

The Dax Law Firm, P.C.

54 State Street, Suite 805
Albany, New York 12207
www.daxlawfirm.com

Telephone: (518) 432-1002
Facsimile: (518) 432-1028

John W. Dax

William F. McLaughlin*

**Also Admitted in Massachusetts & District of Columbia*

September 28, 2016

Electronic Mail secretary@dps.ny.gov

Hon. Kathleen H. Burgess
Secretary to the Commission
New York State Public Service Commission
Agency Building 3
Albany, New York 12223-1350

Re: Case 16-E-____ – Verified Petition of CCI Rensselaer LLC For Approval of Debt Financing Pursuant To Public Service Law Section 69 and a Related Intra-Corporate Transfer of CCI Rensselaer LLC Pursuant to Public Service Law Section 70

Dear Secretary Burgess:

Enclosed for filing are the Verified Petition, Verification and completed Short Environmental Assessment Form Part 1 in support of the Application of CCI Rensselaer LLC for approval pursuant to Public Service Law Section 69 of the planned debt financing described therein. CCI Rensselaer also seeks approval of a related intra-corporate transfer.

I also request that the Commission publish any notice required by the State Administrative Procedure Act in the October 19, 2016 New York State Register.

Respectfully submitted,

THE DAX LAW FIRM, P.C.

John W. Dax

JWD:lmd

Enclosures

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

----- X
:
In the Matter of :
:
:
Verified Petition of CCI Rensselaer LLC For Approval : 16-E-____
of Debt Financing Pursuant To Public Service Law :
Section 69 and a Related Intra-Corporate Transfer of :
CCI Rensselaer LLC Pursuant to Public Service Law :
Section 70. :
:
:
----- X

**VERIFIED PETITION OF CCI RENSSELAER LLC
FOR APPROVAL OF DEBT FINANCING PURSUANT TO
PUBLIC SERVICE LAW SECTION 69 AND A RELATED
INTRA-CORPORATE TRANSFER OF CCI RENSSELAER LLC
PURSUANT TO PUBLIC SERVICE LAW SECTION 70**

Dated: September 28, 2016
Albany, New York

John W. Dax
William F. McLaughlin
The Dax Law Firm, P.C.
Attorneys for CCI Rensselaer LLC
54 State Street, Suite 805
Albany, New York 12207
Telephone: (518) 432-1002
Facsimile: (518) 432-1028
Email: jdax@daxlawfirm.com

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

----- X
:
In the Matter of :
:
:
Verified Petition of CCI Rensselaer LLC For Approval : 16-E-____
of Debt Financing Pursuant To Public Service Law :
Section 69 and a Related Intra-Corporate Transfer of :
CCI Rensselaer LLC Pursuant to Public Service Law :
Section 70. :
:
:
----- X

INTRODUCTION

CCI Rensselaer LLC (CCI Rensselaer) is the sole owner of an approximately 80 MW electric generating facility located at 39 Riverside Avenue, Rensselaer, New York, (Rensselaer Facility). CCI Rensselaer seeks authorization to pledge its ownership of the Rensselaer Facility as security for a financing arrangement that will be executed by an upstream affiliate. One hundred percent (100%) of the ownership interests in CCI Rensselaer is owned, through a series of intermediate holding companies, by Castleton Commodities International LLC, a Cayman Islands limited liability company (CCI). In order to effectuate the planned financing, CCI intends to transfer ownership interests in CCI Rensselaer from its current direct owner, CCI U.S. Asset Holdings II LLC (CCIUSAH2), to a series of existing and newly created, intermediate, wholly owned CCI subsidiaries.¹

As a result of the transaction, 100% of the direct ownership interests in CCI Rensselaer will be transferred from CCIUSAH2 to the newly formed CCI subsidiary, CCI Power Asset Holding LLC (PAH). At the same time, 100% of the ownership interests in PAH will be transferred to a second, newly created CCI subsidiary, New HoldCo. New HoldCo, in turn, will

¹ CCIUSAH2 is an indirect, wholly owned subsidiary of CCI (f/k/a Louis Dreyfus Highbridge Energy LLC).

be a 100% wholly owned subsidiary of a newly created CCI subsidiary, New ParentCo., which itself will be a 100% wholly owned subsidiary of CCI U.S. Asset Holdings LLC (CCIUSAH), a wholly owned subsidiary of CCI. Accordingly, the proposed intra-corporate transfers will not result in any change in the ultimate ownership of the Rensselaer Facility because 100% of the ownership interests in CCI Rensselaer will continue to be held exclusively by CCI, through its wholly owned subsidiary CCIUSAH, which, in turn, will hold, indirectly, the same 100% ownership interest in the Rensselaer Facility that was previously held by CCIUSAH2.

Other than the transfer of CCI Rensselaer to PAH, which is subject to Public Service Law § 70, the upstream corporate re-structuring and the creation of New HoldCo and New ParentCo are not transfers subject to Section 70, but if the Commission concludes otherwise, CCI Rensselaer asks that the transfers be approved along with the transfer of CCI Rensselaer and the proposed financing.

BACKGROUND

CCI Rensselaer (f/k/a Rensselaer Cogeneration LLC) is a Delaware limited liability company, with its principal place of business at 39 Riverside Avenue, Rensselaer, New York. CCI Rensselaer is a lightly regulated Exempt Wholesale Generator that owns and operates an approximately 80 MW natural gas-fired electric generating facility located in Rensselaer, New York.² CCI Rensselaer is a direct, wholly owned subsidiary of CCIUSAH2, which, in turn, is an indirect wholly owned subsidiary of CCI.

CCI is an independent energy company. Its principal place of business is at 2200 Atlantic Street, Suite 800, Stamford, Connecticut. Through its wholly owned

² See Case 11-E-0663, Rensselaer Holdings LLC and Louis Dreyfus Highbridge Energy LLC, *Order Approving Transfer* (February 22, 2012)(approving transfer of Rensselaer Cogeneration and confirming lightened regulations).

subsidiaries, CCI owns and operates electric generation facilities and other energy assets, and engages in the marketing of physical energy commodities, including electricity, natural gas and solid fuels, and related financial instruments. Through its subsidiary, CCIUSAH, CCI owns Roseton Holdings LLC, which in turn owns Roseton Generating LLC (Roseton Generating). Roseton Generating is the owner of the Roseton Generating Station, a 1,160 MW generation facility located in Newburgh, New York. By Order issued April 17, 2015, the Commission authorized Roseton Generating (f/k/a CCI Roseton LLC) to enter into a senior secured credit facility and other credit arrangements that would enable Roseton Generating to borrow up to \$350 million for a term of seven years, using the Roseton Generation Stations to secure the loan.³

PROPOSED FINANCING

The new financing will be secured by a portfolio of CCI's generating assets, including those owned by Roseton Generating and CCI Rensselaer and will be commensurate with the financing approved in the *Roseton Financing Order*. The borrowing under the credit facility and other credit arrangements contemplated therein will remain capped at three hundred and fifty million dollars (\$350,000,000.00). The credit facility will be secured with a first lien on a portfolio of assets that will contain, *inter-alia*, all of the assets of New HoldCo, including all of the assets of CCI Rensselaer, *i.e.*, the Rensselaer Facility and related permits and contracts and other intangibles. Consistent with the *Roseton Financing Order*, the proceeds of the financing will be used to pay for future plant improvements, for working capital purposes, to align the capital structure of CCI Rensselaer with CCI's companywide capital structure and for other lawful purposes.

³ 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 Making Other Findings* (April 17, 2015) (*Roseton Financing Order*).

RELATED INTRA-CORPORATE TRANSFER

To effectuate the creation of the credit facility, CCI Rensselaer's 100 percent (100%) owner, CCIUSAH2, has agreed to transfer 100 percent (100%) of its ownership interests in CCI Rensselaer to a newly created intermediate holding company, CCI Power Asset Holding LLC (PAH) owned by CCIUSAH2's affiliate CCIUSAH. As part of the transaction, CCIUSAH also will create a direct wholly owned subsidiary company, New ParentCo, to act as a holding company for a third intermediate holding company, New HoldCo. Thereafter, CCIUSAH will be the direct owner of 100% of the ownership interests in New ParentCo., which in turn will be the direct owner of 100% of the ownership interests in New HoldCo., which will acquire 100% of the ownership interests in PAH. The credit facility will be held by New HoldCo with New ParentCo acting as the guarantor of New HoldCo's debt obligations under the credit facility, pledging its 100 percent (100%) ownership interest in PAH directly, and CCI Rensselaer, indirectly, as additional security.

THE COMMISSION SHOULD APPROVE THE PLANNED OWNERSHIP CHANGES IN THE PUBLIC INTEREST

The planned rearrangement of the ownership structure is purely intra-corporate, will result in no transfer of ownership interests outside the CCI organization and will effect no change in the ultimate control over CCI Rensselaer or the Rensselaer Facility. Further, because the identity of the ultimate owner of the Rensselaer Facility and the nature of its New York electric industry activities are not changing, the intra-corporate ownership changes described above will not result in any increase in market share, provide any opportunity for the exercise of market power, nor create potential to harm captive rate-payer interests. Therefore, the transfer should be approved in the public interest.

As the Commission observed in the *Roseton Financing Order*, the focus of the inquiry under PSL §70(1) for the transfer of a lightly-regulated entity centers 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 ratepayers interests.

(*Roseton Financing Order* at 6). Here, CCI Rensselaer is a lightly regulated entity whose intercorporate ownership transfer does not create an opportunity for the exercise of market power, or the potential to harm captive ratepayers. Moreover, in the *Roseton Financing Order*, the Commission thoroughly examined all of the ownership interests and market share of CCI Rensselaer's current owner, CCI, and concluded that the intercorporate transfer of Roseton Generating was appropriate.

A similar result should be reached here because this proposed transfer does not pose the potential for the exercise of horizontal or vertical market power for the same reasons recited in the *Roseton Financing Order*. Here, CCI currently owns all of the interests in CCI Rensselaer indirectly, and will continue to own them indirectly after the transaction. As explained in the *Roseton Financing Order*, owning them indirectly after transferring the interests to PAH as an intermediate holding company will not enhance market power because its share of the competitive wholesale market will not change. Furthermore, neither CCI Rensselaer nor its affiliates controls electric delivery facilities in New York, other than interconnections, or exerts a substantial influence over inputs. Finally, as a participant in the competitive wholesale market for electricity, CCI Rensselaer has no captive ratepayers and the transfer will leave existing operational controls in place. Consequently, the transfer transactions should be approved.

**APPLICATION OF LIGHTENED REGULATION TO
CCI RENSSELAER SHOULD BE CONTINUED**

In a *Declaratory Ruling on Review of an Upstream Transfer Transaction* in Case 12-E-0442,⁴ Petition of LDH Rensselaer LLC (f/k/a Rensselaer Cogeneration LLC), the Commission reviewed the market activities of CCI Rensselaer’s affiliates and concluded that a transfer of upstream interests in CCI Rensselaer raised no vertical or horizontal market power issues because its share of the NYISO market would remain at existing levels and accordingly that lightened regulation would apply in accordance with the Commission’s lightened regulation policies (*Transfer Order* at 4-6). Similarly, the upstream transfer of ownership proposed herein will not result in a change in horizontal or vertical market power. Because the level of market power will remain unchanged after the ownership restructuring and credit facility described herein have been created, CCI Rensselaer asks that the Commission confirm that lightened regulation will continue to apply to the Rensselaer Facility and to CCI Rensselaer.

**APPROVAL OF THE FINANCING IS CONSISTENT
WITH THE COMMISSION’S LIGHTENED REGULATION REGIME**

Approval of CCI Rensselaer’s financing plans is appropriate. Commission scrutiny of financings proposed by lightly regulated companies is reduced to a level appropriate for companies that operate in a competitive environment.⁵ Where a financing “appears to be for a statutory purpose and does not appear contrary to the public interest” the Commission grants its approval together with the flexibility of the borrower to “modify, without [its] prior Commission

⁴ Case 12-E-0442 – Petition of LDH Rensselaer LLC for a Declaratory Ruling Regarding Application of Public Service Law 70 or in the Alternative, Approval Under Public Service Law 70, *Declaratory Ruling on Review of an Upstream Transfer Transaction* (December 14, 2012) (*Transfer Order*).

⁵ Case 11-E-0351 – Stony Creek LLC, *Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Regulation and Approving Financing* (December 15, 2011) at 41-42.

approval, the identity of the financing entities [and] the payment terms.”⁶ Consistent with the Commission’s practice and the *Roseton Financing Order*, CCI Rensselaer requests approval to enter into the planned credit facility agreement and other credit arrangements contemplated thereunder with the same flexibility and with the credit to be acquired capped at Three Hundred Fifty Million Dollars (\$350,000,000.00).

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

Under the State Environmental Quality Review Act (SEQRA), Article 8 of the New York State Environmental Conservation Law, and its implementing regulations (6 NYCRR § 617 and 16 NYCRR § 7), the Commission must consider the environmental impacts of certain actions it is authorized to approve and then determine whether such action may result in a significant impact on the environment. The proposed financing is appropriately classified as an “unlisted action” under SEQRA because it does not fall within the definition of Type I or Type II actions listed in 6 NYCRR §617.4, 617.5 and 16 NYCRR §7.2.⁷ Accordingly, it is proper for the Commission to declare itself the SEQRA “lead agency,” to conduct an environmental assessment, and to determine the significance of the actions proposed. To facilitate such assessment, attached hereto is a Short Environmental Assessment Form with Part I completed, describing and evaluating the potential for impacts from the proposed financing.

As set forth therein, no significant adverse environmental effect will result from the proposed financing. There will be no changes to the physical configuration of the Rensselaer Facility and the Rensselaer Facility will continue to be operated in accordance with the requirements specified in the relevant environmental permits and all applicable environmental

⁶ *Id.*

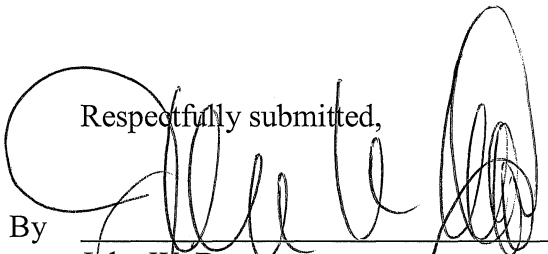
⁷ See, e.g., Case 05-E-1341 Orion Power Holdings, Inc., *Order Approving Transfer and Financings and Making Other Findings* (February 15, 2006) at 4-5.

laws. As a result, the proposed financing will not cause or result in new environmental impacts. Therefore, the Commission should follow its existing precedent and issue a negative declaration regarding this transaction and undertake no further environmental review.

CONCLUSION

For the reasons stated herein, CCI Rensselaer requests that the Commission approve the described debt financing and the associated change in its ownership.

Dated: September 28, 2016
Albany, New York

Respectfully submitted,

By _____
John W. Dax
William F. McLaughlin
THE DAX LAW FIRM, P.C.
Attorneys for CCI Rensselaer LLC
54 State Street, Suite 805
Albany, New York 12207
Telephone: (518) 432-1002
Facsimile: (518) 432-1028
Email: jdax@daxlawfirm.com

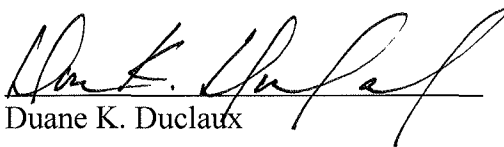
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

----- X
:
In the Matter of :
:
:
Verified Petition of CCI Rensselaer LLC For Approval : 16-E-____
of Debt Financing Pursuant To Public Service Law :
Section 69 and a Related Intra-Corporate Transfer of :
CCI Rensselaer LLC Pursuant to Public Service Law :
Section 70. :
:
:
----- X

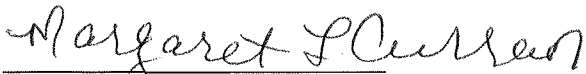
VERIFICATION

STATE OF CONNECTICUT)
) SS:
COUNTY OF FAIRFIELD)

I, Duane K. Duclaux, being first duly sworn, attest that I am Deputy General Counsel for Castleton Commodities International LLC, and that I have authority to verify the foregoing Verified Petition. I have read the foregoing Verified Petition and I affirm the facts, representations and statements set forth herein regarding Petitioner CCI Rensselaer LLC are true and correct to the best of my knowledge, information and belief.


Duane K. Duclaux

Sworn to before me this
28 day of September, 2016



Notary Public

MARGARET L. CURRAN
NOTARY PUBLIC, STATE OF CONNECTICUT
MY COMMISSION EXPIRES MARCH 31, 2018