STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on July 16, 2026

COMMISSIONERS PRESENT:

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

CASE 26-E-0193 – Joint Petition of NHIP II Bayonne Holdings LLC and Jupiter Energy Investor LLC for a Declaratory Ruling Concerning Further Review of Proposed Transaction or an Order Authorizing the Transaction under Section 70 of New York State Public Service Law.

DECLARATORY RULING ON TRANSFER

(Issued and Effective July 22, 2026)

BY THE COMMISSION:

INTRODUCTION

In a joint petition filed on March 25, 2026 (the Petition), NHIP II Bayonne Holdings, LLC (Seller) and Jupiter Energy Investor LLC (Buyer) (together, Petitioners) seek a declaratory ruling that a proposed transfer, from Seller to Buyer, of 100 percent of the equity interests in Thermal Bayonne Holdings, LLC (TBH) (the Proposed Transfer), does not require further review by the Public Service Commission (Commission) pursuant to Section 70 of the Public Service Law (PSL). Petitioners indicate that TBH is the indirect upstream owner of Bayonne Energy Center, LLC (BEC). In the alternative, Petitioners seek Commission approval of the Proposed Transfer under PSL §70.

Pursuant to the Commission's Rules of Procedure, 16 NYCRR §8.2(c), responses to the Petition were due within a 21-day period, which expired on April 15, 2026. No comments were received. As discussed below, the Commission finds that Petitioners have satisfied the presumption established in the Wallkill Order and its progeny (the Wallkill Presumption) by demonstrating that the upstream transfer of ownership interests in BEC would not present an ability to exercise horizontal or vertical market power or otherwise harm captive ratepayer interests.[1] Accordingly, no further review of the Proposed Transfer is required pursuant to PSL §70.

BACKGROUND

BEC owns and operates the Bayonne Energy Center, an approximately 660 megawatt (MW) simple-cycle natural gas-fired electric generating facility located in Bayonne, New Jersey (the Facility). The Facility is electrically interconnected to Consolidated Edison Company of New York, Inc.'s (Con Edison) 345 kilovolt (kV) substation in Brooklyn, New York via a 6.75-mile, high voltage alternating current cable system, and provides wholesale energy, capacity, and ancillary services in New York Independent System Operator, Inc. (NYISO) Zone J.

On November 12, 2009, pursuant to PSL Article VII, the Commission granted BEC a Certificate of Environmental Compatibility and Public Need (Article VII Certificate),

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[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).

authorizing BEC to construct and operate a submarine cable line connecting the Facility in Bayonne, New Jersey and Con Edison's substation in Brooklyn.[2] In a one-Commissioner order issued on April 6, 2010, and confirmed on April 15, 2010, the Commission also granted a Certificate of Public Convenience and Necessity (CPCN) to BEC, pursuant to PSL §68, to exercise the municipal consent granted by the City of New York in order to construct and operate the transmission facilities.[3] The Commission subsequently approved an amendment to the Article VII Certificate on April 19, 2011.[4]

On September 17, 2010, the Commission issued an order, inter alia, authorizing a lightened regulatory regime for BEC similar to that afforded other comparably situated wholesale providers of electricity participating in competitive electric markets.[5] Thereafter, on August 15, 2014, the Commission issued an order: (1) clarifying that the Commission had jurisdiction over the Facility; (2) modifying the lightened regulatory regime applicable to BEC; (3) authorizing financing for BEC of up to $720 million, under PSL §69; and (4) applying the Wallkill Presumption and finding that the upstream transfer of 100

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[2] Case 08-T-1245, Bayonne Energy Center, LLC – Electric Transmission Line, Order Granting Certificate of Environmental Compatibility and Public Need (issued November 12, 2009).

[3] Case 10-E-0077, Bayonne Energy Center, LLC – CPCN Proceeding, One Commissioner Order Granting Certificate of Public Convenience and Necessity (issued April 6, 2010); and Confirming Order (issued April 15, 2010).

[4] Case 08-T-1245, supra, Order Amending Certificate and Approving Construction Plans (issued April 19, 2011).

[5] Case 10-E-0276, Bayonne Energy Center, LLC – Lightened Regulation, Order Providing for Lightened Regulation (issued September 17, 2010) (2010 Lightened Regulation Order). At the time, the Commission declined to exercise jurisdiction over BEC, noting questions around the potential preemption of PSL §§69, 69-a, and 70 under the Federal Power Act.

percent of the indirect ownership interests in BEC did not require further Commission review under PSL §70.[6] The Commission subsequently issued declaratory rulings that an upstream transfer of BEC to Seller did not require further review under PSL §70, and that financing approvals previously granted to BEC would continue.[7]

THE PETITION

According to the Petition, Seller is a Delaware limited liability company formed solely for the purpose of indirectly acquiring, owning, and controlling the equity interests in TBH. Seller is an indirect, wholly owned subsidiary of North Haven Infrastructure Partners II US Investments L.P. (North Haven U.S.) and other co-investment entities, all of which are under common control. Upstream ownership interests are primarily held by various entities under the corporate umbrella of Morgan Stanley, a Financial Holding Company, with limited partnership interests upstream of North Haven U.S. held by passive investors.

The Petition states that Buyer is a Delaware limited liability company and a special purpose vehicle formed for the purpose of acquiring interests in Seller's direct equity interests in TBH, and indirect parent of BEC, pursuant to the

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[6] Case 14-E-0195, Bayonne Energy Center, LLC, Hess Corporation, LLC and AL Bayonne Holdings, LLC, Order Modifying Lightened Ratemaking Regulation Authorizations and Approving Financing and Declaratory Ruling on a Transfer Transaction (issued August 15, 2014).

[7] See Case 18-E-0501, Bayonne Energy Center, LLC, MIC Thermal Power Holdings, LLC, and NHIP II Bayonne Holdings LLC, Declaratory Ruling on Transfer and Making Other Findings (issued September 18, 2018) and Case 18-E-0601, NHIP II Bayonne Holdings LLC – Financing, Declaratory Ruling on Financing (issued November 15, 2018).

Proposed Transfer. All of the equity interests of Buyer are currently owned by Jupiter Energy Investments LLC (Jupiter Investments), a Delaware limited liability company that, in turn, is owned as follows: (1) 32 percent by Elliott Associates, L.P., a Delaware limited partnership; and (2) 68 percent by Elliott International, L.P., a Cayman Island limited partnership (collectively, Elliott). The Petition states that Buyer is presently the only subsidiary of Jupiter Investments, and itself has no subsidiaries. With respect to electric or gas infrastructure, including both generation and transmission, the Petition states that Elliott does not own any public securities of companies doing business in New York or in the PJM Interconnection, LLC (PJM) and ISO New England, Inc. (ISO-NE) control regions. According to the Petition, through its subsidiaries, Elliott has a 97 percent interest in an 851 MW natural gas cogeneration facility in Texas, but otherwise does not hold more than five percent of any electric or gas corporation with energy infrastructure and such holdings are in entities outside New York and its neighboring markets.

The Petition states that Buyer and Elliott do not own or control any interest in, nor operate or control electric transmission facilities, other than those limited facilities used solely for the interconnection of the generating facility in Texas to the transmission grid. The Petition further states that Buyer does not own or control any inputs to electric power production that could be used to prevent competitors from entering any utility service territory, has no franchised service territory and no captive customers, and is not affiliated with any entities that have any retail electric facilities or distribution services or captive customers into any electric market or any entities that could erect barriers to entry into any electric market.

According to the Petition, Seller and Buyer executed a purchase and sale agreement on March 13, 2026, pursuant to which Seller would transfer 100 percent of its direct equity interests in TBH (the indirect parent of BEC) to Buyer. The Proposed Transfer would result in BEC becoming an indirect, wholly owned subsidiary of Buyer post-closing. According to the Petition, BEC would continue to manage the daily operations of the Facility following the transaction, and would continue to contract with an existing asset operations management firm, Ethos Energy, and would contract with existing Facility management personnel to provide for a seamless transition and ensure ongoing efficient and reliable operations post-closing. The Petition also states that the Facility's operating characteristics and its participation in New York's wholesale markets will both remain unchanged.

Petitioners argue that the Commission should apply the Wallkill Presumption to the Proposed Transfer and find that no further review under PSL §70 is needed. Regarding horizontal and vertical market power, Petitioners argue that the Proposed Transfer does not raise any market power concerns. The Petition notes that Buyer currently has no ownership interests in New York electric or gas assets, and the Proposed Transfer would introduce a new player into the New York markets to support Facility operations. Petitioners also note that Elliot's sole ownership interests are in one cogeneration facility in Texas, which is far outside the geographic scope of review and cannot implicate any market power concerns.

Petitioners also point to Buyer's financial wherewithal to own and operate the Facility, stating that Elliott is managed by Elliott Investment Management L.P., one of the oldest investment managers of its kind under continuous management, and that Elliott seeks to acquire the upstream equity interests in BEC and remain within BEC's previously authorized $720 million financing level. Petitioners further argue that the Proposed Transfer will not change the management or asset operations services for the Facility because existing plant-level personnel, many with decades of experience in ensuring reliable operations, will continue to operate the Facility, supported by the oversight, technical resources, and extensive experience provided by the Facility's management team.

Regarding compliance with the Climate Leadership and Community Protection Act (CLCPA), Petitioners assert that the Proposed Transfer will not alter the Facility’s operating characteristics or its participation as a dispatchable supplier in New York’s wholesale markets. The Petition states that the Facility will operate as it does today (i.e., when its bids are accepted in merit order or it is called upon by the NYISO or Con Edison to address operating conditions on the system). Accordingly, Petitioners argue, the level of greenhouse gas emissions from the Facility will not vary due to this change in upstream ownership, and Commission action in this proceeding is not inconsistent with, and will not interfere with, the attainment of Statewide emissions limits under CLCPA §7(2), and will not disproportionately burden disadvantaged communities under CLCPA §7(3).

Based on the foregoing, Petitioners request that the Commission declare that no further review of the Proposed Transfer is needed under PSL §70. In the alternative, Petitioners request that the Commission approve the transaction under PSL §70 as in the public interest for same reasons listed above. Petitioners also request that the Commission confirm that lightened regulation will continue to apply following the Proposed Transfer. Petitioners further request Commission confirmation that previously approved BEC financing levels and terms will continue to be in place post-closing.

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.[8]

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

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

(SEQRA) and its implementing regulations and, therefore, they may be issued without further SEQRA review.[9]

DISCUSSION AND CONCLUSION

Under the Wallkill Presumption, regulation under PSL §70 is presumed to not adhere to the transfer of ownership interests in entities upstream from a New York competitive electric generation subsidiary, provided there is no 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 the upstream transfer. For purposes of the Proposed Transfer, 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 above, the Proposed Transfer involves the transfer, from Seller to Buyer, of 100 percent of upstream interests in BEC. Thus, once the Proposed Transfer is consummated, Buyer would be the sole owner of, and hold 100 percent of the ownership interests in, BEC and, commensurately, the Facility.

The Proposed Transfer does not present any potential harm to captive ratepayers under the Wallkill Presumption. The Petition demonstrates that, following the Proposed Transfer, the Facility will continue to be operated on a merchant basis in New York's wholesale markets, without captive ratepayers, ensuring that all financial obligations of the Facility will be borne by its owners and not by ratepayers. Moreover, Petitioners have

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[9] 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).

adequately demonstrated that Facility management and operations will continue to be conducted by existing plant-level personnel.

Regarding market power, Buyer does not currently own any electric and gas assets in New York, or in the markets administered by PJM and ISO-NE, and is only affiliated with a single cogeneration facility in Texas. The Petition also demonstrates that Buyer and its affiliates do not own or control any interest in, nor operate or control electric transmission facilities, other than those limited facilities used solely to interconnect Elliott's Texas generating facility to the transmission grid. Buyer also does not own or control any inputs to electric power production that could be used to prevent competitors from entering any utility service territory, has no franchised service territory and no captive customers, and is not affiliated with any entities that have any retail electric facilities or distribution services or captive customers into any electric market or any entities that could erect barriers to entry into any electric market. These facts support a finding that the Proposed Transfer does not raise vertical or horizontal market power concerns.

The Commission further finds that issuance of this declaratory ruling is consistent with the requirements of the CLCPA. As the Petition notes, following close of the Proposed Transfer, no changes to the Facility's operating characteristics are expected, and it will continue to be operated in New York's wholesale markets. In other words, consummation of the Proposed Transfer would not disrupt the status quo, and therefore is not inconsistent with, and would not interfere with the attainment of, Statewide greenhouse gas emissions under CLCPA §7(2). For those same reasons, the Proposed Transfer meets the criteria of CLCPA §7(3) insofar that the transaction itself will not change the Facility's operations and will not disproportionately burden disadvantaged communities.

Based on the foregoing, Petitioners have satisfied the requirements of the Wallkill Presumption. Accordingly, the Commission declares that the Proposed Transfer requires no further review under PSL §70.[10] To keep apprised of potential market power concerns in the future, the Commission finds it appropriate and within the public interest to require Buyer, as a new upstream owner of the Facility, to provide an annual report listing all electric generating facilities and other energy-related assets, including energy storage facilities and transmission lines associated with storage or generation participating in the markets administered by the NYISO, PJM, and ISO-NE, and gas pipelines or other similar facilities used to supply natural gas-fired generation facilities in New York, where Buyer and/or any subsidiaries or affiliates thereof holds a direct or indirect ownership or controlling interest. These reports should include the percentage of ownership or control, where applicable, and shall be filed by January 30th of each calendar year.

After the Proposed Transfer is consummated, lightened regulation will continue for BEC. Petitioners are reminded that, under lightened regulation, BEC will remain subject to the PSL with respect to matters such as annual reporting,[11]

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

[11] 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 entities are required to file Annual Reports.

enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed in prior orders. The Commission also finds it reasonable to continue financing approval that it previously established for BEC following consummation of the Proposed Transfer.[12]

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 March 25, 2026, and discussed in the body of this Declaratory Ruling.

2. NHIP II Bayonne Holdings, LLC and Jupiter Energy Investor LLC shall provide notice to the Secretary within 15 days after completing the proposed transfer transaction described in the petition filed in this proceeding on March 25, 2026, and discussed in the body of this Declaratory Ruling.

3. Jupiter Energy Investor LLC shall file an annual report by January 30th of each calendar year detailing all electric generating facilities and other energy-related assets (including, but not limited to, energy storage facilities and transmission lines associated with storage or generation) that participate in markets administered by the New York Independent System Operator, Inc. and neighboring control regions (including PJM Interconnection, LLC and ISO New England, Inc.) in which Jupiter Energy Investor LLC and/or any subsidiaries or affiliates thereof has a direct or indirect ownership or controlling interest, noting the percentage of ownership or

[12] See Case 18-E-0501, supra, Declaratory Ruling on Transfer and Making Other Findings (issued September 18, 2018) and Case 18-E-0601, supra, Declaratory Ruling on Financing (issued November 15, 2018).

control where applicable, as discussed in the body of this Declaratory Ruling.

4. In the Secretary's sole discretion, the deadlines set forth in this Declaratory Ruling may be extended. Any request 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.

5. This proceeding is closed pending compliance with Ordering Clause 2.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary