17, 2018), at 6, http://www3.dps ny.gov/W/PSCWeb.nsf/a8333dcc1f8dfec0852579bf005600b1/2654334b210cff95852579e4005f837d/$FILE/pr18088%20-%20Final%20Agenda.pdf.

[7] *See, e.g.*, Case 18-M-0276, *AEIF BNY Holdings, LLC et al.*, Declaratory Ruling on Transfer and Making Other Findings (July 17, 2018); Case 17-M-0735, *Sithe/Independence Power Partners, L.P. et al.*, Declaratory Ruling on Transfer and Making Other Findings (Feb. 27, 2018); Case 16-M-0194, *Dynegy Inc. et al.*, Declaratory Ruling on Transfer Transaction (May 23, 2016).

[8] 2006 Order at 5 (citation omitted); *see also* 2008 Order at 9 (citation omitted).

IV. IN THE ALTERNATIVE, THE COMMISSION SHOULD APPROVE THE FINANCING UNDER PSL § 69.

Pursuant to PSL § 69, Commission authorization is necessary for an electric corporation to enter into indebtedness payable at periods of more than 12 months. Because the Wind Project Companies are subject to lightened regulation and will not serve any New York State retail customers, the scrutiny applicable to monopoly utilities under PSL § 69 may be reduced. Specifically, the Commission has stated that "[t]he scrutiny applicable to monopoly utilities may be reduced for lightly-regulated companies . . . that operate in a competitive environment. As a result, we need not make an in-depth analysis of the proposed financing transactions."[9]

Zephyr requests that the Commission authorize Noble Clinton, Noble Ellenburg, and Noble Bliss to enter into, and pledge their assets to secure, up to $700 million and authorize Noble Altona, Noble Wethersfield, and Noble Chateaugay to enter into, and pledge their assets to secure, up to $1.475 billion to finance the Acquisition and operation of the Wind Project Companies. Petitioners also request the flexibility to modify, without prior Commission approval, the identity of the financing entities, payment terms, and the amount financed, up to $700 million with respect to Noble Clinton, Noble Ellenburg, and Noble Bliss and $1.475 billion with respect to Noble Altona, Noble Wethersfield, and Noble Chateaugay. As the Commission found in its 2006 and 2008 Orders, captive New York ratepayers cannot be harmed by the Financing because the Wind Project Companies and their affiliates bear all the financial risk associated with these financing arrangements. Thus, the Commission should approve the Financing.

[9] Case 14-E-0195, *Bayonne Energy Ctr., LLC et al.*, Order Modifying Lightened Ratemaking Regulation Authorizations and Approving Financing and Declaratory Ruling on a Transfer Transaction (Aug. 15, 2014), at 9.

V. CONCLUSION

WHEREFORE, Zephyr respectfully request that the Commission issue a ruling declaring that the Commission's approval of indebtedness under PSL § 69 for the Wind Project Companies will continue after Zephyr acquires all of the ownership interests in the Wind Project Companies and clarifying that the scope of such approval includes indebtedness incurred to finance Zephyr's acquisition and operation of the Wind Project Companies. In the alternative, Zephyr requests that the Commission approve the Financing under PSL § 69. Zephyr further requests the Commission expedite, to the extent possible, its review of the instant Petition and grant the approval requested herein as soon as possible.

Respectfully submitted,

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Dated: October 18, 2018

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VERIFICATION

I, JOHN OLDENBURG as OFFICER, of Zephyr Wind Energy, LLC, do hereby affirm that the contents of this document are true to the best of my knowledge and belief.

Signed: John B Oldenburg
Date: October 18, 2018

SARAH DUNIVANT
Notary Public - State of New York
No. 01DU6360670
Qualified in New York County
My Commission Expires June 26, 2021

Sarah Dunivant