

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on July 16, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair  
Diane X. Burman  
James S. Alesi  
Tracey A. Edwards  
John B. Howard

CASE 20-E-0230 - Joint Petition of Bluestone Wind, LLC, Calpine Wind Holdings, LLC & Northland Power New York Wind LLC, for a Declaratory Ruling That No Further Review is Required of Upstream Ownership Transfer, or in the Alternative, for Approval of the Proposed Transaction Pursuant to § 70 of the Public Service Law.

DECLARATORY RULING ON REVIEW  
OF TRANSFER TRANSACTION

(Issued and Effective July 17, 2020)

BY THE COMMISSION:

INTRODUCTION

In a petition filed on May 12, 2020, Bluestone Wind LLC (Bluestone), Calpine Wind Holdings LLC (Calpine Wind), and Northland Power New York Wind LLC (Northland) (collectively, the Petitioners) sought a declaratory ruling that the proposed sale of Calpine Wind to Northland, involving upstream corporate ownership interests in Bluestone, does not require further review under Section 70 of the Public Service Law (PSL) (the Petition). As discussed below, the Public Service Commission (Commission) finds that, based on the information provided in

the Petition, no further review of the proposed transfer transactions is warranted.

THE PETITION

The Petitioners report that Bluestone is developing an approximately 124 MW wind generating facility located in the Towns of Windsor and Sanford, Broome County, New York (the Project). On December 16, 2019, the New York State Board on Electric Generation Siting and the Environment (Siting Board) granted Bluestone a Certificate of Environmental Compatibility and Public Need (CECPN) to construct and operate the Project.<sup>1</sup> On February 20, 2019, Bluestone filed a petition with the Commission for an order granting a Certificate of Public Convenience and Necessity (CPCN) pursuant to PSL §68 and for an order granting lightened regulation, which is pending in Case 19-E-0121.

Bluestone is described in the Petition as a wholly-owned subsidiary of Calpine Wind, which in turn is a wholly owned subsidiary of Calpine Corporation (Calpine). Calpine Wind intends to sell certain subsidiary development companies and their holdings, including the New York development companies Bluestone and High Bridge Wind, LLC, to Northland.<sup>2</sup> The Petition describes Northland as an indirect wholly-owned subsidiary of Northland Power Inc. (Northland Power), which does not currently own any generation assets in the United States. The projects

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<sup>1</sup> Case 16-F-0559, Bluestone Wind, LLC, Order Granting Certificate of Environmental Compatibility and Public Need (issued December 16, 2019); reh'g denied, Order on Rehearing (issued April 9, 2020).

<sup>2</sup> High Bridge Wind, LLC is the project sponsor of a proposed 100 MW wind generating facility in the Town of Guilford, Chenango County, New York, that is pending before the Siting Board in Case 18-F-0262.

being developed by Bluestone and High Bridge Wind, LLC would represent Northland Power's first projects in the United States.

Under the proposed transaction, Calpine plans to contribute 100% of the issued and outstanding membership interests of Bluestone, as well as assign certain assets, to Bluestone Wind Holdings, LLC (Bluestone Holdings), which is a newly formed Delaware limited liability company that would hold the membership interests of Bluestone. At the closing, Northland would directly acquire 100% of the membership interests in Bluestone Holdings from Calpine and thus indirectly acquire 100% of Bluestone's Project, as well as the remainder of project assets for the Project and any other development assets. After the closing with respect to Bluestone Holdings, Northland will own Bluestone Holdings, which will own Bluestone.

The Petitioners maintain that the proposed transfers satisfy the presumption established in the Wallkill Order, where the Commission decided that, under a lightened regulatory regime, PSL §70 regulation would not adhere to a transfer of ownership interests in parent entities upstream from the affiliates owning and operating New York competitive electric generation facilities unless there was a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption.<sup>3</sup> According to Petitioners, the proposed transactions do not create any potential for harm to the interests of captive utility ratepayers because the Petitioners operate in a competitive market and have no captive ratepayers. Furthermore, Petitioners assert that the proposed

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<sup>3</sup> See, Case 91-E-0350, Wallkill Generating Company, L.P., Order Establishing Regulatory Regime (issued April 11, 1994) (Wallkill Order).

transactions will not result in the potential to exercise either vertical or horizontal market power.

Based on the factors noted above, the Petition seeks a declaratory ruling from the Commission finding that no further review of the proposed transaction is necessary pursuant to PSL §70. In the alternative, Petitioners request that the Commission approve the Transaction under PSL §70 and any other statutory or regulatory provision deemed applicable.

#### PUBLIC NOTICE

Pursuant to the Commission's Rules of Procedure, 16 NYCRR §8.2(c), responses to the Petition were initially due within the 21-day period, which expired on June 2, 2020. In response to the Broome County Concerned Residents (BCCR) request for an extension of time to submit comments, which was filed on June 2, 2020, the Secretary to the Commission (Secretary) granted an extension the following day that authorized parties to submit comments by June 12, 2020.

In accordance with the Secretary's extension, several citizens filed comments by the June 12, 2020 deadline. These comments are addressed below.

#### LEGAL AUTHORITY

The Commission is authorized to issue a declaratory ruling with respect to: (i) the applicability of any rule or statute enforceable by it to any person, property, or state of facts; and (ii) whether any action by it should be taken pursuant to a rule. The Commission also may decline to issue such a declaratory ruling. This authority is expressly established by State Administrative Procedure Act §204 and governed by the Commission's Rules of Procedure, contained in 16 NYCRR Part 8, implementing that statute. Declaratory rulings

involving interpretations of existing statutes, rules, or regulation are not "actions" within meaning of the State Environmental Quality Review Act (SEQRA) and its implementing regulations and, therefore, they may be issued without further SEQRA review.<sup>4</sup> The declaratory relief requested in the Petition falls within the ambit of the statute and regulations authorizing issuance of a declaratory ruling.

#### DISCUSSION AND CONCLUSION

For purposes of the proposed transaction, Petitioners have demonstrated, consistent with Commission precedent, that the proposed transaction does not require full regulatory review under PSL §70.<sup>5</sup> Based on the facts stated in the Petition, the proposed transfer of upstream interests in Bluestone from Calpine Wind to Northland does not present a risk of market power or harm to the interests of captive New York ratepayers.

The Project, when constructed, will operate on a competitive basis in the wholesale markets administered by the New York Independent System Operator, Inc. and will not have captive utility ratepayers. Therefore, Northland will bear the financial risks of the Project and its ownership will not present a risk of harm to New York ratepayers. Moreover, Petitioners have demonstrated that Northland does not currently own any generation projects in the United States and its affiliate Northland Power Energy Marketing (US) Inc. (NPEMUS) does not engage in retail sales to New York ratepayers. In

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<sup>4</sup> 6 NYCRR §617.5(c)(37) (defining "interpretation[s] of an existing code, rule or regulation," as Type II actions not subject to review under SEQRA).

<sup>5</sup> See, Wallkill Order; see also, Case 18-E-0333, Cassadaga Wind LLC, Declaratory Ruling on Transfer Transactions (issued July 17, 2018); see also, Case 17-E-0620, AP Cricket Valley Holdings I Inc., et al., Declaratory Ruling on Transfer Transaction (issued December 14, 2017).

addition, NPEMUS "does not own or control electric generation, transmission, or distribution facilities in the United States and does not hold a franchise, service territory or native load obligation within the United States."<sup>6</sup> Therefore, the proposed transfer does not pose the potential for the exercise of horizontal or vertical market power.

This ruling is limited to the question raised in the Petition as to the applicability of PSL §70 to the upstream transfer of ownership interests in Bluestone from Calpine Wind to Northland. It does not address separate matters pertaining to the Project, such the application for a CPCN pursuant to PSL §68 that is pending in Case 19-E-0121, or the Siting Board's issuance of a CECPN in Case 16-F-0559. Several public comments were filed raising issues related to those proceedings, including the impacts of the Project on the environment (e.g., wildlife, water quality, stormwater runoff, blasting, noise, construction hours, light flicker, and decommissioning) and the compatibility of the Project with local laws. Similarly, arguments were raised that Northland should be required to restart the process of obtaining a CPCN and should be required to prove its financial capability to complete, manage, and operate the Project. These comments, however, raise matters that are beyond the scope of this declaratory ruling, which is specific to the applicability of PSL §70 to the facts presented in the Petition. Accordingly, based on the facts and circumstances presented in the Petition, the Commission finds that the proposed transaction does not require further review under PSL §70.

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<sup>6</sup> Petition, p. 6.

The Commission finds and declares:

1. No further review will be conducted of the proposed transfer transactions described in the Petition filed in this proceeding on May 12, 2020, and discussed in the body of this Declaratory Ruling.

2. This proceeding is closed.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary