

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 21, 2021

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman, concurring
James S. Alesi
Tracey A. Edwards
John B. Howard

CASE 19-E-0739 - Petition of LS Power Grid New York Corporation I, LS Power Grid New York, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation.

CASE 20-E-0361 - Petition of LS Power Grid New York, LLC and LS Power Grid New York Corporation I for Approval of Financing Under Lightened Regulation Pursuant to Section 69 of the Public Service Law.

ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY,
PROVIDING FOR LIGHTENED REGULATION, AND APPROVING FINANCING

(Issued and Effective January 21, 2021)

BY THE COMMISSION:

INTRODUCTION

In a petition filed on December 4, 2019, LS Power Grid New York, LLC and LS Power Grid New York Corporation I (collectively, the Petitioners) requested certain approvals in connection with their proposed development of the Marcy to New Scotland electric transmission upgrade project (the Project). Specifically, Petitioners request: 1) the issuance of a Certificate of Public Convenience and Necessity (CPCN) pursuant to Public Service Law (PSL) §68 to allow the exercise of rights

and privileges granted under certain municipal road crossing agreements; and, 2) authorization of a lightened regulatory regime under the PSL, similar to that afforded by the Public Service Commission (Commission) to other entities engaged in competitive wholesale markets.¹ In a separate petition, filed on July 20, 2020, Petitioners sought approval, pursuant to PSL §69, to enter into a financing arrangement to support the construction and operation of the Project.²

By this Order, the Commission grants a CPCN pursuant to PSL §68 and establishes a lightened regulatory regime applicable to Petitioners, with conditions. The Commission also approves Petitioner's request under PSL §69 for flexible financing authorization, up to a maximum amount of \$478 million. The Commission is concurrently issuing a Certificate of Environmental Compatibility and Public Need for the Project under PSL §121 (Article VII Certificate).³

BACKGROUND

In December 2015, the Commission found that a "Public Policy Requirement," as defined under the New York Independent

¹ Case 19-E-0739, Petition of LS Power Grid New York Corporation I, LS Power Grid New York, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation (filed December 4, 2019) (Petition for CPCN/Lightened Regulation).

² Case 20-E-0361, Verified Petition of LS Power Grid New York, LLC and LS Power Grid New York Corporation I for Approval of Financing Under Lightened Regulation Pursuant to Section 69 of the PSL (filed July 20, 2020) (Financing Petition).

³ See, Case 19-T-0549, LS Power Grid New York, LLC, LS Power Grid New York Corporation I, and the New York Power Authority - Article VII, Order Adopting Joint Proposal (issued November 19, 2020).

System Operator, Inc.'s (NYISO) federally approved tariff,⁴ was driving a need for new electric transmission facilities to relieve persistent congestion across the State's Central East and Upstate New York (UPNY)/Southeast New York (SENY) interfaces, as required to attain various policy objectives, including increased delivery of renewable energy into the downstate region.⁵ The Commission's Order Finding Public Policy Transmission Needs resulted in the NYISO's solicitation of solutions to the identified needs and selection of the Petitioners and the New York Power Authority (NYPA) to receive cost recovery for the Project under the OATT.

In August 2019, the Petitioners and NYPA jointly filed an application for an Article VII Certificate authorizing construction and operation of the Project.⁶ The Project consists of an approximately 93-mile, 345-kilovolt (kV) transmission line starting at the Edic substation in Marcy and extending through the Towns of Deerfield and Marcy in Oneida County; the Towns of Schuyler, Frankfort, German Flatts, Little Falls, Stark, Danube, and the Village of Ilion in Herkimer County; the Towns of Minden, Canajoharie, Root, Charleston, Glen, and Florida in

⁴ The NYISO's Open Access Transmission Tariff (OATT) approved by the Federal Energy Regulatory Commission (FERC) includes a Public Policy Transmission Planning Process (PPTPP) process prescribed under Attachment Y, §31.4, et seq.

⁵ Case 14-E-0454, et al., In the Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration, Order Finding Transmission Needs Driven by Public Policy Requirements (issued December 17, 2015) (Order Finding Public Policy Transmission Needs).

⁶ Case 19-T-0549, supra, Application for Article VII Certificate (filed August 20, 2019). The Project represents "Segment A" of the transmission solutions proposed in response to the Order Finding Public Policy Transmission Needs, while "Segment B" is being pursued separately by New York Transco LLC (NY Transco) in Case 19-T-0684.

Montgomery County; the Towns of Duanesburg, Princetown, and Rotterdam in Schenectady County; and the Towns of Guilderland and New Scotland in Albany County, before terminating at the New Scotland substation in Albany.

THE PETITIONS

Petition for CPCN/Lightened Regulation

According to LS Power, because the Project will consist of real estate, fixtures, and personal property to be used for the transmission of electricity in New York State, the transmission line will constitute "electric plant" as defined by PSL §2(12), making Petitioners an "electric corporation" under PSL §2(13). Petitioners clarify that, as corporations formed for utility purposes, even without acquiring property, transacting business, or exercising a franchise, PSL §5-b presently establishes Commission jurisdiction.

1. CPCN

Petitioners seek a CPCN under PSL §68(1) to exercise the rights and privileges granted under certain municipal consents, which were provided in the form of Road Use and Crossing Agreements with the Towns of Deerfield in Oneida County; the Towns of Schuyler, Frankfort, German Flatts, Stark, and Danube and the Village of Ilion in Herkimer County; the Towns of Minden, Canajoharie, Root, Charleston, Glen, and Florida in Montgomery County; the Towns of Princetown, and Rotterdam in Schenectady County; and the Towns of Guilderland and New Scotland in Albany County, New York (the Road Crossing

Agreements). Petitioners further request any other approvals the Commission may deem necessary under PSL §68.⁷

Petitioners describe LS Power Grid, LLC as a limited liability company organized under the laws of Delaware and registered to do business in New York. LS Power Grid New York Corporation I is organized as an electric corporation pursuant to Article 2 of the New York Transportation Corporation Law. Formerly, LS Power Grid, LLC and LS Power Grid New York Corporation I were known as North America Transmission, LLC and North America Transmission Corporation, respectively, and were referred to as "NAT" in the NYISO's PPTPP. The Petitioners are wholly owned direct subsidiaries of LS Power Grid New York Holding, LLC (NY Holdings), a Delaware limited liability company. NY Holdings' current business consists solely of owning LS Power. NY Holdings is a wholly owned indirect subsidiary of LS Power Associates, L.P. (LSP Associates), a Delaware limited partnership. LSP Associates is wholly controlled by its general partner, LS Power Development, LLC (LSP Development), a Delaware limited liability company. LSP Development owns or controls power generation, transmission, battery energy storage, and investment businesses throughout the United States either directly or indirectly through controlled affiliates (collectively, with its affiliates, referred to as "LS Power").

⁷ On February 19, 2020, Petitioners filed a Supplement to the Petition, confirming final approval of the Road Crossing Agreements with the Towns of Deerfield, Schuyler, Frankfort, Root, Florida, and New Scotland and providing certified copies of the Road Crossing Agreements. In the Supplement to the Petition, Petitioners also explain that they received confirmation from the Town of Princetown officials that the Project does not cross any town roads and a Road Crossing Agreement is therefore unnecessary.

LSP Development wholly controls LS Power Equity Partners III, L.P., which directly wholly controls Helix Generations, LLC (Helix), which indirectly wholly owns Helix Ravenswood, LLC (Helix Ravenswood). Helix Ravenswood owns or holds a leasehold interest in and operates the approximately 2,400 megawatt (MW) generating facility in Astoria, Queens. In addition, Helix directly owns Ravenswood Development, LLC, which is developing a proposed 316 MW battery storage facility to be located at the Helix Ravenswood site.

Petitioners explain that other than Helix, LSP Development and its subsidiaries do not presently own or control generation facilities in the NYISO market. Though LSP Development's indirect subsidiaries are pursuing energy storage facility development opportunities in the NYISO and PJM markets. LSP Development subsidiaries have developed, or are currently constructing, six other transmission projects in Texas, Nevada, the Midcontinent Independent System Operator, Inc.'s (MISO) market, and the PJM Interconnection, L.L.C. (PJM) market.

LSP Development is affiliated with LifeEnergy, LLC (LifeEnergy), a Texas-based power marketing company that provides energy products and services to residential and commercial customers in seven states, but does not presently operate in New York and claims no intentions to pursue a license to expand operations into New York. LifeEnergy does not own transmission or generation assets in the NYISO market, and will not be involved with the Project. Additionally, LSP Development is affiliated with Enerwise Global Technologies, Inc. (CPower). CPower provides demand-side energy management services to commercial, industrial, and government organizations and is active in New York. According to Petitioners, CPower will not be involved with the Project.

In support of their request for a CPCN, Petitioners state that their request for an Article VII Certificate satisfies all of the applicable portions of PSL §68 and the Commission's regulations. Petitioners go on to explain in detail their compliance with applicable statutory and regulatory requirements, including certified copies of the Road Crossing Agreements, verification of the contents of the Petition for CPCN/Lightened Regulation, and Petitioners' formation documents.

In conformance with 16 NYCRR §21.2(d), Petitioners state that they have not yet received any permit, license, or authority from any federal authority relative to the Project but that FERC granted Petitioners' request for incentive rate treatment for prudently incurred costs related to its investment in the Project in the event that the Project is abandoned or cancelled for reasons beyond LSP Power's control.⁸

In conformance with 16 NYCRR §21.3(a), Petitioners describe the population of the territories within which they plan to exercise their rights, privileges, and franchises as electric corporations, such as the Road Crossing Agreements. Furthermore, Petitioners state that construction of the Project is expected to occur from November 2020 through December 2023 as more fully described in Exhibit 6 of the Article VII Application. Petitioners assert that the Project will serve as a key element of the New York State Transmission System operated by the NYISO.

Addressing the requirements of 16 NYCRR §21.3(b), Petitioners describe the Project, referring to the detail contained in the Article VII Application, and estimate the total capital cost of the Project to be \$853,752,000. Petitioners explain that during the development phase of the Project they

⁸ LS Power Grid New York, LLC, 167 FERC ¶ 61,139 (2019).

are relying on their parent companies, including LSP Associates, while the Financing Petition describes the arrangements for further phases of the Project.

Petitioners request that the Commission apply PSL §68(1) and 16 NYCRR §21.3(e) regarding evidence of just and reasonable rates flexibly, given that the rates for service provided by the Project will be set by FERC under the Federal Power Act in accordance with the NYISO OATT and FERC's rate setting process to ensure that rates are just and reasonable. Petitioners again underscore that the Project was selected by the NYISO in a competitive solicitation process to address a Commission-approved Public Policy Transmission Need. Petitioners conclude this point by asserting that there is no need in this proceeding for the Commission to determine either the rates to be charged or the estimated revenues and expenses of the Project.

Petitioners demonstrate the facts upon which they rely to entitle them to exercise the rights and privileges, including evidence of the economic feasibility of the enterprise, proof of the applicant's ability to finance the Project and to render adequate service, and that the proposal is in the public interest in accordance with 16 NYCRR §21.3(f). First, Petitioners establish the economic feasibility of the Project by reciting the following facts: (1) the Project will address a Public Policy Transmission Need that was identified by the Commission in the Order Finding Public Policy Transmission Needs; and (2) the Project was selected by the NYISO from among seven competing designs proposed to address that Public Policy Transmission Need. Petitioners explain that additional evidence of the feasibility of the Project is provided by the fact that it will qualify for cost recovery under Attachment P of the

NYISO OATT and, therefore, has a source of funding for the recovery of all prudently incurred Project costs.

Second, Petitioners explain they are able to finance the capital needs of the Project during the development period, which are small relative to the overall Project budget and well within the means of LSP Associates to fund through cash on its balance sheet, retained earnings from revenue including assets in operations, or revolving lines of credit. Petitioners explain that the Financing Petition seeking approval to raise the capital required to fund Project construction is well supported by LS Power's excellent access to capital markets and past experience raising over \$40 billion of debt and equity.

Next, Petitioners explain that they are able to render safe, adequate, and reliable service per PSL §68(1). Petitioners state that LS Power has nearly three decades of developing, engineering, constructing, operating, and maintaining major electric power facilities, including developing more than 975 circuit miles of high voltage electric transmission projects. Petitioners suggest that the Project is in the public interest, as evidenced by the public need for the Project identified in the Commission's Order Finding Public Policy Transmission Needs.

2. Lightened Regulation

The Petitioners are also seeking lightened regulation as an electric corporation under the PSL. According to Petitioners, the same lightened regulatory regime, as was applied to NY Transco,⁹ should be applied to the Petitioners in connection with their ownership and management of the Project,

⁹ Case 15-E-0743, Petition of New York Transco LLC for an Order Providing for Lightened Regulation, Order Providing for Lightened Rate Making Regulation and Approving Financing (issued April 21, 2016) (NY Transco Order).

which will be operated by the NYISO under the provisions of the OATT. Petitioners explain that the Project will transmit electricity in interstate commerce at the wholesale level only, and have no captive customers requiring the protections of the Commission's rate regulation. For these reasons, Petitioners assert that they satisfy all of the requirements for lightened regulation established in the NY Transco Order, and request that the Commission grant their request for lightened regulation.

Petitioners suggest that the Commission's jurisdiction under PSL §§11, 19, 24, 25 and 26 and the requirements of PSL §§66(6), 68, 69, 69-a and 70 be implemented through the Commission's lightened regulation orders in a fashion that limits their impact on Petitioners as lightly regulated entities.¹⁰ Furthermore, Petitioners explain that the Commission has held that Article 2 does not apply to utilities like LS Power, which provide only wholesale service. Additionally, Petitioners state that the Commission has found that most of the provisions of Article 6, but for PSL §119-b regarding the protection of underground facilities from damage by excavators, would not apply to lightly regulated utilities as they either do not pertain to such entities or would unnecessarily hinder competitive lightly regulated utilities by interfering with their flexibility to structure the financing and ownership of their facilities.

¹⁰ Case 91-E-0350, Wallkill Generating Company, L.P., Order Establishing Regulatory Regime (issued April 11, 1994) (Wallkill Order); Case 98-E-1670, Carr Street Generating Station, L.P., Order Providing for Lightened Regulation (issued April 23, 1999) (Carr Street Order); Case 15-E-0743, Transco Order; Case 99-E-0148, AES Eastern Energy, L.P. and AES Creative Resources, L.P., Order Providing for Lightened Regulation (Issued and Effective April 23, 1999); and, Case 10-E-0339, Hudson Transmission Partners, Order Providing for Lightened Rate Making Regulation, slip op. (issued April 14, 2011).

Petitioners request that the Commission issue an order extending the same lightened regulatory regime approved in the Wallkill, Carr Street, and subsequent Orders. Petitioners explain that the Commission's conclusion in those orders, that the regulatory requirements traditionally imposed on vertically integrated utilities should be relaxed in light of the practical realities confronting lightly regulated utilities operating in competitive wholesale markets, apply to LS Power. Additionally, Petitioners explain that granting this form of lightened regulation is in the public interest because the Project was selected by the NYISO in a competitive solicitation process that will benefit all consumers of electricity in New York State and because the Project will provide only wholesale transmission service under the operational control of the NYISO pursuant to the OATT.

Petitioners point out that the Commission has already carefully considered the vertical and horizontal market power issues raised by LS Power's request for lightened regulation in the Helix Order.¹¹ By approving the acquisition of the Ravenswood facility by affiliates of LS Power while knowing that the NYISO may award Petitioners one or both segments of the transmission solution to the Public Policy Requirement, Petitioners state that the Commission affirmed that affiliate ownership of the Ravenswood facility and the Project would not raise any issues of horizontal market power. Furthermore, Petitioners illustrate that the Commission recognized vertical market power risk in affiliate ownership of the Ravenswood

¹¹ Case 17-E-0016, Petition of TC Ravenswood, LLC, TC Ravenswood Services Corp. and Helix Generation for Expedited Approval of a Transfer and Financing Pursuant to Lightened Regulation, Order Approving Transfer Subject to Acceptance of Conditions and Making Other Findings (issued April 19, 2017) (the Helix Order).

facility and one or more transmission line projects developed in the NYISO, but that the public interest in maximizing the competitive proposals available for NYISO to review, combined with the system and ratepayer benefits associated with the transmission lines to be developed under the PPTPP, justified allowing Petitioners to participate. Petitioners suggest that because Helix unconditionally accepted all detailed protective conditions established in the Helix Order and because both Helix and Petitioners have fully complied with those conditions, granting lightened regulation to Petitioners will not harm the interests of captive ratepayers in New York and does not present an unacceptable risk of vertical market power.

Financing Petition

Petitioners explain that, pursuant PSL §69, Commission authorization is necessary for an "electric corporation" to enter into indebtedness payable at periods of more than 12 months. Petitioners further explain that the Project consists of the construction of a transmission line, and Petitioners will not serve any retail customers. Therefore, Petitioners expect that they will be granted lightened regulation treatment and be subject to a reduced level of scrutiny than that applicable to monopoly utilities under PSL §69.

In order to fund construction and ongoing operational needs of the Project, Petitioners request authorization to enter into debt financing arrangements with an aggregate principal amount not to exceed \$478 million.¹² Petitioners explain that additional funding sources outside the scope of the Financing Petition may include utilizing a cash balance that is currently

¹² Petitioners explain that these debt financing arrangements may take the form of funded debt, a revolving credit facility, and/or a letter of credit facility and will primarily be used to fund construction and ongoing operational needs.

available, or accessing retained earnings from revenue including assets in operations. Petitioners further clarify that only the amounts drawn and outstanding under any financing instruments would be counted against the proposed \$478 million limit.

Petitioners request that the Commission treat this request in accordance with the precedent applied to NY Transco, where the Commission found that NY Transco was a lightly regulated utility proposing financial transactions, and the financing would be for a statutory purpose and consistent with the public interest.¹³ Petitioners explain that in light of the pending Petition for CPCN/Lightened Regulation, a similar situation exists in the Financing Petition. Furthermore, as explained in that Financing Petition, the Project will transmit electric power in the wholesale electricity market only, and will "at all times be under the operational control and tariff administration of the NYISO."¹⁴ Petitioners also assert that they will not have any retail customers, and as a result represent that they will not have any adverse effect on captive retail customers requiring the Commission's rate regulation protection. Therefore, Petitioners state that the Commission does not need to make an in-depth analysis of the proposed financing transaction.

LS Power has funded most of its projects in the past by attracting a broad spectrum of investors and lenders, including six major transmission projects comprising over \$2 billion in financing arrangements according to Petitioners. The financing required for the Project, Petitioners explain, is small relative to the total capital LS Power has been successful in raising, with over \$45 billion of debt and equity raised over

¹³ NY Transco Order.

¹⁴ Financing Petition, p. 7.

its history. According to Petitioners, by relying on the representations made in the Petition for CPCN/Lightened Regulation and the Financing Petition, prompt regulatory action is possible and consistent with the public interest.

NOTICES OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking regarding the Petition for CPCN/Lightened Regulation was published in the State Register on March 18, 2020 [SAPA No. 19-E-0739SP1]. The time for submission of comments pursuant to the Notice expired on May 18, 2020. No comments were received.

Regarding the Financing Petition, pursuant to SAPA §202(1), a Notice of Proposed Rulemaking was published in the State Register on September 9, 2020 [SAPA No. 20-E-0361SP1]. The time for submission of comments pursuant to the Notice expired on November 9, 2020. No comments were received.

LEGAL AUTHORITY

PSL §68 prohibits an electric corporation from constructing electric plant, or from exercising any right or privilege under any franchise, until it receives the Commission's approval in a CPCN. In this instance, however, the Commission's issuance of a PSL Article VII Certificate supplants the requirement for construction approval under PSL §68, but not the requirements for Commission approval of its corporate formation and the exercise of any municipal "right, privilege or

franchise."¹⁵ Before the Commission may issue a CPCN, the electric corporation seeking approval must provide a certified copy of its charter and a "verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities." In considering its approval, the Commission "shall consider the economic feasibility of the corporation, the corporation's ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates, and whether issuance of a certificate is in the public interest."¹⁶

The Commission is authorized, pursuant to PSL §69, to approve certain financings, such as the type proposed in the Financing Petition. Financings proposed under PSL §69 by lightly regulated companies operating in a competitive environment may be addressed on the basis of representations made in the petition, and do not require an in-depth analysis. Provided that the proceeds of a financing are for a statutory purpose and in the public interest, petitioners typically are afforded broad latitude to determine the amount and type of debt that is needed to support corporate operations.

The PSL grants the Commission broad authority to regulate corporations that own, operate, and/or manage electric

¹⁵ Case 05-T-0089, Fortuna Energy, Inc., Order Requiring a Hearing and Extending the Time Required to Render a Decision Pursuant to Public Service Law Section 121-a(7) (issued March 23, 2005); see also Matter of TransGas Energy Sys., LLC v. New York State Bd. on Elec. Generation Siting & Env't, et al., 2009 NY Slip Op 6696 (2d Dept., 2009), lv. Denied 2010 NY Slip Op 60611; Case 10-G-0462, DMP New York, Inc. and Laser Northeast Gathering Company, LLC, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Rate Making Regulation (issued February 22, 2011).

¹⁶ PSL §68.

plant, which is broadly defined by PSL §2(10). The regulation of electric corporations has been adapted over time to accommodate the development of competitive wholesale markets and lightened ratemaking regulation policies. The Commission has determined that lightly regulated entities may be exempt from certain PSL provisions that pertain to retail service because they do not serve captive utility customers.¹⁷

DISCUSSION

CPCN

PSL §68 requires an electric corporation to obtain a CPCN before constructing electric plant, including the Petitioners' proposed Marcy to New Scotland transmission upgrade project. The Commission may grant a CPCN after a due hearing and finding that the project is necessary and convenient for the public service and is in the public interest. CPCN requests also must be supported with evidence that the company is economically viable, can finance construction and improvements, will be able to provide safe, adequate, and reliable service, has obtained all necessary municipal consents, and has provided a certified copy of its charter.

The Commission held a public statement hearing before Administrative Law Judge Anthony Belsito, at which Petitioners' representatives and Department of Public Service Staff were present. No statements were made and no interested parties added to the record.¹⁸

¹⁷ See, e.g., Case 16-E-0409, Indeck Corinth Limited Partnership, Order Providing for Lightened regulation (issued December 21, 2016) at pp. 3-4.

¹⁸ Case 19-E-0739, Notice of Public Statement Hearing and Procedural Conference (issued February 21, 2020).

Petitioners have satisfied the evidence required to obtain a CPCN as they have submitted (1) a certified copy of the certificate of incorporation of North America Transmission Corporation and certificate of amendment of the certificate of incorporation to modify the name of the corporation to LS Power Grid New York Corporation and a subsequent certificate of amendment of the certificate of incorporation to modify the name of the corporation to LS Power Grid New York Corporation I;¹⁹ and, (2) a verified statement of the president and secretary of LS Power Grid New York Corporation and LS Power Grid New York Corporation I²⁰ that Petitioners have received the required consent of the proper municipal authorities, as evidenced by certified copies of the Road Crossing Agreements.²¹

Based on the record, the Commission concludes that LS Power is (1) economically sound; (2) able to finance the Project and render safe, adequate, and reliable service; (3) will provide just and reasonable rates; and, (4) the issuance of a CPCN is in the public interest. As demonstrated in the Petition for CPCN/Lightened Regulation, LS Power has access to capital markets and has raised over \$40 billion of debt and equity over its history, and the Project's revenues are highly secure. Petitioners, as members of LS Power, benefit from the experience of developing more than 975 circuit miles of high voltage electric transmission projects, primarily the result of

¹⁹ Case 19-E-0739, Attachment C- Certified Copies of the Certificate of Formation and Amendments Thereto of LS Power Grid New York Corporation I (filed December 4, 2019).

²⁰ Case 19-E-0739, Attachment E- Verifications of Paul Thessen and Scott Carver (filed December 4, 2019).

²¹ Case 19-E-0739, Attachment A- Road Crossing Agreements- 1 of 2 (filed December 4, 2019); Attachment A- Road Crossing Agreements- 2 of 2 (filed December 4, 2019); and, Supplement to the Petition (filed February 4, 2019).

competitive transmission solicitations like this one. As the Project will be under the operational control of the NYISO, subject to FERC's rate regulation, just and reasonable rates are ensured. Finally, the public need for the Project is clearly established by the fact that it was selected by the NYISO to meet the Segment A portion of the Public Policy Requirement identified by the Commission in the Order Finding Public Policy Transmission Needs.²²

Consistent with Commission precedent, the Article VII Certificate requirements, particularly the Environmental Management and Construction Plan (EM&CP), avoids or minimizes, to the extent practicable, any significant adverse environmental impacts. The Article VII proceeding addresses the potential environmental impacts of the Project and provides protective measures tailored to avoid, minimize, and mitigate those impacts. As a result, there is no need to conduct a separate environmental impact analysis in connection with the requests for relief in this proceeding.²³

Lightened Regulation

Petitioners seek an order approving a lightened regulatory regime whereby limited provisions of the PSL would be applied to Petitioners, consistent with Commission precedent in the Carr Street and Wallkill Orders²⁴ and subsequent orders involving competitive wholesale generators and interstate transmission companies.²⁵ In reviewing the record in this

²² Case 14-E-0454 et al., supra, Order Finding Public Policy Transmission Needs.

²³ Case 14-E-0195, Bayonne Energy Center, LLC et al., Order Modifying Lightened Ratemaking Regulation Authorizations and Approving Financing and Declaratory Ruling on a Transfer Transaction (issued August 15, 2014).

²⁴ Carr Street Order; Wallkill Order.

²⁵ NY Transco Order.

proceeding, the Commission finds that Petitioners are electric service providers participating in wholesale electric markets. Petitioners may be lightly regulated in their ownership and management of the Project because Petitioners' transmission assets will be under the operational control and tariff administration of the NYISO, and will only be operated in the wholesale market. The lightened regulatory regime that Petitioners request be applied to their ownership of transmission facilities in New York State is similar to that afforded to others participating in competitive electric markets.²⁶ Petitioners will transmit electricity in interstate commerce at the wholesale level, without providing direct service to retail customers. The request for lightened regulation is therefore approved, subject to conditions, and provided that Petitioners cannot exercise market power as a result.

In interpreting the PSL, the Commission has examined what reading best carries out the statutory intent and advances the public interest. Under this approach, PSL Article 1 applies to Petitioners because they will construct, own, operate, and maintain the Project, therefore meeting the definition of electric corporation under PSL 2(13), and will be engaged in the transmission of electricity under PSL §5(1)(b). Petitioners are therefore subject to provisions such as PSL §§11, 19, 24, 25,

²⁶ See, e.g., NY Transco Order; Case 14-E-0195, Bayonne Energy Center, LLC et al., Order Modifying Lightened Ratemaking Regulation Authorizations and Approving Financing and Declaratory Ruling on a Transfer Transaction (issued August 15, 2014).

and 16, that prevent electric corporations from taking actions that are contrary to the public interests.²⁷

PSL Article 2 is restricted by its terms to the provision of service to retail residential customers, and is therefore inapplicable to Petitioners as entities engaged exclusively in wholesale services. Certain provisions of PSL Article 4 are also restricted to retail service.²⁸ It was decided in the Carr Street and Wallkill Orders that other provisions of Article 4, including but not limited to the provisions of PSL 68, 69, and 70, would apply to entities engaged in wholesale markets.²⁹ Application of these provisions was deemed necessary to protect the public interest. These Article 4 provisions, however, have been implemented through the Commission's lightened regulation orders in a fashion that limits their impact in a competitive market. The Commission has done so to ensure that the scrutiny given such transactions is commensurate with the level required, in the Commission's judgment, by the public interest. Under PSL §66(6), competitive providers of utility services subject to lightened ratemaking regulation satisfy annual report filing requirements through a

²⁷ The PSL §18-a assessment is applied against gross revenues earned on PSL-jurisdictional intrastate services. As long as LS Power Grid New York, LLC and LS Power Grid New York Corporation I sell exclusively at wholesale in interstate markets, there are no intrastate revenues and no assessment is collected.

²⁸ See, e.g., PSL §66(12) (optional tariff filings); PSL §66(21) (retail electric corporation storm plans); PSL §67 (inspection of meters); PSL §72 (hearings and rate proceedings); PSL §72-a (reporting increased fuel costs); PSL §75 (excessive charges); and, PSL §76 (rates charged religious bodies).

²⁹ PSL §68 provides for certification of electric plant and ensures the necessary municipal consent have been received. PSL §§69, 69-a, and 70 provide for the review of securities issuances, reorganizations, and transfers of securities or works or systems, respectively.

format designed to accommodate their particular circumstances.³⁰ This analysis of Article 4 applies to Petitioners.

Regarding PSL Article 6, several of its provisions adhere to the rendition of retail service. These provisions do not pertain to Petitioners as they will engage solely in the provision of wholesale electric transmission service. Application of PSL §115, regarding requirements for the competitive bidding of utility purchases, is discretionary and will not be imposed on wholesale service providers. In contrast, PSL §119-b, regarding the protection of underground facilities from damage by excavators, adhere to all persons, including wholesale transmission providers.

The remaining provisions of PSL Article 6 need not be imposed generally on wholesale transmission providers.³¹ These provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers. As discussed in the Carr Street Order, however, in the event market power issues arise, they may be addressed under PSL §§110(1) and (2), which afford us jurisdiction over affiliated interests. Petitioners report that LSP Development has indirect affiliates pursuing development opportunities for energy storage facilities in the NYISO market, but that these subsidiaries do not currently own or control any such facilities.³² The Petitioners are reminded that each

³⁰ Case 11-M-0294, Annual Reporting Requirements, Order Adopting Annual Reporting Requirements Under Lightened Ratemaking Regulation (issued January 23, 2013).

³¹ These requirements include supervision of affiliated interests under §§110(1) and (2), and approval of: loans under §106; the use of utility revenues for non-utility purposes under §107; corporate merger and dissolution certificates under §108; contracts between affiliated interests under §110(3); and water, gas and electric purchase contracts under §110(4).

³² Petition for Lightened Regulation, p. 4, fn. 4.

affiliate within the Commission's jurisdiction remains subject to the Commission's Statement of Policy Regarding Vertical Market Power (VMP Policy).³³

Petitioners' potential to exert market power inappropriately will be further reduced by Petitioner's commitment to place the Project under the functional and operational control of the NYISO, which will be a condition of our approval. Given that power flows over Petitioners' transmission facilities will be administered by the NYISO subject to FERC-approved tariffs, including, but not limited to, market power monitoring and mitigation measures, and provisions prohibiting anticompetitive behavior, the potential to exercise market power or harm the interests of captive ratepayers in New York State is mitigated. Moreover, FERC requires all transmission to be provided under open access non-discriminatory tariffs.

The Petition for CPCN/Lightened Regulation states that LS Power Grid, LLC and LS Power Grid New York Corporation I were previously known as North America Transmission, LLC and North America Transmission Corporation, respectively, and were referred to as "NAT" in the NYISO's PPTPP. In the Helix Order, the Commission explained that Helix Generation, LLC (Helix Generation) and NAT would be in violation of the Commission's VMP Policy if Helix Generation or any other NAT affiliate holds any interest in generation located in New York and NAT is selected in the NYISO's PPTPP to develop a transmission line in New York.³⁴ The Commission agreed that the proposed transactions

³³ Case 96-E-0900 et al., In the Matter of Orange & Rockland Utilities, Inc.'s Plans For Electric Rate Restructuring Pursuant to Opinion 96-12, Statement of Policy Regarding Vertical Market Power (issued July 17, 1998) (VMP Policy).

³⁴ Id.

approved by the Helix Order did not pose an immediate risk of harm to captive ratepayer interests, but concluded that a future significant potential risk of vertical market power existed.³⁵ The Commission explained that the structural and "schedule" mitigation measures adopted by the Helix Order were sufficient to justify a limited exception to the VMP Policy while the transmission line is sited and constructed, but that actual divestiture is the only mitigation measure that is adequate to eliminate VMP Policy risks over the long-term.

As directed by the Helix Order, NAT affiliates must timely divest themselves of the transmission projects or Helix Generation must timely divest itself of the Ravenswood facilities in accordance with the conditions applied to the proposed transactions the Commission approved in the Helix Order.³⁶ Petitioners affirm that "[b]ecause Helix has unconditionally accepted all of those protective conditions on behalf of itself and its affiliates, and because both Helix and Petitioners have fully complied with those conditions to date, including the posting of the required letter of credit in the amount of \$24,000,000 on June 5, 2019, and commencement of the Article VII proceeding for the Segment A Project on August 20, 2019, granting lightened regulation to Petitioners will not present an unacceptable risk of vertical market power or otherwise harm the interests of captive retail customers in New York State."³⁷

The Commission recognizes that the specified divestiture conditions have not yet occurred, but reiterates that while the structural and schedule mitigation measures

³⁵ Helix Order, p. 23.

³⁶ Helix Order, p. 27.

³⁷ Petition for Lightened Regulation, p. 10.

adopted by the Helix Order are sufficient while the Project is sited and constructed, actual divestiture is the only mitigation measure that is adequate to eliminate VMP risks over the long-term.³⁸ Petitioners will also turn over operational control of the transmission facilities to NYISO and transmission service over Petitioners' facilities will be provided by the NYISO under the NYISO's open access non-discriminatory tariff.

Consequently, we impose the requirements of PSL §§110(1) and (2) on Petitioners only conditionally, and only to the extent that a future inquiry into its relationships with affiliates becomes necessary.

Petitioners remain 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, as with other transmission providers that have been afforded a lightened regulatory regime.³⁹ Among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,⁴⁰ and to report personal injury accidents pursuant to 16 NYCRR Part 125. As discussed elsewhere, Petitioners are also subject to the terms and conditions set forth in, and imposed by, the PSL Article VII Certificate.

³⁸ Helix Order, p. 29.

³⁹ See, e.g., Case 09-M-0251, *Saranac Power Partners, L.P.*, Order Providing for Lightened Regulation of an Electric Corporation and Making Findings on Steam Corporation Regulation (issued June 19, 2009).

⁴⁰ 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).

Financing

Petitioners' request for flexible financing approval pursuant to PSL §69 is appropriate under the standard applied to lightly regulated entities. Consistent with Commission precedent, the scrutiny applicable to monopoly utilities may be reduced for lightly regulated companies like Petitioners. The proposed flexible financing authorization need not be subject to an in-depth analysis. Instead, by relying on the representations Petitioners make in their Financing Petition, prompt regulatory action is possible.⁴¹

The proposed \$478 million in financing would be for a statutory purpose to support the Project and does not appear contrary to the public interest. Petitioners' proposed financing is therefore approved up to a maximum amount of \$478 million. Given that Petitioners will be regulated lightly, as discussed above, they are granted the flexibility to modify, without the Commission's prior approval, the identity of the financing entities, payment terms, and the amount financed, so long as it does not exceed the maximum amount stated above.⁴² Affording Petitioners this financing flexibility avoids disruption of financing arrangements.

CONCLUSION

As discussed above, the Commission grants the CPCN, provides for a lightened regulatory regime, and approves the

⁴¹ Because a PSL §69 approval of a securities issuance is a Type 2 action for the purposes of the State Environmental Quality Review Act, 16 NYCRR §§7.2(a) and 7.2(b)(2)(v), no further review is required under that statute.

⁴² See, e.g., NY Transco Order; Case 03-E-1181, Dynegy Danskammer LLC and Dynegy Roseton LLC, Order Authorizing Entry into Credit Facility and Issuance of Secured Notes (issued November 26, 2003); Case 01-E-0816, Athens Generating Company, L.P., Order Authorizing Issuance of Debt (issued July 30, 2001).

financing requested by Petitioners, up to a maximum of \$478 million. Through these actions, the Commission is advancing the Project to help achieve various policy objectives associated with relieving congestion across the Central East and UPNY/SENY interfaces.

The Commission orders:

1. LS Power Grid New York, LLC and LS Power Grid New York Corporation I's request for issuance of a Certificate of Public Convenience and Necessity, authorizing the construction and ownership of the Project pursuant to Section 68 of the Public Service Law, is granted as discussed in the body of this Order.

2. LS Power Grid New York, LLC and LS Power Grid New York Corporation I shall address market power issues by providing exclusive operational control of the Project to the New York Independent System Operator, Inc. (NYISO) as part of placing the Project in service and joining the NYISO, as discussed in the body of this Order.

3. LS Power Grid New York, LLC and LS Power Grid New York Corporation I shall comply with the Public Service Law in conformance with the requirements set forth in the body of this Order.

4. LS Power Grid New York, LLC and LS Power Grid New York Corporation I shall file an unconditional acceptance to obey all of the terms, conditions, and requirements of this Order. If such acceptance is not filed within a period of 30 days from the issuance of this Order, this Order may be revoked by the Public Service Commission without further notice.

5. LS Power Grid New York, LLC and LS Power Grid New York Corporation I are authorized to enter into the financing

arrangements, up to a maximum amount of \$478 million, as discussed in the body of this Order.

6. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

7. These proceedings shall be closed upon compliance with Ordering Clause No. 4 above.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary