

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
New York on February 23, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Gregg C. Sayre  
Diane X. Burman

CASE 15-E-0580 - Joint Verified Petition of Upstate New York  
Power Producers, Inc.; Cayuga Operating  
Company, LLC; Somerset Operating Company, LLC;  
and Riesling Power LLC for Expedited Approval  
Pursuant to Section 70 of the New York State  
Public Service Law and Related Approvals.

ORDER APPROVING TRANSFER

(Issued and Effective February 25, 2016)

BY THE COMMISSION:

BACKGROUND

In a Verified Petition filed on September 28, 2015,  
Upstate New York Power Producers, Inc. (USNYPP), Cayuga  
Operating Company, LLC (Cayuga), Somerset Operating Company, LLC  
(Somerset), and Riesling Power, LLC (Riesling; collectively, the  
Petitioners) describe a proposed transfer of all ownership  
interests in Cayuga and Somerset from USNYPP to Riesling.  
Cayuga owns a 312 MW electric generating facility located in  
Lansing, New York (the Cayuga Facility). Somerset owns a 668 MW  
electric generating facility located in Somerset, New York (the  
Somerset Facility). The Proposed Transfer, if consummated,  
would result in Riesling acquiring the indirect ownership of the  
Cayuga and Somerset Facilities. The Petitioners request  
Commission approval of the Proposed Transfer pursuant to Public

Service Law (PSL) §70.<sup>1</sup> Both Cayuga and Somerset are lightly regulated with respect to their ownership and operation of these facilities.<sup>2</sup> Accordingly, Petitioners also request that the lightened regulatory regimes be maintained when Riesling acquires Cayuga and Somerset.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on October 21, 2015 [SAPA No. 15-E-0580SP1]. The time for submission of comments pursuant to the Notice expired on December 5, 2015. Comments were timely filed by the Sierra Club. On December 15, 2015, the Petitioners submitted a Joint Response to the Sierra Club's comments, requesting that it be considered because it would contribute to a full and complete record in this proceeding.

THE PETITION

Cayuga and Somerset currently are wholly-owned subsidiaries of USNYPP that own and operate the Cayuga Facility and Somerset Facility, respectively, subject to lightened regulation. The Proposed Transfer, if approved by the

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<sup>1</sup> The Federal Energy Regulatory Commission recently approved the transaction described in the Petition. (Docket No. EC15-214-000, Upstate New York Power Producers, Inc., Cayuga Operating Company, LLC, Somerset Operating Company, LLC, Order Authorizing Disposition of Jurisdictional Facilities (issued January 13, 2016)).

<sup>2</sup> Case 12-E-0174, AES Eastern Energy, LP, AES Somerset, LLC, AES Cayuga, LLC and Somerset Cayuga Holding Company, Inc., Order Approving Transfer and a Financing (issued June 29, 2012) (the USNYPP Transfer Order); Case 99-E-0148, AES Eastern Energy, LP and AES Creative Resources LP Petition for Lightened Regulation, Order Providing for Lightened Regulation (issued April 23, 1999).

Commission, would enable USNYPP to convey its ownership interests in Cayuga and Somerset to Riesling. The Petition describes the two operating companies and their respective generation facilities, as well as the company that would acquire them.

Cayuga

Cayuga is an exempt wholesale generator (EWG) authorized by the Federal Energy Regulatory Commission (FERC) to sell energy, capacity, and ancillary services at market-based rates in the wholesale market. The Cayuga Facility is a coal-fired plant that consists of two generating units with a combined summer rating of 312 MW. It is interconnected to the electric transmission system owned by New York State Electric & Gas Corporation (NYSEG). Petitioners assert that Cayuga does not own or operate, directly or indirectly, any generation or transmission facility in the New York Control Area (NYCA) other than the Cayuga Facility.

Petitioners explain that Cayuga filed a Notice of Intent to Retire the facility by January 6, 2013.<sup>3</sup> A reliability study directed by the Commission subsequently identified a system reliability need for the continued operation of both units of the Cayuga Facility. Consequently, NYSEG and Cayuga negotiated and executed a Reliability Support Services Agreement (RSSA) that would sustain facility operations for a one-year period. The Commission approved the proposed RSSA.<sup>4</sup> Following a competitive solicitation for RSSA alternatives to address the identified reliability need, NYSEG identified the Cayuga

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<sup>3</sup> Case 12-E-0400, Cayuga Mothball Petition, Notice of Intent to Mothball Cayuga Units 1 and 2 (July 20, 2012) (Cayuga Retirement Notice).

<sup>4</sup> Case 12-E-0400, supra, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery (issued December 17, 2012).

Facility as the preferred option. The Commission approved a negotiated extension of the RSSA.<sup>5</sup> As amended, the RSSA will expire on June 30, 2017. Petitioners explain that Cayuga is seeking NYSEG's consent to assign to Riesling its rights and obligations under the amended RSSA.

Somerset

The Somerset facility is a coal-fired electric generating plant with a summer rating of 668 MW that is interconnected to NYSEG's electric transmission system. Petitioners explain that Somerset also is an EWG authorized by FERC to sell energy, capacity, and ancillary services at market-based rates in the wholesale market. Petitioners assert that Somerset does not own or operate, directly or indirectly, any generation or transmission facility in the NYCA other than the Somerset Facility and the plant required for its interconnection to the NYSEG system.

Riesling and Bicent Power

According to the Petition, Riesling is a wholly-owned subsidiary of Bicent Power LLC (Bicent Power), which is affiliated with entities that own and operate approximately 487 MW of generation throughout the United States. Petitioners assert that neither Bicent Power nor Riesling currently own or operate any generating facility in New York. Bicent Power owns and operates an 85 MW generating facility in the market administered by ISO New England, Inc. (ISO-NE), but neither Bicent Power nor Riesling own or operate any such facility in the market administered by PJM Interconnection, LLC (PJM). Petitioners explain that Bicent Power wholly owns Colorado Energy Management, LLC (CEM), which provides operations and

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<sup>5</sup> Case 12-E-0040, supra, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery (issued January 16, 2014).

maintenance (O&M) services to the power generating industry. Petitioners assert that Cayuga and Somerset would retain all plant-level employees at their respective facilities if the Proposed Transfer is consummated, but CEM would assume responsibility for operating and maintaining both Facilities.

Investment funds associated with GSO Capital Partners LP (GSO), Petitioners continue, own approximately 96.5 percent of the equity in Bicent Power. According to the Petition, GSO is the credit-oriented business of The Blackstone Group LP and is affiliated with approximately 1,283 MW of generation facilities located in the market administered by the Electric Reliability Council of Texas, Inc. GSO, however, is not affiliated with any generation capacity located in markets administered by the New York Independent System Operator, Inc. (NYISO), ISO-NE, or PJM.

According to the Petition, GSO is affiliated with two wholesale power marketers that neither do business in New York nor own or control any electric generation or transmission assets, or essential inputs to electricity products or generation, in New York. GSO, however, is affiliated with Champlain Hudson Power Express, Inc. (CHPE),<sup>6</sup> which the Commission previously authorized to construct, operate, and maintain a 1,000 MW high voltage direct current (HVDC) underground transmission line that would extend from a converter station located in Canada to a converter station located in New York City. GSO also is affiliated with Champlain VT, LLC d/b/a TDI New England (TDI New England), which is developing a similar

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<sup>6</sup> Case 10-T-0139, Champlain Hudson Power Express Article VII Application, Order Granting Certificate of Environmental Compatibility and Public Need (issued April 18, 2013). CHPE has not commenced construction of the proposed transmission line.

HVDC line in Vermont. Both lines, if constructed, would be operated on a merchant basis.

Proposed Transfer

As proposed, Riesling would acquire from USNYPP 100 percent of the equity ownership interests in Cayuga and Somerset. Accordingly, when the Proposed Transfer is consummated, Cayuga and Somerset would become wholly-owned subsidiaries of Riesling. The Petitioners assert that Riesling has the experience and capitalization necessary to operate the Cayuga and Somerset Facilities, generally, and to assume and satisfy obligations arising from the RSSA under which the Cayuga Facility currently is operated. The Petitioners maintain that the two plants will continue to be operated in a safe and reliable manner.

The Petitioners believe approval of the Proposed Transaction is appropriate when viewed with the reduced level of scrutiny applied to review of the transfer of generation assets operating in competitive markets. There is no reason, the Petitioners contend, to expand the scope of review beyond that usually applied to such transactions. As a result, the Petitioners maintain that approval is in the public interest and warranted because the transaction will not create market power and the owner is capable of operating the generation facilities.

The Petitioners assert that the Proposed Transfer would have no impact on the potential exercise of horizontal market power. They note that the facilities in issue have an aggregate capacity of approximately 980 MW, and neither Riesling nor its affiliates own or control any other generation assets in the NYISO market, which has an aggregate capacity of approximately 45,000 MW.

The Petitioners further assert that the Proposed Transfer would not enable the potential exercise of vertical

market power. According to the Petitioners, Riesling neither owns nor controls existing electric delivery facilities in New York, and it does not have "substantial influence" over the material inputs needed to support electric generation.

As to transmission facilities, the Petitioners assert that Riesling and its affiliates have control only over the transmission assets needed to interconnect generation facilities to the grid. The Petitioners explain further that neither the CHPE nor the TDI New England HVDC transmission projects have been constructed. If they do commence operations, both lines would be under the operational control of an independent system operator subject to FERC regulation, thereby limiting their value as market power tools. Moreover, as currently certificated, the CHPE project would transmit energy from a converter station located outside Quebec, Canada, to a converter station located in New York City. The Cayuga and Somerset Facilities are remote from the injection point in Canada and thus would be unable to transmit electricity over the CHPE line. The Petitioners assert that the foregoing supports a finding that Riesling does not own or control transmission for purposes of the vertical market power analysis.

Riesling is affiliated with two power marketers. The Petitioners maintain, however, that those relationships do not raise vertical market power concerns because neither entity conducts business in New York. They also note that, pursuant to Commission precedent, potential market power concerns presented by power marketer affiliations may be addressed through application of PSL §§110(1) and (2).

According to the Petition, captive ratepayers would not be harmed by the Proposed Transaction, if it is approved. The Petitioners explain that neither Riesling nor its affiliates have cost-based rates that are charged to captive ratepayers.

All sales of energy, capacity, and ancillary services from the Facilities are and would continue to be made at market-based rates. Consequently, there purportedly would be no ratepayer impact if the Proposed Transfer is approved and consummated.

Finally, the Petitioners request that the lightened regulatory regime previously granted to Cayuga and Somerset relative to the ownership and operation of their respective generation facilities be continued if the Proposed Transfer is approved. The Petitioners maintain that the facts supporting the Commission's initial decision to approve lightened regulation for Cayuga and Somerset would remain after the Proposed Transfer is consummated. The Petitioners assert further that the Commission recently has approved similar requests for continued lightened regulation when approving other transfers of ownership interests in lightly-regulated generation facilities.

#### COMMENTS

##### Sierra Club

Sierra Club advanced two arguments in its comments. Initially, it notes that the Cayuga Facility currently is operating subject to an RSSA that will expire in June, 2017, and Cayuga has proposed that the reliability need underlying that agreement be addressed by repowering the Cayuga Facility pursuant to a customer-funded contract that would support refueling the Facility to run on natural gas. According to Sierra Club, the Commission should direct Riesling to state whether it intends to pursue a customer-subsidized repowering agreement or if the Cayuga Facility will be deactivated when the RSSA expires in recognition of transmission alternatives implemented as its replacement. Sierra Club argues further that Riesling also should be required to state whether the Cayuga



Facility will continue operating in the absence of the transmission alternatives and a subsidized repowering agreement. According to Sierra Club, an affirmative response would indicate that the Cayuga Facility is economic to operate, and the existing RSSA unnecessary. Sierra Club argues that the Commission should require the proposed clarifications to ensure that its resolution of the Petition satisfies the statutory obligation that electric rates are just and reasonable.

The Sierra Club also maintains that the Cayuga and Somerset Facilities will not be safely and adequately operated post-transfer, as claimed in the Petition. In support of this contention, Sierra Club claims that neither Facility is optimizing its use of installed emissions controls. Sierra Club further contends that the site of the Cayuga Facility is contaminated with coal ash, and that such contamination is continuing in nature and could impact adjacent water bodies. Finally, Sierra Club argues that, based on its analysis of sulfur dioxide emissions from the Cayuga Facility, that plant has exceeded established limits during the past four years. Sierra Club argues that the Facilities cannot be safely and adequately operated unless these alleged deficiencies are remedied. It thus recommends that the Commission condition any order approving the proposed transfer on Petitioners engaging with the New York Department of Environmental Conservation (DEC) to address the purported violations.

Finally, Sierra Club recommends that the Commission direct NYSEG and the NYISO to investigate whether the potential retirement of the Somerset Facility would raise any system reliability issues. If so, potential solutions to any identified reliability need should be developed.

Petitioners' Joint Response<sup>7</sup>

In their Joint Response, the Petitioners note initially that the Sierra Club recommends certain conditions on an Order approving the Proposed Transfer, but does not affirmatively oppose the Petition. As to the substance of Sierra Club's concerns, the Petitioners argue that the issues and proposals advanced by that organization are outside the scope of Commission review pursuant to PSL §70. The Petitioners explain that the review of a proposed transfer involving lightly-regulated entities examines potential market power issues and the potential impact on captive ratepayers, but does not extend either to the future operations of the subject facilities, or to their compliance with environmental standards and permits. The Petitioners note that the Commission recently rejected similar arguments advanced by the Sierra Club in regard to the Danskammer Generating Facility.<sup>8</sup>

Opposing Sierra Club's recommendation to condition approval of the Proposed Transfer on obligating Riesling to commit to certain future actions, the Petitioners argue that the Commission rejected similar proposals in the Helios Order and a similar outcome is warranted here. The Petitioners similarly opposed Sierra Club's recommendation that Riesling be compelled to describe its future business plans for the Cayuga Facility. They argue that such proposals inappropriately seek to reopen prior Commission findings regarding the need for the Cayuga RSSA, and would amount to a collateral attack on those findings.

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<sup>7</sup> The unauthorized comments will be considered because they are not prejudicial and contribute to a full and complete record in this proceeding.

<sup>8</sup> Case 14-E-0117, Lease, Sale, and Operation of the Danskammer Generating Facility, Order Approving Transfer and Making Other Findings (June 27, 2014) (Helios Order).

In their Joint Response, the Petitioners also address the environmental issues raised in the Sierra Club's comments. According to the Petitioners, those issues are outside the scope of Commission review pursuant to PSL §70 and, in any event, are subject to the jurisdiction of the DEC, not the Commission. The Petitioners note that the Commission dismissed similar arguments in the Helios Order because the potential environmental issues exceed the scope of the Commission's authority. They argue further that the Sierra Club acknowledges that the potential issues are within the DEC's jurisdiction, and will be addressed by that agency if and when necessary.

#### DISCUSSION

##### Environmental Quality Review

Under the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law and its implementing regulations (6 N.Y.C.R.R. §617 and 16 N.Y.C.R.R. §7), we must determine whether the actions we are authorized to approve may have a significant adverse impact on the environment. Other than our approval of the action proposed here, no additional state or local permits are required, so a coordinated review under SEQRA is not needed. We assumed Lead Agency status under SEQRA and conducted an environmental review.

SEQRA requires applicants to submit a complete Environmental Assessment Form (EAF) describing and disclosing the likely impacts of the actions they propose.<sup>9</sup> Petitioners submitted a narrative and short-form EAF Part 1 that substantially comply with this requirement.

The proposed action over which we have jurisdiction is the transfer of ownership interests in Cayuga and Somerset to

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<sup>9</sup> 6 N.Y.C.R.R. §617.6(a)(3).

Riesling. The proposed action does not meet the definition of Type 1 or Type 2 actions listed in 6 N.Y.C.R.R. §§617.4, 617.5 and 16 N.Y.C.R.R. §7.2, so it is classified as an "unlisted" action requiring SEQRA review. After reviewing the Petition we conclude, based on the criteria for determining significance listed in 6 N.Y.C.R.R. §617.7(c), that there will be no changes to the operation of either the Cayuga Facility or the Somerset Facility that will result in significant adverse environmental impacts. Department of Public Service Staff has completed the short-form EAF Parts 2 and 3.

The Somerset facility is located within the NYS coastal area and is a dominant industrial land use on the Lake Ontario shoreline. Pursuant to Article 42 of the New York State Executive Law, we also find that our approval of the transfer of this facility complies with, and does not conflict with, the policies and purposes of the Town of Somerset Local Waterfront Revitalization Program.

As Lead Agency, we determine that the proposed action will not have a significant adverse impact on the environment and adopt a negative declaration pursuant to SEQRA. Because no adverse environmental impacts were found, no public notice requesting comments is required or will be issued and no coordinated review was undertaken. A Notice of Determination of Significance concerning this unlisted action is attached. The completed EAF will be retained in our files.

#### The Proposed Transfer

Under PSL §70, our approval is required before an electric corporation may transfer ownership interests in electric plant. In conducting a review under §70 that pertains to a lightly-regulated electric corporation operating in wholesale electric markets, we examine any affiliations with fully-regulated New York utilities or power marketers that might

afford opportunities for the exercise of market power or pose the potential for other transactions detrimental to captive ratepayer interests.

When reviewed with the reduced scrutiny applicable under lightened ratemaking regulation, the ownership transfer proposed in the Petition is in the public interest. The transaction does not pose the potential for the exercise of horizontal market power. Standing alone or in aggregate, the Cayuga and Somerset Facilities, at 312 MW and 668 MW of capacity, respectively, are not sized at a level that would pose the potential for the exercise of market power within NYISO markets. Riesling is a new entrant into NYISO wholesale generation markets and is acquiring interests only in the Cayuga and Somerset Facilities. Accordingly, concentration in those markets will not increase as a result of the Proposed Transfer. Moreover, Riesling does not hold any existing interests in generation facilities operating in markets adjacent to New York, so there are no operations in those markets that could raise market power issues within New York.

Nor does the Proposed Transaction pose the potential for the exercise of vertical market power. Riesling itself does not exercise control over electric delivery facilities other than interconnections, or substantial influence over inputs (e.g., fuel) into the production of generation supply within New York. As a result, those avenues to the undue exercise of vertical market power are foreclosed.

GSO, a parent upstream from Riesling, is affiliated with CHPE, which the Commission previously authorized to construct and operate an HVDC transmission line that would carry renewable energy from Canada to New York City. The relationship between Riesling and GSO does not pose vertical market power concerns. CHPE has not commenced construction of the HVDC line,

and it remains uncertain when that might occur. More importantly, the project approved by the Commission has a single injection point for energy in Canada, and a single point for energy delivery in New York City. The injection point is remote from the Cayuga and Somerset Facilities. The CHPE transmission line, therefore, could not be used to accord any undue preference to Cayuga or Somerset.<sup>10</sup>

The Petitioners explain that Riesling is affiliated with two power marketers. According to the Petition, neither entity conducts business in New York. Petitioners do not assert, however, that their operations can have no effect on New York markets or will not have such an effect in the future. Potential market power concerns arising from affiliations with a power marketer, however, can be addressed through the application of PSL §§110(1) and 110(2). Given Riesling's affiliations, PSL §110(1) and (2) are imposed on it and its affiliates conditionally, to the extent necessary.

Moreover, the new owner is affiliated with experienced generation facility operators, appears sufficiently capitalized, and will continue the existing arrangements for operation of the Somerset and Cayuga facilities. The transfer transaction that the Petitioners propose is therefore approved.

After the Proposed Transaction is effectuated, lightened regulation of the Cayuga and Somerset Facilities will continue in accordance with prior Commission orders relative to those plants, including the USNYPP Transfer Order. Riesling is reminded that, under lightened regulation, the owners of the Cayuga and Somerset Facilities and the entities controlling their operations remain subject to the PSL with respect to

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<sup>10</sup> If CHPE were to petition the Commission to modify the HVDC line in the future, the Commission would re-examine market power issues as part of its review of that petition.

matters such as annual reporting,<sup>11</sup> enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed in the Light Regulation Order and other previous Orders.<sup>12</sup> Included among those requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,<sup>13</sup> to give notice of generation retirements,<sup>14</sup> and to report personal injury accidents pursuant to 16 NYCRR Part 125.

Sierra Club Issues

A. Future Operations

Sierra Club does not explicitly oppose the Proposed Transfer, but argues that the Commission should seek certain clarifications of Riesling's future business plans. The Petitioners correctly note that the clarifications proposed by Sierra Club are outside the scope of this review. The Commission denied similar proposals in the Helios Order. There, the Commission explained that the issue addressed in a §70 proceeding is approval of a transaction whereby new owners acquire an electric generating facility, "not the economic

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<sup>11</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>12</sup> See, e.g., Case 10-E-0501, CPV Valley LLC, Order Granting Certificate of Public Convenience and Necessity, Authorizing Lightened Ratemaking Regulation, and Approving Financing (issued May 9, 2014).

<sup>13</sup> 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).

<sup>14</sup> Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

actions they might or might not take as market participants thereafter."

The same reasoning applies here. Pursuant to the lightened ratemaking regulation policies that the Commission has adopted for electric generators operating in the wholesale market, its review of transfer petitions pursuant to PSL §70 typically does not extend to potential actions that the entity acquiring a generation facility may or may not take in response to a myriad of future market conditions and other factors.

Finally, an investigation into the potential impact on system reliability associated with a potential retirement of the Somerset Facility is not needed at this time. The Commission established generation notice requirements in Case 05-E-0889.<sup>15</sup> Those requirements provide that the reliability study proposed by Sierra Club would be conducted shortly after Somerset announces an intent to mothball or retire the Somerset Facility. Although utilities regularly should be examining and planning for contingencies such as generator retirements as part of their prudent system planning activities, the proposed study would be premature, given that Somerset has not filed notice of an intent to retire or mothball its plant.

B. Environmental Issues

Sierra Club raised various environmental issues that it argued should be addressed if the Commission decides to approve the Proposed Transfer. As the Petitioners correctly note, however, those issues are outside the scope of review the Commission undertakes in response to a transfer petition under PSL §70.

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<sup>15</sup> Case 05-E-0889, Policies Regarding Generation Unit Retirements, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).



Sierra Club argues that Riesling should be compelled to assure that emission controls at the Cayuga and Somerset Facilities will be properly and consistently maintained and operated. As to the purported deficiencies regarding coal ash disposal and sulfur dioxide emissions, Sierra Club requests that the Commission require Riesling to "work with DEC" to remedy the alleged deficiencies.

The Petitioners, however, correctly note that these concerns are outside the scope of Commission jurisdiction and review. The issues that Sierra Club identifies instead are subject to DEC jurisdiction and oversight. The Cayuga and Somerset Facilities presumably operate under air permits issued by the DEC that specify the emissions standards that Cayuga and Somerset must satisfy, as well as the emissions controls that must be installed at each Facility. As to Cayuga's disposal of coal ash, it also appears subject to all requisite DEC permits and relevant DEC regulations. Allegations that Cayuga and Somerset are operating their respective Facilities in violation of those permits and/or regulations are matters for DEC to address through enforcement of those permits and regulations, which fall exclusively within the purview of DEC and outside the scope of our jurisdiction under the PSL. As the Commission recently noted in the Helios Order, it would be inappropriate to "usurp DEC's jurisdiction or make findings regarding DEC permits based on our interpretation instead of DEC's."<sup>16</sup> As a result, the environmental issues raised by Sierra Club must be brought, if at all, to DEC.

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<sup>16</sup> Helios Order at 35.

CONCLUSION

The Petitioners have satisfied all PSL and SEQRA requirements prerequisite to approval of the transaction they propose. Consequently, they may proceed with the Proposed Transfer.

The Commission orders:

1. The transfer of ownership interests in Cayuga and Somerset, as described in the Petition filed in this proceeding and in the body of this Order, is approved.

2. This proceeding is closed.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 15-E-0580 - Joint Verified Petition of Upstate New York Power Producers, Inc.; Cayuga Operating Company, LLC; Somerset Operating Company, LLC; and Riesling Power LLC for Expedited Approval Pursuant to Section 70 of the New York State Public Service Law and Related Approvals.

NOTICE OF DETERMINATION  
OF SIGNIFICANCE  
(Negative Declaration)

NOTICE IS HEREBY GIVEN that an Environmental Impact Statement will not be prepared in connection with the proposed transfer of the Somerset and Cayuga generating facilities to Riesling Power, LLC. Having completed its review of the proposed sale, staff has determined that the proposed action would not result in significant, adverse environmental impacts. The proposed sale is an Unlisted action, as defined in 6 NYCRR Part 617.2(ak) because the action does not rise to the level of a Type I action and is not listed as a Type II action by the Public Service Commission or by the Department of Environmental Conservation.

The Somerset facility is located within the NYS coastal area and is a dominant industrial land use on the Lake Ontario shoreline. Pursuant to Article 42 of the New York State Executive Law, we find that our approval of the transfer of this facility complies with, and does not conflict with, the policies and purposes of the Town of Somerset Local Waterfront Revitalization Program. Based upon our review of the petitioner's filings and the record in this case, we find that no significant adverse environmental impacts would result from the sale of these facilities and issue a negative declaration of environmental significance.

The address of the Public Service Commission, the Lead Agency for purposes of environmental quality review of this project, is Three Empire State Plaza, Albany, New York 12223-

CASE 15-E-0580

1350. For further information, please contact Vance A. Barr  
([vance.barr@dps.ny.gov](mailto:vance.barr@dps.ny.gov)) at (518) 402-4873.

KATHLEEN H. BURGESS  
Secretary