

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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In the Matter of Indeck Corinth Limited  
Partnership, Petition for an Order Providing  
For Lightened Regulation

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Case 16-E- \_\_\_\_\_

**PETITION FOR AN ORDER PROVIDING FOR LIGHTENED REGULATION**

David B. Johnson  
READ AND LANIADO, LLP  
Attorneys for Indeck Corinth  
Limited Partnership  
25 Eagle Street  
Albany, New York 12207  
Phone: (518) 465-9313  
Facsimile: (518) 465-9315

Dated: July 22, 2016

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**I. INTRODUCTION**

Indeck Corinth Limited Partnership (“Indeck Corinth”), the owner and operator of a 128 megawatt natural gas-fired cogeneration facility located in Corinth, New York (the “Facility”), hereby petitions the Commission for an order declaring that it will be subject to regulation as an electric corporation under a lightened regulatory regime consistent with the Commission’s orders providing for lightened regulation for wholesale electric generating facilities.<sup>1</sup>

**II. DESCRIPTION OF INDECK CORINTH**

Indeck Corinth is a limited partnership organized under the laws of Delaware and is wholly owned by Indeck Corinth, LLC, and Indeck Energy Services of Corinth, Inc., which both are wholly-owned subsidiaries of Indeck Energy Services, Inc. (“Indeck”), a privately held corporation. Indeck, an international developer of cogeneration and independent power plants, owns five generating facilities in New York (including the Facility) and one facility in New England.

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<sup>1</sup> See Case 98-E-1670, *Carr Street Generating Station, L.P.*, Order Providing for Lightened Regulation (Apr. 23, 1999) (“*Carr Street*”); Case 99-E-0148, *AES Eastern Energy, L.P. and AES Creative Resources, L.P.*, Order Providing for Lightened Regulation (Apr. 23, 1999) (“*AES*”).

Indeck Corinth's principal office is located at 600 N. Buffalo Grove Road, Suite 300, Buffalo Grove, Ill. 60089. Correspondence and communications concerning this filing should be directed to:

Michael Ferguson  
Vice President Operations and Asset Management  
Indeck Corinth Limited Partnership  
600 North Buffalo Grove Road  
Suite 300  
Buffalo Grove, Illinois 60089  
(847) 520-3212  
(847) 520-3235 (fax)

and to Indeck Corinth's counsel:

David B. Johnson, Esq.  
Read and Laniado, LLP  
25 Eagle Street  
Albany, New York 12207  
(518) 465-9313  
(518) 465-9315 (fax)

The Facility is a 128 megawatt natural gas-fired cogeneration facility located in Corinth, New York, operated by Indeck Operations Inc. The Facility commenced operation in July 1995, as a qualifying facility ("QF") pursuant to the Public Utility Regulatory Policies Act of 1978 and began selling electricity to Consolidated Edison Company of New York, Inc. ("Con Ed") pursuant to a twenty-year power purchase agreement. The Facility is interconnected to the transmission system owned by the Niagara Mohawk Power Corporation and operated by the New York Independent System Operator, Inc. Indeck Corinth was exempt from the Commission's regulation under the Public Service Law because it was a QF selling electricity exclusively at wholesale to Con Ed.<sup>2</sup>

On July 1, 2015, Indeck Corinth self-certified its Facility with the Federal Energy Regulatory Commission ("FERC") as an exempt wholesale generator pursuant to the Public

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<sup>2</sup> 18 C.F.R. § 292.602; see Case 92-E-0034, *Selkirk Cogen Partners, L.P.*, Declaratory Ruling (May 18, 1992).

Utility Holding Company Act of 2005.<sup>3</sup> On July 22, 2015, FERC authorized Indeck Corinth to sell power at market-based rates, effective July 1, 2015.<sup>4</sup> On June 30, 2015, Indeck Corinth informed FERC that it elected to relinquish the Facility's QF status and that its election would be given effect as of July 1, 2015. The Facility now sells energy, capacity, and ancillary services into the emerging wholesale market for competitive generation in New York and the surrounding regions. As Indeck Corinth is no longer a QF, it is now subject to the Commission's jurisdiction.

### **III. INDECK CORINTH REQUESTS THAT IT BE REGULATED UNDER THE LIGHTENED REGULATORY REGIME THAT THE COMMISSION HAS APPLIED TO OTHER WHOLESALE GENERATORS.**

Indeck Corinth requests that it be regulated under a lightened regulatory regime similar to the regimes the Commission has imposed on other independent power producers engaged in the selling of electric energy exclusively at wholesale. Indeck Corinth's characteristics are comparable to those generators that the Commission has granted lightened regulation in the past. Furthermore, lightened regulation will provide Indeck Corinth with maximum flexibility to serve the competitive electricity market.

The Commission first articulated its policy on the regulatory regime of competitive wholesale providers of electricity in *Wallkill Generating Co.*<sup>5</sup> In that case, the Commission held that it could relax those regulatory procedures that were intended to apply to monopoly utilities when exercising its jurisdiction over generators operating in a competitive environment.<sup>6</sup> Subsequently, the Commission established the regulatory requirements that should be imposed

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<sup>3</sup> *Indeck Corinth Limited Partnership*, FERC Docket No. EG15-99-000, Self-Certification of EWG Status of Indeck Corinth Limited Partnership (June 23, 2015).

<sup>4</sup> *Indeck Corinth Limited Partnership*, FERC Docket No. ER15-1972-000, Letter Order Granting Market-Based Rate Authorization (July 22, 2015).

<sup>5</sup> Case 91-E-0350, *Wallkill Generating Co., L.P.*, Order Establishing Regulatory Regime (Apr. 11, 1994).

<sup>6</sup> *See id.* at 6 (“[A] competitive provider of electric services[] does not require the same degree of regulatory scrutiny as is applied to monopoly suppliers.”).

on wholesale electric service providers in its orders imposing lightened regulation on Carr Street Generating Station<sup>7</sup> and AES Eastern Enterprises.<sup>8</sup>

In *Carr Street*, the Commission held that the generator was subject to regulation as an electric corporation under Public Service Law (“PSL”) § 2(13)<sup>9</sup> and as an entity engaged in the manufacture of electricity under PSL § 5(1)(b).<sup>10</sup> As such, the generator was subject to the Commission’s jurisdiction under PSL §§ 11, 19, 24, 25, and 26.<sup>11</sup> The Commission also held that the generator was subject to certain provisions of Article 4, namely, PSL §§ 66(6), 68, 69, 69-a, and 70.<sup>12</sup> Further, the Commission stated that it would presume that PSL § 70 regulation would not apply to transfers of ownership interests so long as no potential for the exercise of market power arising out of an upstream power transfer exists.<sup>13</sup>

Finally, the Commission determined that most of the provisions of Article 6 do not apply to wholesale generators.<sup>14</sup> Nonetheless, because the generator would have its capacity marketed by an affiliated power marketer, the Commission ordered it to comply with PSL § 110(2), which grants the Commission access to books, records, and the filing of reports of generators in the event that the affiliate relationship creates a market power issue.<sup>15</sup> The Commission also ordered the generator to comply with PSL § 119-b, regarding the protection of underground facilities

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<sup>7</sup> See *Carr Street*.

<sup>8</sup> See *AES*.

<sup>9</sup> *Carr Street* at 6.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 6–7.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> See *id.* at 8–10.

<sup>15</sup> *Id.* at 10.

from damage by excavators.<sup>16</sup> As for the remainder of the Article 6 requirements, the Commission determined that the provisions either do not pertain to wholesale generators, or would unnecessarily hinder competitive wholesale generators by interfering with their flexibility to structure the financing and ownership of their facilities.<sup>17</sup> In more recent orders, the Commission has imposed requirements on owners of lightly regulated wholesale electric generators to conduct tests for stray voltage on all publicly accessible electric facilities,<sup>18</sup> to give notice of generation unit retirements,<sup>19</sup> to report personal injury accidents pursuant to 16 NYCRR Part 125,<sup>20</sup> and to file annual reports.<sup>21</sup>

In *AES*, the Commission applied the principles announced in *Carr Street* to a similar generator. The Commission determined that, as a wholesale generator like Carr Street, Articles 1 and 4 of the PSL would be applied to AES's operations, but with reduced scrutiny and less stringent filing requirements, and that most of Article 6 would not be imposed.<sup>22</sup> The Commission did not impose PSL § 110(2) requirements on the generator because, unlike Carr Street, it was not affiliated with a power marketer.<sup>23</sup> The Commission has since applied this lightened regulatory regime to other generators selling exclusively at wholesale.<sup>24</sup>

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<sup>16</sup> *Id.* at 9, 10.

<sup>17</sup> *Id.* at 9.

<sup>18</sup> Case 04-M-0159, *Safety of Electric Transmission and Distribution Systems*, Order Instituting Safety Standards (Jan. 5, 2005) and Order on Petitions for Rehearing and Waiver (July 21, 2005).

<sup>19</sup> Case 05-E-0889, *Policies Regarding Generation Unit Retirements*, Order Adopting Notice Requirements for Generation Unit Retirements (Dec. 20, 2005).

<sup>20</sup> *See, e.g.*, Case 08-E-0738, *IPP Energy LLC and Standard Binghamton LLC*, Order Approving Transfer and Providing for Lightened Regulation (Oct. 21, 2008).

<sup>21</sup> Indeck-Corinth filed an annual report for calendar year 2015 with the Commission on June 30, 2016.

<sup>22</sup> *AES* at 4–5.

<sup>23</sup> *Id.* at 5.

<sup>24</sup> *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 (May 9, 2014); Case 12-E-0166, *Edgewood Energy, LLC*, Order Granting Certificate of Public Convenience and Necessity (Oct. 23, 2012); Case 10-

Indeck Corinth qualifies for the lightened regulatory regime established in Commission precedent. Like other wholesale generators, Indeck Corinth sells its electricity exclusively to wholesale competitive markets. Moreover, Indeck Corinth is foregoing its QF status and shifting to the Commission's jurisdiction, which is akin to Carr Street. Thus, consistent with Commission precedent, Indeck Corinth requests that the Commission apply the relevant sections of Article 1 and Article 4 to its operation with reduced scrutiny and less stringent filing requirements, and not impose Article 6, except for PSL § 119-b.

#### **IV. CONCLUSION**

Based on the foregoing, Indeck Corinth respectfully requests that the Commission declare that the Facility's operation as an electric corporation will be subject to a lightened regulatory regime as requested herein.

Respectfully submitted,

READ AND LANIADO, LLP  
Attorneys for Indeck Corinth  
Limited Partnership

By: David B. Johnson  
David B. Johnson  
25 Eagle Street  
Albany, New York 12207  
Phone: (518) 465-9313  
Facsimile: (518) 465-9315  
dbj@readlaniado.com

Dated: July 22, 2016

## VERIFICATION

I, Michael Ferguson, as Vice President Operations and Asset Management of Indeck Corinth Limited Partnership, do hereby affirm that the contents of this document are true to the best of my knowledge and belief.

*Michael Ferguson*

Signed:

Date: July 20, 2016