

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**PETITION OF NY EMPIRE TRANSMISSION
COMPANY LLC FOR AN
ORDER APPROVING A LIGHTENED
REGULATORY REGIME**

Case 26-E-_____

INTRODUCTION

NY Empire Transmission Company LLC (“NYETC or “Petitioner”) hereby requests that the New York State Public Service Commission (“Commission”) issue an order providing that NYETC will be regulated under a lightened regulatory regime, consistent with the Commission’s prior orders providing lightened regulation for competitive wholesale generators and interstate transmission companies engaged in the transmission of electricity in interstate commerce.¹

On April 25, 2023, the New York Power Authority (“NYPA”) and New York Transco LLC (“NY Transco”) entered into a Joint Development Agreement (the “Joint Development Agreement”), pursuant to which, among other things, NYPA and NY Transco agreed to jointly develop the Propel NY Energy transmission project (“Project”).² Under the Joint Development

¹ See, e.g., Case 21-E-0466, *Petition of NextEra Energy Transmission New York, Inc. for a Declaratory Ruling Approving a Lightened Regulatory Regime*, Order Providing for Lightened Regulation (Jan. 21, 2022) (“NEETNY Order”); Case 19-E-0739, *LS Power*, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Regulation, and Approving Financing (Jan. 21, 2021); Case 15-E-0743, *Petition of New York Transco LLC for an Order Providing for Lightened Regulation*, Order Providing for Lightened Ratemaking Regulation and Approving Financing (April 21, 2016); Case 10-E-0276, *Bayonne Energy Center, LLC*, Order Providing for Lightened Regulation (Sept. 17, 2010); Case 05-E-1030 *Cross-Sound Cable Company (New York), LLC*, Order Providing for Lightened Regulation (Feb. 16, 2006).

² As described in more detail in Appendix A to the Joint Proposal filed on April 30, 2026 in Case 24-T-0446, the Project consists of approximately 89.6 miles of new underground transmission lines (approximately 78.7 miles at 345 kilovolts [kV] and approximately 10.9 miles at 138 kV) and direct interconnection with nine existing and/or new substations located within Suffolk, Nassau, Queens, Bronx, and Westchester counties. The Project has four primary components which collectively are the Project Facilities: (i) the “Submarine Cable,” which includes an approximately 9.2-mile submarine crossing of the Long Island Sound (LIS) between the Town of Oyster Bay and the City of New Rochelle, inclusive of horizontal directional drill (HDD) and trenching elements; (ii) the “Terrestrial Cable,” which

Agreement, NYPA and NY Transco will each be allocated and own a distinct and segregable share of the Project Facilities (each such share, a “Co-Developer Share”).

Subsequent thereto, NYPA and NYETC reached an agreement under which, among other things, NYETC has agreed to fund a portion of the costs associated with NYPA’s Co-Developer Share (the “NYPA/NYETC Project Agreement”). Under the NYPA/NYETC Project Agreement, which was approved by the NYPA Board of Trustees on June 23, 2026, in exchange for NYETC agreeing to fund a portion of the costs associated with NYPA’s Co-Developer Share, NYPA will enable transfer of ownership to NYETC of a portion of the assets comprising NYPA’s Co-Developer Share upon reaching substantial completion and ready to be placed into service. As such, upon the transfer, NYETC will become the owner of a distinct and segregable share of the Project Facilities.

As with the distinct and segregable share of the Project Facilities owned by NYPA and NY Transco, the distinct and segregable share of the Project Facilities that will be transferred to NYETC will be under the operational control and tariff administration of the New York Independent System Operator (“NYISO”) and will only be operated in the wholesale market. NYETC will transmit electricity in interstate commerce at the wholesale level without providing direct service to retail customers.³ Thus, consistent with Commission precedent, NYETC seeks an order providing that it is to be regulated under a lightened regulatory regime.

includes approximately 80.4 miles of new underground transmission lines primarily within existing roadway rights-of-way (ROW), including an approximately 0.9-mile land-to-land HDD crossing of the East River from Queens County to Bronx County and an approximately 0.2-mile land-to-land HDD crossing of the Westchester Creek in Bronx County; (iii) three new “Substations:” the New Barrett Road Substation, the New Shore Road Substation, and the New Ruland Road Substation ; and (iv) the “Transition Station” in the City of New Rochelle.

³ NYETC will establish a wholesale transmission rate under FERC jurisdiction and will, through the NYISO tariff, charge only Load Serving Entities (“LSE’s”) for its services. As a wholesale transmission-only entity, NYETC will not have any retail customers.

I. BACKGROUND

A. The Petitioner

NYETC was established as a single-member New York limited liability company special purpose vehicle for the purpose of lessening the burdens of NYPA to provide a responsible supply of affordable, clean and reliable electricity to the residents of the State of New York. NYETC is wholly-owned by Empire Power Infrastructure Company LLC, a single-member New York limited liability company special purpose vehicle. Empire Power Infrastructure Company LLC is wholly-owned by PRG Empire Transmission LLC, a single-member New York limited liability company special purpose vehicle. PRG Empire Transmission LLC is wholly-owned by Provident Resources Group Inc. (“Provident”), a Georgia nonprofit corporation, and a tax-exempt entity under Section 501(a) of the Internal Revenue Code, as an organization formed under Section 501(c)(3) of the Internal Revenue Code. One of Provident’s charitable purpose is to serve to lessen the burdens of government, which charitable purpose may be accomplished through various means, including the development, construction, acquisition, ownership, management, maintenance, operation and disposition of public facilities, public buildings, public works, essential infrastructure of various types that serve the purposes and functions of government, the provisions of services and financial assistance, and the performance of activities that enable state and local government to proficiently carry out its functions and responsibilities to its citizens.

B. The Project

On August 3, 2020, the NYISO commenced the biennial Public Policy Transmission Planning Process specified under Attachment Y of its Open Access Transmission Tariff (“OATT”) by requesting interested entities to identify potential transmission needs that may be driven by Public Policy Requirements (“PPRs”). On October 9, 2020, the NYISO submitted potential

transmission needs driven by PPRs to the Commission for consideration as part of the NYISO's 2020-2021 transmission planning cycle.⁴

On February 3, 2021, in Case 20-E-0497, the Long Island Power Authority ("LIPA") advised the Commission that it had determined "that a transmission need exists within the Long Island Transmission District driven by the Climate Leadership and Community Protection Act ("CLCPA") and the Accelerated Renewable Energy Growth and Community Benefits Act ("the Act")." LIPA requested that the Commission refer to NYISO a Public Policy Transmission Need ("PPTN") to solicit and evaluate potential solutions.

On March 19, 2021, the NYPSC issued an Order Addressing Public Policy Requirements for Transmission Planning Purposes holding that certain aspects of the CLCPA "are driving the need for additional transmission facilities between Long Island and New York City."⁵ (the "PPTN Order"). More specifically, the PPTN Order identified the need for: (i) adding at least one bulk transmission intertie cable to increase the export capability of the LIPA-Con Edison interface, that connects NYISO Zone K to Zones I and J to ensure that the full output of at least 3,000 MW of energy generation is deliverable from Long Island to the rest of the State; and (ii) upgrading associated local transmission facilities to accompany the expansion of the proposed energy generation export capability (the foregoing, collectively, "Transmission Need" or "PPTN").⁶ The Commission also directed the NYISO to utilize the evaluation criteria and cost allocation methodology identified in the PPTN Order.⁷

⁴ See Case 20-E-0497, *In the Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration for 2020 Transmission Planning Cycle*, NYISO Oct. 9, 2020 filing.

⁵ Cases 20-E-0497 and 18-E-0623, *In the Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration for 2020 Transmission Planning Cycle et al.*, Order Addressing Public Policy Requirements for Transmission Planning Purposes, (March 29, 2021) at 4.

⁶ *Id.* at 23.

⁷ *Id.* at 24.

On August 12, 2021, NYISO issued a Request for Solutions to the PPTN.⁸ In response to the solicitation, the NYISO received 18 Public Policy Transmission Projects (“PPTP”) and one Other Public Policy Project. Of the proposed solutions, NYPA and New York Transco collectively submitted seven (four base solutions and three alternative solutions) for evaluation by the NYISO in connection with the PPTN.

On June 13, 2023, NYISO selected the T051 Propel Alternate Solution 5 (the “Project”) collectively proposed by NYPA and NY Transco as the more efficient or cost-effective transmission solution to the PPTN. The NYISO held that the Project “cost-effectively offers expandability, operability, and performance benefits from three new AC tie lines from Long Island to the rest of the state . . . and adds a strong 345 kV backbone to the Long Island transmission system that will help serve Long Island load with the future generation changes needed to meet the CLCPA.”⁹ On May 3, 2024, NYPA and NY Transco entered into a Development Agreement (Service Agreement No. 2843) with NYISO (the “NYISO Development Agreement”), pursuant to which, among other things, NYPA and NY Transco will collectively develop, construct and place in service the Project by the dates required therein.

On July 31, 2024, in accordance with Article VII of the New York Public Service Law (“PSL”) and the rules and regulations promulgated thereunder, NY Transco and NYPA applied to the Commission for a Certificate of Environmental Compatibility and Public Need to construct, operate, and maintain the Project. The Article VII Application was deemed in compliance with

⁸ NYISO, Long Island Offshore Wind Export Public Policy Transmission Need Project Solicitation (issued Aug. 12, 2021).

⁹ See NYISO, Approval of Long Island Offshore Wind Export Public Policy Transmission Planning Report and Selection of Public Policy Transmission Project” (June 13, 2023).

PSL § 122 as of February 5, 2025.¹⁰ On April 30, 2026, a Joint Proposal was filed in the Propel Article VII Proceeding resolving all issues among the signatory parties.

C. NYETC Project Facilities

NYPA will enable transfer of legal title to discrete facilities to NYETC. Transfer of title will not occur until, among other conditions, required approvals from the Commission are obtained by NYETC.¹¹ The transfer of title is expected to occur at substantial completion just prior to energization of the Project Facilities.

NYETC will file proposed rates for recovery of Project costs with FERC based on the initial allocation of Project Facilities and seek a FERC rate mechanism under the NYISO Tariff.

In addition, NYPA and NYETC intend to enter into an Operations and Maintenance agreement, pursuant to which NYPA will provide operations and maintenance services required with respect to the Project Facilities allocated to NYETC and that NYETC will compensate NYPA for such services.

II. DISCUSSION

THE COMMISSION SHOULD ISSUE AN ORDER PROVIDING THAT NYETC WILL BE REGULATED UNDER A LIGHTENED REGULATORY REGIME

¹⁰ Case 24-T-0446, *Petition of New York Transco LLC and New York Power Authority for a Certificate of Environmental Compatibility and Public Need, Pursuant to Article VII of the New York Public Service Law, to Construct, Operate, and Maintain an Approximately 89.7-Mile Underground Transmission Line through Suffolk, Nassau, Queens, Bronx, and Westchester Counties* (the “Propel Article VII Proceeding”)

¹¹ These approvals include approval of a lightened regulatory regime for NYETC’s ownership, operation and maintenance of the facilities allocated to it as requested herein. Moreover, if necessary NYETC will seek: approval under Section 70 of the Public Service Law for the transfer of assets; approval under Section 121 of New York State Public Service Law of the partial transfer of the Certificate of Environmental Compatibility and Public Need issued for the Project as necessary for NYETC’s ownership, operation and maintenance of the facilities allocated to NYETC, if applicable; and approval under Section 68 of New York State Public Service Law of the partial transfer of any Certificate of Public Convenience and Necessity issued for the Project as necessary for NYETC’s ownership, operation and maintenance of the NYETC Allocated Assets, if applicable. NYETC will make filings with the Commission, as applicable, seeking these approvals at a later date, prior to the transfer of ownership.

NYETC requests that it be regulated under a lightened regulatory regime consistent with lightened regulatory regimes the Commission has applied under its realistic appraisal test to other independent power producers and transmission companies engaged in the selling or transmission of electric energy exclusively at wholesale. Such a regime will allow NYETC the flexibility necessary for it to operate effectively as a wholesale electric transmission company and comply with all applicable FERC regulatory requirements, while also providing the Commission the appropriate regulatory oversight under the Public Service Law.

The Commission has consistently applied lightened regulatory oversight to companies whose operations are limited to either wholesale electric generation or interstate transmission.¹² The Commission first articulated its policy on the lightened regulatory regime for competitive wholesale providers of electricity for Wallkill Generating Company, L.P.¹³ The Commission later established the regulatory requirements for electric service providers participating in the wholesale market in its orders applying lightened regulation on Carr Street Generating Station, L.P. and AES

¹² See, e.g., Case 21-E-0466, *Petition of NextEra Energy Transmission New York, Inc. for a Declaratory Ruling Approving a Lightened Regulatory Regime*, Order Providing for Lightened Regulation (Jan. 21, 2022); Case 19-E-0739, *LS Power*, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Regulation, and Approving Financing (Jan. 21, 2021); 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 (April 21, 2016); Case 10-E-0339, *Hudson Transmission Partners, LLC*, Order Providing Lightened Rate Making Regulation, (April 14, 2011); Case 10-E-0276, *Bayonne Energy Center, LLC*, Order Providing for Lightened Regulation (Sept. 17, 2010); Case 10-E-0042, *AES ES Westover, LLC*, Order Providing for Lightened Regulation and Approving Financing (May 14, 2010); Case 09-E-0250, *Astoria Generating Company, L.P.*, Order Approving Financing (Dec. 23, 2009); Case 05-E-1030, *Cross-Sound Cable Company (New York), LLC*, Order Providing for Lightened Regulation (Feb. 16, 2006); Case 05-E-0098, *Caithness Long Island, LLC*, Order Granting a Certificate of Public Convenience and Necessity, Providing for Lightened Regulation and Approving Financing (Nov. 15, 2006); Case 05-E-0669, *Neptune Regional Transmission System*, Order Providing for Lightened Regulation (Nov. 30, 2005); Case 99-E-0148, *AES Eastern Energy, L.P. and AES Creative Resources, L.P.*, Order Providing for Lightened Regulation (April 23, 1999) (“1999 AES Eastern Order”); Case 98-E-1670, *Carr Street Generating Station, L.P.*, Order Providing for Lightened Regulation (April 23, 1999); Case 91-E-0350, *Wallkill Generating Company, L.P.*, Order Establishing Regulatory Regime (April 11, 1994).

¹³ Case 91-E-0350, *Wallkill Generating Company, L.P.*, Order Establishing Regulatory Regime (April 11, 1994).

Eastern Enterprises, L.P.¹⁴ In those decisions, the Commission relaxed the regulatory scheme otherwise applicable to traditional vertically integrated utilities.

Under lightened regulation, the Commission performs a realistic appraisal to ascertain the PSL requirements that should be imposed on wholesale providers of electricity.¹⁵ When a wholesale provider of electricity meets the definition of an electric corporation under PSL Section 2(13) and is engaged in the transmission of electricity under PSL Section 5(1)(b), the Commission has determined that certain PSL Articles are entirely inapplicable, while others are partially applicable. In *Cross-Sound Cable*, the Commission recognized that transmission-only entities should be accorded a lightened regulatory framework for similar reasons as wholesale generators. The Commission found that “[u]nder this realistic appraisal approach, PSL Article 1 adheres to petitioners, because they meet the definition of ‘electric corporation’ under PSL §2(13) and are engaged in the conveying or transportation of electricity under PSL §5 (1)(B).”¹⁶ Similarly, in *New York Transco* and *NEETNY*, the Commission held that NY Transco and NEETNY were subject to a lightened regulatory regime because their “transmission assets will be under the operational control and tariff administration of the NYISO, and will only be operated in the wholesale marketplace.”¹⁷ The Commission further held that the application of a lightened regulatory regime for “wholesale transmission facilities in New York is similar to that afforded to others participating in competitive electric markets.”¹⁸

¹⁴ Carr Street Generating Station, L.P., Order Providing for Lightened Regulation (April 23, 1999); Case 99- E-0148, AES Eastern Energy, L.P. and AES Creative Resources, L.P., Order Providing for Lightened Regulation (April 23, 1999)

¹⁵ Carr Street at 4-5.

¹⁶ Cross-Sound at 4 (citations omitted)

¹⁷ Transco at 8; NEETNY at 6-7.

¹⁸ Transco at 8.

1. Applicable Provisions

Upon the transfer of ownership of Project Facilities to it, NYETC will be engaged in the transmission of electricity under PSL Section 5(1)(b). The Commission has previously determined that the following provisions remain applicable under a lightened regulatory regime: Article 1: Sections 11, 19, and 24-26, which prevent providers of electricity from taking actions that are contrary to the public interest;¹⁹ Article 4: Section 66(2), (5), (8), (9) & (10) (access to records and reports, inspection of property, and orders regarding reasonable improvements), Section 68 (certificate of public convenience and necessity);²⁰ and Article 6: Section 119-b (regulates the protection of underground facilities from damage by excavators). Regarding Section 69, the Commission has held that “the approval of financing plans may be appropriately granted under lightened regulation, but the scrutiny applicable to monopoly utilities may be reduced for lightly-regulated companies that operate in a competitive environment. As a result,[the Commission] need not make an in-depth analysis of proposed financing transactions.”²¹ Regarding PSL §70, it was presumed in the AES Order that regulation would not “adhere to transfer of ownership interests in entities upstream from the parents of a New York competitive electric generation subsidiary, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption.”²²

2. Inapplicable Provisions

Conversely, the Commission has previously determined the following provisions to be inapplicable under a lightened regulatory regime: Article 1: Section 18-a (costs and expenses of

¹⁹ Carr Street, at 6. Transco at 8; NEETNY at 7..

²⁰ Carr Street at 7; AES ES Westover, at 5-6; Cross-Sound, at 5-6; Neptune, at 7.

²¹ Transco at 10-11; *see also* NEETNY at 8.

²² Carr Street Order, p. 8; Wallkill Order, pp. 9-10; Transco at 11; NEETNY at 8.

the Commission and Department applicable to gross retail revenues);²³ Article 2: By its own terms, Article 2 applies only to the provision of service to retail residential customers, and is therefore entirely inapplicable to wholesale generators or competitive transmission companies, such as NYETC;²⁴ Article 4: Section 66(12) (filing of tariffs), Section 66(21) (storm plans), Section 67 (meter inspections), Section 72 (hearing and rate proceedings), Section 72-a (reporting increased fuel costs); Section 75 (excessive charges) and Section 76 (rates charged religious bodies and others)²⁵. Section 66(6), wholesale generators and entities transmitting electricity in interstate commerce have been allowed to fulfill their obligations under Section 66(6) to file an annual report through a format designed to accommodate their particular circumstances;²⁶ and Article 6: Sections 106 (loan approvals), 107 (use of utility revenues), 108 (corporate merger and dissolution), 110(1) (reporting of ownership interests) and 110(2), (access to books and records and the filing of reports), 110(3) (contracts between affiliated interests) and 110(4) (purchase contracts).²⁷ Sections 112 (rate order enforcement), 113 (reparations and refunds), 114 temporary rates), 114-a (exclusion of lobbying costs from rates), 115, which addresses competitive bidding for utility purchases.²⁸ Sections 116 (water service discontinuance), 117 (consumer deposits), 118 (payment to an authorized agent), 119-a (utility poles and conduits), and 119-c (tax reductions).²⁹

NYETC also requests that the Commission clarify that Section 66(4) and its corresponding regulations under 16 NYCRR Parts 165-167 and 180-182 will be inapplicable to NYETC. These sections focus on systems of accounting to be utilized by rate regulated utilities. As noted above,

²³ Carr Street, fn. 8, at 6; AES ES Westover, fn. 5, at 5; Cross-Sound, fn. 7, at 4

²⁴ Carr Street, at 6; AES ES Westover at 5; Cross-Sound, at 4; Caithness, at 3; Transco at 9; NEETNY at 7.

²⁵ Carr Street, fn. 2, at 6; AES ES Westover fn. 6, at 5; Cross-Sound, fn. 8, at 4; Caithness, fn. 6, at 34; NEETNY at 7.

²⁶ See NEETNY at 8 citing Case 11-M-0294, *Annual Reporting Requirements*, Order Adopting Annual Reporting Requirements Under Lightened Ratemaking Regulation (issued January 23, 2013)

²⁷ Carr Street at 10; AES ES Westover, fn. 11, at 7; Cross-Sound, fn. 16, at 8; Caithness, fn. 11, at 36.

²⁸ Carr Street at 9; AES ES Westover at 7; Cross-Sound at 7.

²⁹ Carr Street, fn. 13, at 9; AES ES Westover, fn. 10, at 7; Cross-Sound, fn. 15, at 7; Caithness, fn. 10, at 3

NYETC will establish a wholesale transmission rate under FERC jurisdiction and, through the NYISO tariff, only Load Serving Entities (“LSE’s”) will be charged for its services. As such, these requirements are inapplicable to NYETC.

3. SEQRA/CLCPA Review

Under the State Environmental Quality Review Act (“SEQRA”), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7), the Commission must determine whether the actions it is authorized to approve may have a significant impact on the environment. Here, however, additional SEQRA review is not required if the Commission issues an order determining that NYETC should be lightly regulated.³⁰ Additionally, a project specific environmental review is taking place in the Article VII proceeding for the Project in Case 24-T-0446.

Similarly, should the Commission determine the CLCPA applies to this matter, its action issuing an order providing that NYETC will be regulated under a lightened regulatory regime would not be inconsistent with the CLCPA. Section 7(2) of the CLCPA requires the Commission to confirm that its “administrative approvals and decisions” are not inconsistent with, and will not interfere with, achieving the statewide greenhouse gas emissions limits set forth in Article 75 of the New York Environmental Conservation Law (“NYECL”), or to provide a detailed justification if those limits cannot be met. Section 7(3) prohibits State agencies from taking actions that disproportionately burden disadvantaged communities.

If the Commission determines the CLCPA applies to the action requested herein, these same considerations dictate finding that its requirements are met. Granting lightened regulatory treatment to NYETC will not alter the Project’s location or operating characteristics which will be

³⁰ See 6 N.Y.C.R.R. § 617.5(c)(31) (The following actions are not subject to review under this Part . . . interpreting an existing code, rule, or regulation).

provided as part of the Certificate of Environmental Compatibility and Public Need expected to be issued in Case 24-T-0446. In fact, granting of limited regulation will further support the construction and operation of the Project – which will allow the reliable delivery of renewable resources required by the CLCPA. Thus, Commission action in this proceeding is not inconsistent with, and will not interfere with, the attainment of emissions limits established under the NYECL, nor will it disproportionately burden disadvantaged communities. Therefore, if the Commission undertakes review under this statute, the facts presented support finding its actions in this proceeding satisfy CLCPA requirements.

III. CONCLUSION

For the foregoing reasons, NYETC requests that the Commission issue an order finding that NYETC will be subject to a lightened regulatory regime as described herein.

Respectfully submitted,

COUCH WHITE, LLP
Attorneys for NYETC

Leonard H. Singer

Leonard H. Singer
James S. King
540 Broadway
Albany, New York 12201
T: (518) 426-4600
F: (518) 426-0376
lsinger@couchwhite.com
jking@couchwhite.com

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