STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on October 12, 2023

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 23-E-0388 - Joint Petition of GenOn Bowline Holdings, LLC and Bowline Point Power, LLC for a Declaratory Ruling Eschewing Further Review of the Transaction, or Alternatively, an Order Authorizing the Transaction Pursuant to Section 70 of the New York Public Service Law.

DECLARATORY RULING ON TRANSFER TRANSACTION

(Issued and Effective October 16, 2023)

BY THE COMMISSION:

INTRODUCTION

In a petition filed on July 13, 2023 (the Petition), GenOn Bowline Holdings, LLC (Seller) and Bowline Point Power, LLC (Buyer) (collectively, Petitioners) seek a declaratory ruling from the Public Service Commission (Commission) that a proposed transaction involving the transfer of membership interests in GenOn Bowline Intermediate Holdings, LLC (GenOn Intermediate) from Buyer to Seller (the Proposed Transaction) does not require further review under Section 70 of the Public Service Law (PSL). In the alternative, Petitioners request Commission approval of the Proposed Transaction 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 ended on August 3, 2023. No comments were received. As discussed below, the Commission finds that the Petitioners have satisfied the presumption established in the Wallkill Order (i.e., the Wallkill Presumption) and its progeny by demonstrating that the transfer of upstream corporate ownership interests in a merchant electric generating facility would not present an ability to exercise horizontal or vertical market power or otherwise harm captive ratepayer interests.[1] Accordingly, the Commission declares that no further review of the Proposed Transaction is required pursuant to PSL §70.

THE PETITION

The Seller

The Petition indicates that the Seller is a limited liability company organized under the laws of Delaware, and is the indirect owner of an existing 1,169 megawatt (MW) dual-fueled electric generation facility and a related 4.2 mile fuel gas transmission line used exclusively to serve the facility, located in West Haverstraw, New York (referred to as the Bowline Project). According to the Petition, the Seller owns 100% of the membership interests in GenOn Intermediate, which is a Delaware limited liability company. GenOn Intermediate, in turn, owns 100% of the membership interests in GenOn Bowline Power, LLC (GBP), which is also a Delaware limited liability company. GBP is the direct owner of GenOn Bowline, LLC, which is the owner and operator of the Bowline generation facility.

[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).

The Petition states that GBP is also the owner of Hudson Valley Gas, LLC, which is a Delaware limited liability company that owns and operates the gas transmission line used to serve the generation facility.

The Petition notes that the Bowline generation facility operates as an exempt wholesale generator under the Public Utility Holding Company Act of 2005 and has a market-based rate schedule on file with the Federal Energy Regulatory Commission (FERC). The Petition notes that the generation facility is not subject to any contractual arrangements with utilities and, as a merchant facility, does not have any captive customers.

The Buyer

The Petition describes the Buyer as a limited liability company incorporated in Delaware that was formed for the purpose of acquiring GenOn Intermediate. Buyer is a wholly owned subsidiary of Bowline Point Power Holdings, LLC, which is a wholly owned subsidiary of Rockland Power Partners IV, LP (RPP IV). As described in the Petition, RPP IV is a private equity fund, the General Partner of which is Rockland Power Partners IV GP, LLC (RPP IV GP). RPP IV GP is managed by Rockland Capital, LP (RCLP).

RCLP is described as a private equity company formed in 2008 for the purpose of managing investment funds engaged in acquiring and developing selected investment opportunities in power and energy infrastructure markets. Funds managed by RCLP own interests in approximately 3.8 gigawatts (GW) of operating generation capacity in the United States; however, RCLP does not own any electric generation facilities, electric transmission assets, or natural gas transmission facilities in New York.[2] The

[2] RCLP managed funds own an interest in a 2 MW behind-the-meter solar project in the Town of Monroe, Orange County.

funds managed by RCLP own approximately 1,800 MW of generation within the neighboring markets administered by PJM Interconnection LLC (PJM), with roughly 200 MW of this generation located in any State that borders New York and the vast majority located in the Midwest.

The Proposed Transaction

The Petition incorporates by reference the Purchase and Sale Agreement between the Seller and Buyer (the Agreement). The Agreement describes that GenOn Bowline Holdings, LLC would sell, and Bowline Point Power, LLC would purchase 100% of the membership interests in GenOn Intermediate. Pursuant to the Proposed Transaction outlined in the Agreement, the Bowline Project would continue to be operated in the same manner as before the Proposed Transaction is consummated. Specifically, the Bowline generation facility would continue to operate in the wholesale competitive markets and Buyer would not have any captive customers. Similarly, the Petition states that the transmission line would continue to operate exclusively to serve the needs of the Bowline generation facility.

Petitioners aver that the Proposed Transaction does not raise either horizontal or vertical market power concerns because Buyer does not own any electric infrastructure in New York State and the amount of generation it owns in PJM that is in geographic proximity is too de minimis to have any consequences on New York consumers. In addition, Petitioners reiterate that neither Buyer nor its affiliates, including upstream parent RPP IV or any other funds managed by RCLP, currently owns any other electric generation or natural gas pipeline assets in New York State. The Petitioners therefore maintain that the Buyer would not be able to exercise horizontal market power. Similarly, Petitioners state that the Buyer would be unable to exercise vertical market power, as neither it nor any of its affiliates owns or controls any electric delivery infrastructure or fuel inputs for the generation of electricity.

Regarding financial wherewithal and operating capability criteria, the Petition describes the Buyer and its affiliates as having well-capitalized funds that own interests in approximately 3.8 GW of operating generation capacity. Additionally, the Petition states that RCLP was established for the purpose of managing funds that invest in the energy and infrastructure space and RPP IV currently has over $400 million of assets and uncalled capital from its investors. Accordingly, Petitioners maintain that the Buyer has the financial wherewithal and technical operating capability to own and operate the Bowline Project.

Based on these factors, Petitioners seek a declaratory ruling from the Commission finding that no further review of the Proposed Transaction is necessary pursuant to PSL §70. Petitioners argue, in the alternative, that even if the Wallkill Presumption does not apply, the Commission should nonetheless approve the Proposed Transaction under PSL §70 for all of the previously stated reasons. Finally, Petitioners request confirmation that, following the Proposed Transaction, the direct owners of the Bowline Project (i.e., GenOn Bowline, LLC and Hudson Valley Gas, LLC) would continue to be subject to a lightened regulatory regime.

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.[3]

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.[4] 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

Under the Wallkill Presumption, regulation under PSL §70 will not adhere to the transfer of ownership interests in

[3] See, e.g., Wallkill Order, p. 9; see also Carr Street Order, p. 8.

[4] 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).

entities upstream from 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, or the potential for the exercise of market power arising out of an upstream transfer. For purposes of the Proposed Transaction outlined above, 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 and described above, the Proposed Transaction involves the Seller transferring its membership interests in GenOn Intermediate to the Buyer. Following the Proposed Transaction, the Buyer and its affiliates will only own the facilities that are part of the transaction. Neither the Buyer nor any of its affiliates currently owns any other electric generation or natural gas pipeline assets in New York State.

Similarly, the Proposed Transaction does not present an opportunity for the Buyer or its affiliates to leverage generation owned in the adjacent PJM market to manipulate prices in New York. Petitioners aver that, after the Proposed Transaction is consummated, the Bowline Project would be indirectly affiliated with approximately 1% of the capacity in the PJM market, and no generation in the ISO-NE territory. The Commission agrees that this level is insufficient to raise horizontal market power concerns.

In addition, the Proposed Transaction does not present a vertical market power risk. Neither Buyer nor its affiliates exercise control over any electric delivery infrastructure or fuel inputs for the generation of electricity. Moreover, the Buyer will not engage in retail sales to New York ratepayers.

Petitioners have demonstrated that the Bowline Project will continue to be operated as a wholesale generator and without reliance on captive ratepayer funds following consummation of the Proposed Transaction.

Based on the facts summarized above, and described more fully in the Petition, 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 Transaction does not require further regulatory review under PSL §70.[5]

After the Proposed Transaction is consummated, lightened regulation of the entities that directly own the Bowline Project will continue, as described in the Lightened Regulation Orders.[6] Under this lightened regulatory regime, these entities will remain subject to the PSL with respect to matters such as annual reporting, enforcement, investigation, safety, reliability, system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed in

[5] See Wallkill Order; See also Case 18-E-0133, 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).

[6] See Case 17-E-0503, GenOn Energy, Inc., Declaratory Ruling on Transfer and Making Other Findings (issued November 21, 2017), in which the re-structured GenOn Energy, Inc., thereafter named GenOn Bowline, LLC, was granted a lightened regulatory regime; see also, Case 12-E-0359, GenOn Energy, Inc., Order Approving a Merger and Acquisition (issued December 14, 2012), in which the Commission confirmed that Hudson Valley Gas, LLC is subject to lightened regulation as authorized in Case 01-G-0045 (collectively, the Lightened Regulation Orders).

the Lightened Regulation orders.[7] Included among those requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities, and to report personal injury accidents pursuant to 16 NYCRR Part 125.[8] PSL §110(1) and (2), which provide for Commission jurisdiction over affiliated interests, will apply based on affiliations with power marketers.

The Commission finds and declares:

1. No further review will be conducted of the Proposed Transaction described in the petition filed in this proceeding on July 13, 2023, and discussed in the body of this Declaratory Ruling.

2. This proceeding is closed.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary

[7] Pursuant to the Order Adopting Annual Reporting Requirements Under Lightened Ratemaking Regulation issued January 23, 2013, in Case 11-M-0294, the owners of lightly regulated generation facilities are required to file Annual Reports.

[8] 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).