

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition Of Bluestone Wind, LLC for an
Original Certificate of Public Convenience and
Necessity and an Order Granting Lightened
Regulation

Case 19-E-0121

**VERIFIED AMENDMENT TO PETITION OF BLUESTONE WIND, LLC FOR
AN ORIGINAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND
FOR AN ORDER GRANTING LIGHTENED REGULATION**

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I. INTRODUCTION

On February 20, 2019, Bluestone Wind, LLC (“Bluestone Wind”) filed a petition (the “February 20 Petition”) with the Public Service Commission (the “Commission”) seeking a Certificate of Public Convenience and Necessity (“CPCN”) for the Bluestone Wind Project (the “Project”). In its Petition, Bluestone Wind also seeks a ruling from the Commission finding that Bluestone Wind will be subject to a lightened regulatory regime.

On May 12, 2020, Bluestone Wind, together with Calpine Wind Holdings LLC (“Calpine”), and Northland Power New York Wind LLC (“Northland”) provided notice of a potential upstream change of ownership of Bluestone Wind and petitioned the Commission for a declaratory ruling that no further review of the transaction was required by the Commission.¹ On July 17, 2020, the

¹ As explained in the Petition, Calpine would, at Closing, contribute 100% of the issued and outstanding membership interests of Bluestone Wind, and assigned certain assets, to Bluestone Wind Holdings, LLC (“Bluestone Holdings”), a newly formed Delaware limited liability company created to hold the membership interests of Bluestone Wind. Northland at the same time would acquire 100% of the membership interests in Bluestone Holdings from Calpine and thus indirectly acquired 100% of the Project, as well as the remainder of Project assets and any other development assets (together, the “Transactions”).

Commission issued a declaratory ruling finding that no further review of the Transactions was required under PSL § 70.²

The Transactions closed on July 27, 2020 as set forth in the Petition. As such, Calpine is no longer the upstream parent of Bluestone Wind. Calpine and Northland hereby jointly file this amendment to the February 20 Petition to reflect this change in upstream ownership.³

The February 20 Petition explains in detail how Bluestone Wind satisfies the requirements set forth in the PSL, the Commission's rules (*see* 16 NYCRR §§ 21.2 and 21.3) and the Commission's orders for issuance of a CPCN. The instant filing merely inserts Northland as the upstream owner of Bluestone Wind.

A public statement hearing has already been held and no material issues of fact have been raised thus far. Northland will soon provide supplemental discovery responses to requests made by Department of Public Service Staff ("Staff") and Broome County Concerned Residents ("BCCR") to provide information as if the information requests were directed to Northland as upstream owner, as opposed to Calpine.

Upon resolution of remaining discovery issues, and upon a finding by the Hearing Examiner that there are no material issues of fact requiring an evidentiary hearing, Northland respectfully requests that the Commission issue a CPCN to Bluestone Wind without any further hearings. Petitioners request that the remainder of this proceeding proceed on an expedited basis to enable the Commission to issue an order granting a CPCN and lightened regulation by the October 2020 session. Following the closing of the Transactions, Northland is eager to commence

² 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* (July 17, 2020).

³ Calpine is a joint petitioner only insofar as is necessary to confirm it agrees with this amendment and is otherwise now removed from the proceeding.

construction of the Project in order to remain on target to complete the Project and commence commercial operations by the end of 2022. Currently, tree-clearing is scheduled to begin in November 2020 in order to comply with restrictions to clear trees before April 2021.⁴ Bluestone Wind anticipates compliance filings in accordance with the Article 10 certificate will be submitted in time to be reviewed and approved by the Siting Board before November 2020.

II. BACKGROUND

A. Bluestone Wind's Petition for CPCN

As noted above, Bluestone Wind filed a Petition seeking a CPCN and lightened regulation on February 20, 2019 (the February 20 Petition).

Public Statement Hearings were held in Windsor, New York on September 12, 2019. Public comments were accepted through November 15, 2019 and can be submitted at any time on the Department's Document Matter Management system for this proceeding.

On February 10, 2020, a procedural conference was held at the Commission's offices in Albany, New York. At the Hearing Examiner's direction, limited discovery followed the procedural conference.

BCCR served discovery requests on Bluestone Wind on February 18, 2020. Bluestone served responses and objections on March 2, 2020. A Motion to Compel remains pending.

On June 11, 2020, BCCR filed a second motion requesting a ruling authorizing additional discovery concerning Northland as prospective purchaser of the Project. This motion, however, will become moot once supplemental discovery with information regarding Northland is provided to DPS Staff and BCCR.

⁴ According to Bluestone Wind's CECPN, all tree clearing activities are allowed between November 1 to March 31 without restrictions. From April 1 to October 31, restrictions, as set forth in the certificate conditions, will be implemented.

B. Northland

Northland is a Delaware limited liability company and an indirect wholly-owned subsidiary of Northland Power Inc. (“Northland Power”). Northland Power is a publicly traded company on the Toronto stock exchange (TSX: NPI), based in Toronto, Canada, that develops, builds, owns and operates power infrastructure assets. Northland Power currently owns no operating generation assets in the United States; it owns generation assets operating or under construction in Canada, Germany, Netherlands, and Mexico, and projects under development in the United States, Taiwan, South Korea, and Japan. The power generation assets owned by Northland Power are based on wind, natural gas, biomass, and solar technologies.

As of April 24, 2020, Northland Power owns or has a gross economic interest in 2,681 MWs (2,266 MW net) of operating generating capacity. The 2,681 MWs of operating capacity is comprised of the following projects: (i) three offshore wind projects in Europe (1,184 MWs), (ii) two natural gas-fired projects in Saskatchewan, Canada (346 MWs), and (iii) solar, wind and thermal projects in Ontario and Quebec, Canada (1,151 MWs). In 2020, Northland acquired Empresa de Energía de Boyacá, a regulated power distribution utility located in Colombia serving 480,000 customers.

Northland Power also has an indirect ownership interest in Northland Power Energy Marketing (US) Inc. (“NPEMUS”). NPEMUS engages in the purchase and sale of electric energy in the United States wholesale energy markets. 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 or Canada. NPEMUS does not engage in sales to New York ratepayers. The Commission recently determined that

Northland’s affiliation with NPEMUS “does not pose the potential for the exercise of horizontal or vertical market power.”⁵

As noted earlier, Northland recently completed the purchase of the Bluestone and High Bridge Wind projects from Calpine. In addition, Northland recently purchased the 100 MW Ball Hill Wind Project in Chautauqua County, New York, and the transaction is pending certain regulatory approvals to close. The Bluestone Wind, High Bridge Wind and Ball Hill Wind projects (once closed) represent Northland Power’s first projects in the United States. Northland will operate these projects as a competitive generator in the ISO-administered wholesale markets.

III. DISCUSSION

Section 68 of the PSL generally requires electric corporations to obtain a CPCN from the Commission. In the Cassadaga CECPN Order, however, the Siting Board considered the applicability of PSL § 68 to generating facilities certified under Article 10.⁶ The Siting Board concluded that the subject matter of the two approvals is different and that Article 10 is not designed to encompass all aspects of regulating electric corporations.⁷ Consistent with the Cassadaga CECPN Order, the Commission determined that the Siting Board’s issuance of a PSL Article 10 Certificate supplants the requirement for construction approval under PSL §68, but not the requirements for Commission approval of its corporate formation and the exercise of any municipal “right, privilege or franchise.”⁸ According to the Commission, before it may issue a CPCN, the electric corporation seeking approval must provide a certified copy of its charter and a

⁵ 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* (July 17, 2020), at 6.

⁶ See Case 14-F-0490: *Application of Cassadaga Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a Wind Energy Project, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions* (Jan. 17, 2018), at 110-114 (“Cassadaga CECPN Order”).

⁷ *Id.*

⁸ Cassadaga CPCN Order, at 12.

“verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.”⁹ This information was provided in the February 20 Petition. In March 2020, DPS Staff counsel requested that the verified statements be revised. Attached to this petition is a revised verified statement from the President of Bluestone Wind.¹⁰ Road use agreements between Bluestone Wind and the Towns of Sanford and Windsor were submitted with the February 20 Petition.

In conjunction with meeting the requirements specified in PSL § 68 as interpreted in the Cassadaga CPCN Order, Northland must also satisfy the requirements for CPCNs set forth in 16 NYCRR §§ 21.2 and 21.3. As explained in the February 20 Petition, consistent with the Cassadaga CPCN Order, many of these requirements will be addressed as part of Bluestone Wind’s Article 10 review. Northland requests that, as it did in the Cassadaga CPCN Order, the Commission find that “[t]hrough [this] Petition and supplemental information provided during the course of this proceeding, and the record developed in the Article 10 proceeding, sufficient information is available to satisfy the requirements of 16 NYCRR Part 21 and to provide a full evidentiary record.”¹¹

In considering whether to issue a CPCN, the Commission “consider[s] the economic feasibility of the corporation, the corporation’s ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates, and whether issuance of a certificate is in the public interest.”¹²

⁹ *Id.*

¹⁰ A signed verification from the Secretary of Bluestone Wind will be filed as a supplement to this Verified Amendment.

¹¹ Cassadaga CPCN Order, at 14.

¹² *Id.*

A. Evidence Relating to Economic Feasibility of Entity and Entity’s Ability to Finance Improvements

Section 68 requires the PSC to consider “the economic feasibility of the corporation, and the corporation’s ability to finance improvements of . . . an electric plant.”¹³ In the original Petition Bluestone Wind noted that the “the economic feasibility” and “ability to finance” requirements were meant to apply to monopoly utilities, whose unwise financial decisions were historically passed on to ratepayers, and not to competitive generators who must compete in the marketplace, and who bear their own economic risks.¹⁴ Numerous wholesale electric generators, including utility-scale wind generation facilities, have been granted lightened regulation by the Commission. The Legislature’s decision to amend PSL § 68 in 2013 to require additional scrutiny of a utility’s financial fitness was intended to ensure that utilities awarded franchises as the sole retail provider (or one of limited number of providers) have the resources necessary to respond to storms and outages expeditiously and otherwise fulfill their obligations to their customers.¹⁵ They arguably

¹³ See also, Cassadaga CPCN Order, at 12.

¹⁴ See Case 07-E-0213: *Sheldon Energy LLC*, Order Granting and Amending Certificates of Public Convenience and Necessity, and Providing for Lightened Regulation, p. 15 (Jan. 17, 2008), in which the Commission held that strict financial oversight requirements for utilities “were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers.” Meanwhile, in the case of competitive market participants like the Applicant, the Commission holds that, “[s]o 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, or overly constrain its fluid operation, adversely affecting its operation to the detriment of the public interest.” Case 99-E-0974: *NRG Energy, Inc. and Oswego Harbor Power LLC Joint Petition for a Declaratory Ruling that Lightened Regulation be Applied to their Purchase of the Oswego Fossil Fuel Generating Plant from Niagara Mohawk Power Corporation*, Order Providing for Lightened Regulation (Oct. 21, 1999), at 5.

¹⁵ PSL § 68 was amended in 2013 to add a number of new requirements for CPCN holders to demonstrate financial fitness to provide certain services to New York electric consumers. These amendments authorize the Commission to engage in additional scrutiny of a public utility’s internal organization and financial condition in situations where that utility obtains a franchise agreement under which it will serve as the only, or one of a limited number of, retail provider(s) available in a given area. In response to Hurricane Sandy and utility response, the 2013 legislation was enacted to expand the PSC’s authority to impose sanctions and revoke a CPCN for a utility’s service territory “based on findings of repeated violations . . . that demonstrate a failure of such corporation to continue to provide safe and adequate service.” PSL 68(2). See 2013 Sess. Law News of NY Ch. 57 (S.2607-D) (Approved March 29, 2013). Given the Commission’s longstanding preference for a lightened regulatory regime for competitive wholesale market participants who do not have captive ratepayers to fall back on, it does not appear that the additional financial oversight requirements in the amended Section 68 were intended to apply to competitive generators who must compete in the marketplace, and who bear their own risks in that marketplace. This is similar to other provisions of the Public Service

were not intended to address generation siting, since the consequences of a certified facility failing to compete effectively will fall almost entirely on the Facility's owners and shareholders, obviating the need for Commission oversight. Nevertheless, the Cassadaga CECPN Order compels compliance with those aspects of PSL § 68 that are not addressed by the Article 10 process, including "the economic feasibility of the corporation" and "the corporation's ability to finance improvements of . . . an electrical plant."

Petitioner's parent companies have substantial experience in the construction and operation of utility-scale electric generation facilities of all types, including wind. Northland Power, based in Toronto, Canada, develops, builds, owns and operates power infrastructure assets. Northland Power currently owns no operating generation assets in the United States; it owns generation assets operating or under construction in Canada, Germany, Netherlands, and Mexico, and projects under development in the United States, Taiwan, South Korea, and Japan. The power generation assets owned by Northland Power are based on wind, natural gas, biomass, and solar technologies.

Northland Power is well capitalized and has excellent access to capital on short notice. As of August 6, 2020, Northland Power's market cap was C\$7.5 billion (US\$5.6 billion) and fiscal year 2019 revenue was C\$1.7 billion (US\$1.3 billion). Northland Power possesses cash-on-hand as of March 31, 2020 of C\$629 million (US\$466 million) and a C\$1 billion (US\$741 million) corporate credit facility, which as of December 31, 2019 had C\$433 million (US\$321 million) of credit available. Northland Power has also utilized acquisition bridge loans, most recently in January 2020, with a C\$495 million (US\$367 million) facility used to assist with the acquisition of EBSA, a Colombian distribution utility.

Law that have been deemed inapplicable to wholesale electric generators. For those reasons, Petitioners believe the level of detail provided in this Petition is appropriate and proportional to the regulatory oversight of wholesale market participants which the Commission prefers.

Northland Power's cash on hand is uncommitted and available immediately. Borrowings under Northland Power's corporate credit facility are typically completed in 2-3 days, and due to the nature of the Canadian capital markets, common and/or preferred equity can be raised in as little as two weeks. Furthermore, Northland Power's shareholders and banking relationships continue to be extremely supportive of Northland Power's core strategy: to continue to expand its generation and utility businesses in its target jurisdictions, allowing Northland Power to raise over C\$1.7 billion (US\$1.3 billion) in equity capital since 2015. A sample of some of the financial institutions that have financed Northland Power's projects include: CIBC, National Bank of Canada, Bank of Montreal, Sumitomo Mitsui Banking Corporation, European Investment Bank and MUFG Bank. The owners of the Project are, therefore, financially viable.

Additional information concerning Northland's business and financial capacity can be found at www.northlandpower.com and all public filings for Northland, including its financial statements and a fulsome business description, can be found at: https://www.sedar.com/homepage_en.htm

Once the Project receives its final permits and approvals and a notice to proceed determination has been made, the construction of the Project will be financed through a combination of balance sheet, construction loans or other financing mechanisms.

As noted in the original Petition, available evidence shows that the Project is also economically feasible and nothing has changed since submission of the original Petition. The Petitioner has multiple years of meteorological data showing that the location of the Facility is suitable for wind energy generation. The Project will realize income from the sale of energy pursuant to a long-term off-take agreement and the sale of "green attributes." Of particular note, in March 2018, the New York State Energy Research and Development Authority ("NYSERDA")

issued an award to Bluestone Wind for the construction of the Facility including 6.2 MW of energy storage, the first time a large-scale renewable project has included an energy storage component in New York. If anything, the only change since the original Petition was filed is the urgency for construction to commence.

B. Information About Petitioner’s Ability to Render Safe, Adequate and Reliable Service

To the extent this standard applies to a wholesale generator, this element of the CPCN review is essentially addressed as part of the Article 10 process and need not be duplicated with respect to the CPCN and has been set forth previously in the original Petition. The relevant information remains unchanged. This standard is addressed in multiple exhibits of the Article 10 Application, including Exhibits 5, 8, 10, 15, 18, and 34, and inherent in the Siting Board’s findings under PSL § 168.

As stated in the original Petition, in addition, even under a lightened regulatory regime, Bluestone Wind will remain subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed in previous lightened regulation Orders. Bluestone Wind anticipates that, like other lightly regulated generators, it will be required to conduct tests for stray voltage on all publicly accessible electric facilities, to give notice of generation unit retirements, and to report personal injury accidents pursuant to 16 NYCRR Part 125.¹⁶ According to the Commission, “[t]hese conditions further ensure [lightly regulated generators] will render safe, adequate, and reliable service.”¹⁷

¹⁶ See Cassadaga CPCN Order, at 25.

¹⁷ *Id.*

In addition, in the Cassadaga CPCN Order, the Commission also determined that Cassadaga’s economic feasibility and financial viability “demonstrate Cassadaga’s ability to finance improvements of the Facility and to render safe, adequate and reliable service.”¹⁸ Bluestone Wind’s economic feasibility and financial viability are demonstrated in Section III.A and the Commission should, as it did in the Cassadaga CPCN Order, find that Petitioner has demonstrated its ability to render safe, adequate and reliable service.

C. Evidence Demonstrating Petitioner’s Ability to Provide Just and Reasonable Rates

As stated in the original Petition, the “just and reasonable rates” factor remains inapplicable to the Bluestone Wind Facility, which is a wholesale generation facility that will not be selling electricity at retail. *See* Cassadaga CPCN Order, p. 8 (noting no retail service will be provided by the wind energy generator). According to the Commission, “so long as the wholesale generation market is effectively competitive, wholesale generators complying with tariffs approved by the Federal Energy Regulatory Commission. . . will provide just and reasonable rates and cannot raise prices even if their costs rise due to poor management.”¹⁹

D. Evidence/Documents Under Commission’s Regulations.

As previously noted, the PSC has adopted regulations identifying the evidence and documentation required to support CPCN petitions. *See* 16 NYCRR § 21.2 and 21.3. Consistent with the Cassadaga Order, evidence/documents addressed pursuant to the Article 10 CECPN process need not be duplicated here. Certain other requirements of the regulations are inapplicable to competitive wholesale generation facilities such as the Bluestone Wind Project. Sections §§

¹⁸ *Id.* at 20.

¹⁹ Cassadaga CPCN Order, at 24.

21.2 and 21.3 of the Commission’s rules are inapplicable to Bluestone Wind with Northland as upstream owner for the same reasons provided in the February 20 Petition.

E. The Commission Should Approve a Lightened Regulatory Regime for Bluestone Wind

The Commission should approve a lightened regulatory regime for Bluestone Wind, with Northland as upstream owner, for the same reasons set forth in the February 20 Petition.

After being acquire by Northland, Bluestone Wind is now affiliated with NPEMUS. As discussed above, the Commission recently determined that Northland’s affiliation with NPEMUS does not pose the potential for the exercise of horizontal or vertical market power.”²⁰ Regardless, the Commission has determined, that marketer affiliations “may be addressed through PSL §§110(1) and (2), which afford [the Commission] jurisdiction over affiliated interests.”²¹

²⁰ 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* (July 17, 2020), at 6.

²¹ *Id.*

IV. CONCLUSION

For the foregoing reasons, Bluestone Wind respectfully requests that the Commission expeditiously issue a CPCN to Bluestone Wind for the Project and authorize a lightened regulatory regime.

/s/ Steven D. Wilson

James A. Muscato
Steven D. Wilson
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*Attorneys for Bluestone Wind, LLC,
Calpine Wind and Northland Power
New York Wind LLC*

Dated: August 14, 2020

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

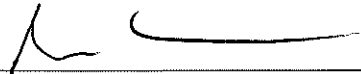
Petition of Bluestone Wind, LLC for an Order Granting a Certificate of Public Convenience and Necessity Pursuant to Public Service Law Section 68 and for an Order Granting Lightened Regulation

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VERIFICATION

Mike Crawly, being duly sworn according to law, upon his oath, deposes and says:

1. I am President and Chief Executive Officer of Bluestone Wind, LLC and I am authorized to make this Verification on behalf of Bluestone Wind, LLC.
2. I have read the contents of the foregoing Verified Amendment and hereby verify that the statements contained therein are true and correct to the best of my knowledge and belief.



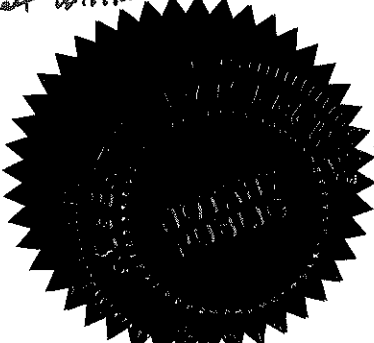
Mike Crawley
President and Chief Executive Officer of
Bluestone Wind, LLC

Sworn to and subscribed before me
This 10th day of August, 2020



Notary Public

Robert William Eaves



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VERIFIED STATEMENT

Mike Crawley, President for Bluestone Wind, LLC, hereby verifies that Bluestone Wind, LLC has secured all municipal consents required by law for issuance of a Certificate of Public Convenience and Necessity to construct and operate the Bluestone Wind Project that were not otherwise supplanted by the Certificate of Environmental Compatibility and Public Need issued by the New York State Board on Electric Generation Siting and the Environment in Case 16-F-0559.



Mike Crawley
President and Chief Executive Officer of
Bluestone Wind, LLC

Sworn to before me
this 10th day of August, 2020



Notary Public

Robert William Eaves

