STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on September 13, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
James L. Larocca
Gregg C. Sayre

CASE 12-E-0211 - Petition of Alliance Energy, New York LLC, MEG Development Company LLC, Massena Energy Holdings LLC, Massena Energy Holdings GP LLC, and Power City Partners, L.P. for a Declaratory Ruling or, in the Alternative, an Order Approving Transfer Pursuant to Public Service Law §70, Approval of Financing Pursuant to Public Service Law §69, and Continuing Lightened Regulatory Regime.

CASE 12-E-0294 - Petition of Alliance NYGT LLC, Seneca Power Partners, L.P., Sterling Power Partners, L.P, Alliance Energy Transmissions LLC, and Alliance Energy Transmissions-Syracuse LLC for an Order Approving Financing Pursuant to Public Service Law §69.

ORDER APPROVING A TRANSFER SUBJECT TO CONDITIONS AND APPROVING FINANCINGS

(Issued and Effective September 17, 2012)

BY THE COMMISSION:

BACKGROUND

In a petition filed on May 3, 2012, initiating Case 12-E-0211, and supplemented on May 18, 2012, Alliance Energy, New York LLC (Alliance), MEG Development Company LLC (MEG), Massena Energy Holdings LLC (ME Holdings), Massena Energy Holdings GP LLC, and Power City Partners, L.P. (Power City) (collectively, the Petitioners) request issuance of a Declaratory Ruling deciding that Alliance's acquisition of indirect ownership interests in Power City need not be reviewed further under Public Service Law (PSL) §70, or, in the alternative, that the transfer be expeditiously approved. The Petitioners also ask for approval of a proposed financing supporting the acquisition transaction pursuant to PSL §69.

Moreover, in another petition filed on June 27, 2012 initiating Case 12-E-0294, Alliance, on behalf of itself and certain of its subsidiaries and affiliates, requests approval of a second financing. That financing would be secured by the assets of a number of Alliance affiliates.

In conformance with State Administrative Procedure Act (SAPA) §202(1), notice of the petition in Case 12-E-0211 was published in the State Register on June 6, 2012. The SAPA §202(1)(a) period for submitting comments in response to the notice expired on July 23, 2012. St. Lawrence Gas Company (St. Lawrence) timely submitted comments, and the parties thereafter made further unauthorized filings in response to each other.

Also in conformance with SAPA §202(1), notice of the petition in Case 12-E-0294 was published in the State Register on July 25, 2012. The SAPA §202(1)(a) period for submitting comments in response to the notice expired on September 10, 2012. No comments were received.

POSITIONS OF THE PARTIES

The Petition in Case 12-E-0211

In describing the proposed purchaser of the indirect interests in Power City, the Petitioners state that Alliance is a subsidiary of Alliance Energy Group, LLC (AEG), which, in turn, is owned by an individual investor. The Petitioners list Alliance's direct and indirect generation ownership interests as consisting of: Seneca Power Partners, L.P. (Seneca), the owner of an approximately 68 MW generation facility located in Batavia (the Seneca facility); Sterling Power Partners, L.P. (Sterling), the owner of an approximately 64 MW generation facility located in Sherrill (the Sterling facility); Ag-Energy, L.P. (AGE), which ceased generating electricity in 2007 but continues to operate as a steam corporation serving the St. Lawrence Psychiatric Center in Ogdensburg, and Standard Power LLC (Standard Power), the owner of an approximately 50 MW facility, and an attendant 0.2 mile gas pipeline, located in Binghamton, that Alliance has been authorized to purchase, albeit it has not yet consummated that transaction.[1]

Through AEG, the Petitioners note, Alliance is affiliated with Alliance NYGT LLC (ANYGT), which owns the approximately 47 MW Hillburn gas turbine located in Hillburn and the 42 MW Shoemaker gas turbine located in Middletown,[2] and owns, temporarily, the approximately 12 MW Swinging Bridge hydroelectric facility that is in the process of being transferred to another owner.[3] Also through AEG, Alliance is affiliated with Alliance Energy Transmission LLC (AET), the owner of an approximately 11-mile gas pipeline needed to connect the Seneca facility to the interstate pipeline system, and Alliance Energy Transmissions-Syracuse LLC (AETS), the owner of

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[1] Case 11-M-0117, Standard Power LLC, Order Approving Transfer (issued October 17, 2011)(Standard Power Order).

[2] See Case 11-E-0701, Alliance NYGT LLC, Order Approving Transfer and Making Other Findings (issued March 21, 2012).

[3] Case 10-M-0186, Alliance Energy Renewables LLC, et al., Order Modifying Prior Order and Approving Transfer (issued November 22, 2010) and Order Approving Transfers Upon Conditions and Making Other Findings (issued July 23, 2010)(Alliance AGE Orders).

an approximately 50,000 foot pipeline running from the Town of Lafayette to a location within the Syracuse University campus.[4]

Turning to Power City, the Petitioners state that it owns, directly, an 85 MW combined cycle generation facility located in Massena. The facility formerly provided steam to a neighboring business, but the steam line has been disconnected and capped, so Power City is not currently either a steam corporation or a steam supplier.[5] The Petitioners note that Alliance formerly owned indirectly the Power City facility, but sold that ownership interest in 2006; the facility was sold again to another owner in 2009.[6]

Upstream from Power City, ME Holdings holds 90% of the ownership interests in Power City itself, with the remaining 10% held by MEGP Holdings. ME Holdings also owns all of MEGP Holdings; MEG, in turn, owns directly all of ME Holdings.

Describing the proposed transaction, the Petitioners explain that Alliance will acquire all of the ownership interests in ME Holdings from MEG. As a result, Alliance will acquire, indirectly, all of the ownership interests in Power City and its 85 MW generation facility. The Petitioners add that Alliance has entered into a separate transaction with MEG, for the purchase of a 32 MW generation facility located in

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[4] Case 11-M-0117 - Alliance Energy Transmissions-Syracuse LLC, Order Approving Transfer of Ownership and Transfer of Certificate and Providing for Lightened Ratemaking Regulation (issued October 17, 2011).

[5] Power City is lightly regulated under the PSL; as an electric corporation; because there are currently no steam operations, there is no steam regulation. Case 88-E-1961, Power City Partners, L.P., Order Providing for Lightened Regulation (issued September 30, 1999)(Light Regulation Order).

[6] Case 06-M-0948, Alliance Energy New York, LLC, Order Approving Transfer (issued October 25, 2006); Case 09-E-0574, RPL Holdings, Inc., Order Approving Transfer and Financings (issued October 26, 2009).

Massachusetts, which is in the footprint of the generation markets supervised by ISO New England, Inc.

According to the Petitioners, the transaction does not pose the potential for the exercise of horizontal market power. They calculate that Alliance would own 445.5 MW of generation capacity in New York if the transaction were approved, which amounts to only about a 1.18% share of the approximately 37,700 MW of generation capacity installed within the New York Independent System Operator (NYISO) market.[7] The Petitioners believe that amount is de minimis.

Maintaining that the transaction does not pose the potential for the exercise of vertical market power, the Petitioners point out that the pipelines owned by affiliates of Alliance are dedicated to single customer use and consequently cannot be deployed to affect fuel supply to competitors of Alliance. Other than those pipelines, the Petitioners state, neither Alliance, nor its affiliates exercise ownership or control over any other natural gas facilities within New York, or over any other fuel input to power generation within NYISO markets.

The Petitioners affirm that the proposed transfer will result in the continuation of operations at the Power City facility, which will sell its generation into NYISO wholesale markets. They also explain that Alliance is an experienced operator that has successfully managed other electric generation facilities, including as a prior owner of Power City. Moreover, the Petitioners note that since Alliance acquired the Hillburn and Shoemaker gas turbine facilities in 2007, it has decreased their forced outage rate by 50%.

[7] The Petitioners claim the calculation is conservative because it reflects generation capability at the AGE facility, which is inoperable; at Swinging Bridge, which is being sold; and, at Standard Power, which has not yet been acquired.

The Petitioners believe that they have satisfied the presumption established in the Wallkill Order.[8] There, it was decided that PSL §70 regulation would not adhere to a transfer of ownership interests in parent entities upstream from the affiliates owning and operating New York competitive electric generating distribution facilities, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to overcome the presumption. The Petitioners claim that, under the presumption, transfers like the one it proposes are not reviewed further under PSL §70.

The Petitioners also ask that a proposed financing supporting Alliance's purchase of Power City and its facility be approved, in the amount of $487,500, with the financing secured by the Power City facility assets and the Massachusetts generation facility assets that Alliance is purchasing from MEG. Although, the Petitioners recount, the term of the proposed financing does not exceed 12 months, and so would be outside the purview of §69, Alliance plans to re-finance for a term of longer duration. The Petitioners ask for approval of that plan. The Petitioners request further that Alliance be granted the authority to substitute financing entities and change payment terms and amounts of its financing without having to seek additional authorization, so long as the total financing amount is less than the $487,500 limit.

St. Lawrence's Comment

St. Lawrence announces that it transports gas to Power City's generation facility in Massena pursuant to a long-term contract. That contract, St. Lawrence continues, runs until 2026 and the fixed charges it specifies serve as the basis for its recovery of the $579,492 it expended to construct the

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

pipeline transportation facilities necessary to serve Power City. St. Lawrence reports that Power City is obligated to pay $61,000 in fixed charges as of the end of the contract year on October 31, 2012, with that amount increasing at a rate of $8,800 per month until then. Power City, St. Lawrence complains, has indicated that it will not make the payment. Compounding the problem, St. Lawrence protests, is an arrearage of $92,000 Alliance owes for gas transportation service provided to AGE under a separate contract. If Alliance does not make the requisite payments under both contracts, St. Lawrence cautions, its other ratepayers will be forced to bear those burdens.

This effect, St. Lawrence argues, is sufficient to require a full PSL §70 review of the transaction the Petitioners propose, and to justify a finding that approval of the transfer would not be in the public interest unless conditions are adopted that protect its ratepayers. The PSL §70 public interest standard, St. Lawrence maintains, encompasses impacts on third parties not directly involved in a transaction.[9] St. Lawrence also claims that, in the Alliance AGE Orders, the public interest was not deemed satisfied until Alliance paid all arrearages owed to St. Lawrence, and arrangements were made for future payments. St. Lawrence therefore insists that approval of the proposed transfer be conditioned upon the posting of security by Power City sufficient to assure that contractual gas transportation obligations will be met.

[9] See Case 05-E-0934, Central Hudson Gas and Electric Corporation, Untitled Order (issued January 17, 2007); Case 96-E-0900, Orange and Rockland Utilities, Inc., Order Approving Transfer of Generating Facilities and Making Other Findings (issued June 24, 1999).

Subsequent Filings[10]

In a July 23, 2012 response to St. Lawrence, Alliance protests that events at AGE are not germane to this transfer. Alliance notes that St. Lawrence has not made a proposal that addresses the gas transportation contract between it and AGE, which, Alliance points out, expires in 2013.

Moreover, Alliance argues that St. Lawrence has misinterpreted the effect of the 2009 RPL Holdings Order, where the sale of the Power City facility was reviewed under PSL §70, and the Wallkill Presumption did not adhere. Here, Alliance maintains, the Wallkill Presumption does attach because this transaction is conducted upstream from ownership of the Power City facility, while the 2009 RPL Holdings Order transaction was conducted at the level of ownership of the facility itself. As a result, Alliance believes that this transaction should be reviewed under the Wallkill Presumption instead of through a full §70 analysis.

Also on July 23, 2012, MEG presented arguments similar to those Alliance makes. MEG asserts that it is not overdue in making payment of any amount to St. Lawrence, and that St. Lawrence’s allegations that a payment is due later this year does not justify a conclusion that it is in arrears now. MEG also asserts that, unless this transaction proceeds, the Power City facility will be retired, pursuant to a Notice it filed on April 23, 2012 in Case 05-E-0887.[11] Avoiding retirement through consummation of the proposed transaction, MEG claims, is the

[10] The unauthorized filings will be considered because they contribute to the development of a complete record in this proceeding and are not prejudicial.

[11] Since notice must be given 180 days in advance of a retirement, Power City could cease generating as of October 20, 2012.

best route to ensuring that gas transportation payments to St. Lawrence will continue.

MEG also argues that the security guarantee St. Lawrence proposes is unnecessary and unreasonable. If the Power City facility continues in operation, MEG maintains, the existing gas transportation contract supporting that operation will continue, including the obligation to pay St. Lawrence gas transportation charges. In any event, MEG claims that St. Lawrence has already recovered all but $20,000 of the initial capital costs it incurred in building a gas pipeline to serve the Power City facility. Since there are no arrears, and St. Lawrence has largely recovered its capital costs, MEG concludes that the imposition of security has not been justified.

On July 31, 2012, St. Lawrence replied to Alliance and MEG. St. Lawrence reports that AGE is now current on gas transportation contract payments it owes, but only because it made a payment bringing its accounts up to date as of July 19, 2012. Turning to MEG, St. Lawrence asserts that, on February 14, 2012, it had to draw on a letter of credit that MEG supplied to secure payment, when Power City failed to pay an invoice for the contract year ending October 31, 2011. St. Lawrence disputes MEG’s implication that a shutdown of the Power City facility ends the obligation to make any payments under the gas transportation contract.

Given the history of missed payments under the AGE and Power City gas transportation contracts, St. Lawrence argues that imposing some form of guarantee of future payment is necessary to protect its ratepayers, who must bear the burden if shortfalls are experienced on those contracts. A letter of credit in the amount of $341,000, St. Lawrence posits, is a reasonable condition to impose on Power City to compel it to meet its gas transportation contract obligations under these circumstances, and is justified as in the public interest. St. Lawrence asks that what it describes as the reasonable conditions it proposes to protect its ratepayers be adopted, notwithstanding the contention that this transfer should be reviewed under the Wallkill Presumption.

On August 8 and August 9, 2012, respectively, Alliance and MEG filed rejoinders to St. Lawrence. Alliance reiterates that the proposed transaction should be authorized without conditions because the authorization would result in continuation of the gas transportation contract as written and avoid the shuttering of the Power City facility. Alliance also maintains that St. Lawrence has failed to justify the amount of the letter of credit it proposes, at $341,450, or to establish the appropriate period for which the letter of credit would run.

Turning to the existing letter of credit obligation under the Power City gas transportation contract, Alliance points out that the letter of credit amount was reduced at the end of 2011 from $341,450 to $241,450, and that the latter obligation will run only until the end of 2012. That date was selected, Alliance insists, because by that time the term of the monthly facility charge provided for under the contract will expire. Since that charge recovers the costs of St. Lawrence's investment in the pipeline to Power City, Alliance elaborates, the utility by then will have obtained the full benefit of the charge and will have recovered all of its fixed costs.

Alliance also calculates that, with the expiration of the monthly facility charge at Power City as of October 31, 2012, the $341,450 amount would equate to four years of the minimum take charges that continue in effect under the Power City gas transportation contract after October 31, 2012. Contending that the minimum take charge could not be collected if the Power City facility were to cease operation, Alliance concludes that the proposed letter of credit requirement has not been justified.[12]

MEG protests that the filing St. Lawrence made on July 31, 2012 is untimely and, accordingly, asks that the issues raised in it not be considered. MEG reiterates that it has met all of its gas transportation contract obligations at the Power City facility and that there are no amounts due or owing St. Lawrence at this time. While admitting that St. Lawrence drew in 2012 on the letter of credit securing payment of Power City's gas transportation charges due October 31, 2011, MEG asserts that it never refused to pay the amount due, and that the utility merely selected the letter of credit method of payment when others were available. MEG also warns that, whatever the terms of the Power City gas transportation contract, if operations at Power City terminate and a bankruptcy results, it is unlikely that the terms of the gas transportation contract will survive.

The Petition in Case 12-E-0294

Reciting again the ownership interests in generation and gas transmission facilities located in New York listed above, Alliance requests authorization to enter into a credit facility comprised of a term loan in an amount of up to $14.0 million, secured by the assets of its ANYGT, Seneca, Sterling, AET and AETS subsidiaries and affiliates. As with the financing supporting the Power City purchase, Alliance requests that it be accorded the flexibility to substitute financing entities and change payment terms and amounts without seeking new authorization so long as the total financing amount is less than

[12] Alliance points out that, when the AGE generation facility was dismantled and retired, the minimum take provision under AGE's gas transportation contract was eliminated. Case 09-G-0320, Ag-Energy, L.P., Order Modifying in Part Gas Transportation Rates (issued September 21, 2009).

or equal to $14.0 million. Alliance states that proceeds from the financing may be used to meet working capital needs, address operational losses, and support capital expenses. Alliance notes that this credit facility will replace an earlier facility that did not run for a term of more than one year.

DISCUSSION AND CONCLUSION

The Transfer

A. Environmental Quality Review

Under the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR §617 and 16 NYCRR §7), we must determine whether the actions we are authorized to approve may have a significant impact on the environment. Other than our approval of the action proposed here, no additional state or local permits are required, so a coordinated review under SEQRA is not needed. We will assume Lead Agency status under SEQRA and conduct an environmental review.

SEQRA requires applicants to submit a complete EAF describing and disclosing the likely impacts of the actions they propose.[13] Alliance submitted a narrative and short-form EAF Part 1 that substantially comply with this requirement.

The proposed action over which we have jurisdiction is the transfer of upstream ownership interests in Power City and its 85 MW generation facility to new owners. The proposed action does not meet the definition of Type 1 or Type 2 actions listed in 6 NYCRR §§617.4, 617.5 and 16 NYCRR §7.2, so it is classified as an “unlisted” action requiring SEQRA review. After review of the petition we conclude, based on the criteria for determining significance listed in 6 NYCRR §617.7(c), that there will be no changes to the operation of the electric

[13] 6 NYCRR §617.6(a)(3).

generating facility underlying the proposed transfer that will result in adverse environmental impacts. Our Staff has completed the short-form EAF Part 2.

As Lead Agency, we determine that the proposed action will not have a significant impact on the environment and adopt a negative declaration pursuant to SEQRA. Because no adverse environmental impacts were found, no public notice requesting comments is required or will be issued. A negative declaration concerning this unlisted action is attached. The completed EAF will be retained in our files.

B. The Transfer

The Petitioners request that the upstream transfer of indirect ownership interests in the Power City facility be reviewed under the Wallkill Presumption. The Presumption, however, adheres only when a Petitioner can demonstrate that a proposed transfer does not pose the potential for impacts adverse to the public interest. Under these circumstances, St. Lawrence has raised issues concerning the payment of gas transportation charges at both Power City and at the AGE steam production facility that Alliance owns. The means for best ensuring that future gas transportation contract payments will be made at Power City, and Alliance’s record in making gas transportation payments as the owner of the AGE facility, are factors relevant to determining the public interest in this proceeding. As a result, the Wallkill Presumption will not be applied,[14] and the public interest will be considered in more detail pursuant to PSL §70.

Under PSL §70, our approval is required before an electric corporation may transfer ownership interests in electric plant. In conducting a review pursuant to §70 that

[14] See Case 08-E-0077, Entergy Nuclear Operations, Inc., Order Establishing Further Procedures (issued May 23, 2008).

pertains to a lightly-regulated electric corporation operating in wholesale electric markets, we examine any affiliations with fully-regulated New York utilities or power marketers that might afford opportunities for the exercise of market power or pose the potential for other transactions detrimental to captive ratepayer interests.

The Petitioners have adequately addressed market power issues. The transaction does not pose the potential for the exercise of horizontal market power. Even after acquiring Power City, the amount of generation Alliance will own is de minimis, at about 1% of the generation capacity available in New York.[15] Consequently, market concentration in New York will not increase cognizably as a result of the transaction. Moreover, the size of Alliance's interests in generation operating in markets adjacent to New York is also de minimis.

Nor does the proposed transaction pose the potential for the exercise of vertical market power. Alliance does not exercise control over electric delivery facilities (other than interconnections), or substantial influence over inputs, like fuel,[16] into the production of generation supply within New York, and does not report an affiliation with a power marketer. As a result, those avenues to the undue exercise of vertical market power are foreclosed. Consequently, the proposed transaction does not raise market power concerns.

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[15] Alliance owns less generation than it reported, because the transfer of the 12 MW Swinging Bridge facility to a new owner has been completed, while its purchase of the 50 MW Standard Power facility has not been consummated, and that facility has been retired by its existing owner.

[16] As Alliance states, its ownership of gas transmission lines each dedicated to a single customer does not enable it to influence the availability of fuel supply to its competitors generally.

Moreover, Alliance is an experienced generation facility operator, appears sufficiently capitalized, and plans to reverse the otherwise-planned retirement of the Power City facility by continuing it in operation. Therefore, other than the issue of the payment of gas transportation charges, the transfer transaction does not raise concerns that could adversely affect captive ratepayers or call into question the prospects for successful operation of the facility.

As St. Lawrence points out, however, the gas transportation payment due from Power City at the October 31, 2011 close of the contract year was not timely made, and Alliance has a long history of accumulating arrearages under the AGE gas transportation contract. Protecting the public interest requires a more thorough inquiry where the prospective purchaser of Power City, Alliance, has failed to timely pay gas transportation charges at one facility, AGE, but nonetheless seeks to acquire another facility, Power City, that also has a history of missing a payment deadline. The delays in making payments for the gas transportation services essential to operating Power City and AGE evidence a potential that Alliance might not be able to operate the Power City facility properly or successfully if the transaction is approved. Moreover, the payment failures redound to the detriment of captive ratepayers at St. Lawrence, who would be required to bear the burden of a payment shortfall if St. Lawrence cannot recover fixed costs.

On the other hand, as the Petitioners contend, the Power City facility is slated for retirement if this transaction is not consummated. Although it would not be appropriate to consider here the disagreement between St. Lawrence and Power City over continuation of gas transportation minimum charges under their contract if the facility is retired, the prospects for St. Lawrence to realize gas transportation revenues from

Power City in the future are better if a successful transaction results in continued operation.

To balance these competing considerations, and support a conclusion that the public interest is satisfied, Alliance must demonstrate it is capable of meeting its gas transportation payment obligations at Power City once it is acquired and also must show that it is capable of meeting its payment obligations at its AGE facility before it can be deemed a satisfactory owner of the Power City facility. As the Petitioners point out, however, St. Lawrence is already guaranteed it will recover its fixed costs at Power City through the existing letter of credit that expires following the end of the October 31, 2012 contract year. The $347,000 in security that St. Lawrence propounds is therefore more than is needed at Power City.

The appropriate remedy at Power City is to require security for the minimum charges under the contract that, notwithstanding the expiration of the fixed charges must be paid when Alliance implements its plans to continue operations there, recognizing that, if Power City fails to make those payments, gas transportation service to it can be shut off. Even if, as is likely, generation operations were to cease because of such a shut off, that outcome would not adversely affect the public, which does not depend on the facility for electric service reliability. As a result, St. Lawrence need only obtain security for two months of payments, so that it could take the necessary steps to shut off service without incurring unpaid minimum charges. The two-month amount, of $17,333.00, would be sufficient to protect St. Lawrence and to adequately demonstrate that Alliance can meet its gas transportation obligations at Power City.

The security, in the form of a letter of credit or a pre-payment, would cover any two months for the contract year ending October 31, 2013, and could be drawn upon until the minimum charges incurred as of that date are paid. If a letter of credit is provided, it shall conform to the terms and conditions provided for in the existing letter of credit between St. Lawrence and Power City, to the extent those terms and conditions are consistent with the requirements of this Order.[17]

Before Alliance can be deemed a capable owner of Power City, however, it must also show it can meet its payment obligations at AGE. To make the requisite showing, it must provide security for the fixed gas transportation charges it will incur for a one year period at that location. Since Alliance has brought its account current through June 2012, providing security from July 2012 through June 2013 would adequately demonstrate its capabilities. The requisite amount is $259,432, not including the $58,562 it is already obligated to pay for July and August 2012, but for which payment is not yet due.[18] Alliance must make those payments as well before it may close on the Power City transaction.

As with the Power City security, the AGE security may be proferred through pre-payments or a letter of credit. Such a letter of credit must conform to the terms and conditions of the existing letter of credit between Power City and St. Lawrence discussed above, again to the extent those terms and conditions are consistent with the requirements of this Order. Alliance may, if it prefers, draw down the AGE security on a monthly basis.

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[17] Those terms and conditions are set forth in the Second Amendment of Natural Gas Transportation Agreement between St. Lawrence and Power City, dated October 25, 2010,

[18] Because AGE provides steam to the St. Lawrence Psychiatric Center, shutting off gas transportation service to it raises the issues addressed in the Order Granting Petition issued April 19, 2010 in Case 09-G-0872.

The proposed transaction, however, shall not close until the security arrangements are binding at both Power City and AGE. These arrangements appropriately balance the interests of the parties and captive ratepayers.

The Financings

Approval of the financing plans Alliance proposes are appropriate under lightened regulation.[19] The scrutiny applicable to monopoly utilities may be reduced for lightly-regulated companies like Alliance that operate in a competitive environment. As a result, we need not make an in-depth analysis of the proposed financing transactions. Instead, by relying on the representations Alliance makes in its filings, prompt regulatory action is possible.

The proposed financing supporting the Power City transaction appears to be for a statutory purpose and does not appear contrary to the public interest. It is approved up to maximum amount of $487,500. Similarly, the proposed credit facility supported by the ANYGT, Seneca, Sterling, AET and AETS assets appears to be for a statutory purpose and does not appear contrary to the public interest. It is approved up to a maximum amount of $14.0 million in credit facilities, in addition to the $487,500 of debt incurred to support the Power City transaction.

Given that Alliance is regulated lightly,[20] it is afforded the flexibility to modify, without our prior approval, the identity of the financing entities, payment terms, and the amount financed, up to the maximum amounts of $487,500 million

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

[20] See, e.g., Case 10-E-0593, Mirant Bowline LLC, Order Approving Financing (issued February 23, 2011); Case 01-E-0816, Athens Generating Company, L.P., Order Authorizing Issuance of Debt (issued July 30, 2001).

and $14.0 million. The exercise of this financing flexibility will allow Alliance to avoid disruption of its financing arrangements and enable it to operate more effectively in competitive electric generation markets. Additional scrutiny is not required to protect captive New York ratepayers, who cannot be harmed by the terms arrived at for these financings because Alliance and its subsidiaries and affiliates bear the financial risk associated with these financial arrangements.

Continuation of Lightened Regulation

After the transaction is consummated, lightened regulation of Power City will continue in accordance with the Light Regulation Order. The Petitioners are reminded that, under light regulation, Power City and the entities exercising control over the operations of its generation facility remain subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement,[21] and the other requirements of PSL Articles 1 and 4, to the extent discussed in the Light Regulation Orders and other previous Orders.[22] Included among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,[23] to give notice of generation unit

[21] The PSL 66(6) annual report requirement that pertains to lightly regulated entities is under review in Case 11-M-0294; any revisions to the requirement adopted in that proceeding will adhere to Power City.

[22] See, e.g., Case 11-E-0351, Stony Creek Energy LLC, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Ratemaking Regulation and Approving Financing (issued December 15, 2011).

[23] 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).

retirements,[24] and to report personal injury accidents pursuant to 16 NYCRR Part 125.

The Commission orders:

1. The financing arrangements described in the petitions filed in Case 12-E-0211 and Case 12-E-0294 and discussed in the body of this Order are approved, up to the maximum amounts of $487,500 and $14.0 million, respectively, subject to the discussion in the body of this Order.

2. The transfer of upstream ownership interests in Power City Partners, L.P. described in the petition filed in Case 12-E-0211 and in the body of this Order is approved, subject to the conditions established in Ordering Clause Nos. 3 and 4.

3. Before closing on the transaction approved in Ordering Clause No. 2, and within 30 days of the date of this Order, Alliance Energy, New York LLC shall provide the security described in the body of this Order to St. Lawrence Gas Company, and shall file with the Secretary evidence that the security is binding.

4. Alliance Energy, New York LLC may close on the transaction described in Ordering Clause No. 2 no sooner than five business days after making the filing described in Ordering Clause No. 3, unless Department of Public Service Staff files an objection with the Secretary within that time period. If such an objection is filed, further proceedings will be conducted as is appropriate, and the transaction shall not close until those proceedings are completed.

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

5. Alliance Energy, New York LLC shall submit a written statement of complete and unconditional acceptance of this Order and its terms and conditions, signed and acknowledged by duly authorized officers, within 30 days of the date of this Order. In the absence of such an acceptance, the approval of the proposed transfer described in Ordering Clause No. 2 is rescinded.

6. The deadlines provided for in this Order may be extended as the Secretary may require.

7. Case 12-E-0211 is continued but shall be closed by the Secretary after any filings received in compliance with Ordering Clause Nos. 3, 4 and 5 have been reviewed, unless the Secretary finds good cause to continue them further.

8. Case 12-E-0294 is closed.

By the Commission,

Jaclyn A. Brilling
Digitally Signed by Secretary
New York Public Service Commission

(SIGNED) JACLYN A. BRILLING
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 12-E-0211 - Alliance Energy, New York LLC, MEG Development Company LLC, Massena Energy Holdings LLC, Massena Energy Holdings GP LLC, and Power City Partners, L.P. - Petition for a Declaratory Ruling or, in the Alternative, an Order Approving Transfer Pursuant to Public Service Law §70, Approval of Financing Pursuant to Public Service Law §69, and Continuing Lightened Regulatory Regime.

NOTICE OF DETERMINATION OF
NON-SIGNIFICANCE

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission of upstream ownership interests in Power City Partners, L.P. (Power City), the owner of an 85 MW generation facility located in Massena, N.Y., based on our determination, in accordance with Article VIII of the Environmental Conservation Law, that such action will not have a significant adverse affect on the environment. The exercise of this approval constitutes an "unlisted" action, as is defined in 6 NYCRR §617.2(ak).

Based on our review of the record, we find that the transfer of upstream ownership interests in Power City to Alliance Energy, New York LLC will not have a significant adverse environmental impact. A change in the identity of the owner of the upstream interests will not cause any physical alterations to Power City’s 85 MW generation facility, or to the facility’s surroundings.

The address of the Public Service Commission, the Lead Agency for the purposes of the environmental quality review of this project, is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Leonard Van Ryn at (518) 473-7136 or at the address above.

JACLYN A. BRILLING
Secretary