STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

COMMISSIONERS PRESENT:

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

CASE 24-E-0378 – Joint Petition of Holtsville Energy Storage, LLC, Savion, LLC, and East Point Energy, LLC for Approval to Transfer Ownership Interests in Battery Energy Storage System Pursuant to Public Service Law Section 70.

DECLARATORY RULING ON TRANSFER TRANSACTION

(Issued and Effective December 23, 2024)

BY THE COMMISSION:

## INTRODUCTION

In a petition filed on June 28, 2024 (Petition), Holtsville Energy Storage, LLC (Holtsville), Savion, LLC (Savion), and East Point Energy, LLC (East Point, and collectively with Holtsville and Savion, the Petitioners) requested that the Public Service Commission (Commission) approve of a proposed transaction involving the transfer of upstream ownership interests in Holtsville under Public Service Law (PSL) §70. Holtsville is in the early stages of developing

an approximately 110-megawatt (MW) battery energy storage system (BESS) located in the Hamlet of Holtsville, Town of Brookhaven, Suffolk County, New York (the Holtsville Project).[1] On October 13, 2023, the Commission granted a lightened regulatory regime and Certificate of Public Convenience and Necessity (CPCN) to Holtsville, authorizing the construction, ownership, and operation of the Holtsville Project.[2]

As discussed below, while the Petitioners requested relief under PSL §70, the Commission finds that the information provided by Petitioners satisfies the presumption established in the Wallkill Order and its progeny by demonstrating that the transfer of ownership interests upstream from Holtsville would not present an ability to exercise horizontal or vertical market power or otherwise harm captive ratepayer interests.[3] Accordingly, the Commission declares that no further review of the proposed transfer transaction is warranted pursuant to PSL §70.

## THE PETITION

### The Petitioners

Holtsville explains that it is a limited liability company that was incorporated in Delaware in 2014 and is

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[1] As described in the Petition, the proposed Holtsville Project is a BESS located on three adjacent land parcels totaling 6.06 acres at the southwest corner of Expressway Drive South and Morris Avenue in Holtsville, New York. According to the Petition, the BESS will be capable of powering 18,000 homes for four hours when discharging stored energy.

[2] Case 23-E-0142, Holtsville Energy Storage - CPCN, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued October 13, 2023) (CPCN Order).

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

authorized to do business in New York State. The Petition also details that Holtsville is a wholly owned project company of Savion, which is in turn a utility-scale solar and energy storage company operating on a standalone basis within a Shell Group portfolio. Savion asserts that it has 23 gigawatts (GWs) of solar and energy storage projects nationwide, with 162 projects in various phases of development located across 31 states in the United States.

East Point, according to the Petition, is a wholly owned direct subsidiary of Equinor Wind US LLC (Equinor Wind), which is a wholly owned indirect subsidiary of Equinor ASA (Equinor). East Point states that it is a development firm focused on the origination, construction, and operation of energy storage projects and has successfully developed several battery storage facilities in several communities across Virginia since its founding in 2018. East Point avers that it is an experienced owner and operator of multiple BESS facilities, comprising gigawatts of projects in operation or under development, and is thus qualified to safely and adequately operate the Holtsville Project.

Equinor Wind, the Petition describes, is the owner of Empire Offshore Wind LLC, which is currently developing two offshore wind generating facilities intended to serve customers in New York State: (1) the 810 MW Empire Wind 1 facility connecting to the Gowanus Substation owned and operated by the Consolidated Edison Company of New York, Inc. (EW1), and (2) the 1,260 MW Empire Wind 2 facility (EW2) which is in the process of reevaluation for future opportunity. The Petition explains that EW1 is moving forward with construction following the recent award of a Renewable Energy Certificate (REC) Agreement by the

New York State Energy Research and Development Authority (NYSERDA).

The Proposed Transaction

Petitioners state that, if approved, the proposed transfer transaction would transfer 100% of the membership interests in Holtsville from Savion to East Point (Proposed Transaction). Accordingly, following the transfer, Petitioners describe that neither Savion nor any of its affiliates would own any interest in Holtsville and would hold no ownership or control interest in the Holtsville Project. Petitioners note that the Proposed Transaction would occur pursuant to the terms of a Membership Interest Purchase Agreement between the Joint Petitioners, while the transfer would remain subject to the Holtsville Project reaching certain development milestones.

Petitioners request that the Commission review the Proposed Transaction pursuant to PSL §70, using the appropriate level of review for a lightly regulated entity, such as Holtsville. Accordingly, Petitioners argue, Commission authorization of an electric corporation to "transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation"[4] is limited to an assessment of the Proposed Transaction to exercise market power or otherwise cause harm to captive ratepayers. Petitioners assert that the Proposed Transaction satisfies this standard of review.

The Petitioners offer evidence that market power concentration would not occur if the Proposed Transaction is completed, as the Holtsville Project would provide less than 2% of the summer peak demand in Zone K of the New York Control Area (NYCA), and less than half of 1% of summer peak demand in the NYCA, indicating electricity generation levels well below the

[4] PSL §70(1).

8.1% the Commission has previously determined does not raise horizontal market power concerns. Additionally, Petitioners aver that vertical market power concerns would be mitigated because any related wholesale market price increases would be limited by the Market Services Tariff administered by the New York Independent System Operator, Inc. (NYISO) and overseen by the Federal Energy Regulatory Commission (FERC). Finally, according to the Petition, wholesale prices for Equinor's offshore EW1 and EW2 projects are to be controlled by their indexed REC agreements with NYSERDA. Thus, Petitioners assert that East Point's acquisition of interests in Holtsville would not create nor enhance vertical market power.

Finally, the Petition states that the Proposed Transaction would not create the potential for harm to the interests of captive ratepayers because the Holtsville Project would operate as a wholesale generator in a competitive market with no captive ratepayers.

## PUBLIC NOTICE

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rule Making (Notice) concerning the Petition was published in the State Register on July 31, 2024 [SAPA No. 24-E-0378SP1]. The time for submission of comments pursuant to the Notice expired on September 30, 2024. No public comments were filed. The relief provided here, in the form of a Declaratory Ruling, obviates the need to adopt this Proposed Rule Making.

## 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 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.[5] The Commission has determined that full regulatory review is presumed to not be needed for transfers of indirect, upstream ownership interests in lightly-regulated electric corporations unless the proposed transfer presents a risk of market power or harm to captive ratepayers (i.e., the Wallkill Presumption).[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 also may 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 meaning of the State Environmental Quality Review Act (SEQRA) and its implementing regulations and, therefore, they may be issued without further

[5] See, e.g., Wallkill Order.

[6] See, e.g., Case 17-E-0620, AP Cricket Valley Holdings I Inc., et al., Declaratory Ruling on Transfer Transaction (issued December 14, 2017).

SEQRA review.[7] This Declaratory Ruling falls within the ambit of the statute and regulations.

## DISCUSSION AND CONCLUSION

### The Transfer

For purposes of the Proposed Transaction, Petitioners have satisfied the Wallkill Presumption and Commission precedent. Under this presumption, transactions involving parent entities upstream from the facilities located in New York will be reviewed only if there is the potential for the exercise of market power or other harm to the interests of captive New York ratepayers.[8] Based on the facts and circumstances presented in the Petition, the Proposed Transaction does not raise market power concerns. The Proposed Transaction involves ownership interests in entities upstream from the direct generation owner, Holtsville, and would result in East River owning 100% of the membership interest in Holtsville.

The Holtsville Project would provide less than 2% of the summer peak demand in Zone K of the NYCA and less than half of 1% of summer peak demand. Additionally, Holtsville's operation as a wholesale market generator requires that any market price increase is limited by the Market Services Tariff administered by the NYISO and overseen by the FERC. Similarly, the EW1 Project (approximately 816 MW) would connect into New York City (zone J) and be subject to the NYISO tariff and FERC rules prohibiting anticompetitive behavior. Notwithstanding, as noted in the Commission order granting a CPCN for EW1, in the event market power issues arise, they may be addressed under PSL

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[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).

[8] Case 91-E-0350, supra, Wallkill Order.

§§110(1) and (2), which afford the Commission jurisdiction over affiliated interests.[9]

Because the Holtsville Project will continue to be operated on a merchant basis following the Proposed Transaction, the transfer of ownership interests in Holtsville will not pose a potential harm to the interests of captive New York ratepayers. The Commission also recognizes East Point's experience in developing successful battery energy storage facilities across the United States, demonstrating that the new Holtsville membership owner is capable of operating the Holtsville Project safely and adequately. As such, the Petition demonstrates that the Proposed Transaction fits within the ambit of Commission precedent finding that certain transfers do not require further regulatory review under PSL §70. Accordingly, the relief requesting approval under PSL §70 is moot.

After the Proposed Transaction is consummated, lightened regulation of Holtsville will continue, as described in the CPCN Order. The Petitioners and their affiliates are reminded that, notwithstanding that Holtsville is lightly regulated, any entities that exercise control over the Holtsville Project remain subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, as with other wholesale generators that have been afforded a lightened regulatory regime.[10] Included among those requirements are the obligations to conduct tests for

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[9] Case 23-E-0413, Empire Offshore Wind LLC – CPCN, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued May 7, 2024).

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

stray voltage on all publicly accessible electric facilities,[11] to give notice of generation unit retirements,[12] and to report personal injury accidents pursuant to 16 NYCRR Part 125.

CLCPA

In compliance with the Climate Leadership and Community Protection Act (CLCPA) §7(2), this Declaratory Ruling is consistent with the attainment of statewide greenhouse gas (GHG) emissions limits under the CLCPA.[13] The Holtsville Project will accommodate diversity of supply, including renewable energy resources, by storing energy at times of low demand and providing dispatchable clean energy upon high demand. The Holtsville Project's dispatchable clean energy will reduce reliance on fossil fuels for electricity generation, with improved air quality and a reduction in particulate emissions benefitting nearby residents. Additionally, because the Project is not located in or adjacent to a Disadvantaged Community, as

[11] Case 04-M-0519, Safety of Electric Transmission and Distribution Systems, Order Instituting Safety Standards (issued January 5, 2005), and Order on Petitions for Rehearing and Waiver (issued July 21, 2005).

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

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

defined in the CLCPA, it will thus not disproportionately burden a Disadvantaged Community as prohibited by CLCPA §7(3).

The Commission finds and declares:

1. No further review will be conducted of the proposed transfer transaction described in the petition filed in this proceeding on June 28, 2024, and discussed in the body of this Declaratory Ruling.

2. Holtsville Energy Storage, LLC, Savion, LLC, and East Point Energy, 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 June 28, 2024, and discussed in the body of this Declaratory Ruling.

3. This proceeding shall be closed upon compliance with Ordering Clause 2.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary