

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on April 19, 2017

COMMISSIONER PRESENT:

Gregg C. Sayre, Interim Chairman

CASE 17-E-0016 - Petition of TC Ravenswood, LLC, TC Ravenswood Services Corp. and Helix Generation for Expedited Approval of a Transfer and Financing Pursuant to Lightened Regulation.

ORDER APPROVING TRANSFER SUBJECT TO ACCEPTANCE OF CONDITIONS  
AND MAKING OTHER FINDINGS

(Issued and Effective April 19, 2017)

INTRODUCTION

TC Ravenswood, LLC (Ravenswood LLC) owns and operates an approximately 2,400 MW generating facility, comprised of Units 10, 20, 30, and 40 (the Ravenswood facility), which is located in Queens, New York. TC Ravenswood Services Corp. (Ravenswood Services) owns steam facilities related to the Ravenswood facility, as well as certain real property underlying that facility. In a petition filed on January 13, 2017, Ravenswood, Ravenswood Services, and Helix Generation, LLC (Helix Generation) (collectively, Petitioners) request an order approving: (i) the proposed sale of Ravenswood LLC from TransCanada Facility USA, Inc. (TC Facility) to Helix Generation pursuant to Public Service Law (PSL) §70; (ii) the proposed sale of Ravenswood Services from TC Facility to Helix Generation pursuant to PSL §83; and (iii) a planned financing, pursuant to PSL §§69 and 82, in an amount not to exceed \$2.5 billion, to support the proposed transfers and for other lawful purposes.

Petitioners also request issuance of a declaratory ruling that: (i) an intra-corporate transfer will not be reviewed further under PSL §70; (ii) Ravenswood LLC will remain subject to lightened regulation as an electric corporation following execution of the proposed transfers; (iii) Ravenswood Services will remain subject to incidental and lightened regulation as a steam corporation following execution of the proposed transfers; and (iv) Unit 40 Sublessor, LLC (Unit 40 Sublessor), a wholly-owned subsidiary of TC Facility and an affiliate of Ravenswood LLC and Ravenswood Services, will not be considered either an electric or steam corporation subject to Commission regulation following execution of the proposed transfers. Finally, Petitioners request waiver of the applicable filing requirements set forth in the Commission's regulations, contained in 16 NYCRR Parts 31.1 and 39.1.

As discussed below, the Commission has determined that the proposed transfers of direct ownership interests in Ravenswood LLC and Ravenswood Services are approved under PSL §§70 and 83, subject to the unconditional acceptance of certain conditions by the Petitioners, or else the petition is denied, and that the proposed financing is approved under PSL §§69 and 82. The Commission also finds that Petitioners have adequately demonstrated that the proposed conversion of Ravenswood Services from a transportation corporation to a limited liability company does not require further review under PSL §70. Further, the Commission finds that the existing incidental and lightened regulatory regimes applied to Ravenswood LLC and Ravenswood Services should be continued after the proposed transfers are consummated, and that Unit 40 Sublessor will not become either an electric corporation or steam corporation subject to Commission regulation upon consummation of the proposed transfers. Finally, the applicable filing requirements of 16

NYCRR Parts 31.1 and 39.1, which specify the contents of petitions for authority under PSL §§70 and 83, are waived regarding information that was not needed for this review.

LEGAL AUTHORITY

Under PSL §70, no gas or electric corporation may “transfer or lease its franchise, works or system or any part of such franchise, works or system” without first receiving written Commission consent. Under PSL §83, no steam corporation may “transfer or lease its franchise, works or system or any part of such franchise, works or system” without first receiving written Commission consent. The Commission uses a public interest standard in its review of proposed transfers under PSL §70. Among the factors the Commission considers in making such a determination are affiliations that might afford opportunities for the exercise of market power or pose the potential for other transactions detrimental to captive ratepayer interests, the financial integrity of the transferee, and the transferee’s ability to render safe, adequate and reliable service.<sup>1</sup>

The review of proposed transfers under PSL §§70 and 83 is based on a public interest standard that focuses on two questions: (i) whether the transfer could afford opportunities for the exercise of market power; and (ii) whether the transfer has the potential to otherwise harm captive ratepayer interests.<sup>2</sup> The steam assets that are the subject of the proposed PSL Section 83 Transfer are used to support electric generation at the Ravenswood facility, and the transfer of those assets is

---

<sup>1</sup> See, Case 10-M-0186 et al., Alliance Energy Renewables, LLC, et al., Order Approving Transfers Upon Conditions and Making Other Findings (issued July 23, 2010) at 17.

<sup>2</sup> Case 16-E-0574, Energy Capital Partners I, LP et al., Order Approving Transfers and Making Other Findings (issued February 23, 2017) at 12.

subject to the same analysis that is applied to the evaluation of proposed transfers under PSL §70. Accordingly, the two transfers will be discussed jointly as the Proposed Transactions, rather than individually as transfers under separate provisions of the PSL.

Financings proposed under PSL §§69 and 82 by lightly-regulated companies operating in a competitive environment may be addressed on the basis of representations made in the petition, and do not require an in-depth analysis.<sup>3</sup> Provided that the proceeds of a financing are for a statutory purpose and in the public interest, petitioners typically are afforded broad latitude to determine the amount and type of debt that is needed to support corporate operations.

PSL §§2(13) and 2(22) define electric corporations and steam corporations broadly to include virtually all entities with assets that are operated, owned, used or to be used for or in connection with the generation, conveyance, and sale of electricity or steam. The Commission has found that companies holding purely passive, indirect financial interests in jurisdictional utility assets may avoid designation as an electric corporation or steam corporation if they do not hold any operating or managerial control over the assets.<sup>4</sup>

The Commission has determined on a case by case basis that certain intra-corporate reorganizations do not require PSL §70 review despite involving a transfer of direct or indirect ownership interests in an operating company and its jurisdictional facilities. Specifically, the Commission has

---

<sup>3</sup> Case 01-E-0186, Athens Generating Company, L.P., Order Authorizing Issuance of Debt (issued July 30, 2001).

<sup>4</sup> Case 08-E-1267, Noble Altona Windpark, LLC et al., Declaratory Ruling on Review and Regulation of a Passive Ownership Interest Transfer (issued December 15, 2008) (Noble Altona Ruling).

found that transfers effectuated pursuant to a wholly intra-corporate reorganization do not amount to a "transfer" under PSL §§70 and 83 if there is no change in the identity of the ultimate ownership or in the proportionate shares held by existing owners, and the reorganization does not present risks of market power or harm to captive ratepayers.<sup>5</sup>

In considering requests for lightened regulation by wholesale generators, the Commission employs a realistic appraisal approach.<sup>6</sup> The first consideration in a realistic appraisal is whether a section of the PSL is inapplicable on its face and, if applicable, whether the regulated entity can comply with the requirements of the provision. However, even if compliance is possible, under a realistic appraisal, the Commission must determine whether imposing the requirement is necessary to protect the public interest, or rather would adversely affect the public.<sup>7</sup> The Commission has recognized that the PSL need not be applied to companies that operate in competitive markets in the same fashion as it is applied to monopoly utilities. To this end, Commission precedent has developed policies and practices that reduce the burden of regulation on competitive providers for the purpose of encouraging market efficiencies and innovation, while still

---

<sup>5</sup> Case 16-E-0574, Energy Capital Partners I, LP et al., Order Approving Transfers and Making Other Findings (issued February 23, 2017).

<sup>6</sup> Case 98-E-1670, Carr Street Generating Station, L.P., Order Providing for Lightened Regulation (issued April 23, 1999) at 4-5.

<sup>7</sup> See, e.g., Case 94-E-0952, In the Matter of Competitive Opportunities for Electric Service, Opinion No. 97-17 (issued November 18, 1997) at 31-35.

ensuring ratepayer protection and compliance with the PSL.<sup>8</sup> PSL §§66(13) and 80(11) further provide that electric corporations and steam corporations, respectively, may be subject to incidental regulation when the owning, operating, management, or control of such plant is wholly subsidiary and incidental to the other business carried out by it. Under incidental regulation, the electric and/or steam corporation is relieved from making full reports and keeping of accounts as to the subsidiary and incidental business.

#### THE PETITION

##### The TransCanada Parties

Petitioners report that Ravenswood LLC and Ravenswood Services are wholly-owned subsidiaries of TC Facility. Petitioners explain that Ravenswood LLC owns and operates the Ravenswood facility subject to a lightened regulatory regime previously approved by the Commission.<sup>9</sup> According to Petitioners, Ravenswood Services is an incidental and lightly-regulated steam corporation which owns steam facilities and certain real property underlying those facilities.

Petitioners explain that TC Facility acquired Ravenswood LLC and Ravenswood Services from KeySpan Corporation (KeySpan) in 2008. At that time, Petitioners continue, the Commission ruled that Ravenswood LLC would remain subject to lightened regulation as an electric corporation, and that TC Services would remain subject to incidental and lightened

---

<sup>8</sup> See generally Case 15-M-0365, Lightened Ratemaking Regulation, Staff Whitepaper on Implementing Lightened Ratemaking Regulation (dated November 4, 2015).

<sup>9</sup> Case 08-M-0436, KeySpan-Ravenswood LLC, Order Approving Transfer and Making Other Findings (issued August 21, 2008) (Ravenswood Transfer Order).

regulation as a steam corporation, following TC Facility's acquisition from KeySpan.<sup>10</sup>

According to Petitioners, Unit 40 Sublessor is a wholly-owned subsidiary of TC Facility and an affiliate of Ravenswood LLC and Ravenswood Services that was formed in 2008 to effectuate a restructuring of interests in Unit 40 of the Ravenswood facility (collectively, with Ravenswood LLC and Ravenswood Services, the "Ravenswood Companies"). Petitioners explain that Unit 40 Sublessor is owned 95% by TC Facility, and 5% by SE Ravenswood Trust, a passive investor and lessor of the Ravenswood facility. According to Petitioners, SE Ravenswood Trust is a Delaware statutory trust and it was organized in May 2004 along with SE Ravenswood Lease, LLC for the purpose of completing the purchase from KeySpan Corporation and subsequent leaseback of Ravenswood Unit 40. Its beneficial interests are 100% owned by SE Ravenswood Lease, LLC, which is an indirect wholly-owned subsidiary of Southern Company Holdings, Inc., which in turn is a subsidiary of The Southern Company.<sup>11</sup> TransCanada does not own or control any interests in SE Ravenswood Trust, nor are any such interests being transferred pursuant to the transactions under review here.

Unit 40 Sublessor, Petitioners aver, has leased Unit 40 from SE Ravenswood Trust, and subleased Unit 40 to TC Ravenswood as part of a sale/leaseback financing arrangement. Petitioners explain that Unit 40 Sublessor has never held anything greater than a purely passive, financial interest in the Unit 40 assets.

---

<sup>10</sup> Id.

<sup>11</sup> The Southern Company owns substantial generation, transmission and utility assets, but none that raise market power concerns in New York.

TC Facility, Petitioners continue, is a direct, wholly-owned subsidiary of TransCanada Energy USA, Inc. (TransCanada USA) which, in turn, is wholly-owned by TransCanada Pipelines Limited (TCPL). Petitioners explain that TCPL is a Canadian public company that is a wholly-owned subsidiary of TransCanada Corporation (TransCanada), a diversified energy company doing business in Canada and the United States. Petitioners aver that TransCanada's principal affiliates - TCPL, Nova Gas Transmission Ltd., and TC Pipeline USA Ltd. (TC Pipeline) - transport natural gas through Canada and parts of the United States. TransCanada, Petitioners continue, indirectly owns or controls electric generation capacity and markets power in the United States. Petitioners aver that TransCanada indirectly owns electric generation in the ISO-NE Inc. (ISO-NE) and PJM Interconnection, LLC (PJM) control areas in addition to the Ravenswood facility in the New York Independent System Operator, Inc. (NYISO) control area. TransCanada OSP Holdings Ltd. (OSP Holdings), Petitioners explain, is one of several TransCanada subsidiaries that own electric generation in the United States. According to Petitioners, the proposed transactions are part of a TransCanada plan to divest merchant generation facilities and power marketing businesses indirectly held throughout the Northeast United States.

The LS Power Parties

Petitioners report that Helix Generation is a wholly-owned subsidiary of LS Power Equity Partners III, L.P., which is wholly-controlled by LS Power Development, LLC (LSP Development). Helix Generation, Petitioners continue, was formed to indirectly acquire and hold the membership interests of the Ravenswood Companies as well as other companies that will be acquired as part of the larger suite of corporate



transactions that include the proposed sales of Ravenswood LLC and Ravenswood Services. Petitioners aver that Helix Generation currently has no assets.

LSP Development, Petitioners note, owns and operates independent generation projects throughout the United States. It also is developing independent transmission projects in parts of the country. Petitioners report that LSP Development does not own or control, either directly or indirectly, generation facilities in the NYISO market. However, Petitioners point out that LSP Development indirectly owns or controls approximately 4,966 MW and 224 MW in the PJM and ISO-NE control areas, respectively.

#### The Proposed Transactions

Petitioners explain that Helix Generation proposes to acquire all of the Ravenswood LLC membership interests (i.e., the PSL Section 70 Transfer), all of the Ravenswood Services interests (i.e., the PSL Section 83 Transfer), and 95% of the membership interests of Unit 40 Sublessor (collectively, the Proposed Transactions).<sup>12</sup> After the Proposed Transactions and related transfers are consummated, Petitioners continue, the Ravenswood Companies will be wholly-controlled indirect subsidiaries of LSP Development.

On March 23, 2017, Petitioners supplemented their original filing to clarify how the Proposed Transactions would be effectuated. In their supplement, Petitioners explained that three new entities would be created and inserted into the corporate structure to facilitate acquisition of the Ravenswood Companies. Petitioners report that lenders involved in the

---

<sup>12</sup> Helix Generation also would acquire all of the interests in certain generation facilities located outside of the NYISO market that are currently owned by TC Facility, TC Pipeline, and OSP Holdings.

Proposed Transactions will require a new, wholly-owned entity to pledge security for the acquisition financing. Helix Generation Holdings, LLC (Helix Holdings), Petitioners continue, would be created to serve in this role as a wholly-owned, direct subsidiary of Helix Generation. Petitioners aver that Helix Gen Funding, LLC (Helix Funding) would be created as a wholly-owned, direct subsidiary of Helix Holdings to serve as the borrower for the acquisition financing. Finally, the Petition Supplement explains that Ravenswood Holdings, LLC (Ravenswood Holdings) was created to serve as the holding company for: (i) 100% of the interests in Ravenswood LLC (which will be renamed Helix Ravenswood, LLC (Helix Ravenswood) following consummation of the PSL Section 70 Transfer); (ii) 100% of the interests in Ravenswood Services, which will be renamed Helix Ravenswood Services, LLC (Helix Services) following consummation of the PSL Section 83 Transfer; and (iii) 95% of the interests in Unit 40 Sublessor. Petitioners aver that Helix Holdings, Helix Funding, and Ravenswood Holdings will each be wholly-owned subsidiaries of Helix Generation.

Petitioners argue that the Commission should approve the Proposed Transactions because they are in the public interest. According to Petitioners, the Commission reduces the regulatory scrutiny applied to the determination of public interest for such transactions when they involve wholesale merchant generating facilities such as the Ravenswood facility.<sup>13</sup> Under this paradigm, Petitioners argue, the Proposed Transactions are in the public interest because they do not present any risk of horizontal or vertical market power or harm to captive ratepayers. Petitioners further request that the

---

<sup>13</sup> See, e.g., Case 16-E-0244, Castleton Energy Center, LLC, Order Approving Transfer and Continuing Lightened Regulation (issued July 14, 2016).

Commission continue its lightened regulation of Ravenswood LLC as an electric corporation, as well as the lightened and incidental regulation of Ravenswood Services as a steam corporation.

Horizontal Market Power

Petitioners argue that Helix Generation's acquisition of Ravenswood LLC will not create or enhance horizontal market power in any relevant market. According to Petitioners, Helix Generation would be a new entrant to the NYISO market, and none of the Helix Generation affiliates own or control generation facilities in the NYISO control area. Thus, Petitioners continue, the Proposed Transactions would not create or enhance horizontal market power in the NYISO electric generation market.

As to neighboring markets, Petitioners explain that Helix Generation affiliates only own a de minimis amount of generation capacity in the PJM and ISO-NE control areas. Petitioners report that, following consummation of the Proposed Transactions, the Helix Generation affiliates would own approximately 3.3% and 2.8% of the total installed capacity in the PJM and ISO-NE markets, respectively. According to Petitioners, this level of market penetration is insufficient to present any horizontal market power concerns.

Petitioners argue further that Helix Generation's affiliated generation interests in the PJM and ISO-NE markets do not, in the aggregate, present any horizontal market power concerns in the NYISO control area. Petitioners assert that this affiliated generation is committed in the PJM and ISO-NE capacity markets through the 2019/2020 market years. Consequently, Petitioners maintain that the affiliated generation capacity in neighboring markets is unable to participate in the NYISO market through at least 2020. Petitioners further argue that limited transfer capabilities

into the NYISO control area from PJM and/or ISO-NE virtually eliminate any opportunity for Helix Generation or its affiliates to impact the NYISO market by leveraging capacity imports from neighboring control areas.

Petitioners aver that Helix Generation is qualified to own and operate the Ravenswood facility. According to Petitioners, Helix Generation is controlled by LSP Development, which is based in New York, and has sufficient resources, experience, and expertise to operate the Ravenswood facility in a safe and reliable manner. LSP Development, Petitioners continue, has developed and/or acquired more than 35,000 MW of generation capacity throughout the United States and raised more than \$30 billion in debt and equity financing. Petitioners assert that the LSP Development generation fleet has a strong safety and environmental record.

If the Proposed Transactions are approved, Petitioners continue, Helix Generation would retain all of the employees currently working at the Ravenswood facility as well as certain currently-effective agreements that pertain to facility operation. Petitioners assert that these commitments would promote continuity in facility operating performance. Helix Generation, Petitioners continue, also plans to improve plant reliability by making certain unspecified capital investments in the Ravenswood facility.

Petitioners assert that the Proposed Transactions are in the public interest. According to Petitioners, Helix Generation would replace TC Facility as a competent and experienced generation facility operator. Petitioners assert that Helix Generation's commitments to retain existing personnel and certain agreements related to operations, as well as its affiliation with LSP Development, demonstrate that Helix Generation is qualified to own the Ravenswood facility.

According to Petitioners, these factors collectively demonstrate that the Proposed Transactions are in the public interest.

Vertical Market Power

Petitioners note that neither Helix Generation nor any of its affiliates currently own or control any electric or transmission or distribution facilities regulated by the Commission, or any fuel inputs into generation facilities that operate in the NYISO control area. The Proposed Transactions, Petitioners continue, would reduce vertical market power because they would sever TransCanada's indirect ownership of the Ravenswood facility as well as its indirect joint ownership of 44.5% of the Iroquois natural gas pipeline that serves the New York City market.

Petitioners report, however, that two affiliates wholly-owned by LSP Development - North America Transmission Corporation and North America Transmission LLC (collectively, NAT) - currently have proposals pending before the NYISO to construct new transmission lines that would increase transfer capability across the Central East or Upstate New York/Southeast New York interfaces (UPNY/SENY) (i.e., the AC Project), or increase transmission capability in Western New York (i.e., the Western NY Project). Petitioners explain that the Commission identified public policy needs for additional transmission capability, and the AC Project and Western NY Project were submitted in response to the NYISO's competitive solicitation for project proposals.<sup>14</sup> According to Petitioners, NAT filed the

---

<sup>14</sup> See Case 14-E-0454, Proposed Public Policy Needs, NYISO AC Transmission Public Policy Transmission Need Viability & Sufficiency Assessment (filed October 28, 2016) (AC Assessment), and NYISO Western NY Public Policy Transmission Need Viability & Sufficiency Assessment (filed June 1, 2016) (Western NY Assessment); Cases 13-T-0454 et al., North America Transmission Corporation, Notice of North America Transmission Corporation and North America Transmission LLC of Withdrawal

AC Project transmission proposals jointly with the New York Power Authority (NYPA). The joint filings imply that NAT and NYPA would coordinate their efforts in a joint venture, if one or more of their proposals are selected by the NYISO. NYPA did not join NAT's Western NY Project proposals, which NAT submitted on an individual basis. The NYISO, Petitioners explain, will select the most "efficient or cost effective transmission" proposal that satisfies the identified public policy transmission needs. Petitioners explain that transmission projects selected by the NYISO must apply to the Commission for a Certificate of Environmental Compatibility and Public Need (Certificate), pursuant to PSL Article VII, for authority to construct, operate, and maintain the transmission line. Petitioners argue that selection of either one of its proposed transmission projects would demonstrate that the project(s) would benefit New York ratepayers.

Petitioners argue that the Proposed Transactions present only an uncertain, speculative concern about potential vertical market power risks that might arise in the future if NAT is awarded the right to develop a transmission project. Nevertheless, acknowledging the Commission's Statement of Policy Regarding Vertical Market Power (VMP Policy Statement) and potential issues regarding future vertical market power risks,<sup>15</sup> Petitioners acknowledge that the Commission may be concerned about potential vertical market power risks associated with consolidating ownership of the Ravenswood facility and either transmission line within a single corporate structure.

---

of Certain Transmission Alternatives from Further Consideration (filed January 15, 2016).

<sup>15</sup> Cases 96-E-0090 et al., Orange & Rockland Utilities, Inc. - Electric Rate Restructuring, Statement of Policy Regarding Vertical Market Power (issued July 17, 1998).

Petitioners suggest that, if selected to develop one or more transmission projects, neither NAT nor Helix Generation would be able to leverage either the generation facility or the transmission asset in a manner that benefits the affiliated interest. They propose a series of conditions that are intended to mitigate the vertical market power that would arise if Helix Generation indirectly owns the Ravenswood facility and NAT is awarded the right to develop either the AC Project or the Western NY Project.

The conditions proposed to mitigate future vertical market power concerns fall into two categories. Petitioners first propose a series of measures intended to reduce the incentive and opportunity for NAT to manipulate the transmission development process to benefit affiliated entities. As proposed, NAT would execute each of the following "structural mitigation" measures to be effective during all times in which Helix Generation owns or controls the Ravenswood Facility and NAT holds the development rights to one or more transmission projects, including: (i) filing with the Commission an "Affiliate Code of Conduct;" (ii) providing a certification by the chief compliance officer that all employees have completed periodic training on the Affiliate Code of Conduct; and (iii) maintaining a log of all communications between NAT and its affiliates with generation in New York that pertain to transmission assets in New York.

Petitioners further propose a series of "schedule mitigation" measures that are intended to moderate the risk that NAT could exercise vertical market power by intentionally delaying the transmission development process. As proposed, NAT would: (i) execute a pro forma "Development Agreement" with the NYISO; (ii) specify in the Development Agreement certain "Critical Path Milestones" (i.e., NYISO-approved deadlines)

regarding "key development and construction activities" and the required commercial operations date for the transmission line; (iii) file a copy of the Development Agreement with the Commission; and (iv) file periodic reports with the Commission to provide periodic updates on progress towards the Critical Path Milestones. Petitioners explain that the pro forma Development Agreement was created in response to an order of the Federal Energy Regulatory Commission (FERC) and provides the NYISO with remedies that incentivize developers to satisfy all obligations under the Development Agreement.<sup>16</sup>

Petitioners assert that the Development Agreement includes punitive measures triggered by uncured failures to achieve any Critical Path Milestones. According to Petitioners, these punitive measures would enable the NYISO to terminate the Development Agreement and exercise other legal remedies, such as suing NAT for damages, if NAT fails to achieve any Critical Path Milestone for reasons within its control. The NYISO may also terminate the Development Agreement, Petitioners maintain, if it concludes that the transmission line cannot be completed and energized prior to the in-service date specified in the Development Agreement (i.e., the Required Project In-Service Date). Petitioners report that the Development Agreement would also authorize the NYISO to require that project development rights to be transferred from NAT to a third party.

Petitioners argue that the Development Agreement creates a "real and very serious risk to a transmission

---

<sup>16</sup> Docket No. ER13-102-007, New York Independent System Operator, Inc. and New York Transmission Owners, Tariff Filing (dated March 22, 2016). A Development Schedule and Development Agreement were included as Appendices C and D, respectively, to §31.7 of the NYISO's Open Access Transmission Tariff (OATT). The pro forma Development Agreement was also appended to the Petition.



developer" that it will experience harm to its finances and public reputation if its project fails or is unduly delayed. Petitioners assert that the potential exposure to monetary damages and loss of project development rights provide strong disincentives for NAT to delay transmission line development to benefit affiliated interests.

Finally, in the event that the Commission determines that the potential for affiliated ownership of transmission and generation assets within a single corporate structure presents too great a risk of vertical market power, Petitioners propose an additional condition to mitigate potential vertical market power concerns. Specifically, Petitioners assert that NAT would divest its interests in the transmission line by selling the asset (i.e., actual divestiture), or by converting its ownership interests into a purely passive economic investment that carries no authority to impact operation or control of the line (i.e., virtual divestiture).<sup>17</sup> Petitioners propose to choose between the two options if divestiture is required, and to complete the chosen divestiture method no later than six months after the New York transmission facilities commence commercial operations.

#### Proposed Financing

Petitioners request approval, pursuant to PSL §§69 and 82, of a planned financing with a term of greater than 12 months

---

<sup>17</sup> In support of the proposed virtual divestiture option, Petitioners cite precedent in which the Commission found that a purely passive economic interest might be adequate to remedy potential vertical market power concerns. See Case 15-E-0592, Astoria Generating Company, L.P. et al., Declaratory Ruling on Transfer Transaction (issued December 15, 2015); Case 13-E-0302, Astoria Energy II, LLC et al., Declaratory Ruling on Review of an Ownership Interest Transfer Transaction (issued September 19, 2013); Case 13-M-0004, EIF BNY LLC et al., Declaratory Ruling on Review of an Acquisition and Stock Transaction (issued February 15, 2015).

and in an amount not to exceed \$2.5 billion. According to Petitioners, the debt will be used to finance the purchase of the Project Companies, including the Ravenswood Companies, and will service the Project Companies' working capital needs, operational losses, and capital expenses. Petitioners aver that security for the financing will include: (i) a pledge of all Helix Generation equity ownership interests in the Project Companies; (ii) all project contracts; (iii) all revenues derived from the ownership and operation of the Project Companies' assets; and (iv) substantially all other tangible and intangible real and personal property and assets jointly and severally owned by the Project Companies. Petitioners further request the flexibility to modify, without prior Commission approval, the terms and conditions of financing, up to the \$2.5 billion limit. Petitioners assert that the Commission typically affords lightly-regulated entities this flexibility.

Petitioners argue that the regulatory scrutiny applicable to the planned financing should be reduced for lightly-regulated companies operating in competitive markets. According to Petitioners, the Ravenswood Companies would bear all the financial risk associated with the proposed financing, thereby shielding captive utility ratepayers from the financial risk. Petitioners cite Commission precedent approving financing to be used for purposes similar to those proposed in the Petition.<sup>18</sup> The planned financing, Petitioners conclude, is in the public interest because it would ensure that the Ravenswood Companies have access to the capital necessary to support operations and provide reliable service.

---

<sup>18</sup> See, e.g., Case 05-E-1341, Orion Power Holdings, Inc., Order Approving Transfer and Financings and Making Other Findings (issued February 15, 2006).

Intra-Corporate Restructuring

Petitioners report that the Proposed Transactions include four intra-corporate transactions. First, Petitioners explain that Ravenswood Services currently is a transportation corporation formed under the New York Transportation Corporations Law. Ravenswood Services, Petitioners continue, would be converted into a New York limited liability company by merging the company into TC Ravenswood Services, LLC, which would survive the transaction. Petitioners explain that this "Conversion" is contemplated solely for tax purposes and would not otherwise impact the corporate structure or operation.

Citing Commission precedent, Petitioners maintain that the Commission does not review intra-corporate transactions, such as the Conversion, which do not alter the ultimate corporate ownership or allocation of ownership shares.<sup>19</sup> Alternatively, Petitioners request approval of the Conversion under PSL §70 and claim the Proposed Transactions are in the public interest and that the Conversion is necessary to effectuate the transfers.

The Petition Supplement describes three corporate entities that will be formed for purposes of facilitating the Proposed Transactions and inserted into the corporate ownership structure between the Ravenswood Companies and Helix Generation. First, Helix Holdings would be formed as a direct, wholly-owned subsidiary of Helix Generation to serve as pledgor for the acquisition financing. Second, Helix Funding would be formed as

---

<sup>19</sup> Case 07-E-0584, NRG Energy, Inc., Declaratory Ruling On Review of an Intra-Corporate Transaction (issued July 23, 2007) (NRG 2007 Ruling); Case 05-E-1582, NRG Energy Inc. and NRG Northeast Generating LLC, Declaratory Ruling on Review of an Intra-Corporate Dissolution Transaction (issued January 26, 2006) (NRG 2006 Ruling; collectively, with the NRG 2007 Ruling, the NRG Rulings).

a direct, wholly-owned subsidiary of Helix Holdings to serve as the borrower for the acquisition financing. Third, Ravenswood Holdings would be formed as a direct, wholly-owned subsidiary of Helix Funding to serve as the holding company for the Ravenswood Companies. Each of these companies would be formed at or before closing on the Proposed Transactions. Consequently, they will be part of the existing corporate structure when Helix Generation indirectly acquires the Ravenswood Companies.

Electric Corporation Regulation

Citing Commission precedent that passive owners of electric plant are not electric corporations within meaning of the PSL,<sup>20</sup> Petitioners suggest that the closing on the Proposed Transactions should not subject Unit 40 Sublessor to Commission regulation as an electric corporation. Petitioners explain that this company was formed to effectuate lease instruments relative to Unit 40 of the Ravenswood facility and to serve as a passive participant in the ownership and operation of the underlying assets. Unit 40 Sublessor, Petitioners continue, would continue to hold a purely passive interest without operating or managerial control over the Ravenswood facility, the associated steam facilities, or any other related plant after the Proposed Transactions are consummated. Petitioners further explain that Unit 40 Sublessor would not hold any stake in the performance or profitability of the Ravenswood facility, and cite precedent supporting their proposal that this company should remain unregulated by the Commission as either an electric or steam corporation.<sup>21</sup>

---

<sup>20</sup> See Noble Altona Ruling.

<sup>21</sup> See, e.g., Case 01-E-0587, Dynergy Danskammer, LLC, Order Authorizing Issuance of Lease Obligation Notes (issued April 27, 2001).

ENVIRONMENTAL QUALITY REVIEW

Under the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR §7), the Commission must determine whether the action it is authorized to approve may have a significant impact on the environment. Other than Commission approval of the actions proposed here, no additional state or local permits are required, so a coordinated review under SEQRA is not required. The Commission assumed Lead Agency status under SEQRA and conducted an environmental review.

SEQRA requires applicants to submit an Environmental Assessment Form (EAF) describing and disclosing the likely impacts of the actions they propose. The Petitioners submitted a short-form EAF Part 1 that complies with this requirement.

The proposed actions, approval of a transfer of ownership interests and a planned financing, do not meet the definition of Type 1 or Type 2 actions listed in 6 NYCRR §§ 617.4, 617.5, and 16 NYCRR §7.2, so they are classified as "unlisted" actions requiring SEQRA review. Upon review of the Petition and EAF, the Commission concludes, based on the criteria for determining significance listed in 6 NYCRR §617.7(c), that there will be no changes to the operation of the electric generating facility subsequent to the proposed transfers and financing that would result in significant adverse environmental impacts. Department of Public Service Staff completed the short-form EAF Parts 2 and 3.

As Lead Agency, the Commission concludes, based on consideration of the criteria for determining significance listed in 6 NYCRR §617.7(c), the information in the EAF and the record, that the proposed actions will not have a significant adverse impact on the environment because approval of the transfers and financing is not expected to have any negative

impacts on the environment. The transfers and financing do not involve any new construction, or other physical modification of the landscape or existing community. Further, approval of the transfers and financing will not result in the creation of environmental hazards or result in any adverse change to natural resources. A negative declaration pursuant to SEQRA is therefore adopted. A Notice of Determination of Significance will be issued in conjunction with this order. The completed EAF will be retained in the Commission's files.

### DISCUSSION

#### Proposed Transactions

As noted, the review of proposed transfers under PSL §§70 and 83 is based on a public interest standard that focuses on two questions: (i) whether the transfer could afford opportunities for the exercise of market power; and (ii) whether the transfer has the potential to otherwise harm captive ratepayer interests. As a participant in a competitive wholesale market for electricity, Ravenswood LLC has no captive ratepayers. Its operations do not pose risks to the captive ratepayers of delivery or other utilities subject to full regulation. The Proposed Transactions, therefore, do not pose an immediate risk of harm to captive ratepayer interests.

The Proposed Transactions do not pose the potential for the exercise of horizontal market power. The transfers would vest indirect ownership of Ravenswood LLC and Ravenswood Services in Helix Generation. Neither this company nor its affiliates currently own or control any generation capacity in the competitive wholesale markets run by the NYISO, and the share that it will acquire through Ravenswood LLC will be subject to NYISO rules and oversight, as well as potential FERC enforcement actions, that mitigate the risk of using the

generation facility to exercise market power in the wholesale markets. For these reasons, the Commission agrees with Petitioners that the Proposed Transactions will not create or enhance horizontal market power in the NYISO market.

Petitioners report that Helix Generation affiliates own or control generation capacity in the adjacent PJM and ISO-NE markets. In total, however, this level of generating capacity is de minimis when compared to total capacity participating in the PJM and ISO-NE markets and will not enable Helix Generation to exercise horizontal market power in New York.

Further, neither Helix Generation nor its affiliates control electric delivery facilities in New York, other than interconnections, or exert a substantial influence over inputs, like fuel, into the production of generation supply within New York. Consequently, there would be no immediate vertical market power risk if the Proposed Transactions are consummated shortly after issuance of this Order, as proposed.

The Petition, however, presents a significant, potential risk of vertical market power in the future. Petitioners report that the NYISO is considering transmission line project proposals submitted by the NAT affiliates of Helix Generation, as part of pending NYISO public policy transmission planning (PPTP) processes. If the NYISO selects either project for development, NAT would acquire the right to develop a transmission line in New York. At that time, Helix Generation and NAT would be in violation of the Commission's VMP Policy Statement if Helix Generation - or any other NAT affiliate - holds any interest in generation located in New York.

The Commission has long-standing policy and precedent supporting a presumption that affiliated companies cannot own generation and transmission assets without presenting an

unacceptable risk of vertical market power.<sup>22</sup> There may be many opportunities for affiliates to act, or not to act, in a manner that inappropriately leverages the transmission asset to benefit the generation asset (or vice versa) but are exceedingly difficult to detect, particularly when critical information resides with the generation or transmission owner. In particular, ownership of downstream generation could create a perverse incentive to delay the completion of these needed transmission projects. Given the complexities of transmission siting and construction in New York, it is imperative that transmission developers have clear and unambiguous incentives to complete projects expeditiously. Incentives to abuse market power, therefore, must be minimized in the first instance because "vigilant regulatory oversight cannot timely identify and remedy all abuses..."<sup>23</sup> Additional oversight by FERC and the NYISO is inadequate to overcome this risk because the effectiveness of such oversight is uncertain.<sup>24</sup>

The VMP Policy Statement established a rebuttable presumption which assumes that inappropriate vertical market power will exist when affiliated entities own generation and transmission in the NYISO market. Significantly, although the Commission specified certain measures that may be considered to mitigate this risk and overcome the presumption, the Commission held that the risk of vertical market power abuse should be avoided unless the underlying transaction would provide substantial ratepayer benefits and demonstrable efficiency gains

---

<sup>22</sup> Cases 96-E-0900 et al., Orange & Rockland Utilities, Inc., Statement of Policy Regarding Vertical Market Power (issued July 17, 1998) (VMP Policy Statement).

<sup>23</sup> Id. at App. I, p. 1.

<sup>24</sup> VMP Policy Statement at 3-4.



accompanied by adequate mitigation procedures that “neutralize” profit-maximizing incentives.<sup>25</sup>

This policy formed the basis for requiring fully-regulated utilities engaged in the transmission of electric energy to divest generation from their organizational structure. In Case 06-M-0878, for instance, the Commission conditioned a merger that included a transfer of generation ownership interests from KeySpan to National Grid PLC (National Grid) on divestiture of the Ravenswood facility.<sup>26</sup> As the Commission explained, a “fundamental tenet” of the policy regarding vertical market power is that structural solutions are preferred to minimize the incentives to abuse market power.<sup>27</sup> Consistent with the VMP Policy Statement, actual divestiture was the preferred structural solution because it minimizes the risk of market power abuse to an extent that could not otherwise be accomplished by regulatory oversight.<sup>28</sup> Consequently, the Commission’s approval of the proposed merger was conditioned on the sale and transfer of ownership of the Ravenswood facility within a specified period of time.<sup>29</sup>

---

<sup>25</sup> Case 06-M-0878, National Grid PLC and KeySpan Corporation, Abbreviated Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (issued August 23, 2007) at 3 (Abbreviated Merger Order), and Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (issued September 17, 2007) (Merger Order).

<sup>26</sup> See generally Abbreviated Merger Order and Merger Order.

<sup>27</sup> Merger Order at 129.

<sup>28</sup> Id.

<sup>29</sup> Id. at 137.

In order to address potential VMP issues if the NYISO selects one of the NAT transmission projects, Petitioners propose several mitigation measures that they assert would address any such issues. Those proposals are inadequate, however, to overcome the market power presumption described in the Commission's VMP Policy Statement. The VMP Policy Statement explains that mitigation measures are adequate only when paired with efficiency gains or substantial ratepayer benefits. Neither condition is met here. Ratepayers will not receive substantial benefits from the sale of a merchant generation facility, and the Petition does not describe any efficiency gains that might arise from the Proposed Transactions.

It is significant, however, that the Commission previously concluded after extensive technical analysis and public process that there are existing transmission needs driven by "Public Policy Transmission Requirements" to: (i) reduce transmission congestion across the UPNY/SENY interface (the "AC Transmission Need");<sup>30</sup> and (ii) increase Western New York transmission capability in an amount sufficient to ensure that full output from the 2,700 MW Niagara hydroelectric generating facility owned and operated by the New York Power Authority may be utilized, and increase the level of imports from Ontario across the Niagara tie lines.<sup>31</sup> Pursuant to its applicable tariff, the NYISO subsequently solicited transmission project proposals that address the identified Public Policy Transmission

---

<sup>30</sup> Cases 12-T-0502 et al., Alternating Current Transmission Upgrades, Order Finding Transmission Needs Driven By Public Policy Requirements (issued December 17, 2015) (AC Transmission Order).

<sup>31</sup> Case 14-E-0454, Proposed Public Policy Transmission Needs, Order Addressing Public Policy Requirements for Transmission Planning Purposes (issued July 20, 2015) (Western NY Transmission Order).

Requirements. The NYISO evaluated the viability and sufficiency of each proposal received, and determined that a subset of the submissions - including NAT's AC Project and Western NY Project proposals - met the criteria and will be evaluated further.

The NYISO will ultimately complete the PPTP process and select, as appropriate, the most cost-effective or efficient transmission projects that address the identified AC Transmission and Western NY Transmission Needs. Competition is a central feature of this process and is critical to ensuring that the proposals selected represent the most cost-effective or efficient projects available. Although affiliate ownership of transmission and generation assets in New York violates the long-standing policy on VMP, the NYISO has independently determined that the NAT transmission projects should be included in the limited pool of competitive proposals that remain under consideration in the PPTP processes. Accordingly, maximizing the competitive proposals available for NYISO review to address the AC Transmission and Western NY Transmission Needs, combined with the system and ratepayer benefits associated with the transmission lines to be developed under those processes, provides a sufficient basis to justify letting the NAT affiliates continue to participate in the PPTP processes if Helix Generation is willing to proceed with the Proposed Transactions after accepting the conditions described below, including that either the NAT affiliates will later timely divest themselves of the transmission projects or Helix Generation will later timely divest itself of the Ravenswood facilities. This approval is warranted, subject to the conditions described below that address the potential vertical market power issues. If the divestiture conditions are not unconditionally accepted by Helix Generation, then the petition is denied without prejudice to a later petition proposing

alternate conditions that address the vertical market power issues identified.

The Petitioners' proposed mitigation measures are inadequate to fully address the potential vertical market power concerns. However, they provide a useful starting point to mitigate the market power risks. The proposed "structural" mitigation measures are adopted as proposed. Accordingly, NAT will file with the Secretary a proposed Code of Conduct, an annual certification by its chief compliance officer that all employees have completed periodic training with respect to the Code of Conduct, and maintain a communications log that tracks all communications regarding transmission assets in New York that are held between NAT and affiliates with generation located in New York. The Code of Conduct should include, inter alia, discussion of the consequences that may be imposed if NAT or its affiliates are found to exercise market power.

If one or more of NAT's project proposals is selected, the OATT provides that the NYISO and NAT will negotiate and execute a Development Agreement. The purpose of this agreement is to increase the likelihood that the project "will be constructed and in service in time to satisfy the Public Policy Transmission Need ("Required Project In-Service Date")."<sup>32</sup> The Development Agreement states that the Required Project In-Service Date specifies the date by which the transmission project must be constructed and operating. The pro forma Development Agreement will include Critical Path Milestones that may include deadlines relative to State-jurisdictional matters such as the PSL Article VII certification process.

These Critical Path Milestones are necessary to mitigate the risk of vertical market power that may be difficult

---

<sup>32</sup> Development Agreement, Recitals.

to detect through regulatory oversight alone. The PSL Article VII certification process, for instance, may present a developer with "opportunities for VMP that could be exercised in ways that would be hard or impossible to detect."<sup>33</sup> The Commission explained in the VMP Policy Statement that such opportunities must be eliminated. The Critical Path Milestones, combined with the structural mitigation measures proposed by Petitioners and additional conditions adopted herein, would moderate but not eliminate the market power risk to a level that would be tolerable while the transmission line is sited and constructed.

Petitioners recognize that the proposed structural and schedule mitigation measures may be inadequate to satisfy the Commission's vertical market power concerns. In that event, Petitioners propose that NAT have the option to pursue its choice of actual or virtual divestiture. Although the structural and schedule mitigation measures adopted herein are sufficient to justify a limited exception to the VMP policy while the transmission line is sited and constructed, actual divestiture is the only mitigation measure that is adequate to eliminate VMP risks over the long-term. Several factors compel this finding.

The useful life of a transmission line is measured in decades, and there are multiple options for Helix Generation to extend the useful life of the Ravenswood facility. The transmission system will change over time as a result of new lines and upgraded or retired equipment, while the distribution system will also change in response to various factors, such as the "Reforming the Energy Vision" initiative. Under these circumstances, it would be exceedingly difficult to anticipate, monitor, and guard against all possible opportunities for market

---

<sup>33</sup> VMP Policy Statement at 134.

power over a period of decades. Actual divestiture, therefore, is the only mitigation measure that can eliminate vertical market power risks over the long-term. Virtual divestiture is inadequate because it would be hard or impossible to guard against subtle, anticompetitive actions or inactions among affiliated interests.

Consequently, the following conditions will apply to the Proposed Transactions:

1. If NAT receives a PPTP award from the NYISO and does not file a complete PSL Article VII application for the transmission project with the Secretary within nine months of the Project Award Date, i.e., the day on which its transmission project is selected by the NYISO, Helix Generation must commence a process to physically divest, by sale, all direct and indirect interests held in the Ravenswood facility located in New York including, but not limited to, Ravenswood LLC. Divestiture of these generation interests must be completed on or before the original Required Project In-Service Date for the transmission project, regardless of any extensions that may be made to that date by the NYISO.

2. If NAT receives a PPTP award from the NYISO, and if on or before the date twelve months prior to the original Required Project In-Service Date for the transmission project, NAT has not filed with the Secretary a contract for sale of all interests in the transmission project with a contract provision that specifies that the transfer will be consummated no later than one month after the original Required Project In-Service Date regardless of any extensions that may be made to that date by the NYISO, Helix Generation must commence a process to physically divest, by sale, all direct and indirect interests held in the Ravenswood facility located in New York including, but not limited to, Ravenswood LLC. Divestiture of these

generation interests must be completed on or before the original Required Project In-Service Date for the transmission project regardless of any extensions that may be made to that date by the NYISO.

3. If NAT receives a PPTP award from the NYISO, within 60 days of the Project Award Date or prior to NAT executing the Development Agreement, whichever occurs first, Helix Generation shall deliver to the Department of Public Service Director of Administration for each such award a separate letter of credit in the amount of \$24 million in a form that is pre-accepted by the General Counsel of the Department of Public Service before it is issued by a banking institution with draw-down offices in the State of New York.

4. If Helix Generation fails to physically divest, by sale, all direct and indirect interests held in the Ravenswood facility located in New York including, but not limited to, Ravenswood LLC on or before the original Required Project In-Service Date for the transmission project as contemplated in Paragraph 1 above, then \$2 million will be drawn from the forfeiture letter of credit each month until divestiture occurs. After each drawing, Helix Generation will have 14 calendar days to amend the forfeiture letter of credit to increase its overall value by the amount drawn to replenish the balance of funds available to be drawn back to \$24 million. If not replenished, the balance of the credit will be due and payable, and will be withdrawn, while the obligation to restore the forfeiture letter of credit to full value (i.e., \$24 million) will remain in full force and effect. Helix Generation thus will be under a continuing obligation to divest its interests in the Ravenswood facility, subject to a monthly withdrawal of \$2 million from a forfeiture letter of credit that must be replenished within the specified period.

5. If Helix Generation fails to physically divest, by sale, all direct and indirect interests held in the Ravenswood facility located in New York including, but not limited to, Ravenswood LLC on or before the original Required Project In-Service Date for the transmission project as contemplated in Paragraph 2 above, then \$2 million will be drawn from the forfeiture letter of credit each month until divestiture occurs. After each drawing, Helix Generation will have 14 calendar days to amend the forfeiture letter of credit to increase its overall value by the amount drawn to replenish the balance of funds available to be drawn back to \$24 million. If not replenished, the balance of the credit will be due and payable, and will be withdrawn, while the obligation to restore the forfeiture letter of credit to full value (i.e., \$24 million) will remain in full force and effect. Helix Generation thus will be under a continuing obligation to divest its interests in the Ravenswood facility, subject to a monthly withdrawal of \$2 million from a forfeiture letter of credit that must be replenished within the specified period.

6. If NAT fails to physically divest, by sale, all interests in the transmission project no later than one month after the original Required Project In-Service Date as contemplated in Paragraph 2 above and the contract described therein, then \$2 million will be drawn from the forfeiture letter of credit each month until divestiture occurs. After each drawing, Helix Generation will have 14 calendar days to amend the forfeiture letter of credit to increase its overall value by the amount drawn to replenish the balance of funds available to be drawn back to \$24 million. If not replenished, the balance of the credit will be due and payable, and will be withdrawn, while the obligation to restore the forfeiture letter of credit to full value (i.e., \$24 million) will remain in full



force and effect. Helix Generation thus will be under a continuing obligation of forfeiture until its affiliate divests its interests in the transmission project, subject to a monthly withdrawal of \$2 million from a forfeiture letter of credit that must be replenished within the specified period.

7. If the forfeiture provisions prove ineffective at inducing the intended performance, or if Helix Generation fails to replenish the letter of credit, the Commission reserves the right to enforce this order or institute additional orders. The Petitioners are on notice that the failure to abide by a Commission order is a violation that will subject Petitioners to a penalty action under PSL §25(2). Pursuant to this law, each additional day of continuing violation of a deadline will constitute a separate and distinct offense that carries a daily penalty of up to \$100,000.

8. Petitioners alternatively may elect to comply with this order and the VMP Policy Statement by divesting all interests in the Ravenswood facility, thereby avoiding the contemporaneous ownership of transmission and generation assets by affiliated companies.

9. The Petitioners, Helix Generation, Ravenswood LLC, and Ravenswood Services must submit a written statement of complete and unconditional acceptance of this order, signed and acknowledged by duly authorized officers, on or before the earlier of the close of business (4:30 pm) on Friday, April 28, 2017, or two business days before any closing of the proposed acquisitions. The statement must be filed with the Secretary of the Commission and served contemporaneously on all active parties in this proceeding. Department of Public Service Staff will review the statement and determine whether they are sufficient to satisfy the conditions specified in this order. The decisions and findings with respect to the proposed

acquisitions are contingent on the filing of such acceptance, or else the petition is denied.

Subject to acceptance of the conditions described above, the Commission finds that the transfers of indirect, upstream interests in Ravenswood LLC and Ravenswood Services are in the public interest, and approves the Proposed Transactions.

Proposed Financing

Approval of the proposed financing is appropriate under lightened regulation. Petitioners correctly note that the scrutiny applicable to monopoly utilities may be reduced for lightly-regulated companies like Ravenswood LLC and Ravenswood Services. As a result, the Commission need not make an in-depth analysis of the proposed financing transactions. Instead, by relying on the representations Petitioners make in their filing, prompt regulatory action is possible.

The proposed financing appears to be for a statutory purpose and does not appear contrary to the public interest. It is therefore approved up to a maximum amount of \$2.5 billion in bank debt, bonds, and other credit arrangements. Given that Ravenswood LLC and Ravenswood Services are subject to lightened regulation, they are afforded the flexibility to modify, without Commission prior approval, the identity of the financing entities, payment terms, and amount financed under the transactions, up to the \$2.5 billion limit.<sup>34</sup> Affording it this flexibility avoids disruption of the financing arrangements and enables Petitioners to operate more effectively in competitive wholesale electric markets, thereby promoting the efficient development of these markets. Captive New York ratepayers

---

<sup>34</sup> See, e.g., Roseton Financing Order; 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).

cannot be harmed by the terms of this financing because Ravenswood LLC and Ravenswood Services bear all the financial risk associated with this financial arrangement.

Electric and Steam Corporation Regulation

Petitioners explained that Unit 40 Sublessor currently holds a passive interest in Ravenswood facility Unit 40. This passive interest, Petitioners averred, does not include any operating or managerial control over any part of the Ravenswood facility, the associated steam facilities, or any other ancillary or related equipment and facilities. Petitioners explain further that Unit 40 Sublessor would not acquire any such operating or managerial control when the Proposed Transactions have been consummated, and the planned financing completed.

Petitioners have demonstrated that Unit 40 Sublessor lacks the ability to direct either Ravenswood LLC or Ravenswood Services in their operation and management of the generating facility and associated steam plant, and does not possess the authority to influence Ravenswood's participation in competitive markets. As a result, Unit 40 Sublessor will not own or control electric or steam plant as defined in PSL §2(12) 2(21) and, therefore, will not become either an electric corporation pursuant to PSL §2(13), or a steam corporation pursuant to PSL §2(22).<sup>35</sup>

Intra-Corporate Reorganization

In reviewing proposed intra-corporate reorganizations, the Commission has determined that certain transactions do not require review under PSL §70 because they do not affect the

---

<sup>35</sup> See Case 15-E-0243, Cross-Sound Cable Company, LLC et al., Order Approving a Transfer Transaction and a Financing and Making Other Findings (issued August 17, 2015); see also Noble Altona Ruling.

ultimate ownership of the operating company and its jurisdictional facilities. In particular, the Commission has found that “[i]nserting a holding company into an ownership structure upstream from lightly-regulated entities that operate electric plant does not amount to a transfer under PSL §70 because there is no change in the identity of the ultimate ownership.”<sup>36</sup>

The proposed Conversion would transform the legal status of an existing company within the Helix Generation corporate structure. It would not change the identity of the ultimate ownership or change the proportionate shares held by ownership, nor would it even remove the company from the existing corporate structure. The Conversion, therefore, falls within this precedent and does not require further review under PSL §70.

Petitioners report that Helix Holdings, Helix Funding, and Ravenswood Holdings would be inserted between Helix Generation and the Ravenswood Companies to effectuate the Proposed Transactions. Whether these companies are formed at or before closing on the Proposed Transactions, they will form part of the corporate structure that will absorb the Ravenswood Companies. The intra-corporate restructuring effectuated by the addition of Helix Holdings, Helix Funding, and Ravenswood Holdings as subsidiaries of Helix Generation thus falls outside of this precedent and does not require further regulatory review.

#### Lightened and Incidental Regulation

After the Proposed Transactions are completed, the lightened regulatory regime applied to Ravenswood LLC, and the

---

<sup>36</sup> Case 07-E-0584, NRG Energy, Inc., Declaratory Ruling on Review of an Intra-corporate Transaction (issued July 23, 2007) at 3-4 (NRG Ruling).

lightened and incidental regulatory regimes applied to Ravenswood Services, will be continued. Petitioners are reminded that, under lightened electric corporation regulation, they will remain subject to the PSL with respect to matters such as annual reporting,<sup>37</sup> enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed in prior orders.<sup>38</sup> Included among those requirements are the obligations to give notice of generation retirements,<sup>39</sup> to report personal injury accidents pursuant to 16 NYCRR Part 125 and, where applicable, to conduct tests for stray voltage on all publicly accessible electric facilities.<sup>40</sup> PSL §§110(1) and (2), which provide for Commission jurisdiction over affiliated interests, will apply immediately if Petitioners and/or any affiliate or subsidiary thereof, will market electric energy to retail customers in New York after the Proposed Transactions are complete.

Ravenswood Services will remain subject to the lightened and incidental regulations applicable to it as a steam

---

<sup>37</sup> Pursuant to the Order Adopting Annual Reporting Requirements Under Lightened Ratemaking Regulation, issued January 23, 2013 in Case 11-M-0294, the owners of lightly-regulated generation facilities are required to file Annual Reports.

<sup>38</sup> Case 08-M-0436, KeySpan-Ravenswood LLC et al. Joint Petition, Order Approving Transfer and Making Other Findings (issued August 21, 2008).

<sup>39</sup> Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

<sup>40</sup> See 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).

corporation, as described in prior orders.<sup>41</sup> Petitioners are reminded that Ravenswood Services remains 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 4A, to the extent discussed in prior orders, and consistent with its types of interests in steam plant.<sup>42</sup>

#### CONCLUSION

As discussed herein, the Proposed Transactions are approved, subject to the unconditional acceptance of certain conditions by the Petitioners, or else the petition is denied. The proposed financing is approved pursuant to PSL §§69 and 82. The Petitioners have demonstrated that the proposed Intra-Corporate Restructuring will not require further review under PSL §70. The Proposed Transactions, when consummated, will not subject Unit 40 Sublessor to regulation as an electric or steam corporation, and that the incidental and lightened regulatory regimes currently applied to Ravenswood LLC and Ravenswood Services will continue after the Proposed Transactions are consummated.

---

<sup>41</sup> See, e.g., Case 04-M-0388, Eastman Kodak Company, Order Granting Certificates of Public Convenience and Necessity and Providing for Lightened Regulation and Incidental Regulation (issued August 2, 2004). Case 96-E-0897, Consolidated Edison Company of New York, Inc., Comprehensive Order Approving Transfer of Generating Facilities and Making Other Findings (issued June 17, 1999).

<sup>42</sup> Case 00-M-2231, Indeck-Olean L.P. - Steam Regulation, Order Providing for Lightened Regulation and Granting a Certificate of Public Convenience and Necessity to Produce and Deliver Steam (issued May 2, 2001).

It is ordered:

1. The transfers of ownership interests in TC Ravenswood, LLC and TC Ravenswood Services Corp., the direct owners of electric and steam plant, respectively, located in Queens, New York, from TransCanada Facility USA, Inc. to Helix Generation, LLC (Helix Generation) are approved subject to the unconditional acceptance of certain conditions stated herein by the Petitioners, or else the petition is denied.

2. If North America Transmission Corporation and North America Transmission LLC (collectively, NAT) receive a Public Policy Transmission Project (PPTP) award from the New York Independent System Operator (NYISO) and do not file a complete PSL Article VII application for the transmission project with the Secretary within nine months of the Project Award Date, i.e., the day on which its transmission project is selected by the NYISO, Helix Generation must commence a process to physically divest, by sale, all direct and indirect interests held in the Ravenswood facility located in New York including, but not limited to, Ravenswood LLC. Divestiture of these generation interests must be completed on or before the original Required Project In-Service Date for the transmission project regardless of any extensions that may be made to that date by the NYISO.

3. If NAT receives a PPTP award from the NYISO, and if on or before the date twelve months prior to the original Required Project In-Service Date for the transmission project, NAT has not filed with the Secretary a contract for sale of all interests in the transmission project with a contract provision that specifies that the transfer will be consummated no later than one month after the original Required Project In-Service Date regardless of any extensions that may be made to that date by the NYISO, Helix Generation must commence a process to

physically divest, by sale, all direct and indirect interests held in the Ravenswood facility located in New York including, but not limited to, Ravenswood LLC. Divestiture of these generation interests must be completed on or before the original Required Project In-Service Date for the transmission project regardless of any extensions that may be made to that date by the NYISO.

4. If NAT receives a PPTP award from the NYISO, within 60 days of the Project Award Date or prior to NAT executing the Development Agreement, whichever occurs first, Helix Generation shall deliver to the Department of Public Service Director of Administration for each such award a separate letter of credit in the amount of \$24 million in a form that is pre-accepted by the General Counsel of the Department of Public Service before it is issued by a banking institution with draw-down offices in the State of New York.

5. If Helix Generation fails to physically divest, by sale, all direct and indirect interests held in the Ravenswood facility located in New York including, but not limited to, Ravenswood LLC on or before the original Required Project In-Service Date for the transmission project as contemplated in Ordering Clause 2 above, then \$2 million will be drawn from the forfeiture letter of credit each month until divestiture occurs. After each drawing, Helix Generation will have 14 calendar days to amend the forfeiture letter of credit to increase its overall value by the amount drawn to replenish the balance of funds available to be drawn back to \$24 million. If not replenished, the balance of the credit will be due and payable, and will be withdrawn, while the obligation to restore the forfeiture letter of credit to full value (i.e., \$24 million) will remain in full force and effect. Helix Generation thus will be under a continuing obligation to divest its interests in the Ravenswood



facility, subject to a monthly withdrawal of \$2 million from a forfeiture letter of credit that must be replenished within the specified period.

6. If Helix Generation fails to physically divest, by sale, all direct and indirect interests held in the Ravenswood facility located in New York including, but not limited to, Ravenswood LLC on or before the original Required Project In-Service Date for the transmission project as contemplated in Ordering Clause 3 above, then \$2 million will be drawn from the forfeiture letter of credit each month until divestiture occurs. After each drawing, Helix Generation will have 14 calendar days to amend the forfeiture letter of credit to increase its overall value by the amount drawn to replenish the balance of funds available to be drawn back to \$24 million. If not replenished, the balance of the credit will be due and payable, and will be withdrawn, while the obligation to restore the forfeiture letter of credit to full value (i.e., \$24 million) will remain in full force and effect. Helix Generation thus will be under a continuing obligation to divest its interests in the Ravenswood facility, subject to a monthly withdrawal of \$2 million from a forfeiture letter of credit that must be replenished within the specified period.

7. If NAT fails to physically divest, by sale, all interests in the transmission project no later than one month after the original Required Project In-Service Date as contemplated in Ordering Clause 3 above and the contract described therein, then \$2 million will be drawn from the forfeiture letter of credit each month until divestiture occurs. After each drawing, Helix Generation will have 14 calendar days to amend the forfeiture letter of credit to increase its overall value by the amount drawn to replenish the balance of funds available to be drawn back to \$24 million. If not replenished,

the balance of the credit will be due and payable, and will be withdrawn, while the obligation to restore the forfeiture letter of credit to full value (i.e., \$24 million) will remain in full force and effect. Helix Generation thus will be under a continuing obligation of forfeiture until its affiliate divests its interests in the transmission project, subject to a monthly withdrawal of \$2 million from a forfeiture letter of credit that must be replenished within the specified period.

8. If the forfeiture provisions prove ineffective at inducing the intended performance, or if Helix Generation fails to replenish the letter of credit, the Commission reserves the right to enforce this order or institute additional orders. The Petitioners are on notice that the failure to abide by a Commission order is a violation that will subject Petitioners to a penalty action under PSL §25(2). Pursuant to this law, each additional day of continuing violation of a deadline will constitute a separate and distinct offense that carries a daily penalty of up to \$100,000.

9. Petitioners alternatively may elect to comply with this order and the VMP Policy Statement by divesting all interests in the Ravenswood facility, thereby avoiding the contemporaneous ownership of transmission and generation assets by affiliated companies.

10. The Petitioners, Helix Generation, LLC, TC Ravenswood, LLC, and TC Ravenswood Services Corp. must submit a written statement of complete and unconditional acceptance of this order, signed and acknowledged by duly authorized officers, on or before the earlier of the close of business (4:30 pm) on Friday, April 28, 2017, or two business days before any closing of the proposed acquisitions. The statement must be filed with the Secretary of the Commission and served contemporaneously on all active parties in this proceeding. Department of Public

Service Staff will review the statement and determine whether they are sufficient to satisfy the conditions specified in this order. These decisions and findings with respect to the proposed acquisitions are contingent on the filing of such acceptance, or else the petition is denied.

11. The affiliates Helix Generation, LLC, North America Transmission Corporation, and North America Transmission, LLC may not hold interests in both generation and transmission assets located in New York longer than one month after the original Required Project In-Service Date of any new transmission facilities.

12. The financing arrangements described in the Petition filed in this proceeding and discussed in the body of this Order shall be approved, up to a maximum amount of \$2.5 billion, subject to the discussion in the body of this Order.

13. No further review will be conducted of the proposed conversion of TC Ravenswood Services Corporation from a transportation corporation to a limited liability company because it is an intra-corporate reorganization that does not effectuate a change in the ultimate ownership, or proportionate shares held by ownership, of TC Ravenswood, LLC or TC Ravenswood Services Corp.

14. Unit 40 Sublessor, LLC will continue to not be deemed an electric or steam corporation under the Public Service Law because it holds only a passive, financial interest in the Ravenswood facility and its associated steam equipment, and does not possess the authority to influence its operation, management, or participation in competitive markets.

15. The lightened regulatory regime previously granted TC Ravenswood, LLC as an electric corporation will be continued because the transactions described herein will not impact the operation, management, or wholesale market participation of the

electric generating facility, or otherwise present changed circumstances that warrant a change in its regulatory treatment.

16. The lightened and incidental regulatory regimes previously granted TC Ravenswood Services Corp. as a steam corporation will be continued because the transactions described herein do not present changed circumstances that warrant a change in its regulatory treatment.

17. All deadlines discussed in the body of this order may be extended only by order of the Commission.

18. This proceeding is continued.

(SIGNED)

---

Commissioner