

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 15, 2010

COMMISSIONER PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

CASE 10-E-0042 - Petition of AES ES Westover, LLC for Declaratory Ruling and, in the Alternative, Application for Certificate of Public Convenience and Necessity and Petition for an Order Providing Lightened Regulation and Financing Approval.

ORDER GRANTING A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY

(Issued and Effective April 15, 2010)

INTRODUCTION

AES ES Westover, LLC (AES ES Westover or the Company) proposes to develop, construct and operate a 20 MW energy storage system (the Project). Utilizing advanced battery technology, the Project will provide ancillary regulation services within New York wholesale electric markets. AES ES Westover, a subsidiary of The AES Company (AES), would locate the Project on the property of a separate AES subsidiary, AES Westover, LLC (AES Westover), in the Town of Union, New York. The Company intends to construct the Project in two phases.

In the first phase, the Company plans to commence commercial operation of eight MW of battery capacity during the second quarter of 2010. In the second phase, the Company would obtain financing to support the construction of the remaining 12 MW of capacity, which would enter service during the third quarter of 2010.

On January 25, 2010, AES ES Westover filed a petition seeking:

- (1) A declaratory ruling that the Company did not require a Certificate of Public Convenience and Necessity (CPCN) under Public Service Law (PSL) §68 before it could begin construction on the Project, or, in the alternative, a CPCN authorizing the Company to proceed with the Project (CPCN Request);
- (2) An Order providing for lightened regulation of AES ES Westover as an electric corporation (Lightened Regulation Request); and
- (3) Approval under PSL §69 to enter into a debt obligation with a term greater than 12 months to finance the second phase of the Project (Financing Approval Request).

On April 12, 2010, the Company provided supplemental information in response to inquiries of the Staff of the Department of Public Service (Staff).

In its petition, AES ES Westover moved, pursuant to 16 NYCRR §21.10, to expedite the process for considering its request that a CPCN be issued authorizing it to construct and operate the Project. Pursuant to 16 NYCRR §21.10(a), AES ES Westover filed proof that it made the requisite newspaper publication of notice of its motion on January 27, 2010. Comments on the motion were due on February 6, 2010, 10 days following publication. No comments have been received.

In light of the Company's desire to begin construction on the first phase of the Project, we will address the Company's CPCN Request, item (1), supra, at this time by granting it a CPCN. The CPCN Request does not require the notice and comment period provided for in State Administrative Procedures Act (SAPA) §202(1)(a). The Lightened Regulation Request and

Financing Approval Request, items (2) and (3), supra, require a SAPA notice and comment period. The notice was published in the State Register on March 17, 2010. The comment period will expire on May 3, 2010. We cannot address the Company's Lightened Regulation Request and Financing Approval Request at this time. When the comment period has expired, we will address these aspects of the Company's petition through a separate order.

THE CPCN REQUEST

AES ES Westover, a Delaware limited liability company, is a direct, wholly-owned, subsidiary of AES Energy Storage LLC, which, in turn, is a wholly-owned subsidiary of AES. The petition states that AES ES Westover will develop, construct, finance, own, operate and manage the Project.

Description of the Project

The Company proposes to install ten 53 foot long containers each housing bidirectional inverters and DC battery subsystems, each with a 2 MW capacity at a site adjoining the AES Westover generating facility and switchyard. The batteries can be used to support and regulate voltage and frequency variations on the transmission system. The Company would begin constructing the first phase of the Project, consisting of four containers with a total of 8 MW of capacity, during the second quarter of 2010. It expects to construct the second phase, consisting of the remaining 6 containers with a total of 12 MW of capacity, in the third quarter, pending our approval of the proposed financing arrangement.

The Project would connect to the high voltage system through standard electrical industry transformers, switchgear and protective relays. In response to automated signaling from the system operator, the Project, when fully constructed, would charge or discharge up to 20 MW in less than one second, up to a maximum of 5 MW/hour of energy. AES ES Westover states that

pilot and demonstration projects showed that the underlying battery technology was efficient, with round trip losses measured at less than 10%.

In addition to the batteries, the project will include an access road, underground electrical collection lines, a cooling and chilling system, step up voltage transformers and associated controls and the use of an existing interconnection substation. Site security is provided by perimeter fencing and enclosed structures to house most equipment.

AES ES Westover intends to build the project on property it would lease from AES Westover. The proposed site largely consists of a paved and gravel surface next to the AES Westover switchyard. The Company employed an outside firm to conduct a subsurface geotechnical study of some locations on the site, which revealed that the soil had been previously disturbed to a depth of at least 13 feet. The Project would interconnect with transmission lines owned and operated by New York State Electric & Gas (NYSEG). The Company asserts that the Project requires no new interconnection facilities, as it would utilize existing facilities, which, until recently, had been used by AES Westover's retired 40 MW coal-fired generation facility, Unit 7.

The Company commits to complying with the requirements of our regulations regarding the protection of underground facilities (16 NYCRR 753) and would require all contractors associated with the Project to comply with the underground facility protection regulations. In its petition and supplement, the Company provided details and descriptions of its proposed electric facilities, including features for facility security and public safety. Additionally, AES ES Westover has agreed to notify affected utilities and coordinate actions when working in close proximity to other utility transmission and distribution facilities. Facility design would conform to the National Electric Safety Code, as well as other relevant codes

and standards applicable to facility siting, construction and operation.

The Public Interest

AES ES Westover asserts that the Project would improve grid stability by selling regulation service into the day-ahead market operated by the New York Independent System Operator (NYISO), a well defined market for regulation services. While noting that power generators meet this need, the Company asserts that energy storage would compete favorably as it does not have any fuel or significant operating costs when compared to a thermal power facility. Additionally, AES ES Westover claims that utilizing energy storage to meet this need would avoid the wear on the power generating fleet and the environmental emissions resulting from the ramping up and down of generators to meet regulation requirements. The Company asserts that energy storage facilities effectively recycle energy already in the system.

Additionally, according to the Company, systems like those to be utilized in the Project will enable the power grid to support a growing percentage of renewable generation. AES ES Westover reports that, on May 15, 2009, the Federal Energy Regulatory Commission (FERC) approved changes to the NYISO's tariffs that allow energy storage facilities to participate in the NYISO's regulation service market. The Company states that FERC recognized that energy storage facilities will provide numerous benefits to New York ratepayers and ensure reliable operation of the New York power grid.

The Company asserts that, with their ability to charge or discharge rapidly, the Project and other limited energy storage resources (LESRs) enable the NYISO to improve its control performance by systematically and precisely correcting imbalances and maintaining grid reliability. AES ES Westover maintains that the NYISO understands that the fast response

capabilities of LESRs will help to address control issues presented by the growing amount of power generated in the New York Control Area by wind and other intermittent renewable resources.

AES ES Westover asserts that the project is financially feasible. The Company states that the total project cost, including proposed financing, is \$22.3 million. The Company states that it is seeking to finance 80% of direct project construction costs under the Department of Energy's innovative technology loan guarantee program, with the remaining costs met through equity contributions from AES. As noted above, the proposed financing arrangement would be used to fund the second phase of the Project.

The Need for a CPCN

AES ES Westover asserts that a CPCN is not required before it can begin construction of the Project. The Company notes that, in a case concerning a gas utility seeking to construct a 13 mile long gas pipeline in an existing franchise area, a CPCN was not required, because PSL §68 "was never intended as a requirement for Commission approval for each and every addition to a plant already authorized and in existence."¹ Additionally, the Company points to a recent case in which we found that USRG Niagara Biomass, LLC did not require a CPCN for modifications to its existing generating facility because the modifications would not increase the facility's generation capacity, would not reconfigure the existing electric

¹ Case 15686, Long Island Lighting Company, Application for Authorization to Install a Gas Pipeline Facility (issued December 12, 1967) (7 NY PSC 321, 328). The Order was upheld in Town of Hempstead v. Public Service Commission, 56 Misc.2d 1098 (Alb. Cty. Sup. Ct. 1968), aff'd sub. nom. Village of Rockville Centre v. Public Service Commission, 38 A.D.2d 1013 (3rd Dept. 1968).

interconnection with the transmission system and would not trigger any changes to the facility's environmental permits.²

AES ES Westover characterizes the Project as a minor modification of the existing power generation facility, which was lawfully constructed by NYSEG under NYSEG's general franchise authority. Thus, AES ES Westover argues, review pursuant to PSL §68 and the issuance of a CPCN are not required before the Company can move forward with the Project.

The Company acknowledges that the direct owners of the Project, AES ES Westover, and the existing generation facility, AES Westover, are not the same entity. However, AES ES Westover points to cases in which we have ruled that changes in ownership of a lightly regulated facility at the subsidiary level are not ownership transfers under PSL §70 if the ultimate, upstream owner remains unchanged.³ The Company urges us to extend this reasoning to the application of PSL §68. AES ES Westover argues that, because it and AES Westover are both owned by the same ultimate upstream entity, AES, the fact that the Project and the existing generating facility are not directly owned by the same entity should not result in a determination that a CPCN is required before the Company can construct the Project.

DISCUSSION AND CONCLUSION

The Need for a CPCN

PSL §68 states that "No ... electric corporation shall begin construction of a[n] ... electric plant without first having obtained the permission and approval of the commission."

² Case 06-E-1465, USRG Niagara Biomass LLC, Declaratory Ruling on Application of Public Service Law §68 (January 22, 2007).

³ See Case 05-E-1582, NRG Energy, Inc., Declaratory Ruling on Review of an Intra-Corporate Dissolution Transaction (January 26, 2006); Case 06-E-0006, Horizon Wind Energy LLC, Declaratory Ruling on an Intra-Company Restructuring Transaction (February 14, 2006).

Further, PSL §68 requires that "[b]efore such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission... ."

AES ES Westover is correct that, in past cases involving intra-corporate transfers of lightly regulated entities, we have not required review or approval under PSL §70.⁴ However, as noted above, PSL §68 requires that an electric corporation within the meaning of PSL §2(13), such as AES ES Westover, submit a copy of its charter prior to the issuance of a CPCN. This requirement illustrates that PSL §68 is concerned, inter alia, with the proper identification and formation of the entity that will actually construct, own and operate the electric plant. In this case that entity is AES ES Westover, not AES Westover or AES, both companies' ultimate upstream parent.

Accordingly, AES ES Westover requires a CPCN before it can construct the Project. Since we find that a CPCN is required prior to construction of the Project predicated on other grounds, we do not need to reach the question of whether the Project is a minor modification of existing facilities or new construction.

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. The Town of Union has completed an uncoordinated SEQRA review and no additional state or local permits are required, so a coordinated review under SEQRA is not needed for our consideration of this

⁴ Indeed, in its petition, AES ES Westover notes that it will lease the project site from AES Westover. We do not review or approve such transfers of property between two subsidiaries of the same ultimate upstream parent under lightened regulation.

action.⁵ Therefore, we will assume Lead Agency status under SEQRA and conduct an uncoordinated environmental review.

SEQRA requires applicants to submit a complete EAF describing and disclosing the likely impacts of the actions they propose.⁶ AES ES Westover submitted a completed long form EAF, indicating the nature of the project setting and its relation to the resources and criteria included in the EAF.

The proposed action over which we have jurisdiction is the issuance of a CPCN authorizing AES ES Westover to construct the Project. 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, as defined at 6 NYCRR §617.2(ak).

After review of the petition and supporting documentation, we conclude, based on the criteria for determining significance listed in 6 NYCRR §617.7(c), that construction is proposed within the area of prior disturbance on the property of an existing major electric generating station, and that there will be no significant changes to the environment due to construction of the Project at the AES Westover site. Our Staff has completed the long-form EAF Part 2.

Based on the proposed location of the Project near the confluence of the Susquehanna River and a tributary, the site is within a designated flood hazard zone. The applicant has

⁵ The applicant submitted a completed long form Environmental Assessment Form (EAF), indicating the nature of the project setting and its relation to the resources and criteria included in the EAF, for the review conducted by the Town of Union Planning Board. The Town of Union Planning Board determined that the project would not have a significant adverse impact and issued a Negative Declaration on February 9, 2010. It also issued appropriate permits for the construction of the facility, including an Aquifer Permit, a Special Permit for floodplain development, Site Plan Approval and a Building Permit.

⁶ 6 NYCRR §617.6(a)(3).

designed facilities to be elevated above the design flood elevation, and has received the appropriate special floodplain permit from the Town of Union.

The site location also has the potential for the presence of archeological resources, although the site is not within, or substantially contiguous to, any historic or prehistoric site that is listed or mapped by the Office of Parks, Recreation and Historic Preservation (OPRHP) as listed or eligible for listing on the State or National Register of Historic Places. Evidence provided in support of the Petition includes documentation of prior site disturbance at most of the project site, including gravel and pavement over most of the proposed facility footprint, and geologic borings documenting the presence of debris including cinders, ash and construction debris to an extensive depth.

The OPRHP Historic Preservation Field Services Bureau submitted a letter dated April 12, 2010, indicating that the project will have no effect on cultural resources in or eligible for listing in the state or National Register of Historic Places. OPRHP recommended that, should there be an unanticipated discovery of archeological resources during excavation, AES ES Westover should be required to protect the discovered resources and engage in further consultation with Staff and OPRHP. The Company has committed to undertake these measures, and we will require the Company to honor this commitment.

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 significant 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.

Necessary or Convenient for the Public Service

We are authorized to grant a CPCN to an electric corporation pursuant to PSL §68, after due hearing and upon a determination that the construction of electric plant is necessary or convenient for the public service. Our rules establish pertinent evidentiary requirements for a CPCN application (16 NYCRR §21.3). The rules require a description of the plant to be constructed and of the manner in which the cost of such plant is to be financed, and evidence that the proposed plant is in the public interest and is economically feasible, and proof that the applicant is able to finance the project and render adequate service.

The Company intends to provide electric energy storage and frequency stabilization to the wholesale competitive market and has proposed to site the Project in an unused, primarily paved or gravel covered section of property to be leased from its affiliate, AES Westover. The Project will avoid significant adverse impacts while enhancing electric transmission system operation in New York State. The facilities, based on advanced battery technology, provide clean frequency stabilization services to the wholesale energy market. Further, the proposed facilities also address objectives identified in the 2002 State Energy Plan, which include increasing energy diversity and promoting a cleaner, healthier environment. The Project would enhance environmental quality by helping to meet the transmission system's frequency stabilization needs without resorting to ramping up or down generating plants, many of which rely on polluting fossil fuels.

The first phase of the Project will be funded by an equity contribution from AES. For the second phase, the Company is seeking financing under the DOE's innovative technology loan guarantee program. In addition, the Company's parent is an experienced and financially viable energy company active in the

development and operation of electric projects in the wholesale market. Furthermore, the Project, operating in a competitive market, would pose minimal risks to utility ratepayers or the residents of the host community. Therefore, the facilities appear to be economically feasible and in the public interest.

AES ES Westover has committed to complying with the relevant design, construction and operational requirements of the National Electric Safety Code, other applicable engineering codes, standards and requirements. The Company has proposed plans for addressing coordination with, and avoiding interference with, other utility providers in its facility design, construction and operations controls.

Concerns regarding the facility interconnection and operation include potential effects on the local NYSEG transmission system. Detailed interconnection designs at either the transmission or distribution voltages have not been finalized with the interconnecting utility. Therefore, we appropriately require, as a condition of our approval, the preparation of final design and mitigation measures necessary to ensure that the commitments by the Company to minimize conflicts with existing facilities and resources are reflected in final design and construction plans and procedures.

As noted above, geologic borings conducted at the proposed site documented the presence of debris including cinders, ash and construction debris to an extensive depth. Thus, some of the excavated materials may not be suitable for reuse in the construction of the Project. Accordingly, the Company shall document compliance with the relevant specifications in the New York State Uniform Fire Prevention and Building Code (Section 1803). Additionally, the depths of foundations shown on the Company's 'Typical Module Foundation Plan, Sections and Details' drawing should be extended to

enhance frost protection. The Company has agreed to construct the foundations at a minimum of 42 inches below grade.

Based on AES ES Westover's representations and commitments to adopt and enforce reasonable measures within the proposed area of operations and the evidence presented in the petition as supplemented, we conclude that the Company will provide safe, reliable and adequate service. The applicant states that the substation design and accessibility, and constructability and operability of the collection lines will meet appropriate utility standards. The interconnection to the transmission system will meet the requirements of NYSEG, and all appropriate reliability criteria to provide safe and reliable operation of the transmission grid. The enhanced monitoring, inspection and maintenance provisions recommended by Staff are reasonable and will be adopted as conditions of our approval. The conditions we impose will help to ensure that the Company's commitments are kept and enable us to make the required statutory findings.

AES ES Westover satisfied the requirements of PSL §68 by filing a copy of its Certificate of Formation as an exhibit to its petition. Since responsible company officials have verified that the Project will not entail any use of municipal property, no municipal franchises or consents are required for the Project.

Accordingly, we grant AES ES Westover's motion for an expedited proceeding. A hearing having been held in this proceeding on April 15, 2010, we find, as required by PSL §68, that the construction of the proposed Project is necessary and convenient for the public service.

The Commission orders:

1. The motion for an expedited proceeding on the non-contested application for PSL §68 certification made by AES ES Westover (AES ES Westover or the Company) is granted.

2. A Certificate of Public Convenience and Necessity (CPCN) is granted to AES ES Westover, authorizing the Company to construct and operate the battery energy storage facility (the Project), the electric plant described in its petition and in this Order, subject to the conditions described in the body of this Order and set forth below.

3. AES ES Westover and its affiliates shall comply with the Public Service Law in conformance with the requirements set forth in the body of this Order.

4. The Company shall obtain all necessary federal, state, and local permits and approvals, and shall implement appropriate mitigation measures defined in such permits or approvals.

5. The Company shall submit final Site Plans and construction drawings for the project components, battery sites, access roads, and electric lines associated with the Project to the Staff of the Department of Public Service (DPS Staff) for review and acceptance before the start of construction. Final Site Plans shall include location of access for construction and operation, any existing or planned structures and facilities of the Company or others, any plans for clearing or grading the site, and measures to protect water resources within or adjoining the Project location; plan and profile figures shall be scaled similarly to the drawings of the Project already provided to DPS Staff.

6. All construction activities related to this Project shall conform to the applicable requirements of the New York State Uniform Fire Prevention and Building Code (Building Code of New York State). Of note, in relation to excavation,

grading, and fill, the Company shall comply with the requirements in Section 1803 of the Building Code of New York State. AES ES Westover shall submit a copy of the report required by Section 1803.5 of the Building Code of New York State to DPS Staff. In reference to footing and foundation construction, AES ES Westover shall comply with Section 1805 of the Building Code of New York State.

7. Within 30 days of completion of each phase of construction, the Company shall submit 'As Built' drawings exhibiting actual constructed locations and details of all new and re-located structures which shall include spot elevations of: facility corners, stair platform heights, finished grade (top of slab or module floor), top of grade and bottom of concrete footing, in addition to heights of re-located overhead conductors or other re-located overhead facilities.

8. Prior to commencing construction of the substation and transmission interconnection, not including minor activities required for testing and development of final engineering and design information, the Company shall provide to DPS Staff final design plans and profile drawings of the substation and the transmission interconnection and proof of acceptance of the design by New York State Electric & Gas (NYSEG).

9. The authorized electric plant shall be subject to inspection by authorized representatives of DPS Staff pursuant to §66(8) of the Public Service Law.

10. The Company shall incorporate, and implement as appropriate, the standards and measures for engineering design, construction, inspection, maintenance and operation of its authorized electric plant, including features for facility security and public safety, utility system protection, plans for quality assurance and control measures for facility design and construction, utility notification and coordination plans for work in close proximity to other utility transmission and

distribution facilities, facility maintenance standards and practices, and emergency response plans for construction and operational phases, as presented in its petition and this Order.

11. The Company shall file with the Secretary to the Commission, within three days after commencement of commercial operation of the electric plant, written notice thereof.

12. AES ES Westover shall file, within ten days after its presentation to the Transmission Planning Advisory Subcommittee (TPAS) of the New York Independent System Operator, Inc (NYISO) by NYISO Staff, a complete copy of the System Reliability Impact Study (SRIS), including appendices, performed in accordance with the NYISO's Open Access Transmission Tariff (OATT) approved by the Federal Energy Regulatory Commission (FERC), and all appendices thereto, reflecting the interconnection of the facility.

13. The Company shall design, engineer, and construct facilities in support of the authorized electric plant in accordance with the applicable and published planning and design standards and best engineering practices of NYISO, the New York State Reliability Council (NYSRC), Northeast Power Coordinating Council (NPCC), North American Electric Reliability Council (NERC) and successor organizations, depending upon where the facilities are to be built and which standards and practices are applicable. Specific requirements shall be those required in the SRIS as performed in accordance with the NYISO's OATT and by the Interconnection Agreement (IA) and the facilities agreement with NYSEG.

14. The Company shall work with NYSEG, and any successor Transmission Owner (as defined in the NYISO Agreement), to ensure that, with the addition of the electric plant (as defined in the IA between the Company and NYSEG), the system will have power system relay protection and appropriate communication capabilities to ensure that operation of the NYSEG

transmission system is adequate under NPCC Bulk Power System Protection Criteria, and meets the protection requirements at all times of the NERC, NPCC, NYSRC, NYISO, and NYSEG, and any successor Transmission Owner (as defined in the NYISO Agreement). The Company shall ensure compliance with applicable NPCC criteria and shall be responsible for the costs to verify that the relay protection system is in compliance with applicable NPCC, NYISO, NYSRC and NYSEG criteria.

15. The Company shall operate the electric plant in accordance with the IA, approved tariffs and applicable rules and protocols of NYSEG, NYISO, NYSRC, NPCC, NERC and successor organizations. The Company may seek subsequent review of any specific operational orders at the NYISO, the Commission, the FERC, or in any other appropriate forum.

16. The Company shall be in full compliance with the applicable reliability criteria of NYSEG, NYISO, NPCC, NYSRC, NERC and successors. If it fails to meet the reliability criteria at any time, the Company shall notify the NYISO immediately, in accordance with NYISO requirements, and shall simultaneously provide the Commission and NYSEG with a copy of the NYISO notice.

17. The Company shall file a copy of the following documents with the Secretary to the Commission:

- (a) All facilities agreements with NYSEG, and successor Transmission Owner throughout the life of the plant (as defined in the NYISO Agreement);
- (b) any documents produced as a result of the updating of requirements by the NYSRC;
- (c) the Relay Coordination Study, which shall be filed not later than one month prior to the projected date for commencement of commercial operation of the facilities; and a copy of the manufacturers' "battery facility characteristics"

of the equipment installed (including test and design data);

- (d) a copy of the facilities design studies for the Electric Plant, including all updates (throughout the life of the plant);
- (e) a copy of the IA and all updates or revisions (throughout the life of the plant); and
- (f) if any equipment or control system with different characteristics is to be installed (throughout the life of the plant), the Company shall provide that information to the DPS Bulk Electric Section and NYSEG, including all supporting documentation and studies, at least three months prior to making any such change. This is to ensure the project does not compromise the reliability of the NYSEG system.

18. The Company shall obey unit commitment and dispatch instructions issued by NYISO, or its successor, in order to maintain the reliability of the transmission system. In the event that the NYISO System Operator encounters communication difficulties, the Company shall obey dispatch instructions issued by the NYSEG Control Center, or its successor, in order to maintain the reliability of the transmission system.

19. After commencement of construction of the authorized Electric Plant:

- (a) The Company shall provide DPS Staff and NYSEG with a monthly report on the progress of construction and an update of the construction schedule, and file copies of current construction progress reports during all phases of construction. In the event the Commission determines that construction is not proceeding at

a pace that is consistent with Good Utility Practice, and that a modification, revocation, or suspension of the CPCN may therefore be warranted, the Commission may issue a show cause order requiring the Company to explain why construction is behind schedule and to describe such measures as are being taken to get back on schedule. The Order to Show Cause will set forth the alleged facts that appear to warrant the intended action. The Company shall have thirty days after the issuance of such Order to respond and other parties may also file comments within such period. Thereafter, if the Commission is still considering action with respect to the CPCN, a hearing will be held prior to issuance of any final order of the Commission to amend, revoke or suspend the CPCN. It shall be a defense in any proceeding initiated pursuant to this condition if the delay of concern to the Commission:

- (1) arises in material part from actions or circumstances beyond the reasonable control of the Company (including the actions of third parties);
 - (2) is not in material part caused by the fault of the Company; or
 - (3) is not inconsistent with a schedule that constitutes Good Utility Practice;
- (b) The Company shall file with the Secretary to the Commission, no more than four months after the commencement of construction, a detailed progress report. Should that report indicate that construction will not be completed within twelve

months, the Company shall include in the report an explanation of the circumstances contributing to the delay and a demonstration showing why construction should be permitted to proceed. In these circumstances, an order to show cause will not be issued by the Commission, but a hearing will be held before the Commission takes any action to amend, revoke or suspend the CPCN;

- (c) For purposes of this condition, Good Utility Practice shall mean any of the applicable acts, practices or methods engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability and safety. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region in which the Company is located. Good Utility Practice shall include, but not be limited to, NERC criteria, rules, guidelines and standards, NPCC criteria, rules, guidelines and standards, NYSRC criteria, rules, guidelines and standards, and NYISO criteria, rules, guidelines and standards, where applicable, as they may be amended from time to time (including the rules, guidelines and criteria of any successor organization to the

foregoing entities). When applied to the Company, the term Good Utility Practice shall also include standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility.

20. Except for periods during which the authorized facilities are unable to safely and reliably convey electrical energy to the New York transmission system (e.g., because of problems with the authorized facilities themselves or upstream electrical equipment) the Company's electric plant shall be exclusively connected to the New York transmission system over the facilities authorized herein.

21. The Company shall work with NYSEG system planning and system protection engineers to discuss the characteristics of the transmission system before purchasing any system protection and control equipment or equipment related to the electrical interconnection of the Project to the transmission system. This discussion is designed to ensure that the equipment purchased will be able to withstand most system abnormalities. The technical considerations of interconnecting the electric plant to the transmission facility shall be documented by the Company and provided to DPS Staff and NYSEG prior to the installation of transmission equipment. Updates to the technical information shall be furnished as available (throughout the life of the plant).

22. The Company shall work with NYSEG engineers and safety personnel on testing and energizing equipment in the authorized substation. A testing protocol shall be developed and provided to NYSEG for review and acceptance. The Company shall provide a copy of the testing design protocol to DPS Staff of the Bulk Electric System Section or its successor within 30 days of NYSEG's acceptance. The Company shall make a good faith

effort to notify DPS Staff of meetings related to the electrical interconnection of the Project to the NYSEG transmission system and provide the opportunity for DPS Staff to attend those meetings.

23. The Company shall call the Bulk Electric System Section within six hours to report any transmission related incident that affects the operation of the Project. The Company shall submit a report on any such incident within seven days to the DPS Staff of the Bulk Electric System Section and NYSEG. The report shall contain, when available, copies of applicable drawings, descriptions of the equipment involved, a description of the incident and a discussion of how future occurrences will be prevented. The Company shall work cooperatively with NYSEG, NYISO and the NPCC to prevent any future occurrences.

24. The Company shall make modifications to its Interconnection Facility, if it is found by the NYISO or NYSEG to cause reliability problems to the New York State Transmission System. If NYSEG or the NYISO bring concerns to the Commission, the Company shall be obligated to address those concerns.

25. If, subsequent to construction of the authorized electric plant, no electric power is transferred over such plant for a period of more than a year, the Commission may consider the amendment, revocation or suspension of the CPCN.

26. In the event that an equipment failure of the authorized Electric Plant causes any reduction in the capability of such Plant to deliver power, the Company shall promptly provide to DPS Staff of the Bulk Electric System Section and NYSEG copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs. The Company shall report monthly to the Staff and NYSEG on the progress of any repairs. If such equipment failure is not completely repaired within nine months

of its occurrence, the Company shall provide a detailed report to the Secretary to the Commission, within nine months and two weeks after the equipment failure, setting forth the progress on the repairs and indicating whether the repairs will be completed within the next three months; if the repairs will not be completed within the next three months, the Company shall explain the circumstances contributing to the delay and demonstrate why the repairs should continue to be pursued.

27. Within 60 days after the issuance of this Order, the Company shall file with the Secretary to the Commission, Operation and Maintenance Plan(s) for the Project;

(a) Thereafter, by the first of January in each year throughout the life of the plant, the Company shall file, with the Secretary to the Commission, its Operation and Maintenance Plan(s) for the Project;

(b) By the first of January in each year throughout the life of the plant, the Company shall file, with the Secretary to the Commission, its Emergency Operations Plan(s) and Safety Plan(s) for the Project, providing at a minimum a list of contacts in the event of a site emergency including the name, telephone number, and reason to contact that particular agency or individual.

28. Should the Company be required to implement a Special Protection System (SPS) at any point throughout the life of the plant, the Company shall file a report with the Secretary to the Commission, within 60 days of the date such system is required, regarding implementation of the SPS which is designed to mitigate possible overloads from certain transmission outages, as well as copies of all studies (presently underway) that support the design of such system. In addition, the Company shall provide all documentation for the design of

special protection system relays, with a complete description of all components and logic diagrams. Prior to commencement of operation of the SPS, the Company shall demonstrate, through appropriate plans and procedural requirements, that the relevant components of the SPS will provide effective protection.

29. Should archeological materials be encountered during construction, the Company shall stabilize the area and cease construction activities in the immediate vicinity of the find and protect the same from further damage. Within twenty-four hours of such discovery, the Company shall notify DPS Staff and the New York State Office of Parks, Recreation and Historical Preservation (OPRHP) to determine the best course of action. No construction activities shall be permitted in the vicinity of the find until such time as the significance of the resource has been evaluated and the need for and scope of impact mitigation has been determined.

30. Should human remains or evidence of human burials be encountered during the conduct of archeological data recovery fieldwork or during construction, all work in the vicinity of the find shall be immediately halted and the remains shall be protected from further damage. Within twenty-four hours of any such discovery, the Company shall notify the DPS Staff and OPRHP. All archaeological/burial encounters and their handling shall be reported in the status reports required by Ordering Clause 19.

31. The Secretary may extend the deadlines set forth in this order.

32. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 10-E-0042 - Petition of AES ES Westover, LLC for Declaratory Ruling and, in the Alternative, Application for Certificate of Public Convenience and Necessity and Petition for an Order Providing Lightened Regulation and Financing Approval.

NOTICE OF
DETERMINATION OF NON-SIGNIFICANCE

NOTICE is hereby given that the Public Service Commission as lead agency has determined that the action under consideration in this proceeding, the granting of a Certificate of Public Convenience and Necessity for the construction of an electrical energy storage facility and ancillary structures, will not have significant adverse impacts on the environment. An Environmental Impact Statement will not be prepared in connection with the potential action. This determination is made pursuant to Part 617 of the implementing regulations pertaining to the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law. The action contemplated is an unlisted action as defined in 6 NYCRR, Section 617.2.

A review of the environmental assessment form (EAF) prepared regarding the action contemplated, and the other supporting documentation, demonstrates that the action under consideration would not result in any significant adverse environmental impacts. AES ES Westover, LLC proposes to construct and operate a 20-megawatt battery-based Grid Stability and Efficiency Project on a portion of a previously developed thirty nine acre site at 720 Riverside Drive in the Town of Union, Broome County, New York. The environmental impacts identified are limited to temporary impacts during construction.

The supporting documentation for this determination is: the EAF submitted to the Town of Union Planning Board, and to the Public Service Commission; the Notice of Determination of Non-Significance of the Town of Union Planning Board for the AES - Westover Grid Stability Project - Aquifer Permit dated February 9, 2010; the Town of Union Planning Board letter regarding conditions applicable to floodplain development Special Permit, dated March 10, 2010; Westover Site Flooding Review report, dated January 18, 2010; Building Permit issued March 19, 2010 by Town of Union Building Inspector Gary Post; Site Plan Approval: AES Westover Grid Stability and Efficiency Project, dated March 31, 2010; an un-dated Notice of Floodplain Involvement - AES Electric Grid Stability Advanced Battery System, issued by the United States Department of Energy; correspondence from the Historic Preservation Field Services Bureau of the New York State Office of Parks, Recreation and Historic Preservation (OPRHP), dated April 05, 2010, April 07, 2010 and April 12, 2010; and the supporting information in the supplement to the applicant's Petition for a Certificate of Public Convenience and Necessity, dated April 12, 2010.

The EAF and supporting information includes documentation which demonstrates that the project will not have significant impacts on natural resources. Correspondence from the OPRHP indicates that, with the mitigation proposed by the applicant, the project will have no impact on cultural resources in or eligible for inclusion in the State and National Register of Historic Places, pursuant to review in accordance with the New York State Parks, Recreation and Historic Preservation Law §14.09.

CASE 10-E-0042

The address of the Public Service Commission, the lead agency for purposes of environmental quality review of this action, is 3 Empire State Plaza, Albany, New York 12223-1350. For further information contact Andrew Davis at (518) 486-2853.

JACLYN A. BRILLING
Secretary