STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on September 15, 2016

COMMISSIONERS PRESENT:

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

CASE 15-E-0516 - Petition of Greenidge Generation LLC for an Original Certificate of Public Convenience and Necessity and Lightened Regulation.

CASE 15-G-0571 - Petition of Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation for an Expedited Original Certificate of Public Convenience and Necessity and for Incidental or Lightened Regulation.

ORDER GRANTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND PROVIDING FOR LIGHTENED AND INCIDENTAL REGULATION

(Issued and Effective September 16, 2016)

BY THE COMMISSION:

INTRODUCTION

In a petition filed on September 10, 2015 (and supplemented on September 21 and 28, November 17 and December 15, 2015 and June 21 and 29, 2016), Greenidge Generation LLC (Generation) seeks a Certificate of Public Convenience and Necessity (CPCN) pursuant to §68(1) of the Public Service Law (PSL) to obtain the Commission approvals required to resume the operation of an existing generating plant — Unit #4 of the Greenidge Generating Station (also called the Facility) – that has been out of service since March 19, 2011. Generation also requests an order providing for the lightened

regulation of it as an electric corporation that is a merchant generating facility operating in the wholesale power markets administered by the New York Independent System Operator, Inc. (NYISO).

In a petition filed on September 24, 2015 (and supplemented on September 28, 2015 and June 21 and 29 and July 15, 2016), Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation (collectively, Pipeline Companies and together with Generation, Petitioners), seek a CPCN approving the exercise of a road use agreement in connection with the operation of a proposed gas transmission line in the Towns of Milo and Torrey, Yates County.[1] The Pipeline Companies also request an order providing for incidental and lightened regulation of them as gas corporations operating in the competitive fuel supply market pursuant to their Gas Transportation Agreement (Agreement) with Generation filed in Case 15-G-0571.[2]

BACKGROUND

Generation owns Unit #4, a 106.3 megawatt (MW) steam turbine generating unit originally constructed by New York State Electric & Gas Corporation (NYSEG) in 1953. In 1998, the Commission authorized NYSEG to sell the Facility along with

[1] See, Case 15-T-0586, in which the Pipeline Companies seek a certificate of environmental compatibility and public need.

[2] The Pipeline Companies request continued Commission oversight over the provisions of the Gas Transportation Agreement in order to qualify for the exemption from regulation by the Federal Energy Regulatory Commission (FERC) provided by section 1(c) of the Natural Gas Act, 15 U.S.C. §717(c), sometimes referred to as the Hinshaw exemption.

certain other generating facilities to AES NY, LLC (AES).[3] In 1999, the Commission granted lightened regulation to AES Eastern Energy, L.P. (AEE), which was then the owner of the Facility.[4] In 2006, the Facility was upgraded by the installation of a multi-pollutant control system. Combustion modifications were made at the same time.[5]

On September 17, 2010, AEE2, LLC (AEE2), a wholly owned subsidiary of AEE, informed the Commission that it was then the owner of the generating unit and that it intended to place Unit #4 into protective lay-up on March 19, 2011. The unit has remained in protective lay-up and has not produced electricity since that date. On December 31, 2011, AES, AEE and AEE2 filed for protection under the Bankruptcy laws. Due to the constraints imposed by the Bankruptcy proceeding, AEE2 informed the Commission by notice dated September 18, 2012, of its intention to permanently retire the Facility on September 21, 2012. Thereafter, the Facility was sold to GMMM Holdings LLC, which in turn transferred the Facility to its affiliate GMMM Greenidge Generation LLC. Greenidge Generation Holdings LLC acquired GMMM Generation LLC in February of 2014 and changed the name of that entity to Greenidge Generation.

Generation has applied to NYISO for a new interconnection agreement for the Facility. The System

---

[3] Case 96-E-0891, New York State Electric & Gas Corporation, Order Approving Transfer Of Electric Generation Facilities, Approving Contracts Upon A Condition, And Making Other Findings (issued December 3, 1998).

[4] Case 99-E-0148, AES Eastern Energy, L.P. and AES Creative Resources, L.P., Order Providing For Lightened Regulation (issued April 23, 1999).

[5] See, Greenidge Multi-Pollutant Control Demonstration Project, Department of Energy, available at http://www.netl.doe.gov/File%20Library/Research/Coal/major%20demonstrations/ppii/greenidge/CCT-Topical-Report-28.pdf.

Reliability Impact Study for Unit #4 was approved by NYISO's Operating Committee on February 5, 2015, and Unit #4 is now participating in NYISO's 2015 Class Year Facilities Study. Generation anticipated that it would obtain Energy Resource Interconnection rights from NYISO before the end of 2015 and Capacity Resource Interconnection rights by the Summer of 2016.

NOTICE OF PROPOSED RULE MAKING
AND OF OTHER COMMENT OPPORTUNITIES

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), Notices of Proposed Rulemaking concerning the requests regarding how Petitioners would be regulated were published in the State Register on October 7, 2015 [SAPA No. 16-E-0516SP1 and on October 21, 2015 [SAPA No. 15-G-0571SP1]. The time for submission of comments pursuant to the Notices expired on November 23, 2015 and December 7, 2015, respectively. Three comments concerning the requests for lightened regulation are addressed below. Moreover, The Secretary issued a Notice of Informational Forum and Public Statement Hearing and Notice of Procedural Conference on October 14, 2015. Pursuant to these notices, a public statement hearing was held before Administrative Law Judge (ALJ) Michelle Phillips in Dresden, New York on November 4, 2015. ALJ Phillips conducted a procedural conference on November 10, 2015 in Albany, New York. In addition, the Secretary issued a Notice Inviting Further Public Comment on November 25, 2015.[6] The comments concerning the requests for CPCNs are addressed below.

Having considered the positions expressed at the public statement hearing and procedural conference, as well as

[6] The Notice stated that comments are welcome at any time during the pendency of these proceedings, but are encouraged as soon as possible to ensure Commission consideration in its decision.

in written submissions, ALJ Phillips ruled (on December 28, 2015) that an evidentiary hearing is not warranted in order to develop an adequate record in these proceedings. While Petitioners did not object to the requests for party status of the Committee to Preserve the Finger Lakes (CPFL) or Dr. John Dennis, ALJ Phillips explained that her ruling that an evidentiary hearing is not warranted renders these requests essentially moot because party status is necessary to engage in discovery, to submit testimony, and to cross-examine witnesses, but not to submit written comments. Thus, she declined to grant the party status requests.[7]

THE PETITIONS

Petitioners and Affiliates

Generation and Greenidge Pipeline LLC are limited liability companies formed under the laws of Delaware and are wholly-owned subsidiaries of Greenidge Generation Holdings LLC (Greenidge Generation Holdings).[8] Greenidge Generation Holdings has two upstream members: Atlas Capital Resources (P) LP, a Delaware limited partnership, which owns less than five percent, and Atlas Capital Resources (A9) LP, also a Delaware limited partnership, which owns the remaining interest. Atlas Capital

[7] Neither CPFL nor Dr. Dennis appealed ALJ Phillips' ruling, nor have they renewed their requests for party status.

[8] Greenidge Pipeline Properties Corporation is a corporation formed under New York's Transportation Corporations Law and is a wholly-owned subsidiary of Greenidge Pipeline LLC. Copies of formation documents for Generation and the Pipeline Companies are attached to their respective petitions. On June 21, 2016, Petitioners provided a supplement containing the verified statements of Dale Erwin, the president and secretary of Generation and the Pipeline Companies, that Petitioners have obtained all required consents of the proper municipal authorities.

Resources (A9) LP owns no other businesses. Atlas Capital Resources (P) LP is wholly owned by Atlas Capital GP LP, a Delaware limited partnership, which in turn is wholly owned by Andrew M. Bursky and Timothy J. Fazio (the Two Principals). The Two Principals also own and operate a diversified group of manufacturing, distribution, service and trading businesses that operate in the automotive, building materials, capital equipment, energy, industrial services, packaging, pulp, paper and tissue, steel and logistics, and supply chain management industries. In addition to Greenidge Generation Holdings and Petitioners, the energy-related holdings of the Two Principals include Twin Rivers Paper Company LLC (Twin Rivers),[9] Finch Paper

[9] Twin Rivers is a paper company with manufacturing facilities in Edmunston and Plaster Rock, New Brunswick, Canada, and Madawaska, Maine. Twin Rivers owns an approximately 38 MW biomass cogeneration facility located in Edmunston, New Brunswick, Canada. A portion of the output from this facility is sold to New Brunswick Power, with the remainder used in paper manufacturing.

LLC (Finch Paper),[10] Detroit Renewable Energy LLC (Detroit Renewable),[11] and Detroit Renewable Power.[12]

Permits and Approvals

Generation explains that it holds all of the state and local permits required for operation of Unit #4, except for the Air Permits and an initial water withdrawal permit. It asserts that each permit it holds was issued prior to August 1, 2012,

[10] Finch Paper is a pulp and paper manufacturer located in Glens Falls, New York. Finch Paper, a federal qualifying facility, owns and operates an approximately 29 MW cogeneration facility in Great Falls, NY. Finch Paper is the successor to Finch, Pruyn & Company (Finch Pruyn), which developed the facility in 1987. Finch Pruyn sold its cogeneration facility to Finch Paper on March 30, 2007. The output from this facility is either used by the pulp and paper facilities or sold to National Grid under a power purchase agreement that expires in 2018.

[11] Detroit Renewable is a consortium of renewable-energy generation and distribution companies that provides the City of Detroit with clean energy and waste disposal solutions. The remaining interest in Detroit Renewable is owned by Thermal Ventures II LP (Thermal Ventures), a private equity firm that specializes in owning and operating district heating and cooling systems. Detroit Renewable was formed in 2010 to improve the operating efficiency, safety and reliability of Detroit's existing renewable energy and waste infrastructure.

[12] Detroit Renewable Power owns and operates an approximately 68 MW waste-to-energy biomass facility located in Detroit. The facility's original developer, Greater Detroit Resource Recovery Authority (GRDA), self-certified as a Qualifying Facility in 1985. GRDA brought the plant on line in 1989 and sold its electrical output to the predecessor to DTE Energy under a long-term Power Purchase Agreement. GRDA subsequently sold the facility to Covanta, which continued to operate it as Michigan Waste Energy ("MWE") until its power purchase agreement expired on September 30, 2009. On October 1, 2010, Covanta shut the plant down permanently and on November 16, 2010 sold it to Detroit Renewable, which returned it to service shortly thereafter.

when the regulations implementing PSL Article 10 became effective,[13] and that each permit remains in effect to this date.

Additional state and federal permits and approvals must, Generation contends, be obtained before Unit #4 may be restarted — namely, air permits and a water withdrawal permit from the Department of Environmental Conservation (DEC), Market Based Rate authority from the Federal Energy Regulatory Commission (FERC) and approval of a new interconnection agreement with NYSEG and NYISO. Generation also intends to request that FERC find that the Facility is an Exempt Wholesale Generator and therefore not subject to the requirements of the Public Utility Holding Companies Act of 2005.

The Pipeline Companies note that a copy of the Road Crossing Agreement between the Town of Torrey and Greenidge Pipeline LLC is annexed to the petition in Case 15-G-0571. They state that the only active roads that the Pipeline will cross are Lampman Hill Road and Kings Hill Road in the Town of Torrey.[14]

Description of Plant to Be Constructed

Generation explains that, because the Facility has been maintained in protective lay-up at all times since March 19, 2011, the only work within the Facility required for its return to service is the kind of routine maintenance required whenever a generating facility is returned to service after an outage. Generation will also perform the work necessary to interconnect Unit #4 to the transmission system under the

[13] See, 34 N.Y.S. Reg. Issue 31 at 42 (August 1, 2012).

[14] The Pipeline will cross certain county and state highways, but these governmental entities are not included in the definition of "municipalities" in PSL § 2(16). Accordingly, the permits required for these road crossings are not "municipal consents" subject to the approval requirements of PSL §68(1).

supervision of NYSEG. The approximately 4.6-mile, 8-inch pipeline proposed to deliver natural gas to Unit #4 is described more fully in the application filed in Case 15-T-0586.

Economic Feasibility and Financeability

Petitioners intend to own the pipeline and Facility free and clear of any liens or encumbrances. Generation estimates the total cost of the work needed to restart Unit #4 at less than $275,000. The Pipeline Companies did not provide an estimate of the cost to construct the pipeline, but Petitioners opine that they will have no difficulty in financing these expenditures and any other improvements needed by the Facility without having to issue any notes, bonds or other evidences of indebtedness. Generation asserts that, as a merchant generating facility supplying the competitive wholesale markets operated by NYISO, the Facility will supply electric energy, capacity and other generation-related services to load serving entities operating throughout New York State and in neighboring control areas as well. These services will be delivered to NYISO at the point of interconnection between the Facility and NYSEG's existing Greenidge Substation, which is located immediately adjacent to the Facility on property owned by Generation.

Rate and Service Issues

The rates Generation will charge for the services provided by the Facility will be established by the NYISO in accordance with its Market Administration and Control Area Tariff. Generation contends that, since those rates are generally determined by competition and market mechanisms, the

Commission has found such rates to be just and reasonable.[15] The Agreement setting forth the rates the Pipeline Companies will charge Generation is annexed to the petition in Case 15-G-0571.

Unit #4 will, contends Generation, be interconnected and operated by experienced personnel in conformance with the applicable reliability and safety requirements of the NYISO, NYSEG, the New York State Reliability Counsel, the Northeast Power Coordinating Council and the North American Electric Reliability Corporation. Accordingly, Generation will at all times render safe, adequate and reliable service.

The Pipeline Companies explain that they will contract with Integrity Engineering PLLC (Integrity) to assist their personnel in developing and implementing the plans, programs and procedures required to achieve and maintain full compliance with 16 NYCRR Part 255. In addition, Integrity will train Petitioners' personnel in emergency procedures such that, upon notification of an event potentially involving the Pipeline or associated facilities, such personnel will "make safe" by initiating a shutdown procedure of the Pipeline at the Meter Station Tap on the Empire Connector.[16] Integrity will make available 3 or 4 employees to assist the Pipeline Companies in the Operation & Maintenance of the Pipeline, including Emergency Response functions. These employees, contend the Pipeline Companies, each have over 20 years of applicable gas experience and are extremely well qualified to perform these functions. They will also maintain Operator Qualification credentials in

---

[15] Case 00-M-0504, Provider of Last Resort Responsibilities, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets (issued August 25, 2004), p. 14.

[16] Certain conditions, such as a report of major blowing gas and or fire, will initiate a second procedure involving "blowing down" of the Pipeline at a safe location by Petitioners' personnel, assisted by employees of Integrity.

conformance with Petitioners' Operator Qualification Program. As Integrity's offices are located less than a 1-hour drive from the Pipeline and Integrity's primary responder lives approximately 35 minutes from that facility, the Pipeline Companies assert that sufficient support will be available at any time. Initially, Integrity or another qualified contractor will perform routine O&M tasks, such as inspections and surveys. Other mandated tasks and programs, such as the Public Education Program, Damage Prevention Program, etc., will be developed and implemented by Petitioners' personnel with the assistance of Integrity.

Public Interest

According to Generation, the Facility will provide needed energy, capacity, voltage support and other valuable generation-related services to NYSEG and NYISO on a purely merchant basis. In addition, returning the Facility to operational status will also create 10 new full-time jobs and stimulate economic development in Yates County by, among other things, providing the impetus for the construction of a new natural gas pipeline, which will involve the creation of 60-80 construction jobs and needed revenue to local government units in the form of a Payment in Lieu of Taxes (PILOT) agreement. Moreover, maintains Generation, with the Facility operating primarily on natural gas, its air pollutant emissions will be greatly reduced. According to Generation, it is particularly significant that these benefits will be provided without imposing any costs or risks on captive retail customers.

Lightened and Incidental Regulation

In support of its request for lightened regulation, consistent with previous Commission orders involving wholesale merchant generators, Generation maintains that it will operate the Facility on a merchant basis in wholesale markets administered by the NYISO, and that it lacks captive retail customers. It further asserts that the 29 MW cogeneration facility in Glens Falls, New York, which is owned and operated by an affiliate, is too small to allow Generation to exercise horizontal market power. Similarly, it avers that it lacks vertical market power because neither it nor its affiliates own or operate any electric transmission or distribution facilities other than those used to interconnect the Facility.

The Pipeline Companies claim that they qualify for incidental regulation with respect to the construction and operation of the proposed natural gas pipeline that will be used solely to supply natural gas to the Facility. Regarding their qualifications for incidental regulation, they proffer that all of the pipeline operations will be "incidental" to Generation's operation of the Facility in wholesale electric markets. The Pipeline Companies compare the payments they will receive under the Agreement between them and Generation with the market revenues Generation expects to receive from those wholesale markets. They characterize the payments under the Agreement as "far less" than the market revenues and as designed to "recover little more than Applicants' actual out-of-pocket costs of operating their pipeline."[17]

The Pipeline Companies request exemption from all of the requirements of PSL Article 4, except for: (1) those affecting matters of public safety and the provisions of PSL §§

[17] See, June 29, 2016 supplement, p. 3.

65, 68 and 74;[18] and (2) the provisions of PSL §66(12)(d) requiring them to strictly adhere to the provisions of the Agreement. They request that the Commission explicitly exercise oversight over the provisions of the Agreement so that they may qualify for an exemption from FERC regulation, as authorized under Section 1(c) of the Natural Gas Act (commonly known as the Hinshaw amendment).[19] To ensure that they qualify for this exemption from FERC jurisdiction, they request that the Commission certify to FERC that it regulates the Pipeline Companies' rates and service.

The Pipeline Companies assert that they should be afforded both lightened and incidental regulation. In support of their position, they cite Commission precedent granting lightened and incidental regulation to other entities. They claim that, because Generation's sales of energy, capacity, and generation-related services will be subject to regulation by FERC, they "cannot be seen as 'otherwise subject to the jurisdiction of the Commission' within the meaning of PSL §66(13)."[20]

With respect to their request for lightened regulation, the Pipeline Companies seek the same regulatory regime that the Commission has applied to wholesale merchant generating facilities, consistent with their request for incidental regulation. They propose to operate the pipeline on a merchant basis and to serve only one customer (i.e., Generation). In addition, the Pipeline Companies assert that they and their affiliates lack horizontal and vertical market power, similar to the contentions made in Generation's Petition.

---

[18] Former §74 (regarding enforcement) is now PSL §26.

[19] 15 U.S.C. §717(c).

[20] June 29, 2016 supplement at 4.

COMMENTS AND RESPONSES

At the public statement hearing, attended by 175 people, 65 people spoke. Representatives of state and local public officials, businesses and property owners expressed their support for the resumption of operation of Unit #4 with natural gas as a fuel because of perceived benefits associated with an increased tax base, an increase in jobs, and a cleaner fuel than coal, which was previously burned at Unit #4. By contrast, others spoke against the project because of perceived detriments to air and water quality and concern that approving this project would take the Commission's focus away from renewable energy resources.

Over 85 comments were also provided in writing, many of which addressed issues similar to those expressed at the public statement hearing. For example, CPFL opined that Generation's petition is properly reviewable pursuant to PSL Article 10, rather than §68(1) because Generation seeks to convert a retired coal-fired generating facility to a gas-fired facility and to start operation under new ownership. CPFL also expressed the view that the petitions fail to demonstrate a public need that will be served by the resumption of operation of the Facility and to explain Petitioners' business plan, which failure it claimed to show a lack of economic feasibility. It, as well as others (including John T. Finn) asserted that reopening Unit #4 is contrary to the State Energy Plan and the New York REV plan and does not comply with the established energy targets. Dr. Robert W. Howarth, Ph.D. (supported by others) contended that concepts of natural gas as a bridge fuel from coal focus solely on CO2 emissions and ignore emissions of methane. Concerns were also expressed that operation of the plant will increase annual carbon dioxide emissions in New York.

CPFL and others argued that granting the petitions would have a significant adverse effect on the environment--particularly on air and water quality, species and habitats in Seneca Lake, and agricultural resources. CPFL cited PSL §5(2)[21] and contended that the Commission has defined "adequate service" as "service that is reliable, environmentally compatible and sustainable," and has determined that "matters such as…environmental externalities, energy efficiency, environmental justice,…economic development,…global warming emissions,…and other issues critical to the public interest may be considered."[22]

Ann Cain Crusade and Anne Cartinell Elder expressed general opposition to Petitioners' requests for lightened regulation. Krys Cail claimed that the specifics of Petitioners' business are not important under lightened regulation. She argued that there is some capacity for manipulation of wholesale electric prices inherent in vertical integration and posited that market manipulation may be a possibility.

Petitioners responded that CPFL's claim that Generation's request to resume operation of Unit #4 is governed by PSL Article 10 cannot be reconciled with the plain language of PSL §162(4)(d), which exempts from Article 10 any facility if, on or before August 1, 2012: "an application has

[21] The commission shall encourage all persons and corporations subject to its jurisdiction to formulate and carry out long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources.

[22] Case 07-E-1507, Long-Range Electric Resource Plan and Infrastructure Planning Process, Order Initiating Electricity Reliability and Infrastructure Planning (issued December 24, 2007), p. 5 n. 11 and pp. 5-6.

been made for a license, permit, certificate, consent or approval from any federal, state or local commission, agency, board or regulatory body in which application the location of the major electric generating facility has been designated by the applicant."[23] According to Petitioners, Generation holds a number of permits, including building permits from the Town of Torrey in which the location of the Facility was designated. Petitioners argued, moreover, that nothing in the State Energy Plan proposes to restrict in any way the use of natural gas in existing electric generating facilities. Contrary to CPFL's apparent claim that Generation has failed to show that its plan to provide generation-related services will be economically viable, Petitioners asserted that the Commission has not required such proof in previous PSL §68 proceedings, relying instead on the experience and financial strength of the petitioners and their affiliates. In the case of merchant generating facilities proposing to operate exclusively in New York's competitive wholesale markets, contended Petitioners, the Commission has consistently recognized that such facilities are in the public interest as required by PSL § 68 where they have been shown to provide benefits in the form of increased employment, improved reliability and lower prices for electric energy and capacity throughout New York State, while not imposing any costs on captive retail customers. According to Generation, its business plan is simple and clear on the face of its petition and, because Generation is not seeking to recover any portion of its costs of serving those markets through cost-based rates imposed on captive retail customers, the Commission has long recognized that there is no need for the kind of detailed

[23] The regulations implementing Article 10 became effective August 1, 2012.

review of Generation's business plans demanded by CPFL. Petitioners also opined that granting the CPCNs is in the public interest because the associated non-monetary benefits outweigh any environmental harm such that, if the economics are positive then society will be better off but, if the economics are negative no harm would result from a decision to grant CPCNs to Petitioners.

DISCUSSION

Environmental Quality Review

Environmental review concerning resumption of operation of the Facility was conducted pursuant to the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law (ECL). The purpose of SEQRA and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7) is to incorporate consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQRA requires agencies to determine whether the actions they are requested to approve may have a significant impact on the environment.

On June 16, 2015, DEC sought lead agency status, pursuant to SEQRA and its implementing regulations, in connection with its review of permit applications regarding the proposed resumption of operation of Generation's Unit #4. The permits DEC was requested to grant are state pollutant discharge elimination system (SPDES) renewal and modification permits, Title IV and V air permits, a water withdrawal permit and, for the associated pipeline, a general construction stormwater pollution prevention permit. As lead agency, DEC classified the

resumption of Facility operation as a Type 1 action[24] and conducted a coordinated environmental review with other involved agencies, including the Commission.

DEC issued a negative declaration regarding the SPDES renewal and modification and the Title IV and V air permits for the Facility (determining that no significant adverse environmental impact would exist) and published a notice thereof in the ENB on August 15, 2015. For the pipeline construction stormwater general permit, DEC will send an acknowledgement of receipt letter and issue a 5-acre waiver.

In a letter dated June 28, 2016, the Region 8 Office of DEC issued an amended negative declaration applicable to Generation's proposal to resume operation of the Facility. DEC determined the proposed project will not have a significant effect on the environment. DEC supports its negative declaration by indicating, in part, that: no impacts to surface waters are anticipated as a result of modification to the existing cooling water intake structure at the facility; the conversion of the facility to utilize natural gas as the primary fuel source will not result in any significant adverse impacts to air quality;[25] the facility will not involve the removal or destruction of vegetation; there will be no significant adverse impacts to historic or archaeological resources associated with the plant re-activation; operation of the facility will have no significant adverse impacts to increasing the use of energy; and

[24] Type I actions are described in 6 NYCRR §617.4 and Type II actions are set forth in 6 NYCRR §617.5. In a notice published in the Environmental Notice Bulletin (ENB) on August 15, 2015, DEC stated that the water withdrawal permit application was a SEQRA Type II action for an existing withdrawal and that, because only Unit #4 would be operated, withdrawal would be for a reduced volume.

[25] Unit #4 will have the capability to co-fire up to 19% biomass, which may include untreated and resonated wood.

there are no significant adverse impacts related to solid waste management associated with the project. The DEC proposes renewal and modification of the facility's existing SPDES permit to incorporate requirements to install cylindrical wedge wire intake screens on the plant's cooling water intakes and variable speed cooling pumps on Unit 4 as "Best Technology Available" to address requirements under the Federal Clean Water Act to reduce fish mortality.

In a separate letter dated June 28, 2016, DEC issued a determination of Complete Application for the Title IV and Title V air permits for the conversion and operation of the Greenidge Generating Station. The draft Title IV and Title V Air Permits permit the Greenidge Power Plant to operate on natural gas, and biomass, but do not permit the use of coal as a fuel source. Following a 30-day public comment period, DEC will submit Draft Title IV and Title V Permits to the U.S. Environmental Protection Agency (EPA), along with a response to comments and changes to the permits to address comments, if necessary. The EPA will then have 45 days to review the Draft Permits and bar issuance if either are determined not to be in compliance with applicable requirements or if the EPA otherwise objects to any conditions or other parts of the Draft Permits.

As the Department of Environmental Conservation is the lead agency for purposes of SEQRA review, the Commission's SEQRA responsibilities are limited to the role of an involved agency. DEC as lead agency conducted a coordinated review, made the required determination of significance on behalf of all involved agencies, and issuing negative declarations regarding the action of resuming operation of Unit #4. Therefore, absent any change in circumstances or new information of significance, of which the

Commission finds none in the record, the SEQRA review is complete.

Generation's request for lightened regulation as an electric corporation and the Pipeline Companies' requests for lightened and incidental regulation as gas corporations are Type II actions,[26] so no SEQRA review of those actions is required. A comprehensive environmental review of the gas transmission facility proposed by the Pipeline Companies in Case 15-T-0586 has been conducted pursuant to PSL Article VII. The granting of a PSL Article VII Certificate is specifically listed as a Type II action exempt from review under SEQRA.[27] The record in the Article VII proceeding contains extensive information regarding the potential environmental impacts of the gas transmission facility and provides protective measures tailored to avoid, minimize, and mitigate the environmental impacts. The granting of a CPCN approving the Pipeline Companies' exercise of the consent to use municipal property in conjunction with the gas transmission facility is not, by itself, an action subject to the requirements of SEQRA.[28]

Public Convenience and Necessity

At the outset, we note that PSL Article 10 does not apply to the construction work necessary for the resumption of operation of Unit #4 for two reasons. First, the building permit for the Facility, issued before the effective date of Article 10 and held by Generation, specifies the location of the Facility. Second, Generation does not propose any increase in the generator nameplate rating of the Facility.

[26] 6 NYCRR §617.5(c)(31).

[27] 6 NYCRR §617.5(c)(35).

[28] 6 NYCRR §617.2(b)(1).

According to PSL §68(1), no gas corporation or electric corporation may exercise any right, privilege or franchise or begin construction of gas plant or electric plant without obtaining a CPCN. Before the Commission may grant such CPCN, the gas or electric corporation must have filed a certified copy of its charter and a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.[29] The statute authorizes the Commission to grant a CPCN "whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is convenient and necessary for the public service. In making such a determination, the commission shall consider the economic feasibility of the corporation, the corporation's ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates, and whether issuance of a certificate is in the public interest.[30]

Generation and the Pipeline Companies have satisfied the statutory prerequisites for our grant of CPCNs. Generation and the Pipeline Companies have provided certified copies of their respective charters and verified statements of the president and secretary of the corporations, showing that they have received the required consent of the proper municipal authorities.

---

[29] If the gas or electric corporation has no president and secretary, 16 NYCRR §21.2(b) provides that a responsible official of Petitioner may provide such verified statement.

[30] PSL §68 was amended in 2013 to explicitly require consideration of the listed factors; however, similar consideration has been required, pursuant to 16 NYCRR §§ 21.2 and 21.3, for well over 40 years.

Petitioners have shown that they meet the statutory provisions regarding their operation as electric and gas corporations. First, their exercise of rights, privileges or franchises in this regard is economically feasible and the construction work necessary to restart the electric plant is financeable. Second, Generation will provide wholesale electric service and receive wholesale rates pursuant to NYISO's federal tariffs.[31] Third, no retail electric ratepayers will be adversely affected. Fourth, both Generation and the Pipeline Companies have at their disposal, a host of corporate resources that will be used to maintain and upgrade the Facility in the future. Finally, restarting the electric plant is in the public interest because of the local economic impacts it will provide and because it will add to the regions reliable electricity supply and sell its electricity into the wholesale market. The Commission's findings here are consistent with recent Commission decisions granting CPCNs for electric generating facilities to return to service.[32]

[31] The Pipeline Companies operations are economically feasible because Generation will need to compensate them for providing the natural gas to fuel the generating facility. Ratepayers have no obligations in these arrangements so there cannot be any adverse impacts to ratepayers.

[32] Case 14-E-0372, Binghamton BOP LLC, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued December 11, 2014; Case 16-E-0033, AG-Energy, L.P., Order Granting Certificate of Public Convenience and Necessity and Confirming Lightened Regulation (issued July 20, 2016).

Electric and Gas Regulation

Generation

Generation qualifies for lightened regulation of its operation of Unit #4. Lightened regulation was first applied to a competitive provider of electricity in the Wallkill Ruling,[33] and the requirements adhering upon lightened regulatory status were further expounded in subsequent orders and rulings.[34] This status serves to exempt competitive electricity providers from those statutory and regulatory requirements otherwise adhering to electric corporations that are inapplicable or otherwise unnecessary due to the nature of competitive operations.

Because the Facility will operate on a merchant basis and provide electricity in interstate commerce at the wholesale level by participating in markets administered by NYISO, Generation will lack captive ratepayers. Furthermore, Generation will lack the ability to exercise market power. In addition to the Facility, its affiliates own only one other generating facility in New York. Given the relatively small size of this other 29 MW cogeneration facility, Generation and its affiliates will be unable to exert horizontal market power. Furthermore, Generation and its affiliates will lack vertical market power. Other than the electric equipment and interstate gas pipeline necessary to interconnect the Facility, Generation and its

---

[33] Case 91-E-0350, Wallkill Generating Company L.P., Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company and Notice Soliciting Comments (issued August 21, 1991).

[34] See e.g., Case 99-E-0148, AES Eastern Energy, L.P. and AES Creative Resources, L.P., Order Providing for Lightened Regulation (issued April 23, 1999) (AES Order); Case 98-E-1670, Carr Street Generating Station, L.P., Order Providing for Lightened Regulation (issued April 23, 1999) (Carr Street Order).

affiliates will not own or operate any other transmission or distribution facilities.[35]

Under this approach, PSL Article 1 applies to Generation because it meets the definition of an electric corporation set forth in PSL §2(13) and is engaged in the manufacture of electricity under PSL §5(1)(b). It is therefore subject to provisions such as PSL §§11, 19, 24, 25, and 26, that prevent electric corporations from taking actions that are contrary to the public interests.[36]

All of Article 2 is restricted by its terms to the provision of service to retail residential customers, and so is inapplicable to entities engaged in wholesale service such as Generation. Certain provisions of Article 4 are also inapplicable because they are restricted to retail service.[37]

It was decided in the Carr Street and Wallkill Orders that the remaining provisions of Article 4 would pertain to wholesale generators.[38] Application of these provisions is

---

[35] The Petition asserts that the Pipeline Companies have no plans to provide natural gas delivery services for any customer other than Generation. Petition, p. 6.

[36] The PSL §18-a assessment is imposed on PSL-jurisdictional gross intrastate revenues. So long as Generation sells exclusively at wholesale, there are no PSL-jurisdictional revenues and no assessment is collected.

[37] See e.g., PSL §§66(12) (optional tariff filings); §66(21) (retail electric corporation storm plans); §67 (inspection of meters); §72 (hearings and rate proceedings); §72-a (reporting increased fuel costs); §75 (excessive charges); and, §76 (rates charged religious bodies and others).

[38] PSL §68 provides for the approval of the exercise of rights, privileges or franchises (including those related to the retailing of gas or electricity to customers via direct interconnection) and the construction of new gas and electric plant (except where PSL Article VII applies). PSL §§69, 69-a, and 70 provide for the review of securities issuances, reorganizations, and transfers of securities or works or systems, respectively.

deemed necessary to protect the public interest. These Article 4 provisions, however, are implemented in a fashion that limits their impact on the operation of competitive markets. Under PSL §66(6), wholesale generators satisfy Annual Report filing requirements through a format designed to accommodate their particular circumstances.[39] Filings required under other provisions of Article 4 are reviewed with the scrutiny commensurate with the level the public interest requires. This analysis of Article 4 adheres to Generation.

Regarding PSL §69, prompt regulatory action is possible through reliance on representations concerning proposed financing transactions. Additional scrutiny is not required to protect captive New York ratepayers, who cannot be harmed by the terms arrived at for these financings because lightly-regulated participants in competitive markets bear the financial risk associated with their financial arrangements.[40]

Regarding PSL §70, it was presumed in the Carr Street and Wallkill Orders that regulation would not "adhere to transfer of ownership interests in entities upstream from the parents of 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."[41] Wholesale service providers were also advised that the potential for the exercise of market power arising out of an upstream transfer would be sufficient to

[39] Case 11-M-0295, Annual Reporting Requirements, Order Adopting Annual Reporting Requirements Under Lightened Ratemaking Regulation (issued January 23, 2013).

[40] 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).

[41] Carr Street Order, p. 8; Wallkill Order, pp. 9-10.

defeat the presumption and trigger PSL §70 review. Generation may avail itself of this presumption. Under PSL §§66(10), we may require access to records sufficient to ascertain whether the presumption remains valid.

Turning to PSL Article 6, several of its provisions adhere only to the rendition of retail service. These provisions do not pertain to Generation because it is engaged solely in the provision of wholesale electric service.[42] Moreover, application of PSL §115, regarding requirements for the competitive bidding of utility purchases, is discretionary and will not be imposed on wholesale service providers. In contrast, PSL §119-b, regarding the protection of underground facilities from damage by excavators, adheres to all persons, including wholesale generators.

The remaining provisions of Article 6 need not be imposed generally on wholesale service providers.[43] These provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers. In comparison, so long as the wholesale generation market is effectively competitive, or market mitigation measures yield prices aligned with competitive outcomes, wholesale generators cannot raise prices even if their costs rise due to poor management. Moreover, imposing these requirements could interfere with wholesale generators' plans

---

[42] See e.g., PSL §112 (rate order enforcement); §113 (reparations and refunds); §114 (temporary rates); §114-a (lobbying costs in rates); §117 (consumer deposits); §118 (bill payments via an agency); §119-a (use of utility poles and conduits); and §119-c (tax benefits in rates).

[43] These requirements include approval of: loans under §106; the use of utility revenues for non-utility purposes under §107; corporate merger and dissolution certificates under §108; contracts between affiliated interests under §110(3); and, water, gas and electric purchase contracts under §110(4).

for structuring the financing and ownership of their facilities. This could discourage entry into the wholesale market, or introduce inefficiencies into the operation of that market, to the detriment of the public interest. As discussed in the Carr Street Order, however, market power issues may be addressed under PSL §§110(1) and (2), which afford us jurisdiction over affiliated interests. Generation has not reported any affiliation with a power marketer, foreclosing that avenue to the exercise of market power. Consequently, the requirements of §§ 110(1) and (2) are imposed on Generation only conditionally, to the extent a future inquiry into its relationships with an affiliate(s) becomes necessary.

Notwithstanding that it is lightly regulated, Generation is reminded that it and any other entities that exercise control over the operations of the Facility remains 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, to the extent discussed above and in previous orders.[44] Included among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,[45] to give notice of generation unit retirements,[46] and to report personal injury accidents pursuant to 16 NYCRR Part 125.

---

[44] See, Case 14-E-0372, supra.

[45] 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).

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

The Pipeline Companies

Pursuant to PSL §66(13), the Commission may exempt a gas corporation from making full reports and keeping accounts where the owning, operating, managing or controlling gas plant by such corporation is "wholly subsidiary and incidental to the other business carried on by it and is inconsiderable in amount and not general in its character."[47] Further, where the Commission grants such corporation permission, pursuant to PSL §68, "to supply gas only to less than twenty customers specified by the Commission, the Commission may, if the public interest permits, exempt such corporation from compliance with all or any of the provisions of [PSL Article 4] except those affecting matters of public safety and the provisions of [PSL §§65, 68, and 74]."[48]

In determining what is in the public interest, a balance must be struck between eliminating unnecessary and overly burdensome requirements and retaining requirements consistent with our duties and responsibilities. Where a gas corporation is formed by a larger economic entity as a convenient vehicle for carrying on the business of owning and operating gas plant, the Commission has consistently held that such corporation may qualify for an exemption pursuant to PSL

[47] The Commission has long held that the "other business" need not be wholly unregulated, but may be that of a lightly-regulated electric corporation. See e.g., Case 02-M-1034, AG-Energy, L.P., Order Providing for Lightened and Incidental Regulation and Granting a Certificate of Public Convenience and Necessity (issued November 25, 2002).

[48] The general rules implementing this subdivision are contained in 16 NYCRR Part 58. PSL § 74 has been recodified as PSL § 26.

§66(13).[49] Under the facts and circumstances presented in their Petition, the Commission finds that the Pipeline Companies are an integral part of an economic entity for which the holding of gas plant is incidental to its other activities, which are considerably related to the provision of wholesale electric generation services. The Commission also finds that both incidental and lightened regulation of the Pipeline Companies are in the public interest, given that they will operate on a merchant basis, serve only one customer, and not have any captive ratepayers. Moreover, they will not be able to exert market power given the limited electric and gas facilities that they and their affiliates own or control.

In applying incidental and lightened regulation to the Pipeline Companies, PSL Article 1 will adhere because they meet the definition of gas corporations under PSL §2(13) and are engaged in the transportation of gas under PSL §5(1)(b). The Pipeline Companies are therefore subject to provisions, such as PSL §§11, 19, 24, 25, and 26, which prevent gas corporations from taking actions that are contrary to the public interest.[50] Article 2, however, does not adhere, because it is applicable to residential customers. The Pipeline Companies will serve only Generation; if they desires to serve other business customers, they must request the Commission's permission to do so.

---

[49] See, Case 26516, U.S. Gypsum Company, Order Granting Petition (issued July 8, 1982); Case 29004, WyCatt Pipeline Company, Opinion No. 86-5(a) (issued June 9, 1986); Case 01-G-0045, Hudson valley Gas Corporation, et al., Order Concerning Exemption From Jurisdiction and Transfer of Property (issued May 2, 2001).

[50] The PSL §18-a assessment is a statutory requirement that cannot be waived. It will be applied against the Pipeline Companies retail gas revenues. The Pipeline Companies shall file annually, by January 31 of each year, a statement setting forth the revenues received from its rendition of regulated retail gas service for the preceding year.

The extent of the incidental regulation exemption is discretionary and based on our determination of the requirements of PSL Article 4 that are in the public interest. According to PSL §66(13), the requirements of PSL §§ 65 and 68 may not be waived. Moreover, the public interest does not permit us to exempt the Pipeline Companies from the provisions of PSL §§ 66(1), (2), (5), (8) and (10).[51] Pursuant to the provisions of PSL §§65(1) and 66(1), the Pipeline Companies are required to file the rates and terms of service for the retail gas transportation service they will provide (as they have already done by filing with us their Agreement with Generation).

In lieu of other Article 4 reporting requirements, the Pipeline Companies are directed to report annually, by January 31 of each year, the cumulative volume of gas delivered to their retail customer(s), and the overall revenues earned from that customer(s) for the prior calendar year, broken down by each month of that year. The Pipeline Companies must also keep appropriate accounts and records, but we see no need to require them to keep accounts pursuant to the Uniform System of Accounts. Should any customer have concerns about the Pipeline's Companies' accounting or other practices, it may file a complaint, pursuant to PSL §65, seeking appropriate relief.

Turning to PSL Article 6, application of PSL §115, on requirements for the competitive bidding of utility purchases, is discretionary and will not be imposed on the Pipeline Companies' gas operations. In contrast, PSL §119-b, on the

[51] These provisions empower the Commission respectively to: generally supervise gas corporations and gas plants; order system improvements; investigate and remedy acts and practices; inspect gas plant; and compel the production of records and the provision of answers and reports.

protection of underground facilities from damage by excavators, adheres to all persons, including the Pipeline Companies. Article 6 provisions regarding retail service will also adhere to them, again implemented with the reduced scrutiny appropriate to participants in competitive markets. Although the Pipeline Companies have not reported any affiliates in the gas business, PSL §§110(1) and (2), which afford us jurisdiction over affiliated interests, will be applied conditionally to the extent a future inquiry into the Pipeline Companies' relationships with affiliates becomes necessary. Most of the remaining provisions of Article 6 need not be imposed generally on the Pipeline Companies.[52] These provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates monopoly providers charged to captive retail customers. Since the Pipeline Companies will furnish retail gas transportation service on a competitive basis to a sophisticated business customer(s) that can take advantage of competitive options, these remaining Article 6 provisions do not pertain to their operations.

Finally, the Pipeline Companies are reminded that, notwithstanding lightened regulation, they remain subject to the PSL with respect to matters such as enforcement, investigation, the safety and reliability of facilities, system improvement, and the other requirements of PSL Articles 1 and 4 to the extent described above.

[52] These requirements include approval of: loans under §106; the use of utility revenues for non-utility purposes under §107; and, corporate merger and dissolution certificates under §108.

Rates and Services

The Pipeline Companies request that the Commission continue to exercise its oversight over the provisions of the Agreement in order to qualify for the exemption from regulation by FERC under Section 1(c) of the Natural Gas Act.[53] Under the Hinshaw amendment:

> The provisions of [the Natural Gas Act] shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal [Energy Regulatory Commission] that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.[54]

As requested by the Pipeline Companies, the Commission certifies that it will maintain and exercise regulatory jurisdiction, pursuant to PSL §§ 65 and 66, over its rates and services, as described above. The Pipeline Companies have filed their Agreement with Generation covering the rates, terms, and conditions for the transportation of natural gas and have requested that we exercise our jurisdiction pursuant to PSL

[53] This provision of the Natural Gas Act is commonly referred to as the Hinshaw amendment, named after the Congressman who introduced the bill including this provision.

[54] 15 U.S.C. §717(c).

§66(12(d) in connection with the Agreement, which we will do. Although the Pipeline Companies currently intend to serve only one customer (i.e., its affiliate, Generation), any amendments to its Agreement, or new agreements to serve additional customers, must be filed with the Commission. The Commission will also maintain jurisdiction to review any complaints or disputes arising under the Agreement or any other customer agreements.

CONCLUSION

Having held the hearing required by PSL §68(1) on November 4, 2015, the Commission finds that Generation's exercise of rights, privileges or franchises as an electric corporation, including the construction work necessary to resume the operation of Unit #4 of the Greenidge Generating Station, and the Pipeline Companies' exercise of rights, privileges or franchises as gas corporations are convenient and necessary for the public service. We will therefore grant Petitioners the CPCNs they seek. We will also approve Generation's request for lightened regulation and the pipeline companies' request for lightened and incidental regulation.

The Commission orders:

1. Certificates of Public Convenience and Necessity are granted to Greenidge Generation LLC, Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation as described in the body of this Order.

2. Greenidge Generation LLC, Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation and their affiliates shall comply with the Public Service Law in conformance with the requirements set forth in the body of this Order.

3. These proceedings are closed.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary