STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on November 18, 2021

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

CASE 21-E-0196 – Joint Petition of Generation Bridge Acquisition, LLC and NRG Energy, Inc. for a Declaratory Ruling Eschewing Further Review of the Proposed Transaction or, in the Alternative, an Order Approving the Proposed Transaction Pursuant to Section 70 of the New York Public Service Law and Petition of Generation Bridge Acquisition, LLC for an Order Authorizing Financing Pursuant to Section 69 of the New York Public Service Law.

ORDER APPROVING FINANCING AND RULING ON TRANSFER

(Issued and Effective November 22, 2021)

BY THE COMMISSION:

INTRODUCTION

By petition filed on April 5, 2021 (the Petition), Generation Bridge Acquisition, LLC (Generation Bridge) and NRG Energy, Inc. (NRG) (collectively, Petitioners) seek a declaratory ruling that NRG’s proposed transfer of upstream ownership interests in Oswego Harbor Power, LLC and Arthur Kill Power, LLC to Generation Bridge (the Proposed Transaction) does not require further review under Public Service Law (PSL) §70.

In addition, Generation Bridge requests approval of a proposed financing, pursuant to PSL §69.

As discussed below, the Public Service Commission (Commission) finds that the Proposed Transaction would not present an ability to exercise horizontal or vertical market power or otherwise harm captive ratepayer interests. Accordingly, the Commission declares that no further review of NRG's transfer of ownership interests to Generation Bridge is necessary. The Commission also authorizes Oswego Harbor Power, LLC and Arthur Kill Power, LLC to enter into indebtedness of up to $700 million, along with flexibility to modify financing arrangements.

THE PETITION

The Petition describes NRG as a Delaware corporation and an integrated wholesale power generation and retail electricity company. NRG is the upstream owner of Oswego Harbor Power, LLC, which is the direct owner of the approximately 1617 MW Oswego Harbor Power Station in Oswego, New York. NRG also has an upstream ownership interest in Arthur Kill Power, LLC, which is the direct owner of the approximately 865 MW Arthur Kill Generating Station in New York City. In addition, NRG has an ownership interest in Astoria Gas Turbine Power LLC, which owns and operates twelve gas turbines, totaling 423 MW, located in New York City that are known as the Astoria Gas Turbines. The Astoria Gas Turbines, together with the Arthur Kill Generating Station, compose the generation "bundle" that NRG purchased from Consolidated Edison Company of New York, Inc. in its divestiture auction.[1]

[1] Case 96-E-0897, Consolidated Edison Company of New York, Inc., Comprehensive Order Approving Transfers of Generating Facilities and Making Other Findings (issued June 17, 1999).

Generation Bridge is described as a wholly owned subsidiary of ArcLight Energy Partners Fund VII, LP (ArcLight Fund VII) which, in turn, is managed by ArcLight Capital Partners, LLC (ArcLight), a specialized private equity firm in the United States focused on energy infrastructure investments. Petitioners report that since its inception, ArcLight has successfully raised $20 billion dedicated to support energy infrastructure investments. ArcLight separately manages ArcLight Energy Partners Fund VI, LLC (ArcLight Fund VI), which indirectly owns 50.4% of the membership interests in Eastern Generation, LLC (Eastern Gen). Easter Gen's subsidiary, Astoria Generating Company, LP, owns and operates the Astoria Steam Station, the Narrows Generating Station, and the Gowanus Generating Station, totaling approximately 1,800 MW in New York City. Petitioners point out that Astoria Generating Company, LP is deemed a "Pivotal Supplier" and is therefore required to comply with the New York Independent System Operator, Inc.'s (NYISO) supplier side market power mitigation rules.

ArcLight Fund VI also holds membership interests in entities that own approximately 5,000 MW of facilities in the PJM Interconnection, LLC market and 575 MW of facilities in the ISO New England, Inc. market. Petitioners note that ArcLight Fund VII does not currently own or operate any generation in New York, either directly or through any of its wholly owned subsidiaries.

Under the Proposed Transaction, Generation Bridge would acquire NRG's interests in Oswego Harbor Power, LLC and Arthur Kill Power, LLC.[2] NRG would retain the Astoria Gas

[2] The Proposed Transaction is part of an overall transaction between NRG and Generation Bridge that also involves four generating facilities in New England, with a total of approximately 1,530 MW, and two facilities in California.

Turbines post-transaction but would continue to coordinate the operations of Arthur Kill and the Astoria Gas Turbines to meet environmental permit requirements. This arrangement is memorialized in a tolling agreement pursuant to which NRG would continue to control Arthur Kill's bidding and economic dispatch and NRG would receive energy and capacity payments resulting from this dispatch through at least April 2025. The Petition explains that NRG's existing New York City fleet operates in accordance with a Department of Environmental Conservation (DEC)-issued NO_x Reasonably Available Control Technology plan specific to the operating characteristics of these plants.

Following the proposed transfer, Petitioners indicate that Generation Bridge would contract with Consolidated Asset Management Services to provide the operating services for the Oswego Harbor Power Station, with Eastern Gen providing asset management services. Petitioners note that Consolidated Asset Management Services provides asset management and operating services to generation owners across the country.

For the Arthur Kill Generating Station, Generation Bridge and Eastern Gen would enter into an operating agreement pursuant to which Eastern Gen would provide asset management services and operate the facility. Petitioners maintain that Eastern Gen will be uniquely well-versed in managing the operation of the Arthur Kill Generating Station to align with the bidding and dispatch decisions made by NRG for the Astoria Gas Turbines given that the facilities must comply with DEC's NO_x requirements on a "bundled" basis. NRG would continue to bid and dispatch these assets accordingly following the Proposed Transaction, as per the tolling agreement. While NRG would receive energy and capacity payments associated with the operation of the Arthur Kill Generating Station, ArcLight, through Eastern Gen, would be responsible for the operations and maintenance of the facility, while Generation Bridge would receive compensation under the Toll.

Petitioners assert that the Proposed Transaction is an inter-corporate transfer of upstream ownership interests that satisfies the presumption established in the Wallkill Order, where the Commission decided that, under a lightened regulatory regime, 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 generation facilities unless there is a potential for the exercise of vertical or horizontal market power, or a potential for harm to the interests of captive utility ratepayers of fully-regulated utilities sufficient to override the presumption (the Wallkill Presumption).[3] According to Petitioners, the Proposed Transaction satisfies the Wallkill Presumption because it does not create the potential for the exercise of horizontal or vertical market power, or the potential for harm to the interests of captive utility ratepayers. Accordingly, Petitioners request that the Commission issue a declaratory ruling finding that no further review is warranted.

In the alternative, Petitioners request that the Commission issue an order approving the transfer under PSL §70. Regardless of the relief granted, the Petitioners ask that the Commission reaffirm that, post-transaction, the lightened

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

regulatory regime previously afforded to Oswego Harbor Power, LLC and Arthur Kill Power, LLC will continue to apply.[4]

In addition, Generation Bridge requests that the Commission apply its lightened regulation standard to review its proposed financing and issue an order authorizing such financing under PSL §69. In particular, Generation Bridge plans to issue total debt, up to $700 million, secured by the interests in all eight project companies acquired from NRG in the overall transaction. The proposed debt would be used to fund the acquisition from NRG, pay certain transaction expenses, and support the working capital needs of the business after closing of the Proposed Transaction. In connection with this request, Generation Bridge also requests that the Commission provide for flexibility to modify the financing entities, payment terms, and the amount of indebtedness, up to the requested amount, similar to the treatment afforded to other merchant generators that require flexibility to operate effectively in competitive markets.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) was published in the State Register on May 12, 2021 [SAPA No. 21-E-0196SP1]. The time for submission of comments pursuant to the Notice expired on July 12, 2021. No comments were received.

---

[4] Case 99-E-0974, NRG Energy, Inc. and Oswego Harbor Power LLC – Lightened Regulation, Order Providing for Lightened Regulation (issued October 21, 1999) (Oswego Lightened Regulation Order); Case 96-E-0897, supra, Comprehensive Order Approving Transfers of Generating Facilities and Making Other Findings (issued June 17, 1999).

LEGAL AUTHORITY

The Commission is authorized, pursuant to PSL §69, to approve certain financings, such as the type proposed in the Petition. Financings proposed under PSL §69 by lightly regulated companies operating in a competitive environment, may be addressed on the basis of representations made in the petition, and do not require an in-depth analysis.[5] Provided that the proceeds of a financing are for a statutory purpose and in the public interest, petitioners typically are afforded broad latitude to determine the amount and type of debt that is needed to support corporate operations.

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 the purchaser with the 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

---

[5] Case 17-E-0016, TC Ravenswood et al., Order Approving Transfer Subject to Acceptance of Conditions and Making Other Findings (issued April 19, 2017).

[6] See, e.g., Wallkill Order, p. 9; see also Case 98-E-1670, Carr Street Generation Station, L.P., Order Providing for Lightened Regulation (issued April 23, 1999), p. 8.

such a declaratory ruling. This authority is expressly established by State Administrative Procedure Act §204 and is 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] The declaratory relief requested in the Petition falls within the ambit of the statute and regulations authorizing issuance of a declaratory ruling.

DISCUSSION AND CONCLUSION

Transfer Transaction

Under the Wallkill Presumption, regulation under PSL §70 does not adhere to the transfer of ownership interests in entities upstream from the parents of a New York competitive electric generation subsidiary, unless there is a potential for the exercise of market power resulting from an upstream transfer or of harm to the interests of captive utility ratepayers sufficient to override the presumption. For purposes of the Proposed Transaction, Petitioners have satisfied the Wallkill Presumption by demonstrating that the upstream transfer will not present an ability to exercise horizontal or vertical market power, or any potential for harm to captive utility ratepayers.

As noted in the Petition, neither Generation Bridge nor any other ArcLight affiliate owns transmission or distribution facilities, other than the limited assets required

[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).

to interconnect their generation facilities, and do not own or control any inputs to electricity products in New York, thus foreclosing any opportunity to exercise vertical market power. Likewise, because neither Generation Bridge nor any other ArcLight affiliate currently owns any generation interests in the NYISO's unconstrained Rest-of-State market, the acquisition of interests in the Oswego Harbor Power Station would not present horizontal market power concerns.

While the Arthur Kill Generating Station is located within the constrained New York City market, the tolling agreement whereby NRG will continue to control the bidding and dispatch of the Arthur Kill facility through at least April 2025 will limit the market share impact of Generation Bridge. Upon the expiration of the tolling agreement, Generation Bridge's ability to exercise market power would be limited and monitored closely. In the first instance, the NYISO would apply its market power mitigation rules that have been specifically tailored for the constrained New York City market. However, the Commission also expects Department of Public Service Staff to oversee Generation Bridge's market behavior and be vigilant in pursuing any suspicious behavior that may arise. Accordingly, the Commission finds that there are no market power concerns at this time and declares that the Proposed Transaction does not require further regulatory review under PSL §70.[8]

Financing

With respect to the requested financing arrangement, the Commission will continue to apply the reduced level of scrutiny appropriate for lightly regulated entities such as

[8] 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).

Oswego Harbor Power, LLC and Arthur Kill Power, LLC. As Generation Bridge represents, the purpose of the indebtedness is to fund the acquisition from NRG, pay certain transaction expenses, and support the working capital needs of the businesses. Because the proposed financing relates to a statutory purpose and is intended to support the management and operation of their facilities, the Commission finds that it is within the public interest. Accordingly, we approve the request to incur indebtedness, along with the requested flexibility to modify, without our prior approval, the identity of the financing entities, payment terms, the amount financed, and to issue and reissue such financing instruments as may be required, subject to a maximum amount of $700 million. The exercise of this financing flexibility will allow the entities to avoid disruption of their financing arrangements and enable them to operate more efficiently to take advantage of changing market conditions.

Finally, the Commission confirms that Oswego Harbor Power, LLC and Arthur Kill Power, LLC will continue to be lightly regulated following the Proposed Transaction.

<u>The Commission finds, declares, and orders:</u>

1. No further review will be conducted of the proposed transfer of ownership interests, as described in the petition filed in this proceeding on April 5, 2021, and discussed herein.

2. Oswego Harbor Power, LLC and Arthur Kill Power, LLC are authorized to enter into the financing arrangements, including financing flexibility, up to a maximum amount of $700 million, as described in the petition filed in this proceeding on April 5, 2021, and discussed herein.

3. This proceeding is closed.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary