STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on September 14, 2017

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman, abstaining
James S. Alesi

CASE 17-M-0422 - Petition of National Grid Generation LLC for a Declaratory Ruling Concerning 3 Cove Hollow Road, East Hampton, NY, to East Hampton Energy Storage Center, LLC.

DECLARATORY RULING ON LEASE TRANSACTION

(Issued and Effective September 19, 2017)

BY THE COMMISSION:

INTRODUCTION

On July 14, 2017, National Grid Generation LLC (National Grid Generation) filed a petition seeking a declaratory ruling that the lease of certain real property to East Hampton Energy Storage Center, LLC does not require further Commission review pursuant to Public Service Law (PSL) §70 (the Petition). The Petition indicates that East Hampton Energy Storage Center, LLC plans to construct a new 5 MW enclosed battery storage system and ancillary facilities on the property, which is located in East Hampton, New York.

Responses to the Petition were due within the 21-day period prescribed under the Commission's Rules of Procedure, contained in 16 NYCRR §8.2(c). One comment was received by the deadline, which expired on August 4, 2017. As discussed below, the Commission grants the Petition and finds that no further

review of the proposed lease transaction is warranted under the circumstances.

THE PETITION

National Grid Generation advises that it is a wholly owned subsidiary of KeySpan Corporation, which is a wholly owned subsidiary of National Grid USA. National Grid Generation notes that it is subject to a lightened regulatory regime by the Commission, and currently owns and operates 50 electric generation units on Long Island, with a total generating capacity of approximately 3,800 MW.

According to National Grid Generation, the property to be leased includes approximately 36,111 square feet (the Property), and is part of the East Hampton Generating Site that contains four combustion generating units operated by National Grid Generation and a substation owned by the Long Island Power Authority (LIPA) that will be used to interconnect the battery storage project to LIPA's distribution system.[1]

In support of its Petition, National Grid Generation asserts that the Property is vacant and there are no current or foreseeable uses for the land. According to National Grid Generation, LIPA has selected the proposal for the battery energy storage system to provide additional local power production resources and transmission support to LIPA's East Hampton substation. The Petition maintains that the lease will have no adverse effect on the electric generation services that National Grid Generation provides to LIPA, and will not harm the interests of utility customers. National Grid Generation reports that it

[1] East Hampton Energy Storage Center, LLC is a subsidiary of LI Energy Storage System LLC, which in turn is owned equally by National Grid Generation Ventures LLC (a wholly-owned subsidiary of National Grid Generation) and Long Island Energy Storage Holdings, LLC (a subsidiary of NextEra Energy, Inc.).

has reserved sufficient land for any additional operational needs it may have in the future, and therefore the lease will not interfere with the safe and reliable operation and maintenance of National Grid Generation's East Hampton generating facility.

In addition, National Grid Generation asserts that the proposed lease does not raise any market power concerns given the small size of East Hampton Energy Storage Center, LLC's proposed facility and other generation facilities owned by its affiliates.[2] Moreover, the Petition notes that LIPA will determine when the output from the battery storage project will be dispatched to deliver its stored energy.

Based on these facts, National Grid Generation seeks a declaratory ruling that the lease to East Hampton Energy Storage Center, LLC does not require further Commission review pursuant to PSL §70. In the alternative, National Grid Generation requests that the proposed lease be approved pursuant to PSL §70 because it is in the public interest.

COMMENTS

One public comment was received by Claudia Diaz, a homeowner adjacent to the proposed battery storage project. Ms. Diaz questions the original cost of the Property and suggests that the actual purchase price of the land should be disclosed, as she believes it is used in determining National Grid Generation's cost of service. Further, she seeks to clarify the actual project area if National Grid Generation is reserving the right to further develop the property and the project will include common areas.

Ms. Diaz also questions the consent required from the Town of East Hampton (the Town) and whether the Town adequately

[2] Long Island Energy Storage Holdings, LLC is a subsidiary of NextEra Energy Resources LLC, which owns two 55 MW peaking plants in Far Rockaway.

ensured that the battery storage project will comply with the Town Code relating to Noise Pollution and the criteria for granting a special permit under the State Environmental Quality Review Act (SEQRA). Ms. Diaz also raises concerns with the financial viability of East Hampton Energy Storage Center, LLC to address an environmental remediation, if required, and urges the Commission to examine all of these issues.

LEGAL AUTHORITY

Pursuant to PSL §70, Commission approval is needed before an electric corporation may "transfer or lease its franchise, works or system or any part of such franchise, works or system...." However, the Commission's review process has been adapted to accommodate entities that are subject to lightened regulation by virtue of their merchant operations in competitive wholesale markets. For example, transfers under PSL §70 have been supported by demonstrating that a transaction will not present an opportunity to exercise either horizontal or vertical market power, or otherwise pose a potential harm to the interests of captive ratepayers of fully-regulated utilities.[3] Where an adequate demonstration can be made, the Commission need not undertake a full review under PSL §70 with respect to a proposed transfer.

[3] See, Case 91-E-0350, Wallkill Generating Company, L.P., Order Establishing Regulatory Regime (issued April 11, 1994); Case 16-M-0194, Dynegy Inc. et al., Declaratory Ruling on a Transfer Transaction (issued May 23, 2016); Case 16-E-0327, ENGIE North America Inc. et al., Declaratory Ruling on a Transfer Transaction (issued August 2, 2016); and, Case 16-E-0392, Danskammer Energy, LLC, Declaratory Ruling on a Transfer Transaction (issued September 19, 2016).

DISCUSSION AND CONCLUSION

The Petition adequately demonstrates that National Grid Generation's proposed lease to East Hampton Energy Storage Center, LLC will not present an opportunity to exercise either horizontal or vertical market power. The relatively small size of the proposed battery storage facility (i.e., 5 MW), is insufficient to present the ability to exert market power. Moreover, any market power concerns would be mitigated by LIPA's control over the energy dispatch from the battery storage project.[4]

In addition, the proposed lease would not pose a potential harm to the interests of captive ratepayers. Significantly, construction, operation, or maintenance of the battery storage facility will not interfere with the safe and reliable operation and maintenance of National Grid Generation's generating facility used to serve LIPA's customers. The lease is of a limited nature and scope, and the real property interests necessary for operation of the facility will be unchanged. National Grid would also retain sufficient land for any additional operational needs it may have in the future.

While the Commission recognizes the concerns raised by Ms. Diaz, they go to matters within the Town's permitting and environmental review process, and are otherwise beyond the scope of the Commission's limited review under the circumstances. As Ms. Diaz notes, the Town is responsible for undertaking the SEQRA review process, which is the proper forum to address the potential environmental impacts of the proposed battery storage project. The Commission also notes that National Grid

[4] LIPA and their agent, PSEG Long Island, intend to bid the project output into markets administered by the New York Independent System Operator, Inc., and to utilize electric delivery facilities outside the control of East Hampton Energy Storage Center, LLC and its affiliates.

Generation is subject to lightened ratemaking regulation and does not have captive ratepayers or rates based on cost of service.[5] Accordingly, the original cost of the Property is not relevant to the Commission's analysis in this situation.

Under the facts and circumstances presented in the Petition, the Commission finds that no further review under PSL §70 is warranted with respect to National Grid Generation's proposed lease to East Hampton Energy Storage Center, LLC. Accordingly, the Commission grants the request in the Petition for a declaratory ruling that the lease of certain real property to East Hampton Energy Storage Center, LLC does not require further Commission review pursuant to PSL §70.

The Commission finds and declares:

1. No further review will be conducted of the proposed lease transaction described in the Petition filed by National Grid Generation LLC on July 14, 2017, and discussed in the body of this ruling.

2. This proceeding shall be closed.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary

[5] See, Case 98-M-0074, Long Island Lighting Company, Order Approving Asset Transfers, Assumption of Liabilities and Issuance of Promissory Notes (issued May 1, 1998), pp. 6-7.