STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on December 19, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

CASE 24-E-0472 – Petition of MPH Cross Island Power, LLC; Edgewood Energy, LLC; Shoreham Energy LLC; Pinelawn Power LLC; and Equus Power I, L.P. for a Declaratory Ruling Regarding Transfer of Ownership, or, in the Alternative, an Approval Pursuant to Section 70 of the Public Service Law.

DECLARATORY RULING ON TRANSFER TRANSACTION

(Issued and Effective December 23, 2024)

BY THE COMMISSION:

INTRODUCTION

By petition filed on August 14, 2024 (the Petition), MPH Cross Island Power, LLC (MPH), Edgewood Energy, LLC (Edgewood), Shoreham Energy, LLC (Shoreham), Pinelawn Power, LLC (Pinelawn), and Equus Power I, L.P. (Equus) (collectively, the Petitioners) seek a declaratory ruling that the proposed upstream transfer of ownership interests in Edgewood, Shoreham, Pinelawn, and Equus (the Project Companies) to MPH (the Proposed Transaction) does not require further review under Section 70 of the Public Service Law (PSL). In the alternative, the Petitioners request that the Public Service Commission (Commission) approve the transfer under PSL §70.

Pursuant to the Commission's Rules of Procedure, 16 NYCRR §8.2(c), responses to the Petition were due within a 21-day period, which expired on September 4, 2024. No comments were received. As discussed below, the Commission finds that the Petitioners have satisfied the presumption established in the Wallkill Order and its progeny (Wallkill Presumption) by demonstrating that the proposed upstream transfers of ownership interests in the Project Companies would not present an ability to exercise horizontal or vertical market power or otherwise harm captive ratepayer interests.[1] Accordingly, no further review of the Proposed Transaction is required pursuant to PSL §70.

THE PETITION

Petitioners

The Petition explains that each of the Project Companies is an indirect subsidiary of J-POWER North America Holdings Co., Ltd. (J-POWER). All of the equity interests of J-POWER are owned by Electric Power Development Co., Ltd., a publicly traded Japanese corporation.

With respect to the individual Project Companies, Edgewood owns an approximately 85 megawatt (MW) generating facility located in Brentwood, New York, within the Long Island (LI) submarket administered by the New York Independent System Operator, Inc. (NYISO). All of the membership interests in Edgewood are owned by J-POWER Sound Capital, LLC (Sound Capital Seller), all of whose membership interests are owned by J-POWER

[1] Case 91-E-0350, Wallkill Generating Company, L.P., Order Establishing Regulatory Regime (issued April 11, 1994) (Wallkill Order); Case 98-E-1670, Carr Street Generation Station, L.P., Order Providing for Lightened Regulation (issued April 23, 1999) (Carr Street Order).

Sound Partners, LLC (J-POWER Sound Partners). All of the equity interests of J-POWER Sound Partners are owned by J-POWER USA Generation Capital, LLC (J-POWER Generation Capital). All of the membership interests of J-POWER Generation Capital are owned by JPOWER USA Generation Partners, LLC, all of whose membership interests are owned by JPOWER USA Generation, L.P. (J-POWER Generation). The partnership interests of J- POWER Generation are owned by: (1) J-POWER USA Generation GP, LLC (J-POWER GP) (0.1 percent general partnership interest); (2) J-POWER USA Investment Co., Ltd. (J-POWER Investment) (49.9 percent limited partnership interest); (3) John Hancock Infrastructure Master Fund, L.P. (John Hancock Infrastructure) (25 percent limited partnership interest); and (4) John Hancock Life Insurance Company (U.S.A.) (John Hancock Insurance, and together with John Hancock Infrastructure, John Hancock) (25 percent limited partnership interest). All of the membership interests of J-POWER GP are owned by J-POWER Investment, all of whose membership interests are owned by J-POWER.

Equus owns an approximately 46 MW generating facility located in Nassau County, New York, within the LI submarket of the NYISO market (the Equus Facility). The partnership interests of Equus are owned by: (1) Equus GP Holdco LLC (Equus GP) (1 percent general partnership interest), and (2) Equus LP Holdco LLC (Equus LP) (99 percent limited partnership interest). All of the membership interests of Equus GP and Equus LP are owned by J-POWER East Coast Capital, LLC (East Coast Seller), all of whose membership interests are owned by J-POWER East Coast Partners, LLC (East Coast Partners). All of the membership interests of East Coast Partners are owned by J-POWER East Coast Consolidation, LLC, all of whose membership interests are owned by J-POWER Generation Capital.

Pinelawn owns an approximately 75 MW generating facility located in Suffolk County, New York, within the LI submarket of the NYISO market (the "Pinelawn Facility"). The output of the Pinelawn Facility is fully committed under a long-term firm power sales agreement with Long Island Lighting Company d/b/a LIPA that is scheduled to expire on October 31, 2025. All of the membership interests of Pinelawn are owned by J-POWER Pinelawn, LLC, all of whose membership interests are owned by East Coast Seller.

Shoreham owns an approximately 85 MW generating facility located in Shoreham, New York, within the LI submarket of the NYISO market (the Shoreham Facility). All of the membership interests of Shoreham are owned by Sound Capital Seller.

MPH is indirectly owned by affiliates of Hull Street Energy, LLC (HSE) and is a special purpose entity established for the purpose of acquiring the equity interests in the Project Companies. Prior to consummation of the Proposed Transaction, MPH would not directly or indirectly own, operate, or control any electric generation or transmission facilities or essential inputs to electricity products or electric power production. MPH is wholly owned by MPH Cross Island Power Holdco, LLC, which in turn is owned by Hull Street Energy Partners III, L.P. (HSEP III) and MPH Cross Island Power Parallel Holdings, LLC (Parallel Holdings). Parallel Holdings is wholly owned by Hull Street Energy Partners III (Parallel), L.P. (HSEP III Parallel). HSEP III and HSEP III Parallel are managed by their general partner, HSE Partners III GP, L.P. (HSE Partners III GP), which owns all of the general partner interests in HSEP III and HSEP III Parallel. The limited partner interests in HSEP III and HSEP III Parallel are owned by passive limited partner investors with only limited rights such as veto and/or consent rights necessary for the limited partners to protect their economic investment interests, and those rights will not affect the ability of the Project Companies to conduct their jurisdictional activities. HSE Partners III GP is managed and controlled by its general partner, HSE, and through HSE Partners III GP, HSE has sole responsibility and authority for the management and control of HSEP III and HSEP III Parallel.

HSE is a private equity firm headquartered in Bethesda, Maryland that is primarily involved in the development and acquisition of, and investment in, energy infrastructure assets, and related ownership, operation, and management of these assets, including electric generation.

HSE is not affiliated with any entity that owns or controls any electric transmission facilities in the United States, except for limited and discrete equipment necessary to interconnect individual generating facilities to the transmission grid. Other than as described in this Petition, HSE is not affiliated with any entity that owns or controls any electric generation. HSE is not affiliated with any public utility with a franchised electric service territory.

HSE is currently controlled by Sarah Wright, an individual.[2] Except with respect to facilities described in this Petition, Ms. Wright is not affiliated with, nor holds or controls, directly or indirectly with the power to vote, voting or equivalent securities in any electric generation facility, electric transmission facility, or any essential input to electricity products or electric power production. Ms. Wright

[2] Ms. Wright is the managing member of HSE and has sole control and decision-making authority with respect to HSE. No other entity or individual that owns a 10 percent or greater voting interest in HSE owns any other interests, directly or indirectly, in electric generation, transmission, or essential inputs to electricity products or electric power production.

is not employed by, or affiliated with, and does not hold the position of officer or director of, any public utility with a franchised electric service territory.

Ms. Wright is a passive investor with respect to four fully-committed run-of-river hydroelectric generation facilities in Ware, Massachusetts (each of which is a qualifying facility) having a combined capacity of 2.4 MWs and has no control over the day-to-day management and business operations of these facilities.

Through its wholly owned subsidiary MPH Rockaway Peakers, LLC, HSE is affiliated with the following entities that own or control generation facilities in the NYISO market:

- Bayswater Peaking Facility, LLC (Bayswater), a Delaware limited liability company, owns and operates an approximately 53 MW natural gas-fired generating facility located in Far Rockaway, New York, within the LI submarket of the NYISO market. Bayswater sells 100 percent of its output to MPH Rockaway Peakers, LLC, which then sells to NYISO or third parties.
- Jamaica Bay Peaking Facility, LLC (“Jamaica Bay”), a Delaware limited liability company, owns and operates an approximately 54 MW oil-fired electric generation facility located in Far Rockaway, New York, within the LI submarket of the NYISO market. Jamaica Bay sells 100 percent of its output to MPH Rockaway Peakers, LLC, which then sells to NYISO or third parties.

With respect to markets adjacent to the NYISO market, HSE is affiliated with 65 MWs and 401.6 MWs of electric generation in the PJM Interconnection, LLC (PJM) and ISO New England Inc. (ISO-NE) markets, respectively.

Proposed Transaction

Pursuant to the Proposed Transaction, MPH would acquire 100 percent of the ownership interests in Edgewood and Shoreham from Sound Capital Seller and 100 percent of the upstream ownership interests in Equus and Pinelawn from East Coast Seller. Thus, a transfer of control to MPH of the Project Companies would have occurred as a result of consummation of the Proposed Transaction. Following consummation of the Proposed Transaction, J-POWER would no longer be affiliated with the Project Companies, and the Project Companies will be subsidiaries of HSE and its affiliates. However, the facilities owned by the Project Companies would continue to be owned and operated as wholesale power plants. No changes to the day-to-day operations of the Facilities are contemplated as a result of the Proposed Transaction.[3]

Petitioners request that the Commission follow its precedent, continue to afford the Project Companies the Wallkill Presumption, and issue a declaratory ruling stating that the Commission need not further review the Proposed Transaction described herein under PSL § 70. The petitioners maintain that the Proposed Transaction does not create the potential for the exercise of horizontal or vertical market power. After the Proposed Transaction is consummated, MPH would be affiliated with approximately 417 MWs of generating capacity in New York, which is 1.1% of the entire NYISO market (39,308 MW) and 7.9% of the LI submarket. As noted in the Petition, this is near or below the levels of market concentration that the Commission ruled are insufficient to raise horizontal market power concerns

[3] Petitioners have included pre-transaction and post-transaction corporate organizational charts in Exhibit A to the Petition.

in New York.[4] The Proposed Transaction would result in the Project Companies being affiliated with less than 1% and 1.5% of the capacity available in the PJM and ISO-NE markets, respectively, which is below the market concentration the Commission ruled is insufficient to raise market power concerns because this market share is de minimis and is reduced further by transmission constraints that limit the amount of affiliated capacity that potentially could be imported to the NYISO market.[5]

The Proposed Transaction, as Petitioners argue, does not present a vertical market power risk because neither MPH nor its affiliates exercise control over electric delivery facilities other than interconnections, or have a substantial influence over inputs, like fuel, into the production of generation supply within New York. Moreover, the Proposed Transaction would not result in any adverse impacts to captive ratepayers in New York. The Project Companies do not make power sales at cost-based rates or provide third party electric transmission service. The Project Companies are exempt wholesale generators (EWGs) within the meaning of Section

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[4] See Case 04-E-1364, Sithe Energies, Inc., Declaratory Ruling on Review of Stock Transfers (issued January, 14, 2005) (ruling increase in horizonal market concentration to 7% does not create the potential for the exercise of market power); Case 07-E-0332, Astoria Generating Company Holdings LLC, Declaratory Ruling on Review of a Merger Transaction (issued May 22, 2007) (ruling increase in horizonal market concentration to 7.1% does not create the potential for the exercise of market power); Case No. 08-E-0410, LS Power Development LLC, Declaratory Ruling on the Acquisition of Common Stock (issued May 27, 2008) (finding that an 8.1% market share did not present an opportunity to exercise market power).

[5] Case 17-E-0601, Calpine Corporation, Declaratory Ruling on Transfer and Making Other Findings (issued December 19, 2017) (ownership of 6.9% of ISO-NE market insufficient to raise market power concerns).

1262(6) of the Public Utility Holding Company Act of 2005 (PUHCA) and Section 366.1 of the regulations of the Federal Energy Regulatory Commission (FERC) and are authorized by FERC pursuant to Section 205 of the Federal Power Act to sell electric power, including energy and capacity, at market-based rates. Therefore, the Project Companies' sales of electric power from the Facilities are exclusively at wholesale at market-based rates pursuant to their FERC-approved market-based rate tariff. The Petition notes that that would continue to be the case following the consummation of the Proposed Transaction, and there would be no change in the status of the Project Companies as EWGs as a result of the Transaction.

Accordingly, the Petitioners claim that the Wallkill Presumption applies to the Project Companies, as lightly regulated entities, and consistent with Commission precedent, the Commission may decline to review the Proposed Transaction under PSL §70 because the Proposed Transaction would not provide Petitioners with the ability to exercise horizontal or vertical market power or to harm the interests of captive New York ratepayers. Alternatively, if the Commission decides to review the Proposed Transaction pursuant to PSL §70, the Petitioners suggest that the Commission should approve it as in the public interest for the reasons discussed above.

LEGAL AUTHORITY

Pursuant to PSL §70, the Commission must review and approve proposed transfers of ownership interests in jurisdictional facilities and properties. These review processes have been adapted over time to accommodate lightened ratemaking regulation policies. Entities subject to lightened regulation operate in competitive markets and, therefore, must support PSL §70 transfer requests with a demonstration under the

Wallkill Presumption that the transaction would not present an opportunity to exercise either horizontal or vertical market power, or otherwise harm the interests of captive ratepayers of fully regulated utilities.[6]

The Commission is authorized to issue a declaratory ruling with respect to: (i) the applicability of any rule or statute enforceable by it to any person, property, or state of facts; and (ii) whether any action by it should be taken pursuant to a rule. The Commission may also decline to issue such a declaratory ruling. This authority is expressly established by State Administrative Procedure Act §204 and governed by the Commission's Rules of Procedure, contained in 16 NYCRR Part 8, implementing that statute. Declaratory rulings involving interpretations of existing statutes, rules, or regulation are not "actions" within the meaning of the State Environmental Quality Review Act (SEQRA) and its implementing regulations and, therefore, they may be issued without further SEQRA review.[7]

DISCUSSION AND CONCLUSION

The Transfer

Under the Wallkill Presumption, regulation under PSL §70 is presumed to not adhere to the transfer of ownership interests in entities upstream from a New York competitive electric generation subsidiary, unless there is a potential for harm to the interests of captive utility ratepayers, or the potential for the exercise of market power arising out of an upstream transfer, sufficient to override the presumption. For

[6] See Wallkill Order, p. 9; see also Carr Street Order, p. 8.

[7] 6 NYCRR §617.5(c)(37) (defining "interpretation[s] of an existing code, rule or regulation," as Type II actions not subject to review under SEQRA).

purposes of the Proposed Transaction, the Petitioners have satisfied the Wallkill Presumption and Commission precedent by demonstrating that the upstream transfer in ownership interests in the Project Companies will not present an ability to exercise horizontal or vertical market power, or any potential for harm to captive utility ratepayers.[8]

Pursuant to the Proposed Transaction, MPH will acquire 100 percent of the ownership interests in Edgewood and Shoreham from Sound Capital Seller and 100 percent of the upstream ownership interests in Equus and Pinelawn from East Coast Seller. Following consummation of the Proposed Transaction, J-POWER will no longer be affiliated with the Project Companies, and the Project Companies will be subsidiaries of HSE and its affiliates.

Consummation of the Proposed Transaction would not create a potential for harm to the interests of captive utility ratepayers, or a potential for the exercise of market power arising out of this upstream transfer. The Project Companies will continue to operate in a competitive market and have no captive ratepayers. As Petitioners note, the Proposed Transaction will not result in changes in the day-to-day operations of the Project Companies' facilities. The Project Companies' sales of electric power from the facilities are

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[8] Each of the Project Companies is subject to lightened regulation by the Commission. See Case 01-E-1635, PPL Global, LLC, Order Providing for Lightened Regulation (issued March 28, 2002); Case 01-E-1634, PPL Global, LLC, Order Providing for Lightened Regulation (issued March 28, 2002); Case 04-E-0734, Pinelawn Power LLC, Order Granting a Certificate of Public Convenience and Necessity, Providing for Lightened Regulation, and Approving Financing (issued August 25, 2004); and Case 03-E-1179, Equus Power I, L.P., Order Providing for Lightened Regulation and Approving Financing (issued October 30, 2003) (collectively, the Lightened Regulation Orders).

exclusively at wholesale at market-based rates pursuant to their FERC-approved market-based rate tariff.

Regarding horizontal market power, the Proposed Transaction will result in MPH being affiliated with approximately 417 MW of generating capacity in New York, which is 1.1% of the entire NYISO market (39,308 MW) and 7.9% of the LI submarket. This is near or below the levels of market concentration that were previously determined by the Commission to not raise horizontal market power concerns.[9] Moreover, the output of the facilities will also be subject to the competitive markets under FERC's jurisdiction, including rules prohibiting anti-competitive market behavior. Further, the Proposed Transaction will result in the Project Companies being affiliated with less than 1% and 1.5% of the capacity available in the PJM and ISO-NE markets, respectively, which is below the market concentration the Commission ruled is insufficient to raise market power concerns because this market share is de minimis and is reduced further by transmission constraints that

[9] See, e.g., Case 04-E-1364, Sithe Energies, Inc., Declaratory Ruling on Review of Stock Transfers (issued January 14, 2005) (ruling increase in horizonal market concentration to 7% does not create the potential for the exercise of market power); Case 07-E-0332, Astoria Generating Company Holdings LLC, Declaratory Ruling on Review of a Merger Transaction (issued May 22, 2007) (ruling increase in horizonal market concentration to 7.1% does not create the potential for the exercise of market power); and Case 08-E-0410, LS Power Development LLC, Declaratory Ruling on the Acquisition of Common Stock (issued May 27, 2008) (finding that an 8.1% market share did not present an opportunity to exercise market power).

limit the amount of affiliated capacity that potentially could be imported to the NYISO market.[10]

Likewise, the Proposed Transfer does not present a vertical market power risk, as neither MPH nor its affiliates will have an opportunity to exercise vertical market power as they do not own exercise control over electric delivery facilities other than interconnections, or have a substantial influence over inputs, like fuel, into the production of generation supply within New York.

Based on these facts, the Petitioners have adequately demonstrated that the Proposed Transaction does not present an opportunity to exercise either horizontal or vertical market power, or a potential to harm the interests of captive New York ratepayers. Accordingly, the Proposed Transfer does not require further regulatory review under PSL §70.[11]

After the Proposed Transaction is consummated, lightened regulation of the Project Companies will continue, as described in the Lightened Regulation Orders. The Petitioners and their affiliates are reminded that, notwithstanding that the Project Companies are lightly regulated, any entities that exercise control over the Project Companies' facilities 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 4, as with other wholesale generators that have been afforded a lightened

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[10] Case 17-E-0601, Calpine Corporation, Declaratory Ruling on Transfer and Making Other Findings (issued December 19, 2017) (ownership of 6.9% of ISO-NE market insufficient to raise market power concerns).

[11] See Wallkill Order; see also, Case 18-E-0333, Cassadaga Wind LLC, Declaratory Ruling on Transfer Transactions (issued July 17, 2018); see also Case 17-E-0620, AP Cricket Valley Holdings I Inc., et al., Declaratory Ruling on Transfer Transaction (issued December 14, 2017).

regulatory regime.[12] Included among those requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,[13] to give notice of generation unit retirements,[14] and to report personal injury accidents pursuant to 16 NYCRR Part 125. PSL §§110(1) and (2), which provide for Commission jurisdiction over affiliated interests, will apply based on affiliations with power marketers. These conditions further ensure that Petitioner will render safe, adequate, and reliable service.

CLCPA

In compliance with the Climate Leadership and Community Protection Act (CLCPA) §7(2), this Declaratory Ruling is consistent with the attainment of statewide greenhouse gas (GHG) emissions limits under the CLCPA.[15] The Proposed Transaction will not result in changes in the day-to-day operations of the Project Companies' facilities. Importantly, these existing facilities are currently operating under air

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[12] See, e.g., Case 16-E-0409, Indeck Corinth Limited Partnership, Order Providing for Lightened Regulation (issued December 21, 2016).

[13] Case 04-M-0519, 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).

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

[15] See Section 7 of Chapter 106 of the Laws of 2019. The CLCPA became effective on January 1, 2020. The CLCPA requires, inter alia, that a State agency, in considering and issuing permits, licenses, and other administrative approvals and decisions, consider whether such decisions are inconsistent with or will interfere with the attainment of statewide GHG emissions limits and, if so, provide justification for why such limits/criteria may not be met, and identify alternatives or GHG mitigation measures to be required where a project is located.

permits issued by the New York State Department of Environmental Conservation, which is responsible under the CLCPA for establishing and enforcing GHG limits on a statewide basis. Given that the existing facility permits were issued in accordance with environmental statutes and regulations that ensure the facilities are operated in a manner that is protective of the environment, the Commission finds that this Declaratory Ruling is not inconsistent with, and will not interfere with the attainment of, the statewide GHG gas emissions limits established by the NYSDEC.[16] Likewise, the operation of the existing facilities in accordance with applicable, existing, and valid permits will not disproportionately burden disadvantaged communities, as prohibited by CLCPA §7(3).

The Commission finds and declares:

1. No further review will be conducted of the proposed transfer described in the petition filed in Case 24-E-0472 on August 14, 2024, and discussed in the body of this Declaratory Ruling.

2. MPH Cross Island Power, LLC, Edgewood Energy, LLC, Shoreham Energy, LLC, Pinelawn Power, LLC, and Equus Power I, L.P. shall provide notice to the Secretary within 15 days after completing the proposed transfer transaction described in the petition filed in this proceeding on August 14, 2024, and discussed in the body of this Declaratory Ruling.

[16] It is also noted that Section 8 of the CLCPA, which provides that the Commission's regulation of GHG emissions "... shall not limit the [NYSDEC's] authority to regulate and control greenhouse gas emissions pursuant to article 75 of the environmental conservation law," limits the Commission's authority to impose air emissions limits more stringent than the NYSDEC or to prohibit facilities from exercising their rights under air permits validly issued by NYSDEC.

3. This proceeding shall be closed upon compliance with Ordering Clause No. 2.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary