

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

At a session of the Public Service
Commission held in the City of
Albany on June 21, 2021

COMMISSIONER PRESENT:

John B. Howard, Interim Chair

CASE 21-E-0122 - Verified Petition of East River ESS, LLC for an Expedited Order Granting a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law and Establishing a Lightened Regulatory Regime.

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

(Issued and Effective June 21, 2021)

INTRODUCTION

In a petition filed on February 19, 2021 (the Petition), East River ESS, LLC (East River ESS or Petitioner) requests a Certificate of Public Convenience and Necessity (CPCN) pursuant to §68 of the Public Service Law (PSL) authorizing the construction of a proposed stand-alone, battery-based energy storage facility with a capacity of up to 100 megawatts (MW) located in Astoria, New York (the Facility). The Petition also requests lightened ratemaking regulation relative to East River ESS's ownership and operation of the Facility as a wholesale electric market participant.

In this Order, the Public Service Commission (Commission) finds that East River ESS has satisfied the statutory requirements of PSL §68 and, therefore, grants a CPCN in connection with the Facility. East River ESS is also granted a lightened ratemaking regulatory regime because it will own and operate the Facility on a merchant basis and participate in the

competitive markets administered by the New York Independent System Operator, Inc. (NYISO).

BACKGROUND

On December 13, 2018, the Commission issued the Order Establishing Energy Storage Goal and Deployment Policy (Energy Storage Order).¹ Among other provisions, the Energy Storage Order required Consolidated Edison Company of New York, Inc. (Con Edison) to procure at least 300 MW of energy storage. The Energy Storage Order also required that the storage be operational by December 31, 2022. In line with those requirements, the Commission ordered Con Edison to file an implementation plan detailing a competitive direct procurement process to deploy 300 MW of qualified energy storage systems by February 11, 2019.

Con Edison's implementation plan outlined, among other items, the eligibility requirements, bid requirements, bid evaluation criteria, and responsibilities of the winning bidders.² The implementation plan also noted that if the Request for Proposals (RFP) process concluded with no financially viable options, the procurement strategy and storage economic trends would be reassessed before issuing another RFP. On July 15, 2019, Con Edison posted its RFP and Energy Storage Services

¹ Case 18-E-0130, Energy Storage Deployment Program, Order Establishing Energy Storage Goal and Deployment Policy (issued December 13, 2018).

² Case 18-E-0130, supra, Implementation Plan of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. for a Competitive Direct Procurement of Scheduling and Dispatch Rights from Qualified Energy Storage Systems (filed February 11, 2019).

Agreement.³ The RFP outlined requirements in-line with its implementation plan, including demonstrating experience deploying the proposed commercialized storage technology and providing audited financial statements.

After considering the responses to the RFP, on December 18, 2019, Con Edison selected East River ESS as a finalist in the RFP. Subsequently, Con Edison and East River ESS executed an Energy Storage Services Agreement (ESSA) on December 11, 2020.⁴ Under the ESSA, Con Edison will have scheduling and dispatch rights to the Facility's 100 MW storage capacity for 7 years. During that time, East River ESS will own, operate, and maintain the Facility for Con Edison's benefit. In accordance with the Energy Storage Order, East River ESS also committed to a guaranteed commercial operation date of December 31, 2022. The agreement further provides for development security and performance assurance. Upon commercial operation of the Facility, the ESSA calls for Con Edison to provide East River ESS with a lump sum payment, which would be followed by seven annual payments.

THE PETITION

On February 19, 2021, East River ESS filed the Petition for a CPCN and lightened ratemaking regulation in connection with the Facility. The Petition was deemed to comply with applicable legal requirements by Department of Public Service (DPS) Staff on March 22, 2021.

³ Case 18-E-0130, supra, Notice of Posting Storage RFP Request (filed July 15, 2019).

⁴ Case 18-E-0130, supra, Energy Storage Services Agreement between Consolidated Edison Company of New York, Inc. and East River ESS, LLC (filed January 8, 2021).

As described in the Petition, the Facility will consist of a 100 MW battery storage system with 400 megawatts hours (MWh) of storage capacity. The battery storage system will be enclosed in multiple cabinets totaling approximately 130,680 square feet within the footprint of the New York Power Authority's (NYPA) former Charles Poletti Power Plant within the Astoria Industrial Complex. East River ESS reports that it has entered into a lease agreement with NYPA for use of the land. The Facility design includes 127 Tesla "megapacks," which house racks of battery modules, a bi-directional inverter to convert power between alternating current (AC) and direct current (DC), a thermal management system, and AC main breaker. The design also includes one switchgear enclosure and one bi-directional AC/DC transformer. The batteries will feed into bi-directional AC/DC power inverters and transformers. That power will be collected at the Facility's substation, which East River will develop, own, and operate. The substation will step the power up to transmission level voltage and feed into the Astoria West Switchyard, which will be the Facility's point of interconnection into the State's transmission grid.

CPCN

In support of its request for a CPCN, East River ESS explains that it is a Delaware limited liability company registered to do business in New York and is a wholly owned subsidiary of Hanwha Energy USA Holdings Corporation, a Delaware Corporation that does business as 174 Power Global (174 PG). As evidence of this, the Petition includes East River ESS's Articles of Organization, foreign business registration, and current operating agreement.

The Petitioner further states that it has satisfied the applicable requirements of PSL §68(1) and the Commission's

regulations. In conformance with 16 NYCRR §21.2(a), East River ESS notes that no entities own or operate existing energy storage facilities on the Facility site and that it is not aware of any existing similar energy storage project in the vicinity of the Facility site.

The Petitioner states that the Facility does not cross any public roads, and, accordingly, it does not need to secure any consent or approval from any municipality. In satisfaction of 16 NYCRR §21.2(b), Petitioner provided verifications from its President and Secretary confirming that no such municipal agreements are required.

In conformance with 16 NYCRR §21.2(d), the Petitioner states that it has not received any permit, license, or consent from any federal authority relative to the Facility, and does not anticipate that any federal agencies will issue such approvals for the Facility. If, however, federal permits, licenses, or consultations are received or completed while the Petition is pending, the Petitioner stated it would provide a copy to the Commission.

In conformance with 16 NYCRR §21.3(a), the Petitioner states that the Facility will be in Astoria, New York, which is in the borough of Queens, which has a population of approximately 2,254,000, and the State of New York, which has a population of approximately 19,454,000. Construction of the Facility would begin in the first quarter of 2022, and the Facility would be energized by December 31, 2022.

In addressing 16 NYCRR §21.3(b), the Petitioner provided an explanation of the Facility design as discussed above. The Petitioner also provided the estimated cost for the Facility.

With respect to PSL §68(1), requiring the Commission to consider a corporation's ability to provide just and reasonable rates, and 16 NYCRR §§21.3(d) and (e) requiring evidence of rates to be charged and estimated revenues and expenses, respectively, the Petitioner avers that these requirements are inapplicable as the Facility will be operated in the competitive wholesale market.

In addressing 16 NYCRR §21.3(f), the economic feasibility of the Facility is established by, among other things, the receipt of various payments from Con Edison through the ESSA, as well as the tax incentives Petitioner will receive through the New York City Industry Development Agency. Further, the Petitioner will file a petition pursuant to PSL §69 to secure the necessary Commission approvals to finance any debt that it determines necessary to construct the Facility, and the remainder will be financed by Petitioner's equity. The Petitioner reports that its parent company, 174 PG, has an in-house project finance and deal transaction team with experience raising tax equity and negotiating and closing complex transactions with the team having raised around \$1 billion in nonrecourse debt and tax equity.

In addressing the requirement under PSL §68(1) that the Commission consider the ability to provide safe, adequate, and reliable service, in addition to 16 NYCRR §21.3(f) requiring proof of the ability to provide adequate service and that the proposal is in the public interest, Petitioner asserts first that its parent, 174 PG, is a well-qualified and experienced developer and operator of solar power and energy storage projects. 174 PG has in-house expertise in all functional areas of development, including land siting, securing permits, stakeholder engagement and outreach, and interconnection

agreements to purchase power agreement origination. Further, Con Edison selected the East River ESS through a competitive solicitation process that required bidders to “[d]emonstrate experience deploying the proposed commercialized storage technology at scale with Dispatchable Capacity of at least 2 MW in a single project in an expeditious manner.”⁵ The Facility will be developed under Con Edison’s supervision, and Con Edison will have scheduling and dispatch rights for the first seven years of commercial operation. The Petitioner further notes that the Facility will comply with all applicable requirements of the National Electric Safety Code and the requirements of the North America Electric Reliability Corporation, the Northeast Power Coordinating Council, and the New York State Reliability Council.

In support of the public need for the Facility, the Petitioner states that the public interest and need are clear given the State codifying under PSL §74 the requirement that the Commission encourage the proliferation of energy storage projects. The Commission accordingly established a goal for the State to procure 3,000 MW of energy storage by 2030 and required Con Edison to procure 300 MW of energy storage systems to be operational by December 31, 2022. Petitioner avers that this Facility is both in the public interest and needed because it will help achieve the State’s energy storage targets.

⁵ Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. Joint Request for Proposals, Bulk Energy Storage Scheduling and Dispatch Rights (July 15, 2019), available at: <https://www.coned.com/-/media/files/coned/documents/business-partners/business-opportunities/bulk-energystorage/bulk-storage-request-for-proposals.pdf?la=en> (Con Edison RFP).

In addressing 16 NYCRR §21.3(g), Petitioner submits that the requirement is inapplicable because (1) there are no energy storage systems projects on the Facility Site; and, (2) even if there were similar projects constructed, there is still a need for this Facility as it will contribute to one-third of the Commission's entire 300 MW directive to Con Edison.

Lightened Regulation

The Petitioner requests that it be regulated under the lightened regulatory regime that the Commission has long applied to independent power producers engaged in selling electric energy exclusively in the competitive wholesale electric market. Petitioner notes that the Facility will provide only wholesale electric service under Con Edison's operational control and that Petitioner will have no captive retail customers requiring the protection of full Commission regulation. Petitioner also notes that its request is analogous to the Ravenswood Development, LLC (Ravenswood) proceeding in which the Commission approved a lightened-regulatory regime for Ravenswood, which would operate an energy storage facility in the competitive wholesale electric market.⁶ The Ravenswood proceeding concerned an energy storage facility with a capacity of up to 316 MW in the borough of Queens in New York City, and the energy storage facility would operate exclusively in the competitive wholesale electric market. The Petitioner urges the Commission to apply the same reasoning and find that it should be subject to a lightened regulatory regime.

On June 1, 2021, the Petitioner filed a supplemental letter confirming that no corporate affiliate exports power into

⁶ Case 19-E-0122, Ravenswood Development, LLC, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued October 17, 2019).

the New York Control Area. 174 Power Global Northeast, LLC, an affiliate of Petitioner, owns four rooftop solar facilities that are sited on commercial/industrial properties within New York pursuant to power purchase agreements; however, the electricity generated by those facilities is consumed on-site and is not exported to the New York Control Area. Petitioner also confirmed that no corporate affiliate owns transmission assets within the New York Control Area.

PUBLIC NOTICE

Pursuant to the State Administrative Procedure Act (SAPA) § 202(1), a Notice of Proposed Rulemaking (Notice) concerning the request for lightened ratemaking regulatory treatment was published in the State Register on March 31, 2021 [SAPA No. 21-E-0122SP1]. The time for submission of comments pursuant to the Notice expired on June 1, 2021. The comments received are summarized below.

In addition, the Commission held a public statement hearing on April 27, 2021 before Administrative Law Judge Michael Clarke, at which Petitioner's representatives and Department of Public Service Staff were present. No statements were made, and no interested parties added to the record.⁷ The Administrative Law Judge, accordingly, issued a ruling stating that no further proceedings were required under his direction.⁸

COMMENTS

⁷ Case 21-E-0122, Public Statement Hearing and Procedural Conference Transcript (filed April 30, 2021).

⁸ Case 21-E-0221, Ruling on Process (issued April 28, 2021).

No comments concerning the request for lightened regulation were received. Comments were received, however, generally supporting the Facility. In its comments in support, the City of New York noted that the proposed Facility will repurpose a brownfield site, contribute to air quality improvement and greenhouse gas emission reduction by off-setting more carbon intensive on-peak generation, and have the potential to provide many benefits to the City of New York and the State. The New York League of Conservation voters filed comments similarly supporting the Facility and noting that the Facility will contribute to the grid operator and utilities being able to better plan and fully utilize existing assets, help ensure reliability, allow a larger percentage of clean energy usage, and bring down costs in New York City.

LEGAL AUTHORITY

PSL §68 requires an electric corporation to obtain a CPCN prior to "construction of . . . electric plant . . . [or the] exercise of any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised" The Commission is authorized to grant a CPCN to an electric corporation pursuant to PSL §68, "whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is convenient and necessary for the public service." In making that determination, the Commission must consider "the economic feasibility of the corporation, the corporation's ability to finance improvements of . . . 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." A petitioner must also file a copy of the

charter of the corporation together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

The PSL further grants the Commission broad authority to regulate corporations that own, operate, and/or manage electric plant, which is broadly defined by PSL §2(10). The regulation of electric corporations has been adapted over time to accommodate the development of competitive wholesale markets and lightened ratemaking regulation policies. The Commission has determined that lightly regulated entities may be exempt from certain PSL provisions that pertain to retail service because they do not serve captive utility customers.⁹

DISCUSSION

Environmental Quality Review

Pursuant to the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law, and its implementing regulations, 6 NYCRR Part 617, all State agencies must determine whether discretionary actions that they are considering for approval may have a significant impact on the environment.

Petitioner filed a Part 1 Full Environmental Assessment Form (EAF) with its Petition. Pursuant to 6 NYCRR Part 617 and 21 NYCRR Part 461, after classifying the project as an Unlisted Action, NYPA proposed to conduct a Coordinated

⁹ See, e.g., Case 16-E-0409, Indeck Corinth Limited Partnership, Order Providing for Lightened regulation (issued December 21, 2016), pp. 3-4.

Review among the potential Involved Agencies.¹⁰ NYPA identified the Commission as an Involved Agency given the Petition at issue in the instant proceeding.¹¹ Based on Staff's review of the Part 1 EAF, agreement that the action was an Unlisted Action, and consideration of an internally completed Part 2 EAF that did not identify any potentially significant impacts, the Commission did not object to NYPA acting as the lead agency. Because NYPA assumed lead agency status for purposes of the SEQRA, the Commission's role is limited to that of an Involved Agency.¹²

After receiving no objections from the Commission, or any of the other Involved Agencies, NYPA conducted the Coordinated Review. While NYPA identified two moderate impacts on flooding and energy, and some additional small adverse environmental impacts, NYPA determined that the extent, duration, and severity of the environmental impacts could be avoided, minimized, or mitigated.¹³ Accordingly, NYPA determined that the construction and operation of the Facility will not result in any significant adverse environmental impacts and issued a Negative Declaration.¹⁴ As an Involved Agency, the determination of significance issued by NYPA following the coordinated review is binding on the Commission.¹⁵ Therefore, the SEQRA review is complete.

¹⁰ Letter from Patricia A. Meehan, Vice President Environmental, Health and Safety, New York Power Authority, to Hon. Michelle L. Phillips, Secretary, Public Service Commission (dated February 25, 2021).

¹¹ Id.

¹² 6 NYCRR §§617.6(2) and (3).

¹³ Case 21-E-0122, Full Environmental Assessment Form (filed April 16, 2021).

¹⁴ Id.

¹⁵ 6 NYCRR §617.6(b)(3)(iii).

CPCN

Based upon the information provided in the Petition, after due hearing, the Commission finds that East River ESS has satisfied the legal and regulatory requirements of PSL §68 and its implementing regulations. In particular, the Petitioner has satisfied the evidence required to obtain a CPCN as they have submitted (1) the Articles of Incorporation of East River ESS; (2) East River ESS's foreign business registration; (3) a copy of its current operating agreement; and (4) a verified statement of the president and secretary of East River that Petitioner does not require any municipal consents.¹⁶ In addition, the record demonstrates that East River ESS will be: (1) economically feasible; (2) able to finance the construction and maintenance of the Facility; (3) technically capable of rendering safe, adequate, and reliable service; and (4) providing just and reasonable rates.

Further, the Commission finds there is sufficient information in the Petition to conclude that East River ESS is economically feasible. As discussed above, Con Edison entered into an ESSA with East River ESS following its RFP process. Under that ESSA, East River ESS will recover a portion of costs through a lump sum payment from Con Edison in addition to seven annual payments. In addition to the payments it will receive from Con Edison, East River ESS has provided information regarding 174 PG's experience and its intention to seek tax-related incentives from the New York City Industry Development Agency. East River ESS will also be operating the Facility as a merchant facility without relying on cost-of-service rates. As

¹⁶ Case 21-E-0122, Exhibit 1 Articles of Organization East River ESS, Exhibit 2 East River ESS Foreign Business Registration, and Exhibit 3 Road Use Agreements (filed February 19, 2021).

a merchant generator, East River ESS will not have captive ratepayers and will, therefore, bear the financial risk associated with the Facility.

The Facility will advance the public interest, particularly, the energy storage goals previously established by the Commission. PSL §74 directed the Commission to establish a statewide energy storage goal for 2030 and develop a policy to support that goal. Through the Energy Storage Order, the Commission adopted a Statewide energy storage goal of installing up to 3,000 MW of qualified storage energy systems by 2030, with an interim objective of deploying 1,500 MW of energy storage systems by 2025. In establishing that goal, the Commission noted that successful implementation would advance a number of State goals including the 2015 State Energy Plan's Statewide clean energy goals and the Clean Energy Standard's goal, at that time, that 50 percent of the electricity consumed in the State be generated from renewable power sources by 2030.¹⁷

The Facility will further provide safe and adequate service. The Facility will be designed in compliance with all applicable federal, State, and New York City codes and regulations; the New York Independent System Operator, Inc.'s and Con Edison's interconnection agreements; and applicable engineering codes, standards, and guides.

Based upon the above findings and considerations, the Commission concludes, after due hearing held on April 27, 2021, that the issuance of a CPCN for East River ESS in the public

¹⁷ Energy Storage Order (citing New York State Energy Planning Board, The Energy to Lead: 2015 New York State Energy Plan (2015) and Case 15-E-0302, et al., Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting a Clean Energy Standard (issued August 1, 2016)).

interest and that the Facility is convenient and necessary the public service.

Lightened Regulation

The lightened regulatory regime that East River ESS requests be applied to its wholesale electric operations is similar to that afforded to other comparably situated wholesale generators - particularly, a comparably situated energy storage facility. Its request is, therefore, granted to the extent discussed below.

In interpreting the PSL, the Commission has examined what reading best carries out the statutory intent and advances the public interest. The Commission has thus concluded that new forms of electric service providers participating in competitive wholesale markets would be lightly regulated.¹⁸ Under this approach, PSL Article 1 applies to East River ESS because it meets the definition of an electric corporation under PSL §2(13) and will be engaged in the sale and distribution of electricity under PSL §5(1)(b). It is, therefore, subject to provisions that prevent producers of electricity from taking actions that are contrary to the public interest, such as PSL §§11, 19, 24, 25, and 26.

All of PSL Article 2 is restricted by its terms by its terms to the provision of service to retail residential customers and so is inapplicable to wholesale generators like

¹⁸ Case 98-E-1680, Carr Street Generation Station, L.P., Order Providing for Lightened Regulation (issued August 23, 1999) (Carr Street Order); Case 91-E-0350, Wallkill Generating Company, Order Establishing Regulatory Regime (issued April 11, 1994) (Wallkill Order).

East River ESS. Certain provisions of PSL Article 4 are also inapplicable because they are restricted to retail service.¹⁹ It was decided in the Carr Street and Wallkill Orders that the remaining provisions of Article 4 would pertain to wholesale generators.²⁰ Application of these provisions is deemed necessary to protect the public interest. The Article 4 provisions, however, are implemented in a fashion that limits their impact on the operation of competitive electric markets. Under PSL §66(6), wholesale generators satisfy annual report filing requirements through a format designed to accommodate their particular circumstances.²¹ Filing required under other provisions of Article 4 are reviewed with the scrutiny commensurate to the level the public interest requires. This analysis of Article 4 adheres to East River ESS.

Regarding PSL §69, prompt regulatory action is possible through reliance on representations concerning proposed financing transactions. Additional scrutiny is not required to protect captive New York ratepayers, who cannot be harmed by the terms arrived at for these financings because lightly regulated

¹⁹ See, e.g., PSL §§66(12) (optional tariff filings), 66(21) (retail electric corporation storm plans); §75 (excessive charges); and, §76 (rates charged to religious bodies).

²⁰ PSL §68 provides for certification of the construction of new plant or the retailing of electricity to customers via direct interconnections. PSL §§69, 69-a, and 70 provide for the review of securities issuances, reorganizations, and transfers of securities or works or systems, respectively.

²¹ Case 11-M-0295, Annual Reporting Requirements, Order Adopting Annual Reporting Requirements Under Lightened Ratemaking Regulation (issued January 23, 2013).

participants in competitive markets bear the financial risk associated with their financial arrangements.²²

Regarding PSL §70, it was presumed in the Carr Street and Wallkill Orders that "regulation does not adhere to transfer of ownership interests in entities upstream from the parents of the 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."²³ In those Orders, however, 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. East River ESS may avail itself of this presumption. Pursuant to PSL §66(9) and (10), we may require access to records sufficient to ascertain whether the presumption remains valid.

Several provisions of PSL Article 6 adhere only to the rendition of retail service. These provisions do not pertain to East River ESS because it will not engage in retail sales of electricity or other products.²⁴ Moreover, application of PSL §115, on requirements for the competitive bidding of utility purchases, is discretionary and will not be imposed on wholesale market participants. In contrast, PSL §119-b, which pertains to the protection of underground facilities from damage by

²² See, e.g., Case 10-E-0405, NRG Energy, Inc., Order Approving Financing (issued November 18, 2010); Case 01-E-0816, Athens Generating Company, L.P., Order Authorizing Issuance of Debt (issued July 30, 2001).

²³ Carr Street Order at 8; Wallkill Order at 9.

²⁴ See, e.g., PSL §§112 (rate order enforcement), 113 (reparations and refunds), 114 (temporary rates), 114-a (lobbying cost sin rates), 117 (consumer deposits), 118 (bill payments via an agency), 119-a (use of utility poles and conduits), and 119-d (tax benefits in rates).

excavators, adheres to all persons, including wholesale market participants.

The remaining provisions of Article 6 need not be imposed generally on wholesale market participants such as East River ESS.²⁵ These provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers. In comparison, 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. 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 introduce inefficiencies into market operations to the detriment of the public interest.

As discussed in the Carr Street Order, however, market power issues may be addressed under PSL §§110(1) and (2), which afford us jurisdiction over affiliated interests. East River ESS has not reported any affiliation with a power marketer, foreclosing that avenue to the exercise of market power. Consequently, the Commission imposes the requirements of PSL §§110(1) and (2) on East River ESS only conditionally, to the extent a future inquiry into its relationships with an affiliate becomes necessary.

²⁵ These requirements include PSL §§106 (approval of loans), 107 (use of utility revenues for non-utility purposes), 108 (corporate merger and dissolution certificates), 110(3) (contracts between affiliated interests), 110(4) (water, gas, and electric purchase contracts).

Finally, notwithstanding that it is lightly regulated, East River ESS is reminded that it and any other entities that exercise control over Storage Facility operations 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 above and in previous Orders.²⁶ Included among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,²⁷ to give notice of unit retirements,²⁸ and to report personal injury accidents pursuant to 16 NYCRR Part 125. These conditions further ensure East River ESS will render safe, adequate, and reliable service.

CONCLUSION

Having held the hearing required by PSL §68(1) on April 27, 2021, it is determined that East River ESS has demonstrated its financial viability and readiness to construct and operate the Facility and that issuance of the CPCN to East River ESS is in the public interest. Additionally, East River ESS's request for a lightened ratemaking regulatory regime is granted.

²⁶ See, e.g., Case 16-E-0409, Indeck Cornith Limited Partnership, Order Providing for Lightened Regulation (issued December 21, 2016).

²⁷ Case 04-M-0519, 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).

²⁸ Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

It is ordered:

1. East River ESS, LLC's request for issuance of a Certificate of Public Convenience and Necessity, authorizing the construction and ownership of the Facility pursuant to Section 68 of the Public Service Law, is granted, as discussed in the body of this Order.

2. East River ESS, LLC shall comply with the Public Service Law in conformance with the requirements set forth in the body of this Order.

3. East River ESS, LLC shall file an unconditional acceptance of all terms, conditions, and requirements of this Order. If such acceptance is not filed within a period of 30 days from the issuance of this Order, this Order may be revoked by the Public Service Commission without further notice.

4. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

5. This proceeding is closed pending compliance with the Ordering Clause No. 3 above.

(SIGNED)

Commissioner