STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

COMMISSIONERS PRESENT:

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

CASE 12-E-0577 - Proceeding on Motion of the Commission to Examine Repowering Alternatives to Utility Transmission Reinforcements.

ORDER MAKING FINDINGS ON THE REPOWERING OF THE CAYUGA GENERATING FACILITY

(Issued and Effective February 25, 2016)

BY THE COMMISSION:

INTRODUCTION

On January 18, 2013, the Commission directed New York State Electric & Gas Corporation (NYSEG) to examine the relative costs and benefits of repowering the Cayuga generating facility and to evaluate repowering over a long-run horizon of at least ten years as an alternative to the transmission upgrades designed to address the potential retirement of the Cayuga facility.[1] The January 2013 Order directed NYSEG to prepare a report analyzing the repowering alternatives in terms of the impacts on reliability and other factors.

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[1] Case 12-E-0577, Repowering Alternatives to Utility Transmission Reinforcements, Order Instituting Proceeding and Requiring Evaluation of Transmission Reinforcement (issued January 18, 2013), p. 3 (January 2013 Order).

Over 27,000 public comments have been received with respect to this matter, including those made during the Public Statement Hearing held on July 29, 2013. A large number of comments were received both supporting and opposing repowering the Cayuga facility. Commenters' arguments focus largely on the following topics: (1) cost and tax consequences; (2) the local economy; (3) ratepayers' expenses; (4) energy reliability; (5) emissions reductions; and, (6) impacts on competitive markets.

First, parties supportive of repowering the Cayuga plant argue that the local area greatly benefits from the tax revenue earned from the plant. In particular, supporters assert that the Cayuga plant is the biggest local taxpayer and substantially contributes to the funding needed to sustain the academic programming and extracurricular offerings of the area's public schools. However, parties opposed to repowering counter that the loss in tax revenue the area would experience if the plant closed would be less than the cost of the subsidy necessary to fund the repowering.

Second, parties in support of repowering argue that converting the Cayuga plant to natural gas will not only retain the jobs that are currently at the plant, but will also create new jobs needed to complete the conversion. Opponents point out, however, that renewable energy companies in the area are also creating jobs.

Third, parties opposed to repowering Cayuga criticize the conversion as far too costly and express displeasure that such costs would be passed on to ratepayers. Opponents continue that ratepayers should not pay more for non-renewable energy that further increases state reliance on fossil fuels. Opponents caution that Cayuga is already an expensive plant to maintain and furthermore there is no guarantee that Cayuga will not necessitate further subsidies, even after the cost of the repowering has already been passed on to ratepayers.

Fourth, supporters believe that the Cayuga repowering will increase energy reliability in the local area, as well as help the system meet demand at peak times. Several supporters also claim that a continued source of local, reliable power is especially important for the regional farming community.

Fifth, those in favor of repowering Cayuga maintain that converting the plant to natural gas is substantially cleaner, cheaper, and more efficient than retaining coal-powered operations. Additionally, supporters assert that the reduced carbon emissions advance the goals of the New York Energy Highway Blueprint and that repowering to natural gas will help the State gradually transition to renewable energy sources.

On the other hand, opponents dispute that natural gas is a clean energy alternative for Cayuga because the plant will continue to use coal during the repowering and both natural gas and coal create carbon emissions. Opponents contend that conversion, and the carbon emissions associated with it, will undermine the emissions reduction goals stated in the Commission's Reforming the Energy Vision proceeding and further contribute to global climate change. Instead, parties opposed to repowering support upgrading transmission lines and closing the Cayuga plant, because they see transmission as a more sustainable, as well as cost-effective, solution. Opponents also suggest that the lakefront area is an ideal location for developing renewable sources of energy, such as solar and wind, in the future. And lastly, sixth, regarding impacts on competitive markets, those opposed to repowering Cayuga observe that upgrading the transmission lines would obviate the need for out-of-market payments to Cayuga.

In this Order, the Commission addresses the repowering and refueling proposals provided by Cayuga Operating Company, LLC (Cayuga), as well as NYSEG's evaluation of those proposals. As discussed below, the Commission finds that NYSEG has satisfied the inquiry required under the January 2013 Order, which was subsequently codified in State statute,[2] and required an adequate consideration of the repowering and refueling options. Upon consideration of the extensive record and numerous public comments, the Commission concludes that the benefits of repowering or refueling the Cayuga facility do not justify the out-of-market costs to NYSEG ratepayers. Therefore, pursuing Cayuga's proposal further, with financial support from NYSEG ratepayers, would not be in the public interest. The owners of the Cayuga facility may further pursue repowering or refueling options on a merchant basis without support from NYSEG ratepayers.

BACKGROUND

On July 20, 2012, Cayuga, a subsidiary of Upstate New York Power Producers, Inc., provided notice that it intended to mothball its Cayuga generating facility located in Lansing, New York.[3] The Cayuga facility consists of two coal-fired units, with a combined rating of approximately 312 MW, which are separately interconnected to NYSEG's transmission system. At the request of Department of Public Service Staff (DPS Staff), a study was prepared by NYSEG and the New York Independent System

[2] Laws of 2013, ch. 57 (Part Y Legislation).

[3] In an Order Approving Transfer issued concurrently in Case 15-E-0580, we approve the transfer of ownership interests in the Cayuga generating facility and the 668 MW Somerset generating facility, which are currently wholly-owned by Upstate New York Power Producers, Inc., to Riesling Power, LLC.

Operator, Inc. (NYISO) evaluating the reliability implications of mothballing the Cayuga facility.

On August 24, 2012, NYSEG advised that its study results identified adverse impacts on reliability due to mothballing the Cayuga facility, and that there was a need to retain the facility in order to maintain local electric system reliability for an interim period. The Commission subsequently approved a term sheet filed by Cayuga and NYSEG, whereby NYSEG would compensate Cayuga in exchange for continuation of facility operations.[4] Cayuga and NYSEG subsequently executed a Reliability Support Services Agreement (RSSA) in accordance with the term sheet. On January 16, 2013, Cayuga and NYSEG executed a second RSSA to continue supporting facility operations until June 30, 2017, as approved by the Commission.[5]

On January 18, 2013, the Commission issued an Order instituting the current proceeding and directing NYSEG to: (1) evaluate the projected costs and benefits of repowering the Cayuga facility and to compare them to the costs and benefits of alternative transmission upgrades that would be necessary to compensate for the loss of power if the facility were closed; (2) file the projected costs of the alternative transmission upgrades with DPS Staff; and, (3) solicit a bid from Cayuga detailing the financial support that would be required to fund repowering of the facility. The January 2013 Order specified that the following topics must be addressed in NYSEG's evaluation: reliability; ratepayer costs; environmental impacts; economic impacts (such as job creation and tax

[4] Case 12-E-0400, Cayuga Operating Company, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery (issued December 17, 2012).

[5] Case 12-E-0400, supra, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery (issued January 16, 2013).

revenue); and, electric market competitiveness. NYSEG was also directed to recommend an action for Commission consideration.

On February 19, 2013, in response to the January 2013 Order, NYSEG solicited bids from Cayuga on scenarios for repowering the Cayuga generating facility. On March 26, 2013, Cayuga submitted an initial repowering proposal to NYSEG (Initial Proposal). The Initial Proposal outlined four options for repowering or refueling the Cayuga facility, including: (1) refueling the two existing coal-fired units with natural gas (Option 1); (2) construction of three new gas-fired units in a simple-cycle configuration; (3) refueling of one of the existing coal boilers to use natural gas, while adding a heat recovery boiler and combining a new gas turbine with the existing steam turbine to make a combined-cycle configuration; and, (4) constructing two new 163 MW combined cycle gas turbines. In addition, the Initial Proposal outlined construction of solar photovoltaic panels in a 2 MW array to supplement the gas-fired capacity.

On May 17, 2013, NYSEG submitted a report comparing Cayuga's Initial Proposal to the utility's proposed alternative transmission upgrades. NYSEG's report concluded that a transmission upgrade was the most cost-effective way to address reliability needs and recommended that this upgrade should be pursued.

On July 29, 2013, a public information forum was held in Lansing, New York to provide a description of the options available to NYSEG for addressing the electric reliability concerns associated with mothballing the Cayuga facility.

Following the public information forum, a public statement hearing was conducted and various public comments were received.[6]

On September 19, 2013, during the Commission’s session, DPS Staff reported that the Initial Proposal did not appear to be in the public interest, but suggested that a revised repowering solution could be consistent with the best interests of the public and ratepayers. On September 24, 2013, the Commission issued a Notice of Filing Deadline, directing Cayuga and NYSEG to file a joint revised proposal that “meets the reliability, economic development, and environmental benefits identified in the January 2013 Order,” or to separately file their recommendations for any further action if the parties were unable to reach a joint proposal.

Following several extensions, Cayuga filed a revised repowering proposal (Revised Proposal), separate from NYSEG, on February 6, 2015. The Revised Proposal proffered the addition of natural gas capacity for both of the Cayuga facility’s coal-fired units, while one unit would be capable of switching back and forth between coal and natural gas within a 24-hour period. The Revised Proposal also contemplated adding up to 4 MW of solar capacity to the facility. Cayuga sought NYSEG-supported payments of $49.5 million to fund construction, plus $9.6 million per year for 10 years of operation (a total of $104.2 million in payments on a Net Present Value (NPV) basis). Based on estimated economic benefits (construction, on-going labor, materials and services, and property taxes), RSSA savings, and fuel diversity benefits, Cayuga calculated that the Revised Proposal would provide $65 million in net benefits, which, as

[6] A transcript of the comments received during the public statement hearing was posted on our website on August 9, 2013. Cayuga submitted comments on the NYSEG report on August 16, 2013.

noted below, Cayuga subsequently revised upward to $73.1 million. Cayuga asserted that the Revised Proposal would allow NYSEG to maintain and enhance reliable service, reduce emissions, and support the creation and retention of significant regional economic benefits. Cayuga requested that the Commission accept the Revised Proposal and direct the provision of a term sheet for review.

NYSEG filed comments on February 6, 2015, concurrent with Cayuga's Revised Proposal, and estimated that customer payments under Cayuga's least-cost proposal (Option 1) would result in a net cost to customers of $188.6 million on a 20-year NPV basis. NYSEG recommended that the Commission find that further pursuit of a largely customer subsidized repowering/refueling of the Cayuga facility is not in the public interest. Further, NYSEG asked that the Commission allow it to move forward with its planned transmission reinforcement projects, which NYSEG believes are no longer avoidable, as originally contemplated. The transmission upgrades referred to by NYSEG, including the Auburn Transmission Project, were filed in Case 13-T-0235.[7]

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking regarding the Revised Proposal was published in the State Register on July 8, 2015 [SAPA No. 12-E-0577SP5]. The time for submission of comments in response to the SAPA Notice expired on August 24, 2015. Comments were timely filed by various interested individuals, elected officials, and municipal entities, as well

[7] Case 13-T-0235, New York State Electric & Gas Corporation and Niagara Mohawk Power Corporation d/b/a National Grid, Joint Application (filed May 31, 2013).

as Cayuga, the Entergy Entities (on behalf of Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc.), and Earthjustice (on behalf of Sierra Club, Ratepayer and Community Intervenors, Citizens Campaign for the Environment, and Environmental Advocates of New York). Detailed summaries of entities filing comments are included in Appendix A.

In addition, on September 18, 2015, Cayuga filed an updated chart showing that, under its analysis, the net benefits of the Revised Proposal would be $73 million on a ten-year NPV basis.[8] On October 2, 2015, NYSEG replied to Cayuga's comments filed on August 24, 2015 and September 18, 2015, stating that the NPV cost to NYSEG ratepayers would be $73.1 million (i.e., a negative benefit).[9] On October 7, 2015, Cayuga responded to NYSEG's comments, noting that the issue of whether the proposed Auburn Transmission Project is needed had not then been resolved in Case 13-T-0235.

DISCUSSION

Repowering Issues

The January 2013 Order created a process for giving adequate consideration to repowering as an alternative to transmission that could ensure reliability. It required NYSEG to analyze various factors, including: (1) the effectiveness in alleviating the identified reliability problems and in reducing the risk of load shedding; (2) the ratepayer costs; (3)

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[8] Cayuga estimates $175 million in direct and indirect benefits, and offsets this amount by a direct cost of $102 million that would be paid by NYSEG ratepayers for the refueling.

[9] NYSEG estimates paying Cayuga approximately $106 million, while NYSEG customers would receive benefits of approximately $33 million inclusive of avoided RSSA and local economic benefits.

environmental factors; (4) the economy (e.g., temporary and permanent jobs, economic development, and tax revenue); (5) the competitiveness of the electric market; and, (6) other factors NYSEG believes should be considered in weighing the costs and benefits of the alternatives.[10]

As stated in the January 2013 Order, “[r]epowering existing generation facilities can produce significant benefits in terms of enhanced system reliability, electric market competitiveness, and emissions reductions.”[11] These potential benefits have been embodied in the Part Y Legislation enacted on March 29, 2013, which codified the January 2013 Order insofar as that Order recognized Commission discretion to balance the various factors in considering whether repowering (refueling) is in the public interest.

As noted below, the Commission has evaluated Cayuga’s Revised Proposal in order to determine whether Cayuga’s current proposal is in the public interest.[12] Consistent with the June 2014 Order,[13] the Commission considered numerous quantitative and qualitative factors as part of a benefit-cost analysis. The quantified potential benefits of refueling the Cayuga facility consist of avoided utility transmission revenue requirement, avoided RSSA payments, and broad economic development benefits.

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[10] January 2013 Order, pp. 3-4.

[11] January 2013 Order, p. 1.

[12] Although NYSEG conducted an extensive evaluation of the costs to ratepayers of undertaking the refueling proposal presented by Cayuga, NYSEG focused on Option 1 in Cayuga’s Initial Filing as being the least cost option in order to identify whether any net ratepayer benefits would exist.

[13] Case 12-E-0577, supra, Order Addressing Repowering Issues and Cost Allocation and Recovery (issued June 13, 2014) (June 2014 Order).

In this case, the avoided transmission revenue requirement benefits depend on whether the second phase of the Auburn Transmission Project is needed from a reliability perspective, regardless of whether the Cayuga plant is refueled. In our concurrent decision in Case 13-T-0235, we find that the second phase is needed independent of refueling the Cayuga facility.[14] Assuming, arguendo, that the costs of these transmission upgrades, as well as certain RSSA payments, could be avoided with a refueled Cayuga plant in-service, the analysis discussed below indicates that the costs to NYSEG ratepayers would still significantly exceed the benefits.

Pursuant to Cayuga's Revised Proposal, and updated estimates filed on September 18, 2015, the cost of refueling the Cayuga facility would be $102 million in out-of-market payments from NYSEG ratepayers on a ten-year NPV basis. For purposes of evaluating the potential for net benefits, we have examined the reliability and economic benefits. First, if the Commission assumes that the net costs of the remainder of the RSSA ($16 million), as well as the cost of Phase 2 of the Auburn Transmission Project ($23.3 million in revenue requirement over 10 years on an NPV basis),[15] are conservatively treated as expenditures that would not be incurred if refueling were accomplished, these costs can be treated as an avoided cost benefit that would attend refueling, and an offset against that $102 million cost.

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[14] In an Order Granting Certificate of Environmental Compatibility and Public Need issued concurrently in Case 13-T-0235 (Auburn Certification Order), the Commission certifies Phase 2 of the Auburn line, in part, on the basis that it provides greater reliability benefits than the Cayuga refueling.

[15] NYSEG Supplement (filed February 22, 2016)(updating cost estimates previously filed on a confidential basis).

Second, Cayuga has not shown that its Revised Proposal would lead to any additional relief of specific congestion or provide other related benefits arising, for instance, from alleviating transmission constraints. In contrast, relief of transmission congestion and access to renewable generation was a benefit considered in the June 2014 Order, and was assigned a monetary value in production cost savings due to the “unbottling” of the Niagara hydroelectric plant and the resulting availability of imports from Ontario.[16]

Third, in regard to broad economic development benefits, despite the lack of statewide benefits, NYSEG estimated approximately $20 million in local economic benefits associated with annual direct payroll benefits from the Cayuga proposal, in order to “recognize the fact that the repowering would be done three years in advance of the construction of the required need date of 2019 identified in the NYISO’s 2014 Reliability Needs Assessment.”[17] Cayuga’s estimate of direct labor for the 3-year period 2017-2019 totaled $12.7 million, while materials and services totaled $12.1 million, for a range of $12.7 million to $24.8 million.[18] This range provides a reasonable estimate of the local economic development benefits associated with Cayuga’s proposal, consistent with the consideration of direct labor and materials expenditures in the June 2014 Order. The Commission rejects Cayuga’s proposal to multiply the economic development benefits of on-going labor by a stimulus factor, since the multiplier would also apply to the

[16] June 2014 Order (relying on the May 16, 2014 DPS Staff Report describing production costs savings between $31 and $81 million).

[17] NYSEG Comments (filed February 6, 2015) p. 13.

[18] Cayuga Comments (filed September 18, 2015) Attachment 2.

cost to ratepayers, thereby offsetting any indirect benefits.[19] Therefore, a range of approximately $13 million to $25 million appears to be a more reasonable estimate of local economic development impacts for purposes of balancing whether the benefits and costs of refueling are in the public interest, and is generally consistent with the methodology considered in the June 2014 Order.

In seeking to balance system reliability, adequacy, environmental benefits, and economic concerns, we observe that the Part Y Legislation provides three rationales. One is that "[r]epowering existing power generation facilities can produce significant benefits in terms of enhanced system reliability, electric market competitiveness and emissions reductions."[20] Those benefits are not present here. Notably, no transmission congestion relief benefits were identified. As a result, the emissions here would be unlikely to decrease by virtue of the sort of unbottling of renewable generation resources from the Niagara hydroelectric plant that was found in the June 2014 Order. Further, Cayuga's Revised Proposal would simply substitute natural gas for coal as the primary fuel source, while the existing, less-efficient boilers would be retained. Although commenters correctly note that natural gas could present an opportunity to reduce emissions relative to a coal-fired facility, the absence of improved performance or access to renewables attending such a proposal would not produce significant system reliability or emissions benefits.

The Part Y statute also provides that "it is in the public interest to develop clean power generation near energy demand to meet the needs of ratepayers, support local and state

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[19] Case 12-E-0577, supra, May 16, 2014 Staff Report, pp. 20-21.

[20] Laws of 2013, ch. 57 (Part Y Legislation).

tax revenue stability, promote economic opportunity, and enhance the state's environment."[21] Here, ratepayer needs would not be met by refueling. Instead, as the opponents of refueling point out, the loss in tax revenue the area would experience if the plant closed would be less than the cost of the subsidy necessary to fund the repowering. In addition, the transmission solution presents a preferred reliability alternative, and at a significantly reduced cost. Even assuming that the Auburn Phase 2 project could be avoided by retaining the availability of the Cayuga facility, avoidance of those costs would still produce a significant net cost for ratepayers from the standpoint of ratepayer needs.[22] The Commission finds that the economic and tax benefits alone do not, on balance, support repowering.

The Part Y Legislation further provides that "[r]etiring power plants that are not repowered may leave behind abandoned or underutilized land that would negatively affect surrounding communities and impede economic development."[23] Unlike the unique local economic circumstances present in the June 2014 Order,[24] Cayuga has made no showing that the local economy is similarly dependent. Instead, that economy appears more diverse, as reflected in the variety of local views regarding Cayuga's repowering. Earthjustice echoes these conclusions in its comments, criticizing that "a number of indirect economic benefits . . . are largely unsubstantiated and, even if they were incorporated, would not make [repowering]

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[21] Id.

[22] Although the Auburn Phase 2 expenditures are treated as avoidable for the purposes of this analysis, that assumption is generous, since, as found in the Auburn Certification Order, Case 13-T-0235, supra, those expenditures are required to meet reliability needs.

[23] Part Y Legislation, Section 1.2.

[24] June 2014 Order, pp. 33-34.

more cost-effective than NYSEG's transmission upgrades."[25] As a result, there is no need to burden ratepayers throughout NYSEG's service territory in order to support the repowering of the Cayuga plant.

In sum, Cayuga estimated the net benefits of repowering to be $73 million (NPV), based largely on localized economic and tax benefits, while failing to identify any benefits to ratepayers generally. This estimate, however, does not reflect any system-wide or transmission congestion relief benefits, or any environmental benefits (including emissions reductions), and unduly relies upon the indirect economic benefits allegedly attributable to refueling. After conducting a holistic review of both the assumed benefits associated with the RSSA and Phase 2 of the Auburn transmission upgrades, and the appropriate expected level of economic benefits of repowering, the Commission finds that refueling of Cayuga is not in the public interest. Most notably, the transmission solution provides greater reliability, as explained in the Auburn Certification Order, at a cost less than that of repowering.

While, as Cayuga has argued, the Part Y Legislation permits us to consider local economic development benefits, those benefits are insufficient on the whole given the other facts presented, in particular the lack of any meaningful reliability and system congestion relief benefits. In weighing Cayuga's Revised Proposal, the Commission therefore finds that the costs to NYSEG's ratepayers would not be justified by the claimed potential benefits of economic development and tax payments.

Accordingly, as recognized in the Auburn Certification Order, Auburn Phase 2 is the best alternative for addressing the

[25] Case 12-E-0577, supra, Comments of Earthjustice (filed August 25, 2015) p. 15.

reliability needs associated with the potential unavailability of the Cayuga units. Even if an extension to the RSSA were needed to complete the Auburn Phase 2 project -- a speculative assumption at best at this time -- completing the transmission project is the approach that best serves the public interest in conformance with the January 2013 Order and the Part Y Legislation.[26] Moreover, the Commission cannot find that the Cayuga repowering costs, which represent a much more expensive alternative that lacks benefits sufficient to meaningfully offset those costs, would result in rates that are just and reasonable to NYSEG’s ratepayers.

Procedural Issues

On March 25, 2015, Earthjustice, on behalf of Sierra Club and Ratepayer and Community Intervenors (collectively, Movants), filed a Motion to Compel Cayuga to provide responses to Movants’ joint interrogatories and request for production of documents dated February 12, 2015 (Motion). The information requests sought more detailed information related to the claims and conclusions contained in the Revised Proposal. In the event the Motion is denied, the Movants request that the Commission order Cayuga to make the requested information available to the parties.

On April 3, 2015, Cayuga responded to the Motion, arguing that it should be denied because the Commission rules do not provide for discovery in a notice and comment proceeding, such as this proceeding. To bolster its argument, Cayuga cites a letter dated November 13, 2013, in which the Secretary stated that Earthjustice does not have a discovery right under the

[26] Even if the project is not in-service by the end of the RSSA, its extension might be unnecessary in light of other alternatives, such as demand reduction, that could be more cost effective.

Commission’s Rules of Procedure, 16 NYCRR Part 5. Additionally, Cayuga asserts that the Movants’ reliance on the Protective Order, issued November 13, 2013, as a basis for discovery is untenable because the documents sought in the Motion are not covered by the Protective Order, and are instead subject to the Commission’s Rules of Procedure, 16 NYCRR Part 5.

The information sought by Movants, by letter dated February 12, 2015, was intended to better inform their position on the Revised Proposal. In its comments, Earthjustice disputes the need to repower/refuel the Cayuga facility as proffered in the Revised Proposal. However, given our determination here that Cayuga’s proposals do not warrant further consideration and are not in the public interest, the need for such additional information has been obviated. Given that the Motion is moot, we need not address the substantive merits raised by Movants or Cayuga. Accordingly, the Commission denies the Motion.

CONCLUSION

In response to the January 2013 Order, as codified in the Part Y Legislation, NYSEG has undertaken an evaluation and consideration of proposals for repowering and refueling the Cayuga generating facility. The Commission finds, based on the record, that Cayuga’s Revised Proposal is not in the public interest and should not be pursued further on a ratepayer-supported basis. The owners of the Cayuga facility remain free to pursue repowering or refueling on a merchant basis.

The Commission orders:

1. Pursuant to the Commission’s order issued in this proceeding on January 18, 2013, and consistent with Chapter 57 of the Laws of 2013 (Part Y Legislation), the finding is made that the various refueling and repowering proposals Cayuga

Operating Company, LLC has filed will not serve the public interest.

2. The Motion to Compel, filed on March 25, 2015, by Earthjustice, on behalf of Sierra Club and Ratepayer and Community Intervenors, is denied.

3. This proceeding is closed.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary

SUMMARY OF COMMENTS

Cayuga

According to Cayuga, the February 6, 2015 Revised Repowering Proposal ("revised proposal") is consistent with the Repowering Order, the June 2014 Order, and state energy goals, such as the New York Energy Highway Blueprint. Specifically, Cayuga asserts that repowering the Cayuga generation facility ("facility") will provide for a reliable source of local power, contributing to stabilization of the electric grid, as well as obviating the need for construction of Phase 2 of the Auburn Transmission Project. In particular, Cayuga stresses that the proposed dual-fuel capability of one of the facility's coal-fired units will significantly contribute to system reliability, which is especially important given the extended periods of cold weather upstate New York often experiences.

Turning to the environment, Cayuga contends that repowering will notably reduce emissions, improving air quality and shrinking the facility's carbon footprint. Countering NYSEG, Cayuga argues that the comparison between emissions levels must be made between a repowered facility and a coal-fired facility, rather than a new, combined cycle natural gas-fired generator.

Asserting that the region will benefit from the positive economic effects of repowering the facility, Cayuga maintains that repowering will reduce residential taxpayer costs, maintain and create local jobs, and provide stable tax revenue for the local government and public schools. To bolster its position that repowering will support the local economy, Cayuga specifically points to anticipated construction spending and the amount of tax revenue earned from the facility.

Entergy Entities

The Entergy Entities note that, in the revised proposal, Cayuga claims that repowering will lead to installed capacity and LBMP savings. Accordingly, the Entergy Entities argue that, pursuant to the Federal Power Act, the Federal Energy Regulatory Commission ("FERC") has exclusive jurisdiction over the proposed repowering under both field and conflict preemption principles.

Asserting that transmission upgrades are necessary for NYSEG to continue to provide customers with safe and reliable service, the Entergy Entities posit that such upgrades must be made regardless of whether Cayuga is repowered. Accordingly, the Commission is not required to choose between repowering Cayuga and upgrading transmission lines because, assuming the transmission work is completed, Cayuga must choose, as a market participant, whether it should continue to operate.

Earthjustice

Contrary to Cayuga, Earthjustice posits that the revised proposal will lead to reliability risks and unnecessary costs that could be avoided if transmission upgrades are pursued instead of repowering. Citing reliability analyses conducted by NYSEG and Cayuga, Earthjustice claims that transmission upgrades are necessary regardless of whether the facility is repowered and that those upgrades will solve reliability issues in the area, obviating the need for repowering. Furthermore, Earthjustice contends that there is no guarantee the facility will not require more funding, in addition to subsidies it is already scheduled to receive, after ratepayers have paid for the repowering.

Recognizing that closing the facility is likely to cause negative economic effects in the region, Earthjustice asserts that because the current RSSA does not expire until

2017, there is sufficient time to develop mitigation plans and proactive measures designed to reduce the impact of those anticipated negative effects. Earthjustice also points out that NYSEG is open to discuss identification of such plans and measures with the relevant state agencies.

Maintaining that Commission approval of the revised proposal constitutes an "action" subject to **the** State Environmental Quality Review Act **("S**EQRA"), Earthjustice argues that the Commission must make a SEQRA determination of significance (to decide whether an environmental impact statement ("EIS") is required) before it can issue such approval. Earthjustice believes that the nature and extent of the anticipated environmental impacts of the repowering will necessitate preparation of an EIS.

Elected Officials

Officials on the local, state, and federal levels offered comments on the revised proposal. On the local level, Martha Robertson, Chair of the Tompkins County Legislature, as well as Pat Pryor, a Tompkins County Legislator (6^{th} District), offered their support for the repowering proposal while Carol Chock, also a Tompkins County Legislator (3^{rd} District), noted her opposition to repowering. Don Barber, Caroline Town Supervisor, also opposes repowering, though Kathy Miller, Lansing Town Supervisor, supports repowering. In addition to local government officials, comments were received from representatives in the New York State Senate and Assembly, as well as the United States Congress.

i. New York State Legislature

Emphasizing the positive tax-related impacts for local residential taxpayers, businesses, and public schools, Assemblyman Gary Finch (126^{th} District) urged support for repowering the facility. Also in support of repowering, Assemblyman Robert Oaks (130th District) adds that, in addition to tax benefits, job creation and reduced power costs will result from repowering.

Urging that ratepayers should not be required to continue to fund outdated generation, Assemblymembers Edward Braunstein (26th District), Phil Steck (110th District), Barbara Lifton (125th District), Deborah Glick (66th District), Walter Mosley (57th District), Jo Anne Simon (52nd District), Fred Thiele, Jr. (1st District), Amy Paulin (88th District), David Buchwald (93rd District), Jeffrey Dinowitz (81st District), Albert Stirpe, Jr. (127th District), James Skoufis (99th District), and Brian Kavanagh (74th District), as well as Senators Liz Krueger (28th District), Martin Malavé Dilan (18th District), Neil Breslin (44th District), Jesse Hamilton (20th District), Brad Hoylman (27th District), George Latimer (37th District), Kevin Parker (21st District), Bill Perkins (30th District), and José Serrano (29th District) argue that the facility is too costly and its continued operation undermines state energy goals. Instead, they stress that investments should be made in renewable energy and energy efficiency initiatives. Accordingly, they offered their support for transmission upgrades as a clean and cost-effective alternative to repowering and for responsible retiring of the facility.

Senators John DeFrancisco (50th District), Thomas O'Mara (58th District), Michael Nozzolio (54th District), George Maziarz (62nd District), and James Seward (51st District) support repowering the facility according to any of the four options Cayuga presented. They specifically asserted that repowering will preserve up to ninety permanent jobs and add up to 500 temporary constructions jobs, protect the local tax base, contribute to regional economic development, reduce emissions, and support state renewable energy goals (due to inclusion of a 2 MW solar array in each of the repowering options).

ii. United States Congress

Maintaining that the facility contributes to the local economy, Tom Reed, representing the 23rd District of New York in the House of Representatives, suggests repowering will maintain and create jobs in the local area. Further noting support for repowering, Mr. Reed argues natural gas will improve electric system reliability and increase power quality.

iii. Towns

The Town of Ulysses requests that the Tompkins County Legislature undertake an analysis to better understand the impact of the Cayuga Power Coal Ash Landfill on the health of local residents and on the environment and develop a long-term plan to best protect resident and the region from adverse effects. The Towns of Ithaca and Caroline oppose repowering. The Town of Dryden supports immediate transmission upgrades and continued operation of the facility until those upgrades are complete. Once the upgrades are finished, Dryden suggests conducting a reevaluation of demand and whether the facility should continue operations at that point.