STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on December 17, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard

CASE 20-G-0385 – Petition of Alliance Energy Group, LLC, Alliance Energy Transmission LLC, Alliance Energy Transmissions - Syracuse, LLC, Linger Trust, and AET Holdings LLC for Approval of a Transfer Pursuant to Lightened Regulation.

ORDER APPROVING TRANSFERS

(Issued and Effective December 18, 2020)

BY THE COMMISSION:

INTRODUCTION

On July 31, 2020, Alliance Energy Group, LLC (AEG), Alliance Energy Transmissions LLC (AET), Alliance Energy Transmissions–Syracuse, LLC (AET-Syracuse), the Linger Trust and AET Holdings LLC (AET Holding) (collectively, the Petitioners) filed a petition (Petition) requesting that the Public Service Commission (Commission): 1) approve, pursuant to Section 70 of the New York Public Service Law (PSL), the transfer of 100% of AEG's membership interests in AET and AET-Syracuse to AET Holdings (the Proposed Transaction); and, 2) declare that post-transaction AET and AET-Syracuse will continue to be subject to lightened regulation under the PSL.

As discussed below, the Commission approves the proposed transfer of ownership interests in AET and AET-

Syracuse. Following the transfer, AET and AET-Syracuse will continue to be lightly regulated and provide gas transportation service pursuant to their existing transportation agreements.

THE PETITION

The Petitioners

1. Alliance Energy Group

The Petitioners describe AEG as a limited liability company owned by an individual investor, Samuel G. Nappi. AEG, through its subsidiaries, is engaged in electric power generation, natural gas exploration, production and transportation, and energy technology research into various forms of renewable fuels such as biodiesel and hydropower. Aside from the holdings in AEG, Mr. Nappi does not own or control any other energy-related facilities. AEG owns 100% of the membership interests in AET, which holds a Certificate of Environmental Compatibility and Public Need (Certificate) for an approximately 11.2 mile intrastate natural gas pipeline in New York that is used solely to transport gas to a 67.3 megawatt (MW) (nameplate) electric generation facility located in Batavia, New York, which is owned by AEG indirectly.[1] AET is a gas corporation subject to lightened regulation under the PSL.[2]

AEG also owns 100% of the membership interests in AET-Syracuse, which holds a Certificate for an approximately 9.5 mile intrastate natural gas pipeline in New York and is engaged

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[1] Case 09-T-0489 Alliance Energy Transmissions, LLC, et al., Order Approving Amendment and Transfer of Certificate (issued November 17, 2009).

[2] Case 09-G-0490, Alliance Energy Transmissions, LLC, et al., Declaratory Ruling on Review of a Transfer Transaction and Order Providing for Lightened Regulation (issued November 17, 2009).

exclusively in the business of providing gas transportation services to Syracuse University.[3] AEG is a gas corporation also subject to lightened regulation under the PSL.[4]

AEG also owns 100% of the membership interest in Alliance Energy, New York LLC (AENY), which owns, directly and indirectly, 100% of the partnership and membership interests in: Allegany Generating Station LLC (Allegany), which owns a 67 MW gas-fired combined-cycle power plant located in Hume, New York, and Carthage Energy, LLC (Carthage), which owns a 62.9 MW dual fuel (gas/oil) combined-cycle cogeneration facility located in Carthage, New York; Power City Partners (Power City), the owner of a 103.1 MW (nameplate) electric generation facility located in Massena, New York; Seneca Power Partners, L.P. (Seneca), the owner of a 67.3 MW (nameplate) electric generation facility located in Batavia, New York; Sterling Power Partners, L.P. (Sterling), the owner of a 67.3 MW (nameplate) electric generation facility located in Sherrill, New York; AGEnergy, L.P. (AG-Energy), which owns a 99.3 MW electric generation plant in Ogdensburg (the Ogdensburg Plant) that is in the process of returning to service; and, Lowell Cogeneration Company Limited Partnership (Lowell), the former owner of a 32.5 MW (nameplate) cycle electric generation facility located in Lowell, Massachusetts (Lowell facility) that has been retired. Allegany, Carthage, Lowell, Power City, Seneca, Sterling, and AG-Energy have each received authority to sell power at market-based rates from the Federal Energy Regulatory Commission

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[3] Case 88-T-082, G.A.S. Orange Development, Inc., Opinion No. 89-17 (issued June 5, 1989).

[4] Case 11-M-0396, et al., Project Orange Associates LLC, et al., Order Approving Transfer of Ownership and Transfer of a Certificate and Providing for Lightened Ratemaking Regulation (issued October 17, 2011).

(FERC). The output of the Allegany, Carthage, Power City, Seneca and Sterling facilities are sold into the wholesale competitive markets administered by the New York Independent System Operator, Inc. (NYISO). The Lowell facility has been retired.

In addition to AENY, AEG also owns 100% of the membership interest of Alliance NYGT, LLC (Alliance NYGT), and indirectly, 100% of the membership interest of AER- NYGen, LLC (AER-NY-Gen). Alliance NYGT owns the 46.5 (nameplate) MW Hillburn Gas Turbine located in Hillburn, New York (Hillburn facility), and the 41.9 (nameplate) MW Shoemaker Gas Turbine located in Middletown, New York (Shoemaker facility). AER NYGen currently holds no assets. Alliance NYGT, LLC is authorized to sell power at market-based rates and the output of the Hillburn and Shoemaker facilities is sold into the NYISO market. AEG also owns, indirectly, Greeley Energy Facility, LLC, the owner of a currently mothballed 35 MW (nameplate) cogeneration facility located in Greeley, Colorado.

Lastly, AEG is also affiliated with Alliance Energy Marketing, LLC (AEM), a New York limited liability company formed to act as a marketer of wholesale power and other services. AEM has received market-based rate authority from FERC but is not currently engaged in making any sales of electric energy. All of AEG’s affiliates own or control generation facilities that are located in the NYISO market, with the exception of the Greeley facility. Neither AEG nor any of its affiliates owns or controls any electric transmission or distribution facilities in the United States, other than the limited interconnection facilities necessary to connect individual generating facilities to the transmission grid. AEG is not affiliated with any other inputs to electric power production that could be used to prevent competitors from entering Petitioners' relevant markets. Further, Petitioners report that AEG is not affiliated with any public utility with a franchised electric service territory.

2. Linger Trust and AET Holdings

For the purposes of the proposed transaction, Petitioners would form a New York limited liability company, which is tentatively referred to as AET Holdings but may have a different name when formed, to hold all the membership interests of AET and AET-Syracuse. The Linger Trust would hold 100% of the membership interest in AET Holdings. The Linger Trust is a family trust established by Mr. Nappi, who is also the sole member of AEG. The Linger Trust owns all of the membership interest in Clarion Energy, LLC (Clarion), a Nevada limited liability company registered to do business in New York, which owns oil and gas leases and gas production wells located outside of New York State.

The Linger Trust, Clarion, and AET Holdings do not currently own any interest in electric or gas transmission or distribution providers or entities that can exercise control over the provision of fuels in generation. Clarion is the sole member of Clarion Energy West LLC (Clarion West), a Nevada limited liability company. Clarion West owns Colton Power L.P. (Colton) and Harbor Cogeneration Company, LLC (Harbor). Colton and Harbor are exempt wholesale generators with market-based rate authority. Colton owns two 45 MW natural gas fired electric generating facilities in Colton, California, and Harbor owns a 107.4 MW natural gas fired generating facility in Los Angeles, California, all of which are interconnected with the Southern California Edison Company transmission system located within the California Independent System Operator Corporation (CAISO) market. The Linger Trust, AET Holdings, and Clarion do not own, nor are affiliated with, any other wholesale generators, marketers, or energy services companies. Petitioners assert that AET and AET-Syracuse are sufficiently capitalized to support operations. In addition, AET-Syracuse's obligations have been guaranteed by AEG.

The Proposed Transfers

The Proposed Transaction consists of the transfer of all of AEG's membership interests in AET and AET-Syracuse to AET Holdings. AET Holdings would be the sole member of both companies. After consummation of the proposed transaction, the trustee of the Linger Trust would have the authority to control AET and AET-Syracuse by virtue of its ownership of AET Holdings. Organizational charts depicting the ownership structure before and after the Proposed Transaction are presented in Exhibit A of the Petition.[5]

AEG and the Linger Trust would not be affiliated after the consummation of the proposed transaction; however, Mr. Nappi, the grantor of the Trust, is the sole manager of AET and AET-Syracuse. In addition, AEG subsidiary Alliance Energy Marketing, LLC would provide services to AET and AET-Syracuse with the same personnel continuing to operate and maintain the gas transmission lines pursuant to operation and maintenance agreements. Additionally, the guarantee by AEG of AET-Syracuse's obligations would continue after consummation of the proposed transaction. Assuming, for purposes of review of the proposed transaction, that AET and AET-Syracuse are affiliates of AEG after consummation of the proposed transaction, post transfer to the Linger Trust, the Petitioners aver that the transfer would not result in any change in vertical or horizontal market power because neither the Linger Trust, or its

[5] The Petitioners indicate that Syracuse University has consented to the transfer of AET-Syracuse, as proposed in the Petition.

trustee or beneficiaries, have direct or indirect interests in energy-related assets located in the NYISO, PJM Interconnection LLC, and/or ISO-NE control areas.

The Petition indicates that AET and AET-Syracuse would continue to provide gas transportation service pursuant to their existing transportation agreements. Further, the same personnel would continue to operate and maintain the gas transmission lines pursuant to existing operation and maintenance agreements. The only effect of the transaction, according to Petitioners, is to replace the parent ownership of AET and AET-Syracuse.

The Petitioners request that the Commission approved the Proposed Transaction pursuant to PSL §70 because it would not cause the potential for horizontal or vertical market power, nor pose the potential for harm to captive New York ratepayers. The Petitioners also suggest that AET and AET-Syracuse should be subject to incidental regulation post-transaction, or in the alternative, the Petitioners ask that the Commission affirm that the lightened regulatory regime currently in place would continue.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on September 9, 2020 [SAPA No. 20-G-0385SP1]. The time for submission of comments pursuant to the Notice expired on November 9, 2020. No comments were received.

LEGAL AUTHORITY

Pursuant to PSL §70, no gas or electric corporation may “transfer or lease its franchise, works or system or any part of such franchise, works or system” without first receiving the Commission’s written consent. The Commission uses a public interest standard in its review of proposed transfers under PSL §70.[6] 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.[7]

DISCUSSION AND CONCLUSION

Ownership Transfers

The Commission has afforded AET and AET-Syracuse with lightened regulation and accordingly looks to whether the proposed transfers of ownership interests in jurisdictional facilities would enable the new owner to exercise market power or would pose a potential harm to captive ratepayers. Based on the facts and circumstances presented in the Petition, no such consequences are apparent. The Proposed Transaction will result in all of AEG's membership interests in AET and AET-Syracuse being transferred to AET Holdings. The AET and AET-Syracuse pipelines will continue to be owned solely by AET and AET-

[6] See, Case 10-M-0186 et al., Alliance Energy Renewables, LLC, et al., Order Approving Transfers Upon Conditions and Making Other Findings (issued July 23, 2010), p. 17. Case 17-E-0016, TC Ravenswood, LLC et al., Order Approving Transfer Subject to Acceptance of Conditions and Making Other Findings (issued April 19, 2017), pp. 3-4; Case 16-E-0574, Energy Capital Partners I, LP et al., Order Approving Transfers and Making Other Findings (issued February 23, 2017), p. 12.

[7] See, Case 91-E-0350, Wallkill Generating Company, L.P., Order Establishing Regulatory Regime (issued April 11, 1994) (Wallkill Order); see also, Case 18-G-0771, Selkirk Cogen Partners, L.P., Order Approving Transfer and Making Other Findings (issued June 18, 2019).

Syracuse, and provide dedicated service to their respective customers, which in each case is a sophisticated market participant. AET and AET-Syracuse will continue to provide gas transportation service pursuant to their existing transportation agreements, while the same personnel will continue to operate and maintain the gas transmission lines pursuant to existing operation and maintenance agreements. As AET and AET-Syracuse do not serve captive utility ratepayers and will continue to bear the full responsibility for the costs of operating and maintaining their facilities, the transfers will not pose a potential harm to captive ratepayers.

Moreover, the proposed transfers will not create any market power concerns or opportunities to exercise horizontal or vertical market power. The Proposed Transaction will have no effect on market concentration or raise any market power concerns. The competitive market conditions that existed upon the initial certifications and lightened regulation of AET and AET-Syracuse remain and are likely to continue with AET Holdings as the new owner. Therefore, the Commission approves the proposed transfers under PSL §70 as within the public interest. The Petitioners will be required to report upon the closing date for the transactions and the ultimate name of the entity to which AEG’s membership interests were transferred.

AET and AET-Syracuse will continue to be subject to lightened regulation following the transfers. AET and AET-Syracuse, however, have not shown that they are entitled to incidental regulation pursuant to PSL §66(13). The Petition fails to provide information that AET and AET-Syracuse’s ownership of gas plant is wholly subsidiary and incidental to other business carried on by them. Similarly, the Petition does not address the nature and extent of the Petitioners’ general business (including the amount of revenue received from such business), as required pursuant to 16 NYCRR §58.2(a)(1).

Environmental Quality Review

Under SEQRA, Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7), State agencies must determine whether the actions they are authorized to approve may have a significant adverse impact on the environment. The transfer of facility ownership does not meet the definition of either Type I or Type II actions that are contained in 6 NYCRR §§617.4, 617.5, and 16 NYCRR §7.2, so it is classified as an "unlisted" action requiring SEQRA review. Other than our approval of the action proposed here, no additional State or local permits are required at this time, so a coordinated review under SEQRA is not needed. We will assume Lead Agency Status under SEQRA and conduct an environmental assessment.

The Petition includes a Short Environmental Assessment Form (EAF) regarding the action. Parts 2 and 3 of the EAF were prepared by Department of Public Service Staff for the Commission’s consideration.[8] After considering the EAF, the record in this proceeding, and the criteria for determining significance listed in 6 NYCRR §617.7(c), it is concluded that the transfer of ownership of the AET and AET-Syracuse membership interests will not have a significant adverse impact on the environment since AET and AET-Syracuse will continue operate their respective pipelines in the same manner as before. A change in the identity of the owner of the gas pipeline transportation assets will not in and of itself cause any physical alterations to those assets or their surroundings. Accordingly, we adopt a negative declaration pursuant to SEQRA.

[8] 6 NYCRR §617.6(a)(3).

A Notice of Determination of Significance for this unlisted action is attached. Because no adverse environmental impacts were found, no public notice requesting comments is required or will be issued. The completed EAF will be retained in our files.

The Commission orders:

1. Alliance Energy Group, LLC is authorized, pursuant to Public Service Law §70, to transfer its membership interests in Alliance Energy Transmissions LLC and Alliance Energy Transmissions–Syracuse, LLC to AET Holdings LLC (or other entity), as discussed in the body of this Order.

2. Within 60 days of the date of issuance of this Order, Alliance Energy Transmissions LLC (AET) and Alliance Energy Transmissions–Syracuse, LLC (AET-Syracuse) shall file with the Secretary to the Commission confirmation of the date on which the transfers authorized in the preceding clause were or will be completed, and shall further identify the final corporate entity to which Alliance Energy Group, LLC transferred or will transfer its interests, being tentatively identified in the Petition as AET Holdings LLC.

3. In the Secretary's sole discretion, the deadlines set forth in this Order 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.

4. This proceeding shall be closed upon compliance with Ordering Clause No. 2 above.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 20-G-0385 – Petition of Alliance Energy Group, LLC, Alliance Energy Transmission LLC, Alliance Energy Transmissions - Syracuse, LLC, Linger Trust, and AET Holdings LLC for Approval of a Transfer Pursuant to Lightened Regulation.

NOTICE OF DETERMINATION OF SIGNIFICANCE
(NEGATIVE DECLARATION)

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the transfers of ownership interests, from Alliance Energy Group, LLC to AET Holdings LLC (or other entity). This is based upon the determination, pursuant to regulations implementing Article 8 of the Environmental Conservation Law contained in 6 NYCRR Part 617, that such action will not have a significant effect on the environment. The action contemplated is an Unlisted Action, as defined in 6 NYCRR §617.2.

The action will not result in a significant impact on the environment since there will be no physical changes to the existing gas pipelines or changes to their operation. The change in the identity of the owner of the gas pipeline transportation assets will not in and of itself cause any physical alterations to those assets or their surroundings.

The address of the Public Service Commission, the Lead Agency for purposes of environmental quality review for this action, is Three Empire State Plaza, Albany, New York 12223-1350. For further information, please contact David Drexler via e-mail at David.Drexler@dps.ny.gov or via phone at (518) 473-8178, or by mail to the address above.

MICHELLE L. PHILLIPS
Secretary