

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 17, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
James L. Larocca
Gregg C. Sayre

CASE 12-M-0491 - WPS Empire State, Inc., WPS Beaver Falls Generation LLC, WPS Syracuse Generation LLC, and Lakeside New York LLC - Petition for Expedited Approval Pursuant to Public Service Law §70 and §83 for the Proposed Transfer of Ownership Interests in WPS Beaver Falls Generation LLC and WPS Syracuse Generation LLC and Related Approvals.

ORDER APPROVING TRANSFERS

(Issued and Effective January 22, 2013)

BY THE COMMISSION:

BACKGROUND

In a petition filed on October 24, 2012, WPS Beaver Falls Generation LLC (WPS Beaver Falls), WPS Syracuse Generation LLP (WPS Syracuse), WPS Empire State, Inc. (WPS Empire) (collectively, the WPS Companies) and Lakeside New York LLC (Lakeside)(all together, the Petitioners) request approval, under Public Service Law (PSL) §70 and §83, of the transfer of all the ownership interests in WPS Beaver Falls and WPS Syracuse from WPS Empire to Lakeside. WPS Beaver Falls owns an approximately 95 MW generation facility located in Beaver Falls, New York, and also supplies steam service to two nearby retail

customers. WPS Syracuse owns an approximately 109 MW generation facility located in Solvay, New York.

In conformance with State Administrative Procedure Act (SAPA) §202(1), notice of the petition was published in the State Register on November 21, 2012. The SAPA §202(1)(a) period for submitting comments in response to the notice expired on January 7, 2013. No comments have been received.

THE PETITION

Describing the current ownership arrangements for the WPS Companies' generation facilities, the Petitioners explain that the WPS Companies are indirect subsidiaries of Integrys Energy Services, Inc., which is affiliated with a family of energy companies that operate generation facilities in the central U.S. and retail electric delivery systems in Wisconsin and Michigan. The two New York generation facilities owned by the WPS Companies, the Petitioners point out, are lightly regulated, both as wholesale electric market participants, and, in the case of WPS Beaver Falls, as a steam service provider.¹ Lakeside, the Petitioners relate, is a private equity firm that is committing capital to the profitable growth of energy companies it is acquiring in North America.

Turning to the transaction, the Petitioners report that WPS Empire will sell to Lakeside all of the existing ownership interests in WPS Beaver Falls and WPS Syracuse and their generation and steam facilities. Upon the closing of the transaction, WPS Beaver Falls and WPS Syracuse will become direct, wholly-owned subsidiaries of Lakeside.

¹ Case 02-M-0094, WPS Power Development, Inc., Order Approving Transfers, Providing For Lightened and Incidental Regulation, and Granting a Certificate of Public Convenience and Necessity (issued April 26, 2002)(Light Regulation Order).

The Petitioners maintain that the ownership transfer is in the public interest. The transaction does not raise horizontal market power concerns, they assert, because Lakeside does not currently own any generation facilities located in New York and so is a new entrant into the wholesale electric markets managed by the New York Independent System Operator, Inc. (NYISO). At 204 MW, the Petitioners elaborate, the size of the generation facility interests Lakeside will acquire amounts to about 0.5% of the capacity operating in the NYISO wholesale generation market. That amount, the Petitioners claim, is de minimis, and has previously been found below the level that would raise market power concerns.

In wholesale electric markets adjacent to New York, the Petitioners continue, Lakeside is affiliated with the owner of a 150 MW gas-fired generation facility located in the PJM Interconnection, Inc. (PJM) market. The effect of this affiliation on the exercise of horizontal market power in the combined PJM and NYISO markets, the Petitioners claim, is also de minimis.

As to vertical market power, the Petitioners emphasize that neither the WPS Companies nor Lakeside are affiliated with any owner of any generation, transmission, or distribution facilities located within New York, and do not otherwise control the operation of any such facilities. The Petitioners note that the WPS Companies are currently affiliated with an energy services company (ESCO) operating in New York, but that once the transaction is consummated, that link will be severed and Lakeside, as the new owner, will not be affiliated with any New York ESCOs or energy marketers.

The Petitioners also report that the existing steam system owned by WPS Beaver Falls will be transferred to Lakeside. The Petitioners point out that the system's two steam

customers are sophisticated business entities that are capable of protecting their own interests and can avail themselves of competitive alternatives to continuation of steam service from WPS Beaver Falls.

The Petitioners assert that Lakeside is qualified to own and operate the WPS Companies' generation and steam facilities. Lakeside's senior managers, the Petitioners explain, are professionals qualified and experienced in generation facility operations, who have grown Lakeside and its affiliates into an enterprise with a value of approximately \$1.0 billion that has the financial resources necessary to support compliance with all state and federal requirements at WPS Beaver Falls and WPS Syracuse. Lakeside, the Petitioners promise, will staff the WPS Beaver Falls and WPS Syracuse generation and steam facilities with capable personnel skilled in the operation of such electric and steam plant.

As a result, the Petitioners believe that the transfer to Lakeside of the ownership interests the WPS Companies hold in electric generation and steam facilities should be approved. They request that lightened ratemaking regulation of the facilities continue in the hands of the new owner.

DISCUSSION AND CONCLUSION

Environmental Quality Review

Under the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR §617 and 16 NYCRR §7), we must determine whether the actions we are authorized to approve may have a significant 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 will assume Lead Agency status under SEQRA and conduct an environmental review.

SEQRA requires applicants to submit a complete EAF describing and disclosing the likely impacts of the actions they propose.² The Petitioners have 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 the 95 MW WPS Beaver Falls generation facility and steam facilities, and in the 109 MW WPS Syracuse generation facility, to a new owner. The proposed action does 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 it is classified as an "unlisted" action requiring SEQRA review. After review of the petition, we conclude, 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 generation and steam facilities underlying the proposed transfer will result in adverse environmental impacts. Our Staff has completed the short-form EAF Part 2.

As Lead Agency, we determine that the proposed action will not have a significant 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. A negative declaration concerning this unlisted action is attached. The completed EAF will be retained in our files.

The Transfer

Under PSL §70(1) and §83(1), our approval is required before an electric and steam corporation may transfer ownership interests conveying control over electric and steam plant. In conducting a review under §70 and §83 that pertain to a lightly-

² 6 NYCRR §617.6(a)(3).

regulated electric corporation operating in wholesale electric markets while furnishing steam in competitive retail markets, we examine any affiliations, including those with fully-regulated New York utilities or power marketers, or any other circumstances, that might afford opportunities for the exercise of market power or pose the potential for other harm detrimental to captive ratepayer interests.

When reviewed with the reduced scrutiny applicable under lightened regulation, the ownership transfer the Petitioners propose is in the public interest. The transaction does not pose the potential for the exercise of horizontal market power. Lakeside is a new entrant into the NYISO generation market, and is acquiring only the existing market share of about 0.5% held by WPS Empire, which is de minimis in size. Consequently, ownership concentration in NYISO wholesale electric markets is not affected by the transaction. The size of Lakeside's existing generation interests in the PJM market is similarly insufficient to support the exercise of horizontal market power in New York.

The proposed transaction also does not pose the potential for the exercise of vertical market power. Lakeside does not own or control electric delivery facilities in New York (other than interconnections), or exert substantial influence over inputs, like fuel, into the production of generation supply within New York. Moreover, Lakeside is not affiliated with ESCOs or power or gas marketers.³ As a result, those avenues to the undue exercise of vertical market power are foreclosed.

The transfer does not otherwise raise the potential for harm to captive ratepayer interests. As the Petitioners

³ In the event of such an affiliation, captive ratepayer interest would be protected through application of PSL §110(1) and (2); Lakeside is advised that those statutory provisions will adhere conditionally only to the extent necessary.

point out, the two retail steam service customers of WPS Beaver Falls are sophisticated business entities capable of protecting their contractual interests, and they can also avail themselves of competitive alternatives to steam service from WPS Beaver Falls.⁴

Moreover, the new owner appears sufficiently capitalized, will retain personnel qualified to manage and operate the generation and steam facilities it is acquiring, and will continue the existing arrangements for the sale of the wholesale output from the generation facilities and the supply of retail steam service. The transfer transaction that the Petitioners propose is therefore approved as in the public interest, when reviewed with the reduced scrutiny applicable to entities participating in competitive markets under lightened ratemaking regulation.

After the transfer transaction is consummated, lightened ratemaking regulation of Lakeside, and of WPS Beaver Falls and WPS Syracuse as the respective owners of the 95 MW generation and steam facilities located in Beaver Falls and the 109 MW generation facility located in Solvay, will continue in accordance with the Light Regulation Order. Lakeside is also reminded that, under lightened regulation,⁵ the WPS Beaver Falls generation and steam facilities and the WPS Syracuse generating facility, and the entities controlling their operations, remain

⁴ Since WPS Beaver Falls itself will continue to provide the steam service, the Certificate of Public Convenience and Necessity issued to it under the Light Regulation Order will continue in effect and is not being transferred to a new owner.

⁵ The PSL 66(6) annual report requirement that pertains to lightly regulated entities is under review pursuant to the Notice Soliciting Comments issued June 3, 2011 in Case 11-M-0294; any revisions to the requirement adopted in that proceeding will adhere to WPS Beaver Falls and WPS Syracuse.

subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed in the Light Regulation Order and other previous orders.⁶ Included among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,⁷ to give notice of generation unit retirements,⁸ and to report personal injury accidents pursuant to 16 NYCRR Part 125.

The Commission orders:

1. The transfer of the ownership interests in the generation and steam facilities 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)

JEFFREY C. COHEN
Acting Secretary

⁶ See, e.g., Case 11-E-0351, Stony Creek Energy LLC, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Ratemaking Regulation and Approving Financing (issued December 15, 2011).

⁷ 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).

⁸ Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

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NOTICE OF DETERMINATION OF
NON-SIGNIFICANCE

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission of the transfer of ownership interests in by WPS Empire State, Inc. (WPS Empire) in WPS Beaver Falls Generation LLC and its 95 MW electric generation facility and steam supply facilities, and in WPS Syracuse Generation LLC and its 109 MW electric generation facility, based on our determination, in accordance with Article VIII of the Environmental Conservation Law, that such action will not have a significant adverse affect on the environment. The exercise of this approval constitutes an "unlisted" action, as is defined in 6 NYCRR §617.2(ak).

Based on our review of the record, we find that the proposed action, which will lead to the ownership and control of electric generation and steam supply facilities by Lakeside New York LLC instead of by WPS Empire, will not have a significant adverse environmental impact. A change in the identity of the owner of by the generation and steam plant will not otherwise cause any physical alterations to the generation or steam plant or their surroundings.

The address of the Public Service Commission, the Lead Agency for the purposes of the environmental quality review of

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this project, is Three Empire State Plaza, Albany, New York
12223-1350. Questions may be directed to Leonard Van Ryn at
(518) 473-7136 or at the address above.

JEFFREY C. COHEN
Acting Secretary