

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on August 22, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman  
Maureen F. Harris  
Robert E. Curry, Jr.  
Cheryl A. Buley

CASE 06-E-1424 - Petition of Jordanville Wind, LLC for a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law, and Approving a Lightened Regulatory Regime.

ORDER GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY AND  
PROVIDING FOR LIGHTENED REGULATION

(Issued and Effective August 23, 2007)

BY THE COMMISSION:

INTRODUCTION

By petition filed November 20, 2006, Jordanville Wind, LLC (JW or the Company) requested a Certificate of Public Convenience and Necessity (CPCN), pursuant to §68 of the Public Service Law (PSL), authorizing the construction and operation of a wind energy generating project proposed to be located in the Towns of Warren and Stark, Herkimer County, New York (collectively, the Towns). JW also requested an order providing for lightened regulation as an electric corporation.

In connection with its request for a CPCN, JW moved for an expedited proceeding, pursuant to 16 NYCRR §21.10(a)(1), so that the hearing required by PSL §68 might be held before us on the application and any information filed by the parties, without oral testimony. JW caused notice of its motion to be published in the Utica Observer Dispatch on December 9, 2006, and in the Evening Telegram on December 8, 15, 22 and 29, 2006; and on January 5 and 12, 2007. These are newspapers of general

circulation in the vicinity of the proposed project. No responses to the motion were received within the ten-day period specified in 16 NYCRR §21.10(b)(2), which expired on January 22, 2007.

A notice of the petition for lightened regulation was published in the State Register on December 20, 2006 in conformance with §202(1) of the State Administrative Procedure Act (SAPA). No response to the notice was received within the SAPA §202(1)(a)(i) comment period, which expired on February 5, 2007.

On December 11, 2006, JW filed the first supplement to the petition, in response to questions on the petition asked by Department of Public Service (DPS) Staff. On April 10, May 10, 29, and 31, 2007, JW filed supplements to its Petition providing details of the relationship of JW to its parent and affiliate corporations Community Energy, Inc. (CEI) and Iberdrola Renewable Energies USA, Ltd. (Iberdrola), and correcting errors in the original petition. In addition, the Supplements provided information regarding design and management of the proposed substations and transmission facilities, various plans, analyses, drawings, schedules, a list of applicable codes, criteria, procedures and standards for project design, construction, operation and management.

Several organizations and persons have filed petitions seeking party status late in this proceeding, including project opponents and project proponents. Petitions have been received from Otsego 2000, Advocates for Springfield and Advocates for Stark (collectively, Otsego 2000 and Advocates); the Towns; and Friends of Renewable Energy (FORE).

### THE PETITION

JW is wholly-owned by CEI, which is a wholly-owned subsidiary of Iberdrola. The petition states that CEI is a marketer and developer of wind energy generation, with 100,000 residential customers and marketing arrangements with 18 investor-owned and municipal utilities. According to the Company, CEI developed and jointly owns wind projects in New Jersey and Pennsylvania, and has other projects in development in other regions of the country. JW intends to commence construction in

the fall of 2007 and anticipates that its project will begin commercial operation by the end of 2008.

### Description of Project

JW originally proposed to develop a 150 megawatt (MW) wind-powered generating facility in the Towns. This project was anticipated to include 75 Gamesa Eolica wind turbines, each with a generating capacity of 2.0 MW. The project as currently proposed includes a maximum of 68 wind turbines, for a rated output of 136 MW; two permanent meteorological towers; an operation and maintenance building; a system of 17.7 miles of gravel access roads; 25.3 miles of buried and overhead 34.5 kilovolt (kV) electric lines; a collection substation; a 0.7 mile long 230 kV overhead electric transmission line; and an interconnection substation. Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) will provide for interconnection to its existing Porter-Rotterdam 230 kV bulk transmission line.

The array of 68 turbines is proposed to span portions of the two towns in a generally random arrangement, with turbines spaced over 1000 feet apart. 34 turbines are proposed to be sited in each of the two Towns. Each wind turbine will have a total maximum height of approximately 399 feet. The turbine field will be lighted pursuant to Federal Aviation Administration standards for aviation hazard warning. The JW project land area (Site) includes approximately 6,300 acres of private land on approximately 56 separate parcels.

The single circuit 230 kV transmission line will connect the collection substation with the proposed interconnection substation. The transmission line will be approximately 0.7 miles in length, with conductors carried on steel and wood pole structures in a vertical configuration.

Project construction is anticipated to occur in a multiple phase operation, starting with road construction and site work in the fall of 2007, with all work being completed by the end of 2008.

CPCN Request

The Company has committed to comply with the requirements of our regulations regarding the protection of underground facilities (16 NYCRR Part 753); the company also certified that it will become a member of Dig Safely New York, and will require all contractors, excavators and operators associated with their facilities to comply with the underground facility protection regulations. The Company has also committed to comply with the requirements of our regulations regarding identification and numbering of above ground utility poles (16 NYCRR Part 217).

In supplements to its petition, the Company provided additional details and descriptions of its proposed electric facilities, including features for facility security and public safety, a plan for quality assurance and control measures for facility design and construction, utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities, emergency response plans for construction and operational phases, and complaint resolution measures. Facility design is proposed to conform to the National Electric Safety Code, as well as other relevant codes and standards applicable to facility siting, construction and operation. JW has not yet provided final transmission line design or construction plan and profile details, as requested by DPS Staff. Before the start of clearing or construction of the transmission line or substation facilities, we will require that JW provide additional details of substation facility security, as well as additional plans, standards and practices for transmission line construction and vegetation maintenance.

Lightened Regulation Request

JW requested that it be regulated under a lightened regulatory regime similar to the regimes that have been applied to other entities engaged in selling electric power exclusively at wholesale. According to the petition, JW will sell the output of its project exclusively at wholesale and will not be a retail supplier of electricity. JW explained that it is not affiliated with a power marketer, though CEI does market renewable energy credits.

### COMMENTS AND RESPONSES

Comments in opposition to the Jordanville Project were submitted by Otsego 2000 and Advocates, and several concerned citizens. Comments in favor of the project were received from FORE, which identified itself as comprised of individuals interested in promoting renewable energy resources, and includes landowners who will directly benefit from the siting of turbines on their property.

Otsego 2000 and Advocates together requested party status on June 25, 2007, explaining their participation in State Environmental Quality Review Act (SEQRA) proceedings and local permitting proceedings, their interest in a range of environmental matters including in particular regional impacts beyond the towns, and their concern for historic resource impacts. Additionally, they expressed concerns regarding the conduct and results of the SEQRA proceedings. Otsego 2000 presented a Specific Observer Analysis Report on July 5, 2007. This report is a representation of the predicted visibility of specific proposed turbines on the Otsego Lake landscape, and characterizes the nature and extent of each turbine's visibility. The report focused primarily on the specific turbines, which it characterizes as having the greatest degrees of significance within the Otsego Lake viewshed. Otsego 2000 also submitted a report on August 7, 2007, which provides an analysis of the Company's July 2, 2007 Alternatives Analysis.<sup>1</sup> The August 7 report by Otsego 2000 points out that the Alternatives Analysis is not sufficient to fully analyze the alternatives, or to provide many of the underlying assumptions, estimates, or costs.

On July 19, the Company responded to the request for party status, arguing that it was belated, that Otsego 2000 and Advocates' intent is to re-open the "completed" SEQRA process and that Otsego 2000 and Advocates would not contribute to the development of a complete record. The Company believes that the Otsego 2000 and Advocates' request should be denied or, in the alternative, that we should require Otsego 2000 and Advocates to be bound by the record as presently developed.

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<sup>1</sup> This analysis, as well as an additional analysis filed with the Secretary on July 20, 2007, relates to the consultation with the Office of Parks, Recreation and Historic Preservation (OPRHP) that we have undertaken pursuant to §14.09 of the Parks, Recreation and Historic Preservation Law (PRHPL), as implemented by 9 NYCRR Part 428.

On August 3, 2007, Otsego 2000 and Advocates replied to the Company's response, indicating that the lead agency did not inquire into several issues including the fiscal need for the project to be developed at the size proposed and the failure to acknowledge or resolve the adverse impacts on historic and cultural resources. Otsego 2000 and Advocates pointed out that historic and cultural resource impacts and alternative scale projects were matters raised by both OPRHP and DPS Staff and that the Company itself had recently submitted related materials to DPS and OPRHP on these very issues.

The Towns requested party status, indicating that their participation would contribute to the development of a complete record, and that their participation would be in the public interest. The Towns cited their understanding of the requested intervention by Otsego 2000 and Advocates and stated their request that "party status be granted to all or to none." The Towns indicated their support for the JW petition and the grant of a CPCN.

In its August 7, 2007 petition for party status, FORE reported that it is a local citizen's group based in Herkimer County, cited the group's commitment to "uniting public awareness on the issues of renewable energy options" in the area, and otherwise indicated its support for the project, including the economic and environmental benefits of project development and operation. FORE asserted its support for the Towns' decisions and efforts and thorough examination of the project impacts and benefits. FORE suggested that the project will bring significant local economic benefits, including payments to the municipalities, schools, and the lessors and landowners on which project components are proposed to be located. In addition, FORE expressed its support for the state Renewable Portfolio Standard (RPS) and efforts to advance indigenous renewable energy resources.

Comments were received from several individuals. Denise Como and Richard Whritenour, residents of Fort Plain, pointed out concerns regarding adequacy of area roads to support extreme oversize loads during project construction, limitations of site "karst" geologic formations to support the large turbines, effects on property valuation, wind turbine production efficiency, noise effects of turbine operation, safety

concerns with turbine operations including equipment failure, ice throw, lightning strikes, and additional matters. Louise Doubleday, a resident of Warren, found disturbing the lack of depth of research conducted by the Towns, particularly regarding the potential health hazards of the project. Edward and Dorayne Peplinski, residents of Warren, expressed their strong concerns regarding the adequacy of the mitigations proposed thus far. Carol Mulcrone, a resident of Stark, reiterated similar environmental concerns and urged that the proposed project be downsized. Charles Kieler, a resident of Cherry Valley, commented that he was concerned that the conclusions of environmental reviews were rushed and that adverse effects on historic resources and districts would result from project development. Archbishop Hilarion of the Russian Orthodox Church reported that the Project would devastate the unique religious setting of the Holy Trinity Monastery and Cathedral, and the Seminary and the Convent of St. Elizabeth near Jordanville. The Archbishop explained that this site has become known worldwide as a spiritual center for the members of the Russian Orthodox Church. Comments were also received from Sue Brander and James Hockenberry, who cited concerns with noise, visual, groundwater, and other environmental effects associated with project siting.<sup>2</sup>

## DISCUSSION AND CONCLUSION

### Procedural Matters

The hearing required by PSL §68 may be held before us on the application and any information filed by the parties, without oral testimony.<sup>3</sup> We grant permission to intervene as a party “if the intervention is likely to contribute to the development of a

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<sup>2</sup> In the last week, additional comments expressing either support for or opposition to the Project were received. No new issues or factual information relevant to our consideration were received.

<sup>3</sup> According to 16 NYCRR §21.10(b)(2), this is because no one filed an objection stating substantive reasons for opposing JW’s motion for an expedited proceeding.

complete record or is otherwise fair and in the public interest”.<sup>4</sup> In deciding whether to grant a CPCN, we consider issues relating to public convenience and necessity. Because of our approval authority under PSL §68, moreover, we are an involved agency for purposes of SEQRA review. As such, we may not generally require the preparation of SEQRA documents in connection with proposed actions;<sup>5</sup> however, we must make a written findings statement that, inter alia, weighs and balances relevant environmental impacts with social, economic, and other considerations and provide a rationale for our decision.<sup>6</sup> Furthermore, as a State agency, we must consult with OPRHP regarding the impacts of proposed projects on cultural resources, pursuant to PRHPL §14.09. Because these broad responsibilities relate to our PSL §68 review, we will allow those seeking party status to intervene, believing that their participation is helpful in completing the record and in the public interest. For the same reason, we will also consider the other comments filed in this proceeding.

#### State Environmental Quality Review

Environmental review of the proposed facilities was conducted pursuant to SEQRA, Article 8 of the Environmental Conservation Law, with the Town of Warren acting as lead agency. The purpose of SEQRA and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7) is to incorporate consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQRA requires that agencies determine whether the actions they are requested to approve may have a significant impact on the environment. If it is determined that an action may have a significant adverse impact, an environmental impact statement must be prepared by the lead agency or the applicant.

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<sup>4</sup> See 16 NYCRR §4.3(c)(1)

<sup>5</sup> See 6 NYCRR §617.6(b)(3)(iii).

<sup>6</sup> See 6 NYCRR §617.11(c) and (d)



On November 14, 2005, a Full Environmental Assessment Form (EAF) and application for a wind energy facility permit addressing the proposed wind power project was submitted by JW to the Town of Warren Town Board. A solicitation of lead agency status was forwarded to involved agencies by the Warren Town Board, along with a copy of the EAF document. No agency objected to the Board assuming the role of lead agency. In that role it issued a positive declaration, requiring the preparation of a Draft Environmental Impact Statement (DEIS) on March 13, 2006.

On May 19, 2006, the DEIS was submitted to the Lead Agency. The DEIS was accepted as complete on May 31, 2006. Upon acceptance of the DEIS, copies of that document (along with a copy of the public notice) were distributed to all interested and involved agencies and made available to the public. The public comment period ran from May 31, 2006 to August 4, 2006. Public hearings were held in the Towns.

In order to address changes made to the Project layout, present further support studies, and provide additional detail to the public regarding the proposed project, a Supplemental Draft Environmental Impact Statement (SDEIS) was required to be prepared. The SDEIS was accepted by the Lead Agency on November 15, 2006 and a Notice of Completion and Notice of Public Comment Period were subsequently filed and published. The public comment period on the SDEIS ran to December 15, 2006. No public hearing on the SDEIS was held. A Responsiveness Summary was subsequently prepared as part of the Final Environmental Impact Statement (FEIS) to address all substantive comments received on the DEIS and the SDEIS. The FEIS was accepted as complete by the Lead Agency on May 4, 2007, and thereafter noticed, filed, and distributed as required under 6 NYCRR §617.12.

The DEIS, SDEIS and FEIS for the project analyzed potential environmental impacts on land use and zoning, visual resources, socioeconomic issues, traffic and transportation, air quality, noise, soils, geology, terrestrial and aquatic ecology including threatened and endangered species, effects on communications facilities, stormwater management, impacts of construction, and proposed general and specific mitigation measures. The Lead Agency determined that a large-scale wind power-

generating project will result in benefits to the area, as well as certain environmental impacts if not mitigated, avoided or offset.

The lead agency stated that Stormwater and erosion control plans, if properly implemented, will minimize construction impacts. Following construction, disturbed areas will be restored. Agricultural lands will be restored to agricultural use in accordance with New York State Department of Agriculture and Markets (Ag&Mkts) Agricultural Protection Guidelines.

Moreover, the Towns concluded, based upon field investigations and review of the DEIS and the FEIS, that the proposed action with the mitigation measures incorporated in the FEIS minimizes or avoids significant adverse environmental impact to the maximum extent possible. The mitigation measures discussed in the FEIS include:

- compliance with conditions and any mitigation measures required by any federal, state, and local permits and approvals;
- implementation of appropriate mitigation measures defined in such permits or approvals;
- use of minimum setbacks from residences to limit certain impacts;
- post-construction noise testing with noise limits of 50 dB(A) on a one hour average when measured from adjacent residences; and
- employment of environmental and agricultural monitors to assure compliance with various commitments and permit requirements.

Project-wide soil erosion and sediment control is required to be addressed in the Stormwater Pollution Protection Plan. As a result of the visual assessment study, the mitigation measures include location of the turbines in a random pattern, installation of landscape plantings for affected viewsheds, and a prohibition of advertising on the turbines.

The 230 kV transmission line route was modified to reduce impacts on a steep slope, and the final location for the collection substation and adjoining operations center access road is under review to minimize effects on agricultural lands. DPS Staff has requested that the Company continue to work with Ag&Mkts and the affected landowner(s) to identify a location for the permanent access road that provides sufficient

grade and curvature to accommodate construction and ongoing operations and maintenance, while minimizing impacts.

While we acknowledge the environmental concerns of the several commenters, it is clear that under SEQRA the lead agency has the responsibility to give careful consideration to such issues. As noted above, we may not require the preparation of SEQRA documents, though we may take appropriate action to ensure that we may make the findings statement required by 6 NYCRR §617.11(c). Except where specifically noted herein, the lead agency has appropriately analyzed the environmental impacts associated with JW's project. The findings, as extensively discussed in the Findings Statement adopted by the lead agency, are generally reasonable and appropriate. The additional impact mitigation requirements we will impose will insure that impacts are minimized to the extent practicable, and that required SEQRA findings may be made.

#### Bird and Bat Impacts

Impacts on avian and bat species are anticipated due to facility operations. The FEIS identifies potential mortality estimates based on an analysis of site conditions and operating experience at other wind-powered electric generation projects. The potential impacts will be minimized by a requirement for post-construction mortality studies, reporting, and an adaptive management strategy to address any adverse impacts to birds and bats that are revealed by these studies. We will require that the adaptive management strategy be developed with additional input from the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation (DEC) and be implemented during facility operation. Critical migratory periods and hours of highest risk of impact may be identified through a period of monitoring operations and impacts. Deterrent mechanisms and habitat manipulation near turbine locations hold potential for reducing wildlife collisions with operating turbines; they warrant additional evaluation as greater operational experience in the industry is gained. Based on operational experience, impact avoidance or minimization strategies appropriate to the facility site must be developed and implemented as appropriate to address potential significant impacts on avian and bat species. We will, therefore, require the Company to address the need for

additional post-construction study, monitoring and analysis of impacts, and the development and implementation of a long-range strategy for adapting facility operations to address conservation of natural resources, such as birds and bats.

PRHPL §14.09 Review

The DEIS did not include an evaluation of historic resources, and the visual impact analysis was inadequate in addressing certain areas, most notably the Otsego Lake area and surrounding environs, which constitute the Glimmerglass Historic District listed on the National and State Registers of Historic Places. These areas and similar resources had been indicated as warranting attention in comments to the Lead Agency filed by DPS Staff, both in response to the request for lead agency designation and in comments on the DEIS. Conservation groups, including Otsego 2000 had raised similar issues.

Thus, DPS Staff and others attempted from very early in the SEQRA review to have historic resources identified, analyzed and addressed and project impacts mitigated in accordance with the requirements of PRHPL §14.09. Impacts to historic and cultural resources were not addressed until the SDEIS was developed. Otsego Lake and the surrounding area are well known for their significance as a scenic and cultural resource and focal point of public interest.<sup>7</sup>

The SDEIS included analysis of a broader study area and an initial review of cultural resources, including historic sites and archeological resources evaluations. The resource investigation included several viewpoints from Otsego Lake representing views northerly toward the Project area from the Glimmerglass Historic District. The SDEIS depicted the proposed turbines as introduced mechanical features emerging above a generally wooded ridgeline north of the Historic District. The visual contrasts here, as elsewhere, will vary depending on ambient lighting and atmospheric conditions.

By letter of January 4, 2007, DPS requested that OPRHP's Historic Field Services Bureau issue an impact determination based on archeological and historic

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<sup>7</sup> See Case 70126 - Power Authority of the State of New York, Opinion No. 85-2, Opinion and Order Granting Certificate of Environmental Compatibility and Public Need, (issued January 30, 1985).

resources and visual impact assessments in the SDEIS. The Historic Field Services Bureau issued an “Adverse Impact” determination regarding historic resources in a letter dated January 22, 2007. The letter pointed out that the significance of the Glimmerglass Historic District, acknowledged as “a nationally significant resource” is to a large degree related to the natural setting, “an outstanding scenic environment that survives with a high degree of integrity today, retaining substantial evidence of its long and multi-layered history.” OPRHP stated that it “believes that views from this district must be an integral component of the final assessment of alternatives to be discussed regarding impacts associated with this project. Although beyond the five-mile limit established for most wind energy projects, the clear and defined national significance of this resource warrants its full consideration in the process.” In addition to comments on this resource of national significance, reference to other historic resources listed or eligible for listing on the State or National Registers of Historic Places that would be adversely affected by the Project was provided. OPRHP concluded “We now encourage the project sponsor to continue the consultation process under §14.09 by fully exploring all feasible and prudent alternatives and by giving due consideration to feasible and prudent plans that avoid or mitigate the adverse impacts.”

The Company provided additional analyses of alternatives, including identification of individual turbine visibility from various locations on Otsego Lake within the Glimmerglass Historic District. In correspondence submitted on May 29, July 2 and July 20, 2007, the Company presented information indicating the extent of turbine visibility, and potential effects of alternative smaller-scale projects. JW reported that reduced scale projects to remove the extent and number of turbines visible from the Glimmerglass Historic District would reduce the benefits of the project in terms of energy produced, emissions offset, and payments to the taxing jurisdictions, host communities and landowners. The reduction of project size by 19 turbines would reportedly reduce the return on investment rate by “75 basis points” and lead to project delays. None of the three alternative scale projects analyzed, in the Company’s opinion, was feasible or prudent.

In informal comments sent to DPS Staff, the Towns indicated that a reduction in turbines threatens to leave the host communities all of the local visual impact, while dramatically cutting the economic benefit to their residents and family farms. The benefit, if any, of a reduced visual impact will go to distant vantage points in neighboring towns in another county, according to the Towns. The Towns asserted that the assessment made in the SEQRA process and the findings made by the Towns fully considered visual effects, and that consideration of reduced project scale in the consultation and decision-making process required by PRHPL §14.09 threatens to “make a mockery” of the SEQRA process.

Otsego 2000 provided information in regard to individual turbine visibility from Otsego Lake, which helped confirm the analysis provided by JW. Otsego 2000 also provided an analysis of the economic considerations asserted in the JW Alternatives Assessments of July 2 and July 20, 2007. The analysis by Otsego 2000 indicated that: economic feasibility criteria or economic analysis to support the conclusion that smaller alternative projects were not economically feasible were not provided in the JW analysis; the analysis provides only part of the information needed to conduct an economic evaluation, such as costs of capital, financing assumptions and most operating costs; and potentially overstates project benefits and projected emissions displacements. Citing to smaller projected emissions reductions resulting from smaller scale project alternatives, Otsego 2000 claims

Unfortunately, these undocumented and unsupported claims do not reflect the simple fact that the identified pollutants are regulated in New York under cap and trade programs. While the wind project may displace fossil fuel generation and some associated emissions, the displaced source will be free to sell any unused credits to another source. Therefore, any displaced emissions are not avoided. Second, with the New York RPS standard, the true comparison of emissions should be among the other projects that are competing with the Jordanville project in the special set-aside RPS market. If not Jordanville, the generation would come from another renewable project that would have a similar emissions profile. Bottom line is that there would be no difference in avoided emissions between the project as proposed, any of its claimed

alternatives or if it were not built at all. (August 7, 2007 comments by Tom Hewson, Energy Ventures Analysis, Inc. for Otsego 2000, p. 2 (emphasis in original).)

The SEQRA and PRHPL §14.09 review procedures and findings requirements, while similar in some respects, are not identical. The review processes may be integrated to a large degree, provided that the Lead Agency and developer enable such integration, by requiring that the scope and content of the analysis provided in the DEIS include an analysis of the probable effect on cultural resources within the project study area, consideration of alternatives to address adverse impacts on the identified resources, and decision making that includes the criteria for decisions as stipulated by both SEQRA and PRHPL §14.09.

The history of events in this case shows that DPS staff recommended that the Lead Agency require that cultural and historic resources study and analysis be included in the DEIS, that the study area be expanded to include the Otsego Lake area and the Glimmerglass Historic District, and that a public scoping document be provided for consideration by involved agencies. Other commenting parties in the SEQRA review made similar requests. The comments of parties on the DEIS reflect the perceived shortcomings of that document, that a cultural and historic resources study and impact assessment was not included, that the study area and content had not been expanded as recommended, and that consideration of alternatives and mitigation measures would need to be revisited upon provision of additional baseline evaluations of cultural and historic resources. Comments on the SDEIS reflect similar lingering concerns regarding the impact assessments and shortcomings of the consideration of mitigation and alternatives to reduce adverse impacts. The FEIS provided limited consideration of alternatives in this regard, concluding that the perceived impacts were not significant and were otherwise unavoidable, and that no reasonable alternatives were available that would provide the reported benefits to the Towns, the region and the State. The FEIS states that “a down-sized project is not essentially different from the project as proposed and therefore does not warrant further evaluation” (FEIS p. 162).

The Company's arguments that alternative projects would reduce the estimated benefits and delay the project do not address the fundamental tenet of PRHPL Article 14 and the finding that must be made under that statute. Article 14 declares that the public policy and public interest of the state includes promotion and protection, enhancement and perpetuation of historic properties, preservation and enhancement of the State's attractions to tourists. It requires that "[t]o the fullest extent practicable, it is the responsibility of every state agency, consistent with other provisions of law, to avoid or mitigate adverse impacts to registered property or property determined to be eligible for listing on the state register" (PRHPL §14.09(1)).

The analysis provided by the FEIS regarding project impacts on visual and cultural resources does not fully address the broader issue under consideration, which involve the multitude of cultural resources within the regional setting, the linkages between the many resources, and the efforts underway to promote these resources in a contextual landscape as part of a heritage tourism corridor under the auspices of the Mohawk Valley Heritage Corridor Commission (MVHCC). The MVHCC, as established by the PRHPL, developed a management plan for the Corridor region, including the Southern Herkimer County Towns of Stark and Warren.<sup>8</sup> The heritage area administered by MVHCC should have been, but was not, incorporated in the review pursuant to SEQRA; consideration of the area is also required in the §14.09 review.<sup>9</sup>

The SEQRA record indicates that some consideration of tourism was made, largely relying on reference to consideration of project views from the Route 20 Scenic Byway corridor and efforts promoting wind farm tourism at the Fenner Wind energy project located west of the project area. The analysis did not consider specific heritage based tourism effects or efforts to promote and expand that tourism as now specifically promoted by MVHCC. The Management Plan specifies the goals and strategies that will be implemented to promote heritage tourism as an economic development program

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<sup>8</sup> Management Plan for the Mohawk Valley Heritage Corridor, approved by OPRHP Commissioner Bernadette Castro, September 24, 1997, pursuant to §35.05(7) of the PRHPL.

<sup>9</sup> See PRHPL §35.07(3)



within the Heritage Corridor municipalities.<sup>10</sup> The intent of heritage development planning is to use historic preservation as an economic development tool, while the Project record indicates that historic preservation was addressed by the Lead Agency generally as an afterthought, and concluding that impacts are generally unavoidable due to the size and scale of the turbines and to limitations on siting. Among other things, the Plan identifies a Proposed Scenic Heritage Route which traverses the Project area, called “Ilion to Herkimer Home” and comprised in part by portions of County Route 18 (from NYS Route 51) to NYS Route 167, to County Route 136 within the Project area.

Following a late realization that MVHCC had not been involved in the SEQRA record development, DPS Staff initiated contacts with MVHCC to advance the consultation pursuant to PRHPL §35.07(3) within the context of the ongoing PRHPL §14.09 consultation. The Towns’ desire to develop wind-based energy resources and associated tourism is commendable. Whether protection and enhancement of significant heritage resources and wind energy development can successfully advance in concert should, however, not be tested without taking seriously the requirements of §14.09. Therefore, we will require that the continuing consultation pursuant to PRHPL §14.09 include consultation with the MVHCC.

The PRHPL §14.09 review focuses on “adverse impact” on historic districts listed or eligible for listing on the State and National Registers of Historic Places. Three large historic districts in the project Area of Potential Effect (APE) have been identified, namely the Lindesay Patent, the Waggoner Patent, and the Glimmerglass Historic Districts; the latter includes Otsego Lake and a broad expanse of the adjacent landscape. Portions of the first two districts and all of the Glimmerglass District are beyond the 5-mile radius visual and historic resource study area or APE typically reviewed for major wind energy facilities. Consideration of these resources was brought into the record in the SDEIS, including documentation of resource locations and potential Project visibility, and consideration of Project impact on those resources. Impacts were

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<sup>10</sup> PRHPL §35.07(3) requires consultation and coordination with OPRHP and MVHCC when considering activities that would directly affect a heritage area; and conducting of activities in a manner which is, to the maximum extent practicable, consistent with an approved management plan.

generally dismissed by the Lead Agency as limited due to distance from the Project, limited contrast with existing views, and the unavoidable nature of the impacts resulting from Project characteristics, such as the lack of alternative sites or scales.

As noted previously, the Otsego Lake area and related resources were analyzed in a proceeding before the Commission (the Marcy-South transmission facilities siting case).<sup>11</sup> In Opinion No. 85-2 the Commission changed the location of the proposed aboveground major transmission facility from a position approximately 4.5 miles east of Otsego Lake to a position averaging approximately nine miles west of the lake, to preclude facility visibility, avoid potential effects on the Otsego Lake area landscape and take into account important historic, cultural and tourism considerations.<sup>12</sup>

The importance of this resource, acknowledged in that 1985 decision, still stands as evidenced by the listing on the State and National Registers of Historic Places of the Glimmerglass Historic District.<sup>13</sup> As noted above, this resource is of national significance, and was listed based on historic importance and the scenic quality of the setting. The decision in the Marcy-South case related to transmission lines less than 150 feet tall. Here, the wind turbines proposed to be installed close to the nationally significant landscape are 400 feet tall, located at prominent landscape locations, with rotors spinning in the wind, in stark contrast to the existing vista. Limitations in visibility due to atmospheric conditions will vary over time, as demonstrated in the SEQRA record. Yet the potential for an adverse effect on the Glimmerglass Historic District should not be dismissed as an unavoidable consequence of development of this Project.

Alleging that its projected return on investment will fall by 75 basis points if a smaller scale project is required, JW concludes that reducing the size of the project is not feasible or prudent. Moreover, a smaller project will result in fewer emissions offsets, for use in meeting RPS targets, and lower payments to taxing jurisdictions and land owners.

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<sup>11</sup> Case 70125, Supra

<sup>12</sup> That change also relocated the facility outside the Town of Stark.

<sup>13</sup> State Register listing occurred on July 26, 1999; National Register listing occurred on September 24, 1999.

Weighing all of these factors, we conclude that the size of JW's project must be reduced in order to avoid adverse environmental impacts on the scenic quality of the Glimmerglass Historic District. Therefore, to protect the District's view shed, we authorize 19 fewer turbines than JW proposed. The 19 excluded turbines, listed at Ordering Clause No. 3, are identified by both JW and Otsego 2000 as those that would be most visible from the District.

The adverse effects attending such a reduction in project scope are not sufficient to justify foregoing the environmental benefits that will be realized as a result. The smaller project will be sized at 49 turbines and 98 MW, instead of 68 turbines and 136 MW, as proposed by JW. A smaller-sized project will yield less revenue for its owner. Nevertheless, JW should still have a reasonable opportunity to earn a reasonable return, given the tax credit and other benefits available to developers of renewable wind generation, and the fact that the smaller size will entail a smaller investment.

While the smaller project will produce fewer emissions offsets, the contribution of the project to meeting RPS targets will nonetheless remain significant. And other wind developers can be found who would be willing to replace the contribution to RPS lost because of the reduction in the project's size. As to the taxing jurisdictions and land owners, again, they will receive lower payments from a smaller project, but those payments will, in the aggregate, remain significant. As a result, preventing the harms to the Glimmerglass Historic District can be achieved upon impacts to the project and its beneficiaries that are acceptable.

To further assist in reducing the visual impacts associated with the project, we will require that JW develop the landscape conservation program contemplated but not established as a requirement by the Towns.

That condition, however, was not required as a Condition of Special Use Permits issued by either Town.<sup>14</sup> We will direct the Company to work with the Towns to develop that program to identify appropriate locations for such scenic and open space

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<sup>14</sup> We note that the Towns found in SEQRA findings that development of a plan and program to develop scenic easements and conservation of forested landscapes to "aid in the stabilization of regional vistas in order to preserve the scenic environment" was an appropriate condition of approval.

easements on appropriate forested, agricultural or other lands and focus on properties that are affected by the alternative project arrangement that will be a requirement of this CPCN. The turbine locations that will be displaced and adjacent areas are likely locations where landscape conservation easements would be appropriate for further mitigating remaining impacts on the Glimmerglass District, and payments for the easements would likely help offset the reduction in lease payments to affected landowners.

We recognize the allegation that delays in project implementation and local permitting decisions will occur because of our decision to authorize a smaller scale project. Such delays, however, are not inevitable. In any event, proper consideration of cultural resources impacts from the beginning of the SEQRA review would have avoided the extended time for record development that has occurred.

In addition to the direct mitigation of impacts to historic resources just discussed, we will require that the Company cooperate in and fund the development and implementation of a Historic Resources mitigation plan that will include measures to specifically address effects of the project on resources near or along the Scenic Heritage Route, resources that can be linked to the Heritage Route and the Heritage Corridor Management Plan goals and objectives, and resources that will provide continuing community benefits.

#### Public Convenience and Necessity

We are authorized to grant certification to an electric corporation pursuant to PSL §68, after due hearing and upon a determination that the construction of electric plant is necessary and convenient for the public service. Our rules establish pertinent evidentiary requirements for a CPCN application (16 NYCRR §21.3). The rules require a description of the plant to be constructed and of the manner in which the cost of such plant is to be financed, evidence that the proposed plant is in the public interest and is economically feasible, and proof that the applicant is able to finance the project and render adequate service.

The company intends to provide electricity to the wholesale competitive market and has proposed to site the facilities to utilize a portion of the wind energy

potential in New York State. The facilities are based on renewable resource technology, providing clean and renewable supplies of electricity to the wholesale energy market. Further, the proposed facilities will facilitate compliance with Executive Order 111 (issued by Governor George Pataki on June 30, 2001 and continued by Governor Eliot Spitzer on January 1, 2007), which requires all New York State agencies to purchase 10% of their electricity from renewable energy sources by 2005 and 20% by 2010. The proposed facilities also address the objectives identified in the 2002 State Energy Plan and in the RPS Proceeding, Case 03-E-0188.

These objectives include stimulating economic growth, increasing energy diversity, and promoting a cleaner, healthier environment. The proposed facilities will reportedly provide benefits that include positive economic impacts (such as increased revenues to municipalities and lease payments to landowners) and enhanced environmental quality (including potential reduction of emissions from fossil-fuel burning power plants).

In addition, the Company's parent is an experienced and financially viable developer of wind energy. Therefore, the facilities appear to be economically feasible and, with the mitigation measures required in this Order, are in the public interest.

The Company is committed to complying with the relevant design, construction and operational requirements of the National Electric Safety Code, other applicable engineering codes, standards and requirements, and the standards and policy requirements of NMPC. The Company has proposed reasonable plans for addressing coordination with, and avoiding interference with, other utility providers in its facility design, construction and operations controls, and for responding to complaints and inquiries. The Company has generally developed appropriate emergency response measures, facility maintenance standards for the life of the electric plant, and decommissioning plans for removal of the facilities at the end of plant service life.

Based on the Company's representations and commitments to adopt and enforce reasonable measures within the proposed area of operations, and the evidence presented in the petition and supplements, we conclude that the Company will provide safe, reliable and adequate service. The final design of substation accessibility, right-of-

way management, and construction and maintenance of transmission line will be resolved through compliance filings and review by DPS Staff. The conditions we will impose will help to ensure that the Company's commitments are kept and enable us to make the required statutory finding.

JW satisfied the requirements of PSL §68 by filing a copy of its Certificate of Formation as an exhibit to its petition. Moreover, a responsible Company official has verified that JW has secured all municipal consents necessary for the use of town property that are required by law. A hearing having been held on August 22, 2007, we find, as required by PSL §68, that the construction of the proposed Jordanville Wind Project, as modified herein, is necessary and convenient for the public service.

### Electric Regulation

The lightened regulatory regime that JW requests is similar to that afforded to other comparably-situated Exempt Wholesale Generators participating in wholesale electric markets. Its petition is, therefore, granted, to the extent discussed below.

In interpreting the PSL, the Commission has examined what reading best carries out the Legislature's intent and advances the public interest. In the AES and Carr Street Orders,<sup>15</sup> it was concluded that new forms of electric service providers participating in wholesale markets would be lightly regulated. Under this realistic appraisal approach, PSL Article 1 applies to JW because it meets the definition of an electric corporation under PSL §2(13) and is engaged in the manufacture of electricity under PSL §5(1)(b). JW is, therefore, subject to provisions, such as PSL §§ 11, 19, 24, 25 and 26 that prevent producers of electricity from taking actions that are contrary to the public interest.<sup>16</sup>

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<sup>15</sup> Case 98-E-1670, Carr Street Generating Station, L.P., Order Providing For Lightened Regulation (issued April 23, 1999) (Carr Street Order); Case 99-E-0148, AES Eastern Energy, L.P., Order Providing For Lightened Regulation (issued April 23, 1999) (AES Order).

<sup>16</sup> The PSL §18-a assessment is applied against gross retail revenues. As long as JW remains exclusively a wholesaler, there are no retail revenues and no assessment is collected.

All of Article 2 is restricted by its terms to the provision of service to retail residential customers. It is inapplicable to wholesale generators like JW.

Certain provisions of Article 4 are also restricted to retail service.<sup>17</sup> It was decided in the AES and Carr Street Orders that other provisions of Article 4 pertain to wholesale generators.<sup>18</sup> Application of these provisions was deemed necessary in light of obstacles to entry into the generation market. The Article 4 provisions, however, were implemented in a fashion that limited their impact in a competitive market, with the extent of scrutiny afforded a particular transaction reduced to the level the public interest required. Moreover, wholesale generators were allowed to fulfill their PSL §66(6) obligation to file an annual report by duplicating the report they were required to file under federal law. This analysis adheres to JW.

Regarding PSL §70, it was presumed in the AES Order that regulation would not "adhere to transfer of ownership interests in entities upstream from the parents of a New York competitive electric generation subsidiary, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption."<sup>19</sup> Wholesale generators were also advised that the potential for the exercise of market power arising out of an upstream transfer would be sufficient to defeat the presumption and trigger PSL §70 review.<sup>20</sup> This analysis applies to JW.

Turning to PSL Article 6, several of its provisions that adhere to the rendition of retail service do not pertain to JW because it is engaged solely in the

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<sup>17</sup> See, e.g., PSL §66(12), regarding the filing of tariffs, required at our option; §66(21), regarding storm plans submitted by retail service electric corporations; §67, regarding inspection of meters; §72, regarding hearings and rate proceedings; §75, regarding excessive charges; and §76, regarding rates charged religious bodies and others.

<sup>18</sup> PSL §68 provides for certification in connection with the construction of electric plant (unless such plant is reviewed pursuant to PSL Article VII) or with electricity sales made via direct interconnection with retail customers. PSL §69, §69-a and §70 provide for the review of security issuances, reorganizations, and transfers of securities, works or systems.

<sup>19</sup> AES Order, p. 7.

<sup>20</sup> In this context, under PSL §66(9) and (10), we may require access to records sufficient to ascertain whether the presumption remains valid.

generation of electricity for sale into the wholesale market.<sup>21</sup> Application of PSL §115, relating to requirements for the competitive bidding of utility purchases, is discretionary and will not be imposed on wholesale generators. In contrast, PSL §119-b, relating to the protection of underground facilities from damage by excavators, adheres to all persons, including wholesale generators.

Most of the remaining provisions of Article 6 need not be imposed generally on wholesale generators.<sup>22</sup> These provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers. So 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, adversely affecting its operation to the detriment of the public interest.

As discussed in the Carr Street Order, market power issues may be addressed under PSL §110(1) and (2), which afford us jurisdiction over affiliated interests.<sup>23</sup> JW, however, reports that it does not plan to affiliate with a power marketer. Consequently, we will not impose the requirements of Article 6 on JW except for §119-b; we will conditionally impose §110(1) and (2) to the extent discussed above. JW is reminded, however, that it remains subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and the other requirements of

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<sup>21</sup> See, e.g., PSL §112, regarding enforcement of rate orders; §113, regarding reparations and refunds; §114, regarding temporary rates; §114-a, regarding exclusion of lobbying costs from rates; §116, regarding discontinuance of water service; §117, regarding consumer deposits; §118, regarding payment to an authorized agency; §119-a, regarding use of utility poles and conduits; and, §119-c, regarding recognition of tax reductions in rates.

<sup>22</sup> These requirements include approval of: loans under §106; the use of utility revenues for non-utility purposes under §107; corporate merger and dissolution certificates under §108; contracts between affiliated interests under §110(3); and electric, gas, and water purchase contracts under §110(4).

<sup>23</sup> Case 98-E-1670, Supra, pp. 9-10.



PSL Articles 1 and 4, to the extent discussed above and in previous orders.<sup>24</sup> Included among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,<sup>25</sup> to give notice of generation unit retirements,<sup>26</sup> and to report personal injury accidents pursuant to 16 NYCRR Part 125.

The Commission orders:

1. The motion for an expedited proceeding on the noncontested application of Jordanville Wind, LLC (JW or the Company) is granted.
2. A Certificate of Public Convenience and Necessity is granted to the Company, authorizing JW to construct and operate the Jordanville Wind Project, the electric plant described in its petition (as supplemented) and as modified in this Order, subject to the conditions set forth below.
3. JW is authorized to construct its project as proposed, except for Wind Generating Turbines 15, 18, 20, 22A, 32, 34, 35, 36, 37, 54, 57, 58, 59, 66, 76, 82, 85, 86 and 90, and associated electric plant. Any other proposed relocation or modification to the Project layout, including future additions of Wind Generating Turbines by JW, affiliates or successors, shall be presented for analysis, review and approval pursuant to all relevant local, state and federal permitting requirements.
4. JW shall obtain all necessary federal, state, and local permits and approvals, and shall implement appropriate mitigation measures defined in such permits or approvals.
5. JW shall file with the Secretary to the Commission, within 90 days of the issuance of this Order, Final Site Plans as approved by the Town of Stark

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<sup>24</sup> See, e.g., Case 05-E-1095, TransCanada Power (Castleton) LLC, Declaratory Ruling on Transfer of Ownership Interests and Order Providing for Lightened Regulation (issued January 26, 2006).

<sup>25</sup> Case 04-M-0159, Safety of Electric Transmission and Distribution Systems, Order Instituting Safety Standards (issued January 5, 2005) and Order on Petitions for Rehearing and Waiver (issued July 21, 2005).

<sup>26</sup> Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

and The Town of Warren, revised design plans and profile drawings of the substations, the transmission interconnection and the 230 kV transmission line. All further plan revisions shall be filed in a timely manner.

6. Prior to construction of the substations and transmission interconnection, not including minor activities required for testing and development of final engineering and design information, JW shall provide to the Staff of the Department of Public Service (DPS) proof of acceptance of the design by Niagara Mohawk Power Corporation d/b/a National Grid (NMPC).
7. The authorized electric plant shall be subject to inspection by representatives of DPS pursuant to §66(8) of the Public Service Law,
8. JW shall continue to cooperate in the development of, and comply with, the final historic resources mitigation plan to be developed in consultation with the Office of Parks, Recreation and Historic Preservation (OPRHP), Mohawk Valley Heritage Corridor Commission, and DPS Staff, as discussed in the body of this order. Consultation shall be on-going regarding the historic mitigation program components, reporting requirements, and funding levels; a final historic mitigation program plan shall be presented for approval to OPRHP and involved agencies within 120 days following issuance of this Order; the final program plan shall include any comments received by JW; funding for final historic mitigation program plan component projects shall be available for mitigation project implementation by JW within one year following the issuance of this Order; reporting on final historic mitigation program plan projects shall be provided by JW; reports shall summarize program status, expenditures, and estimated dates of completion, and shall be presented semi-annually, by project heading, until program completion is reported.
9. JW shall work with the Towns of Warren and Stark to develop a program to identify and acquire scenic and open-space easements as discussed in the body of this Order. JW shall file an implementation plan, with the Secretary to the Commission, within 120 days of the issuance of this order.

10. JW shall incorporate, and implement as appropriate, the standards and measures for engineering design, construction and operation of its authorized electric plant, including features for facility security and public safety, plans for quality assurance and control measures for facility design and construction, utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities, vegetation and facility maintenance standards and practices, emergency response plans for construction and operational phases, and complaint resolution measures, as identified in its supplements of December 11, 2006, April 10, May 10, May 29, and May 31, 2007 and identified in this Order.
11. JW shall file with the Secretary to the Commission, within three days after commencement of commercial operation of the electric plant, an original and three copies of written notice thereof.
12. JW shall develop final construction and vegetation management plans to address; (a) initial clearing and construction and (b) subsequent long-range management of the 230 kV transmission right-of-way (ROW). Before vegetation clearing or construction of the 230 kV transmission facility may commence, JW shall submit for DPS Staff's approval, plans and specifications for facility design, construction (including any off-ROW access locations and the initial clearing and disposal of vegetation along the 230 kV ROW), and ROW restoration. The Plan shall also address: vegetation clearing specifications; the acceptable vegetation species list; vegetation disposal methods and locations, invasive species controls, and follow-up treatments; and oversight responsibilities by a qualified vegetation management professional. Within one year after energization of the 230 kV transmission line, JW shall file, for DPS Staff's review and approval, a Long-Range ROW Management Plan.
13. JW shall design, construct and operate electric plant including transmission facilities in accordance with the Agricultural Mitigation Guidelines

recommended by the New York State Department of Agriculture and Markets.

14. JW shall continue to consult with the New York State Department of Environmental Conservation (DEC) and the U.S. Fish and Wildlife Service (FWS) in the preparation of a work plan for post-construction monitoring and mitigation of avian and bat impacts; a draft work plan for first season operations monitoring shall be submitted to DPS Staff, DEC and FWS by November 15, 2007; a revised plan for additional post-construction monitoring approved by DEC and FWS shall be provided to DPS Staff by February 5, 2008; a final report shall be presented upon conclusion of the post-construction monitoring studies; the final report shall include an adaptive management strategy, including identification of a commitment to employ necessary mitigation measures in the event that post-construction monitoring studies identify significant adverse impacts to populations of resident or migratory birds or bats from operation of the wind energy facilities; any disputes or unresolved issues regarding the studies or management plans shall be reported to the Commission for resolution.
15. JW shall design, engineer, and construct facilities in support of the authorized electric plant as provided in the System Reliability Impact Study (SRIS) approved by the New York Independent System Operator (NYISO), the Transmission Planning and Advisory Subcommittee (TPAS), the NYISO Operating Committee, and the NYISO Class Year 2007 Annual Transmission Reliability Assessment Study, and in accordance with the applicable and published planning and design standards and best engineering practices of NYISO, NMPC, the New York State Reliability Council (NYSRC), Northeast Power Coordinating Council (NPCC), North American Electric Reliability Council (NERC) and successor organizations, depending upon where the facilities are to be built and which standards and practices are applicable. Specific requirements shall be those required by the NYISO Operating Committee and TPAS in the approved SRIS and by

the Interconnection Agreement (IA) and the facilities agreement with NMPC.

16. JW shall work with NMPC, and any successor Transmission Owner (as defined in the NYISO Agreement), to ensure that, with the addition of the electric plant (as defined in the IA between JW and NMPC), the system will have power system relay protection and appropriate communication capabilities to ensure that operation of the NMPC Transmission System is adequate under NPCC Bulk Power System Protection Criteria, and meets the protection requirements at all times of the NERC, NPCC, NYSRC, NYISO, and NMPC, and successor Transmission Owner (as defined in the NYISO Agreement). JW shall ensure compliance with applicable NPCC criteria and shall be responsible for the costs to verify that the relay protection system is in compliance with applicable NPCC, NYISO, NYSRC and NMPC criteria.
17. JW shall operate the electric plant in accordance with the IA, approved tariffs and applicable rules and protocols of NMPC, NYISO, NYSRC, NPCC, NERC and successor organizations. JW may seek subsequent review of any specific operational orders at the NYISO, the Commission, the Federal Energy Regulatory Commission, or in any other appropriate forum.
18. JW shall be in full compliance with the applicable reliability criteria of NMPC, NYISO, NPCC, NYSRC, NERC and successors. If it fails to meet the reliability criteria at any time, JW, or any other successive owner as the case may be, shall notify the NYISO immediately, in accordance with NYISO requirements, and shall simultaneously provide the Commission and NMPC with a copy of the NYISO notice.
19. JW shall file a copy of the following documents with the Secretary to the Commission:
  - (a) all facilities agreements with NMPC, and successor Transmission Owner (as defined in the NYISO Agreement);

- (b) the SRIS approved by the NYISO Operating Committee;
  - (c) any documents produced as a result of the updating of requirements by the NYSRC;
  - (d) the Relay Coordination Study, which shall be filed not later than four months prior to the projected date for commencement of commercial operation of the authorized electric plant; and a copy of manufacturers' "machine characteristics" of the equipment installed (including test and design data);
  - (e) a copy of the facilities design studies for the Electric Plant, including all updates (throughout the life of the plant);
  - (f) a copy of the IA and all updates or revisions (throughout the life of the plant); and
  - (g) if any equipment or control system with different characteristics is to be changed out then JW shall provide that information before such changes are made (throughout the life of the plant);
20. JW shall obey unit commitment and dispatch instructions issued by NYISO, or its successor, in order to maintain the reliability of the transmission system. In the event that the NYISO System Operator encounters communication difficulties, JW shall obey dispatch instructions issued by the NMPC Control Center, or its successor, in order to maintain the reliability of the transmission system.
- (a). After commencement of construction of the authorized Electric Plant, JW shall provide DPS Staff and NMPC with a monthly report on the progress of construction and an update of the construction schedule. In the event the Commission determines that construction is not proceeding at a pace that is consistent with Good Utility Practice, and that a modification, revocation, or

suspension of the Certificate may therefore be warranted, the Commission may issue a show cause order requiring JW to explain why construction is behind schedule and to describe such measures as are being taken to get back on schedule. The Order to Show Cause will set forth the alleged facts that appear to warrant the intended action. JW shall have thirty days after the issuance of such Order to respond and other parties may also file comments within such period. Thereafter, if the Commission is still considering action with respect to the Certificate, a hearing will be held prior to issuance of any final order of the Commission to amend, revoke or suspend the Certificate. It shall be a defense in any proceeding initiated pursuant to this condition if the delay of concern to the Commission:

1. arises in material part from actions or circumstances beyond the reasonable control of JW (including the actions of third parties);
2. is not in material part caused by the fault of JW; or
3. is not inconsistent with a schedule that constitutes Good Utility Practice.

(b) JW shall file with the Secretary to the Commission, no more than four months after the commencement of construction, a detailed progress report. Should that report indicate that construction will not be completed within twelve months, JW shall include in the report an explanation of the circumstances contributing to the delay and a demonstration showing why construction should be permitted to proceed. In these circumstances, an order to show cause will not be issued by the Commission, but a hearing will be held

before the Commission takes any action to amend, revoke or suspend the Certificate.

- (c) For purposes of this condition, Good Utility Practice shall mean any of the applicable acts, practices or methods engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region in which JW is located. Good Utility Practice shall include, but not be limited to NERC criteria, rules, guidelines and standards; NPCC criteria, rules, guidelines and standards; NYSRC criteria, rules, guidelines and standards; and NYISO criteria, rules, guidelines and standards, where applicable, as they may be amended from time to time (including the rules, guidelines and criteria of any successor organization to the foregoing entities). When applied to JW, the term Good Utility Practice shall also include standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility.



- (d) Except for periods during which the authorized facilities are unable to safely and reliably convey electrical energy to the New York transmission system (e.g., because of problems with the authorized facilities themselves or upstream electrical equipment) JW's electric plant shall be exclusively connected to the New York transmission system over the facilities authorized herein.
21. JW shall work with NMPC system planning and system protection engineers to discuss the characteristics of the transmission system before purchasing any system protection and control equipment related to the electrical interconnection of the Project to the NMPC transmission system. This discussion is designed to ensure that the equipment purchased will be able to withstand most system abnormalities. The technical considerations of interconnecting the electric plant to the NMPC 230 kV transmission facility shall be documented by JW and provided to DPS Staff and NMPC prior to the installation of transmission equipment. Updates to the technical information shall be furnished as available.
22. JW shall work with NMPC engineers and safety personnel on testing and energizing equipment in the authorized substations. A testing protocol shall be developed and provided to NMPC for review and acceptance. A copy shall be provided to DPS Staff following NMPC approval. JW shall make a good faith effort to notify DPS Staff of meetings related to the electrical interconnection of the Project to the NMPC transmission system and provide the opportunity for DPS Staff to attend those meetings. A copy of the testing design protocol will be provided to DPS Staff of the Bulk Transmission Section.
23. JW shall call DPS's Bulk Transmission Section within six hours to report any transmission related incident that affects the operation of the Electric Plant. JW shall submit a report on any such incident within seven days to

DPS's Bulk Transmission Staff and NMPC. The report shall contain, when available, copies of applicable drawings, descriptions of the equipment involved, a description of the incident and a discussion of how future occurrences will be prevented. JW shall work cooperatively with NMPC, NYISO and the Regional Reliability Council to prevent any future occurrences.

24. JW shall make modifications to its Interconnection Facility, if it is found by the NYISO or NMPC to cause reliability problems to the New York State Transmission System. If NMPC or the NYISO bring concerns to the Commission, JW shall be obligated to address those concerns.
25. If, subsequent to construction of the authorized electric plant, no electric power is transferred over such plant for a period of more than a year, the Commission may issue an Order to Show Cause requiring JW to explain why power has not been transferred for such period, and specifying what, if any, action the Commission may be considering with respect to the Certificate and the basis for such action. JW shall have thirty days after issuance of such Order to respond, and other parties may file comments within such period. Thereafter, if the Commission is still considering action with respect to the Certificate, a hearing will be held prior to issuance of any final order of the Commission to amend, revoke or suspend the Certificate.
26. In the event that an equipment failure of the authorized Electric Plant causes a significant reduction in the capability of such Plant to deliver power, JW shall promptly provide to DPS Staff and NMPC copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs. JW shall report monthly to DPS Staff and NMPC on the progress of any repairs. If such equipment failure is not completely repaired within nine months of its occurrence, JW shall provide a detailed report to the Secretary to the Commission, within

nine months and two weeks after the equipment failure, setting forth the progress on the repairs and indicating whether the repairs will be completed within three months; if the repairs will not be completed within three months, JW shall explain the circumstances contributing to the delay and demonstrate why the repairs should continue to be pursued. A hearing will be held before the Commission takes any action to amend, revoke or suspend the Certificate.

27. Within 60 days of the issuance of this Order, JW shall file with the Secretary to the Commission, Operation and Maintenance Plans for the electric plant.
28. JW and its affiliates shall comply with the Public Service Law in conformance with the requirements set forth in the body of this Order.
29. This proceeding is continued pending compliance with ordering clauses 5, 8, 9, 11, 12, 14, 19(d), 20(b), 21, and 27; following compliance, it will be closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING  
Secretary

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 06-E-1424 – Petition of Jordanville Wind, LLC for a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law, and Approving a Lightened Regulatory Regime.

FINDINGS STATEMENT

This statement was prepared in accordance with Article 8 of the Environmental Conservation Law. The construction of wind energy generation and transmission electric plant in the Town of Warren and the Town of Stark, Herkimer County, is a Type I action. The Town of Warren acted as lead agency and the Public Service Commission (the Commission) is an involved agency. The address of the lead agency is:

Town of Warren Town Board  
180 Main Street  
Jordanville, New York 13361

Questions may be directed to Richard Jack, Town Supervisor at (315) 858-0869. The address of the Commission is

Jaclyn A. Brilling, Secretary  
New York State Public Service Commission  
3 Empire State Plaza  
Albany, NY 12223-1350

Questions may be directed to Andrew Davis at (518) 486-2853, or to the Commission at the address above. The project is briefly described below:

Project Description

As modified by the Commission, the Project will consist of 49 wind turbines, two permanent meteorological towers; an operation and maintenance building; a system of gravel access roads; buried and overhead 34.5 kilovolt (kV) electric lines; a collection substation; a 0.7 mile long 230 kV overhead electric transmission line; and a switchyard.

Environmental Impact Statements

The Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS) analyzed potential environmental impacts on land use and zoning, visual resources, socioeconomic issues, traffic and transportation, air quality, noise, soils, geology, terrestrial and aquatic ecology including threatened and endangered species, effects on communications facilities, stormwater management, impacts of construction, and proposed general and specific mitigation measures. The Town determined, based upon field investigations and review of the DEIS and the FEIS that the proposed action with the mitigation measures incorporated in the FEIS minimizes or avoids significant environmental impact to the maximum extent possible. The mitigation measures discussed in the FEIS include: compliance with conditions and any mitigation measures required by any federal, state, and local permits and approvals; implementation of appropriate mitigation measures defined in such permits or approvals; facility phasing and design that avoid concentrating construction-related impacts in any one area; facility layout and location that avoid areas with concentrations of residents or sensitive environmental features; minimum setbacks from residences to limit noise, visual and public safety impacts; and employment of environmental monitors to assure compliance with all environmental commitments and permit requirements. The Towns determined that a large-scale wind power-generating project will result in significant environmental and economic benefits to the area.

As requested by Department of Public Service (DPS) Staff, Jordanville Wind, LLC (the Company) provided additional information regarding management of environmental impacts and other matters related to electric transmission facility engineering, construction and operation. DPS Staff was particularly concerned with the design details and environmental management plan for the 230 kV transmission line and associated substation facilities. Pursuant to responsibilities for compliance with Parks, Recreation and Historic Preservation Law (PRHPL) §14.09, additional information regarding mitigation of direct and indirect impacts on historic resources of interest to the State was also requested.

Construction and operation of the transmission line requires a balance between safety and reliability of the facility and the impacts of construction and life-time maintenance. To that end the Commission has required submission of construction and vegetation management plans to address clearing and construction, as well as the long-range management of the 230 kV transmission right-of-way.

Citing provisions requiring conformance with §14.09 of PRHPL, DPS Staff raised concerns with the Company about analysis of potential historic resource impacts, and fulfilling the requirements regarding consultation with the Office of Parks, Recreation and Historic Preservation (OPRHP) Staff.<sup>1</sup> OPRHP issued an “Adverse Impact” determination regarding historic resources in a letter dated January 22, 2007. The letter pointed out that the significance of the Glimmerglass Historic District, acknowledged as “a nationally significant resource” is to a large degree related to the natural setting, “an outstanding scenic environment that survives with a high degree of integrity today, retaining substantial evidence of its long and multi-layered history.” OPRHP stated that it “believes that views from this district must be an integral component of the final assessment of alternatives to be discussed regarding impacts associated with this project. Although beyond the five-mile limit established for most wind energy projects, the clear and defined national significance of this resource warrants its full consideration in the process.” In addition to comments on this resource of national significance, reference to other historic resources listed or eligible for listing on the State or National Registers of Historic Places that would be adversely affected by the Jordanville Project was provided. OPRHP concluded “We now encourage the project sponsor to continue the consultation process under §14.09 by fully exploring all feasible and prudent alternatives and by giving due consideration to feasible and prudent plans that avoid or mitigate the adverse impacts.” DPS staff also engaged in consultation with the Mohawk Valley Heritage Corridor Commission (MVHCC) and reviewed the approved Management Plan for the

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<sup>1</sup> Pursuant to PRHPL §14.09, DPS Staff has been engaged in ongoing consultation with OPRHP Staff.

Mohawk Valley Heritage Corridor.<sup>2</sup> The Commission has required that with MVHCC consultation continue as part of the consultation pursuant to PRHPL §14.09. In order to minimize adverse environmental impact on the Glimmerglass Historic District, the Commission has authorized the Jordanville Project, except for 19 specified turbines and associated electric plant.

In addition to the historic resource impacts discussed above, impacts on avian and bat species are anticipated due to facility operations. The FEIS identifies potential mortality estimates based on analysis of site conditions and operating experience at other wind-powered electric generation projects. The FEIS indicates that post-construction mortality reporting and an adaptive management strategy to minimize significant impacts should be developed with additional input from the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation. This approach is appropriate to the mitigation of adverse wildlife effects, provided that the adaptive management strategy is required to be implemented in facility operations. Critical periods of potential highest risk, land cover management opportunities, or similar adaptive management strategies, may be identified by monitoring mortalities and operations. Results will indicate impact avoidance or minimization strategies, appropriate to the facility sites.

Other findings pursuant to the State Environmental Quality Review Act (SEQRA), as extensively discussed in the Findings Statement adopted by the Town, are reasonable and appropriate. Those findings consider the relevant environmental impacts, facts and conclusions as discussed in the FEIS. Significant benefits identified in the FEIS will accrue to the local community through increased employment, payment of taxes, Payments In Lieu of Tax, and Host Community Agreement incentive payments. The FEIS identified a long-term beneficial impact on air quality due to electricity generation without any emissions to atmosphere, and potential displacement of emissions from fossil-fuel based generation. Initiatives of New York State are served by the increased availability of renewable electricity to be provided by the wind energy facilities.

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<sup>2</sup> The Jordanville Wind Project is consistent with portions of the approved management plan. Reducing the inconsistencies should be the goal of continuing consultation.

The potential benefits identified in the FEIS outweigh the potential adverse effects that will result from construction and operation of the wind energy facilities as modified. The direct mitigation and offset measures specified are reasonable responses to identified impacts, and will avoid or minimize the identified adverse effects to the extent practicable. Offset measures to the identified adverse effects on historic resources will provide for the establishment or enhancement of historic preservation programs in the project vicinity, and will advance the understanding, appreciation and preservation of historic resources and historic values in the community. Implementation of the adaptive management strategy discussed in the FEIS will minimize adverse impacts on wildlife species.

The Commission certifies that the requirements of SEQRA have been met, based on the procedural measures administered by the lead agency, the input of involved agencies, and the substantive mitigation of adverse effects based on facility design and the requirements of the lead agency's findings, the various permits to be issued, and the requirements of the Certificate of Public Convenience and Necessity. The Commission also certifies that, consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable because of the incorporation of conditions requiring appropriate mitigation measures in the Certificate.

(SIGNED)

JACLYN A. BRILLING  
Secretary