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June 26, 2013

VIA ELECTRONIC FILING

Hon. Jeffrey C. Cohen
Acting Secretary
New York State Board on Electric Generation
Siting and the Environment
Three Empire State Plaza
Albany, New York 12223

Re:	Case 13-E	- In the Matter of AES Energy Storage, LLC -
	Petition for Declaratory R	Ruling

Dear Acting Secretary Cohen:

On behalf of AES Energy Storage, LLC ("AES"), please find enclosed for filing with the New York State Board on Electric Generation Siting and the Environment an original and five copies of the "PETITION FOR DECLARATORY RULING."

If you have any questions or require additional information regarding this Petition, please contact me at (516) 663-6600.

Respectfully submitted,

RUSKIN MOSCOU FALTISHCEK P.C. Attorneys for AES Energy Storage, LLC

Stanley B. Klimberg

Enclosures

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ce: Garry A. Brown, Siting Board Chair Richard Kauffman, Chairman, NYSERDA Joseph Martens, Commissioner, DEC Kenneth Adams, Commissioner, President and CEO, NYS Empire State Development Nirav R. Shah, M.D., M.P.H., Commissioner, DOH

STATE OF NEW YORK BOARD OF ELECTRIC GENERATION SITING AND THE ENVIRONMENT		
	X	
In the Matter of AES Energy Storage, LLC – Petition for Declaratory Ruling	Case 13-E	
	X	

PETITION FOR DECLARATORY RULING

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Attorneys for AES Energy Storage, LLC

Dated: June 26, 2013

Uniondale, New York

STATE OF NEW YORK BOARD OF ELECTRIC GENERATION SITING AND THE ENVIRONMENT	
In the Matter of AES Energy Storage, LLC – Petition for Declaratory Ruling	Case 13-E
X	

PETITION FOR DECLARATORY RULING OF AES ENERGY STORAGE, LLC THAT BATTERY-BASED ENERGY STORAGE FACILITIES ARE NOT SUBJECT TO ARTICLE 10 OF THE PUBLIC SERVICE LAW

I. INTRODUCTION

In accordance with Section 161 of the Public Service Law ("PSL"), and pursuant to Part 8 of the New York State Public Service Commission's ("Commission") Rules and Regulations, 16 NYCRR Section 8.1, AES Energy Storage, LLC hereby files this Petition for a Declaratory Ruling requesting the Chair of the Board on Electric Generation Siting and the Environment (the "Siting Board") to issue a Declaratory Ruling that stand-alone, battery-based, energy storage facilities, as have been proposed by AES for installation on Long Island and in the New York City area, are not subject to Article 10 of the PSL.

II. DESCRIPTION OF AES ENERGY STORAGE, LLC

AES Energy Storage, LLC ("AES"), a wholly owned subsidiary of The AES Corporation, develops, owns, and operates grid-scale advanced energy storage projects in five markets. AES currently has 76 MW of battery-based, energy storage facilities in operation today, equivalent to more than 150MW of power resources, including 8 MW installed in Johnson City, New York in 2010, and has over 1,000 MW in development.

III. DESCRIPTION OF AES' PROPOSED BATTERY-BASED, ENERGY STORAGE FACILITIES

AES has proposed the installation of battery-based, energy storage facilities to be located at sites across Long Island to provide peak capacity, energy and ancillary services and has proposed similar projects to help with localized capacity and reliability constraints in the New York City area.

AES's proposed energy storage facilities would store, in batteries, electricity that is produced by electric generating facilities located elsewhere. They would generally store electricity during off peak periods when the cost to generate it is relatively low, and would provide capacity, energy or ancillary services to the electric grid at a later date when needed.

Importantly, AES' proposed energy storage facilities would not generate any new electricity, but would store electricity created in other permitted facilities for a time when it more effective to be used. In fact, the facilities would, over time, be net withdrawers of electricity from the grid.

AES has proposed the installation of multiple 50MW units on Long Island and multiple 100MW units around New York City. Each unit would be comprised of bidirectional inverters (similar to D-VAR^{®1}), sealed-cell batteries,² transformers, and cooling systems. The equipment would be housed in trays and racks in a manner similar to those seen in data center architecture. The power rating (in MW) and energy duration

¹ Dynamic Volt-Amp Reactive (D-VAR[®]) systems stabilize and regulate voltage for industrial operations and for transmission and distribution systems. The other equipment such as transformers and cooling systems are standard, commodity products used by any user of energy such as shopping malls and warehouses.

² Sealed-cell batteries are manufactured in such a way that the electrolyte, anode, cathode, and separator are fully encapsulated within an external casing. The batteries do not vent gas, do not have exposed chemicals, and do not require the addition of water to the cells.

(in MWh) can be scaled independently for each of these facilities by adding additional trays and racks to the facility. The facilities would be synchronized to the grid around the clock in order to provide reliability services, such as voltage control, frequency regulation, and spinning reserves.

The proposed facilities would generally be housed in a typical warehouse style building, similar to a data center or distribution center, or in containerized units similar to shipping containers. The size of the facilities is consistent with typical warehouse buildings and may be between 0.75 acres and 5.0 acres depending on the configuration and capacity of each unit. AES has proposed projects in multiple locations on Long Island and New York City using both new construction and retrofitting of existing buildings.

The proposed facilities would have a net positive overall effect on the environment. They would have no direct emissions and would significantly reduce the total emissions from existing generating plants and would increase the utilization of existing transmission lines. The proposed facilities do not consume or utilize water, employ sealed batteries that require no handling of any chemicals or fuel, and do not discharge water or chemicals to the environment. Further, the proposed facilities would have extremely limited visual impacts on the local communities where they are located.

IV. BATTERY-BASED ENERGY STORAGE FACILITIES, AS PROPOSED BY AES, ARE NOT SUBJECT TO ARTICLE 10

Under Article 10 of the PSL, no person shall commence the preparation of a site for, or begin construction of a "major electric generating facility" in the State of New York, without having obtained a certificate of environmental compatibility and public need ("Certificate") issued with respect to such facility by the Siting Board. Section 162 of the PSL.

A "major electric generating facility" is defined in Section 160 of the PSL as an "electric generating facility with a nameplate generating capacity of twenty-five thousand kilowatts or more...." The regulations issued by the Siting Board under Article 10 define a "major electric generating facility" as "an electric generating facility with a nameplate generating capacity of twenty-five megawatts or more, ...and including ancillary features located on the facility site such as roads, railroads, switchyards, fuel or energy storage or regulation facilities...." Section 1000.2(v) of the Siting Board's Rules and Regulations.

Neither Article 10 nor the regulations issued thereunder list the specific types of facilities that are covered by the term "major electric generating facilities." Similarly, the legislative history of Article 10 is silent regarding the specific types of facilities covered by Article 10. In addition, neither Article 10 nor the regulations issued thereunder define the term "electric generating facility."

Nevertheless, it is clear from a reading of the plain words in Article 10 that

Article 10 is intended to cover only facilities that "generate" or produce electricity and

The term "electric generating facility" is defined in DEC's regulations with respect to CO2 Performance Standards for an electric generating facility as "[a] facility which sells its power to the electrical grid and that utilizes boilers, combustion turbines, waste to energy sources, and/or stationary internal combustion engines to produce electricity." (6 NYCRR Part 251, Section 251.1) Battery-based energy storage facilities do no utilize boilers, combustion turbines, waste to energy sources, and/or stationary internal combustion engines to produce electricity and thus clearly do not meet the definition of "electric generating facility" under DEC's regulations.

not facilities that do not generate electricity, except to the extent that such facilities are ancillary features located on an electric generating facility site.⁴

We have examined how the terms "electricity generation," "generating facility," "generating unit" and "generation" are commonly used and defined in the electric utility industry. According to the U.S Energy Information Administration Electricity Terms and Definitions, the term "electricity generation" means "[t]he process of producing electric energy or the amount of electric energy produced by transforming other forms of energy, commonly expressed in kilowatthours (kWh) or megawatthours (mWh);" the term "generating facility" means "[a]n existing or planned location or site at which electricity is or will be produced;" the term "generating unit" means "[a]ny combination of physically connected generators, reactors, boilers, combustion turbines, and other prime movers operated together to produce electric power;" and the term "generation" means "[t]he process of producing electric energy by transforming other forms of energy; also, the amount of electric energy produced, expressed in kilowatthours."

As noted above, battery-based, energy storage facilities, including AES' proposed battery-based, energy storage facilities, do not "produce" or "generate" electric power or energy and do not transform other forms of energy into electric energy. Instead, they store electricity generated elsewhere in the facilities' batteries and discharge the electricity into the electric grid when needed. In fact, battery-based, energy storage facilities experience electricity losses in the process of storing and discharging electric energy. Therefore, we believe that battery-based energy storage facilities are not subject to Article 10.

⁴ AES's proposed battery-based energy storage facilities would be separately-located projects, i.e., they would not be part of or located on the site of a generating facility, and thus would not be "ancillary features located on the facility site" of a proposed "major electric generating facility" subject to Article 10.

We have also reviewed the types of evaluations required to be provided by applicants for an Article 10 Certificate and the findings required to be made by the Siting Board prior to issuance of a Certificate as a possible further indication of the facilities intended to be covered by Article 10. It is apparent from a review of the required evaluations and the Siting Board's required findings that Article 10 is clearly directed at facilities which may emit substantial pollutants to the air, may have substantial impacts on water quality or quantity, and/or may have substantial visual impacts, among other potentially significant environmental impacts. In contrast, we note that battery-based energy storage facilities, as have been proposed by AES in Long Island and New York City, do not emit Federal criteria pollutants to the air, use negligible amounts of water, do not discharge water or chemicals into the environment and have very limited visual impacts. Indeed, battery-based energy storage facilities would likely significantly reduce overall emissions by storing electricity produced during off peak periods from more efficient, cleaner generation available during such off peak periods when the cost to generate electricity is relatively low, and discharging the electricity stored in the facilities' batteries during on peak periods when needed, particularly during the summer period, thus displacing less efficient, more polluting facilities. We believe that this fact further supports the conclusion that Article 10 was not intended to cover battery-based energy storage facilities, as have been proposed by AES.

V. CONCLUSION

For all of the foregoing reasons, AES Energy Storage, LLC respectfully requests the Chair of the Siting Board to issue a Declaratory Ruling that sealed-cell, battery-based,

energy storage facilities, as proposed by AES Energy Storage, LLC, are not subject to Article 10 of the Public Service Law.

Respectfully Submitted,

Stanley B. Klimberg

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Dated: June 26, 2013

Uniondale, New York

BOARD OF ELECTRIC GENERATION SITING AND THE ENVIRONMENT	-x
In the Matter of AES Energy Storage, LLC – Petition for Declaratory Ruling	Case 13-E
	-x
VERIFICATION	<u>N</u>
STATE OF VIRGINIA)	
COUNTY OF FAIR FAX)	
I, John Zahurancik, Vice President of AES Energy petition and know the contents thereof and that the same knowledge, information and belief.	
	John Zakurandik
Sworn to before me this 25 day of June, 2013	
Notary Public	1744 14 14 14 14 14 14 14 14 14 14 14 14 1
OF VI	RGIN!