

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 8, 2015

COMMISSIONERS PRESENT:

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

CASE 14-M-0516 - Lakeside Energy LLC, Lakeside Generation LLC,
Lakeside New York LLC, Lakeside Beaver Falls
LLC, Lakeside Syracuse LLC, and NEP Holdco 1
LLC - Joint Petition for Expedited Approval
Pursuant to Public Service Law §§70 and 81 and
Related Approvals.

DECLARATORY RULING ON REVIEW
OF A TRANSFER TRANSACTION

(Issued and Effective January 13, 2015)

BY THE COMMISSION:

BACKGROUND

In a petition filed on November 26, 2014, NEP Holdco 1
LLC (NEP Holdco) and Lakeside Energy LLC (Lakeside Energy) and
its subsidiaries, Lakeside Generation LLC (Lakeside Generation),
Lakeside New York LLC, Lakeside Beaver Falls LLC (Lakeside
Beaver Falls), Lakeside Syracuse LLC (Lakeside Syracuse)
(collectively, Petitioners) request issuance of an expedited
order approving the transfer of all of the membership interests
of Lakeside Generation from Lakeside Energy to NEP Holdco
pursuant to §§70 and 83 of the Public Service Law (PSL). The
Petitioners also request that the lightened regulatory regime
currently applied to Lakeside Syracuse and Lakeside Beaver Falls

continue to apply to those entities under the ownership of NEP Holdco. Lakeside Beaver Falls owns and operates a 108 MW electric generation facility in Beaver Falls, and also supplies steam service to two nearby retail customers, Interface Solutions, Inc. and Omniafiltra, LLC. Lakeside Syracuse owns and operates a 103 MW electric generation facility in Solvay, New York. Both Lakeside Beaver Falls and Lakeside Syracuse are wholly owned indirectly by Lakeside Generation, through the ownership succession described in the Transfer Order.¹

Though the Petitioners have requested that an Order be issued approving the proposed transaction, as described below, the petition is best treated as a request for a declaratory ruling. No further review of the proposed transaction beyond that conducted through this Declaratory Ruling is necessary.

Responses to the petition were due within the 21-day period prescribed under the Rules of Procedure, 16 NYCRR §8.2(c), which expired on December 17, 2014. No comments have been received.

THE PETITION

The Petitioners begin by describing the structure of Lakeside Energy, which owns Lakeside Beaver Falls and Lakeside Syracuse indirectly through Lakeside Generation, subject to lightened regulation.² The Petitioners also state that NEP Holdco and its affiliates currently own no generation facilities in New York.

¹ See Case 12-M-0491, WPS Empire State, Inc., WPS Beaver Falls Generation, LLC, and Lakeside New York LLC, Order Approving Transfers (issued January 22, 2013) (Transfer Order).

² Case 02-M-1215, WPS Empire State, Inc., Order Approving Transfers and Providing For Lightened Regulation (issued December 26, 2002) (Light Regulation Order).

Describing Lakeside Energy, the Petitioners state that it is a private equity firm owned by American Securities Partners IV, L.P. Lakeside Generation's wholly-owned subsidiary, Lakeside Hazleton LLC owns an approximately 158 MW generating facility located in Pennsylvania. Other than Lakeside Beaver Falls, Lakeside Syracuse, and Lakeside Hazleton LLC, Lakeside Energy and Lakeside Generation are not affiliated with any entity that owns or controls generation or transmission facilities.

Describing NEP Holdco, Petitioners state that it is a special-purpose limited liability company created for the purpose of facilitating the proposed transaction. NEP Holdco, in turn, will be owned indirectly through funds entirely managed and controlled by Starwood Energy Group Global, L.L.C. (Starwood). While Starwood has yet to decide upon the exact ownership structure for NEP Holdco, the Petitioners affirm that no limited partner investor in the Starwood funds will hold more than a 10% equity interest in NEP Holdco under whatever structure is selected.

The Petitioners note, however, that one investor in the Starwood funds also holds an approximately 12.5% passive limited partner interest in an indirect owner of an approximately 942 MW electric generation facility interconnected to both the New York Independent System Operator, Inc. (NYISO) and PJM Interconnection LLC (PJM) markets. As the investment interest is passive, the Petitioners claim, no management, direction or control over that facility can be exercised through the interest. Moreover, NEP Holdco is affiliated with ownership of a 250 MW wind facility currently under construction in PJM and a 76.5 MW biomass-fueled facility located in the in the ISO-New England, Inc. (ISO-NE) market.

Further discussing the absence of horizontal market power concerns, Petitioners explain that NEP Holdco currently does not own or control any generation facilities in New York. After the transaction, NEP Holdco's total share of generating capacity in NYISO markets will be less than 2%. NEP Holdco's affiliations with generation facilities in adjacent markets also represent less than 2% of generation capacity in those markets.

Petitioners also assert that NEP Holdco will not be able to exercise vertical market power as a result of the transaction. NEP Holdco, they state, has no affiliation with entities that own or control electric generation fuel inputs, traditional public utilities or electric transmission in New York, or with New York Energy Services Companies (ESCOs).

Petitioners assert that the presumption established in the Wallkill Order should apply to the transaction.³ In the Wallkill Order, it was decided that PSL §70 and §83 regulation would not adhere to a transfer of ownership interests in parent entities upstream from the affiliates owning and operating New York competitive electric facilities unless there was a potential for harm to the interests of captive utility ratepayers sufficient to overcome the presumption. Petitioners assert that the transaction will not adversely affect captive ratepayers because Petitioners do not have any captive customers and the transaction does not pose the potential for NEP Holdco to exercise market power. Petitioners thus request approval of the transaction.

³ Case 91-E-0350, Wallkill Generating Company, L.P., Order Establishing Regulatory Regime (issued April 11, 1994).

DISCUSSION AND CONCLUSION

For the purposes of this transaction, Petitioners have satisfied the Wallkill presumption, under which transactions involving parent entities upstream from the entities owning wholesale electric generation facilities, and steam service facilities, operating in competitive markets located in New York will be reviewed under PSL §70(4) and §83(4) only if there is the potential for the exercise of market power or other harm to the interests of captive New York ratepayers. No such potential is apparent here, based on the facts stated in the petition.

The proposed ownership interest transaction does not pose the potential for the exercise of horizontal market power. Because NEP Holdco currently does not own or control any generation facilities in New York, its acquisition of Lakeside Generation will have no effect on market concentration in New York. Also, the Commission's previous finding that "[t]he size of Lakeside's existing generation interests in the PJM market is similarly insufficient to support the exercise of horizontal market power in New York" still holds true,⁴ even with the addition resulting from NEP Holdco's affiliation with the new 250 MW wind facility to be located there. NEP Holdco's affiliation with generation facility interests in ISO-NE is de minimis, and so also would not support the exercise of horizontal market power in New York.

The proposed transaction does not pose the potential for the exercise of vertical market power. As stated by the Petitioners, neither NEP Holdco nor its affiliates own or control ESCOs or electric delivery facilities in New York, New York Energy Services Companies, or exert a substantial influence over inputs, like fuel, into the production of generation supply

⁴ Transfer Order at 6.

within New York. As a result, those avenues for the undue exercise of vertical market power are foreclosed. Since this transaction, as described in the petition, poses no other potential harm to the interests of captive electric ratepayers, the Commission finds, in conformance with the Wallkill Order, that we need not review the transaction further under PSL §70. Since the transaction has no effect on Lakeside Beaver Falls' retail steam service, this finding adheres to that service as well under PSL §83.

Ownership or control of electric plant or steam plant, as defined in PSL §§ 2(12) and 2(21), respectively, renders an entity an electric corporation under PSL §2(13) or a steam corporation under PSL §2(22), respectively. Because NEP Holdco, upon acquisition of the membership interests in Lakeside Generation, will acquire the ability to control and influence the operation of electric generation or steam facilities, NEP Holdco will become both an electric corporation and a steam corporation, albeit subject to the lightened regulatory regimes described in the Light Regulation Order and its successors.⁵

After the transaction is consummated,⁶ lightened ratemaking regulation of Lakeside Beaver Falls and Lakeside Syracuse, as the respective owners of the 108 MW electric generation and steam facilities located in Beaver Falls and the 109 MW electric generation facility located in Solvay, will

⁵ See, e.g., Case 14-E-0372, Binghamton BOP LLC, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued December 11, 2014).

⁶ Pursuant to the Order Adopting Annual Reporting Requirements Under Lightened Ratemaking Regulation issued January 23, 2013 in Case 11-M-0294, the owners of lightly-regulated generation facilities are required to file Annual Reports. Lakeside Beaver Falls, however, is exempt from annual reporting on its steam operations through PSL §80(11).

continue in accordance with the Light Regulation Order. NEP Holdco is reminded that, under light regulation, it and any other entities controlling the operations of the Beaver Falls generation facility and the attached steam service facilities, as well as the Syracuse generation facility, 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, respectively, Articles 4 and 4-A. Included among those requirements, for Lakeside Beaver Falls and Lakeside Syracuse, are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,⁷ to give notice of generation retirements,⁸ and to report personal injury accidents pursuant to 16 NYCRR Part 125.

The Commission finds and declares:

1. No further review will be conducted of the ownership interest transactions described in the petition filed in this proceeding and in the body of this Order.

2. This proceeding is closed.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

⁷ Case 04-M-0159, Safety of Electric Transmission and Distribution Systems, Order Instituting Safety Standards (issued January 5, 2005) and Order on Petition for Rehearing and Waiver (issued July 21, 2005).

⁸ Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).