STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on April 16, 2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 15-E-0041 - CCI Roseton LLC – Application for Approval of Debt Financing Pursuant to Public Service Law Section 69.

ORDER APPROVING A TRANSFER TRANSACTION
AND A FINANCING AND MAKING OTHER FINDINGS

(Issued and Effective April 17, 2015)

BY THE COMMISSION:

BACKGROUND

In a petition filed on January 22, 2015, CCI Roseton LLC (CCI Roseton or Petitioner) requests authorization to enter into a loan agreement to borrow funds secured by the Roseton Generating Station, a 1,160 MW generation facility located in Newburgh, New York (the Facility). Additionally, CCI Roseton seeks an Order finding that the Commission will not exercise its jurisdiction found in Public Service Law (PSL) §70 over a transfer of ownership interests in CCI Roseton because approval is not required for the proposed intra-corporate transaction. In the alternative, the Petitioner asks for approval of the planned transaction.

In conformance with State Administrative Procedure Act (SAPA) §202(1), notice of the petition was published in the State Register on February 25, 2015. The SAPA §202(1)(a) period for submitting comments in response to that notice expired on April 13, 2015. No comments have been received.

THE PETITION

CCI Roseton asks, in effect, if it can continue to rely upon the lightened regulation previously applied to CCI Roseton in the Transfer Order, noting that it was decided there that the most recent ownership transaction involving the Facility was approved as in the public interest.[1] That lightened regulation, the Petitioner maintains, should continue to adhere because the circumstances remain unchanged notwithstanding the ownership restructuring.

Within the Petition, CCI Roseton seeks authority to enter into a senior secured credit facility and other credit arrangements enabling CCI Roseton to borrow up to $350 million for a term of seven years, using the Roseton Generating Station (the Facility) to secure the loan. The funds from the loan will be used for, among other things, improvements made and to be made to the Facility, and working capital. Petitioner notes the loan should be approved, because where financing "appears to be for a statutory purpose and does not appear contrary to the public interest," approval is consistent with Commission precedent.[2] Petitioner also requests flexibility consistent with that precedent.

The Petition further explains the proposal of a change in upstream ownership of the Facility. CCI Roseton is currently the owner of all the interest in the Facility. CCI Roseton's sole owner, CCI U.S. Asset Holdings LLC (CCI U.S.), will create an intermediate holding company, Roseton Holdings LLC (Roseton

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[1] Case 13-E-0019 et al., Dynegy Roseton LLC and CCI Roseton LLC, Order Approving Transfer and Authorizing a Retirement Prior to Expiration of the Notice Period (issued April 22, 2013), p.8.

[2] Case 11-E-0531, Stony Creek Energy LLC, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Rate Making Regulation and Approving Financing (issued December 15, 2011), pp. 41-42.

HLLC), and will transfer 100 percent of its ownership interest in CCI Roseton to the new entity. CCI Roseton will also change its name to Roseton Generating LLC,[3] and will pledge its 100 percent ownership of the Facility as security for the credit. The new holding company, Roseton HLLC, will be a guarantor of CCI Roseton's debt obligations under the new loan. As described in the Petition, the proposed addition of a new intermediate holding company does not pose any change in actual ownership of the Facility.

The Petitioner argues that, pursuant to Commission precedent, PSL §70 approval is not required for the transaction. Petitioner cites to a prior declaratory ruling stating the insertion of a holding company into an ownership structure upstream from a lightly regulated entity that operates electric plant does not amount to a transfer under PSL §70 because there is no change in the identity of the ultimate ownership.[4]

DISCUSSION AND CONCLUSION

Environmental Quality Review

Under the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR §617 and 16 NYCRR §7), the Commission must determine whether the actions it is authorized to approve may have a significant impact on the environment. Other than Commission approval of the action proposed here, no additional state or local permits are required, so a coordinated review under SEQRA was not needed. The Commission assumed Lead Agency status under SEQRA and conducted an environmental review.

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[3] The proposed change of name from CCI Roseton LLC to Roseton Generating LLC does not impact this Order or its content.

[4] Petition, p. 3, citing, Case 07-E-0584, NRG Energy, Inc., Declaratory Ruling on Review of an Intra-Corporate Transaction (issued July 23, 2007), pp. 3-4.

SEQRA requires applicants to submit an Environmental Assessment Form (EAF) describing and disclosing the likely impacts of the actions they propose. The Petitioners submitted a narrative and short-form EAF Part 1 that complies with this requirement.

The proposed action, approval of a transfer of ownership interests, does not meet the definition of Type 1 or Type 2 actions listed in 6 NYCRR §§ 617.4, 617.5, and 16 NYCRR §7.2, so it is classified as an “unlisted” action requiring SEQRA review. After review of the petition and EAF the Commission concludes, based on the criteria for determining significance listed in 6 NYCRR §617.7(c), that there will be no changes to the operation of the electric generating facility subsequent to the proposed transfer that would result in significant adverse environmental impacts. Department of Public Service Staff completed the short-form EAF Parts 2 and 3.

As Lead Agency, the Commission determines that the proposed action will not have a significant adverse impact on the environment and adopts a negative declaration pursuant to SEQRA. Because no adverse environmental impacts were found, no public notice requesting comments is required or will be issued. A Notice of Determination of Significance concerning this unlisted action is attached. The completed EAF will be retained in our files.

The Transfer

Under PSL §70, Commission approval is required before an electric corporation may transfer ownership interests in electric plant. In past orders and declaratory rulings, the Commission has identified several situations where a full PSL §70 review and approval of a transaction is not required. First, under the Wallkill presumption, no further review of acquisition transactions involving parent entities upstream from the entities owning wholesale electric generation facilities located in New York is required if it is determined there is no potential for the exercise of market power or other harm to the interests of captive New York ratepayers.[5] Second, transactions that involve only reshuffling of the corporate structure such that all entities remain wholly-owned by an existing owner are not reviewed because there is no change in the identity of the owner.[6] Third, transactions involving the transfer of only non-controlling interests among passive investors generally do not require review under PSL §§70(1).[7]

These past decisions are inapposite to the transfer at issue here. The Wallkill presumption does not apply because the transfer is not upstream from CCI Roseton but instead involves CCI Roseton itself, as the direct owner of the generation facility.[8] The transaction is also not a mere reshuffling, since it will result in the transfer of all the ownership interests in CCI Roseton from CCI U.S. to Roseton HLLC, the new intermediate holding company.[9] Nor is the interest transferred passive. Therefore, due to the transfer of a controlling interest in CCI

[5] Case 07-E-1283, Noble Clinton Windpark I, LLC, Declaratory Ruling on Ownership Interest Transfer (issued December 18, 2007)(Noble Ruling).

[6] Cases 06-E-1106 and 06-E-1703, PPM Energy, Inc. and Atlantic Renewable Projects LLC, Declaratory Ruling on Regulation of Intra-Corporate and Other Transactions (issued October 16, 2006).

[7] Noble Ruling, supra.

[8] Case 04-E-0784, Great Lakes Power, Inc., Order Approving Transfers and A Financing and Making Other Findings (issued September 22, 2004).

[9] Case 14-M-0381, Lockport Energy Associates, L.P., Order Approving Ownership Transfer (issued December 17, 2014); Case 12-E-0220, Caithness Long Island LLC, Order Approving Transfer (issued August 20, 2012.

Roseton, the direct owner of the Facility,[10] review is necessary under PSL §§70(1).

The Petitioners correctly describe the PSL §70 review of lightly-regulated entity transfers as based on a public interest standard. The focus is on two questions: whether the Transfer could afford opportunities for exercise of market power; and, whether the Transfer has the potential to otherwise harm captive ratepayer interests.

The proposed transaction does not pose the potential for the exercise of horizontal or vertical market power. CCI U.S. already owns all of the interests in CCI Roseton directly, and owning them indirectly after transferring the interests to CCI HLLP as the intermediate holding company does not enhance market power. The share CCI U.S, and CCI Roseton through it, hold in the competitive wholesale markets run by the New York Independent System Operator (NYISO) remains the same after the transaction as it was before it. That share, as decided in the Transfer Order, is insufficient to support the exercise of horizontal market power in NYISO markets.

Furthermore, neither CCI Roseton nor its subsidiaries or affiliates control electric delivery facilities in New York, other than interconnections, or exert a substantial influence over inputs, like fuel, into the production of generation supply within New York. Those avenues to the exercise of vertical market power are therefore foreclosed.

As a participant in a competitive wholesale market for electricity, CCI Roseton has no captive ratepayers itself. Its operations also do not pose risks to the captive ratepayers of delivery or other utilities subject to full rate of return

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[10] Case 08-M-0659, Regulation of Ownership Interests, Order Establishing Presumption and Closing Proceedings Without Prejudice (issued September 21, 2010).

regulation. The transfer, therefore, poses no risk of harm to captive ratepayer interests.

Moreover, the transfer leaves existing operational and financial structures in place. CCI Roseton is an experienced generation facility operator, appears sufficiently capitalized, and will continue the existing arrangements for operation of the Facility. Consequently, the transfer transaction is approved.

The Financing

Approval of CCI's financing plans is appropriate under lightened regulation. The scrutiny applicable to monopoly utilities may be reduced for lightly-regulated companies like [name] that operate in a competitive environment. As a result, the Commission need not make an in-depth analysis of the proposed financing transactions. Instead, by relying on the representations CCI Roseton makes in its filing, prompt regulatory action is possible.[11]

The proposed financing appears to be for a statutory purpose and does not appear contrary to the public interest. It is approved up to a maximum amount of $350 million in a senior credit facility and other credit arrangements.

Given that CCI Roseton is subject to lightened regulation, it is afforded the flexibility to modify, without our prior approval, the identity of the financing entities, payment terms, and amount financed under the transactions, up to the $350 million limit.[12] Affording it this flexibility avoids disruption of its financing arrangements and enables it to

[11] Because a PSL §69 approval of a securities issuance is a Type 2 action for the purposes of the State Environmental Quality Review Act, 16 NYCRR §§7.2(a) and 7.2(b)(2)(v), no further review is required under that statute.

[12] See, e.g., Case 10-E-0405, NRG Energy, Inc., Order Approving Financing (issued November 18, 2010); Case 01-E-0816, Athens Generating Company, L.P., Order Authorizing Issuance of Debt (issued July 30, 2001).

operate more effectively in competitive wholesale electric markets, thereby promoting the efficient development of these markets. Captive New York ratepayers cannot be harmed by the terms of this financing because CCI Roseton bears all the financial risk associated with this financial arrangement.

Lightened Regulation

After the transfer is consummated,[13] lightened regulation of CCI Roseton will continue as described in the Transfer Order and in other previous Orders.[14] CCI U.S. and CCI Roseton are reminded that, under lightened regulation, the owners of the Facility and the entities controlling its operations remain subject to the PSL with respect to matters such an enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed in the Light Regulation Order and other previous Orders. Included among those requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,[15] to give notice of generation retirements, and to report personal injury accidents pursuant to 16 NYCRR Part 125.

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[13] 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.

[14] See, e.g., Case 10-E-0501, CPV Valley LLC, Order Granting Certificate of Public Convenience and Necessity, Authorizing Lightened Ratemaking Regulation, and Approving Financing (issued May 9, 2014).

[15] See Case 04-M-0159, Safety of Electric Transmission and Distribution Systems, Order Instituting Safety Standards (issued January 5, 2005).

The Commission orders:

1. The financing arrangements described in the Petition filed in this proceeding and discussed in the body of this Order are approved, up to a maximum amount of $350 million, subject to the discussion in the body of this Order.

2. Approval of the transfer of ownership interests in CCI Roseton LLC, the owner of the Roseton Generating Station located in Newburgh, New York, from CCI U.S. Asset Holdings LLC to Roseton Holdings LLC, as described in the petition filed in this proceeding and in the body of this Order, is granted.

3. This proceeding is closed.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 15-E-0041 – Application of CCI Roseton LLC for Approval of Debt Financing Pursuant to Public Service Law Section 69.

NOTICE OF DETERMINATION OF SIGNIFICANCE

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission of a transfer transaction resulting in CCI U.S. Asset Holdings LLC creating a new intermediate holding company, Roseton Holdings LLC, and transferring 100% of its ownership interest in CCI Roseton LLC, the owner of a 1,160 MW generation facility, located in Newburgh, New York, to the new holding company. The exercise of this approval constitutes an "unlisted" action, as defined in 6 NYCRR §617.2(ak). A change in the direct ownership of CCI Roseton LLC will not otherwise cause any physical alterations to the operations of its generation facility or its surroundings. Therefore, based on our determination, in accordance with Article VIII of the Environmental Conservation Law, such action will not have a significant adverse affect on the environment and a negative declaration of environmental significance is adopted.

The address of the Public Service Commission, the Lead Agency for the purposes of the environmental quality review of this project, is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Alan Michaels at 518-474-1585 or at the address above.

KATHLEEN H. BURGESS
Secretary