

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 20, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan

CASE 23-E-0421 - Petition of Hecate Grid Swiftsure LLC for
Certificate of Public Convenience and Necessity
Pursuant to Section 68 of the Public Service Law
and Order Granting a Lightened Regulatory
Regime.

ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY,
AND PROVIDING FOR LIGHTENED RATEMAKING REGULATION

(Issued and Effective June 21, 2024)

BY THE COMMISSION:

INTRODUCTION

In a petition filed on July 31, 2023, and supplemented on December 11, 2023 (collectively, the Petition), Hecate Grid Swiftsure LLC (Petitioner) requests a Certificate of Public Convenience and Necessity (CPCN), pursuant to Public Service Law (PSL) §68, authorizing the construction and operation of a battery energy storage system sized up to 650 megawatts (MW) located at Victory Boulevard, Block 2784, Lot 29, Staten Island, State of New York (the Storage Facility), along with an electric transmission interconnection (the Transmission Facility, and together with the Storage Facility, the Project). The Petition also requests lightened regulation relative to Petitioner's

ownership and operation of the Project as a wholesale electric market participant.

In this Order, the Public Service Commission (Commission) finds that Petitioner has satisfied the statutory requirements of PSL §68 and therefore grants a CPCN in connection with the Project, subject to conditions. Petitioner is also granted a lightened ratemaking regulatory regime because it will own and operate the Project on a merchant basis and participate in the competitive markets administered by the New York Independent System Operator, Inc. (NYISO).

THE PETITION

Petitioner

As described in the Petition, Petitioner is a limited liability company formed in the State of Delaware and authorized to do business in New York State. Petitioner is a wholly owned project company of Hecate Energy LLC. The Project is being supported by their affiliate, Hecate Grid, LLC, which develops standalone storage projects in the United States. Petitioner plans to construct, own, and operate all components of the Project.

The Project

The Petition provides details about the proposed Project, stating that the site for the Storage Facility is a 12.66-acre parcel that is zoned M1 Industrial (M1-I), which would allow it to be built "as-of-right" under New York City (City) zoning rules. The actual facilities would be built on approximately eight acres of that parcel, and would utilize lithium-ion batteries housed within self-contained all-weather cabinets approximately eight feet tall and 12 feet wide, aligned in rows, with a total capacity up to 650 MW. The cabinets would be connected to Power Conditioning Stations and step-up

transformers. The step-up transformers would be connected by a medium voltage (34.5 kV) underground collection system that would connect the energy storage system to a new Project substation. The Storage Facility would be encompassed by a security fence and visual screening. The Transmission Facility would include an approximately one mile underground electric transmission line buried under Victory Boulevard connecting the Storage Facility to Consolidated Edison Company of New York, Inc.'s (Con Edison) Fresh Kills 345 kV Substation.

The Project would not generate any new electricity but would store electricity drawn from the grid and generated at other facilities. Stored energy would then be released to the grid in accordance with NYISO and Con Edison's system operating requirements providing capacity and grid reliability services. The Petition explains that, by storing energy available from the grid during off-peak periods and making that stored energy available during peak demand periods, the need for additional generation in New York City during such periods would be reduced. Additionally, the batteries would be capable of providing other essential ancillary services to the grid, such as reserves, regulation, and voltage support.

Project construction is planned to commence late 2025 with a schedule to complete most of the on-site construction and restoration during 2026. The planned commercial operation date for the Project is in the first quarter of 2027. Construction is anticipated to occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, in accordance with New York City Code. It is not anticipated that overnight, weekend, or holiday construction hours would be required, with the exception of the Project's Start, Testing, and Commissioning Phases, but in the event special circumstances arise to support construction, Petitioner would request approval from the City in advance.

1. Environmental Impacts

The Petition includes detailed information regarding the potential environmental impacts, including an Expanded Environmental Assessment Form (Expanded EAF) under the New York State Environmental Quality Review Act (SEQRA).¹ Petitioner maintains that the Project would not result in any significant adverse environmental impacts. The Project, it asserts, is compatible with existing land uses, and it would avoid or minimize adverse effects to air quality, water resources, noise, traffic and transportation, visual resources, community facilities and natural resources.

a. Air

As the Petition notes, the proposed Project would not cause or require any direct air emissions. Petitioner argues that the Project would have a net benefit to local air quality through reducing the direct need for deploying peaker plants during peak demand scenarios and reducing commercial traffic that currently utilizes the site.

b. Water

The Project, Petitioner indicates, would not result in any wastewater discharges and would not require any water for operation other than that required to operate the fire suppression systems and that required for project staff facilities. Further, it notes that the Project would not result in any adverse impacts to surface waters or regulated wetlands. As noted, the Project site does not contain any federal or state regulated wetlands. Erosion and sediment control measures would be installed during construction and Best Management Practices would be used to protect the water resources located off site.

¹ Petition, Exhibit B (filed July 31, 2023).

Petitioner reports that because the site is already developed and primarily impervious cover, a significant increase in surface runoff is not expected. However, prior to the commencement of construction, the Project would develop a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the New York State Department of Environmental Conservation (NYSDEC) State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity. The SWPPP would also be compliant with the NYSDEC Stormwater Management Design Manual. During construction and operation, the stormwater discharges will be managed under the SWPPP.

The SWPPP would detail the proposed stormwater management practices and best management practices (BMPs) for the Project. The Project is anticipated to require a storm sewer system including manholes and culvert to capture stormwater runoff throughout the Project Site.

c. Noise

The Petition notes that there would be temporary noise impacts during Project construction. These impacts would vary with the specific construction activities but would be temporary and transient. Equipment and vehicle idling would be minimized, and construction vehicle traffic would be timed and routed in order to minimize potential noise impacts on the local community. All construction activities would be conducted in accordance with the applicable state and local hourly restrictions on such activities. Further, the Petition notes that construction would abide by the Construction Noise Mitigation Plan required as part of the construction permit, and Petitioner would work with city departments to maintain regulatory compliance during construction.

The Petition also addresses the noise impacts that would result from the operation of the Project. A comprehensive Noise Study Report is provided in the Petition, which includes background noise measurements to characterize the existing noise environment, noise modeling to predict the sound levels resulting from the operation of the Project at the property line and any nearby sensitive receptors, including an assessment of compliance with the New York City Noise Control Code and NYSDEC's Assessing and Mitigating Noise Impacts (DEP-00-1, February 2, 2001) guidance policy.²

The primary noise producing sources during Project operation would be the battery energy storage system (BESS) containers, the power inverters, and the transformers. The results of the noise modeling predicted that the Project would likely create noise increases (over 6 dBA) and have the potential to affect neighboring residences near the property line. Therefore, noise mitigation would be required to comply with the New York City Noise Code requirements and NYSDEC Guidelines. The noise modeling was repeated to evaluate the effectiveness of noise barrier walls on reducing the noise impact from the Project during operation. The modeled barrier walls were eight feet high and placed along the south, east, and north interior perimeter of the site access road, with an assumed reflection loss of 5 dB. The noise modeling study showed that the addition of noise walls would significantly reduce the sound level increases at the monitoring locations to the point where there will not be adverse impacts to adjacent residential and commercial properties. Based on the results of this sound assessment, the Project would comply with the

² Petition, Attachment G to Exhibit B (filed July 31, 2023).

applicable New York City noise control requirements and NYSDEC Guidelines during operation.

d. Traffic and Transportation

During construction of the Storage Facility, there would be approximately 100 total project-related construction workers commuting to and from the site, and material/equipment deliveries, during the construction phase. Based on the current Project design, it is anticipated that construction parking would be contained within the Project site and access would be through an entrance on Latimer Avenue.

During the construction period, anticipated Project-related traffic would consist of commuting construction workers and material/equipment deliveries. Based on Petitioner's preliminary engineering, most construction parking and staging areas would be located within the Project site and within the temporary traffic control pattern. Construction is anticipated to occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday. Access to the Project Site would utilize ingress/egress via Baron Boulevard, which intersects Victory Boulevard approximately 200 feet to the north. It is anticipated that Project-related deliveries and construction crews would utilize NY-440/Victory Boulevard from the west and Victory Boulevard from the east. Deliveries can be dispersed throughout the day and any large delivery will be scheduled to occur outside of the roadway peak hours.

Petitioner avers that based on the limited number of construction workers and production rate, the temporary construction of the Project would not have a significant impact on traffic operating conditions. Further, the existing roadway network would be able to support this anticipated traffic. No roadway improvements would be required for the construction

phase of this Project other than the restoration of the trench with in-kind replacement of the bituminous pavement structure.

After completion of the Project, the operation of the Storage Facility would result in minimal traffic in the area as the Storage Facility would be unmanned during operation, a major improvement over existing site-generated traffic. Typical maintenance requirements are performed during normal operation with battery storage service technicians on site to inspect all equipment, replace/clean filters, as necessary, and perform any required sampling dictated by operational and/or permit requirements. Therefore, the Petition asserts that Project-related traffic during operation would not have a significant impact on traffic operating conditions or the existing roadway network.

It is anticipated two options would be considered for the installation of the new cable and conduit, Open Trench (4500 feet) vs. Open Trench (3000 feet) with Horizontal Directional Drilling (1500 feet). It is anticipated the open trench would be 3 feet wide by 8 feet deep, utilizing a trench box. It is estimated the production rate for the installation of the new cable and conduit via open trench would be 200 feet per day. Therefore, the temporary traffic control would be considered a short-term operation. It is also assumed that all work would be completed during the daytime.

e. Visual

Petitioner does not report any potential adverse visual impacts to the surrounding areas because the Project would be located on a previously developed commercial property and would be enclosed by a security fence with visual screening. In addition, the associated generation tie-line would be buried underground and not have a visual impact on surrounding areas.

f. Community Facilities

As reported, there are no known archaeological resources that overlap with the Project and only one historical resource listed on the National Registry of Historic Places (NRHP). The site listed on the NRHP is located adjacent to the gen-tie line that will be buried underground. Therefore, Petitioner does not anticipate any impacts to archaeological or historical architectural resources. Petitioner has advised the New York State Office of Parks, Recreation and Historic Preservation of its findings.

g. Natural Resources

Petitioner notes that the Project site does not contain suitable habitat for the species that have been identified as potentially occurring in the vicinity of the Project, and that potential offsite habitat will be protected via the SWPPP and BMPs for sediment and erosion controls. As such, impacts to listed species are not anticipated.

h. Disadvantaged Communities/Environmental Justice

The Petition contends that the Project would not result in a disproportionate or adverse impacts to any disadvantaged communities nor any potential Environmental Justice communities. As noted, the Project would generate positive economic benefits to the surrounding communities, including new annual tax payments, construction jobs, local spending in the area on supplies and materials for construction, and spending by construction workers in the area on food, lodging, increasing grid reliability and resiliency, and other services. Further, the Project would result in beneficial effects on air quality by replacing combustion turbines in New York City with energy storage technology, further enabling New York City and New York to meet its electrification targets while maintaining grid reliability and reducing commercial traffic in

and out of the site, as compared with the current use. The Petition adds that there would not be any significant adverse visual or noise impacts.

i. Land Use and Zoning

The Petition maintains that the Project would improve a vacant site, currently occupied by surface parking and abandoned vehicles. The Project, according to Petitioner, would generally be consistent with the industrial, manufacturing, utility, and other non-residential uses that dominate the West Shore of Staten Island. Further, the Project would not require any zoning changes and would comply with all dimensional requirements of the M1-I industrial district, including floor area, yard and height, and parking and loading standards.

j. Coastal Resources

The Petition indicates that the Project site is within a coastal area, as well as a community with an approved Local Waterfront Revitalization Program. However, the Project site is not within a Coastal Erosion Hazard Area.

2. Decommissioning

Petitioner estimates that the Project will have a useful life of at least 30 years. After the end of its useful life, or in the event the operations have ceased for more than one year, Petitioner plans to decommission the Project. The decommissioning would involve removal of equipment, capping utilities and final restoration, such that the property can be repurposed and utilized for other commercial or industrial purposes. In addition, the batteries would be removed from the containers and returned to the manufacturer or their approved recycling partner(s) for dismantling, material processing, and recovery of ferrous and non-ferrous metals and other packaging products.

The Petition includes a Decommissioning Plan (Plan) for the Project.³ The Plan provides the general scope of decommissioning work as well as a construction cost estimate for a decommissioning assurance mechanism for the Project. The Plan outlines the decommissioning requirements for removal of above-ground structures, debris, underground foundations, and cables and restoration of soil and vegetation after termination of operations of the BESS.

3. Fire Protection/Emergency Response

As part of the Expanded EAF, the Petition indicates that an Emergency Response Plan would be developed prior to Project construction and operation in consultation with the Fire Department of New York (FDNY) prior to the Project receiving its building permits. The Project would be designed in accordance with the applicable national, state, and local codes, including FDNY 3 RCNY 608-01 and NY FC 608 for fire detection, protection, and suppression. In addition, a Certificate of Fitness (COF) holder would be designated for the site per FDNY B-28.

The Project would utilize equipment listed by a nationally recognized testing laboratory to the UL 9540 standard and would be selected from the FDNY list of approved manufacturers. The Project would also be designed to comply with various standards adopted by the National Fire Protection Association (NFPA).

In the event of an emergency, a remote monitoring system would shut down necessary equipment remotely. In the event of an emergency, there are five existing fire hydrants located along Victory Boulevard for use by the FDNY. The FDNY would have an emergency action plan and would have

³ Petition, Attachment B of Exhibit B (filed July 31, 2023).

access to guidance on how to respond to the event, along with education prior to operations on the potential hazards on site.

Request for CPCN

In support of its request for a CPCN, the Petition presents a detailed description of the Project and provides proof of incorporation, including a copy of the Certificate of Incorporation certified by the New York Secretary of State and records demonstrating that the company is registered to do business in New York and that it has properly registered an agent for service of process.⁴ Petitioner also includes a verified statement of a company representative, authorized to act in the capacity of a corporate president and secretary, that verifying that no municipal consents are required for the issuance of a CPCN.⁵

Petitioner also argues that it has the experience and financial resources necessary to construct, own, and operate the Project, and to render safe, adequate, and reliable services. Petitioner estimates that the total cost of the Project would be approximately \$300 million, which the company expects to finance through a combination of debt, equity, and tax equity. In support of its ability to finance the Project, the Petition notes that Hecate Grid, LLC closed a \$100 million project debt financing in January of 2023 and is in the process of raising additional equity and debt for near-term pipeline projects. Hecate Grid, LLC is currently backed by equity funding from InfraRed Capital Partners, a \$14 Billion AUM infrastructure fund based in the U.K.

According to Petitioner, the Project would result in important public benefits, including advancing the State's

⁴ Petition, Exhibits A and D (filed July 31, 2023).

⁵ Petition, Exhibit C (filed December 11, 2023).

energy storage goals, improve the reliability and stability of the grid, and achieve positive environment benefits. This supports a finding that the Project is in the public interest.

Request for Lightened Regulation

Petitioner requests that the Project be regulated under a lightened regulatory regime, as has been consistently applied by the Commission to independent power producers in the wholesale electric market for over twenty years.⁶ The Petition cites to various Commission orders affording such entities lightened regulation, noting that they remain subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement.

PUBLIC NOTICE

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rule Making was published in the State Register on November 29, 2023 [SAPA No. 23-E-0421SP1]. The time for submission of comments pursuant to the SAPA notice expired on January 29, 2024. No comments were received in response to the SAPA notice.

In addition, on April 26, 2024, the Secretary to the Commission (Secretary) issued a Notice Requesting Comments and Announcing Public Statement Hearing and Procedural Conference. A virtual Public Statement Hearing, followed by a Procedural Conference, was held before Administrative Law Judges (ALJ) Erika Bergen on May 15, 2024. Subsequently, on May 15, 2024, a Ruling on Process was issued by ALJ Bergen, finding that there was no need for an evidentiary hearing in this proceeding. No

⁶ 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).

comments were received either during the Public Statement Hearing or in writing by the deadline of May 29, 2024, as established in the Secretary's notice.

LEGAL AUTHORITY

PSL §68 prohibits an electric corporation from constructing electric plant, or from exercising any right or privilege under any franchise, until it receives the Commission's approval in a CPCN. In instances where siting approval has already been granted, such approval may supplant the requirement for construction approval under PSL §68, but not the requirements for Commission approval of its corporate formation and the exercise of any municipal "right, privilege or franchise."⁷ Before the Commission may issue a CPCN, the electric corporation seeking approval must provide a certified copy of its charter and a "verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities." In considering its approval, the Commission "shall consider the economic feasibility of the corporation, the corporation's ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates, and whether issuance of a certificate is in the public interest."⁸

The PSL also grants the Commission broad authority to regulate corporations that own, operate, and/or manage electric plant, which is defined in PSL §2(10).⁹ The regulation of

⁷ Case 18-E-0399, Cassadaga Wind, LLC - CPCN, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued November 15, 2018), p. 12.

⁸ PSL §68.

⁹ PSL §§5, 66.

electric corporations has been adapted over time to accommodate the development of competitive wholesale markets and lightened ratemaking policies. The Commission has determined that lightly regulated entities may be exempt from certain PSL provisions that pertain to retail service because they do not serve captive utility customers.¹⁰

DISCUSSION

State Environmental Quality Review

Under SEQRA, the Commission must determine whether an action it is authorized to approve may have a significant adverse impact on the environmental. The proposed action over which the Commission has jurisdiction is the grant of a CPCN for the construction and operation of the Project. The proposed action does not meet the definition of Type 1 or Type 2 actions listed in 6 NYCRR §§617.4 and 617.5, or 16 NYCRR §7.2, so it is classified as an "unlisted" action requiring SEQRA review. The Commission assumes Lead Agency status under SEQRA for purposes of conducting an uncoordinated environmental review of the action contemplated in this proceeding.

SEQRA requires applicants to submit a completed EAF describing and disclosing the likely impacts of the actions they propose.¹¹ Petitioners submitted a full EAF Part 1 and Expanded EAF that substantially complies with this requirement. Department of Public Service Staff has completed Parts 2 and 3 of the full EAF, as well as a Coastal Assessment Form, which will be retained in our files.

¹⁰ See, e.g., Case 16-E-0409, Indeck Corinth Limited Partnership, Order Providing for Lightened Regulation (issued December 21, 2016), pp. 3-4.

¹¹ Six NYCRR §617.6(a)(3).

After reviewing the Petition and the full EAF, the Commission concludes, based on the criteria for determining significance listed in 6 NYCRR §617.7(c), that granting a CPCN for the construction and operation of the Project will not result in any significant adverse environmental impacts. Specifically, construction and operation of the Project is consistent with existing zoning restrictions and compatible with existing land uses in proximity to the site. No impacts are anticipated to any archaeological or historical architectural resources. Visual impacts would be avoided or minimized by the security fence with visual screening. In addition, the associated generation tie-line would be buried underground and not have a visual impact on surrounding areas. Potential adverse noise impacts to adjacent residential and commercial properties would be addressed with the addition of noise walls. Further, the Project, as described above, would avoid or minimize adverse effects to air quality, water resources, traffic and transportation, and natural resources. Moreover, the Project is found to be consistent with New York City's approved Local Waterfront Revitalization Program, pursuant to New York State's Coastal Management Program.

Given the foregoing, the Commission, as Lead Agency, determines that the proposed action will not have a significant adverse impact on the environment and adopts 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 Notice of Determination of Significance concerning the unlisted action is attached.

CPCN

In accordance with the procedural prerequisite prior to issuance of a CPCN under PSL §68, an opportunity for "due hearing" was provided at the Public Statement Hearing held on

May 15, 2024. With respect to the statutory findings required for the grant of a CPCN, the Petition and the record developed in this proceeding provides sufficient information to make the necessary findings. Based on the record, the Commission finds that Petitioner has satisfied the requirements of PSL §68 and its implementing regulations for the grant of a CPCN.

In particular, Petitioner has provided a copy of the Certificate of Incorporation certified by the New York Secretary of State and records demonstrating that the company is registered to do business in New York and that it has properly registered an agent for service of process.¹²

In conformance with PSL §68, Petitioner has provided a verified statement of a corporate officer, authorized to act in the capacity of a corporate president and secretary, who represented that no municipal consents are required for the issuance of a CPCN.

Petitioner has also demonstrated its economic feasibility and that it will be capable of exercising its rights, privileges, or franchises under the CPCN. As noted above, Petitioner is a wholly owned project company of Hecate Energy LLC, and is affiliated with Hecate Grid LLC. Hecate Grid LLC develops, owns, and operates standalone storage projects in the United States, and closed a \$100 million project debt financing in January of 2023.¹³ Hecate Grid LLC is currently backed by equity funding from InfraRed Capital Partners, a \$14 Billion AUM infrastructure fund based in the U.K. The estimated Project cost of approximately \$300 million would be financed

¹² Petition, Exhibits A and D (filed July 31, 2023).

¹³ Petitioner reports that Hecate Grid LLC and its affiliates have contracted 420 MW/1,680 MWh of battery storage contracts with 105 MW/210 MWh under construction, and a U.S. energy storage pipeline exceeding 7 GW.

through a combination of debt, equity, and tax equity. Thus, the Commission finds that Petitioner will be economically feasible, financially viable, able to finance improvements to the Project, and capable of rendering safe, adequate, and reliable service.

As the Project will be operating in a competitive wholesale market, the rates charged by Petitioner will be subject to tariffs approved by the Federal Energy Regulatory Commission and administered by the NYISO, including market monitoring provisions. Accordingly, just and reasonable rates will be ensured.

The record further demonstrates that granting a CPCN for the Project is in the public interest. The Project will further the State's energy storage goals, including the Climate Leadership and Community Protection Act's (CLCPA) target to procure 3,000 MW of energy storage resources by 2030.¹⁴ The primary benefits associated with the deployment of energy storage systems include enhanced flexibility in electric system operations, enabling cleaner renewable energy sources to meet periods of peak demand and thereby providing public health benefits through reduced air emissions via the displacement of fossil-fuel generating units, as well as adding resiliency to the grid to reduce outages.

As such, construction and operation of the Project, as authorized in the CPCN, will be consistent, and not interfere with, the attainment of the statewide GHG emissions limits

¹⁴ The Commission has already established statewide goals consistent with the CLCPA and is contemporaneously considering the expansion of these goals in Case 18-E-0130.

established under the CLCPA.¹⁵ Although the Project is located in an area defined in the CLCPA as a Disadvantaged Community, we find that it will not result in a disproportionate burden on such Community, as prohibited by CLCPA §7(3).¹⁶ As discussed above, the Project will not present any significant adverse impacts on the human or natural environment. The construction related impacts would be temporary, while operation of the Project would not have any direct air emissions and would offset the need for fossil fuel peaking units, thereby reducing the associated air emissions. Accordingly, issuance of the CPCN is in the public interest. To support this finding with respect to the Project, the Commission also addresses the following matters with respect to fire safety, emergency response, and decommissioning.

1. Fire Safety/Emergency Response

The Commission recognizes the importance of fire safety given prior incidents involving battery energy storages facilities. Those incidents prompted the creation of the New York State Inter-Agency Fire Safety Working Group (Working Group) that was convened on July 28, 2023.¹⁷ The Working Group, which includes the Department of Public Service, is tasked with identifying best practices, addressing potential risks to public

¹⁵ Section 7(2) of the CLCPA requires all State agencies to “consider whether [their] decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits” established by the New York State Department of Environmental Conservation under the CLCPA.

¹⁶ The areas designated as disadvantaged communities by the Climate Justice Working Group can be identified in an interactive map available at:
<https://www.nyserda.ny.gov/ny/Disadvantaged-Communities>.

¹⁷ <https://www.nyserda.ny.gov/About/Newsroom/2023-Announcements/2023-07-28-Governor-Hochul-Convenes-Inter-Agency-Fire-Safety-Working-Group>.

safety, and ensuring energy storage sites across New York are safe and effective.

On February 6, 2024, the Working Group released its recommendations for the New York State Fire Prevention and Building Code Council.¹⁸ The recommendations urge the incorporation of many provisions of the National Fire Prevention Association 855 Standard for the Installation of Stationary Energy Storage Systems 2023 Edition (NFPA 855) into the state fire code, recognizing that the NFPA protocols are among the leading BESS fire safety measures and would strengthen emergency planning, response, and fire protections if adopted by the state. However, the recommended measures are subject to a lengthy proceeding to update the state fire safety code. In the interim, the Commission finds that certain conditions are necessary to ensure that comprehensive safety measures for fire suppression and emergency response are incorporated into Commission approvals of battery energy storage facilities. These measures are intended to complement the measures already identified in the Petition to address fire safety and emergency response, as noted above.

In advance of New York updating its energy storage facility fire safety measures, the Commission looks to national best practice standards to provide guidance. Specifically, NFPA 855 is comprehensive, reasonable, and the most up-to-date regulatory framework of battery storage facility fire safeguards and emergency response measures. In particular, issuance of the CPCN will be conditioned upon submission of an Emergency Operations Plan, a Fire Control and Suppression Plan, including annual training for local fire and emergency response personnel,

¹⁸ <https://www.nyserda.ny.gov/All-Programs/Energy-Storage-Program/New-York-Inter-Agency-Fire-Safety-Working-Group>.

and notification and reporting requirements related to fires and other catastrophic events, as detailed in the ordering clauses below.¹⁹ While the conditions applied herein capture key fire prevention and response measures contained in NFPA 855, Petitioner is directed to consult with at least one professional knowledgeable with NFPA 855 to ensure that Project aspects related to design, construction, operation, maintenance, and decommissioning adhere to industry best practices.

2. Decommissioning

In recent cases involving CPCNs, including for storage facilities, the Commission has stated that the facility site should be restored to at least its present condition after its useful life has run, or the facility has ceased operations or been abandoned for a period that exceeds one year.²⁰ The Commission likewise finds that the following conditions are needed to ensure that Petitioner appropriately follows through on this commitment.

As a condition to the grant of a CPCN, Petitioner must file, within 90 days of the date of this Order, a decommissioning plan that describes how and when Petitioner will decommission and restore the portions of the site on which the

¹⁹ Petitioner is advised to file any required information that is deemed confidential with the Records Access Officer, and to otherwise file it with the Secretary to the Commission. Further details on the filing process are available at: <https://dps.ny.gov/filing-documents-secretary>.

²⁰ See, e.g., Case 19-E-0122, Ravenswood Development, LLC, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued October 17, 2019); Case 18-E-0654, Ball Hill Wind Energy, LLC, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued April 18, 2019) (Ball Hill Order); Case 14-F-0490, Cassadaga Wind, LLC, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions (issued January 17, 2018).

Storage Facility will be located. Within the same period Petitioner must also file a decommissioning cost study that will be updated no more than 60 days after the Project's commercial operation date (i.e., when the Project commences commercial operations), and every three years thereafter. The decommissioning cost study must estimate the full cost that will be required to restore the Storage Facility site to its pre-construction condition. The Commission will establish the initial amount of this "Decommissioning Security" that Petitioner must provide before commencing Project installation. The Commission subsequently may direct Petitioner to adjust the Decommissioning Security if it concludes, based on a cost study update, that a modification is warranted. The Decommissioning Security will not reflect an offset for salvage or resale value of component parts. Petitioner, and not the Project's host community (i.e., New York City) should bear the risk of salvage value volatility that may cause the net decommissioning cost to exceed the Decommissioning Security value. Excluding this offset appropriately allocates most of the risk inherent in decommissioning to the project developer rather than the host communities.²¹

The Decommissioning Security should be paid directly to the host community if it will agree to hold this financial instrument. This agreement should be obtained at least 90 days prior to construction and submitted for approval as a compliance filing. If the host community does not agree, Petitioner shall obtain a third-party trustee to manage a standby trust perpetually until decommissioning is completed. Furthermore, the Decommissioning Security provided to the host community or the trustee must be in the form of a letter of credit.

²¹ See, e.g., Ball Hill Order, p. 36.

Decommissioning funds must be available to the host community over the entire course of the Project's useful life. Letters of credit provide certainty and security that the funds will be readily available if Petitioner, or its successor-in-interest, is insolvent and cannot pay to decommission the Project.²² These conditions are intended to ensure that the Project site is fully restored if and when the Project permanently ceases commercial operations. They also are consistent with conditions recently imposed on other proposed supply resources seeking a CPCN, and they limit potential uncertainty in the future as to the continuing obligation of electric plant owners to fully satisfy their decommissioning obligations even after their facilities have ended commercial operation.

Lightened Ratemaking Regulation

In interpreting the PSL for ascribing lightened regulation, the Commission has examined what reading best carries out the statutory intent and advances the public interest. The Commission thus concluded previously that new forms of electric service providers participating in competitive wholesale markets would be lightly regulated.²³

The lightened regulatory regime that Petitioner requests be applied to its wholesale electric operations is similar to that afforded to other comparably situated wholesale market participants. Petitioner demonstrated that its ownership and operation of a merchant generation resource as an independent power producer in the wholesale market will not create the potential for the exercise of market power or cause

²² Id., pp. 36-37.

²³ See Carr Street Order and Wallkill Order.

other harm to captive ratepayers.²⁴ As with similar enterprises, Petitioner will participate in the competitive markets administered by the NYISO. Its request is therefore granted, to the extent discussed below.

In the Carr Street Order, it was concluded that new forms of electric service providers participating in wholesale markets would be lightly regulated. Under this approach, PSL Article 1 applies to Petitioner because it meets the definition of an electric corporation under PSL §2(13) and is engaged in the manufacture of electricity under PSL §5(1)(b). Petitioner, therefore, is subject to provisions, such as PSL §§11, 19, 24, 25, and 26, that prevent producers of electricity from taking actions that are contrary to the public interest.²⁵

All of Article 2 is restricted by its terms to the provision of service to retail residential customers, and so is inapplicable to wholesale generators like Petitioner. Certain provisions of Article 4 are also inapplicable because they are restricted to retail service.²⁶

²⁴ Neither Petitioner nor its affiliates currently operate any other generation or transmission facilities within the NYISO control region or neighboring regions. As noted in Case 23-E-0343, Hecate Energy, LLC's subsidiary, Hecate Energy Cider Solar, LLC, is developing an approximately 500 MW solar-powered electric generation project in the Towns of Elba and Oakfield, Genesee County, New York.

²⁵ The PSL §18-a assessment is applied against gross retail revenues; so long as Petitioner sells exclusively as a wholesaler, there are no retail revenues and no assessment is collected.

²⁶ See, e.g., PSL §66(12), regarding the filing of tariffs required at our option; PSL §66(21), regarding the storm plans submitted by retail service electric corporations; PSL §67, regarding inspection of meters; PSL §72, regarding hearings and rate proceedings; PSL §75, regarding excessive charges; and PSL §76, regarding rates charged religious bodies and others.

In the Carr Street and Wallkill Orders, the Commission determined that other provisions of Article 4, including but not limited to the provisions of PSL §§68, 69, and 70, would apply to entities engaged in wholesale markets. Application of these provisions is necessary to protect the public interest. The Article 4 provisions, however, are implemented in a fashion that limits their impact in a competitive market, with the extent of scrutiny afforded a particular transaction reduced to the level the public interest required. For example, under PSL §66(6), competitive providers of utility services subject to lightened ratemaking regulation satisfy annual report filing requirements through a format designed to accommodate their particular circumstances.²⁷ Similarly, the scrutiny for approval of financing plans under PSL §69 may be reduced for lightly regulated companies operating in a competitive environment, and upstream transfers of ownership in lightly regulated companies are reviewed under PSL §70 using the presumption established in the Wallkill Order. Under this approach, it is presumed that regulation will 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.”²⁸ Wholesale generators were also advised that the potential for the exercise of market power arising out of an upstream transfer would be sufficient to

²⁷ See Case 11-M-0294, Annual Reporting Requirements, Order Adopting Annual Reporting Requirements Under Lightened Ratemaking Regulation (issued January 23, 2013).

²⁸ See Wallkill Order.

defeat the presumption and trigger PSL §70 review.²⁹ This analysis of Article 4 applies to Petitioner.

Turning to PSL Article 6, several of its provisions adhere to the rendition of retail service. These provisions do not pertain to Petitioner because it is engaged solely in the generation of electricity for wholesale.³⁰ The remaining provisions of Article 6 need not be imposed generally on wholesale generators. Application of PSL §115, on requirements for the competitive bidding of utility purchases, is discretionary and will not be imposed on wholesale generators. In contrast, PSL §119-b, on the protection of underground facilities from damage by excavators, adheres to all persons, including wholesale generators.

The remaining provisions of Article 6 need not be imposed generally on wholesale generators.³¹ These provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers. So long as the wholesale generation market

²⁹ In this context, under PSL §§66(9) and (10), we may require access to records sufficient to ascertain whether the presumption remains valid.

³⁰ See, e.g., PSL §112, regarding enforcement of rate orders; §113, regarding reparations and refunds; PSL §114, regarding temporary rates; PSL §114-a, regarding exclusion of lobbying costs from rates; PSL §116, regarding discontinuance of water service; PSL §117, regarding consumer deposits; PSL §118, regarding payment to an authorized agency; PSL §119-a, regarding use of utility poles and conduits; and, PSL §119-c, regarding recognition of tax reductions in rates.

³¹ These requirements include supervision of affiliated interests under PSL §§110(1) and (2), and approval of: loans under PSL §106; the use of utility revenues for non-utility purposes under PSL §107; corporate merger and dissolution certificates under PSL §108; contracts between affiliated interests under PSL §110(3); and, water, gas and electric purchase contracts under PSL §110(4).

is effectively competitive, however, wholesale generators cannot raise prices even if their costs rise due to poor management. Moreover, imposing these requirements could interfere with wholesale generators' plans for structuring the financing and ownership of their facilities. This could discourage entry into the wholesale market, or overly constrain its fluid operation, to the detriment of the public interest.

As discussed in the Carr Street Order, however, market power issues may be addressed under PSL §§110(1) and (2), which afford Commission jurisdiction over affiliated interests. Petitioner has not reported any affiliation with a power marketer, foreclosing that avenue to the exercise of market power. Consequently, we impose the requirements of PSL §§110(1) and (2) on Petitioner only conditionally, to the extent a future inquiry into its relationships with affiliates becomes necessary.

Based on Petitioner's and its affiliates' ownership interests, namely the 500 MW Hecate Energy Cider Solar project, the Commission finds that Petitioner lacks the ability to exercise vertical or horizontal market power. As such, the Commission imposes the requirements of PSL §110(1) and (2) on Petitioner only conditionally, to the extent a future inquiry into its relationships with an affiliate becomes necessary.

Petitioner is reminded that it and the entities that exercise control over its operations 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, to the extent discussed

above and in previous orders.³² Included among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,³³ to give notice of generation unit retirements,³⁴ and to report personal injury accidents pursuant to 16 NYCRR Part 125. These conditions further ensure that Petitioner will render safe, adequate, and reliable service.

CONCLUSION

After holding the requisite hearing on May 15, 2024, and taking into consideration the factors identified in PSL §68(1), the Commission determines that the construction of the Project is convenient and necessary for the public service. Accordingly, Petitioner is granted a CPCN with respect to the Project. Petitioner has also demonstrated that it should be provided with a lightened ratemaking regulatory regime, consistent with prior orders, given its exclusive participation in wholesale energy markets on a purely merchant basis. The Petitioner will remain subject to regulatory oversight regarding other matters necessary to protect the public interest, such as safety and reliability.

³² See, e.g., Case 09-M-0251, Saranac Power Partners, L.P., Order Providing for Lightened Regulation of an Electric Corporation and Making Findings on Steam Corporation Regulation (issued June 19, 2009).

³³ 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).

³⁴ Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

The Commission orders:

1. A Certificate of Public Convenience and Necessity is granted to Hecate Grid Swiftsure LLC, pursuant to Public Service Law §68, authorizing the construction and operation of electric plant, as discussed in the body of this Order.

2. Hecate Grid Swiftsure LLC shall comply with the Public Service Law in conformance with the requirements set forth in the body of this Order.

3. Hecate Grid Swiftsure LLC shall, as discussed in the body of this Order, file, no less than 30 days prior to the commencement of construction, for Department of Public Service review and comment, an Emergency Operations Plan that shall include, at a minimum:

- a. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions;
- b. Procedures for inspection and testing of associated alarms, interlocks, and controls;
- c. Procedures to be followed in response to notifications of system alarms or out-of-range conditions that could signify potentially dangerous conditions, including shutting down equipment, summoning service or repair personnel, and providing agreed upon notification to fire department personnel;
- d. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions;

- e. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required;
- f. Procedures for dealing with energy storage system equipment damaged in a fire or other emergency event, including contact information for personnel qualified to safely remove damaged energy storage system equipment from the project site;
- g. Procedures to provide for the safety of project personnel and local fire responders and other emergency responders;
- h. Contact information for Hecate Grid Swiftsure LLC's emergency response personnel; and
- i. Procedures and schedules for conducting drills of these procedures, which shall be offered to local fire responders and other emergency responders at least 30 days prior to the commencement of operations and at least once per year thereafter.

Copies of the Emergency Operations Plan shall also be provided, no less than 30 days prior to the commencement of construction, for review and comment by the applicable municipal supervisor(s), the New York State Division of Homeland Security and Emergency Services, and local fire responders and other emergency responders that serve the project. The Emergency Operations Plan shall be implemented during the construction, operation, and decommissioning phases of the project. Hecate Grid Swiftsure LLC shall take corrective action where advised by the Department of Public Service's Chief, Electric Safety and Reliability.

4. Hecate Grid Swiftsure LLC shall, as discussed in the body of this Order, file, no less than 30 days prior to the commencement of construction, for Department of Public Service

review and comment, a Fire Control and Suppression Plan that shall include, at a minimum:

- a. Smoke and fire detection, including a secondary power supply, and, where appropriate, a radiant energy-sensing system with a secondary power supply;
- b. Fire control and suppression measures for rooms or areas within buildings, outdoor walk-in units, and containers containing energy storage systems;
- c. Identification of a permanent water supply; and
- d. Contact information for Hecate Grid Swiftsure LLC's emergency response personnel.

Copies of the Fire Control and Suppression Plan shall also be provided, no less than 30 days prior to the commencement of construction, for review and comment by the applicable municipal supervisor(s), the New York State Division of Homeland Security and Emergency Services, and local fire responders and other emergency responders that serve the project. The Fire Control and Suppression Plan shall be implemented during the construction, operation, and decommissioning phases of the project. Hecate Grid Swiftsure LLC shall take corrective action where advised by the Department of Public Service's Chief, Electric Safety and Reliability.

5. In the event of a fire or other catastrophic event involving the energy storage systems and/or any associated equipment, Hecate Grid Swiftsure LLC shall report such event no later than 12 hours following such an event to the Department of Public Service's Emergency Telephone Notification system as follows. If the event occurs between the hours of 8:30 a.m. and 4:45 p.m., Monday through Friday, call 518-473-0763. If the event is outside those days and times, call 347-233-1412.

6. In the event of a fire or other catastrophic event involving the energy storage systems and/or any associated

equipment, Hecate Grid Swiftsure LLC shall prepare a report detailing a root cause analysis of the event and shall, as discussed in the body of this Order, file such report, no more than 90 days after such event, for Department of Public Service review and comment. Hecate Grid Swiftsure LLC shall take corrective action where advised by the Department of Public Service's Chief of Bulk Electric Systems.

7. Hecate Grid Swiftsure LLC shall consult with at least one professional knowledgeable with the National Fire Prevention Association (NFPA) 855 Standard for the Installation of Stationary Energy Storage Systems (currently 2023 Edition) to ensure that the Emergency Operations Plan, Fire Control and Suppression Plan, and other aspects of the project related to design, construction, operation, maintenance, and decommissioning adhere to industry best practices. Hecate Grid Swiftsure LLC shall identify the professional(s) consulted with as part of filing the Emergency Operations Plan and Fire Control and Suppression Plan, and shall indicate the findings and recommendations made by such professional(s) along with Hecate Grid Swiftsure LLC's response and actions taken to address those findings and recommendations.

8. Hecate Grid Swiftsure LLC shall obtain all necessary federal, state, and local permits and approvals, as applicable, and shall implement appropriate mitigation measures defined in such permits or approvals.

9. Hecate Grid Swiftsure LLC shall, prior to the commencement of construction, file with the Secretary (or with the Records Access Officer to the extent it includes confidential information) final site plans and construction drawings for the project components, battery buildings sites, access roads, electric lines associated with the Storage

Facility, and technical specifications for the final battery storage technology selected for installation.

10. Hecate Grid Swiftsure LLC shall, within 90 days of the issuance of this Order, file with the Secretary a decommissioning plan, as set forth in the body of this Order.

11. Hecate Grid Swiftsure LLC shall ensure that the authorized electric plant may be inspected by authorized representatives of Department of Public Service Staff pursuant to §66(8) of the Public Service Law.

12. Hecate Grid Swiftsure LLC shall file with the Secretary, within three days after commencement of commercial operation of the electric plant, a written notice thereof.

13. Hecate Grid Swiftsure LLC shall, within 90 days of the issuance of this Order and every three years thereafter, file with the Secretary a decommissioning cost study in conformance with the requirements set forth in the body of this Order. The decommissioning cost study shall be updated by a qualified independent engineer licensed to practice engineering in the State of New York to reflect inflation and any other changes in cost. Hecate Grid Swiftsure LLC shall work with the Department of Public Service (DPS) Staff and New York City on an acceptable form of letter or letters of credit and Hecate Grid Swiftsure LLC shall file with the Secretary New York City's approval prior to construction. Hecate Grid Swiftsure LLC shall also file with the Secretary proof that the letter or letters of credit have been obtained in the decommissioning estimate amount. The letter or letters of credit shall remain active for the life of the storage facility, until it is decommissioned, as adjusted every third year in consultation with New York City and DPS Staff. Hecate Grid Swiftsure LLC shall execute a decommissioning agreement with New York City establishing a right for New York City to draw on the letter of credit if

Hecate Grid Swiftsure LLC defaults on any part of its decommissioning obligations.

14. Hecate Grid Swiftsure LLC shall, within 30 days of the issuance of this Order, file with the Secretary a verified written statement signed by a duly authorized officer indicating its complete and unconditional acceptance of this Order and its terms and conditions. Failure to comply with this condition shall invalidate this Order.

15. In the Secretary's sole discretion, the deadline set forth in this Order may be extended. Any requests for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

16. This proceeding shall be continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 23-E-0421 - Petition of Hecate Grid Swiftsure LLC for Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law and Order Granting a Lightened Regulatory Regime.

NOTICE OF DETERMINATION OF SIGNIFICANCE
(NEGATIVE DECLARATION)

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the grant by the Public Service Commission (Commission) of a Certificate of Public Convenience and Necessity (CPCN) to Hecate Grid Swiftsure LLC, for the construction, ownership, and operation of an approximately 650 megawatt (MW) battery energy storage system and related electric transmission interconnection line (the Project) located at or near Victory Blvd., Block 2784, Lot 29, Staten Island, New York. The grant of a CPCN in this case constitutes an "unlisted action," as defined in 6 NYCRR §617.2.

Based on a review of the record, the Commission finds that the construction and operation of the Project will not have a significant adverse effect on the environment, under the criteria set forth in 6 NYCRR §617.7. The record demonstrates that construction and operation of the Project is consistent with existing zoning restrictions and compatible with existing land uses in proximity to the site. No impacts are anticipated to any archaeological or historical architectural resources. Visual impacts would be avoided or minimized by the security fence with visual screening. In addition, the associated generation tie-line would be buried underground and not have a visual impact on surrounding areas. Further, the Project, as

described above, would avoid or minimize adverse effects to air quality, water resources, traffic and transportation, and natural resources. Moreover, the Project is found to be consistent with coastal policies. Environmental protection measures incorporated into the Project design will prevent or mitigate potential adverse noise impacts to adjacent residential and commercial properties.

The address of the Public Service Commission, the Lead Agency for purposes of environmental quality review of this action is, Three Empire State Plaza, Albany, New York 12223. Questions may be directed to David Drexler at (518) 473-8178 or at the address above.

MICHELLE L. PHILLIPS
Secretary