

**BEFORE THE
PUBLIC SERVICE COMMISSION
STATE OF NEW YORK**

In the Matter of the Joint Petition of TC RAVENSWOOD, LLC, TC RAVENSWOOD SERVICES CORP., and HELIX GENERATION, LLC, for Expedited Approval Pursuant to Sections 70 and 83 of the Public Service Law for the Proposed Transfer of Ownership Interests in Certain Generating and Related Assets, and Pursuant to Sections 69 and 82 of the Public Service Law for a Proposed Financing and for Related Approvals.

Case 17-M-

JOINT PETITION OF TC RAVENSWOOD, LLC, TC RAVENSWOOD SERVICES CORP. AND HELIX GENERATION, LLC, FOR EXPEDITED APPROVAL PURSUANT TO SECTIONS 70 AND 83 OF THE PUBLIC SERVICE LAW FOR THE PROPOSED TRANSFER OF OWNERSHIP INTERESTS IN CERTAIN GENERATING AND RELATED ASSETS, AND PURSUANT TO SECTIONS 69 AND 82 FOR A PROPOSED FINANCING AND FOR RELATED APPROVALS

TC Ravenswood, LLC (“TC Ravenswood”), TC Ravenswood Services Corp. (“TC Ravenswood Services”) and Helix Generation, LLC (“Helix Generation” and collectively, with TC Ravenswood and TC Ravenswood Services, the “Petitioners”) respectfully submit this Joint Petition for Approval Pursuant to Sections 70 and 83 of the Public Service Law for the Proposed Transfer of Certain Generating and Related Assets, Pursuant to Sections 69 and 82 of the Public Service Law for a Proposed Financing and for Related Approvals, pursuant to Rules 3.5 and 8.1 of the Commission’s Procedural Rules, 16 N.Y.C.R.R. §§ 3.5 and 8.1 (2015).

**INTRODUCTION AND
REQUEST FOR EXPEDITED ACTION**

In this proceeding, Petitioners hereby jointly petition the New York State Public Service Commission (the “Commission”) (1) for approval under Section 70 of the Public Service Law (“PSL”) of a transfer of all of the membership interests in TC Ravenswood, an electric corporation subject to the Commission’s jurisdiction under the PSL, from TransCanada Facility USA, Inc. (“TC Facility”) to Helix Generation (the “Section 70 Transfer”), (2) for approval under Section 83 of the PSL of a transfer of all of the membership interests in TC Ravenswood Services, a steam corporation subject to the Commission’s jurisdiction under the PSL from TC Facility to Helix Generation (the “Section 83 Transfer”) (collectively, the “Transfers”), (3) for a declaratory ruling that the Commission need not review, under PSL Section 70, an intra-company transfer converting TC Ravenswood Services from a New York transportation corporation to a New York limited liability company (the “Conversion”), or in the alternative, for the approval of such Conversion under PSL Section 70, and (4) for approval of a financing related to the Transfers under Sections 69 and 82 of the PSL.

Petitioners also ask the Commission to confirm that, following the proposed Transfers, TC Ravenswood will continue to be subject to lightened regulation as a New York electric corporation, that TC Ravenswood Services will continue to be subject to incidental and lightened regulation as a New York steam corporation and that their affiliate, Unit 40 Sublessor, LLC, which is described in further detail below, will continue not to be considered an electric corporation or a steam corporation subject to regulation by the Commission under the PSL. Petitioners further request that the Commission waive the applicable filing requirements set forth in Parts 31.1 and 39.1 of the Commission’s regulations.

Petitioners also respectfully request expedited treatment to permit the Commission to act on this Joint Petition on or before April 20, 2017, in order to align with other pending regulatory approvals for this transaction (namely, approval from the Federal Energy Regulatory Commission (“FERC”))¹ and in order permit the Conversion to occur and the Transfers to close and financing to occur as scheduled in April, 2017.

BACKGROUND

I. DESCRIPTION OF THE PARTIES

A. The TransCanada Parties

TC Ravenswood is a lightly regulated electric corporation that owns or holds the leasehold interest in and operates the electric generation facilities known as Ravenswood Generating Station. Ravenswood Generating Station generally comprises certain electric generation facilities, including Units 10, 20, 30 and 40, along with certain ancillary equipment, interconnection and other facilities and related real property, located in Queens, New York.² TC Ravenswood Services is an incidentally and lightly regulated steam corporation that owns the

¹ Early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 has already been granted by the Federal Trade Commission and the Antitrust Division of the Department of Justice.

² TC Ravenswood is the holder of the Certificate of Environmental Compatibility and Public Need originally issued on September 7, 2001 to construct and operate Unit 40 (“Article X Certificate”). The change in ownership of TC Ravenswood as described herein will not transfer TC Ravenswood’s responsibility to comply with the terms, limitations, and conditions contained in the Article X Certificate. Therefore, Petitioners will provide written notice of the change in ownership to the Secretary to the Commission within seven days of such change. *See* 16 N.Y.C.R.R. § 1000.17(a); *see also* Case 99-F-1625, *Application by KeySpan Energy for a Certificate of Environmental Compatibility and Public Need to Construct and Operate a 250 Megawatt, Cogeneration, Combustion Turbine Electric Generating Facility to be Developed at the Existing Ravenswood Generating Station in Long Island City, Borough of Queens*, Joint Notice of KeySpan-Ravenswood, LLC and TransCanada Facility USA, Inc. of Intention to Transfer All of the Membership Interests in KeySpan-Ravenswood, LLC to TransCanada Facility USA, Inc. (filed June 27, 2008) at 3; Case 03-F-0597, *Petition of Athens Generating Company L.P. for Approval of the Transfer of its Certificate of Environmental Compatibility and Public Need Issued June 15, 2000 to New Athens Generating Company, LLC*, Order Approving Transfer (issued and effective September 17, 2003) at 4, note 7. Petitioners will also separately submit a compliance filing pursuant to 16 N.Y.C.R.R. § 1002.2 to address the manner in which Helix Generating and its affiliates will provide security for the retirement of Unit 40 required by the Article X Certificate.

real property beneath the steam facilities on the Ravenswood Generating Station site and owns the Boiler “A” House and certain other steam facilities (the “Steam Facilities”). All of the membership interests of both TC Ravenswood and TC Ravenswood Services are wholly owned by TC Facility.

An affiliate of TC Ravenswood and TC Ravenswood Services, Unit 40 Sublessor, LLC (“Unit 40 Sublessor”), was formed to effect the restructuring of the Unit 40 lease instruments when TransCanada purchased the interests in TC Ravenswood and TC Ravenswood Services from Key Span Corporation in 2008. TC Facility owns ninety-five percent (95%) of the membership interests of Unit 40 Sublessor, and the remaining five percent of ownership interests in Unit 40 Sublessor is owned by SE Ravenswood Trust, as a passive investor and lessor of the Ravenswood Generating Station. Unit 40 Sublessor has leased Unit 40 at the Ravenswood Generating Station from SE Ravenswood Trust and subleased that unit to TC Ravenswood as part of a sale/leaseback financing arrangement. Unit 40 Sublessor, thus, has served solely as a passive participant in the Unit 40 assets. Together, TC Ravenswood, TC Ravenswood Services and Unit 40 Sublessor shall be referred to herein as the “Ravenswood Companies.”

TC Facility is a Delaware corporation and a direct, wholly owned subsidiary of TransCanada Energy USA, Inc. (“TransCanada USA”), which in turn, is a Delaware corporation that is wholly owned by TransCanada Pipelines Limited (“TCPL”). TCPL is a Canadian public company incorporated in 1951 by a Special Act of Parliament of Canada and continued on June 1, 1979 under the Canada Business Corporations Act. TCPL is a wholly owned subsidiary of TransCanada Corporation (“TransCanada”). TransCanada is a diversified energy company doing business in Canada and the United States.

Through its principal subsidiaries (TCPL, Nova Gas Transmission Ltd. and TC Pipeline USA Ltd. (“TC Pipeline USA”)), TransCanada transports natural gas through interstate pipelines in Canada and parts of the United States. Through its subsidiaries, TransCanada also owns interests in entities that own or control electric generation capacity in the United States or operate as power marketers in the United States. In addition to TC Ravenswood, TransCanada’s electric generation companies in the United States are Ocean State Power LLC (“OSP”) (which is wholly owned by TransCanada OSP Holdings Ltd. (“OSP Holdings”)), TransCanada Maine Wind Development Inc. (“TCMWD”), TC Ironwood LLC (“TC Ironwood”) (which is wholly owned by TC Ironwood Holdings LLC (“Ironwood Holdings”)), TransCanada Hydro Northeast Inc. (“TC Hydro NE”) and Coolidge Power LLC (“Coolidge”). TC Ravenswood is located in the footprint of New York Independent System Operator, Inc. (“NYISO”); OSP and TCMWD are located in ISO-NE; TC Ironwood is located in the footprint of PJM Interconnection, LLC (“PJM”); and Coolidge is located in Coolidge, Arizona. TransCanada is currently in the process of selling all of its merchant generation facilities in the Northeast United States, including through the proposed Transaction as further described herein, and its power marketing business.

TC Facility acquired the membership interests in TC Ravenswood and TC Ravenswood Services from Key Span Corporation effective August 26, 2008. The Commission approved TC Facility’s acquisition of those interests in August 2008 in Case No. 08-M-0436 (the “TransCanada Transfer Order”).³ In the TransCanada Transfer Order, the Commission approved the proposed transfer of the ownership interests in TC Ravenswood and TC Ravenswood Services to TC Facility, and ruled that TC Ravenswood would remain subject to “lightened

³ Case 08-M-0436, *KeySpan-Ravenswood LLC, Keyspan-Ravenswood Services Corporation and TransCanada Facility USA, Inc. – Joint Petition for Authority Under PSL §70 and §83 to Transfer Certain Generating and Related Assets and For Related Relief*, Order Approving Transfer and Making Other Findings (issued and effective August 21, 2008) (the “TransCanada Transfer Order”).

regulation” as an electric corporation with respect to its interests in Ravenswood Generating Station, subject to certain conditions set forth therein.⁴ The Commission further ruled that TC Ravenswood Services would remain entitled to “incidental regulation” with respect to its steam plant interests at the Boiler House A site, and otherwise subject to lightened regulation with respect to its steam corporation interests, subject to certain conditions set forth therein.⁵

B. The LS Power Parties.

Helix Generation is a direct subsidiary of LS Power Equity Partners III, L.P., a New York-based Delaware limited partnership, wholly controlled by LS Power Development, LLC (“LSP Development”), a Delaware limited liability company. Helix Generation was formed as a Delaware limited liability company to directly (or indirectly through one or more controlled affiliates) acquire and hold the membership interests of the Ravenswood Companies as well as the other Project Companies to be acquired as part of the Transaction, and currently has no assets.⁶

LSP Development develops, owns and operates independent power projects in the United States and is, among other things, also developing independent transmission projects in parts of the United States. LSP Development does not own or control, nor does it have any subsidiaries that own or control, generation facilities in the NYISO market.⁷ LSP Development does have

⁴ *Id.* at 17-21.

⁵ *Id.* at 21-23.

⁶ While passive investors not controlled by LSP Development hold indirect, non-voting interests in the chain of ownership between LSP Development and Helix Generation, none of the voting securities of Helix Generation or any intermediate holding company between LSP Development and Helix Generation are owned by any entity not exclusively controlled by LSP Development.

⁷ LSP Development is affiliated with LifeEnergy, an energy services company providing energy products and services to residential and commercial customers in Pennsylvania, Ohio and Illinois. LifeEnergy may expand its operations into New York State. LifeEnergy does not own generation or transmission assets in NYISO.

the following indirect subsidiaries that own or control generation facilities in the adjacent PJM and ISO-NE markets:

- Aurora Generation, LLC, an exempt wholesale generator (“EWG”) that owns and operates the Aurora Generating Station, an approximately 832 MW (summer rating) natural gas-fired generation facility in Du Page County, Illinois (PJM market);
- Doswell Limited Partnership, an EWG that owns and operates an approximately 814 MW (summer rating) natural gas-fired generating facility⁸ in Ashland, Virginia (PJM market);
- Jericho Power LLC, which owns and operates an approximately 12 MW (summer rating) wind-powered qualified facility in Berlin, New Hampshire (ISO-NE market);
- LSP University Park, LLC, an EWG that owns and operates an approximately 504 MW (summer rating) natural gas-fired, simple-cycle generating facility near University Park, Illinois (PJM market);
- Riverside Generating Company, LLC, an EWG that leases and operates, and has the right to the output of, an approximately 825 MW (summer rating) natural gas-fired generating facility in Lawrence County, Kentucky (PJM market);
- Rockford Power, LLC, an EWG that owns and operates an approximately 300 MW (summer rating) natural gas-fired generation facility in Rockford, Illinois (PJM market);
- Rockford Power II, LLC, an EWG that owns and operates an approximately 157 MW (summer rating) natural gas-fired generation facility in Rockford, Illinois (PJM market);
- Seneca Generation, LLC, an EWG that owns and operates the Seneca Pumped Storage Station, a pumped storage station with generating capacity of approximately 513 MW (summer rating) in Warren, Pennsylvania at the U.S. Army Corps of Engineers’ Kinzua Dam on the Allegheny River (PJM market);
- University Park Energy, LLC, an EWG that owns and operates an approximately 300 MW (summer rating) natural gas-fired peaking facility near University Park, Illinois (PJM market);

⁸ A planned expansion, currently expected to be completed in March 2018, would increase the generating capacity of this facility by approximately 340 MW (summer rating).

- Wallingford Energy LLC (“Wallingford”), an EWG that owns an approximately 212 MW (summer rating) natural gas-fired generating facility⁹ in Wallingford, Connecticut (ISO-NE market);
- West Deptford Energy, LLC, an EWG that leases and operates an approximately 711 MW (summer rating) natural gas-fired, combined-cycle generating facility in West Deptford Township, New Jersey (PJM market); and
- White Oak Solar Energy, LLC, which owns and operates an approximately 10 MW (summer rating) solar-powered qualified facility in Dover, Delaware (PJM market).

II. **DESCRIPTION OF THE PROPOSED TRANSFERS**

The proposed Transfers and the Conversion are part of a larger transaction (the “Transaction”) by and among TC Facility, TC Pipeline USA, OSP Holdings, and Helix Generation. Pursuant to the proposed Transaction, Helix Generation will directly (or indirectly through one or more controlled affiliates) acquire all of the membership interests of TC Ravenswood, all of the equity interests or membership interests, as applicable, of TC Ravenswood Services and ninety-five percent (95%) of the membership interests of Unit 40 Sublessor from TC Facility.

In addition, pursuant to the Transaction, Helix Generation will directly or indirectly acquire from TC Facility, TC Pipeline USA and OSP Holdings, as applicable, all of the membership interests in entities located not in the NYISO footprint, but in other balancing areas, including (1) all of the membership interests in TC Ironwood, which is located in the PJM footprint (2) all of the equity interests or membership interests, as applicable, of TCMWD, which is located in the ISO-NE footprint; and (3) all of the membership interests of OSP, which is also located in the ISO-NE footprint (collectively, all of the acquired entities shall be referred to

⁹ A planned expansion, currently expected to be completed in December 2017, would increase the generating capacity of this facility by approximately 90 MW (summer rating).

herein as the “Project Companies”). As a result of the Transaction, the Ravenswood Companies as well as the other Project Companies will become wholly controlled indirect subsidiaries of LSP Development and will cease to be affiliated with TransCanada, TC Facility, TC Pipeline USA, and OSP Holdings.

As part of the Transaction, it is contemplated that TransCanada will, prior to closing, effect the Conversion, by which TC Ravenswood Services, which is currently a New York transportation corporation formed under the New York Transportation Corporations Law, will be converted into a New York limited liability company by merger into TC Ravenswood Services, LLC, a newly formed limited liability company, with TC Ravenswood Services, LLC as the surviving entity. This Conversion is being effected solely for tax structuring purposes and there will be no other changes to the structure or operation of TC Ravenswood Services as a result of the Conversion. As described below in more detail, the Petitioners do not believe that this Conversion should be subject to review under PSL Section 70, but if the Commission were to consider such Conversion subject to PSL Section 70 review, Petitioners request its approval as well. All further references to “TC Ravenswood Services” in this Joint Petition, except for those in Section II regarding the Conversion, shall also refer to its proposed successor as part of the proposed Transaction, TC Ravenswood Services, LLC.

ANALYSIS

I. PETITIONERS REQUEST APPROVAL OF THE PROPOSED TRANSFER OF OWNERSHIP INTERESTS IN TC RAVENSWOOD PURSUANT TO PSL SECTION 70

A. Standard of Review

Under PSL Section 70, Commission approval is required before an electric corporation may transfer ownership interests in its electric plant. PSL Section 70(5) further requires a

demonstration that any such transfer is in the public interest. In reviewing PSL Section 70 petitions submitted by wholesale merchant generating facilities that are subject to lightened regulation under the PSL, such as the Ravenswood Generating Station, the Commission has routinely applied a reduced scrutiny in determining whether such transactions are within the public interest.¹⁰ As such, the Commission has limited its review to whether (i) the transactions will result in concentration of wholesale generation market ownership that might enable the acquiring entity to exercise horizontal or vertical market power post-closing; (ii) the acquiring entity is affiliated with entities that own or control traditional public utilities, electric transmission facilities or fuel inputs into generation that operates in markets affecting New York; and (iii) the assets acquired will be safely and adequately operated.¹¹

B. The Proposed Transfer Raises No Horizontal or Vertical Market Power Concerns and Will Otherwise Have No Adverse Market Impacts.

i. Horizontal Market Power

The transfer of the membership interests in TC Ravenswood to Helix Generation will not create or enhance horizontal market power in any relevant market. Neither Helix Generation nor any of its affiliates owns or controls generation facilities either in the New York City sub-market or the broader NYISO market. Helix Generation (including its affiliates) will be a new entrant

¹⁰ See, e.g., Case 16-E-0244, *Joint Petition of Castleton Energy Center, LLC, et al. for Approval of the Transfer of Ownership Interests Pursuant to Section 70 of the Public Service Law*, Order Approving Transfer and Continuing Lightened Regulation (issued and effective July 14, 2016); Case 04-E-0630, *Joint Petition of Atlantic Renewables Projects, LLC, et al. for Approval of the Transfer of Ownership Interests in an Electric Corporation and of the Transfer of Assets of an Electric Corporation*, Order Approving Transfer (issued and effective May 22, 2006); Case 05-E-1341, *Orion Power Holdings, Inc., et al. – Petition for Authority to Transfer Ownership Interests and to Issue Corporate Debt*, Order Approving Transfer and Financings and Making Other Findings (issued and effective February 15, 2006); Case 07-E-0322, *Astoria Generating Company Holdings LLC, et al. – Joint Petition for a Declaratory Ruling, or in the Alternative, for Authorization under Public Service Law Section 70 to Transfer Ownership*, Declaratory Ruling on Review of a Merger Transaction (issued and effective May 22, 2007).

¹¹ See, e.g., Case 04-E-0789, *Orion Power Holdings, Inc. et al. – Joint Petition for Application of Lightened Regulation, Approval of a Financing, and a Declaratory Ruling that the Commission Will Not Assert Jurisdiction Over a Transfer, or, in the Alternative, Approval of the Transfer*, Order Approving Transfers and a Financing and Making Other Findings at 22 (issued and effective September 22, 2004).

into the NYISO market, and as such, the proposed Section 70 Transfer does not create or enhance horizontal market power in electric generation markets.

As for markets adjacent to NYISO, while Helix Generation does have affiliates that own or control electric generating facilities that operate in the adjacent markets of PJM and ISO-NE, the amount of Helix Generation's affiliate ownership in each of the PJM and ISO-NE markets will, respectively, represent only a *de minimis* amount of the total generation capacity within those markets and present no market concerns. This is confirmed below and pursuant to the Affidavit of Julie R. Solomon that is attached hereto as Exhibit 3 ("Solomon Section 70 Affidavit").

1. PJM

One of TC Ravenswood's current affiliates, TC Ironwood, which is to be acquired by Helix Generation as part of the Transaction, owns a generation facility in the PJM market, and certain affiliates of Helix Generation own or control generation facilities located within the PJM market.¹² However, as set forth in Petitioners' filings before FERC under Section 203 of the Federal Power Act (including the Affidavit of Julie R. Solomon from Navigant Consulting, Inc. attached to the Section 203 Application), in connection with the Transaction, the total amount of ownership interest, including both TC Ironwood and Helix Generation's affiliates, will equal (following consummation of the Transaction) approximately 3.3 percent of the total installed

¹² See Docket No. EC17-38-000, Joint Application for Approval Under Section 203 of the Federal Power Act and Request for a Shortened Comment Period at 14 (November 21, 2016) ("Section 203 Application"), the public version of which is attached hereto as Exhibit 1 to the Joint Petition (an Affidavit from Julie R. Solomon (the "Solomon 203 Affidavit"), is attached as Attachment 1 to the Section 203 Application and Ms. Solomon's resume is included with the Solomon Section 203 Affidavit)).

capacity for PJM at 182,400 MW. This level is consistent with levels previously considered *de minimis* by FERC.¹³

2. ISO-NE

Similarly, in ISO-NE, two of TC Ravenswood's affiliates, TCMWD and OSP, which are to be acquired by Helix Generation as part of the Transaction, own generation facilities in the ISO-NE market, and affiliates of Helix Generation also own or control two generation facilities in the ISO-NE market. However, as set forth in Petitioners' filings before FERC in connection with the Transaction, the total amount of ownership interest, including that of TCMWD, OSP and Helix Generation's affiliates, will equal (following consummation of the Transaction) approximately 2.8 percent of the total installed capacity for ISO-NE at 30,761 MW. Again, this level is also consistent with levels previously considered *de minimis* by FERC.¹⁴

To the extent the Commission considers inter-ties with the NYISO as potentially relevant to a market power analysis, Helix Generation's affiliated ownership interests in electric generation in PJM and ISO-NE do not raise horizontal market power concerns. To the extent the generation affiliated with Helix Generation in PJM or ISO-NE has cleared the PJM Reliability Pricing Model market or the ISO-NE Forward Capacity Market, respectively, such supply is required to be offered in the PJM energy markets or the ISO-NE day-ahead and real-time energy markets, respectively. The generation affiliated with Helix Generation in PJM and ISO-NE, including the generating assets being transferred pursuant to the Transaction, is committed in the ISO-NE and PJM capacity markets through the 2019/2020 markets. As a result, the opportunity

¹³ *Id.* at 14.

¹⁴ *Id.* at 16.

for participation in the NYISO market from the generation affiliated with Helix Generation in PJM and ISO-NE is non-existent through at least 2020.

Moreover, even if Helix Generation's affiliated generation in PJM and ISO-NE were not committed to participation in those respective markets, due to the limited transfer capabilities between PJM and NYISO and between ISO-NE and NYISO, the amount of power that can be transferred from either PJM or ISO-NE to NYISO is materially constricted. Helix Generation and its affiliates hold no firm transmission rights into NYISO from PJM or ISO-NE. The Total Transfer Capability ("TTC") from PJM to NYISO is 2,300 MW,¹⁵ and sometimes lower.¹⁶ Even if Helix Generation was attributed a pro rata share of the TTC from PJM into NYISO based on its share of generation in PJM (3.3 percent),¹⁷ it would represent approximately 76 MW of imports into NYISO, a miniscule share of the approximately 39,000 MW of installed capacity in NYISO.¹⁸ The transfer capability from PJM directly into NYISO zone J is even smaller (about 1,475 MW, including the Linden VFT),¹⁹ and Helix Generation is affiliated with approximately 2.1 percent of all generation in the portion of PJM interconnecting into zone J (approximately 720 MW of the approximately 34,000 MW in the entire PJM East sub-market)²⁰; Helix

¹⁵ *Northeast Power Coordinating Council Reliability Assessment For Summer 2016*, Final Report, April 28, 2016, at page 81, [https://www.npcc.org/Library/Seasonal%20Assessment/NPCC Reliability Assessment for 2016 Summer-Final Report.pdf](https://www.npcc.org/Library/Seasonal%20Assessment/NPCC%20Reliability%20Assessment%20for%202016%20Summer-Final%20Report.pdf). This excludes capacity on the Neptune and Linden VFT paths.

¹⁶ For example, on December 6, 2016, the PJM-NYISO TTC was reported as 1,700 MW. See http://mis.nyiso.com/public/htm/atc_ttc/20161206atc_ttc.htm.

¹⁷ The pro rata methodology has been affirmed in a number of FERC orders. See, for example, *PPL Corporation*, 149 FERC ¶ 61,260 at P 84 (2014) ("*PPL*"), and *NRG Energy*, 141 FERC ¶ 61,207 at P 63. (Solomon 203 Affidavit at 18)

¹⁸ NYISO 2016 Load and Capacity Data Report, ("NYISO Gold Book"), http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/Planning_Data_and_Reference_Docs/Data_and_Reference_Docs/2016_NYCA_Generators.xls.

¹⁹ *Northeast Power Coordinating Council Reliability Assessment For Summer 2016*, *op cit.*, at Appendix VIII, page 17.

²⁰ See *2016 State of the Market Report for PJM*, January-September 2016, Monitoring Analytics, LLC, at Table 12-10 (combining capacity from AECO, DPL, JCPL, PECO, and PSEG zones).

Generation's pro rata share of imports into zone J also would be immaterial at approximately 31 MW.

The situation is similar with respect to transfers from ISO-NE to NYISO. The TTC from ISO-NE to NYISO is 1,500 MW,²¹ and sometimes lower.²² And, if Helix Generation was attributed a pro rata share of the TTC from ISO-NE into NYISO based on its share of generation in ISO-NE (2.8 percent), it would represent approximately 42 MW of imports into NYISO, also a miniscule share of the approximately 39,000 MW of installed capacity in NYISO. There is no direct interconnection from ISO-NE into zone J.

After consummation of the Transaction, Helix Generation and its affiliates will own or control, across all three markets, about 9,000 MW of generation relative to the more than 250,000 MW of total capacity in these three markets, or only 3.6 percent, which is well below any level of concern, particularly when transfer capability limitations among the regions and local capacity and energy market commitments are taken into account.²³

ii. Vertical Market Power

Neither Helix Generation nor any of its affiliates currently owns or controls any electric transmission or distribution facilities regulated by the Commission or any fuel inputs into generation that operates in the NYISO market.²⁴ Thus, vertical market power concerns related

²¹ 2012 Simultaneous Import Limit Study of New York Independent System Operator, Inc., FERC Docket No. AD10-2, December 19, 2013.

²² For example, on December 6, 2016, the ISONE-NYISO TTC was reported as 1,000 MW. See note 15.

²³ See, e.g., Case 11-E-0245, *Joint Petition of Exelon Corporation et al. for a Declaratory Ruling Regarding a Stock Transaction or, In the Alternative, An Order Approving the Stock Transaction*, Declaratory Ruling on Review of a Stock Transfer Transaction (issued December 20, 2011) at 11-14 (recognizing several factors that limit the exercise of horizontal market power in adjacent markets).

²⁴ Consistent with established Commission precedent, Helix Generation's affiliation with a retail electric supplier can be addressed through the regulatory authority provided for under PSL § 110. See Case 12-E-0359, *NRG Energy, Inc.*, Order Approving a Merger and Acquisition Upon Conditions (issued December 14, 2012) at 10.

to control over the delivery of electricity are absent. Indeed, with the proposed Section 70 Transfer, vertical market power will actually be reduced. Whereas, as observed by the Commission in the prior TransCanada Transfer Order, TransCanada owned forty-four and one-half percent (44.5%) of the Iroquois pipeline that provides natural gas service in New York City, neither Helix Generation nor its affiliates own or control any fuel inputs into generation facilities that operate in New York.

North America Transmission Corporation and North America Transmission LLC (collectively, “NAT”), each of which is 100% owned by LSP Development and its subsidiaries, have proposals pending before the NYISO to construct new alternating current transmission lines that would, respectively, add incremental transfer capability at the Central East or UPNY/SENY interfaces (“AC Transmission”) or increase Western New York transmission capability (“Western NY Transmission”).²⁵

NAT is competing for the AC Transmission and Western NY Transmission facilities so that it can assist New York State in meeting Commission-identified public policy transmission needs.²⁶ The Commission just recently re-affirmed the public policy needs for additional transmission capability in Western NY.²⁷ The Commission is expected to decide in the near future whether a public policy need continues to exist for the AC Transmission facilities. The re-

²⁵ See Case 14-E-0454, *In the Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration*, NYISO AC Transmission Public Policy Transmission Need Viability & Sufficiency Assessment (filed October 28, 2016) at 14-15 (“AC Transmission VSA”); Case 14-E-0454, supra, NYISO Western NY Public Policy Transmission Need Viability & Sufficiency Assessment (filed June 1, 2016) at 13-16; see also Cases 13-T-0454 et al., *Application of North America Transmission Corporation and North America Transmission, LLC – Edic to Fraser 345 kV Transmission Line and a New Scotland to Leeds to Pleasant Valley 345 kV Transmission Line*, Notice of North America Transmission Corporation and North America Transmission LLC of Withdrawal of Certain Transmission Alternatives from Further Consideration (filed January 15, 2016).

²⁶ NAT is a joint bidder with the New York Power Authority (“NYPA”) for the AC Transmission facilities. See AC Transmission VSA at 14-15.

²⁷ Case 14-E-0454, supra, Order Addressing Public Policy Transmission Need for Western New York (issued October 13, 2016).

affirmance of the public policy need triggers additional evaluation by the NYISO and the NYISO will ultimately select the “more efficient or cost effective transmission” proposal(s) to satisfy any public policy transmission need.²⁸ After selection by the NYISO, the Commission will have to decide, after further process including public statement hearings, whether to grant certificates of public convenience and necessity to the selected solutions pursuant to PSL Article VII. If NAT is selected by the NYISO to construct one or more of its proposed facilities, it will be on the basis of a determination that NAT’s proposal is, relative to all of the competing proposals, the “more efficient or cost effective” transmission solution, such that NAT’s moving forward with construction of the facility or facilities in question would necessarily be a significant benefit to ratepayers in New York State.

Petitioners appreciate that the Commission may be concerned about the potential to exercise vertical market power if Helix Generation were to own the Ravenswood Generating Station and its affiliates were awarded one or more transmission projects. As discussed herein and in the Solomon Section 70 Affidavit, there is significant uncertainty surrounding whether and, if so, when NAT will be selected to construct new transmission lines in New York State.²⁹ Moreover, even if selected, Helix Generation and NAT believe that NAT will not be able to operate their transmission assets in a manner that benefits Helix Generation, or vice versa. Nevertheless, in recognition of the Commission’s stated concerns on vertical market power, Helix Generation and its transmission affiliate, NAT, will, as described in more detail below, commit to a series of conditions at this time in order to assure the Commission that vertical market power concerns will not arise in connection with the Transfer.

²⁸ See *id.* at 3.

²⁹ See Solomon Section 70 Affidavit at ¶¶6-7.

1. Vertical Market Power Concerns Associated with Potential, Future Transmission Ownership by Affiliates of Helix Generation are Uncertain at This Time

In 1998, the Commission issued its *Statement of Policy Regarding Vertical Market Power*,³⁰ which establishes a rebuttable presumption that ownership of generation by a transmission and distribution (“T&D”) company affiliate would unacceptably exacerbate the potential for vertical market power. This presumption can be rebutted by demonstrating that “vertical market power could not be exercised because the circumstances do not give the T&D company an opportunity to exercise market power, or because reasonable means exist to mitigate market power.”³¹ In the alternative, the T&D company “would need to demonstrate that substantial ratepayer benefits, together with mitigation measures, warrant overcoming the presumption.”³²

Under the VMP Policy Statement, possible means of mitigating market power include: (i) limitations on the degree of control over the constraining transmission interface held by the T&D utility; (ii) a pledge by the T&D utility to pursue transmission projects recommended by the Commission or by the ISO, together with a proposal that would neutralize profit maximizing incentives on generation that is within the market power control area pending the completion of all reasonable efforts by the T&D company to complete recommended transmission projects; and (iii) an agreement by the T&D company to participate in a binding arbitration in the event of a dispute over a new generator’s interconnection requirements in the T&D utility’s territory.³³

³⁰ Cases 96-E-0900, et al., *In the Matter of Orange & Rockland Utilities, Inc.’s Plans for Electric Rate Restructuring Pursuant to Opinion 96-12*, Statement of Policy Regarding Vertical Market Power (issued July 17, 1998) (“VMP Policy Statement”).

³¹ *Id.* at App I, p. 2.

³² *Id.*

³³ *Id.*

As noted above, neither Helix Generation nor any of its affiliates currently owns or controls any electric transmission or distribution facilities regulated by the Commission or any fuel inputs into generation that operates in the NYISO market, except for transmission facilities used for the limited purpose of interconnecting its generating facilities with the transmission grid. At present, NAT represents only one of several bidders seeking approval to construct proposed AC Transmission and Western NY Transmission facilities.

Given the competitive nature of the NYISO selection processes, there remains significant uncertainty over whether NAT will be selected by the NYISO to construct the new transmission lines. Even if NAT is chosen as a winning bidder, it is not clear, at present, what specific transmission assets NAT would own—NAT's pending transmission proposals contain a range of geographic and technical configurations. NAT's winning proposals would then be subject to public review and evaluation under PSL Article VII.

Nor is it clear at this time whether NAT would be able to exercise vertical market power to benefit the Ravenswood Generating Station. In some instances, available data suggests that NAT's facilities would provide NAT with minimal ability to impact electricity pricing in New York City. Furthermore, any opportunity for NAT to actually exercise vertical market power (if selected) will be significantly limited by a number of factors, including general FERC and NYISO oversight; the transmission expansion process provided under FERC Order No. 1000 (which, among other things, allows the Commission to designate public policy transmission needs and thereby require the NYISO to address transmission expansion problems); NYISO control over the operation of transmission lines; NYISO's control over interconnection procedures and scheduling planned and emergency outages of transmission facilities; and dispute resolution procedures.

All of the above-described factors result in significant uncertainty over the potential vertical market power concerns that may arise in the future. In the past, the Commission has acknowledged that affiliations with entities involved in uncertain, future transmission projects do not raise vertical market power concerns in the context of Section 70 petitions similar to the instant Joint Petition. For example, in the recent *Order Approving Transfer* in Case 15-E-0580,³⁴ the Commission determined that there were no vertical market power concerns with the proposed transfer of the 312 MW Cayuga facility and 668 MW Somerset facility, despite the purchaser's affiliation with an entity authorized by the Commission to construct, operate, and maintain a 1,000 MW high voltage direct current transmission line extending from Canada to New York City. In discussing vertical market power in the *Cayuga and Somerset Order*, the Commission acknowledged that, even though the transmission facility already received its Article VII certificate, construction on the affiliate's transmission line had not commenced and it was "uncertain when that might occur."³⁵

Similar to the *Cayuga and Somerset Order*, there is enough uncertainty surrounding NAT's transmission proposals such that the Transfer does not pose vertical market power concerns at this time. In fact, the results of the selection process are more speculative than the transmission line at issue in the *Cayuga and Somerset Order*, which had already been granted an Article VII certificate. Even if NAT's facilities are selected by the NYISO, there remains uncertainty surrounding (among other things) the actual facilities NAT will be selected for; the timing for when those facilities will be certificated and placed in service; and the impact of the

³⁴ Case 15-E-0580, *Joint Verified Petition of Upstate New York Power Producers, Inc. et al. for Expedited Approval Pursuant to Section 70 of the New York State Public Service Law and Related Approvals*, Order Approving Transfer (issued February 25, 2016) ("*Cayuga and Somerset Order*").

³⁵ Case 15-E-0580, *Joint Verified Petition of Upstate New York Power Producers, Inc. et al. for Expedited Approval Pursuant to Section 70 of the New York State Public Service Law and Related Approvals*, Order Approving Transfer (issued February 15, 2016) at 13-14.

constructed facilities on prices for generators located in New York City. Thus, as it has done in the past, the Commission should consider refusing to speculate on potential, uncertain vertical market power concerns in response to this Joint Petition.³⁶

2. Although Vertical Market Power Concerns are Uncertain at This Time, NAT Will Agree to Certain Conditions to Address the Potential Exercise of Vertical Market Power

Although Helix Generation and its affiliates do not believe that NAT will be able to exercise vertical market power, if the proposed Transfer is approved and NAT is selected to develop transmission facilities, NAT would agree to a series of conditions that address all reasonable vertical market power concerns.³⁷ The proposed conditions outlined below ensure that NAT is properly incented to construct any new transmission assets in a timely manner and that, once constructed, NAT's ability to exercise vertical market power will be non-existent. NAT would agree to the conditions set forth below in the event that one or more of NAT's pending AC Transmission or Western NY Transmission proposals are selected by the NYISO and, at the time of selection, Helix Generation owns or controls the Ravenswood Generating Station.

i. Structural Mitigation

First, to ensure structural separation between their affiliated interests during the development of any transmission facilities, NAT would commit to the following measures during all times that Helix Generation owned or controlled the Ravenswood Generating Station:

³⁶ Id.

³⁷ Notably, the VMP Policy Statement applies exclusively to T&D companies and Petitioners did not locate any instance where the VMP Policy Statement has been applied to entities such as Helix Generation or NAT (i.e., entities that do not provide regulated distribution service in a defined service territory). VMP Policy Statement at 8. Indeed, NAT's agreement to the conditions described herein should not be construed as an admission that the VMP Policy Statement is applicable to them; rather, the conditions described herein are offered in a good faith effort to allay any Commission concerns that may arise in the future.

- Within 30 days after selection by the NYISO, NAT shall file with the Secretary to the Commission its Affiliate Code of Conduct which will establish strict separateness between transmission and generation affiliates, including establishing separate, restricted space for transmission operations; separating employees performing engineering or transmission planning for NAT from other non-transmission affiliates; maintaining independent books and records; information safeguards to protect confidential and proprietary information; prohibitions on services to competitive affiliates; prohibition on cross-affiliate subsidization; limits on transfers of employees from transmission to generation affiliates; internal confidential complaint procedures; internal policy of consequences for individual violations of Codes of Conduct; and regular training of all company employees regarding the Codes of Conduct.
- NAT shall provide an annual certification by its chief compliance officer that all employees have completed periodic training with respect to its Code of Conduct; and
- NAT shall maintain, and make available to the Department of Public Service Staff, upon request, a log of all communications between NAT and its affiliates with generation in New York State with respect to transmission assets in New York State, such log to be maintained on a rolling five year basis.

ii. Schedule Mitigation

Second, in order to eliminate concerns that NAT may delay development of new transmission assets to benefit its generation affiliates, following the date that NAT is selected by the NYISO and continuing until the date that the relevant transmission facilities are energized, NAT will:

- Execute a development agreement with the NYISO, in the form approved by the NYISO (the “Development Agreement”);
- Include in the Development Agreement, as “Critical Path Milestones,”³⁸ NYISO-approved deadlines for (i) completion of key development and construction activities (including, but not limited to, acquisition of key governmental approvals) and (ii) placing the transmission facilities in service (referred to in the Development Agreement as the “Required Project In-Service Date”), such that there would be specific adverse consequences to NAT, as described below, in the event of failure by NAT to achieve such Critical Path Milestones;
- File a copy of the Development Agreement with the Commission; and
- File periodic reports with the Commission related to progress toward the specified Critical Path Milestones.

The Development Agreement is a form agreement developed by NYISO for execution by transmission developers who are selected to construct transmission projects in connection with competitive processes initiated pursuant to FERC Order No. 1000, and by design it imposes significant schedule commitments on the developer and provides the NYISO with a suite of remedies intended to ensure that the developer does everything within its control to ensure that

³⁸ See Appendix C of the Development Agreement, a copy of which is attached for reference as Exhibit 4.

the transmission project is completed on time. The development and construction schedule protections provided by the Development Agreement are relatively recent additions to the NYISO OATT (driven by FERC’s Order No. 1000); and, in fact, the Western NY and AC Transmission facilities will be the first transmission facilities where these provisions apply. These protections go above and beyond the regulatory oversight and schedule-related commitments applicable to the permitting and construction by T&D utilities of new non-Order No. 1000 transmission facilities in the State.

Under the Development Agreement, any uncured failure by the developer to achieve *any* Critical Path Milestone – including, but not limited to early-stage development milestones – for reasons within the developer’s control will constitute a “*breach*” of the Development Agreement, enabling the NYISO to terminate the Development Agreement and exercise all other legal or equitable remedies available to the NYISO, including suing the developer for damages.³⁹ In addition, even if the failure to achieve a Critical Path Milestone is caused by forces outside of the developer’s control (i.e., is result of a “Force Majeure event”), the NYISO will have the right to terminate the Development Agreement unless the NYISO concludes that, notwithstanding the delay, the developer can complete the transmission facilities and place them in service by the specified Required Project In-Service Date.⁴⁰ In addition, upon any early termination of the Development Agreement, the NYISO is expressly permitted to request the developer to transfer its rights to the transmission project in question to a third party, thereby providing the NYISO

³⁹ See *id.* at Sections 7.1, 7.2, 7.3, 8.1.

⁴⁰ *Id.* at Section 8.1.

with a path forward with an alternative developer, with minimal further delay, which increases the risk to the developer that the NYISO will exercise its contract termination rights.⁴¹

Taken together, these provisions create a real and very serious risk to a transmission developer such as NAT that fails to achieve any development or construction milestone – whatever the cause – that the developer will suffer significant economic harm as a result of the delay, including total loss of the transmission project in question (including both the amount invested in the project and the expected economic benefits that would result from completion of the project). This economic harm, as well as the reputational harm associated with being responsible for delays or a failed project, would be significant. In the theoretical scenario where the Commission may have a concern – i.e., where the failure to maintain schedule is or is perceived to be within the developer’s control – the developer faces the additional risk of being sued for damages. The costs and losses to the developer arising from such a lawsuit would not be possible to predict, but any prudent developer would assume that the total exposure to it as a result of an intentional delay could be significant, creating a serious disincentive.

In addition to the above remedies expressly provided to the NYISO by the Development Agreement, a developer that intentionally avoids or delays pursuit of transmission project development or completion activities with the goal of impacting electricity market prices would of course be subject to enforcement action by the applicable federal and state regulatory authorities, including under existing market manipulation rules.⁴² The repercussions of these types of enforcement actions – financial and otherwise – by themselves provide a serious

⁴¹ *Id.* at Section 8.3.

⁴² *See* 16 U.S.C. §§ 824v, 825o-1 (2012); 18 C.F.R. § 1c; FERC Order No. 670, FERC Stats. & Regs. ¶ 31,202 at P 49 (January 19, 2006).

disincentive to any transmission developer, particularly one that wishes to have a future in the business.⁴³

In short, the above conditions will provide binding financial incentives, along with serious consequences, both financial and reputational, to ensure that NAT completes construction of its transmission facilities in a timely manner. When combined with the structural mitigation described in sub-part (i) above and the numerous existing state and federal regulatory controls described herein, both Helix Generation and NAT believe that during the time any of NAT's transmission lines are under development or construction neither entity will be able to exercise vertical market power to benefit the other.

ii. Divestiture

Lastly, if the Commission deems it necessary at this time, NAT would agree to certain further conditions to eliminate *all* potential vertical market power concerns that may arise when NAT's transmission facilities enter commercial operation. Specifically, no later than six months following the commencement of the commercial operation of any transmission facilities in New York State owned and operated by NAT, or any affiliate thereof, and if at such time Helix Generation owns the Ravenswood Generating Station, NAT would agree at its option to either: (i) divest of all NAT's interests in any transmission facilities that have achieved commercial operation; or (ii) convert NAT's ownership interests in its transmission facilities in New York State to economic interests of such a passive nature that the Commission determines to its satisfaction such interests do not pose the potential for exercise of vertical market power, such as lessor interests, as the Commission has previously held do not pose the potential for the exercise

⁴³ See 16 U.S.C § 825o-1 (providing for civil penalties of up to \$1 million per day, per violation, for any violation of Part II of the Federal Power Act, including the anti-manipulation provisions in 16 U.S.C. § 824v).

of such power.⁴⁴ These conditions provide the Commission with ironclad assurances that neither Helix Generation nor NAT would be able to exercise vertical market power to improperly benefit the other.

- iii. Helix Generation, as a Wholly Controlled Subsidiary of LSP Development, Is Amply Qualified to Own and Operate the Ravenswood Generating Assets.

Helix Generation, which is a wholly controlled subsidiary of New York-headquartered LSP Development, has sufficient resources, experience and expertise to capably operate and manage Ravenswood Generating Station safely and efficiently. LSP Development has significant experience in the power generation business. LSP Development has developed over 10,000 MW and acquired over 25,000 MW of competitive power generation in the United States, raising over \$30 billion in debt and equity financing. It currently owns 20 power generation projects located throughout the United States that operate on a variety of fuel types, including natural gas, dual-fuel gas and oil, hydroelectric, wind, and solar.

Furthermore, LSP Development has a strong safety and environmental track record at its facilities, with a recordable injury rate that is over 60 percent lower than the national average for the fossil fuel generation industry;⁴⁵ no history of environmental problems at its facilities while under LSP Development ownership; and a high level of community involvement.

⁴⁴ See Case 15-E-0592, *Joint Petition of Astoria Generating Company, L.P. et al.*, Declaratory Ruling on Transfer Transaction (issued December 15, 2015) at 5-6 (“National Grid bears full responsibility for the operation and maintenance of this facility. For this reason, it was previously decided that the lessor of the Volney-Marcy Line is not an ‘electric corporation’ or ‘gas corporation’ within meaning [sic] of the Public Service Law and, therefore, leasehold interests in the facility are not subject to PSL regulation. *These findings bear on a vertical market power analysis by establishing that the lessors hold only passive interests in the Line, which cannot support the exercise of vertical market power.*” [emphasis added; internal citations omitted]); see also Case 13-E-0302, *Joint Petition of Astoria Energy II LLC et al.*, Declaratory Ruling on Review of an Ownership Interest Transfer Transaction (issued September 19, 2013) at 6; Case 13-M-0004, *Joint Petition of EIF BNY LLC et al.*, Declaratory Ruling on Review of an Acquisition and Stock Transaction (February 15, 2013) at 7.

⁴⁵ See <https://www.bls.gov/iif/oshsum.htm>.

Moreover, in connection with the Transaction, Helix Generation has committed to retain all of the employees who currently have operational and managerial duties at the Ravenswood Generating Station. In addition, because the Transfer involves purchase of TC Ravenswood's membership interests (as opposed to an asset purchase), a number of pre-existing agreements that relate to operation of the Ravenswood Generating Station will continue after the Transfer closes, without interruption. These include, but are not limited to, fuel supply agreements, gas delivery agreements, and operation and maintenance agreements. By retaining existing personnel and operations-related agreements, Helix Generation will help assure continuity in the operating performance of Ravenswood Generating Station. Additionally, Helix Generation plans on making several needed investments to improve the reliability of the aging Ravenswood Generating Station.⁴⁶

In sum, the proposed transfer of the membership interests in TC Ravenswood from TC Facility to Helix Generation satisfies the Commission's established public interest test. As TransCanada exits the merchant generation business, the public interest demands that the Ravenswood Generating Station, as the largest power plant in New York City, secures a competent and experienced operator. Helix Generation, through its affiliation with LSP Development and its commitment to employee retention and operational continuity, has demonstrated in this Joint Petition that it is both uniquely and amply qualified to own and operate the Ravenswood Generating Station. Moreover, as explained herein, there are no horizontal or vertical market power concerns currently associated with this transfer and, if the Commission deems it necessary at this time, potential vertical market power concerns that may

⁴⁶ These investments will not increase the capacity of the Station and, as noted in Point V *infra*, the Station will continue to operate in accordance with existing environmental permits following the Transfer.

arise in the future due to NAT's pending proposals to construct new transmission lines can be eliminated by adopting the proposed conditions described herein. Accordingly, for all of the foregoing reasons, Petitioners respectfully request that the Commission approve the proposed transfer of the membership interests in TC Ravenswood under Section 70 of the PSL.

II. PETITIONERS REQUEST APPROVAL OF THE PROPOSED TRANSFER OF OWNERSHIP INTERESTS IN TC RAVENSWOOD SERVICES PURSUANT TO PSL SECTION 83

A. Standard of Review.

Similar to Section 70 of the PSL with respect to electric corporations, Section 83 of the PSL requires that the Commission's authorization for a steam corporation to transfer its franchise, works or system to any other person or corporation shall not be given unless it is shown to be in the public interest. The Commission has previously approved the transfer of steam facilities ancillary to electric generating facilities by undertaking primarily the same Section 70 analysis as provided above in Section I of this Joint Petition, and examining any affiliations with electric market participants that might afford opportunities for the exercise of market power, and considering any other potential detriments to captive ratepayer interests.⁴⁷ Furthermore, as with PSL Section 70 petitions, the Commission has held that it shall review such PSL Section 83 petitions with reduced scrutiny, minimizing the burden on the petitioner.⁴⁸

B. The Proposed Transfer Will Have No Adverse Market Impacts and Helix Generation Is Amply Qualified to Own and Operate the Steam Facilities.

⁴⁷ See, e.g., Case 10-M-0186, *Alliance Energy Renewables, LLC, et al.*, Order Approving Transfers Upon Conditions and Making Other Findings at 17 (issued and effective July 23, 2010); Case 05-E-0746, *Power City Partners, L.P. et al. – Joint Petition for Approval of the Transfer of Ownership Interests in Electric and Steam Generating Facilities*, Order Approving Transfers at 7-9 (issued and effective September 7, 2005) (“AG-Energy Order”).

⁴⁸ See, e.g., AG-Energy Order at 7.

Helix Generation is capable of and can be expected to operate the Steam Facilities reliably, efficiently and in accordance with applicable law. The proposed transfer does not create any potential for harm to the interests of captive utility ratepayers because TC Ravenswood Services operates in a competitive market for steam services and has no captive ratepayers. Helix Generation is not affiliated with any fully regulated public utilities in New York. Nor will the transfer result in a concentration of wholesale market ownership that might enable Helix Generation to exercise horizontal or vertical market power. Neither Helix Generation nor any of its affiliates owns any steam facilities, or sell steam produced from such facilities, in New York.

Accordingly, the Petitioners respectfully request that the Commission approve the proposed transfer of the membership interests in TC Ravenswood Services under PSL Section 83.

III. PETITIONERS REQUEST THAT THE COMMISSION ISSUE A DECLARATORY RULING FINDING THAT PSL SECTION 70 REVIEW IS NOT NEEDED

A. PSL Section 70 Review Is Not Required For Intra-Company Conversions

The Commission has recognized in several cases that transfers of ownership interests in lightly regulated entities within the same corporate family do not trigger the need for Commission review under PSL § 70, as long as those entities continue to be owned by the same ultimate parent entity. For instance, Case 07-E-0584 involved multi-step stock intra-corporate transfer within NRG Energy’s corporate ownership.⁴⁹ As a result of those intra-corporate transfers, a new holding company under NRG Energy was formed and that new holding company ultimately owned all of NRG Energy’s common stock. After the consummation of that

⁴⁹ Case 07-E-0584, *NRG Energy, Inc. - Petition For a Declaratory Ruling That Public Service Law §70 Does Not Apply to a Proposed Corporate Reorganization and Stock Transfer*, Declaratory Ruling On Review of an Intra-Corporate Transaction (issued and effective July 23, 2007) (the “NRG 2007 Order”).

transaction, there was no change in NRG's upstream ownership structure, and NRG's ultimate shareholders and officers and directors remained unchanged. The Commission found that "the intra-corporate reorganization and stock transfer transaction NRG Energy describes does not result in a transfer of ownership interests within the meaning of PSL § 70."⁵⁰

In another case involving NRG Energy, an intra-corporate transfer resulted in the dissolution of NRG Northeast and the incidental transfer to NRG Energy of all of the membership interests held by NRG Northeast in its operating subsidiaries in New York State.⁵¹ There, the Commission found this transaction to be an internal corporate reorganization that involved only the dissolution of an intermediate entity within the existing ownership structure. Because there was no change in the identity of the ultimate owner of those facilities, the Commission concluded that no PSL § 70 review was required.⁵²

In this case, in order to effectuate the proposed Transfers, TransCanada desires to effect a Conversion and convert TC Ravenswood Services from a New York corporation to a New York limited liability company by merging it into TC Ravenswood Services, LLC, a newly formed limited liability company, with TC Ravenswood Services, LLC as the surviving entity. Ultimately, this will result in one entity being removed from the chain of ownership of the Steam Facilities, and a new entity being inserted into the same place within that chain of ownership. The ultimate owner of the Steam Facilities will not have changed; the only change is to the form of the TC Ravenswood Services entity.

⁵⁰ NRG 2007 Order at 3.

⁵¹ Case 05-E-1582, *NRG Energy Inc. and NRG Northeast Generating LLC – Petition for a Declaratory Ruling that the Public Service Law Does not Apply to an Intra-Corporate Dissolution Transaction*, Declaratory Ruling on Review of an Intra-Corporate Dissolution Transaction (issued and effective January 26, 2006).

⁵² NRG 2007 Order at 5.

For this reason, the Petitioners respectfully request that the Commission find that review of the Conversion under PSL § 70 is unnecessary.

B. Alternatively, the Commission Should Disclaim Approval Jurisdiction Over the Conversion Under the Wallkill Presumption.

If the Commission concludes that PSL Section 70 does apply to the Conversion, the Commission should disclaim such approval jurisdiction under the *Wallkill* presumption. In the *Wallkill* Ruling,⁵³ the Commission recognized that while the owner of generating facilities that operated in competitive wholesale power markets would be required to obtain Commission approval for any transfer of its property or securities, transfers of ownership in such facilities' upstream affiliates would not be subject to Commission review absent a showing that such arrangements posed a threat to captive retail customers in New York State.⁵⁴

In Case 02-E-0939, the Commission applied the *Wallkill* Presumption where Orion Power proposed to insert a new subsidiary into the ownership structure between the then-current parent, Orion Power Holdings, and its subsidiaries that operated Orion's New York Generation Facilities. Orion Power Holdings would then transfer to the new subsidiary its stocks from other subsidiaries upstream from Orion's New York Operating affiliates. In that case, the Commission found that the proposed intra-corporate transfer of stock within Orion Power's ownership framework upstream from its New York affiliates would not affect their operation of the New York facilities.⁵⁵ The Commission further found that this corporate reorganization would not

⁵³ Case 91-E-0350, *Wallkill Generating Company L.P. - Petition For a Declaratory Ruling That the Public Service Law is Inapplicable, or That Further Regulation Thereunder is Unnecessary, or in the Alternative, That Light-Handed Regulation be Applied*, Declaratory Ruling On Regulatory Policies Affecting Wallkill Generating Company And Notice Soliciting Comments (issued and effective August 21, 1991) (the "Wallkill Ruling").

⁵⁴ *Id.*

⁵⁵ Case 02-E-0939, *Orion Power New York, L.P. – Petition for Expedited Approval Under §69 to Restructure Corporate Debt and for a Declaratory Ruling Under §70*, Declaratory Ruling on Review of Corporate Reorganization and Order Clarifying Prior Order (issued and effective September 24, 2002).

increase market concentration or pose any potential for the exercise of market power to the detriment of captive ratepayers. Finally, the Commission noted that Orion Power and its affiliates would continue to bear the financial risk associated with their organizational and financial arrangements.⁵⁶

Similarly, the Conversion will not result in any increase in ownership concentration that could create or enhance horizontal or vertical market power. Instead, control of the Steam Facilities will simply be transferred from one wholly-owned subsidiary of TransCanada to another wholly-owned subsidiary of TransCanada. Because the Conversion will have no adverse effect whatsoever on ownership concentration in New York, the Commission should find and declare that under the Wallkill presumption, the Conversion is not subject to review under the PSL Section 70.

C. Alternatively, the Commission Should Grant Approval of the Conversion Under PSL Section 70.

In the event that the Commission does not issue a declaratory ruling as requested in this Joint Petition, and determines that the Petitioners must obtain the Commission's prior approval under PSL Section 70 before the Conversion can occur, the Petitioners respectfully request that the Commission grant approval of the Conversion under PSL Section 70 because the public interest requirement has been satisfied, as set forth above in Section I of this Joint Petition with respect to the proposed Transfers. If the Commission undertakes a PSL Section 70 review for the Conversion, the Petitioners respectfully request waiver of the filing requirements found in 16

⁵⁶ See also Case 04-M-1592, *WPS Power Development, Inc. and WPS Energy Services, Inc. – Joint Petition for a Declaratory Ruling that the Commission Will Not Review the Proposed Restructuring of WPS Power Development and WPS Energy Services*, Declaratory Ruling on Review of an Intra-Corporate Restructuring (issued and effective February 16, 2005) (The Commission found that the ultimate parent, WPS Corporation, was not increasing its share of sources of supply in any of the markets for wholesale generation operated by the NYISO and the proposed intra-corporate transfer would not affect horizontal market concentration. Ultimately, the Transfer did not pose potential for impacts adverse to captive New York ratepayers, and thus, the *Wallkill* Presumption applied).

N.Y.C.R.R. §§ 18.1, 31.1, and 39.1, as has been granted in other cases involving lightly regulated entities.

IV. PETITIONERS REQUEST APPROVAL OF THE FINANCING IN CONNECTION WITH THE TRANSFERS PURSUANT TO PSL SECTIONS 69 AND 82

Helix Generation plans to finance the overall Transaction, in part, with bank debt and bonds with a term of more than 12 months, in an amount not exceeding \$2.5 billion (the “Debt”). Pursuant to PSL Sections 69 and 82, Commission authorization is necessary for an electric corporation or steam corporation, respectively, to enter into indebtedness payable at periods of more than 12 months. Therefore, in addition to the PSL Sections 70 and 83 approvals requested herein, Petitioners, specifically Helix Generation, also request that the Commission grant any required approvals under PSL Sections 69 and 82 for Helix Generation to issue the Debt.

The Debt will be used to finance (i) the purchase of the Project Companies, including the Ravenswood Companies⁵⁷ and (ii) the Project Companies’ working capital needs, operational losses and capital expenses. The proposed Debt will be secured by, among other things: (i) a pledge of all equity ownership interests directly or indirectly owned by Helix Generation in the Project Companies; (ii) all project contracts; (iii) all revenues derived from the ownership and operation of the Project Companies’ assets; and (iv) substantially all other tangible and intangible real and personal property and assets jointly and severally owned by the Project Companies.

⁵⁷ To the extent that the financing authorizations must rest with the companies owning or controlling the relevant electric and steam facilities, Helix Generation requests that the relief sought under this Section IV extend only to TC Ravenswood and to TC Ravenswood Services, which are the Ravenswood Companies that are lightly regulated by the Commission as electric and steam corporations, respectively. Unit 40 Sublessor is a passive participant not regulated by the Commission and, as explained herein, it will remain a passive participant following consummation of the Transaction. As a result, financing approval is not required for Unit 40 Sublessor.

Because the Ravenswood Companies are, and will continue to be, competitive providers of electricity and steam services subject to lightened regulation, the scrutiny applicable to monopoly utilities under PSL Sections 69 and 82 may be reduced.⁵⁸ In prior proceedings, the Commission has approved debt issuances of entities subject to lightened regulation where such entities planned to use the debt for the same purposes that Helix Generation here plans to use the Debt, as well as debt instruments that encumbered generation assets both within and without New York State.⁵⁹ Similar to those prior holdings, approving the Ravenswood Companies' debt limit at no more than \$2.5 billion is in the public interest because it will provide the Ravenswood Companies with continuing access to capital for their operations and will strengthen the Ravenswood Companies' ability to provide cost-effective, safe, and reliable service.

Moreover, because the Ravenswood Companies are lightly regulated, Helix Generation seeks the flexibility to modify, without prior Commission approval, the identity of the financing entities, payment terms, and the amount financed, up to the \$2.5 billion limit. Such requests are routinely granted to similarly situated entities.⁶⁰ As the Commission has held previously,

⁵⁸ See Case 13-M-0305, *Verified Petition of Sithe/Independence Power Partners, L.P. for Approval of a Financing Pursuant to Lightened Regulation, Order Approving Financing* (issued and effective October 21, 2013) at 3 ("2013 Sithe Order"); Case 09-M-0776, *Petition of Griffiss Utility Services Corporation for Approval of Project Financing Pursuant to Public Service Law § 69 and § 82, Order Making Findings on Regulation of a Generation Facility and Approving Financing* (issued and effective February 17, 2010) at 10–11 ("Griffiss Order").

⁵⁹ See Case 05-E-1341, *Petition of Orion Power Holdings, Inc. et al. for Approval of Ownership Transfer Transactions and Authority to Issue Corporate Debt, Verified Petition of Orion Power Holdings, Inc. et al.* (filed October 26, 2005) at 9; Case 05-E-1341, *supra*, Order Approving Transfer and Financings and Making Other Findings (issued and effective February 15, 2006) at 6-7; see also Case 15-M-0297, *Petition of Sithe/Independence Power Partners, L.P. for Approval of Financing Pursuant to Sections 69 and 82 of the New York State Public Service Law, Order Approving Financing* (issued and effective September 21, 2015).

⁶⁰ See Case 14-E-0264, *Astoria Generating Company, L.P.'s Petition for Order Approving Financing Pursuant to Section 69 of Public Service Law, Order Approving Financing* (issued and effective October 2, 2014) ("AGC Order"); Case 11-E-0351, *Petition of Stony Creek Energy LLC for a Certificate of Public Convenience and Necessity, to Establish Lightened Regulation and for Approval of Debt Financing, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Rate Making Regulation and Approving Financing* (issued and effective December 15, 2011).

affording this flexibility allows lightly regulated entities “to avoid disruption of [their] financing arrangements and enables [them] to operate more effectively in competitive...markets.”⁶¹

As with financings approved for other lightly-regulated entities, captive New York ratepayers cannot be harmed by the terms of the proposed financing because the Ravenswood Companies will bear all the financial risk associated with these financing arrangements. As the Commission has previously found, “[a]dditional scrutiny is not required to protect captive New York ratepayers, who cannot be harmed by the terms arrived at for this financing because [the generator owner] bears the financial risk associated with its financial arrangements.”⁶²

Based on the foregoing, Helix Generation respectfully requests that it (and/or the relevant Ravenswood Companies, as necessary) be granted the authority to incur and/or guarantee indebtedness in an aggregate principal amount not to exceed \$2.5 billion, and to grant liens on substantially all of its assets and properties in connection with such indebtedness, as described herein.

V. **NEITHER THE PROPOSED TRANSFERS NOR THE CONVERSION WILL HAVE ANY ADVERSE IMPACTS ON THE ENVIRONMENT AND NO FURTHER SEQRA ACTION IS REQUIRED**

Under the State Environmental Quality Review Act (“SEQRA”), Article 8 of the Environmental Conservation Law, and its implementing regulations, 6 N.Y.C.R.R. §§ 7 and 617, the Commission must determine whether certain actions it is authorized to approve may have a significant impact on the environment. With respect to the proposed Transfers and the Conversion,⁶³ pursuant to PSL Section 70, SEQRA review is required under 6 N.Y.C.R.R. §§

⁶¹ See AGC Order at 4; see also Griffiss Order at 11.

⁶² See, e.g., 2013 Sithe Order at 3.

⁶³ No SEQRA review is required for the proposed Financing set forth in Section IV of this Petition because “PSL § 69 and § 82 approval of a securities issuance are a Type 2 action under the State Environmental Quality Review

617.4 and 617.5 and 16 N.Y.C.R.R. § 7. As these proposed actions do not meet the definition of a Type 1 or Type 2 actions listed in 6 NYCRR §§ 617.4 and 617.5 and 16 N.Y.C.R.R. § 7.2, they are classified as “unlisted” actions, as defined at 6 N.Y.C.R.R. § 617.2(ak).

A short form Environmental Assessment Form (“EAF”) is provided as Exhibit 2 to this Joint Petition. As set forth in the EAF, the proposed Transfers and the Conversion will have no significant adverse impact on the environment for purposes of SEQRA. The Transfers proposed and the Conversion concern merely a change in upstream ownership of the Ravenswood Companies. Ravenswood Generating Station will continue to operate in accordance with existing environmental permits, which will not change as a result of the change in ownership of the Ravenswood Companies. Moreover, following the Transfer, Helix Generation has committed to retain existing employees that are responsible for environmental compliance within the Ravenswood Generation Station. These proposed actions thus will not result in any change to the operation of the electric and steam facilities underlying the proposed transfer.

Accordingly, the Petitioners respectfully request that the Commission find that the proposed Transfers and Conversion will have no significant adverse impact on the environment and that no further SEQRA review is required.

VI. THE COMMISSION SHOULD FIND THAT, FOLLOWING THE CLOSING, TC RAVENSWOOD WILL CONTINUE TO QUALIFY FOR LIGHTENED REGULATION, TC RAVENSWOOD SERVICES WILL CONTINUE TO QUALIFY FOR INCIDENTAL AND LIGHTENED REGULATION AND THAT UNIT 40 SUBLESSOR WILL CONTINUE TO BE UNREGULATED

The proposed Transfers will cause no change that should affect the Commission’s prior determinations granting TC Ravenswood lightened regulation with respect to its provision of

Act, 16 NYCRR §§ 7.2(a) and 7.2(b)(2)(v), no further review of the financing is required under that statute.” Griffiss Order at 11 n.11.

wholesale electric service from the Ravenswood Generating Station electric generation facilities. Nor is there any change that should affect the Commission's prior determination in the TransCanada Transfer Order that TC Ravenswood Services qualifies for incidental regulation with respect to its steam plant interests at the Boiler "A" House site, and qualifies for lightened regulation with respect to its steam corporation interests.

The Commission should confirm, thus, that upon the closing of the proposed Transfers, that TC Ravenswood will continue to be subject to lightened regulation as an electric corporation consistent with the *AES* and *Carr Street* decisions,⁶⁴ and that TC Ravenswood Services will continue to be incidentally regulated with respect to its interests in the Boiler "A" House site and lightly regulated with respect to its steam corporation interests.

Moreover, as discussed above, Unit 40 Sublessor was formed to effect the restructuring of the Unit 40 lease instruments, and has served as merely a passive participant with respect to Unit 40's ownership and operation. After the proposed Transfers, Unit 40 Sublessor will continue to have a passive role, and will continue to not have operating or managerial control over Ravenswood Generating Station, the steam facilities or any other ancillary and related equipment or facilities. Nor will Unit 40 Sublessor have any stake in the performance or profitability of those facilities. Accordingly, consistent with applicable precedent,⁶⁵ Unit 40 Sublessor should continue to be considered unregulated and outside the Commission's

⁶⁴ See Case 99-E-0148, Case 98-E-1670, *AES Eastern Energy, L.P. and AES Creative Resources, L.P. - Petition for a Declaratory Ruling That Light-Handed Regulation Be Applied Concerning the Petitioner's Purchase of Certain Electric Generating Assets From New York State Electric & Gas Corporation*, Order Providing for Lightened Regulation (issued and effective April 23, 1999); *Carr Street Generating Station, L.P. - Petition for an Original Certificate of Public Convenience and Necessity and For a Declaratory Ruling On Regulatory Regime*, Order Providing for Lightened Regulation (issued and effective April 23, 1999).

⁶⁵ Case 01-E-0587, *Dynegy Danskammer, LLC and Dynegy Roseton, LLC - Petition for Expedited Approval Under Lightened Regulation of the Issuance of Securities*, Order Authorizing Issuance of Lease Obligation Notes at 4 (issued and effective April 27, 2001) ("[s]o long as the passive financiers lack operational or decision-making control over the generation facilities, the passive financiers will not be regulated.").

jurisdiction, whether under PSL Section 70 or otherwise, and Petitioners request that the Commission confirm this in its Order approving the Joint Petition.

VII. THE COMMISSION SHOULD WAIVE CERTAIN FILING REQUIREMENTS

Petitioners respectfully request a waiver of Sections 31.1(a), (c), (d) and (f)-(l) and Sections 39.1(a)-(c) of the Commission's regulations⁶⁶ because these provisions require the submission of information concerning financial condition, franchises, local consents, the costs of retail service, stock valuation and related data that applies to utilities that provide cost-based service to retail customers and that are subject to rate of return regulation. Such information is not relevant here, where the Petitioners operate in the wholesale electric generation market or in the wholesale steam market. The Commission has upheld such a waiver under similar circumstances.⁶⁷ Accordingly, Petitioners respectfully request a waiver of those requirements set forth in Sections 31.1(a), (c), (d) and (f)-(l) and 39.1(a)-(c) of the Commission's regulations.

⁶⁶ 16 NYCRR §§ 31.1(a), (c), (d), (f)-(l); 39.1(a)-(c).

⁶⁷ See, e.g., Case 06-M-0948, *Alliance Energy New York LLC et al. – Joint Petition for Approval of the Transfer of Ownership Interests in an Electric Generation Facility*, Order Approving Transfer at 4 n.5 (issued and effective October 25, 2006).

VIII. CORRESPONDENCE AND COMMUNICATIONS

All communications and correspondence with respect to this Joint Petition should be addressed to the following:

On behalf of Helix Generation:

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lsinger@couchwhite.com

John Staikos
General Counsel
Helix Generation, LLC
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On behalf of the TransCanada and Ravenswood parties:

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James M. D'Andrea
TransCanada USA Services Inc.
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Westborough, MA 01581
(508) 475-6088
(508) 898-0433 (facsimile)
jim_dandrea@transcanada.com
us_regulatory_law@transcanada.com

CONCLUSION

WHEREFORE, for the above stated reasons, Petitioners respectfully and jointly request that the Commission issue an expedited Order:

- (1) approving the proposed Transfers under PSL Sections 70 and 83, respectively;
- (2) issuing a declaratory ruling finding and declaring that the Conversion either (i) does not trigger a PSL § 70 review due to its intra-corporate nature, (ii) satisfies the requirements of

the *Wallkill* presumption and, accordingly, may be consummated without the Commission's prior approval under PSL § 70, or (iii) in the alternative, granting approval of the Conversion pursuant to PSL § 70;

(3) approving the proposed Financing under PSL Sections 69 and 82, respectively;

(4) confirming that, following the proposed Transfers, TC Ravenswood will continue to be a lightly regulated New York electric corporation, that TC Ravenswood Services will continue to be an incidentally and lightly regulated New York steam corporation, as previously held, and that Unit 40 Sublessor will continue to remain unregulated; and

(5) finding that the Transfers, and the Conversion, if applicable, will result in no significant adverse environmental impacts and that no further SEQRA action is required;

(6) waiving the filing requirements under Sections 31.1(a), (c), (d) and (f)-(l) and 39.1(a)-(c) of the Commission's regulations; and

(7) granting such other and further relief to which Petitioners may be entitled.

Respectfully submitted,

/s/

Brenda D. Colella, Esq.
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125 East Jefferson Street
Syracuse, NY 13202
Phone: (315) 425-2722
Fax: (315) 703-7301

George M. Pond, Esq.
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80 State Street
Albany, NY 12207
Phone: (518) 429-4232
Fax: (518) 427-3486

*Attorneys for TC Ravenswood LLC and TC
Ravenswood Services Corp.*

/s/

Leonard Singer, Esq.
Couch White, LLP
P.O. Box 22222
540 Broadway
Albany, New York 12201-2222
Phone: 518-426-4600
Fax: 518-426-0376

Attorneys for Helix Generation, LLC

Dated: January 13, 2017

Affidavit of
Jobey Eddleman
On Behalf Of
North America Transmission Corporation

**BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION**

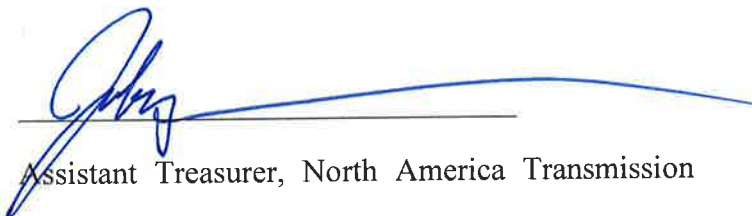
STATE OF NEW YORK)
) SS.
NEW YORK COUNTY)

VERIFICATION OF

Jobey Eddleman

Assistant Treasurer of North America Transmission Corporation

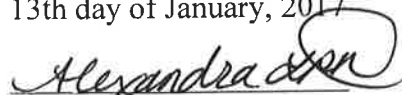
Jobey Eddleman, being duly sworn, deposes and says: I am the Assistant Treasurer, of North America Transmission Corporation. I have read the foregoing Joint Petition for Approval Pursuant to Sections 70 and 83 of the Public Service Law for the Proposed Transfer of Certain Generating and Related Assets, Pursuant to Sections 69 and 82 of the Public Service Law for a Proposed Financing and for Related Approvals, and state that I know the contents thereof; and that the facts stated therein with respect to North America Transmission Corporation are true to the best of my knowledge, information and belief.


Assistant Treasurer, North America Transmission

Corporation

Sworn to before me this

13th day of January, 2017



ALEXANDRA LINARES-PENA MEJIA
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01LI6192833
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES 09/15/2020

Affidavit of
Jobey Eddleman
On Behalf Of
North America Transmission LLC

**BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION**

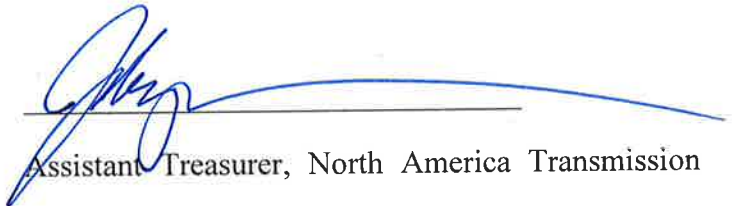
STATE OF NEW YORK)
) SS.
NEW YORK COUNTY)

VERIFICATION OF

Jobey Eddleman

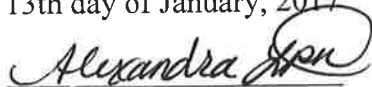
Assistant Treasurer of North America Transmission LLC

Jobey Eddleman, being duly sworn, deposes and says: I am the Assistant Treasurer of North America Transmission LLC. I have read the foregoing Joint Petition for Approval Pursuant to Sections 70 and 83 of the Public Service Law for the Proposed Transfer of Certain Generating and Related Assets, Pursuant to Sections 69 and 82 of the Public Service Law for a Proposed Financing and for Related Approvals, and state that I know the contents thereof; and that the facts stated therein with respect to North America Transmission LLC are true to the best of my knowledge, information and belief.


Assistant Treasurer, North America Transmission
LLC

Sworn to before me this

13th day of January, 2017



ALEXANDRA LINARES-PENA MEJIA
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01LI6192833
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES 09/15/2020

Affidavit of
David Nanus
On Behalf Of
Helix Generation, LLC

**BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION**

STATE OF NEW YORK)
) SS.
NEW YORK COUNTY)

VERIFICATION OF

David Nanus

Executive Vice President of Helix Generation, LLC

David Nanus, being duly sworn, deposes and says: I am the Executive Vice President of Helix Generation, LLC, one of the Petitioners in this proceeding. I have read the foregoing Joint Petition for Approval Pursuant to Sections 70 and 83 of the Public Service Law for the Proposed Transfer of Certain Generating and Related Assets, Pursuant to Sections 69 and 82 of the Public Service Law for a Proposed Financing and for Related Approvals, and state that I know the contents thereof; and that the facts stated therein with respect to Helix Generation, LLC and its affiliates are true to the best of my knowledge, information and belief.



Executive Vice President, Helix Generation, LLC

Sworn to before me this

13th day of January, 2017



ALEXANDRA LINARES-PENA MEJIA
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01LI6192833
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES 09/15/2020

Affidavit of
Jasmin Bertovic
On Behalf Of
TC Ravenswood Services Corp.

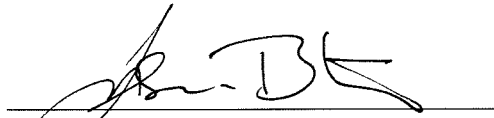
**BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION**

STATE OF MASSACHUSETTS))
WORCESTER COUNTY) SS.

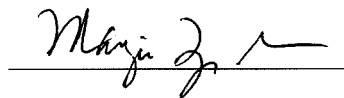
VERIFICATION OF
JASMIN BERTOVIĆ

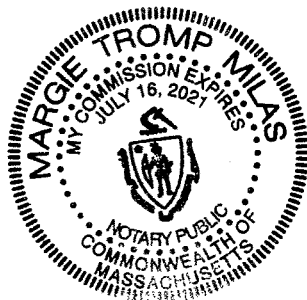
Vice President of TC Ravenswood Services Corp.

Jasmin Bertovic, being duly sworn, deposes and says: I am the Vice President, of TC Ravenswood Services Corp., one of the Petitioners in this proceeding. I have read the foregoing Joint Petition for Approval Pursuant to Sections 70 and 83 of the Public Service Law for the Proposed Transfer of Certain Generating and Related Assets, Pursuant to Sections 69 and 82 of the Public Service Law for a Proposed Financing and for Related Approvals, and state that I know the contents thereof; and that the facts stated therein with respect to TC Ravenswood Services Corp. and its affiliates are true to the best of my knowledge, information and belief.


Vice President, TC Ravenswood Services Corp.

Sworn to before me this
13th day of January, 2017





Affidavit of
Jasmin Bertovic
On Behalf Of
TC Ravenswood LLC

**BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION**

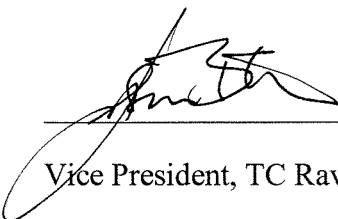
STATE OF MASSACHUSETTS)
) SS.
WORCESTER COUNTY)

VERIFICATION OF

JASMIN BERTOVIC

Vice President of TC Ravenswood, LLC

Jasmin Bertovic, being duly sworn, deposes and says: I am the Vice President, of TC Ravenswood, LLC, one of the Petitioners in this proceeding. I have read the foregoing Joint Petition for Approval Pursuant to Sections 70 and 83 of the Public Service Law for the Proposed Transfer of Certain Generating and Related Assets, Pursuant to Sections 69 and 82 of the Public Service Law for a Proposed Financing and for Related Approvals, and state that I know the contents thereof; and that the facts stated therein with respect to TC Ravenswood, LLC and its affiliates are true to the best of my knowledge, information and belief.



Vice President, TC Ravenswood, LLC

Sworn to before me this
13th day of January, 2017





EXHIBIT 1

KING & SPALDING

King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-4706
www.kslaw.com

Main Telephone: (202) 737-0500
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November 21, 2016

VIA eFILING

PUBLIC VERSION

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**PRIVILEGED MATERIAL
HAS BEEN REMOVED**

Re: *Helix Generation, LLC, TC Ravenswood, LLC, TC Ironwood LLC, TransCanada Maine Wind Development Inc., Ocean State Power LLC, and TransCanada Power Marketing Ltd., Joint Application for Approval Under Section 203 of the Federal Power Act and Request for a Shortened Comment Period, Docket No. EC17- -000*

Dear Secretary Bose:

Enclosed for filing please find the joint application (the “Application”) pursuant to Section 203 of the Federal Power Act (the “FPA”)¹ and Part 33 of the regulations of the Federal Energy Regulatory Commission (the “Commission”)² of Helix Generation, LLC (“Buyer”), TC Ravenswood, LLC (“Ravenswood”), TC Ironwood LLC (“Ironwood”), TransCanada Maine Wind Development Inc. (“Maine Wind”), Ocean State Power LLC (“Ocean State” and collectively with Ravenswood, Ironwood, and Maine Wind, the “Project Companies”), and TransCanada Power Marketing Ltd. (“TCPM” and collectively with Buyer and the Project Companies, “Applicants”) for all FPA Section 203 approvals deemed to be required in connection with a transaction (the “Transaction”) whereby (1) Buyer will indirectly acquire all of the interests in the Project Companies, and (2) TCPM will transfer a rate schedule establishing the revenue requirement for reactive power and voltage support provided by Ironwood’s generation facility to Ironwood.

Applicants respectfully request that the Commission issue an order approving the Transaction *on or before March 17, 2017*.

¹ 16 U.S.C. § 824b (2012).

² 18 C.F.R. Pt. 33 (2016).

Kimberly D. Bose
November 21, 2016
Page 2

Applicants request confidential treatment of Exhibit I to this Application in accordance with Sections 33.8 and 388.112 of the Commission’s regulations.³ Exhibit I is the Purchase and Sale Agreement, dated as of November 1, 2016, by and among TransCanada Facility USA, Inc., TransCanada PipeLine USA Ltd., TransCanada OSP Holdings Ltd., and Buyer, which contains highly sensitive and confidential commercial and financial information. Public disclosure of this information could hamper the parties’ negotiating positions in future transactions. This information is not generally available to the public, and is exempt from the mandatory public disclosure requirements of the Freedom of Information Act.⁴ In accordance with Section 388.112(b)(2)(i) of the Commission’s regulations,⁵ Applicants have provided, in Attachment 2 to the Application, a proposed protective order pursuant to which other parties will be able to obtain access to the non-public materials. The proposed protective order is a modified version of the Commission’s Model Protective Order, which creates a new class of protected materials, “Highly Sensitive Protected Materials,” and is substantively identical to protective orders used in other Commission proceedings.⁶ Notwithstanding the proposed protective order, the non-public materials should be treated as privileged materials reviewable by Commission Staff. The non-public materials are marked “**CONTAINS PRIVILEGED INFORMATION**” and “**DO NOT RELEASE.**”

³ 18 C.F.R. §§ 33.8, 388.112 (2016). Applicants will also be requesting confidential treatment for certain workpapers underlying the analysis performed by Julie R. Solomon of Navigant Consulting, Inc., which will be filed separately in CD-ROM format.

⁴ 5 U.S.C. § 552 (2012).

⁵ 18 C.F.R. § 388.112(b)(2)(i) (2016).

⁶ See, e.g., *Astoria Generating Co., L.P. v. New York Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,155 (2011) (“*Astoria Generating*”). The proposed protective order differs from that adopted in *Astoria Generating* in two non-material respects. First, the paragraphs have been renumbered to track more closely the numbering of the Commission’s Model Protective Order. Second, the proposed protective order includes a separate form of non-disclosure agreement for “Competitive Duty Personnel,” who would not have access to Highly Sensitive Protected Materials, in order to minimize the risk of confusion about which individuals are entitled to see which materials. Applicants have also added a new defined term “Non-Disclosure Certificate for Competitive Duty Personnel” in paragraph 3(c)(2) of the proposed protective order and incorporated this new defined term into paragraph 9(a) of the proposed protective order.

Kimberly D. Bose
November 21, 2016
Page 3

Thank you for your consideration of this matter. Please do not hesitate to contact counsel listed below with any questions.

Very truly yours,

/s/ Neil L. Levy

Neil L. Levy
David G. Tewksbury

Counsel for **Helix Generation, LLC**

Enclosures

cc: Steve P. Rodgers (Commission Staff)
Amery Poré (Commission Staff)

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Helix Generation, LLC)	
TC Ravenswood, LLC)	
TC Ironwood LLC)	
TransCanada Maine Wind Development Inc.)	Docket No. EC17-____-000
Ocean State Power LLC)	
TransCanada Power Marketing Ltd.)	

**JOINT APPLICATION FOR APPROVAL UNDER SECTION 203 OF THE
FEDERAL POWER ACT AND REQUEST FOR A SHORTENED COMMENT PERIOD**

Pursuant to Section 203 of the Federal Power Act (“FPA”)¹ and Part 33 of the regulations of the Federal Energy Regulatory Commission (the “Commission”),² Helix Generation, LLC (“Buyer”), TC Ravenswood, LLC (“Ravenswood”), TC Ironwood LLC (“Ironwood”), TransCanada Maine Wind Development Inc. (“Maine Wind”), Ocean State Power LLC (“Ocean State” and collectively with Ravenswood, Ironwood, and Maine Wind, the “Project Companies”), and TransCanada Power Marketing Ltd. (“TCPM,” collectively with the Project Companies, the “TC Applicants,” and collectively with Buyer and the Project Companies, “Applicants”) hereby submit this application (this “Application”) requesting such FPA Section 203 approvals as may be deemed to be required in connection with a transaction (the “Transaction”) whereby (1) Buyer will indirectly acquire all of the interests in the Project Companies, and (2) TCPM will transfer a rate schedule (the “Ironwood Reactive Rate Schedule”) establishing the revenue requirement for reactive power and voltage support provided from Ironwood’s generation facility (the “Ironwood Facility”) to Ironwood.³ As demonstrated

¹ 16 U.S.C. § 824b (2012).

² 18 C.F.R. Pt. 33 (2016).

³ Specifically, Applicants request approval under FPA Sections 203(a)(1)(A) and 203(a)(1)(B),

herein, the Transaction satisfies the requirements of Section 203 of the FPA and the Commission's Part 33 regulations, because it is consistent with the public interest and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.⁴

I. REQUEST FOR APPROVAL BY MARCH 17, 2017 AND A SHORTENED COMMENT PERIOD

Applicants respectfully request the issuance of an order approving this Application *on or before March 17, 2017* and a shortened comment period of 45 days in order to allow for approval by that date. There could be significant adverse commercial consequences for Buyer if this Application is not approved by that date and the parties are not in a position to consummate the Transaction soon thereafter. Issuance of an order by March 17, 2016 is appropriate, because, as discussed below and in the affidavit of Julie R. Solomon of Navigant Consulting, Inc. provided in Attachment 1 hereto (the "Solomon Affidavit"), the Transaction presents no competitive issues and is otherwise consistent with the public interest. With the highest post-Transaction market share being approximately 3.3 percent, the overlap between the combining entities is *de minimis*. Applicants have nonetheless provided a delivered price test ("DPT") analysis, prepared in accordance with Appendix A to the *Merger Policy Statement*,⁵ and that

16 U.S.C. §§ 824b(a)(1)(A), 824b(a)(1)(B) (2012), for the change in upstream control over the Project Companies and their Commission-jurisdictional assets and the transfer of the Ironwood Reactive Rate Schedule. Buyer is not currently a "holding company" that would require approval under FPA Section 203(a)(2), 16 U.S.C. § 824b(a)(2) (2012), but FPA Section 203(a)(2) approval is requested to the extent necessary on behalf of those of its upstream holding companies, including LS Power Development, LLC ("LSP Development"), that are not eligible for the blanket authorization in Section 33.1(c)(8) of the Commission's regulations, 18 C.F.R. § 33.1(c)(8) (2016), based on direct and/or indirect interests in transmitting utilities and electric utilities that are not exempt wholesale generators ("EWGs"), qualifying facilities ("QFs"), or foreign utility companies.

⁴ See 18 C.F.R. § 2.26 (2016).

⁵ *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (the "*Merger Policy Statement*"),

analysis confirms that the Transaction presents no competitive concerns. Applicants respectfully request that, consistent with the approach taken in the Commission's recent order in *Essential Power, LLC*,⁶ the Commission disregard the DPT analysis if it agrees that the overlap between the combining entities is *de minimis* and that the DPT analysis is, therefore, unnecessary.

In order to allow for approval of this Application on or before March 17, 2017, and thereby facilitate timely consummation of the Transaction, Applicants respectfully request a shortened comment period of 45 days. While the Commission's general policy is to establish a comment period of 60 days where, as here, an FPA Section 203 application includes an Appendix A analysis, the Commission has expressly declined to codify this policy in recognition of the need to be "flexible to deal with varying circumstances."⁷ Consistent with this recognition, the Commission has regularly granted shortened comment periods in cases involving FPA Section 203 applications that included Appendix A analyses.⁸ Such shortened notice is particularly appropriate here, because the Appendix A analysis is being submitted out of

reconsideration denied, Order No. 592-A, 79 FERC ¶ 61,321 (1997).

⁶ 155 FERC ¶ 62,191 (2016) ("*Essential Power*").

⁷ *Transactions Subject to Federal Power Act Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 194 (2005), *on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

⁸ *See, e.g.*, Errata Extending Comment Date, Docket No. EC16-130-000 (June 16, 2016) (unreported) (establishing a 45-day comment period); Combined Notice of Filings #1, Docket Nos. EC16-82-000, *et al.* (Mar. 1, 2016) (unreported) (establishing a 21-day comment period for an FPA Section 203 application filed in Docket No. EC16-82-000); Combined Notice of Filings #1, Docket Nos. EC16-19-000, *et al.* (Oct. 28, 2015) (unreported) (establishing a 21-day comment period for an FPA Section 203 application filed in Docket No. EC16-19-000); Combined Notice of Filings #1, Docket Nos. EC13-152-000, *et al.* (Sept. 20, 2013) (unreported) (establishing a 21-day comment period for an FPA Section 203 application filed in Docket No. EC13-152-000); Combined Notice of Filings #1, Docket Nos. EC12-27-000, *et al.* (Nov. 9, 2011) (unreported) (establishing a 21-day comment period for an FPA Section 203 application filed in Docket No. EC12-27-000); Combined Notice of Filings #1, Docket Nos. EC11-118-000, *et al.* (Sept. 12, 2011) (unreported) (establishing a 21-day comment period for an FPA Section 203 application filed in Docket No. EC11-118-000).

an abundance of caution and the Transaction could be approved solely on the basis of the *de minimis* analysis.

II. BACKGROUND

A. Description Of Applicants And Other Relevant Entities

1. The TC Applicants

As discussed in greater detail below, each of the TC Applicants is a wholly owned subsidiary of TransCanada PipeLines Limited (“TCPL”), a Canadian public company incorporated in 1951 by a Special Act of Parliament of Canada and continued on June 1, 1979 under the Canada Business Corporations Act. TCPL is, in turn, a wholly owned subsidiary of TransCanada Corporation (“TransCanada”). TransCanada is a diversified energy company doing business in Canada and the United States. Common shares in TransCanada are traded on the Toronto and New York stock exchanges. No shareholder (together with its affiliates) owns 10 percent or more of the publicly-traded stock of TransCanada.

Through its principal subsidiaries (TCPL, Nova Gas Transmission Ltd., and TransCanada PipeLine USA Ltd. (“TC PipeLine USA”)), TransCanada transports natural gas through pipelines in Canada and parts of the United States.⁹ TransCanada also owns interests in various

⁹ TransCanada owns interests in nine U.S. interstate natural gas pipelines, as follows: effectively a 67 percent indirect interest in Great Lakes Gas Transmission Limited Partnership, which serves the Midwest markets; a 100 percent indirect interest in ANR Pipeline Company, which serves the Midwest markets; a 14.5 percent indirect interest in Northern Border Pipeline Company, which serves the Midwest markets; a 50.2 percent indirect interest in Bison Pipeline LLC, which serves the Midwest markets; a 50.2 percent indirect interest in Gas Transmission Northwest Corporation, which serves the Pacific Northwest markets; a 28.9 percent indirect interest in North Baja Pipeline, LLC, which serves the Southwest markets; a 28.9 percent indirect interest in Tuscarora Gas Transmission Company, which serves the Western markets; a 44.5 percent indirect interest in Iroquois Pipeline, which serves the Northeast markets; and a 61.71 percent indirect interest in the Portland Natural Gas Transmission System Partnership, which serves the Northeast markets. Finally, TransCanada has gas pipeline interests throughout Canada that, *inter alia*, deliver gas to the United States-Canada border.

TransCanada also owns interests in a U.S. interstate natural gas storage facility, holding a 100 percent indirect interest in ANR Storage Company, which serves the Midwest markets. Through

electric generation facilities, including the interests held through the Project Companies and interests in facilities that are not involved in the Transaction.¹⁰

a. Ravenswood

Ravenswood owns and/or leases and operates the Ravenswood Generating Station, an approximately 2,246 MW (summer rating) natural gas- and oil-fired generation facility located in New York City and interconnected with the transmission grid controlled by the New York Independent System Operator, Inc. (the “NYISO”). The Ravenswood Generating Station resides within the New York City (“NYC”) sub-market. Ravenswood is an EWG and is authorized to make wholesale sales of electric energy, capacity, and certain ancillary services at market-based rates.¹¹ Ravenswood is a member of the NYISO and makes sales of energy, capacity, and ancillary services in the NYISO’s wholesale electricity markets as well as through bilateral transactions.

All of the membership interests of Ravenswood are owned by TransCanada Facility USA, Inc. (“TC Facility”). TC Facility is a wholly owned subsidiary of TransCanada Energy

ANR Storage Company, TransCanada also holds a 75 percent indirect general partner interest in Blue Lake Gas Storage Company, a Commission-jurisdictional storage partnership located in Kalkaska County, Michigan.

TransCanada also transports oil through Canada and the United States and holds a 100 percent indirect interest in the Keystone Pipeline System, which serves the Midwest markets.

¹⁰ Such facilities include, among other things, approximately 567 MW (summer rating) of hydroelectric facilities in the ISO New England Inc. (“ISO-NE”) market that are owned indirectly through TransCanada Hydro Northeast Inc. (“TC Hydro NE”). TransCanada’s indirect interests in TC Hydro NE are being sold to an affiliate of ArcLight Capital Partners in a separate transaction that is the subject of a separate application under FPA Section 203. *See* Joint Application for Authorization of Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act and Requests for Waivers, Expedited Action, and Privileged Treatment, Docket No. EC17-36-000 (filed Nov. 18, 2016).

¹¹ *See KeySpan-Ravenswood, Inc.*, 88 FERC ¶ 62,073 (1999) (granting EWG status); *MEP Investments, Inc.*, 87 FERC 61,209 (1999) (granting market-based rate authority).

USA, Inc. (“TransCanada USA”), which is, in turn, a wholly owned subsidiary of TCPL. As noted, TCPL is a wholly owned subsidiary of TransCanada.

TC Facility also owns all of the equity interests of TC Ravenswood Services Corp. (“Ravenswood Services”)¹² and 95 percent of the membership interests of Unit 40 Sublessor, LLC (“Unit 40 Sublessor”). Ravenswood Services provides fuel and related services to Ravenswood. Unit 40 Sublessor leases Unit 40 at the Ravenswood Generating Station from SE Ravenswood Trust (as passive owner-lessor) and subleases that unit to Ravenswood as part of a sale/leaseback financing arrangement.

b. Ironwood

Ironwood owns and operates the Ironwood Facility, an approximately 660 MW (summer rating) natural gas-fired generation facility located near Lebanon, Pennsylvania and interconnected with the transmission grid controlled by PJM Interconnection, L.L.C. (“PJM”). The Ironwood Facility resides within the 5004/5005 sub-market of the PJM market. Ironwood is an EWG and is authorized to make wholesale sales of electric energy, capacity, and certain ancillary services at market-based rates.¹³

All of the membership interests of Ironwood are owned by TC Ironwood Holdings LLC (“Ironwood Holdings”),¹⁴ all of whose membership interests are owned by TC Facility. As

¹² This entity will be converted from a corporation to a limited liability company prior to closing. To the extent that Section 203 authorization is required for this conversion, such authorization is provided by the blanket authorization in Section 33.1(c)(6) of the Commission’s regulations “for internal corporate reorganizations that do not result in the reorganization of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and that do not present cross-subsidization issues.” 18 C.F.R. § 33.1(c)(6) (2016).

¹³ See *AES Ironwood, LLC*, 86 FERC ¶ 62,247 (1999) (granting EWG status); *AES Ironwood, LLC*, Docket Nos. ER01-1315-000, *et al.* (June 5, 2001) (unreported).

¹⁴ Ironwood Holdings also owns all of the membership interests of TC Ironwood Services LLC, an entity that does not currently engage in any business activities.

noted, TC Facility is a wholly owned subsidiary of TransCanada USA. TransCanada USA is a wholly owned subsidiary of TCPL, which is, in turn, a wholly owned subsidiary TransCanada.

c. Maine Wind

Maine Wind¹⁵ owns and operates an approximately 132 MW (nameplate rating) wind-powered generation facility (the “Kibby Facility”) located in Kibby and Skinner Townships, Maine and an approximately 25-mile, 115 kV generator lead line (the “Kibby Line”) that is used solely to deliver the output of the Kibby Facility to the transmission grid controlled by ISO-NE.¹⁶ A portion of the output of the Kibby Facility is committed to a non-affiliate under a long-term power purchase agreement (the “Kibby PPA”).¹⁷ Maine Wind is an EWG and is authorized to make wholesale sales of electric energy, capacity, and certain ancillary services at market-based rates.¹⁸

All of the membership interests of Maine Wind are owned by TC PipeLine USA. TC PipeLine USA is a wholly owned subsidiary of TCPL. As noted, TCPL is a wholly owned subsidiary of TransCanada.

¹⁵ This entity will be converted from a corporation to a limited liability company prior to closing under the blanket authorization in Section 33.1(c)(6) of the Commission’s regulations, 18 C.F.R. § 33.1(c)(6) (2016), for internal corporate reorganizations. *See supra* note 12.

¹⁶ The Kibby Line is not a networked transmission facility, is not designed or constructed to serve as a transmission facility, and is not intended to serve as a transmission facility for third party transmission customers. At the Commission’s directive, *see Coolidge Power LLC*, 135 FERC ¶ 61,103, PP 1, 11, 15 (2011), Maine Wind filed a request for a waiver of the requirement to have an open access transmission tariff on file at the Commission, which the Commission subsequently granted. *See TransCanada Me. Wind Dev. Inc.*, 136 FERC ¶ 61,138 (2011).

¹⁷ The Kibby PPA has conservatively been disregarded in Ms. Solomon’s competitive analysis of the Transaction.

¹⁸ *See* Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG17-17-000 (filed Oct. 28, 2016); *TransCanada Me. Wind Dev. Inc.*, Docket No. ER08-685-000 (Apr. 16, 2008 (unreported) (granting market-based rate authority).

d. Ocean State

Ocean State owns and operates an approximately 454 MW (summer rating) natural gas-fired generation facility (the “Ocean State Facility”) located in Burrillville, Rhode Island and interconnected with the transmission grid controlled by ISO-NE. Ocean State is an EWG and is authorized to make wholesale sales of electric energy, capacity, and certain ancillary services at market-based rates.¹⁹

All of the membership interests of Ocean State are owned by TransCanada OSP Holdings Ltd. (“OSP Holdings”). OSP Holdings is a wholly owned subsidiary of TC PipeLine USA. As noted, TC PipeLine USA is a wholly owned subsidiary of TCPL, which is, in turn, a wholly owned subsidiary of TransCanada.

e. TCPM

TCPM is a power marketer. TCPM holds the Ironwood Reactive Rate Schedule, which sets forth the revenue requirement for reactive supply and voltage support from the Ironwood Facility pursuant to Schedule 2 to PJM’s Open Access Transmission Tariff (the “PJM OATT”).²⁰ Among other things, TCPM currently also purchases and markets the output of the Ironwood, Kibby, and Ocean State Facilities pursuant to agreements that will be terminated

¹⁹ See Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG17-9-000 (filed Oct. 13, 2016); *Ocean State Power*, Docket Nos. ER08-25-000, *et al.* (Dec. 18, 2007) (unreported) (granting market-based rate authority).

²⁰ See *PPL EnergyPlus, LLC*, Docket No. ER08-1462-000 (Sept. 25, 2008) (unreported) (accepting the Ironwood Reactive Rate Schedule for filing); *TransCanada Power Mktg., Ltd.*, Docket No. ER16-1134-000 (Apr. 13, 2016) (unreported) (accepting notice of TCPM’s succession to the Ironwood Reactive Rate Schedule for filing). TCPM has submitted an informational filing pursuant to Schedule 2 to the PJM OATT relating to the transfer of the Ironwood Facility. See Informational Filing of TransCanada Power Marketing, Ltd., Docket Nos. EL16-32-000, *et al.* (filed Nov. 2, 2016).

immediately prior to closing of the Transaction. TCPM is authorized to make wholesale sales of electric energy, capacity, and certain ancillary services at market-based rates.²¹

TCPM is a wholly owned subsidiary of TC PipeLine USA. As noted, TC PipeLine USA is a wholly owned subsidiary of TCPL, which is, in turn, a wholly owned subsidiary TransCanada.

2. Buyer And Its Relevant Affiliates

Buyer is an indirect subsidiary wholly controlled by LSP Development.²² Buyer was formed to acquire and hold the membership interests of the Project Companies. It currently has no assets.

LSP Development develops, owns, and operates independent power projects in the United States and is, among other things, also developing merchant transmission projects in parts of the United States. None of LSP Development's subsidiaries owns or controls generation facilities in the NYISO market, where Ravenswood's assets are located. LSP Development has the following subsidiaries that own or control generation facilities in the PJM and ISO-NE markets, where certain of the Project Companies' assets are located:²³

- Aurora Generation, LLC, an EWG that owns and operates the Aurora Generating Station, an approximately 832 MW (summer rating) natural gas-fired generation facility in Du Page County, Illinois (PJM market);²⁴

²¹ See *TransCanada Power Mktg., Ltd.*, Docket No. ER98-564-000 (Mar. 2, 1998) (unreported) (granting market-based rate authority).

²² While passive investors not controlled by LSP Development may hold indirect, non-voting interests in Buyer or in entities between LSP Development and Buyer, none of the voting securities of Buyer or any intermediate holding company between LSP Development and Buyer are owned by any entity not exclusively controlled by LSP Development.

²³ Subsidiaries of LSP Development own or control generation facilities in markets first-tier to the PJM and/or ISO-NE markets. These facilities have been taken into account in Ms. Solomon's competitive analysis of the Transaction.

²⁴ See Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG17-102-

- Doswell Limited Partnership, an EWG that owns and operates an approximately 814 MW (summer rating) natural gas-fired generating facility²⁵ in Ashland, Virginia (PJM market; AP South sub-market);²⁶
- Jericho Power LLC, which owns and operates an approximately 12 MW (summer rating) wind-powered QF in Berlin, New Hampshire (ISO-NE market);²⁷
- LSP University Park, LLC, an EWG that owns and operates an approximately 504 MW (summer rating) natural gas-fired, simple-cycle generating facility near University Park, Illinois (PJM market);²⁸
- Riverside Generating Company, L.L.C., an EWG that leases and operates, and has the right to the output of, an approximately 825 MW (summer rating) natural gas-fired generating facility in Lawrence County, Kentucky (PJM market);²⁹
- Rockford Power, LLC, an EWG that owns and operates an approximately 300 MW (summer rating) natural gas-fired generation facility in Rockford, Illinois (PJM market);³⁰
- Rockford Power II, LLC, an EWG that owns and operates an approximately 157 MW (summer rating) natural gas-fired generation facility in Rockford, Illinois (PJM market);³¹

000 (filed May 18, 2016); *Beacon Solar 1, LLC*, Notice of Effectiveness of Exempt Wholesale Generator Status, Docket Nos. EG16-90-000, *et al.* (Aug. 8, 2016) (unreported); *Aurora Generation, LLC*, Docket No. ER16-1732-000 (July 7, 2016) (unreported) (granting market-based rate authority).

²⁵ A planned expansion, currently expected to be completed in March 2018, would increase the generating capacity of this facility by approximately 340 MW (summer rating). This additional capacity has been reflected in Ms. Solomon's competitive analysis of the Transaction.

²⁶ See *Doswell Ltd. P'ship*, 61 FERC ¶ 61,325 (1992) (granting EWG status); *Doswell Ltd. P'ship*, Docket No. ER00-2391-000 (June 15, 2000) (unreported) (granting market-based rate authority).

²⁷ See Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility, Docket No. QF15-218-000 (filed Dec. 18, 2014).

²⁸ See *PPL Univ. Park, LLC*, 99 FERC ¶ 62,066 (2002) (granting EWG status); *PPL Univ. Park, LLC*, Docket No. ER02-1327-000 (May 9, 2002) (unreported) (granting market-based rate authority).

²⁹ See *Riverside Generating Co., L.L.C.*, 91 FERC ¶ 62,101 (2000) (granting EWG status); *Riverside Generating Co., L.L.C.*, Docket No. ER01-1044-000 (Feb. 20, 2001) (unreported) (granting market-based rate authority).

³⁰ See *NRG Rockford LLC*, 91 FERC ¶ 62,128 (2000) (granting EWG status); *NRG Rockford LLC*, Docket No. ER00-2069 (May 3, 2000) (unreported) (granting market-based rate authority).

³¹ See *Indeck-Rockford II LLC*, 99 FERC ¶ 62,097 (2002) (granting EWG status); *Indeck-Rockford II LLC*, Docket No. ER02-1412 (May 29, 2002) (unreported) (granting market-based rate authority).

- Seneca Generation, LLC, an EWG that owns and operates the Seneca Pumped Storage Station, a pumped storage station with generating capacity of approximately 513 MW (summer rating) in Warren, Pennsylvania at the U.S. Army Corps of Engineers' Kinzua Dam on the Allegheny River (PJM market);³²
- University Park Energy, LLC, an EWG that owns and operates an approximately 300 MW (summer rating) natural gas-fired peaking facility near University Park, Illinois (PJM market);³³
- Wallingford Energy LLC ("Wallingford"), an EWG that owns an approximately 212 MW (summer rating) natural gas-fired generating facility³⁴ in Wallingford, Connecticut (ISO-NE market; Southwest Connecticut ("SWCT") sub-market);³⁵
- West Deptford Energy, LLC, an EWG that leases and operates an approximately 711 MW (summer rating) natural gas-fired, combined-cycle generating facility in West Deptford Township, New Jersey (PJM market; PJM East sub-market);³⁶ and
- White Oak Solar Energy, LLC, which owns and operates an approximately 10 MW (summer rating) solar-powered QF in Dover, Delaware (PJM market; PJM East sub-market).³⁷

³² See Self-Certification of Exempt Wholesale Generator Status, Docket No. EG14-5-000 (filed Oct. 10, 2013); *Burgess Biopower*, Docket Nos. EG14-1-000, *et al.* (notice of effectiveness of EWG status); *Seneca Generation, LLC*, 145 FERC ¶ 61,096 (granting market-based rate authority).

³³ See *University Park Energy, LLC*, 92 FERC ¶ 62,117 (2000) (granting EWG status); *Constellation Power Source, et al.*, Docket Nos. ER01-556-000, *et al.* (Jan. 19, 2001) (unreported) (granting market-based rate authority).

³⁴ A planned expansion, currently expected to be completed in December 2017, would increase the generating capacity of this facility by approximately 90 MW (summer rating). This additional capacity has been reflected in Ms. Solomon's competitive analysis of the Transaction.

³⁵ See *PPL Wallingford Energy LLC*, 95 FERC ¶ 62,067 (2001) (granting EWG status); *PPL Wallingford Energy, LLC*, Docket No. ER01-1559-000 (May 10, 2001) (unreported) (granting market-based rate authority).

³⁶ See Self-Certification of Exempt Wholesale Generator Status, Docket No. EG14-2-000 (filed Oct. 3, 2013); *Burgess Biopower LLC*, Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status, Docket Nos. EG14-1-000, *et al.* (Jan. 9, 2014) (unreported); see *West Deptford, Energy, LLC*, Docket No. ER14-19-000 (Nov. 21, 2013) (unreported) (granting market-based rate authority).

³⁷ See Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility, Docket No. QF11-266-000 (filed May 27, 2011).

B. The Transaction

The terms of the Transaction are set forth in the Purchase and Sale Agreement (the “PSA”), dated as of November 1, 2016, by and among TC Facility, TC Pipeline USA, OSP Holdings, and Buyer. A copy of the PSA is being submitted, on a non-public basis, as Exhibit I to this Application. Pursuant to the PSA, Buyer will acquire (1) all of the membership interests of Ravenswood, all of the membership interests of Ravenswood Services, and 95 percent of the membership interests of Unit 40 Sublessor from TC Facility; (2) all of the membership interests of Ironwood Holdings from TC Facility; (3) all of the membership interests of Maine Wind from TC Pipeline USA; and (4) all of the membership interests of Ocean State from OSP Holdings.³⁸ In addition, TCPM will transfer the Ironwood Reactive Rate Schedule to Ironwood. As a result of the Transaction, the Project Companies will become wholly controlled indirect subsidiaries of LSP Development and will cease to be affiliated with TransCanada, TCPL, TC Facility, TC Pipeline USA, and OSP Holdings.

III. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST

Section 203(a)(4) of the FPA provides that the Commission “shall approve” a proposed transaction “if it finds that the proposed transaction will be consistent with the public interest, and will not result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. . . .”³⁹ In determining whether a proposed transaction is in the public interest, the Commission considers whether it will have an adverse impact on (i) competition, (ii) rates, or (iii) regulation.⁴⁰ The Transaction

³⁸ Intermediate holding companies may be inserted between Buyer and one or more of the Project Companies at or around the closing of the Transaction.

³⁹ 16 U.S.C. § 824b(a)(4) (2012).

⁴⁰ *Revised Filing Requirements Under Part 33 of the Commission’s Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *on reh’g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

satisfies the requirements of FPA Section 203, because it will have no adverse impact on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of any associate company.

A. The Transaction Will Not Have An Adverse Effect On Competition

1. The Transaction Presents No Horizontal Market Power Concerns

The Transaction presents no horizontal market power concerns. Under Section 33.3(a)(2) of the Commission’s regulations,⁴¹ applicants are not required to submit a DPT analysis performed in accordance with Appendix A to the Commission’s *Merger Policy Statement* where the combining “entities do not currently conduct business in the same geographic markets or . . . the extent of the business transactions in the same geographic markets is *de minimis* . . .”⁴² As discussed below and in the Solomon Affidavit, there is no overlap at all in the NYISO market (including the NYC sub-market), and the overlap in the PJM market (including the 5004/5005 and AP South sub-markets) and the ISO-NE market is *de minimis*. As a result, the Transaction presents no horizontal market power concerns, and no Appendix A analysis should be required for any market. Nonetheless, out of an abundance of caution, Ms. Solomon performed DPT analyses for the ISO-NE and PJM markets, as well as the 5004/5005 and AP South sub-markets. The DPT results confirm that the Transaction presents no horizontal market power concerns.

⁴¹ 18 C.F.R. § 33.3(a)(2) (2016).

⁴² 18 C.F.R. § 33.3(a)(2)(i) (2016). *See also, e.g.*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,902 (stating that an Appendix A analysis will not be required if “the applicant demonstrates that the merging entities do not currently operate in the same geographic markets”).

a. The NYISO Market

One of the Project Companies, Ravenswood, owns/leases a generation facility in the NYC sub-market of the NYISO market. None of Buyer or its affiliates owns or controls generation facilities in the NYC sub-market or the broader NYISO market. Accordingly, because there is no overlap in the NYISO market, the Transaction presents no horizontal market power concerns in the NYISO market or the NYC sub-market, and no Appendix A analysis is required with respect to the NYISO market or the NYC sub-market.⁴³

b. The PJM Market

One of the Project Companies, Ironwood, owns a generation facility in the 5004/5005 sub-market of the PJM market. Certain of Buyer's affiliates own or control generation facilities in the PJM East sub-market, which resides within the 5004/5005 sub-market, and in the AP South sub-market, within which the 5004/5005 sub-market resides,⁴⁴ and other affiliates of Buyer own or control facilities in parts of the PJM market outside any recognized sub-market. Accordingly, the 5004/5005 and AP South sub-markets and the broader PJM market are relevant geographic markets.

Measured against the approximately 182,400 MW of installed capacity in the PJM market, the Transaction involves the combination of the approximately 2.9 percent market share of Buyer and its affiliates with the approximately 0.4 percent market share of Ironwood for a combined post-Transaction market share of approximately 3.3 percent.⁴⁵ Because the bulk of the generation owned or controlled by Buyer's affiliates is located outside the 5004/5005 and AP

⁴³ See 18 C.F.R. § 33.3(a)(2) (2016).

⁴⁴ None of Buyer's current affiliates owns or controls generation facilities in that part of the 5004/5005 sub-market outside the PJM East sub-market.

⁴⁵ See Solomon Affidavit at 6-7 & Table 4.

South sub-markets, the post-Transaction market shares for those sub-markets are even lower, approximately 2.3 percent and 3.0 percent, respectively.⁴⁶ The foregoing post-Transaction market shares are consistent with levels previously accepted as *de minimis*.⁴⁷

The results of Ms. Solomon's DPT analyses for the PJM market and the 5004/5005 and AP South sub-markets confirm that the Transaction does not present any horizontal market power concerns. In the PJM market, the Transaction results in Herfindahl-Hirschman Index ("HHI") increases for the 10 time periods ranging from 1 to 3 points, when analyzed using the economic capacity ("EC") measure, and from 3 to 6 points, when analyzed using the available economic capacity ("AEC") measure, in a market that the post-Transaction HHIs show to be unconcentrated under either measure.⁴⁸ In the 5004/5005 sub-market, the Transaction results in HHI increases for the 10 time periods ranging from 4 to 5 points, when analyzed using the EC measure, and from 7 to 10 points, when analyzed using the AEC measure, in a market that is unconcentrated under either measure.⁴⁹ In the AP South sub-market, the Transaction results in HHI increases for the 10 time periods ranging from 4 to 7 points, when analyzed using the EC measure, and from 10 to 18 points, when analyzed using the AEC measure, in a market that is unconcentrated under either measure.⁵⁰ In each case, the HHI increases are well below the

⁴⁶ See *id.* at 7, 23-24 & Tables 9, 10.

⁴⁷ See, e.g., *Essential Power*, 155 FERC ¶ 62,191 (approving application in which a post-transaction market share of 5.3 percent was characterized as *de minimis*); *Dynegy Roseton, LLC*, 142 FERC ¶ 62,148 (2013) (approving application in which post-transaction market share of 3.2 percent was characterized as *de minimis*); *Milford Power Co., LLC*, 134 FERC ¶ 62,038 (2011) (approving application in which post-transaction market share of 4.5 percent was characterized as *de minimis*).

⁴⁸ See Solomon Affidavit at 24-25, 27 & Tables 11, 14; see also *id.*, Exhs. J-7, J-8.

⁴⁹ See *id.* at 25-28 & Tables 12, 15; see also *id.*, Exhs. J-7, J-8.

⁵⁰ See *id.* at 25-28 & Tables 13, 16; see also *id.*, Exhs. J-7, J-8.

thresholds set forth in Appendix A to the *Merger Policy Statement*,⁵¹ confirming that the Transaction does not present any horizontal market power concerns.

c. The ISO-NE Market

Two of the Project Companies, Maine Wind and Ocean Power, own generation facilities in the ISO-NE market. Certain of Buyer's affiliates own or control generation facilities in the ISO-NE market. Accordingly, the ISO-NE market is a relevant geographic market. Although Wallingford's generation facility is located in the SWCT sub-market, that sub-market is not a relevant geographic market, because Maine Wind's and Ocean Power's generation facilities are located outside that sub-market (*i.e.*, there is no overlap) and none of the Project Companies has firm transmission rights into that sub-market.⁵²

Measured against the approximately 30,671 MW of installed capacity in the ISO-NE market, the Transaction involves the combination of the approximately 1.0 percent market share of Buyer and its affiliates with the approximately 1.8 percent market share of Maine Wind and Ocean Power for a combined post-Transaction market share of approximately 2.8 percent.⁵³ Such a market share is consistent with levels previously accepted by the Commission as *de minimis*.⁵⁴

⁵¹ See *Merger Policy Statement*, FERC Stats. & Regs. ¶ 31,044 at 30,134 (finding that a transaction is unlikely to have adverse competitive effects if the post-transaction market is unconcentrated “regardless of the change in HHI”; if the post-transaction market is moderately concentrated and the HHI increase is less than 100 points; or if the post-transaction market is highly concentrated and the HHI increase is less than 50 points).

⁵² See *Analysis of Horizontal Market Power Under the Federal Power Act*, 138 FERC ¶ 61,109 at P 43 (2012) (stating that no Appendix A analysis is required “for an identified submarket if the applicants do not have overlapping generation within the submarket and lack firm transmission rights to import capacity into that market.”); *NRG Energy, Inc.*, 141 FERC ¶ 61,207 at P 74 (2012) (finding an analysis of a particular sub-market is irrelevant, “because Applicants’ ownership of generation does not overlap in th[at] submarket”).

⁵³ See Solomon Affidavit at 5 & Table 2.

⁵⁴ See *supra* note 47.

The results of Ms. Solomon's DPT analysis for the ISO-NE market confirm that the Transaction does not present any horizontal market power concerns. In the ISO-NE market, the Transaction results in HHI increases for the 10 time periods ranging from 0 to 4 points, when analyzed using the EC measure, and from 0 to 8 points, when analyzed using the AEC measure,⁵⁵ in a market that the post-Transaction HHIs show to be unconcentrated under either measure.⁵⁶ Such HHI increases are well below the thresholds set forth in Appendix A to the *Merger Policy Statement*,⁵⁷ confirming that the Transaction does not present any horizontal market power concerns.

2. The Transaction Presents No Vertical Market Power Concerns

The Transaction presents no vertical market power concerns. The Transaction does not involve any electric transmission facilities, other than facilities used to interconnect the Project Companies' generation facilities with the transmission grid, or any other upstream inputs to electricity products and thus presents no vertical market power concerns. None of Buyer or its affiliates owns or controls any operational electric transmission facilities in the NYISO, PJM, or ISO-NE market, except for facilities used to interconnect generating facilities with the transmission grid, or any inputs to electricity production that would allow them to impose

⁵⁵ It is questionable whether the AEC measure is appropriate for the ISO-NE market, where most retail markets have been restructured. The presumption underlying the AEC measure is that "the lowest running cost units are used to serve native load and other firm contractual obligations and would not be available for other sales." *Merger Policy Statement*, FERC Stats. & Regs. ¶ 31,044 at 30,132. As the Commission has recognized, "this presumption may not be valid" in a market with retail restructuring. *Id.* See also *id.* at 30,132, n.81 (observing that "in a market with full retail access and a bid-based power exchange, all generation units would be in the market"). Moreover, where retail restructuring has occurred, it may be difficult accurately to determine native load deductions necessary to calculate AEC. See *Exelon Corp.*, 112 FERC ¶ 61,011 at P 130 (2005).

⁵⁶ See Solomon Affidavit at 19-21, Tables 6, 7; see also *id.*, Exhs. J-5, J-6.

⁵⁷ See *supra* note 51.

barriers to entry into the NYISO, PJM, or ISO-NE market. Accordingly, the Transaction presents no vertical market power concerns, and no vertical market power analysis is required.⁵⁸

B. The Transaction Will Not Have An Adverse Effect On Rates

The Transaction will not adversely affect rates. None of Applicants or their affiliates provides third-party Commission-jurisdictional transmission service or has any captive wholesale requirements customers. All wholesale sales of electric energy, capacity, and ancillary services by the Project Companies are made pursuant to their market-based rate tariffs or cost-based rate schedules on file with the Commission, and following the consummation of the Transaction, all wholesale sales of electric energy, capacity, and ancillary services by the Project Companies will continue to be made pursuant to their market-based rate tariffs or cost-based rate schedules on file with the Commission. The only cost-based rate schedule or tariff involved in the Transaction is the Ironwood Reactive Rate Schedule. Neither the Ironwood Reactive Rate Schedule nor the PJM Tariff would allow for the pass-through of costs associated with the Transaction without Commission authorization under Section 205 of the FPA.⁵⁹ Accordingly, the Transaction will not have any adverse effect on wholesale rates.

C. The Transaction Will Not Impair The Effectiveness Of Regulation

The Transaction will not have any adverse effect on the effectiveness of federal or state regulation. Wholesale sales by the Project Companies will continue to be subject to the

⁵⁸ See 18 C.F.R. § 33.4(a)(2) (2016).

⁵⁹ The same is true of the other rate schedules and tariffs under which certain of Buyer's affiliates receive cost-based compensation for reactive power, black start, and similar services: neither those rate schedules nor applicable independent system operator/regional transmission organization tariffs would allow for the pass-through of costs associated with the Transaction without Commission authorization under Section 205 of the FPA.

Commission's ratemaking jurisdiction, just as they are today. Similarly, the Transaction will not affect the ability of any state authority to regulate retail rates.

D. The Transaction Will Not Result In Cross-Subsidization Or The Pledge Or Encumbrance Of Utility Assets As To Any Associate Company

Pursuant to Section 203(a)(4) of the FPA⁶⁰ and Section 2.26(f) of the Commission's regulations,⁶¹ the Commission evaluates whether a proposed transaction will result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. The Commission has recognized three classes of transactions that are unlikely to present cross-subsidization concerns and, accordingly, has adopted three "'safe harbors' for meeting the section 203 cross-subsidization demonstration, absent concerns identified by the Commission or evidence from interveners that there is a cross-subsidy problem based on the particular circumstances presented."⁶² The Transaction falls squarely within the safe harbor for transactions that do not involve a franchised public utility with captive customers.⁶³ Under such circumstances, the Commission has recognized that "there is no potential for harm to customers."⁶⁴

IV. INFORMATION REQUIRED BY THE COMMISSION'S REGULATIONS

In support of this Application, the following information is provided as required by Section 33.2 of the Commission's regulations.⁶⁵ Applicants respectfully request that the

⁶⁰ 16 U.S.C. § 824b(a)(4) (2012).

⁶¹ 18 C.F.R. § 2.26(f) (2016).

⁶² *See FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at P 16 (2007).

⁶³ *See id.* at P 17.

⁶⁴ *Id.*

⁶⁵ 18 C.F.R. § 33.2 (2016).

Commission grant certain waivers of these requirements consistent with those granted under similar circumstances.⁶⁶

A. Section 33.2(a) – The Exact Name Of The Applicants And Their Principal Business Addresses

Buyer's exact legal name and the address of its principal business office are:

Helix Generation, LLC
One Tower Center, 21st Floor
East Brunswick, NJ 08816

The TC Applicants' exact legal names are: TC Ravenswood, LLC, TC Ironwood LLC, TransCanada Maine Wind Development Inc., Ocean State Power LLC, and TransCanada Power Marketing Ltd. The address of their principal business office is:

110 Turnpike Road, Suite 300
Westborough, MA 01581

B. Section 33.2(b) – Names And Addresses Of Persons Authorized To Receive Notices And Communications Regarding The Application

Applicants request that the names of the following persons be placed on the official service list compiled by the Secretary in this proceeding:⁶⁷

On behalf of Buyer:

Neil L. Levy
David G. Tewksbury
KING & SPALDING LLP
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Scott Carver
Senior Vice President and
Associate General Counsel
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⁶⁶ See, e.g., *Northeast Generation Co.*, 117 FERC ¶ 61,068 at P 17 (2006) (rejecting objections to applicants' request to waive the requirements to file certain information).

⁶⁷ Applicants respectfully request waiver of Rule 203(b) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b) (2016), to the extent necessary to allow each of the persons listed below to be included on the official service list for this proceeding.

On behalf of the TC Applicants:

Kenneth L. Wiseman
Mark F. Sundback
William M. Rappolt
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(508) 898-0433 (facsimile)
jim_dandrea@transcanada.com
us_regulatory_law@transcanada.com

C. Section 33.2(c) – Description Of The Applicants

1. Exhibit A – Description Of The Applicants’ Business Activities

Descriptions of Applicants’ business activities are provided above in Section II.A. Applicants respectfully request waiver of Section 33.2(c)(1) of the Commission’s regulations⁶⁸ to the extent it would require the submission of additional information in Exhibit A.

2. Exhibit B – List Of Energy Subsidiaries And Affiliates

The Transaction will affect only Applicants, each of which is described in Section II.A of this Application. Applicants respectfully request waiver of Section 33.2(c)(2) of the Commission’s regulations⁶⁹ to the extent it would require the submission of additional information in Exhibit B.⁷⁰

3. Exhibit C – Organizational Charts

Organizational charts depicting the corporate structures above the Project Companies and other entities being acquired through the Transaction are provided in Exhibit C. The Transaction

⁶⁸ 18 C.F.R. § 33.2(c)(1) (2016).

⁶⁹ 18 C.F.R. § 33.2(c)(2) (2016).

⁷⁰ See, e.g., *Sunoco Power Generation LLC*, 138 FERC ¶ 62,255 (2012); *Cottonwood Energy Co. LP*, 118 FERC ¶ 62,151 (2007); *National Power of Am., Inc.*, 109 FERC ¶ 62,214 (2004).

will not result in any change in upstream ownership of TCPM. Applicants respectfully request partial waiver of Section 33.2(c)(3) of the Commission's regulations⁷¹ to the extent necessary to permit them to include on the organizational charts only the Project Companies, and those parent companies, energy subsidiaries, and energy affiliates that are relevant to the Transaction. In particular, Applicants request partial waiver to the extent necessary to permit them to exclude from those charts TCPM, as well as intermediate holding companies, service companies, and similar subsidiaries and affiliates not involved in, or relevant to, the Transaction.

4. Exhibit D – Description Of Joint Ventures, Strategic Alliances, Tolling Arrangements Or Other Business Arrangements

The Transaction will have no effect on any joint ventures, strategic alliances, tolling arrangements, or other business arrangements of Applicants separate from the Transaction. Applicants, therefore, request waiver of the requirement of Section 33.2(c)(4) of the Commission's regulations⁷² to file Exhibit D.

5. Exhibit E – Identity Of Common Officers

There are currently no common officers or directors shared between Buyer, on the one hand, and the TC Applicants, TC Facility, TC PipeLine USA, and OSP Holdings, on the other hand. Following consummation of the Transaction, there will be no common officers or directors shared between Buyer and the Project Companies, on the one hand, and TCPM, TC Facility, TC PipeLine USA, and OSP Holdings, on the other hand. Following consummation of the Transaction, there will likely be common officers and directors shared between Buyer, on the one hand, and the Project Companies, on the other hand, as the Project Companies will be wholly owned subsidiaries of Buyer. To the extent that the Transaction results in individuals

⁷¹ 18 C.F.R. § 33.2(c)(3) (2016).

⁷² 18 C.F.R. § 33.2(c)(4) (2016).

holding covered interlocking positions with public utilities, appropriate filings will be made, if and as necessary, pursuant to Part 45 and Part 46 of the Commission's regulations.⁷³ Applicants respectfully request waiver of the requirement of Section 33.2(c)(5) of the Commission's regulations⁷⁴ to the extent it would require the submission of additional information in Exhibit E.

6. Exhibit F – Wholesale Power Sales And Transmission Customers

Applicants respectfully request waiver of the requirement of Section 33.2(c)(6) of the Commission's regulations⁷⁵ to submit Exhibit F. As discussed above, the Transaction does not have any detrimental impact on competition, rates, or regulation and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

D. Section 33.2(d) – Description Of Jurisdictional Facilities

The only jurisdictional facilities involved in the Transaction are (1) generator interconnection facilities associated with the Project Companies' generation facilities, including (but not limited to) the Kibby Line; (2) the Project Companies' market-based rate tariffs and wholesale power sales contracts and books and records relating to sales thereunder;⁷⁶ and (3) the Ironwood Reactive Rate Schedule. Applicants respectfully request waiver of the requirement of

⁷³ 18 C.F.R. Pts. 45, 46 (2016).

⁷⁴ 18 C.F.R. § 33.2(c)(5) (2016).

⁷⁵ 18 C.F.R. § 33.2(c)(6) (2016).

⁷⁶ In addition to the Kibby PPA, the Transaction will result in the indirect transfer of certain rights and obligations with regard to sales of capacity through the markets administered by the NYISO, PJM, and ISO-NE, which rights and obligations might be viewed as contracts and/or books and records relating to wholesale sales for FPA Section 203 purposes.

Section 33.2(d) of the Commission's regulations⁷⁷ to provide additional information in Exhibit G.

E. Section 33.2(e) – Description Of The Transaction

A description of the Transaction has been provided above in Part II.B. Applicants request waiver of Section 33.2(e)(2) of the Commission's regulations⁷⁸ to the extent it would require submission of additional information in Exhibit H.

F. Section 33.2(f) – All Contracts Related To The Transaction

A copy of the PSA is provided, on a non-public basis, in Exhibit I. Applicants request waiver of the requirements of Section 33.2(f) of the Commission's regulations to the extent that it would require the filing of the exhibits and schedules to the PSA.⁷⁹

G. Section 33.2(g) – Facts Relied Upon To Show That The Transaction Is Consistent With The Public Interest

The facts upon which Applicants rely to show that the Transaction is consistent with the public interest are set forth above in Part III. In accordance with Section 33.2(g) of the Commission's regulations,⁸⁰ Applicants will supplement this Application promptly to reflect in their analysis any material changes that may occur after the date this filing is made with the Commission, but before final Commission action. Because such information is provided in the

⁷⁷ 18 C.F.R. § 33.2(d) (2016).

⁷⁸ 18 C.F.R. § 33.2(e)(2) (2016).

⁷⁹ *See, e.g., Montenay Montgomery Ltd. P'ship*, 128 FERC ¶ 62,111 (2009) (granting FPA Section 203 application based on application containing a copy of the transaction document from which the schedules and exhibits were omitted).

⁸⁰ 18 C.F.R. § 33.2(g) (2016).

body of this Application, Applicants request waiver of the requirement of Section 33.2(g) of the Commission's regulations⁸¹ to provide such information in Exhibit J.

H. Section 33.2(h) – Map Of Physical Property

Applicants respectfully request waiver of the requirement of Section 33.2(h) of the Commission's regulations⁸² to provide a map identifying the physical property owned by the Applicants in Exhibit K, because the Transaction does not involve any combination of utilities with franchised service territories.

I. Section 33.2(i) – Licenses, Orders, Or Other Approvals Required From Other Regulatory Bodies In Connection With The Proposed Transaction And The Status Of Other Regulatory Actions

Applicants identify all licenses, orders, and other approvals from other regulatory bodies required in connection with the Transaction in Exhibit L. In accordance with Section 33.2(i) of the Commission's regulations,⁸³ Applicants will supplement this Application with copies of any orders of such regulatory bodies pertaining to the Transaction that may issue while this Application is pending.

J. Section 33.2(j) – Explanation That The Transaction Will Not Result In Cross-Subsidization Or The Pledge Or Encumbrance Of Utility Assets As To Any Associate Company

Applicants provide the required verification in Exhibit M.

⁸¹ *Id.*

⁸² 18 C.F.R. § 33.2(h) (2016).

⁸³ 18 C.F.R. § 33.2(i) (2016).

V. PROPOSED ACCOUNTING ENTRIES

Applicants have not included proposed accounting entries showing the effect of the Transaction, because none of Applicants is required to maintain its books and records in accordance with the Commission's Uniform System of Accounts.

VI. VERIFICATIONS

Pursuant to Section 33.7 of the Commission's regulations,⁸⁴ signed verifications by Applicants' authorized representatives are provided in Attachment 3.

⁸⁴ 18 C.F.R. § 33.7 (2016).

VII. CONCLUSION

For the reasons set forth in this Application, Applicants respectfully request that the Commission issue an order on or before March 17, 2017, granting all FPA Section 203 approvals required in connection with the Transaction.

Respectfully submitted,

HELIX GENERATION, LLC

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TC IRONWOOD LLC
TRANSCANADA MAINE WIND
DEVELOPMENT INC.
OCEAN STATE POWER LLC
TRANSCANADA POWER MARKETING LTD.

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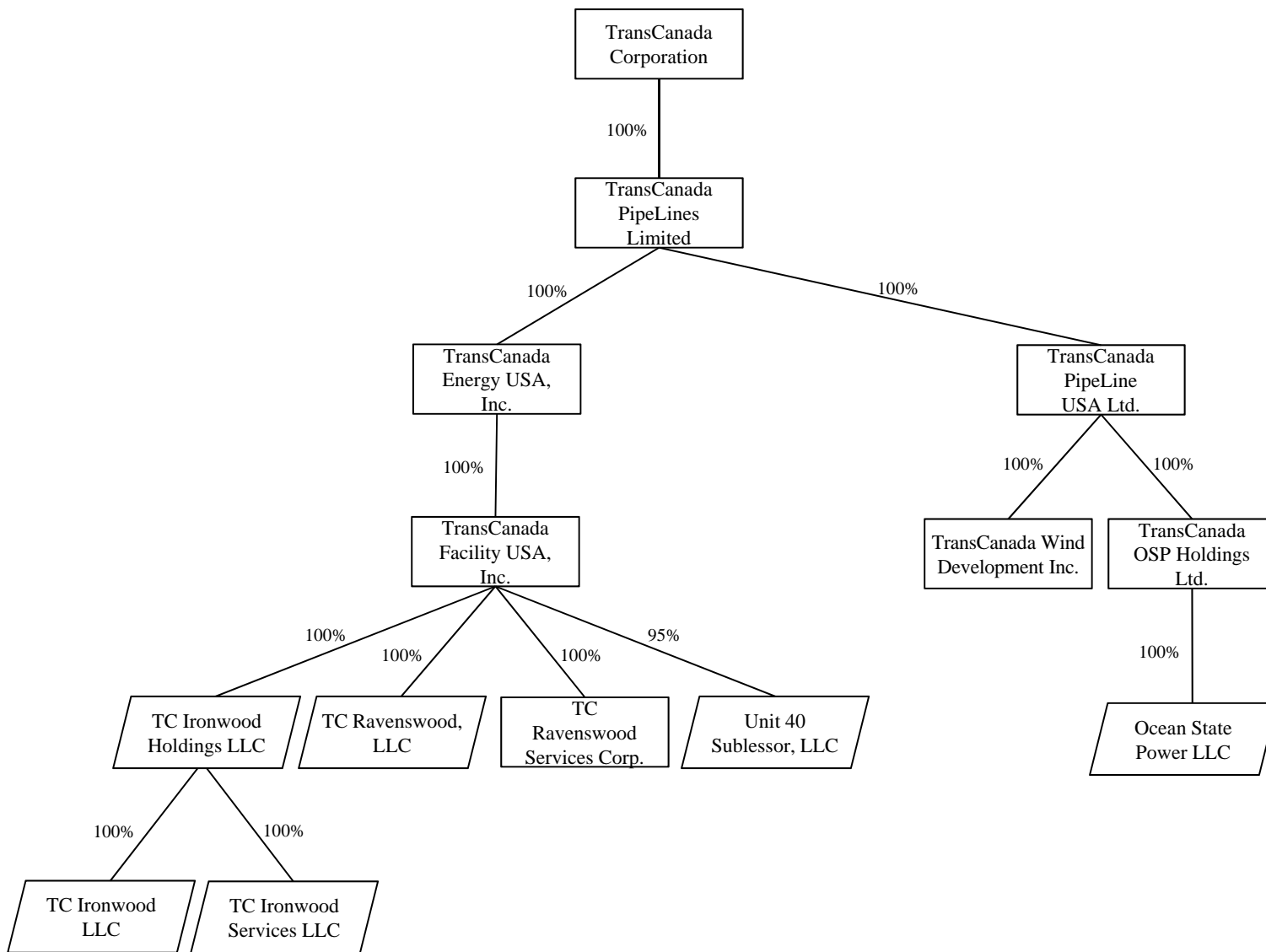
Counsel for **TC Ravenswood, LLC,**
TC Ironwood LLC, TransCanada
Maine Wind Development Inc.,
Ocean State Power LLC, and
TransCanada Power Marketing Ltd.

Dated: November 21, 2016

Exhibit C

Pre- and Post-Transaction Organizational Charts

Pre-Transaction Organizational Chart



Post-Transaction Organizational Chart

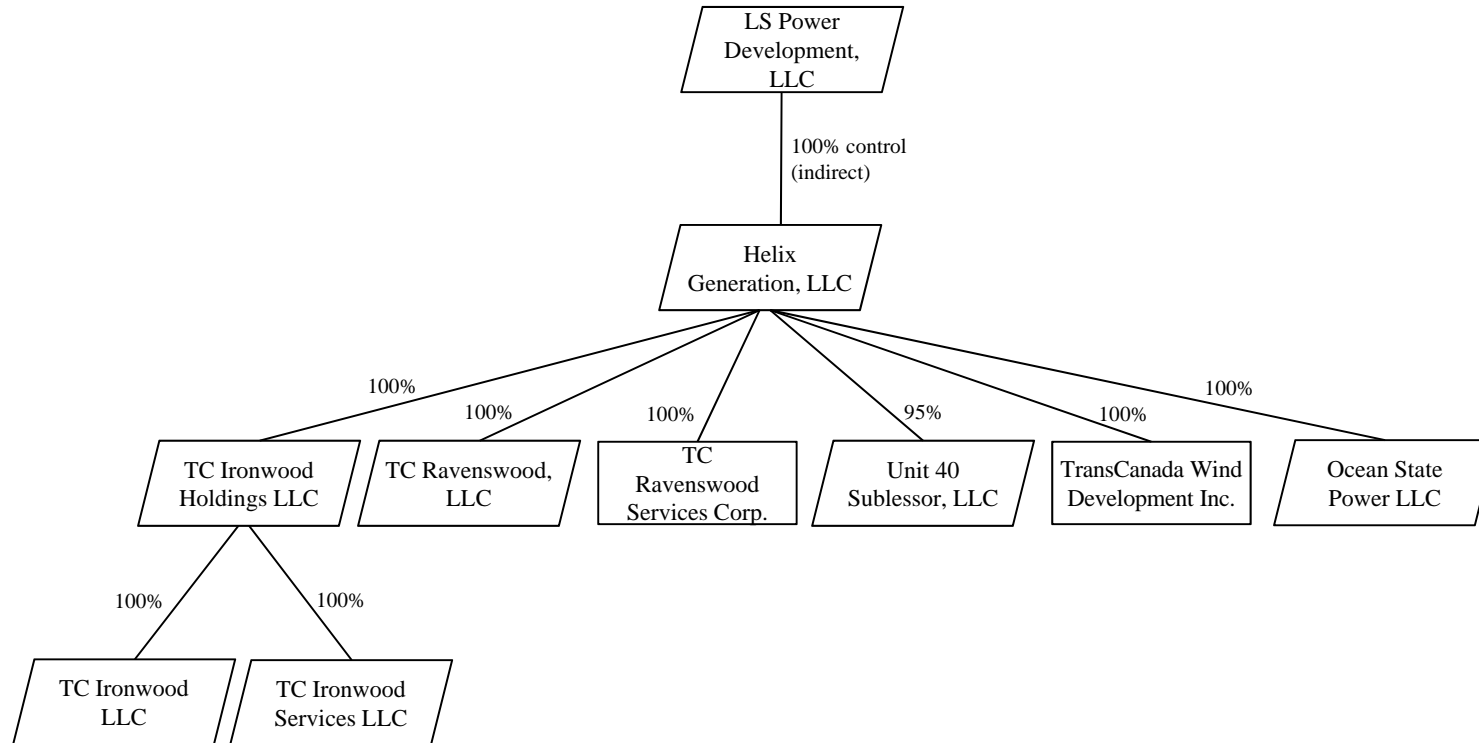


Exhibit I

Agreement Related to the Proposed Transaction

PUBLIC VERSION

PRIVILEGED INFORMATION
HAS BEEN REMOVED

Exhibit L

Other Regulatory Approvals

Applicants will be providing notice to the Federal Trade Commission and to the Department of Justice pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and will be filing with the Federal Communications Commission concerning the transfer of certain wireless communication licenses. Applicants will also be seeking approval, or a finding that no approval is required, from the New York State Public Service Commission.

Exhibit M

Cross-Subsidization and Encumbrance of Utility Assets

Based on the facts and circumstances known to Applicants or that are reasonably foreseeable, the Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. The Transaction does not involve a franchised public utility with captive customers and, therefore, falls within one of the safe harbors set forth in the *Supplemental Policy Statement*.¹ The Commission has recognized that “the detailed explanation and evidentiary support required by Exhibit M may not be warranted” for safe harbor transactions,² and that, as a general matter “there is no potential for harm to customers” in the case of such transactions.³

Furthermore, in accordance with Section 33.2(j)(1)(ii) of the Commission’s regulations,⁴ Applicants verify that the Transaction will not result in: (1) transfers of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) new issuances of securities by traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) new pledges or encumbrances of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate

¹ *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (the “*Supplemental Policy Statement*”).

² *Id.* at P 15.

³ *Id.* at P 17.

⁴ 18 C.F.R. § 33.2(j)(1)(ii) (2016).

company; or (4) new affiliate contracts between non-utility associate companies and traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review pursuant to FPA Sections 205 and 206.

Attachment 1
The Solomon Affidavit

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Helix Generation, LLC)	
TC Ravenswood, LLC)	
TC Ironwood LLC)	
TransCanada Maine Wind Development Inc.)	Docket No. EC17-___-000
Ocean State Power LLC)	
TransCanada Power Marketing Ltd.)	

AFFIDAVIT OF JULIE R. SOLOMON

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INTRODUCTION

My name is Julie R. Solomon. I am a Managing Director at Navigant Consulting, Inc. My business address is 1200 19th Street, N.W., Suite 700, Washington, DC 20036. A large portion of my consulting activities involves electric utility industry restructuring and the transition from regulation to competition. I have been involved extensively in consulting on market power issues concerning mergers, other asset transactions and market rate applications. I have filed a number of affidavits before the Federal Energy Regulatory Commission (“Commission”) in connection with electric utility mergers, the purchase and sale of jurisdictional assets, applications for market-based rates, and triennial updates. My resume is included as Exhibit J-1.

I have been asked by counsel for Helix Generation, LLC (“Helix Generation”), a wholly-controlled subsidiary of LSP Development, LLC (“LSP Development”), to evaluate the potential competitive impact on electricity markets of a transaction (“Transaction”) under which Helix Generation will purchase four indirect public utility subsidiaries from TransCanada Corp. (“TransCanada”) – TC Ravenswood, LLC (“TC Ravenswood”), TC Ironwood LLC (“TC Ironwood”), TransCanada Maine Wind Development Inc. (“TC Maine Wind”), and Ocean State Power LLC (“Ocean State Power”) (collectively with Helix Generation and TransCanada Power Marketing Ltd. (“TCPM”), “Applicants”).¹

The potential horizontal market power effects of the Transaction are those arising from the combination of the electric generating assets owned by Helix Generation and its affiliates and the generation that will be acquired as a result of the Transaction that theoretically could enable Helix Generation or its affiliates to increase prices in relevant electricity markets. Potential vertical market power effects arise from barriers to entry that might undercut the presumption that long-run generation markets are competitive, including the potential to use control over fuel supplies, fuel transportation facilities, or electric transmission to exert vertical market power by increasing rivals’ costs.

¹ TCPM is included as an “Applicant” on the section 203 application, because it is transferring a rate schedule establishing a revenue requirement for reactive supply and voltage support that Ironwood provides pursuant to Schedule 2 to the PJM Interconnection, L.L.C. (“PJM”) tariff.

As I demonstrate below, the Transaction will not have an adverse effect on horizontal competition in any relevant wholesale electricity market (or submarket). There also are no vertical effects of the Transaction that raise market power concerns.

SUMMARY OF ANALYSIS AND CONCLUSIONS

The key element of the Transaction of relevance to my competitive analysis is the extent of geographic overlap in generation owned or controlled by Helix Generation and its affiliates with the generation being acquired pursuant to the Transaction. The generating assets affiliated with Helix Generation, and those subject to the Transaction are summarized in Table 1 below.²

Table 1: Summary of Generation Currently Affiliated with Helix Generation and Generation Being Acquired from TransCanada (MW)

Market	Helix Generation and Affiliates	TransCanada
ISO-NE ³	313.6	569.2
NYISO	0.0	2,246.4
PJM ⁴	5,305.0	660.1
Total	5,618.6	3,475.7

As shown in Table 1, there are three markets where the relevant TransCanada generation subject to the Transaction is located: ISO-NE, New York Independent System Operator, Inc. (“NYISO”),

² Unless otherwise noted specifically or by context, references to generation megawatts in my Affidavit refer to summer ratings as reported by the Energy Information Administration, Annual Electric Generator data, Form EIA-860 (ratings as of 2015) (<http://www.eia.gov/electricity/data/eia860/>). See Exhibit J-2 (Helix Generation and affiliates), and Exhibit J-3 (TransCanada affiliates) for details. These ratings may not precisely match the generator ratings used for other purposes. The generation model underlying the Competitive Analysis Screen relies generator ratings from ABB Energy Velocity, which may differ slightly from the EIA-860 ratings.

³ For Helix Generation’s affiliates, ISO New England Inc. (“ISO-NE”) generation conservatively includes 90 MW of new generation (at the Wallingford facility) expected to come on line in December 2017. Based on ISO-NE ratings in its Capacity, Energy, Loads and Transmission (“CELT”) Report (see note 8), Helix Generation’s affiliated ISO-NE capacity, including the planned 90 MW addition, has a summer rating of 311.1 MW (as compared to 313.6 MW based on EIA data). Likewise, based on ISO-NE ratings in the CELT Report, the generation being acquired in the Transaction from TransCanada has a summer rating of 555 MW (as compared to 569 MW based on EIA data). The lower CELT ratings reflect derating of a wind facility owned by a Helix Generation affiliate and a wind facility that is being acquired from TransCanada.

⁴ For Helix Generation and Affiliates, PJM generation conservatively includes 340 MW of new generation (at the Doswell facility) expected to come on line in early 2018.

and PJM.⁵ Of these three markets, Helix Generation and its affiliates own generation only in ISO-NE and PJM, and, hence, these are the common (*i.e.*, overlapping) markets where Helix Generation and its affiliates both own generation and where they are acquiring additional generation. Thus, ISO-NE and PJM are the markets (along with any relevant submarkets) that are the sole focus of my competitive analysis.⁶ My conclusions regarding these markets are summarized as follows.

First, the horizontal effect of the Transaction resulting from the combination of generation in ISO-NE is small, and arguably, “the extent of the business transactions in the same geographic markets is *de minimis*.” In any event, assuming a Competitive Analysis Screen is needed, the changes in market concentration are well within the screening thresholds. As reflected in Table 1, Helix Generation and its affiliates own approximately 314 MW of generation in ISO-NE (311 MW based on ISO-NE CELT Report (see note 3)). This conservatively includes 90 MW of planned capacity affiliated with Helix Generation anticipated to come on-line in late 2017. TransCanada is affiliated with 1,136 MW of generation in ISO-NE (1,122 based on ISO-NE CELT data), consisting of Ocean State Power and TC Maine Wind’s Kibby Wind project,⁷ both of which are part of this Transaction; and a portfolio of hydroelectric generation that is also being sold to a different buyer in a separate transaction. The generation being acquired by Helix Generation in ISO-NE consists of Ocean State Power and Kibby Wind (a combined 569 MW) (555 MW based on ISO-NE CELT Report (see note 3)).

⁵ Helix Generation will not be acquiring all of the generating capacity in ISO-NE currently affiliated with TransCanada – approximately 567 MW of TransCanada’s current affiliated generating capacity in ISO-NE is being sold to an affiliate of ArcLight Capital. (See Exhibit J-4). My post-transaction Competitive Analysis Screen reflects this and other pending transactions in the relevant markets. Because the changes in market concentration pertaining to this Transaction are so small, the inclusion of pending transactions does not affect any of the conclusions that can be drawn from my analysis.

⁶ My Competitive Screen Analysis takes into consideration NYISO generation to the extent it can theoretically be imported into the ISO-NE and PJM markets.

⁷ The Ocean States Power facility has an EIA-860 summer rating of 437.2 MW (CELT summer rating of 541.1 MW), and the Kibby Wind facility has an EIA-860 rating of 132.0 MW (CELT rating of 13.5 MW). A portion of the output of the Kibby Wind facility is committed to a non-affiliate under a long-term power purchase agreement. I have conservatively disregarded this agreement for purposes of my analysis of the Transaction.

Installed capacity in ISO-NE is approximately 31,000 MW.⁸ Post-Transaction, Helix Generation and its affiliates will own or control only approximately 2.8 percent of installed capacity in ISO-NE, as shown in Table 2 on the following page. This market share falls within the range supporting the proposition that the extent of business transactions in the same geographic markets is *de minimis*.⁹ Likewise, the change in market concentration, as measured by the Herfindahl-Hirschman Index (“HHI”), resulting from the Transaction in ISO-NE on the basis of installed capacity is slightly negative (-3 points), as shown in Table 2 below. The market deconcentration occurs because TransCanada owns other capacity in ISO-NE that is not part of this Transaction. There are no relevant submarkets in ISO-NE to consider in the context of this Transaction. Further, the output from the generation that will be affiliated with Helix Generation post-Transaction accounted for only about 1.4 percent of load in ISO-NE in 2015 (see page 23).

Table 2: Effect of Transaction in ISO-NE (Installed Capacity)

	Pre-Transaction			Post Transaction			HHI Change
	MW	Market Share	HHI	MW	Market Share	HHI	
Helix Generation and Affiliates	311	1.01%	1	866	2.82%	8	7
TransCanada ^{1/}	1,122	3.66%	13	568	1.85%	3	-10
ISO-NE Installed Capacity	30,671	100.00%		30,671	100.00%		-3

Note: Capacity ratings for purposes of this analysis are based on the ISO-NE CELT report, the data source for the market-wide data. The 90 MW Wallingford addition is reflected in both the capacity MWs assigned to LS Power and the ISO-NE Installed Capacity.

^{1/} TransCanada Post-Transaction MWs reflect hydro generation being acquired by an affiliate of ArLight.

Although the installed capacity analysis should adequately demonstrate that the extent of business transactions in ISO-NE is *de minimis*, I nevertheless also performed a Competitive Analysis Screen, or DPT for the ISO-NE market. As shown in Table 3, the DPT is easily passed for the Economic Capacity (“EC”) measure, and the ISO-NE market remains unconcentrated post-Transaction. Likewise, the requisite price sensitivity cases (+10 percent, -10 percent) evidence no screen failures.

⁸ 2016-2025 Forecast Report of Capacity, Energy, Loads and Transmission, ISO-NE, May 2, 2016, Section 2.1, https://www.iso-ne.com/static-assets/documents/2016/05/2016_celt_report.xls.

⁹ See, e.g., *Essential Power, LLC*, 155 FERC ¶ 62,191 at page 4 (2016) (recognizing overlap as *de minimis* where post-transaction market share, based on installed capacity, was 4.3 percent in ISO-NE, one percent in PJM and less than 5 percent in PJM submarkets and concluding that the extent of their business transactions was *de minimis* in ISO-NE, PJM and PJM submarkets). In that proceeding, applicants submitted a Delivered Price Test (“DPT”), but such analysis was not relied upon in the order.

Table 3: DPT Results for ISO-NE (Economic Capacity)

Period	Price	Pre-Transaction						Post-Transaction			
		Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation			HHI Change
		Mkt MW	Mkt Share	Mkt MW	Mkt Share			Mkt MW	Mkt Share	Market HHI	
S_SP1	\$ 200	286	1.0%	987	3.3%	29,954	475	865	2.9%	475	(1)
S_SP2	\$ 65	287	1.0%	989	3.6%	27,651	507	867	3.1%	507	(1)
S_P	\$ 35	284	1.2%	749	3.0%	24,667	582	893	3.6%	585	3
S_OP	\$ 20	4	0.0%	669	3.4%	19,733	701	513	2.6%	697	(4)
W_SP	\$ 200	311	1.0%	1,040	3.3%	31,609	466	939	3.0%	466	(0)
W_P	\$ 100	313	1.1%	852	3.1%	27,270	525	963	3.5%	527	2
W_OP	\$ 80	314	1.3%	812	3.3%	24,989	578	975	3.9%	581	4
SH_SP	\$ 100	281	1.1%	924	3.8%	24,618	476	785	3.2%	475	(1)
SH_P	\$ 50	282	1.3%	742	3.3%	22,501	513	803	3.6%	515	2
SH_OP	\$ 30	282	1.5%	612	3.2%	19,087	611	717	3.8%	614	3

I also demonstrate later in my affidavit that the DPT screens for the Available Economic Capacity measure (“AEC”) in ISO-NE also are easily passed.

There are no relevant ISO-NE submarkets in the context of the Transaction,¹⁰ and the Commission has determined that no analysis is required (or relevant) if there is no overlap of generation ownership in a submarket.¹¹

I also demonstrate below a lack of competitive effect in ISO-NE capacity and ancillary services markets.

Second, the horizontal effect of the Transaction resulting from the combination of generation in PJM is small, and arguably, “the extent of the business transactions in the same geographic markets is *de minimis*.” In any event, assuming a Competitive Analysis Screen is needed, the changes in market concentration are well within the screening thresholds. In PJM, Helix Generation is affiliated with 5,305 MW of generation (conservatively including 340 MW of planned capacity affiliated with Helix Generation anticipated to come on-line in early 2018),

¹⁰ None of the generation being acquired in the Transaction is located in either Connecticut (“CT”) or Southwest Connecticut (“SWCT”), which the Commission previously has identified as relevant submarkets. *See, e.g.*, Order No. 697 at P 236.

¹¹ In *NRG Energy, Inc.*, the Commission determined that “because Applicants’ ownership of generation does not overlap in the New York City submarket, such analysis is not relevant.” *NRG Energy, Inc.*, 141 FERC ¶ 61,207 at P 74 (2012) (“*NRG Energy*”). *See, also, Order Reaffirming Commission Policy And Terminating Proceeding*, 138 FERC ¶ 61,109 at P 43 (2012) (“We clarify that we will not require applicants to submit a DPT for an identified submarket if the applicants do not have overlapping generation within the submarket and lack firm transmission rights to import capacity into that market.”)

and is acquiring the Ironwood facility (660 MW) as part of the Transaction. Installed capacity in PJM is approximately 182,000 MW.¹² Post-Transaction, Helix Generation and its affiliates collectively will own or control approximately 3.3 percent of installed capacity in PJM, as shown in Table 4 on the following page. This market share also falls within the range supporting the proposition that the extent of business transactions in the same geographic markets is *de minimis*.¹³ The change in market concentration resulting from the Transaction on the basis of installed capacity is only 2 points, as shown in Table 4 below. Further, the output from the generation that will be affiliated with Helix Generation post-Transaction accounted for only about 1.9 percent of load in PJM in 2015 (see page 31).

Table 4: Effect of Transaction in PJM (Installed Capacity)

	Pre-Transaction			Post-Transaction			HHI Change
	MW	Market Share	HHI	MW	Market Share	HHI	
Helix Generation and Affiliates	5,305	2.91%	8	5,965	3.27%	11	2
TransCanada	660	0.36%	0	0	0.00%	0	0
PJM Installed Capacity	182,400	100.00%		182,400	100.00%		2
Note: The 340 MW Doswell addition is reflected in both the capacity MWs assigned to LS Power and the PJM Installed Capacity.							
2ab HHI Change							2

Within PJM, the generation being acquired from TransCanada (the Ironwood facility) is located in the 5004/5005 and AP South submarkets. Helix Generation has affiliated generation in the PJM East and AP South submarkets. Post-Transaction, Helix Generation and its affiliates will own approximately 2.3 percent of installed capacity in the 5004/5005 submarket and approximately 3.0 percent of installed capacity in the AP South submarket,¹⁴ further demonstrating that the extent of business transactions in the same geographic markets is *de minimis*.

Although the installed capacity analysis should adequately demonstrate that the extent of business transactions in PJM and relevant submarkets (5004/5005 and AP South) is *de minimis*, I

¹² 2016 State of the Market Report for PJM, January-June 2016, Monitoring Analytics, LLC, at Table 1-1, August 11, 2016, http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2016/2016q2-som-pjm-sec1.pdf.

¹³ See note 9.

¹⁴ Tables reflecting this analysis is included later in my affidavit.

nevertheless also performed a DPT for PJM and the relevant submarkets. As shown in Table 5, the DPT is easily passed for EC, and the PJM RTO-wide market remains unconcentrated post-Transaction. Likewise, both the EC results for the submarkets and the requisite price sensitivity cases for both PJM and the relevant submarkets evidence no screen failures.

Table 5: DPT Results for PJM (Economic Capacity)

Period	Price	Pre-Transaction						Post-Transaction			
		Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation			HHI Change
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share	Market HHI	
S_SP1	\$ 150	4,954	2.9%	689	0.4%	171,222	615	5,637	3.3%	618	2
S_SP2	\$ 60	4,954	2.9%	690	0.4%	171,071	616	5,638	3.3%	619	2
S_P	\$ 30	4,441	2.8%	714	0.5%	156,372	611	5,143	3.3%	613	3
S_OP	\$ 25	1,814	1.4%	661	0.5%	126,982	692	2,456	1.9%	693	1
W_SP	\$ 200	5,295	2.9%	738	0.4%	182,039	592	6,026	3.3%	594	2
W_P	\$ 50	5,085	3.0%	696	0.4%	167,024	589	5,762	3.4%	592	2
W_OP	\$ 40	4,782	3.0%	690	0.4%	161,415	582	5,443	3.4%	585	2
SH_SP	\$ 70	4,286	2.9%	582	0.4%	148,838	590	4,860	3.3%	592	2
SH_P	\$ 35	3,838	2.7%	600	0.4%	139,659	574	4,425	3.2%	577	2
SH_OP	\$ 25	1,367	1.3%	555	0.5%	107,211	647	1,895	1.8%	649	1

I demonstrate later in my affidavit that the DPT screens for AEC in PJM and relevant submarkets also are readily passed.

I also demonstrate below a lack of competitive effect in PJM capacity and ancillary services markets.

Third, there are no horizontal market power issues in NYISO as a result the Transaction. Helix Generation is acquiring 2,246 MW of generation in NYISO (the Ravenswood facility), located in New York City. However, because Helix Generation is not affiliated with any generation in NYISO, with respect the NYISO market (or the New York City submarket), “the merging entities do not currently conduct business in the same geographic markets”.¹⁵ Hence, no Competitive Analysis Screen is required.

Finally, there are no vertical market power issues in connection with the Transaction. Within the relevant markets, none of Helix Generation’s affiliates own or control any transmission other than the limited and discrete facilities necessary to interconnect their affiliated

¹⁵ See, also, note 11.

generation to the grid, and no transmission is being acquired as part of the Transaction other than the limited and discrete facilities necessary to interconnect the to-be-acquired generation to the grid. Further, neither Helix Generation nor any of its affiliates has – or will have after the transaction – any ownership interest in or control of fuel supplies, fuel delivery systems, or any new sites for electric generation that could raise barriers to entry in any of the relevant markets. Accordingly, there are no concerns with regard to barriers to entry.

DESCRIPTION OF RELEVANT PARTIES

A complete description of relevant parties and their affiliates and subsidiaries, and the Transaction, is included in Section II of the Application.

LSP Development and Helix Generation

LSP Development develops, owns, and operates independent power projects in the United States and is, among other things, also developing merchant transmission projects in parts of the United States.

Helix Generation is an indirect subsidiary wholly controlled by LSP Development formed to acquire and hold the interests being acquired as part of the Transaction. It currently has no assets.

The generation affiliated with Helix Generation in ISO-NE, PJM and first-tier markets generation is detailed in Exhibit J-2. Helix Generation is not currently affiliated with any generation in NYISO.

None of Helix Generation's affiliates own or control any transmission facilities in PJM, ISO-NE or NYISO other than facilities interconnecting their generation facilities to the grid.

TransCanada

TransCanada is a diversified energy company doing business in Canada and the United States. Through its principal subsidiaries (TransCanada PipeLines Limited (“TCPL”), Nova Gas Transmission Ltd. and TransCanada PipeLine USA Ltd. (“TC PipeLine USA”)), TransCanada transports natural gas through interstate pipelines in Canada and parts of the United States.

TransCanada, through subsidiaries, owns power marketing companies and generation companies that sell at wholesale in Canada, and power marketing companies that sell at retail and/or wholesale in the United States, and generation companies that engage in the sale of power in the United States exclusively at wholesale.

TCPM is a power marketer with authority to sell at market-based rates that transacts both on a bilateral basis and in the markets operated by ISO-NE, NYISO and PJM; is a supplier of wholesale standard offer service in New England and PJM; and makes sales in New England, New York, and PJM to retail customers.

TC Ravenswood owns the 2,246 MW Ravenswood facility in NYISO. TC Ironwood owns the 660 MW Ironwood facility in PJM. TC Maine Wind owns the 132 MW Kibby Wind facility in ISO-NE, and Ocean State Power owns the 454 MW Ocean State Power facility in ISO-NE. Exhibit J-3 details generating assets affiliated with TransCanada in the eastern United States and Canada, including those subject to the Transaction.

FRAMEWORK FOR THE ANALYSIS

Market power is defined as the ability of a firm to profitably maintain prices above competitive levels for a significant period of time. Market power analysis of a proposed merger or other combination of assets examines whether a merger or transaction would cause a material increase in the combining firms' market power or a significant reduction in the competitiveness of relevant markets. The focus is on the effects of the transaction, which means that the analysis examines those business areas in which the combining firms are competitors. This is referred to as horizontal market power assessment. In most instances, a transaction will not affect competition in markets in which the combining firms do not compete. Of relevance to my analysis, the proposed Transaction will, in effect, combine generation affiliated with Helix Generation with generation owned by TC Ravenswood, TC Ironwood, TC Maine Wind, and Ocean State Power.

In the context of the proposed Transaction the focus is properly on those markets in which these entities are actual or potential competitors. The analysis is intended to measure the

adverse impact, if any, of the elimination of a competitor as a result of the combination in relevant markets.

Potential vertical market effects of a proposed merger or other combination relate to the combining firms' ability and incentives to use their market position over a product or service to affect competition in a related business or market. For example, vertical effects could result if a transaction created an opportunity and incentive to operate electric transmission facilities in a manner that created market power for the generation activity of the merged company that did not exist previously. The Commission has identified market power as also arising from dominant control over potential generation sites or over fuel supply and fuel transportation systems. Such dominant control could undercut the presumption that long-run generation markets are competitive and could injure competition by raising rivals' costs.

Understanding the competitive impact of a transaction requires defining the relevant market (or markets) in which the combining firms participate. Participants in a relevant market include all suppliers, and in some instances potential suppliers, who can compete to supply the products produced by the combining parties and whose ability to do so diminishes the ability of the combining parties to increase prices. Hence, determining the scope of a market is fundamentally an analysis of the potential for competitors to respond to an attempted price increase. Typically, markets are defined in two dimensions: geographic and product. Thus, the relevant market is composed of companies that can supply a given product (or its close substitute) to customers in a given geographic area.

My analysis is conducted in the context of the Commission's orders governing mergers. In December 1996, the Commission issued Order No. 592,¹⁶ the "Merger Policy Statement," which provides a detailed analytic framework for assessing the horizontal market power arising from electric utility mergers (the Appendix A analysis). This analytic framework is organized around a market concentration analysis. The Commission adopted the U.S. Department of Justice ("DOJ") and Federal Trade Commission ("FTC") 1992 *Horizontal Merger Guidelines* for

¹⁶ *Inquiry Concerning the Comm'n's Merger Policy Statement Under the Federal Power Act, Policy Statement, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) ("Merger Policy Statement" or "Order No. 592"), order on reconsideration, 79 FERC ¶ 61,321 (1997).*

measuring market concentration levels by the HHI.¹⁷ On November 15, 2000, the Commission issued its Revised Filing Requirements Under Part 33 of the Commission’s Regulations,¹⁸ which affirmed the screening approach to mergers consistent with the Appendix A analysis set forth in the Merger Policy Statement, and codified the need to file a Competitive Analysis Screen and the exceptions therefrom. The policy was reaffirmed on February 16, 2012.¹⁹ Specifically, the Commission’s regulations require a “delivered price test” to measure EC, defined as energy that can be delivered into a destination market at a delivered cost less than 105 percent of the destination market price. The screening test also provides for an analysis of AEC, defined as energy over and above that required to meet native load and other long-term obligations that meets the delivered price test. If a proposed merger raises no horizontal market power concerns (*i.e.*, passes the Competitive Analysis Screen), the inquiry generally is terminated with respect to horizontal market power.

Both the Merger Policy Statement and the Commission’s Revised Filing Requirements provide that a screen analysis (or filing of the data needed for the screen analysis) is not required where applicants do not sell products in the same geographic markets or the extent of their business transactions in the same geographic markets is *de minimis*.²⁰

¹⁷ To determine whether a proposed merger requires further investigation because of the potential for a significant anti-competitive impact, the DOJ/FTC *Guidelines* consider the level of the HHI after the merger (the post-merger HHI) and the change in the HHI that results from the combination of the market shares of the merging entities. In the *Revised Filing Requirements*, the Commission adopted the 1992 *Guidelines*’ standards. Markets with a post-merger HHI of less than 1000 are considered “unconcentrated.” Mergers in such markets are presumed to have no anti-competitive impact. Markets with post-merger HHIs of 1000 to 1800 are considered “moderately concentrated.” In those markets, mergers that result in an HHI change of 100 points or fewer are considered unlikely to have anti-competitive effects. Finally, post-merger HHIs of more than 1800 are considered to indicate “highly concentrated” markets. In these markets, mergers that increase the HHI by 50 points or fewer are unlikely to have a significant anti-competitive impact, while mergers that increase the HHI by more than 100 points are considered likely to reduce market competitiveness.

¹⁸ *Revised Filing Requirements Under Part 33 of the Comm’n’s Regulations*, FERC Stats. & Regs. ¶ 31,111 (2000) (“Order No. 642”), *order on reh’g*, 94 FERC ¶ 61,289 (2001).

¹⁹ *Analysis of Horizontal Market Power under the Federal Power Act*, 138 FERC ¶ 61,109 (2012).

²⁰ Order No. 592 at 30,113 provides: “[I]t will not be necessary for the merger applicants to perform the screen analysis or file the data needed for the screen analysis in cases where the merging firms do not have facilities or sell relevant products in common geographic markets. In these cases, the proposed merger will not have an adverse competitive impact (*i.e.*, there can be no increase in the applicants’ market power unless they are selling relevant products in the same geographic markets) so there is no need for a detailed data analysis.”

Relevant Product Markets

The Commission generally is concerned with the following relevant product markets: non-firm energy, short-term capacity (firm energy), long-term capacity, and certain ancillary services.²¹

Both EC and AEC are used as measures of energy in conducting the DPT to assess horizontal market power. Under both measures, capacity that is attributed to a market participant is that capacity controlled by it that can reach the destination market, taking transmission constraints and costs into account, at a price no higher than 105 percent of the destination market price.²² The Commission in recent years has given more weight to the results of AEC analyses in non-restructured markets (*i.e.*, where traditional suppliers maintain load-serving responsibility),²³ and, conversely, more weight to the results of EC analyses in substantially restructured markets.

I conducted both an EC and AEC analysis for the relevant markets (ISO-NE, PJM and PJM submarkets). As I discuss below, the EC analysis is of primary relevance, consistent with the Commission's reliance on EC in restructured markets.²⁴ As discussed in the Summary and Conclusions, no further analysis of the NYISO market is conducted.

The Commission's regulations provide that a Competitive Analysis Screen need not be filed if the applicant "[a]ffirmatively demonstrates that the merging entities do not currently conduct business in the same geographic markets or that the extent of the business transactions in the same geographic markets is *de minimis*." 18 C.F.R. § 33.3(a)(2)(i).

²¹ See 18 C.F.R. § 33.3(c)(1).

²² See 18 C.F.R. § 33.3(c)(4).

²³ See, *e.g.*, *Nevada Power Co.*, 113 FERC ¶ 61,265 at P 15 (2005) (finding that AEC is a more accurate measure for markets where utilities have significant native load obligations). Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 112. See also *Kansas City Power & Light Co.*, 113 FERC ¶ 61,704 at PP 31, 35 (2005) ("[U]tilities with a native load obligation are obligated to secure and devote resources to serve that native load. Depending on load conditions, some or all of those resources are not available to the wholesale market and the available economic capacity measure accounts for that.").

²⁴ For example, the competitive analyses in some previous section 203 proceedings concerning generation in ISO-NE were based solely on the EC measure, with no AEC analysis conducted, and the Commission approved the transactions without AEC being analyzed. See *NSTAR*, 136 FERC ¶ 61,016 (2011); *FPL Energy Maine Hydro LLC*, 142 FERC ¶ 62,150 (2013); and *Dominion Energy Brayton Point, LLC*, 144 FERC ¶ 61,139 (2013).

Relevant Geographic Markets

Traditionally, the Commission has defined the relevant geographic markets as centered on the applicants and, for transmission-owning entities, on control areas (now BAAs) directly interconnected with the applicants (*i.e.*, first-tier BAAs). Both Order No. 592 and Order No. 642 continue to define the relevant geographic market in terms of BAAs (or destination markets) in which applicants control generation and first-tier destination markets, where applicable.²⁵ However, the Commission's practice has been to aggregate customers that have the same supply alternatives into a single destination market, and Regional Transmission Organizations ("RTOs") and Independent System Operators ("ISOs") generally are default markets where applicable. Where transmission constraints exist within an RTO/ISO, the Commission also has considered submarkets as separate geographic markets.²⁶ As discussed previously, the relevant geographic markets in the context of the Transaction are ISO-NE and PJM. PJM's 5004/5005 and AP South submarkets also are analyzed.

Competitive Analysis Screen

The Competitive Analysis Screen is intended to be a conservative screen to determine whether further analysis of market power is necessary.²⁷ If the Competitive Analysis Screen shows that the relevant entities will not be able to exercise market power in narrowly defined markets in which they or the affiliates own or control generation, it generally follows that they will not have market power in more broadly defined and more geographically remote markets.

As described earlier (see note 17), the Competitive Analysis Screen measures the HHI changes resulting from a transaction. The acceptable HHI changes depend on whether the post-transaction market is unconcentrated, moderately concentrated, or highly concentrated.

²⁵ Order No. 592 at 30,119; 18 C.F.R. § 33.3(c)(2).

²⁶ Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,890-1 (2000), citing *Atlantic City Elec. Co.*, 80 FERC ¶ 61,126 (1997); *Consolidated Edison, Inc.*, 91 FERC ¶ 61,225 (2000). To the extent there are internal transmission constraints within these markets, the Commission has considered smaller markets within these single control areas as potentially relevant. Likewise, the Commission's indicative screens for purposes of determining eligibility to obtain authority to sell at market-based rates also use BAAs or RTOs/ISOs as default geographic markets. *Order No. 697* at P 231 and P 246 (citing to a number of Commission decisions involving electric utility mergers).

²⁷ See Order No. 642 at 31,879 and 31,886-87; Order No. 592 at 30,119; *Analysis of Horizontal Market Power under the Federal Power Act* at 35.

Description of Methodology

I performed the DPT analysis for ISO-NE and PJM using a model that includes each potential supplier as a distinct “node” or area that is connected via a transportation (or “pipes”) representation of the transmission network. Each link in the network has its own non-simultaneous limit and cost, and a simultaneous import limit (“SIL”) is imposed across these individual limits. Potential suppliers may use economically and physically feasible links or paths to reach the destination market. I consider potential supply within these markets and markets first- and second-tier to the destination market.²⁸ This generally is a conservative approach as it limits import supply to a smaller group of potential market participants than if, for example, participants in second-tier markets were considered as potential supply. To the extent more generation meets the economic element of the DPT (*i.e.*, 105 percent of the market price)²⁹ than actually can be delivered on the transmission network, scarce transmission capacity is allocated based on the relative amount of economic generation that each party controls at a constrained interface.

The data sources and methodology relevant to conducting the DPT are described in Exhibit J-4.

Time Periods

For each relevant market, I examined ten time periods, selected to reflect a broad range of system conditions. Broadly, I evaluated hourly load data to aggregate similar hours. I defined periods within three seasons (Summer, Winter and Shoulder) to reflect the differences in unit availability, load and transmission capacity. Hours were first separated into seasons to reflect differences in generating availability and then further differentiated by load levels during each

²⁸ In some recent previous DPT analyses, I conservatively included only generation within and first-tier to the destination market. Here, allowing second-tier supply to compete as imports is relevant because Applicants and their affiliates own generation in some second-tier markets.

²⁹ See 18 C.F.R. 33.3(c)(4).

season.³⁰ For each season, hours were segmented into peak- and off-peak periods.³¹ The periods evaluated (and the designations used to refer to these periods in exhibits) are:

SUMMER (June-July-August)

Super Peak 1 (S_SP1):	Top load hour
Super Peak 2 (S_SP2):	Top 10% of peak load hours
Peak (S_P):	Remaining peak hours
Off-peak (S_OP):	All off-peak hours

WINTER (December-January-February)

Super Peak (W_SP):	Top 10% of peak load hours
Peak (W_P):	Remaining peak hours
Off-peak (W_OP):	All off-peak hours

SHOULDER (March-April-May-September-October-November)

Super Peak (SH_SP):	Top 10% of peak load hours
Peak (SH_P):	Remaining peak hours
Off-peak (SH_OP):	All off-peak hours

Study Year

I analyze 2017 market conditions, consistent with the Order No. 642 requirement that the analysis be forward looking. Even though my analysis approximates 2017 market conditions, the primary source of data on generation is current and recent historical data. Where appropriate, I adjusted relevant data to approximate 2017 conditions. As described in Exhibit J-4, this includes load and generation dispatch (*i.e.*, fuel) costs. I included generation expected to be on-

³⁰ Appendix A requires applicants to evaluate the merger's impact on competition under different system conditions. For example, aggregating summer peak and shoulder peak conditions may mask important differences in unit availability and, therefore, a merger could potentially affect competition differently in these seasons. Thus, applicants are directed to evaluate enough sufficiently different conditions to show the merger's impact across a range of system conditions. On the other hand, the DOJ/FTC *Horizontal Merger Guidelines* discuss the ability to "sustain" a price increase, and a finding that a structural test (like the HHI statistic) violates the safe harbor for some small subset of hours during the year may not be indicative of any market power problems.

³¹ Peak and off-peak hours were defined according to NERC's definition, except that I did not consider Saturdays to be peak days.

line by the summer of 2017. I excluded units already retired or approved for retirement prior to or during 2017.³²

As described earlier, Helix Generation affiliates have two generating unit additions expected on-line at the end of 2017 (Wallingford, 90 MW in ISO-NE) and early 2018 (Doswell, 340 MW in PJM). I conservatively included these units in my generation database, but did not include any other generation coming on line post-summer 2017.

Market Price Levels

The Commission confirmed that market prices for both a base case and sensitivities are required, stating that “every Delivered Price Test should address three scenarios: the Base Case, in which applicants should use appropriate forecasted market prices to model post-merger competition in the study area, and sensitivity analyses of the Base Case that measure the effect of increasing or decreasing the market prices relative to the Base Case.”³³ The Commission also indicated a preference to use “actual market prices rather than price proxies such as system lambda.”³⁴ Here, for my base case prices, I rely on two years of historical prices in the relevant markets (2014-2015), adjusted to reflect forecasted fuel prices for 2017, and conducted sensitivity analyses using slightly higher and lower prices (changing prices by 10 percent).³⁵ The underlying cost assumptions in my analysis are consistent with this market price forecast.

Import Limits and Allocation of Limited Transmission Capacity

I use SIL data approved by the Commission in connection with the 2013 market-based rate triennial filings in the Northeast Region for ISO-NE.³⁶ For PJM, I use SIL data recently submitted to the Commission by PJM in connection with the upcoming Northeast Region

³² I generally relied on information in the ABB Velocity Suite database for my review of new entry and retirements, as well as information from other public sources.

³³ *Duke Energy Corp.*, 136 FERC ¶ 61,245 at P 118 (2011) (footnote omitted).

³⁴ *Id.*, at P 121.

³⁵ *NRG Energy*, 141 FERC ¶ 61,207 at P 63.

³⁶ *New Brunswick Energy Marketing Corp.*, Order on Simultaneous Transmission Import Limit Values For the Northeast Region, 147 FERC ¶ 61,190 (2014).

triennial market-based rate filings.³⁷ Although these PJM SILs have not yet been approved by the Commission, they are more current than the ones approved by the Commission in 2014. Interface limits are based on data from a number of sources, including information submitted by ISO-NE and PJM in connection with their respective SIL analyses for the 2013 triennials,³⁸ other information published by the RTOs, the Northeast Power Coordinating Council and OASIS data. Appendix A notes that there are various methods for allocating transmission, and instructs applicants to support the method used.³⁹ I allocated transmission using a pro rata method based on relative ownership shares of capacity, taking into account both interface limits and SILs.⁴⁰ Ultimately, the shares at the destination market represent the prorated share of EC and AEC that is economically and physically feasible.

IMPACT OF THE TRANSACTION ON COMPETITION

Horizontal Market Power

Consistent with the guidance in the Merger Policy Statement and the Revised Filing Requirements, I examined the relevant markets in which the generation subject to the Transaction is located, namely the ISO-NE and PJM markets, as well as relevant submarkets. For the reasons explained in my summary, I concluded that no horizontal market power concerns are raised in the NYISO market because Helix Generation is not affiliated with any generation in NYISO.

My analysis of ISO-NE and PJM and relevant submarkets in PJM, where I conducted a Competitive Analysis Screen, is detailed below.

³⁷ PJM's recent SIL study is for the December 2014-November 2015 study period. See *PJM Interconnection, L.L.C.*, Informational Filing of 2015 Simultaneous Import Limit Study Report for PJM Region, Docket No. AD10-2-007 (filed Sept. 2, 2016).

³⁸ *2012 Simultaneous Import Limit Study*, ISO New England Inc., Docket No. AD10-2, November 20, 2013; *2012 Simultaneous Import Limit Study*, Docket No. AD10-2, October 2, 2013 and April 7, 2014.

³⁹ See Order No. 592, ¶ 31,044 at 30,133: "In many cases, multiple suppliers could be subject to the same transmission path limitation to reach the same destination market and the sum of their economic generation capacity could exceed the transmission capability available to them. In these cases, the available transfer capability must be allocated among the potential suppliers for analytic purposes. There are various methods for accomplishing this allocation. Applicants should support the method used."

⁴⁰ The pro rata methodology used here has been affirmed in a number of Commission orders. See, for example, *PPL Corporation*, 149 FERC ¶ 61,260 at P 84 (2014) ("*PPL*"), and *NRG Energy*, 141 FERC ¶ 61,207 at P 63.

ISO-NE

I previously provided the results of the installed capacity analysis (see Table 2), which demonstrated that Helix Generation and its affiliates, after the Transaction, will have a Post-Transaction market share of just 2.8 percent in ISO-NE.

Economic Capacity

The DPT demonstrates that the ISO-NE market is unconcentrated, and the Transaction readily passes the DPT screens in all periods/load conditions, as shown in Table 6 below (same as previous Table 3) and Exhibit J-5. After the Transaction, the ISO-NE market remains unconcentrated. The results of the price sensitivities (plus and minus 10 percent) are not materially different (see Exhibit J-5).

Table 6: DPT Results for ISO-NE (Economic Capacity)

Period	Price	Pre-Transaction				Post-Transaction				HHI Change	
		Helix Generation		TransCanada		Helix Generation			Market		
		Mkt	Share	Mkt	Share	Mkt	Share	HHI			
S_SP1	\$ 200	286	1.0%	987	3.3%	29,954	475	865	2.9%	475	(1)
S_SP2	\$ 65	287	1.0%	989	3.6%	27,651	507	867	3.1%	507	(1)
S_P	\$ 35	284	1.2%	749	3.0%	24,667	582	893	3.6%	585	3
S_OP	\$ 20	4	0.0%	669	3.4%	19,733	701	513	2.6%	697	(4)
W_SP	\$ 200	311	1.0%	1,040	3.3%	31,609	466	939	3.0%	466	(0)
W_P	\$ 100	313	1.1%	852	3.1%	27,270	525	963	3.5%	527	2
W_OP	\$ 80	314	1.3%	812	3.3%	24,989	578	975	3.9%	581	4
SH_SP	\$ 100	281	1.1%	924	3.8%	24,618	476	785	3.2%	475	(1)
SH_P	\$ 50	282	1.3%	742	3.3%	22,501	513	803	3.6%	515	2
SH_OP	\$ 30	282	1.5%	612	3.2%	19,087	611	717	3.8%	614	3

Available Economic Capacity

Because all but one of the New England states have been substantially restructured such that traditional suppliers generally do not both own generation and have load-serving responsibility, EC clearly is the appropriate measure on which to focus the competitive analysis.⁴¹

Conducting an AEC analysis in restructured markets is quite complex. Where retail electricity markets have been opened to competition, the link is broken between long-term

⁴¹ See note 23.

(essentially perpetual) load-serving commitments and owned generation. This is replaced by a mix of competitively sourced physical supply contracts and financial hedging contracts entered into by the traditional utilities to serve load that has not migrated to competitive retail suppliers, plus whatever long-term contracts competitive retail suppliers enter into, if any, to secure supplies. There is limited information available about many of these contracts. Further, loads can shift among suppliers in relatively short periods as individual retail customers change suppliers. In such circumstances, conducting a traditional AEC analysis by trying to identify long-term firm load commitments and linking them to specific generation portfolios cannot be expected to produce very stable or reliable market concentration metrics. Furthermore, because the link between generation capacity and long-term load serving obligations has been significantly reduced, AEC provides a less reliable, and less relevant measure of the competitive effects of generation ownership. For these reasons, EC provides the sounder basis for assessing the ISO-NE market in the context of the Transaction. Nevertheless, I conducted an AEC analysis, based on information about the level of customer switching and the manner in which supplies for default service are procured. These assumptions are detailed in Exhibit J-4. In my analysis, I did not assign any load to the generation affiliated with Helix Generation or the TransCanada affiliated generation in the United States.

As shown in Table 7 below, the DPT screens for AEC is passed in the ISO-NE market. The market again remains unconcentrated. The results for the price sensitivities are not materially different (see Exhibit J-6).

Table 7: DPT Results for ISO-NE (Available Economic Capacity)

Period	Price	Pre-Transaction						Post-Transaction			
		Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation			HHI Change
		MW	Share	MW	Share			MW	Share	HHI	
S_SP1	\$ 200	300	1.2%	1,031	4.1%	24,883	546	933	3.7%	546	0
S_SP2	\$ 65	298	1.3%	1,026	4.4%	23,117	604	921	4.0%	604	0
S_P	\$ 35	295	1.4%	834	4.0%	21,059	681	996	4.7%	686	6
S_OP	\$ 20	4	0.0%	613	3.9%	15,848	906	492	3.1%	901	(5)
W_SP	\$ 200	321	1.2%	1,075	4.0%	27,157	541	989	3.6%	542	0
W_P	\$ 100	326	1.5%	901	4.2%	21,357	677	1,033	4.8%	682	5
W_OP	\$ 80	328	1.7%	862	4.4%	19,724	759	1,049	5.3%	767	8
SH_SP	\$ 100	293	1.4%	953	4.6%	20,700	576	833	4.0%	576	0
SH_P	\$ 50	293	1.5%	775	4.0%	19,339	617	856	4.4%	621	4
SH_OP	\$ 30	301	1.8%	578	3.5%	16,733	748	729	4.4%	754	6

Capacity Market

There also are no competitive concerns in the Forward Capacity Market (“FCM”) in ISO-NE. The results are similar to the installed capacity analysis (Table 2), but the ratings and market metrics are based on the capacity qualified for FCA-10 (2019-2020) (which includes existing and new generation, imports and demand resources). As shown in Table 8 below, qualified capacity in FCA-10 was approximately 39,000 MW.⁴² Post-Transaction, Helix Generation will be affiliated with approximately 2.2 percent of qualified supply, and the Transaction reduces market concentration by 2 points.

Table 8: Effect of Transaction in ISO-NE Capacity Market (FCA-10)

	Pre-Transaction			Post Transaction			HHI Change
	MW	Market Share	HHI	MW	Market Share	HHI	
Helix Generation and Affiliates	311	0.79%	1	867	2.21%	5	4
TransCanada ^{1/}	1,126	2.87%	8	570	1.45%	2	-6
ISO-NE Installed Capacity	39,177	100.00%		39,177	100.00%		-2

^{1/} TransCanada Post-Transaction MWs include hydro generation being acquired by an affiliate of ArLight.

I also determined that there were no capacity submarkets where the generation capacity of Helix Generation’s affiliates, on the one hand, and TC Maine Wind and Ocean State Power, on the other hand, overlaps. In FCA-10, only a single import constrained capacity zone was modeled, Southeast New England (“SENE”), combining the areas of northeast Massachusetts (NEMA) Southeast Massachusetts (SEMA) and Rhode Island (RI). The SENE zone did not

⁴² 2019-2020 Forward Capacity Auction Obligations, ISO-NE, http://www.iso-ne.com/static-assets/documents/2016/02/fca_10_obligations.xlsx.

clear as a separate market in the last auction. In any event, while all of the generation that Helix Generation is acquiring is in the SENE zone, none of the generation owned or controlled by its current affiliates is located in SENE.

Ancillary Services Markets

While ISO-NE operates reserve and regulation ancillary services markets, data are not available to conduct a detailed quantitative analysis of these markets. However, available data indicate that, in the most recent forward reserve market auction (Winter 2016-2017), supply offered for the 10-Minute Non-Spinning Reserves (“TMNSR”) in Rest of System (“ROS”) was 2.7 times the supply cleared.⁴³ Likewise, the supply offered for 30-Minute Operating Reserves (“TMOR”) in ROS was 2.1 times the supply cleared.⁴⁴ The vast majority of the generation affiliated with Helix Generation in ISO-NE (the Wallingford facility) is in the CT reserve zone, but Helix Generation is not acquiring any generation in CT. The Ocean State and Kibby Wind facilities being acquired as part of the Transaction are located in ROS, where Helix Generation is affiliated with only 12 MW of generation (the Jericho Wind facility).

With respect to the regulation market, in the most recent ISO-NE *Annual Market Report*, the internal market monitor concluded that the regulation market was relative unconcentrated,⁴⁵ and the external market monitor reported that available supply of regulation was 10 times the amount needed in 2015.⁴⁶ The internal market monitor also notes that the regulation market in

⁴³ ISO-NE *Forward Reserve Auction Results Winter 2016-17*, August 29, 2016, http://www.iso-ne.com/static-assets/documents/2015/09/fr_auction_win2015-16.pdf. Results for the Summer 2016 auction reflect offered/cleared supply ratios of 2.8 for TNMSR and 2.4 for TMOR in ROS. ISO-NE *Forward Reserve Auction Results Summer 2016*, April 28, 2016, https://www.iso-ne.com/static-assets/documents/2016/04/fr_auction_sum2016.pdf.

⁴⁴ *Id.*

⁴⁵ ISO New England Inc., Internal Market Monitor, *2015 Annual Markets Report*, page 28 and page 179, May 25, 2015 (“The abundance of regulation resources, and relatively unconcentrated control of that supply, implies that market participants have little opportunity to engage in economic or physical withholding. The regulation market was competitive in 2015.”). https://iso-ne.com/static-assets/documents/2016/05/2015_imm_amr_final_5_25_2016.pdf.

⁴⁶ Potomac Economics, Ltd., ISO New England Inc., External Market Monitor, ISO New England Inc., *2014 Assessment of the Electricity Markets in New England*, page 29, June 2016 (“On average, more than 600 MW of available supply competed to provide less than 60 MW of regulation service in 2015. The significant excess supply generally limits competitive concerns in the regulation market.”) https://www.iso-ne.com/static-assets/documents/2016/06/isone_2015_emm_report_final_6_14_16.pdf.

ISO-NE represents a very small component of the overall energy market (on average, it accounted for less than 0.3 percent of energy market payments in the first half of 2016.⁴⁷

Based on this information and the relative of oversupply of forward reserves and regulation, combined with the very small market share of ISO-NE generation that will be affiliated with Helix Generation, I conclude that there are no concerns with respect to the ISO-NE ancillary services markets raised by the modest increase in generation that will be affiliated with Helix Generation as a result of the Transaction.

Historical Transactions

Based on information reported in Electric Quarterly Reports (“EQRs”) on energy sales (reported in MWh) and in ABB Velocity Suite⁴⁸ on unit operations (reported in MWh), it is clear that the generation that will be owned by Helix Generation and its affiliates represents a relatively small share of actual energy in ISO-NE, which is consistent with the analyses above. In 2015, the output of generation owned by Helix Generation and its affiliates, and the generation transferred to Helix Generation pursuant to the Transaction accounted for 1.4 percent of ISO-NE load.⁴⁹ Thus, these data corroborate the results of the DPT. Likewise, low market concentration in ISO-NE is corroborated by the ISO-NE external market monitor.⁵⁰

PJM

I previously provided the results of the installed capacity analysis (see Table 4), which demonstrated that Helix Generation and its affiliates, after the Transaction, will have a Post-Transaction market share of 3.3 percent in PJM. Their share of installed capacity in relevant PJM submarkets is less than 3 percent (2.3 percent in 5004/5005 and 3 percent in AP South), as

⁴⁷ ISO New England’s Internal Market Monitor, Spring 2016 Quarterly Markets Report, August 26, 2016, page 35, https://www.iso-ne.com/static-assets/documents/2016/08/q2_spring_2016_qmr_final.pdf.

⁴⁸ ABB Velocity Suite is a set of databases, analytical tools and forecasts published by ABB Velocity Suite that is widely used in the industry.

⁴⁹ The MWhs sold in ISO-NE are based on reported 2015 net generation in the EIA Form 923 for 2015 as a percentage of ISO-NE’s 2015 load.

⁵⁰ *2015 Assessment of the ISO New England Electricity Markets*, Potomac Economics, External Market Monitor for ISO-NE, June 2016, Figure 10, https://iso-ne.com/static-assets/documents/2016/06/isone_2015_emm_report_final_6_14_16.pdf.

shown in Table 9 and Table 10 below.⁵¹ These market shares conservatively include 340 MW of capacity affiliated with Helix Generation anticipated to come on-line in early 2018.

Table 9: Installed Capacity in PJM 5004/5005 Submarket

	Pre-Transaction			Post-Transaction			HHI Change
	MW	Market Share	HHI	MW	Market Share	HHI	
Helix Generation and Affiliates	721	1.20%	1	1,381	2.30%	5	4
TransCanada	660	1.10%	1	0	0.00%	0	-1
PJM Installed Capacity	60,000	100.00%		60,000	100.00%		3
2ab HHI Change							3

Table 10: Installed Capacity in PJM AP South Submarket

	Pre-Transaction			Post-Transaction			HHI Change
	MW	Market Share	HHI	MW	Market Share	HHI	
Helix Generation and Affiliates	1,875	2.18%	5	2,535	2.95%	9	4
TransCanada	660	0.77%	1	0	0.00%	0	-1
PJM Installed Capacity	86,000	100.00%		86,000	100.00%		3
Note: The 340 MW Doswell addition is reflected in both the capacity MWs assigned to LS Power and the PJM Installed Capacity.							
2ab HHI Change							3

Economic Capacity

The DPT demonstrates that the PJM market is unconcentrated, and the Transaction readily passes the DPT screens in all periods/load conditions, as shown in Table 11 below (same as previous Table 5) and Exhibit J-7. After the Transaction, the PJM market remains unconcentrated, and HHI changes are only 1-3 points. The results of the price sensitivities (plus and minus 10 percent) are not materially different (see Exhibit J-7).

⁵¹ The installed capacity for the 5004/5005 and AP South submarkets is based on the generation dataset underlying the DPT model.

Table 11: DPT Results for PJM (Economic Capacity)

Period	Price	Pre-Transaction						Post-Transaction			
		Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation			HHI Change
		Mkt MW	Mkt Share	Mkt MW	Mkt Share			Mkt MW	Mkt Share	Market HHI	
S_SP1	\$ 150	4,954	2.9%	689	0.4%	171,222	615	5,637	3.3%	618	2
S_SP2	\$ 60	4,954	2.9%	690	0.4%	171,071	616	5,638	3.3%	619	2
S_P	\$ 30	4,441	2.8%	714	0.5%	156,372	611	5,143	3.3%	613	3
S_OP	\$ 25	1,814	1.4%	661	0.5%	126,982	692	2,456	1.9%	693	1
W_SP	\$ 200	5,295	2.9%	738	0.4%	182,039	592	6,026	3.3%	594	2
W_P	\$ 50	5,085	3.0%	696	0.4%	167,024	589	5,762	3.4%	592	2
W_OP	\$ 40	4,782	3.0%	690	0.4%	161,415	582	5,443	3.4%	585	2
SH_SP	\$ 70	4,286	2.9%	582	0.4%	148,838	590	4,860	3.3%	592	2
SH_P	\$ 35	3,838	2.7%	600	0.4%	139,659	574	4,425	3.2%	577	2
SH_OP	\$ 25	1,367	1.3%	555	0.5%	107,211	647	1,895	1.8%	649	1

The DPT results for the 5004/5005 and AP South submarkets demonstrate that these markets are unconcentrated, and the Transaction readily passes the DPT screens in all periods/load conditions, as shown in Table 12 (5004/5004) and Table 13 (AP South) below and Exhibit J-8. HHI changes are no more than 5 points, and the results of the sensitivities are not materially different.

Table 12: DPT Results for 5004/5005 (Economic Capacity)

Period	Price	Pre-Transaction						Post-Transaction			
		Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation			HHI Change
		Mkt MW	Mkt Share	Mkt MW	Mkt Share			Mkt MW	Mkt Share	Market HHI	
S_SP1	\$ 200	872	1.5%	697	1.2%	57,558	886	1,562	2.7%	889	4
S_SP2	\$ 75	875	1.6%	698	1.2%	56,444	895	1,565	2.8%	899	4
S_P	\$ 35	869	1.7%	722	1.4%	52,445	880	1,580	3.0%	885	4
S_OP	\$ 25	750	1.8%	665	1.6%	41,753	810	1,393	3.3%	815	5
W_SP	\$ 200	942	1.5%	741	1.2%	62,216	908	1,675	2.7%	912	4
W_P	\$ 60	939	1.8%	692	1.3%	51,679	902	1,614	3.1%	907	5
W_OP	\$ 55	926	1.8%	698	1.4%	50,505	898	1,603	3.2%	903	5
SH_SP	\$ 95	784	1.6%	590	1.2%	49,787	857	1,365	2.7%	860	4
SH_P	\$ 40	765	1.7%	614	1.3%	46,238	825	1,366	3.0%	829	4
SH_OP	\$ 30	770	1.8%	551	1.3%	42,697	796	1,297	3.0%	800	4

Table 13: DPT Results for AP South (Economic Capacity)

Period	Price	Pre-Transaction						Post-Transaction			
		Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation			HHI Change
		Mkt MW	Mkt Share	Mkt MW	Mkt Share			Mkt MW	Mkt Share	Market HHI	
S_SP1	\$ 200	1,919	2.4%	664	0.8%	78,859	987	2,579	3.3%	992	4
S_SP2	\$ 75	1,919	2.5%	665	0.9%	76,226	961	2,580	3.4%	966	4
S_P	\$ 35	1,912	2.7%	677	1.0%	70,549	973	2,583	3.7%	978	5
S_OP	\$ 25	1,677	3.1%	648	1.2%	53,744	928	2,314	4.3%	935	7
W_SP	\$ 200	2,064	2.4%	716	0.8%	85,359	938	2,775	3.3%	942	4
W_P	\$ 60	2,053	2.9%	682	0.9%	71,900	956	2,724	3.8%	961	5
W_OP	\$ 55	2,035	2.9%	686	1.0%	69,045	943	2,708	3.9%	949	6
SH_SP	\$ 95	1,676	2.4%	571	0.8%	68,889	895	2,241	3.3%	899	4
SH_P	\$ 40	1,648	2.6%	588	0.9%	62,344	864	2,226	3.6%	869	5
SH_OP	\$ 30	1,649	2.9%	542	0.9%	57,466	864	2,173	3.8%	869	5

Available Economic Capacity

As discussed earlier (see page 19), conducting an AEC analysis is complicated in restructured markets such as PJM. While EC is arguably the more relevant metric for PJM, the Commission has considered AEC in PJM, noting that some states in PJM have not implemented retail choice,⁵² and that utilities may retain provider of last resort (“POLR”) obligations even in states with retail competition.⁵³ In the context of the Transaction, it is worth noting that all of the states within the PJM East and 5004/5005 submarkets have retail competition and, even though utilities within those states retain POLR obligations, the utilities procure energy supply to meet those obligations through competitive solicitations. In that sense, there no longer is any linkage between the utilities’ (or their affiliates’) owned generation and their POLR obligations in the states within the PJM East and 5004/5005 submarkets. This also is the case in other states in PJM with retail choice.

In conducting my analysis, I linked load-serving “obligations” to generation in PJM based on available information about which generation is committed to serving PJM utilities’ load obligations. The relevant assumptions are detailed in Exhibit J-4. As noted earlier, I did not

⁵² *NRG Energy*, 141 FERC ¶ 61,207 at n. 115 (“The Commission notes that although EC may be the more relevant measure for energy markets where retail competition exists, Applicants’ analyses under the AEC measure is also appropriate because while some states within PJM have implemented retail choice, Indiana, Kentucky, North Carolina, Tennessee, Virginia, and West Virginia have not.”)

⁵³ *PPL*, 149 FERC ¶ 61,260 at P 88.

assign any load to the generation affiliated with Helix Generation or TransCanada in the United States.

As shown in Table 14 below, the DPT screens for AEC are easily passed in the PJM market. The market is unconcentrated, and the HHI changes are trivial. The results for the price sensitivities are not materially different (see Exhibit J-8).

Table 14: DPT Results for PJM (Available Economic Capacity)

Period	Price	Pre-Transaction						Post-Transaction			
		Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation			HHI Change
		Mkt MW	Mkt Share	Mkt MW	Mkt Share			Mkt MW	Mkt Share	Market HHI	
S_SP1	\$ 150	4,955	4.6%	736	0.7%	107,381	595	5,689	5.3%	602	6
S_SP2	\$ 60	4,955	4.4%	728	0.7%	111,857	575	5,677	5.1%	581	6
S_P	\$ 30	4,441	4.1%	795	0.7%	108,811	570	5,226	4.8%	576	6
S_OP	\$ 25	1,815	2.0%	639	0.7%	88,751	627	2,446	2.8%	630	3
W_SP	\$ 200	5,296	4.3%	765	0.6%	124,479	539	6,057	4.9%	544	5
W_P	\$ 50	5,085	4.2%	688	0.6%	120,540	534	5,749	4.8%	539	5
W_OP	\$ 40	4,782	4.0%	683	0.6%	119,567	533	5,446	4.6%	538	5
SH_SP	\$ 70	4,287	4.4%	626	0.6%	97,272	542	4,907	5.0%	547	6
SH_P	\$ 35	3,838	3.9%	645	0.7%	99,141	520	4,475	4.5%	525	5
SH_OP	\$ 25	1,367	1.9%	530	0.7%	73,286	626	1,885	2.6%	629	3

The DPT results for the PJM submarkets indicate markets that are generally unconcentrated, and the Transaction readily passes the DPT screens in all periods/load conditions, as shown in Table 15 (5004/5004) and Table 16 (AP South) below and Exhibit J-8. The markets are unconcentrated. HHI changes are small, and the results of the price sensitivities are not materially different.

Table 15: DPT Results for 5004/5005 (Available Economic Capacity)

Period	Price	Pre-Transaction						Post-Transaction			
		Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation			HHI Change
		Mkt MW	Mkt Share	Mkt MW	Mkt Share			Mkt MW	Mkt Share	Market HHI	
S_SP1	\$ 200	940	2.3%	730	1.8%	41,527	852	1,668	4.0%	860	8
S_SP2	\$ 75	941	2.3%	723	1.7%	41,709	837	1,659	4.0%	844	8
S_P	\$ 35	920	2.3%	761	1.9%	40,175	884	1,675	4.2%	893	9
S_OP	\$ 25	769	2.4%	638	2.0%	31,580	644	1,400	4.4%	654	10
W_SP	\$ 200	1,027	2.1%	756	1.6%	47,914	833	1,779	3.7%	840	7
W_P	\$ 60	1,007	2.5%	676	1.7%	40,034	891	1,669	4.2%	899	8
W_OP	\$ 55	986	2.5%	679	1.7%	39,855	907	1,649	4.1%	915	8
SH_SP	\$ 95	861	2.3%	616	1.7%	36,895	759	1,471	4.0%	767	8
SH_P	\$ 40	825	2.3%	650	1.8%	35,988	796	1,468	4.1%	804	8
SH_OP	\$ 30	823	2.4%	526	1.6%	33,665	729	1,340	4.0%	736	8

Table 16: DPT Results for AP South (Available Economic Capacity)

Period	Price	Pre-Transaction						Post-Transaction			
		Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation			HHI Change
		Mkt MW	Mkt Share	Mkt MW	Mkt Share			Mkt MW	Mkt Share	Market HHI	
S_SP1	\$ 200	1,990	4.3%	688	1.5%	45,997	757	2,677	5.8%	770	13
S_SP2	\$ 75	1,987	4.3%	684	1.5%	46,207	743	2,668	5.8%	756	13
S_P	\$ 35	1,946	4.2%	697	1.5%	46,377	735	2,641	5.7%	748	13
S_OP	\$ 25	1,681	4.9%	635	1.8%	34,330	584	2,311	6.7%	602	18
W_SP	\$ 200	2,184	3.9%	736	1.3%	56,290	683	2,917	5.2%	693	10
W_P	\$ 60	2,130	4.4%	672	1.4%	48,743	707	2,791	5.7%	719	12
W_OP	\$ 55	2,092	4.3%	674	1.4%	48,211	725	2,754	5.7%	737	12
SH_SP	\$ 95	1,799	4.2%	601	1.4%	42,701	656	2,395	5.6%	668	12
SH_P	\$ 40	1,701	4.0%	615	1.5%	42,072	650	2,311	5.5%	662	12
SH_OP	\$ 30	1,695	4.2%	523	1.3%	40,197	603	2,212	5.5%	614	11

Capacity Market

There also are no concerns raised in the PJM Reliability Pricing Mechanism (“RPM”) capacity market, as presented in Table 17 below.⁵⁴ As shown below, Helix Generation’s affiliated market share of the PJM capacity market following the Transaction will be approximately 3.2 percent, and the HHI change associated with the transaction is only 2 points, clearly indicating a lack of competitive concern.

⁵⁴ Market data are from *RPM Base Residual Auction Report*, Table 4. <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/2018-2019-base-residual-auction-report.ashx>.

Table 17: Effect of Transaction in RPM Market (RTO-Wide, 2018/2019 Auction)

	Pre-Transaction			Post-Transaction			HHI Change
	MW	Market Share	HHI	MW	Market Share	HHI	
Helix Generation and Affiliates	5,165	2.87%	8	5,825	3.24%	10	2
TransCanada	660	0.37%	0	0	0.00%	0	0
Total RTO Capacity Offered (UCAP)	179,891	100.00%		179,891	100.00%		2
2ab HHI Change							2

The generation owned in PJM by Helix Generation’s affiliates is located in the following Zones/Local Deliverability Areas (“LDA”): AECO/EMAAC, Penelec/MAAC, AEP/RTO, DOM/RTO and COMED/COMED, according to the PJM Resource Model.⁵⁵ Ironwood, the only generating unit in PJM being acquired in this Transaction, is in the METED zone in the MAAC LDA. In the most recent RPM auction (2018/19), the Eastern Mid-Atlantic Area Council (“EMAAC”) and ComEd (“COMED”) LDAs cleared at separate (higher) prices from the RTO-wide market. There is no overlap between the generation affiliated with Helix Generation and being acquired in this Transaction in either EMAAC or COMED. MAAC is the only LDA in which there is an overlap of generation capacity affiliated with Helix Generation and being acquired in this Transaction. Even though MAAC did not clear separately in the last auction, I examined the impact of the Transaction in MAAC. Table 18 below shows the effect in the MAAC LDA. As shown, Helix Generation’s affiliated market share of the MAAC LDA following the Transaction will be 2.5 percent, and the HHI change associated with the transactions is only 3 points, again indicating a lack of competitive concern.

⁵⁵ <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/2019-2020-rpm-resource-model.ashx>.

Table 18: Effect of Transaction in RPM Market (MAAC)

	Pre-Transaction			Post-Transaction			HHI Change
	MW	Market Share	HHI	MW	Market Share	HHI	
LS Power and Affiliates	1,186	1.61%	3	1,847	2.51%	6	4
TransCanada	660	0.90%	1	0	0.00%	0	-1
Total RTO Capacity Offered (UCAP)	73,546	100.00%		73,546	100.00%		3
2ab HHI Change							3

Ancillary Services Markets

PJM operates ancillary services markets for regulation, synchronized reserves and supplemental reserves. The regulation and synchronized reserve markets are cleared on a co-optimized basis in real-time with the energy market and the provision of operating reserves. A unit can bid into both markets and can be selected for either regulation or synchronized reserve, but not for both.

The Transaction raises no competitive concerns in the regulation market. PJM operates a single RTO-wide regulation market, with supply provided by generators via automatic control signals or by demand response capability. Participant behavior and market performance have been deemed competitive.⁵⁶ In the first six months of 2016, the ratio of hourly eligible supply of regulation to regulation demand was 1.86 for on-peak hours and 2.28 for off-peak hours,⁵⁷ indicating substantial excess supply of regulation.

Primary reserve includes synchronized reserves provided by resources synchronized to the system that can respond within ten minutes, and non-synchronized reserves that can be provided by units capable of providing energy within ten minutes. The primary reserve requirement is 150 percent of the largest contingency. PJM operates an RTO-wide market for primary reserves, as well as a Mid-Atlantic Dominion (“MAD”) Subzone. The subzone is defined dynamically by the most limiting constraint, but typically includes portions of MAAC and the Dominion zone (and encompasses much of the footprint of the AP South energy submarket). Participant behavior and market performance have been deemed competitive for

⁵⁶ 2016 Quarterly Report State of the Market Report for PJM, January-June, Section 10 (Ancillary Service Markets), at 367. http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2016/2016q2-som-pjm-sec10.pdf.

⁵⁷ *Id.*, at 372.

Tier 2 synchronized reserves.⁵⁸ Offered and eligible synchronized reserve in the first six months of 2016 was 20,302 MW in the RTO Reserve Zone (6,907 MW in the MAD Subzone) relative to 1,450 MW of demand in the RTO Reserve Zone and MAD Subzone,⁵⁹ indicating substantial excess supply of synchronized reserves.

Supplemental (30-minute) reserve requirements are supplied through the Day Ahead Scheduling Reserve (“DASR”) market. While requirements are determined by reliability regions, the DASR market clears as an RTO-wide market, simultaneously with the day-ahead energy market. Market performance was deemed competitive in the first half of 2016.⁶⁰ In the first half of 2016, the average available hourly DASR was 36,752 MW, relative to average cleared MW of 5,501 MW,⁶¹ indicating substantial excess supply of supplemental reserves.

While the existing generation in PJM affiliated with Helix Generation and the generation being acquired in this Transaction participate in RTO-wide ancillary services markets, Helix Generation will be affiliated with only about 3 percent of total generation in PJM post-Transaction, and there is substantial excess supply of regulation, synchronized reserves and supplemental reserves. Market performance in the PJM ancillary services markets has been deemed competitive. Thus, the Transaction does not raise any competitive concerns with respect to the PJM ancillary services markets.

Historical Transactions

Based on information reported in EQRs on energy sales (reported in MWh) and in ABB Velocity Suite on unit operations (reported in MWh), it is clear that the generation that will be owned by Helix Generation and its affiliates represents a relatively small share of actual energy in PJM, which is consistent with the analyses above. In 2015, the output of generation owned by Helix Generation and its affiliates, as well as the generation transferred to Helix Generation

⁵⁸ *Id.*, at 367. There is no formal market for Tier1 synchronized reserves. *Id.*, at 368.

⁵⁹ *Id.*, at 369.

⁶⁰ *Id.*, at 367.

⁶¹ *Id.*, at 371.

under the Transaction accounted for a combined 1.9 percent of load in PJM.⁶² Therefore, these data corroborate the results of the DPT.

Vertical Market Power

The Transaction does not raise any competitive concerns with regard to vertical market power.

First, there are no issues related to electric transmission ownership. Helix Generation and its affiliates own no transmission in or proximate to the relevant markets, other than the limited and discrete facilities necessary to interconnect the relevant generation to the grid. No transmission is being acquired in the Transaction, other than the limited facilities necessary to interconnect the relevant generation to the grid.

Second, there are no issues related to fuel supplies or fuel delivery systems. Neither Helix Generation nor their affiliates has any ownership interest in or control of fuel supplies, fuel delivery systems, other inputs to electricity markets or any new sites for electric generation that could raise barriers to entry in any of the relevant markets.

Third, there are no other barriers to entry that raise concerns. Nor is there a basis to overcome the Commission's presumption that long-term markets are competitive.⁶³ The entry of new generation into ISO-NE and its ownership by numerous independent entities evidences a lack of entry barriers. ISO-NE reports that there was about 11,000 MW of "active" generation in the interconnection queue as of April 1, 2015.⁶⁴ Likewise, the entry of new generation in PJM and its ownership by numerous independent entities shows that entry is not constrained. There is

⁶² The MWhs or output are based on reported net generation in EIA Form 923 for 2015 as a percentage of PJM's 2015 load. EQR and net generation data are provided in workpapers.

⁶³ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,649 n.86 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁶⁴ ISO New England, *2015 Regional System Plan* at Table 5-4, November 5, 2015, http://www.iso-ne.com/static-assets/documents/2015/11/rsp15_final_110515.docx.

more than 40,000 MW of generation in the active PJM interconnection queue, including about 24,000 MW under construction.⁶⁵

In short, none of the vertical market power concerns that the Commission typically considers exists with respect to the Transaction, and hence it does not create or enhance vertical market power.

CONCLUSION

The market power analyses discussed herein demonstrate that the Transaction will not have adverse competitive effects in any relevant market.

⁶⁵ 2016 *Quarterly Report State of the Market Report for PJM, January-June*, Table 12-3.



Julie R. Solomon

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Professional History

- Managing Director, Navigant Consulting - 2010-Present
- Vice President, Charles River Associates - 2001-2010
- Senior Vice President, Putnam, Hayes and Bartlett, Inc. and PHB Hagler Bailly, Inc., Washington, DC - 1986-2000
- Economist, Economic Consulting Services, Inc., Washington, DC - 1979-1986
- Economist, U.S. Department of Labor, Washington, DC - 1976-1979

Education

- M.B.A. Finance, The Wharton School University of Pennsylvania
- B.A. Economics, Connecticut College

Testimony

- Written testimony provided in more than 150 regulatory proceedings
 - » analysis of supply options, privatization and restructuring.
 - » Advised utility and non-utility clients on many aspects of the competitive independent power industry, including strategic and financial consulting assignments.
 - » Consulted legal counsel on a variety of litigation matters, including the development of expert testimony on liability issues and the calculation of damages in a variety of industries.
 - » Provided strategic and economic analyses for clients in trade regulatory proceedings such as dumping and subsidies.
 - » Provided financial and business valuation analyses in a number of transactions, including fair market value for taxation purposes and valuation of family-owned businesses.

Julie Solomon is a Managing Director at Navigant Consulting, Inc. in the Energy Practice's Power Systems, Markets & Pricing group. She has more than 20 years of consulting experience, specializing in the areas of regulatory and utility economics, financial analysis and business valuation. Ms. Solomon has participated in analysis of proposed regulatory reforms, supply options and utility industry restructuring in the gas and electric industries. She also has advised utility clients in corporate strategy and corporate restructuring, and consulted to legal counsel on a variety of litigation and regulatory matters, including antitrust litigation and contract disputes. She has filed testimony in numerous proceedings before the Federal Energy Regulatory Commission. Much of her current practice focuses on regulatory and market power issues concerning mergers and acquisitions and compliance filings in the electricity market.

- » Advised clients in the electric and gas utility industry on competition issues, including the impact of mergers on competition. Directed a large number of analytic studies relating to obtaining merger approval from regulatory authorities.
- » Advised clients in the electric utility industry on restructuring strategies, including potential mergers and acquisitions, functional unbundling and cost savings.
- » Consulted in the electric and gas utility industries in a variety of regulatory and competition matters, including rate proceedings, prudence reviews, proposed regulatory reforms,



Julie R. Solomon

Professional Experience

Electric and Gas Utilities

Mergers and Acquisitions (Market Power and Competition Issues)

- » Advised clients and conducted analytic studies in connection with a large number of major electric and electric-gas mergers and asset transactions of regulated companies. Provided testimony to FERC for a number of these types of transactions.
- » Advised clients and provided confidential pre-screening analyses for potential mergers and acquisitions.
- » Conducted numerous analytic studies in connection with FERC market-based rate applications and compliance filings for electricity sellers. Provided testimony to FERC for a number of these types of transactions.
- » Conducted numerous analytic studies in connection with FERC market-based rate applications and compliance filings for gas storage facilities. Provided testimony to FERC for a number of these types of transactions.

Utility Restructuring and Stranded Cost

- » Conducted analytic studies and provided litigation support in connection with state stranded cost proceedings in Ohio (Cincinnati Gas & Electric and Dayton Power & Light); West Virginia (Monongahela Power and Potomac Edison); Maryland (Potomac Edison) and Pennsylvania (West Penn Power).
- » Provided analytic support evaluating the benefits of Public Service of Colorado's proposed DC transmission line between Colorado and Kansas in support of a regulatory proceeding.
- » Assisted in studies relating to privatization of the electricity industry in the United Kingdom, including development of a computer model to simulate electricity dispatch and project future prices, capacity needs and utility revenues under various scenarios. During temporary assignment to London office.
- » Participated in antitrust litigation involving a utility and a cogenerator, including preparation of an expert report on liability and damage issues, preparation of expert witnesses for deposition, and assistance in preparation for depositions of opposing expert and in-house witnesses.
- » Assisted in the valuation of the interests of several firms in various cogeneration projects for the purpose of combining these interests into a new entity or selling interests to third parties.
- » Analyzed the financial feasibility and viability of a large number of cogeneration projects, assisted in the preparation of presentations and filings and presented testimony to the relevant public utility commission. Ms. Solomon also assisted in the development of a PC-based financial model to analyze various cogeneration projects.



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- » Participated in a study to analyze the financial effects of a variety of restructuring options for a utility, including transfer and/or sale of assets and subsequent sale-leasebacks, and debt restructuring alternatives. In addition, she developed a PC-based financial model with applications to utility restructuring plans.
- » Provided litigation support in major utility rate proceedings, including assisting in the preparation of responses to interrogatories and data requests, preparation of company and outside expert witnesses for deposition and hearings, and assistance in the deposition and cross-examination of intervenor witnesses.
- » Participated in proceedings involving regulation of an oil pipeline, which included evaluating the business risks faced by the company.

Business Valuation

- » Participated in a valuation study involving the fair market value of a privately held company for purposes of an IRS proceeding.
- » Participated in a valuation study in a divorce proceeding, where the assets being valued included a privately held business.
- » Participated in two strategic engagements that developed business plans and identified potential acquisition candidates for the client.
- » Provided advice to a client concerning the benefits and potential risks of developing a partnership with a competitor.



Julie R. Solomon

Testimony or Expert Report Experience (2013-July 2016)

- » Supplemental Affidavit on behalf of Dynegey Inc. et al., Docket Nos. EC16-93 and -94, July 8, 2016.
- » Affidavit on behalf of Arlington Valley, LLC et al., Docket No. ER10-2756 et al., market-based rate triennial filing, June 30, 2016.
- » Affidavit on behalf of Sundevil Holdings et al., Docket No. ER16-2107 et al., market-based rate triennial filing, June 30, 2016.
- » Affidavit (with Matthew E. Arenchild) on behalf of BHE Northwest Companies, Docket No. ER10-3246 et al., market-based rate triennial filing, June 30, 2016.
- » Affidavit on behalf of BHE Renewables, LLC, Docket No. ER13-520 et al., market-based rate triennial filing, June 30, 2016.
- » Affidavit on behalf of Atlantic Renewable Projects II LLC et al., Docket No. ER10-2822 et al., market-based rate triennial filing, June 30, 2016.
- » Affidavit on behalf of the Calpine MBR Sellers, Docket No. ER10-2042 et al., market-based rate triennial filing, June 30, 2016.
- » Affidavit on behalf of the NorthWestern Corporation, Docket No. ER11-1858, market-based rate triennial filing, June 29, 2016.
- » Affidavit on behalf of the ArcLight Energy Marketing et al., LLC, Docket No. ER16-2014 et al., market-based rate triennial filing, June 24, 2016.
- » Affidavit on behalf of River Bend Solar, LLC Docket No. ER16-1913, application for market-based rates, June 10, 2016.
- » Affidavit (with Matthew E. Arenchild) on behalf of Nevada Power Company et al., Docket No. EC16-130, application for authorization of disposition of jurisdictional facilities, June 7, 2016.
- » Affidavit on behalf of Apple Energy, LLC, Docket No. ER16-1887, application for market-based rates, June 6, 2016.
- » Affidavit on behalf of Marshall Solar, LLC, Docket No. ER16-1872, application for market-based rates, June 3, 2016.
- » Affidavit on behalf of the Dominion Companies, Docket No. ER13-2109 et al., notice of change in status filing, May 25, 2016.
- » Affidavit on behalf of Eastern Shore Solar LLC, Docket No. ER16-1750, application for market-based rates, May 20, 2016.
- » Affidavit on behalf of Roswell Solar LLC and Chaves County Solar, LLC, Docket No. ER16-1440 and ER16-1672, applications for market-based rates, May 20, 2016 and May 17, 2016.
- » Affidavit on behalf of Exelon MBR Entities, Docket No. ER10-2997 et al., notice of change in status filing, April 22, 2016.



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- » Affidavit on behalf of Live Oak Solar LLC, White Oak Solar, LLC, and White Pine Solar, LLC, Docket No. ER16-1354, ER16-1293 and ER16-1277, applications for market-based rates, April 6, 2016, March 30, 2016 and March 25, 2016.
- » Affidavit on behalf of Atlas Power Finance, LLC, Dynegy Inc., Energy Capital Partners III, LLC, and GDF SUEZ Energy North America, Inc., Docket No. EC16-93, application for authorization of disposition of jurisdictional facilities, March 25, 2016.
- » Affidavit on behalf of Dynegy Inc. and Energy Capital Partners III, LLC, Docket No. EC16-94, application for authorization of disposition of jurisdictional facilities, March 25, 2016.
- » Affidavit on behalf of Grande Prairie Wind, LLC, Docket No. ER16-1258, application for market-based rates, March 22, 2016.
- » Affidavit on behalf of Florida Power & Light Company, Docket No. ER16-628-001, application for market-based rates, March 21, 2016.
- » Affidavit on behalf of Essential Power, LLC, Docket No. EC16-82, application for authorization of disposition of jurisdictional facilities, February 29, 2016.
- » Affidavit on behalf of Duke Energy Florida, LLC, Docket No. EC16-69, application for authorization of disposition of jurisdictional facilities, February 10, 2016.
- » Affidavit on behalf of Nassau Energy, LLC, Docket No. ER16-806, application for market-based rates, January 21, 2016.
- » Affidavit on behalf of ECP MBR Sellers, Docket No. ER16-72, market-based rate triennial filing, December 31, 2015.
- » Affidavit on behalf of SDG&E Sellers, Docket No. ER14-474, market-based rate triennial filing, December 30, 2015.
- » Affidavit on behalf of New Harquahala Generating Company, Docket No. ER15-2013, market-based rate triennial filing, December 30, 2015.
- » Affidavit on behalf of Exelon SPP Entities, Docket No. ER14-474, market-based rate triennial filing, December 29, 2015.
- » Affidavit on behalf of Florida Power & Light Company, Docket No. ER16-628-000, application for market-based rates, December 23, 2015.
- » Affidavit on behalf of ENGIE Portfolio Management, LLC et al, Docket No. ER16-581 et al., application for market-based rates, December 18, 2015.
- » Affidavit on behalf of Marshall Wind Energy, LLC, Docket No. ER16-438, market-based rate triennial filing, December 18, 2015.
- » Affidavit on behalf of Marshall Wind Energy, LLC, Docket No. ER16-438, application for market-based rates, December 1, 2015.
- » Affidavit on behalf of Calpine Granite Holdings, LLC, Docket No. EC16-19, application for authorization of disposition of jurisdictional facilities, October 27, 2015.



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- » Affidavit on behalf of Berkshire Hathaway, Inc., Docket No. EC16-10, application for authorization of disposition of jurisdictional facilities, October 8, 2015.
- » Affidavit on behalf of Panda Patriot, LLC, Docket No. ER15-2472, application for market-based rates, September 29, 2015.
- » Affidavit on behalf of Talen Energy Corporation, Docket No. EC14-112, Motion to Amend Mitigation Plan, September 25, 2015.
- » Affidavit on behalf of BHE MBR Sellers, Docket No. ER12-162, notification of change in status, September 25, 2015.
- » Affidavit on behalf of Talen Energy Corporation, Docket No. EC14-112, Motion to Amend Mitigation Plan, September 8, 2015.
- » Affidavit on behalf of BHE MBR Sellers, Docket No. ER13-521, response to Commission Staff Deficiency Letter and Request for Additional Information, September 24, 2015.
- » Affidavit on behalf of BHE MBR Sellers, Docket No. ER13-521, supplemental filing, September 8, 2015.
- » Affidavit on behalf of GDF SUEZ MBR Sellers, Docket No. ER14-1699, notice of change, August 31, 2015.
- » Affidavits on behalf of PacifiCorp and NV Energy, Docket No. ER15-2283, EIM analysis, July 27, 2015.
- » Affidavit on behalf of NorthWestern Corporation and Beethoven Wind, LLC, Docket No. EC15-176, application for authorization of disposition of jurisdictional facilities, July 24 2015.
- » Affidavit on behalf of MidAmerican Energy Services, LLC, Docket No. ER15-2211, application for market-based rates, July 24, 2015.
- » Affidavit on behalf of The Empire District Electric Company, Docket No. ER10-2738, market-based rate triennial filing, June 30, 2015.
- » Affidavit on behalf of Exelon MBR Sellers, Docket No. ER10-2172 *et al.*, market-based rate triennial filing, June 30, 2015.
- » Affidavit on behalf of Oklahoma Gas & Electric, Docket No. ER11-2105, market-based rate triennial filing, June 30, 2015.
- » Affidavit on behalf of LG&E Energy Marketing, Inc., Docket No. ER10-1714, market-based rate triennial filing, June 30, 2015.
- » Affidavit on behalf of Westar Energy, Inc., Docket No. ER10-2507, market-based rate triennial filing, June 29, 2015.
- » Affidavit on behalf of the Alabama Power Company, *et al.*, Docket No. EL15-39, *et al.*, response to show cause order, June 26, 2015.
- » Affidavit on behalf of Wisconsin Electric Power Company, Docket No. ER15-2019 market-based rate triennial filing, June 26, 2015.



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- » Affidavit on behalf of Panda Liberty LLC, Docket No. ER15-1841, market-based rate application, June 2, 2015.
- » Affidavit on behalf of CCI U.S. Asset Holdings LLC, Docket No. EC15-108, application for authorization of disposition of jurisdictional facilities, March 31, 2015.
- » Affidavit on behalf of Florida Power & Light Company, Docket No. EC15-102, application for authorization of disposition of jurisdictional facilities, March 23, 2015.
- » Affidavit on behalf of Osprey Energy Center, LLC, Docket No. EC15-96, application for authorization of disposition of jurisdictional facilities, March 13, 2015.
- » Affidavit on behalf of the Berkshire Hathaway Energy MBR Sellers, Docket No. EL15-22, *et al.*, response to show cause order, February 9, 2015.
- » Affidavit on behalf of ECP MBR Sellers, Docket No. ER13-2477, notice of change in status, January 20, 2015.
- » Affidavit on behalf of NorthWestern Corporation, Docket No. ER11-1859, market-based rate triennial filing, December 30, 2014.
- » Affidavit on behalf of Exelon, Docket No. ER12-2178, market-based rate triennial filing, December 23, 2014.
- » Affidavit on behalf of Dynegy Inc., Docket No. ER14-1569, market-based rate triennial filing, December 23, 2014.
- » Affidavit on behalf of Northern Indiana Public Service, Docket No. ER10-1781, market-based rate triennial filing, December 23, 2014.
- » Affidavit on behalf of AES Corp, Docket No. ER10-3415, market-based rate triennial filing, December 22, 2014.
- » Affidavit on behalf of Ameren Illinois Company, Union Electric Company, and AmerenEnergy Medina Valley Cogen, L.L.C. Docket No. ER10-1119, ER10-1123, and ER10-1103, market-based rate triennial filing, December 19, 2014.
- » Affidavit on behalf of Duke Energy MBR Sellers, Docket No. ER10-1325, market-based rate triennial filing, December 19, 2014.
- » Affidavit on behalf of Duke Energy Progress, Inc., Docket No. EC15-9, application for authorization of disposition of jurisdictional facilities, October 10, 2014.
- » Comments of Julie R. Solomon and Matthew E. Arenchild regarding NOPR on market-based rate authority, Docket No. RM14-14, September 23, 2014.
- » Affidavit on behalf of Dynegy Resource I, LLC, Docket No. EC14-141, application for authorization of disposition of jurisdictional facilities, September 11, 2014.
- » Affidavit on behalf of Dynegy Inc., Docket No. EC14-140, application for authorization of disposition of jurisdictional facilities, September 11, 2014.
- » Affidavit on behalf of Calpine Fore River Energy Center, LLC, Docket No. EC14-135, application for authorization of disposition of jurisdictional facilities, September 5, 2014.



Julie R. Solomon

- » Affidavit on behalf of Seiling Wind, LLC; Seiling Wind II, LLC; Mammoth Plains Wind Project, LLC; and Palo Duro Wind Energy, LLC, Docket No. ER14-2707-10, market-based rate applications, August 26, 2014.
- » Affidavit on behalf of ECP MBR Sellers, Docket No. ER10-2302, notification of change in status, August 18, 2014.
- » Affidavit on behalf of Millennium Power Partners, L.P., Docket No. ER10-3286, notification of change in status, August 4, 2014.
- » Affidavit on behalf of Granite Acquisition, Inc., Docket No. EC14-125, application for authorization of disposition of jurisdictional facilities, August 15, 2014.
- » Testimony (Direct and Rebuttal), on behalf of Duke Energy Florida, Inc., Docket No. 140111-EI before the Florida Public Service Commission, Petition for Determination of Cost Effective Generation Alternative to Meet Need Prior to 2018, May 27, 2014 and August 5, 2014.
- » Affidavit on behalf of LS Power Development, LLC, Docket No. ER13-2318, notification of change in status, August 4, 2014.
- » Supplemental Affidavit on behalf of Powerex Corp., Docket No. ER11-2664, market-based rate triennial filing, July 25, 2014.
- » Supplemental Affidavit on behalf of Berkshire Hathaway Energy, Docket No. ER13-1266, notification of change in status, August 17, 2014.
- » Affidavit on behalf of RJS Power Holdings LLC and PPL Corporation, Docket No. EC14-112, application for authorization of disposition of jurisdictional facilities, July 15, 2014.
- » Affidavit on behalf of South Carolina Electric & Gas Company, Docket No. ER10-2498, market-based rate triennial filing, July 14, 2014.
- » Affidavit on behalf of Consumers Energy Company, Docket No. EC14-110, application for authorization of disposition of jurisdictional facilities, July 1, 2014.
- » Affidavit on behalf of J.P. Morgan Sellers, Docket No. ER10-2331, market-based rate triennial filing, June 30, 2014.
- » Affidavit on behalf of Duke Energy MBR Sellers, Docket No. ER10-1325, market-based rate triennial filing, June 30, 2014.
- » Affidavit on behalf of PPL Southeast Companies, Docket No. ER10-1511, market-based rate triennial filing, June 30, 2014.
- » Affidavit on behalf of NextEra Companies, Docket No. ER10-1852, market-based rate triennial filing, June 30, 2014.
- » Affidavit on behalf of NextEra Companies, Docket No. ER10-1838, market-based rate triennial filing, June 30, 2014.
- » Affidavit on behalf of Brookfield Companies, Docket No. ER11-2292, market-based rate triennial filing, June 30, 2014.



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- » Affidavit on behalf of Calpine Corp, Docket No. ER10-1944, market-based rate triennial filing, June 30, 2014.
- » Affidavit on behalf of LS Northeast MBR Sellers, Docket No. ER13-2318, market-based rate triennial filing, June 30, 2014.
- » Affidavit on behalf of GDF SUEZ Northeast MBR Sellers, Docket No. ER10-2670, market-based rate triennial filing, June 30, 2014.
- » Affidavit on behalf of Safe Harbor Water Power Corp., Docket No. ER13-395, market-based rate triennial filing, June 27, 2014.
- » Affidavit on behalf of ECP MBR Sellers, Docket No. ER13-2477, market-based rate triennial filing, June 23, 2014.
- » Affidavit on behalf of Rockland Sellers, Docket No. ER12-1436, market-based rate triennial filing and notification of change in status, June 19, 2014.
- » Affidavit on behalf of Exelon Corp and Pepco Holdings, Inc., Docket No. EC14-96, application for authorization of disposition of jurisdictional facilities, May 30, 2014.
- » Affidavit on behalf of Nevada Power Co and Nevada Sun-Peak Limited Partnership, Docket No. EC14-83, application for authorization of disposition of jurisdictional facilities, May 2, 2014.
- » Affidavit on behalf of Nevada Power Co and Las Vegas Cogeneration Limited Partnership, Docket No. EC14-84, application for authorization of disposition of jurisdictional facilities, May 2, 2014.
- » Affidavit on behalf of NatGen Southeast Power LLC, Docket No. EC14-81, application for authorization of disposition of jurisdictional facilities, April 28, 2014.
- » Surrebuttal Testimony on Behalf of Commonwealth Edison Company, Illinois Commerce Commission, Application for a Certificate of Public Convenience and Necessity, No. 13-0657, April 9, 2014.
- » Affidavit on behalf of KMC Thermo, LLC, Docket No. ER14-1468, market-based rate application, March 12, 2014.
- » Affidavit on behalf of Trailstone Power, LLC, Docket No. ER14-1439, market-based rate application, March 6, 2014.
- » Affidavit on behalf of MACH Gen, LLC et al., Docket No. EC14-61, application for authorization of disposition of jurisdictional facilities, March 4, 2014.
- » Affidavit on behalf of MidAmerican Geothermal, LLC, et al., Docket No. EC14-59, application for authorization of disposition of jurisdictional facilities, February 20, 2014.
- » Affidavit on behalf of Green Mountain Power Corporation, Docket No. ER11-1933, market-based rate triennial filing, February 7, 2014.
- » Affidavit on behalf of NorthWestern Corporation, et al., Docket No. EC14-41, application for authorization of disposition of jurisdictional facilities, January 10, 2014.



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- » Affidavit on behalf of NorthWestern Corporation, Docket No. ER11-1858, notification of change in status, January 10, 2014.
- » Affidavit on behalf of MidAmerican Energy, Docket No. ER10-2475, notification of change in status, January 2, 2014.
- » Affidavit on behalf of Powerex Corp., Docket No. ER11-2664, market-based rate triennial filing, December 31, 2013.
- » Affidavit on behalf of TransAlta, Docket No. ER10-2847, market-based rate triennial filing, December 31, 2013.
- » Affidavit on behalf of Duquesne Light Company, Docket No. ER10-1910, market-based rate triennial filing, December 31, 2013.
- » Affidavit on behalf of Constellation Energy Nuclear Group, Docket No. ER10-2179, market-based rate triennial filing, December 30, 2013.
- » Affidavit on behalf of Exelon, Docket No. ER12-2178, market-based rate triennial filing, December 30, 2013.
- » Affidavit on behalf of Dominion, Docket No. ER13-434, market-based rate triennial filing, December 30, 2013.
- » Affidavit on behalf of Brookfield Companies, Docket No. ER10-2895, market-based rate triennial filing, December 30, 2013.
- » Affidavit on behalf of Oklahoma Gas & Electric, Docket No. ER14-882, notification of change in status/tariff filing, December 30, 2013.
- » Affidavit on behalf of AES Corp, Docket No. ER10-3415, market-based rate triennial filing, December 26, 2013.
- » Affidavit on behalf of JPMorgan, Docket No. ER10-2331, market-based rate triennial filing, December 23, 2013.
- » Affidavit on behalf of Northeast Utilities, Docket No. ER10-1801, market-based rate triennial filing, December 20, 2013.
- » Affidavit on behalf of Iberdrola, Docket No. ER10-2822, market-based rate triennial filing, December 20, 2013.
- » Affidavit on behalf of PHI, Docket No. ER10-2997, market-based rate triennial filing, December 20, 2013.
- » Affidavit on behalf of Essential Power, Docket No. ER12-952, market-based rate triennial filing, December 20, 2013.
- » Affidavit on behalf of Empire District, Docket No. ER14-793, notification of change in status/tariff filing, December 20, 2013.
- » Affidavit on behalf of Westar Energy, Inc., Docket No. ER14-724, notification of change in status/tariff filing, December 19, 2013.



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- » Affidavit on behalf of Alpha Gen Power, LLC, Docket No. ER14-630, market-based rate application, December 16, 2013.
- » Affidavit on behalf of Black Bear Hydro Partners, LLC, Docket No. EC14-28, application for authorization of disposition of jurisdictional facilities, November 14, 2013.
- » Affidavit on behalf of Sierra Pacific Power Company, Docket No. ER10-2474, notification of change in status, November 4, 2013.
- » Affidavit on behalf of ECP, Docket No. ER11-3859, notification of change in status, September 30, 2013.
- » Affidavit on behalf of Steele Flats Wind Project, LLC, Docket No. ER13-2474, market-based rate application, September 27, 2013.
- » Affidavit on behalf of Tuscola Wind II, LLC, Docket No. ER13-2458, market-based rate application, September 26, 2013.
- » Affidavit on behalf of Pheasant Run Wind, LLC and Pheasant Run Wind II, LLC, Docket Nos. ER13-2461-2, market-based rate applications, September 26, 2013.
- » Affidavit on behalf of TPF II and USPG Holdings, LLC, Docket No. EC13-154, application for authorization of disposition of jurisdictional facilities, September 25, 2013.
- » Affidavit on behalf of Seneca Generation, LLC et al., Docket Nos. ER13-2316-9, market-based rate applications, September 4, 2013.
- » Affidavit on behalf of Seneca Generation, LLC et al., Docket No. EC13-143, application for authorization of disposition of jurisdictional facilities, September 4, 2013.
- » Supplemental Affidavit on behalf of MidAmerican Energy (Silver Merger Sub, Inc.), Docket No. EC13-128, application for authorization of disposition of jurisdictional facilities, August 17, 2013.
- » Affidavit on behalf of Desert Sunlight 250, LLC and Desert Sunlight 300, LLC, Docket Nos. ER13-1991-2, market-based rate applications, July 17, 2013.
- » Affidavit on behalf of MidAmerican Energy (Silver Merger Sub, Inc.), Docket No. EC13-128, application for authorization of disposition of jurisdictional facilities, July 12, 2013.
- » Affidavit on behalf of Calpine Southwest MBR Sellers, Docket No. ER10-1942, market-based rate triennial filing, July 1, 2013.
- » Affidavit on behalf of NextEra Companies, Docket No. ER10-1847, market-based rate triennial filing, July 1, 2013.
- » Affidavit on behalf of Wayzata Entities, Docket No. ER10-1777, market-based rate triennial filing, July 1, 2013.
- » Affidavit on behalf of AES MBR Affiliates, Docket No. ER10-3415, market-based rate triennial filing, July 1, 2013.
- » Affidavit on behalf of Sierra Pacific Power Company, *et al.* under ER10-2474, Docket No. ER10-24744, market-based rate triennial filing, July 1, 2013.



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- » Affidavit on behalf of NorthWestern Corporation, Docket No. ER11-1858, market-based rate triennial filing, July 1, 2013.
- » Affidavit on behalf of SGOC Southwest MBR Sellers, Docket No. ER10-2864, market-based rate triennial filing, June 28, 2013.
- » Affidavit on behalf of GWF Energy LLC, et al. Docket No. ER10-3301, market-based rate triennial filing, June 28, 2013.
- » Affidavit on behalf of NV Energy, Inc., application for approval of internal reorganization, Docket No. EC13-113, May 31, 2013.
- » Affidavit on behalf of Midwest Generation, LLC, Docket No. EC13-103, application for authorization of disposition of jurisdictional facilities, May 6, 2013.
- » Affidavit of behalf of Nevada Power Company (with Matthew E. Arenchild), Docket No. EC13-96, application for authorization of disposition of jurisdictional facilities, April 17, 2013.
- » Affidavit of behalf of Dynegy Inc., Docket No. EC13-93, application for authorization of disposition of jurisdictional facilities, April 16, 2013.
- » Application on behalf of Florida Power & Light Company, Docket No. EC13-91, application for authorization of disposition of jurisdictional facilities, April 12, 2013.
- » Affidavit on behalf of Blythe Energy LLC, et al., Docket No. EC13-89, application for authorization of disposition of jurisdictional facilities, April 2, 2013.
- » Affidavit on behalf of New Harquahala Generating Company, LLC, Docket No. ER10-3310, market-based rate triennial filing, March 29, 2013.
- » Affidavit on behalf of Dominion Energy Brayton Point, et al., Docket No. EC13-82, application for authorization of disposition of jurisdictional facilities, March 21, 2013.
- » Affidavit on behalf of Duke Energy Carolinas, LLC et al., Docket No. ER10-2566, et al., notice of change in status, January 29, 2013.
- » Affidavit on behalf of CCI Roseton LLC, Docket No. ER13-773, market-based rate application, January 17, 2013.
- » Affidavit on behalf of CCI Roseton LLC, Docket No. EC13-63, application for authorization of disposition of jurisdictional facilities, January 16, 2013.

Exhibit J-2

Generation Affiliated with Helix Generation in ISO-NE, NYISO, PJM and Relevant First-Tier Markets

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BAA	Sub-market	Generation Facility	Capacity (MW)		Ownership %	LT Purchase/Sales (MW)		Net Interest (MW)	
			Summer	Winter		Summer	Winter	Summer	Winter
ISO-NE									
ISO-NE	CT	Wallingford	211.5	242.4	100%	-	-	211.5	242.4
ISO-NE	CT	Wallingford (Dec 2017)	90.0	100.0	100%	-	-	90.0	100.0
ISO-NE		Jericho Power	12.1	12.1	100%	(10.0)	(10.0)	2.1	2.1
Subtotal, ISO-NE			313.6	354.5		-	-	303.6	344.5
PJM									
PJM		Aurora	832.0	1,002.0	100%	-	-	832.0	1,002.0
PJM		Rockford	456.2	558.4	100%	-	-	456.2	558.4
PJM	East	West Deptford ^{1/}	711.0	754.2	18%	-	-	711.0	754.2
PJM	East	White Oak Solar	10.0	10.0	100%	-	-	10.0	10.0
PJM	AP South	Doswell	813.8	939.0	100%	-	-	813.8	939.0
PJM	AP South	Doswell (Mar 2018)	340.0	340.0	100%	-	-	340.0	340.0
PJM		LSP University Park	504.0	540.0	100%	-	-	504.0	540.0
PJM		Riverside/Foothills Project	825.0	950.0	100%	-	-	825.0	950.0
PJM		University Park South	300.0	336.0	100%	-	-	300.0	336.0
PJM		Seneca Pumped Storage Station	513.0	513.0	100%	-	-	513.0	513.0
Subtotal, PJM			5,305.0	5,942.6		-	-	5,305.0	5,942.6
First-Tier Markets									
MISO									
MISO		Carville	525.0	545.0	100%	(485.0)	(485.0)	40.0	60.0
Subtotal, MISO			525.0	545.0		(485.0)	(485.0)	40.0	60.0
DUK									
DUK		Cherokee	86.0	101.0	100%	(86.0)	(101.0)	-	-
Subtotal, DUK			86.0	101.0		(86.0)	(101.0)	-	-
TVA									
TVA		Decatur Energy Center	725.0	805.0	100%	(725.0)	(805.0)	-	-
Subtotal, TVA			725.0	805.0		(725.0)	(805.0)	-	-

^{1/} Although LS Power owns only 18% of West Deptford, 100% of the capacity is attributed to it. Generation ratings are based on EIA-860 (2015).
<http://www.eia.gov/electricity/data/eia860/>

Generation Affiliated with TransCanada in ISO-NE, NYISO, PJM and Relevant First-Tier Markets

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BAA	Sub-market	Generation Facility	Capacity (MW)		Ownership SI	LT Purchase/Sales (MW)		Net Interest (MW)			
			Summer	Winter		Summer	Winter	Summer	Winter		
Plants Subject to the Transaction											
ISO-NE											
		ISO-NE		Ocean State Power	437.2	477.8	100%	-	-	437.2	477.8
		ISO-NE		Kibby Wind	132.0	132.0	100%	-	-	132.0	132.0
		Subtotal, ISO-NE			569.2	609.8		-	-	569.2	609.8
NYISO											
		NYISO	NYC	Ravenswood	2,246.4	2,378.4	100%	-	-	2,246.4	2,378.4
		Subtotal, NYISO			2,246.4	2,378.4		-	-	2,246.4	2,378.4
PJM											
		PJM	5004/500	Ironwood	660.1	735.4	100%	-	-	660.1	735.4
		Subtotal, PJM			660.1	735.4		-	-	660.1	735.4
Plants Not Subject to the Transaction											
ISO-NE											
		ISO-NE		TransCanada Hydro Northeast ^{1/}	566.9	571.2	100%	-	-	566.9	571.2
		Subtotal, ISO-NE			566.9	571.2		-	-	566.9	571.2
First-Tier Markets											
IESO											
		IESO		Brockville Solar Project	19.0	19.0	100%	(19.0)	(19.0)	-	-
		IESO		Burritts Rapids Solar Energy Project	7.0	7.0	100%	(7.0)	(7.0)	-	-
		IESO		Project Liskeard 13 & 4	10.0	10.0	100%	(10.0)	(10.0)	-	-
		IESO		Halton Hills Generating Station	683.0	683.0	100%	(683.0)	(683.0)	-	-
		IESO		Mississippi Mills Solar Park	10.0	10.0	100%	(10.0)	(10.0)	-	-
		IESO		Portlands Energy Center	550.0	550.0	50%	-	-	275.0	275.0
		IESO		Bruce Power LP	6,364.8	6,364.8	48.5%	-	-	3,086.9	3,086.9
		IESO		Lennox GS/Napanee (2017)	900.0	900.0	100%	(900.0)	(900.0)	-	-
		Subtotal, IESO			8,543.8	8,543.8		(1,629.0)	(1,629.0)	3,361.9	3,361.9
HQT											
		HQT		Anse A Valleau	100.5	100.5	62.0%	(62.3)	(62.3)	-	-
		HQT		Baie Des Sables	109.5	109.5	50.0%	(54.8)	(54.8)	-	-
		HQT		Carleton	219.0	219.0	50.0%	(109.5)	(109.5)	-	-
		HQT		Gros Morne	211.5	211.5	50.0%	(105.8)	(105.8)	-	-
		HQT		Montagne Seche	58.5	58.5	50.0%	(29.3)	(29.3)	-	-
		HQT		Becancour Industrial Park ^{2/}	-	-	100%	-	-	-	-

Exhibit J-3

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Sub- BAA market	Generation Facility	Capacity (MW)		Ownership SI	LT Purchase/Sales (MW)		Net Interest (MW)	
		Summer	Winter		Summer	Winter	Summer	Winter
Subtotal, HQT		699.0	699.0		(361.6)	(361.6)	-	-
NBSO								
NBSO	Grandview Cogeneration Plant	88.0	88.0	100%	(88.0)	(88.0)	-	-
Subtotal, IESO		88.0	88.0		(88.0)	(88.0)	-	-

^{1/} Includes Bellow Falls Dam, Comerford Dam, Deerfield Dam, Harriman Dam, McIndoes Dam, Searsburg Dam, Sherman Dam, Vernon Dam, and Wilder Dam. This generation is being sold to an affiliate of ArLight Capital in a separate transaction.

^{2/} Power generation suspended since 2008. In any event, subject to a long-term tolling agreement with Hydro-Quebec.

Generation ratings are based on EIA-860 (2015 early release).

<http://www.eia.gov/electricity/data/eia860/>

MODELING AND DATA INPUTS

The DPT model is a spreadsheet model that includes each potential supplier as a distinct “node” or area that is connected via a transportation (or “pipes”) representation of the transmission network. Each link in the network has its own non-simultaneous limit and cost. Potential suppliers are allowed to use all economically and physically feasible links or paths to reach the destination market. In instances where more generation meets the economic facet of the delivered price test than can actually be delivered on the transmission network, scarce transmission capacity is allocated based on the relative amount of economic generation that each party controls. The model incorporates Simultaneous Import Limits (“SILs”), and allocates a pro rata share of aggregated potential first-tier supply from all sources.

The competitive analysis screen uses the existing market structure of the relevant markets and publicly available data on generation and transmission capacity, supplemented by The Velocity Suite’s databases (“ABB Velocity Suite”).¹ The data inputs were adjusted to reflect 2017 conditions.

Potential suppliers include generators located in BAAs directly interconnected (first and second-tier) to the relevant market. The model includes all significant generation owners, including traditional utilities, merchant generators, municipal utilities and cooperatives. Each entity is generally modeled as an individual “node.”²

A. Generating Resources

The data on generating plant capability is mainly from ABB Velocity Suite. The primary source of such data is publicly-available information such as the EIA-860.³ These data sources provide information on capacity (nameplate and seasonal (summer and winter) net dependable

¹ ABB Velocity Suite is a set of databases, analytical tools and forecasts published by ABB that is widely used in the industry.

² The term “nodes” is used to denote a region or bubble where load, generation, and/or transmission assets are aggregated.

³ In some instances there may be minor differences in ratings in the DPT and in Exhibits JRS-2 and JRS-3, arising from reliance on different data sources (ABB Velocity Suite as compared to EIA-860 raw data).

Exhibit J-4

capacity (“NDC”) ratings), planned retirements and additions, operating status, primary and secondary fuel, and ownership, including jointly-owned units. NDC ratings were used for the analyses, with the summer ratings used for the shoulder time periods. All units with unit status listed as operating, restarted, under construction, site preparation, or testing, and expected to be on-line by the start of summer 2017,⁴ were included in the analysis. For jointly-owned plants, shares were assigned to each of the respective owners.

Each supplier’s generating resources were adjusted to reflect long-term (one year or more) capacity purchases and sales where they could be identified from publicly available data.⁵ In order to verify that the DPT database reflects historical long-term power purchase agreements (“PPAs”), the primary source was ABB Velocity Suite (which reports PPAs from FERC Form 1, RUS 12 and EQRs). PPAs scheduled to expire in 2017 were treated as no longer long-term, given the 2017 snapshot being analyzed. Consistent with guidance provided by the Commission, it was assumed that system power sales were comprised of the lowest-cost supply for the seller unless a more representative price could be identified.⁶ Public data on purchases and sales, however, are not entirely complete or consistent across sources.

Because the DPT is intended to evaluate energy products, seasonal capacity was de-rated to approximate the actual availability of the units in each period. That is, it was assumed that generation capacity would be unavailable during some hours of the year for either maintenance (planned) or forced (unplanned) outages. Data reported in the NERC “Generating Availability

⁴ In identifying generation under construction (or site preparation or testing), I sought to identify only generating units with summer ratings greater than 10 MW scheduled to be on-line by summer 2017. The effect is to exclude some smaller renewable facilities; their exclusion is generally conservative from the standpoint of the DPT.

⁵ Sources for such information include FERC Form 1 and EIA Forms 411 and 412, utility resource plans and NERC’s Electricity Supply and Demand database (as compiled by ABB Velocity Suite). Requirements contracts are treated as the equivalent of native load and potential supplier’s Economic Capacity was not adjusted to reflect them.

⁶ “[T]he lowest running cost units are used to serve native load and other firm contractual obligations” (Order No. 592 at 30,132). The lowest-cost supply that was available year-round (i.e., excluding hydro) was used. To the extent that long-term sales could be identified specifically as unit sales, the capacity of the specific generating unit was adjusted to reflect the sale, and the variable element of the purchase price attributed to the sale was the variable cost of the unit. The dispatch price for system purchases was based on the energy price reported for long-term purchases in FERC Form 1 where such purchases could be identified and a variable cost price determined. In instances where the purchases could not be matched with FERC Form 1 data, the dispatch price was estimated.

Exhibit J-4

Data System” (“GADS”) was used to calculate the “average equivalent availability factor” to estimate total outages, and the “average equivalent forced outage rate” to estimate forced outages for fossil and nuclear plants.⁷ Based on a review of historical planned outages (as reported in the FERC Form 714 (2012-2015)), scheduled maintenance was assumed to occur mostly in the shoulder season (approximately 86-87 percent in PJM and ISONE), with the remainder scheduled during the winter season. Forced outages were assumed to occur uniformly throughout the year.

Supply curves were developed for each potential supplier, based on estimates of each unit’s incremental costs. The incremental cost is calculated by multiplying the fuel cost for the unit by the unit’s efficiency (heat rate) and adding any additional variable costs that may apply, such as costs for variable operations and maintenance (“VOM”) and costs for environmental controls.

Data used to derive incremental cost estimates for each unit were taken from the following sources:

- Heat Rates – ABB Velocity Suite’s database provides information on heat rates and their sources. The “Fully Loaded Tested Heat Rate” reported by ABB Velocity Suite was used. In a few rare circumstances where units are included in the DPT generation database but not included in the ABB Velocity Suite database, default heat rate estimates were used based on Navigant estimates. The heat rates used and the specific sources are provided in workpapers.
- Fuel Costs – Regional dispatch costs for fossil fuel units were from projected fuel prices. For gas-fired units, ABB Velocity Suite’s natural gas price forecast was used. Specifically, ABB Velocity Suite provides gas price forecasts on an RTO-wise basis and regions within the RTO. For historical gas prices, ABB Velocity Suite provides data on an RTO-wide basis and for more specific gas pricing points (“Gas Points”) within the RTOs, and provides a mapping of gas-fired generators to a specific Gas Point. Historical gas price

⁷ GADS reported data for the period 2009-2013 (the most recent available five-year period) was used in most instances. In addition to thermal unit availability, hydro unit availability and generation are specified for each time period. Hydro capacity factors have been assigned to each unit based on five years of historical operation as reported in EIA Form 923 monthly generation data. Both reported maximum capacities and, where necessary, assumptions regarding minimum capacity (assumed to be 15 percent of maximum if no data is available) were used. For PJM wind facilities, seasonal capacity factors and shapes were based on data in the PJM State of the Market reports. Wind capacity factors for first-tier markets were based on 2011-2015 EIA-923 data. Capacity factors for pumped storage units are derived from the 2015 EIA-923 and EIA-860 data.

differentials were calculated based on the specific Gas Points relative to RTO average. These differentials were then applied to the RTO-wide or regional RTO forecasted gas price in order to determine forecasted gas prices at each Gas Point, and applied these prices to the Gas Point location of gas-fired generation identified by ABB Velocity Suite.⁸ For oil fired units, 2015 EIA daily fuel prices were used for the relevant fuel type used at each unit, escalated to 2017 based on NYMEX ClearPort and Future crude oil prices. For coal-fired units, plant-specific coal spot prices from the detailed coal transactions reported in 2015 FERC Form 423 were used, supplemented by ABB Velocity Suite's Spot prices. In instances where no spot price was available for a given unit, prices based on actual fuel costs (contracts) were used. If neither of those data points were provided, a regional average price estimate was used as the default.

- Variable O&M – Variable O&M costs are based on ABB Velocity Suite, by unit, and include emissions costs (see below). ABB Velocity Suite reports VOM costs for hydroelectric generation, fuel cells, solar, and pumped storage generation. The EIA Annual Energy Outlook for 2015 reports zero VOM for wind and solar,⁹ as does the National Renewable Energy Laboratory.¹⁰ I used an estimate of \$6/MWh for VOM for onshore wind.¹¹
- Environmental Costs – ABB Velocity Suite incorporates unit specific environmental costs as part of its VOM (see workpapers). Therefore, these costs are captured in the estimated dispatch costs by incorporating ABB Velocity Suite's VOM values.

B. Transmission Costs, Losses and Capability

The Commission's Appendix A analysis specifies that the transmission system be modeled on the basis of inter-balancing authority area transmission capability using transmission prices based on transmission providers' maximum OATT rates, except where lower rates (*i.e.*, discounts) can be clearly documented. I have implemented this methodology in my analysis. For

⁸ This methodology incorporates both ABB Velocity Suite's regional and RTO gas price forecast and locational gas price differentials based on historical data. This methodology is consistent with the data used to adjust historical energy prices to the forecasted time period to determine destination market prices. Detailed steps are provided in workpapers.

⁹ See Annual Energy Outlook, <http://www.eia.gov/forecasts/aeo/assumptions/pdf/electricity.pdf>, Table 8.2, Cost and performance characteristics of new central station electricity generating technologies.

¹⁰ http://www.nrel.gov/analysis/tech_lcoe_re_cost_est.html.

¹¹ Although EIA uses zero VOM in its energy models, the VOM cost for wind generation is reported as a DOE estimate in <http://en.openei.org/apps/TCDB/>.

each exporting BAA, I applied transmission rates and losses based on information from their respective transmission tariffs. The specific data used in the DPT analysis and supporting material are provided in workpapers.

In my analysis, I applied transmission rates and losses for deliveries into the relevant markets but did not include transmission costs or losses within the destination market. The rates and losses are “pancaked” and provided in workpapers.

Non-simultaneous transmission limits are based on data from a number of sources, including information published by the RTOs, the Northeast Power Coordinating Council and OASIS data. The specific non-simultaneous transmission limits assigned to each path are provided in workpapers.

C. AEC Analysis

ISO-NE

Hourly load data for ISO-NE were obtained from 2015 FERC Form 714 (as compiled by ABB Velocity Suite) and escalated to 2017 based on the 2015 FERC Form 714 (comparing actual summer 2015 peak load and total energy and forecasted 2017 peak load and total energy).

Loads are “shaped” based on ISO-NE’s 2015 hourly load data.¹² (For example, the Winter Super Peak period is defined to include the top 10 percent of peak load hours in December through February. The hourly load data was sorted into peak versus off-peak hours in December through February and then the peak hours were sorted from highest to lowest based on ISO-NE’s hourly load. Next, the top 10 percent of the hours were designated as Winter Super Peak. The remaining time periods were aggregated in the same way.).

As discussed in the affidavit, determining AEC in a restructured market such as ISO-NE is not straightforward as it is in non-restructured markets. For load obligations in ISO-NE, I considered the following factors. First, with the exception of Vermont, all states in ISO-NE have some degree of retail access. In those states with retail access, non-traditional providers

¹² When analyzing ISO-NE, loads in potential supplying regions are shaped based on ISO-NE loads. (For example, load in NYISO and PJM are shaped based on the ISO-NE load shape.)

Exhibit J-4

account for a range of 34 percent (in Rhode Island) to 99 percent (in Maine) of retail sales in the ISO-NE states.¹³ This is a measure of how many customers have “switched” from traditional load-serving entities.

Second, I examined the contracting requirements for default service supply in Massachusetts and Connecticut, the states that account for more than 70 percent of ISO-NE retail sales. In Connecticut, distribution companies are required “to schedule four SS [Standard Service] procurements per year, in a pattern of 6- and/or 12-month contracts, such that each rate period will reflect an average of contracts awarded during approximately three to four different procurement dates.”¹⁴ Supplier of Last Resort Services (“SOLR”) is procured similarly. In Massachusetts, basic service supply for residential and small industrial customers is procured on a semi-annual basis (six-month terms); for medium and large commercial and industrial customers, 100 percent of the requirement is procured for three month terms.¹⁵ Thus none of the contracts default service supply in either in Connecticut or Massachusetts is longer than 12-months – *i.e.*, they are not “contracts with a remaining commitment of more than one year”¹⁶ such as is defined for analyzing Economic Capacity under the DPT. Even if I were able to identify these contracts, none would remain in effect for the 2017 period I am analyzing.

Finally, consistent with the foregoing facts, I calculated the percentage of ISO-NE load that has either switched to non-traditional providers or are served under default service supply contracts of a term no more than one year. Because Connecticut and Massachusetts procure default service supply under shorter term contracts, I treated such load as served by non-traditional providers, who themselves do not have any identifiable long-term supplies. For the remaining states, I conservatively assumed that non-switched load was met by long-term contracts. Based on the EIA data described above, I determined that less than 15 percent of

¹³ Retail Sales of Electricity by State by Sector by Provider, http://www.eia.gov/electricity/data/state/sales_annual.xls. These percentages are calculated based on Retail Sales, Energy for “Energy Only Providers” relative to Total Retail Sales.

¹⁴ State of Connecticut, Public Utilities Regulatory Authority, Docket No. 12-06-02RE01, August 14, 2014.

¹⁵ <http://www.mass.gov/eea/energy-utilities-clean-tech/electric-power/electric-market-info/basic-service-overview.html>.

¹⁶ 18 CFR § 33.3(c)(4)(i)(A).

Exhibit J-4

ISO-NE load remained to be served by traditional suppliers procuring default service supply on a long-term basis. The calculations are shown in workpapers. Note that the AEC analysis in the DPT is not conducted on the basis of a state-by-state analysis, but rather the lowest-cost supply for sellers in ISO-NE is assumed to be used to meet the load obligations.¹⁷ None of Applicants' generation is assumed to be eligible to supply load in ISO-NE. The specific load obligations assigned to each potential supplier is provided in workpapers.

PJM

Hourly load data for PJM were obtained from 2015 FERC Form 714 (as compiled by ABB Velocity Suite) and escalated to 2017 based on the 2015 FERC Form 714 (comparing actual summer 2015 peak load and total energy and forecasted 2017 peak load and total energy).

Loads are "shaped" based on PJM's 2015 hourly load data.¹⁸ In conducting my analysis, I linked load-serving "obligations" to generation in PJM based on available information about which generation is committed to serving PJM utilities' load obligations.

There are four such categories of linkages. First, for traditional load-serving entities within PJM (*i.e.*, utilities located in Indiana, Kentucky, North Carolina, Tennessee, Virginia, and West Virginia), the utilities were assumed to use their owned and contracted-for generation to serve 100 percent of their loads.¹⁹ Their load data was based on peak load reported in the FERC Form 1 for 2015, escalated to 2017, with an hourly load profile based on the PJM overall load shape. Second, in states where standard offer service or default service auctions are conducted and auction/procurement winners are reported (DC, Maryland, New Jersey, Delaware and Ohio), I assigned the load procured in the auction to each generation-owning entity that was a winning bidder in the auction. Third, for utilities in Pennsylvania, where

¹⁷ "[T]he lowest running cost units are used to serve native load and other firm contractual obligations" (Order No. 592 at 30,132).

¹⁸ When analyzing PJM, loads in potential supplying regions are shaped based on PJM loads. (For example, load in NYISO and ISO-NE are shaped based on the PJM load shape.)

¹⁹ Utilities with traditional load-serving obligations include Dominion (Virginia and North Carolina); AEP (Virginia, West Virginia, Tennessee, Indiana and Kentucky), FirstEnergy (West Virginia), Duke Energy (Kentucky), East Kentucky Power Cooperative (Kentucky), and Old Dominion Electric Cooperative (Virginia).

Exhibit J-4

winning bidders are not publicly reported, I assigned load to each generation-owning entity reported as the source of long-term firm purchases reported in the utilities' FERC Form 1. Fourth, I assumed that generation owned by municipal entities and transmission dependent utilities was fully committed and therefore had zero AEC, and that some small non-utility generation facilities also had no AEC.

Forecasted PJM load served by AEP affiliates was provided by the company, and included both utility load and other load-serving commitments, including commitments procured in default service supply auctions.²⁰

D. Market Prices

Destination market prices for the DPT analysis were based primarily on two years of historical LMP data (2014 and 2015 Day Ahead and Real Time prices) for PJM, PJM submarkets, and ISO-NE. These historical prices were adjusted to reflect the forward-looking 2017 analysis using the difference in gas prices during the historical and forward-looking periods (using information from ABB Velocity Suite, such that the prices are consistent with the costs included in the model) and supplemented with (i) an analysis of the type of generation operating during each time period (*e.g.*, gas-fired peakers in S_SP1 versus gas-fired combined-cycles in S_P) based on actual operations (capacity factors),²¹ (ii) review of ABB Velocity Suite's RTO market price forecasts (which are consistent with its underlying gas price forecast); and (iii) consideration of loads in each of the time periods relative to economic supply. These forecasted prices were "rounded" in some instances, primarily because of concern over what otherwise could be considered to be false precision in determining the destination market prices; and the S_SP1 price was set at \$150/MWh in PJM, \$200/MWh in PJM submarkets and \$200/MWh in ISO-NE to capture the majority of generation available at the peak hour. Neither rounding prices nor setting a high S_SP1 prices has a material impact on the DPT results. The destination market prices tend to imply somewhat higher capacity factors for gas-fired generation than actual capacity factors,

²⁰ See confidential workpapers.

²¹ Unit-specific monthly data on historical capacity factors is included in workpapers.

because, under the DPT, units are either on or off, rather than operating at minimum or less than full output. The data and specific assumptions are reflected in workpapers.

E. Historical Information

Historical information on Applicants' purchases and sales, capacity factors, transmission reports and data from ISO-NE and PJM, and other relevant materials are provided in workpapers. This includes information on Applicants' transactions reported in the Commission's Electric Quarterly Reports ("EQR"). The historical information was generally retrieved from ABB Velocity Suite or provided in public reports, such as market reports issued by ISO-NE and PJM and/or their independent market monitors.

DPT Results: Economic Capacity**Base Prices**

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Mkt Share		
ISONE	S_SP1	\$ 200	286	1.0%	987	3.3%	29,954	475	865	2.9%	475	(1)
ISONE	S_SP2	\$ 65	287	1.0%	989	3.6%	27,651	507	867	3.1%	507	(1)
ISONE	S_P	\$ 35	284	1.2%	749	3.0%	24,667	582	893	3.6%	585	3
ISONE	S_OP	\$ 20	4	0.0%	669	3.4%	19,733	701	513	2.6%	697	(4)
ISONE	W_SP	\$ 200	311	1.0%	1,040	3.3%	31,609	466	939	3.0%	466	(0)
ISONE	W_P	\$ 100	313	1.1%	852	3.1%	27,270	525	963	3.5%	527	2
ISONE	W_OP	\$ 80	314	1.3%	812	3.3%	24,989	578	975	3.9%	581	4
ISONE	SH_SP	\$ 100	281	1.1%	924	3.8%	24,618	476	785	3.2%	475	(1)
ISONE	SH_P	\$ 50	282	1.3%	742	3.3%	22,501	513	803	3.6%	515	2
ISONE	SH_OP	\$ 30	282	1.5%	612	3.2%	19,087	611	717	3.8%	614	3

DPT Results: Economic Capacity**Prices +10%**

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Mkt Share		
ISONE	S_SP1	\$ 220	286	0.9%	983	3.3%	30,191	476	861	2.9%	475	(1)
ISONE	S_SP2	\$ 72	287	1.0%	989	3.6%	27,651	507	867	3.1%	507	(1)
ISONE	S_P	\$ 39	286	1.2%	741	3.0%	24,692	581	888	3.6%	584	3
ISONE	S_OP	\$ 22	4	0.0%	667	3.2%	20,990	693	513	2.4%	690	(4)
ISONE	W_SP	\$ 220	311	1.0%	1,040	3.3%	31,678	466	938	3.0%	465	(0)
ISONE	W_P	\$ 110	313	1.1%	850	3.1%	27,330	522	961	3.5%	525	2
ISONE	W_OP	\$ 88	313	1.2%	807	3.1%	25,884	566	971	3.8%	569	3
ISONE	SH_SP	\$ 110	281	1.1%	924	3.8%	24,618	476	785	3.2%	475	(1)
ISONE	SH_P	\$ 55	282	1.3%	740	3.3%	22,578	511	802	3.6%	513	2
ISONE	SH_OP	\$ 33	279	1.4%	708	3.7%	19,312	594	816	4.2%	597	4

Prices -10%

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Mkt Share		
ISONE	S_SP1	\$ 180	287	1.0%	987	3.4%	28,826	487	865	3.0%	486	(1)
ISONE	S_SP2	\$ 59	287	1.0%	993	3.6%	27,651	508	871	3.1%	507	(1)
ISONE	S_P	\$ 32	287	1.2%	753	3.1%	24,093	607	898	3.7%	610	3
ISONE	S_OP	\$ 18	4	0.0%	184	1.2%	15,848	624	26	0.2%	623	(1)
ISONE	W_SP	\$ 180	311	1.0%	1,042	3.3%	31,530	466	940	3.0%	466	(0)
ISONE	W_P	\$ 90	313	1.2%	853	3.2%	27,057	532	964	3.6%	535	2
ISONE	W_OP	\$ 72	314	1.3%	811	3.3%	24,350	605	974	4.0%	609	4
ISONE	SH_SP	\$ 90	281	1.1%	924	3.8%	24,618	476	785	3.2%	475	(1)
ISONE	SH_P	\$ 45	283	1.3%	746	3.4%	22,168	526	807	3.6%	528	2
ISONE	SH_OP	\$ 27	160	0.9%	613	3.4%	18,029	654	593	3.3%	654	(1)

DPT Results: Available Economic Capacity**Base Prices**

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Mkt Share		
ISONE	S_SP1	\$ 200	300	1.2%	1,031	4.1%	24,883	546	933	3.7%	546	0
ISONE	S_SP2	\$ 65	298	1.3%	1,026	4.4%	23,117	604	921	4.0%	604	0
ISONE	S_P	\$ 35	295	1.4%	834	4.0%	21,059	681	996	4.7%	686	6
ISONE	S_OP	\$ 20	4	0.0%	613	3.9%	15,848	906	492	3.1%	901	(5)
ISONE	W_SP	\$ 200	321	1.2%	1,075	4.0%	27,157	541	989	3.6%	542	0
ISONE	W_P	\$ 100	326	1.5%	901	4.2%	21,357	677	1,033	4.8%	682	5
ISONE	W_OP	\$ 80	328	1.7%	862	4.4%	19,724	759	1,049	5.3%	767	8
ISONE	SH_SP	\$ 100	293	1.4%	953	4.6%	20,700	576	833	4.0%	576	0
ISONE	SH_P	\$ 50	293	1.5%	775	4.0%	19,339	617	856	4.4%	621	4
ISONE	SH_OP	\$ 30	301	1.8%	578	3.5%	16,733	748	729	4.4%	754	6

DPT Results: Available Economic Capacity**Prices +10%**

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation			HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Mkt Share	Market HHI	
ISONE	S_SP1	\$ 220	299	1.2%	1,023	4.1%	25,117	549	923	3.7%	549	(0)
ISONE	S_SP2	\$ 72	298	1.3%	1,026	4.4%	23,117	604	920	4.0%	604	0
ISONE	S_P	\$ 39	300	1.4%	813	3.9%	21,076	674	981	4.7%	680	6
ISONE	S_OP	\$ 22	4	0.0%	613	3.5%	17,561	844	492	2.8%	841	(4)
ISONE	W_SP	\$ 220	321	1.2%	1,073	3.9%	27,226	541	987	3.6%	541	0
ISONE	W_P	\$ 110	325	1.5%	897	4.2%	21,391	674	1,028	4.8%	680	5
ISONE	W_OP	\$ 88	325	1.6%	851	4.1%	20,668	733	1,037	5.0%	740	7
ISONE	SH_SP	\$ 110	293	1.4%	953	4.6%	20,700	576	833	4.0%	576	0
ISONE	SH_P	\$ 55	293	1.5%	773	4.0%	19,416	613	855	4.4%	617	4
ISONE	SH_OP	\$ 33	289	1.7%	755	4.5%	16,957	706	887	5.2%	713	7

Prices -10%

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation			HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Mkt Share	Market HHI	
ISONE	S_SP1	\$ 180	303	1.3%	1,049	4.4%	23,754	575	953	4.0%	575	0
ISONE	S_SP2	\$ 59	299	1.3%	1,037	4.5%	23,117	604	930	4.0%	604	(0)
ISONE	S_P	\$ 32	304	1.5%	848	4.1%	20,528	718	1,018	5.0%	725	6
ISONE	S_OP	\$ 18	4	0.0%	146	1.3%	11,179	909	26	0.2%	908	(0)
ISONE	W_SP	\$ 180	322	1.2%	1,077	4.1%	26,244	553	992	3.8%	553	1
ISONE	W_P	\$ 90	327	1.5%	903	4.3%	21,192	687	1,035	4.9%	692	5
ISONE	W_OP	\$ 72	329	1.7%	860	4.5%	19,171	798	1,048	5.5%	806	8
ISONE	SH_SP	\$ 90	294	1.4%	954	4.6%	20,700	576	834	4.0%	576	0
ISONE	SH_P	\$ 45	295	1.5%	783	4.1%	19,023	635	866	4.6%	639	4
ISONE	SH_OP	\$ 27	181	1.2%	567	3.6%	15,666	830	598	3.8%	832	2

DPT Results: Economic Capacity

Base Prices

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Mkt Share		
PJM	S_SP1	\$ 150	4,954	2.9%	689	0.4%	171,222	615	5,637	3.3%	618	2
PJM	S_SP2	\$ 60	4,954	2.9%	690	0.4%	171,071	616	5,638	3.3%	619	2
PJM	S_P	\$ 30	4,441	2.8%	714	0.5%	156,372	611	5,143	3.3%	613	3
PJM	S_OP	\$ 25	1,814	1.4%	661	0.5%	126,982	692	2,456	1.9%	693	1
PJM	W_SP	\$ 200	5,295	2.9%	738	0.4%	182,039	592	6,026	3.3%	594	2
PJM	W_P	\$ 50	5,085	3.0%	696	0.4%	167,024	589	5,762	3.4%	592	2
PJM	W_OP	\$ 40	4,782	3.0%	690	0.4%	161,415	582	5,443	3.4%	585	2
PJM	SH_SP	\$ 70	4,286	2.9%	582	0.4%	148,838	590	4,860	3.3%	592	2
PJM	SH_P	\$ 35	3,838	2.7%	600	0.4%	139,659	574	4,425	3.2%	577	2
PJM	SH_OP	\$ 25	1,367	1.3%	555	0.5%	107,211	647	1,895	1.8%	649	1

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Mkt Share		
5004/5005	S_SP1	\$ 200	872	1.5%	697	1.2%	57,558	886	1,562	2.7%	889	4
5004/5005	S_SP2	\$ 75	875	1.6%	698	1.2%	56,444	895	1,565	2.8%	899	4
5004/5005	S_P	\$ 35	869	1.7%	722	1.4%	52,445	880	1,580	3.0%	885	4
5004/5005	S_OP	\$ 25	750	1.8%	665	1.6%	41,753	810	1,393	3.3%	815	5
5004/5005	W_SP	\$ 200	942	1.5%	741	1.2%	62,216	908	1,675	2.7%	912	4
5004/5005	W_P	\$ 60	939	1.8%	692	1.3%	51,679	902	1,614	3.1%	907	5
5004/5005	W_OP	\$ 55	926	1.8%	698	1.4%	50,505	898	1,603	3.2%	903	5
5004/5005	SH_SP	\$ 95	784	1.6%	590	1.2%	49,787	857	1,365	2.7%	860	4
5004/5005	SH_P	\$ 40	765	1.7%	614	1.3%	46,238	825	1,366	3.0%	829	4
5004/5005	SH_OP	\$ 30	770	1.8%	551	1.3%	42,697	796	1,297	3.0%	800	4

Base Prices

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Share	MW	Share			MW	Share		
AP South	S_SP1	\$ 200	1,919	2.4%	664	0.8%	78,859	987	2,579	3.3%	992	4
AP South	S_SP2	\$ 75	1,919	2.5%	665	0.9%	76,226	961	2,580	3.4%	966	4
AP South	S_P	\$ 35	1,912	2.7%	677	1.0%	70,549	973	2,583	3.7%	978	5
AP South	S_OP	\$ 25	1,677	3.1%	648	1.2%	53,744	928	2,314	4.3%	935	7
AP South	W_SP	\$ 200	2,064	2.4%	716	0.8%	85,359	938	2,775	3.3%	942	4
AP South	W_P	\$ 60	2,053	2.9%	682	0.9%	71,900	956	2,724	3.8%	961	5
AP South	W_OP	\$ 55	2,035	2.9%	686	1.0%	69,045	943	2,708	3.9%	949	6
AP South	SH_SP	\$ 95	1,676	2.4%	571	0.8%	68,889	895	2,241	3.3%	899	4
AP South	SH_P	\$ 40	1,648	2.6%	588	0.9%	62,344	864	2,226	3.6%	869	5
AP South	SH_OP	\$ 30	1,649	2.9%	542	0.9%	57,466	864	2,173	3.8%	869	5

DPT Results: Economic Capacity

Prices +10%

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Mkt Share		
PJM	S_SP1	\$ 165	4,954	2.9%	689	0.4%	171,389	614	5,637	3.3%	617	2
PJM	S_SP2	\$ 66	4,954	2.9%	690	0.4%	171,071	616	5,637	3.3%	619	2
PJM	S_P	\$ 33	4,441	2.8%	713	0.4%	161,337	605	5,143	3.2%	607	2
PJM	S_OP	\$ 28	3,189	2.2%	657	0.5%	144,632	632	3,829	2.6%	634	2
PJM	W_SP	\$ 220	5,295	2.9%	738	0.4%	183,034	593	6,025	3.3%	596	2
PJM	W_P	\$ 55	5,085	3.0%	693	0.4%	167,329	589	5,760	3.4%	591	2
PJM	W_OP	\$ 44	4,782	2.9%	710	0.4%	163,090	578	5,464	3.4%	580	2
PJM	SH_SP	\$ 77	4,286	2.9%	580	0.4%	148,838	590	4,858	3.3%	592	2
PJM	SH_P	\$ 39	3,838	2.7%	599	0.4%	141,195	572	4,426	3.1%	574	2
PJM	SH_OP	\$ 28	2,503	2.1%	550	0.5%	120,815	617	3,030	2.5%	619	2

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Mkt Share		
5004/5005	S_SP1	\$ 220	872	1.5%	694	1.2%	59,394	914	1,559	2.6%	918	3
5004/5005	S_SP2	\$ 83	875	1.6%	697	1.2%	56,444	895	1,565	2.8%	899	4
5004/5005	S_P	\$ 39	869	1.6%	716	1.3%	53,256	890	1,575	3.0%	894	4
5004/5005	S_OP	\$ 28	814	1.7%	660	1.4%	46,699	859	1,455	3.1%	864	5
5004/5005	W_SP	\$ 220	941	1.5%	740	1.2%	62,696	911	1,673	2.7%	915	3
5004/5005	W_P	\$ 66	939	1.8%	764	1.4%	52,906	879	1,688	3.2%	884	5
5004/5005	W_OP	\$ 61	926	1.8%	695	1.4%	50,694	897	1,602	3.2%	902	5
5004/5005	SH_SP	\$ 105	784	1.6%	590	1.2%	49,787	857	1,365	2.7%	860	4
5004/5005	SH_P	\$ 44	765	1.6%	612	1.3%	46,756	821	1,365	2.9%	825	4
5004/5005	SH_OP	\$ 33	762	1.7%	624	1.4%	44,254	808	1,368	3.1%	813	5

Prices +10%

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Share	MW	Share			MW	Share		
AP South	S_SP1	\$ 220	1,918	2.4%	663	0.8%	80,722	988	2,578	3.2%	992	4
AP South	S_SP2	\$ 83	1,919	2.5%	664	0.9%	76,226	961	2,580	3.4%	966	4
AP South	S_P	\$ 39	1,912	2.7%	674	0.9%	71,569	975	2,581	3.6%	980	5
AP South	S_OP	\$ 28	1,863	3.1%	645	1.1%	60,859	936	2,498	4.1%	942	6
AP South	W_SP	\$ 220	2,063	2.4%	716	0.8%	85,977	940	2,773	3.2%	944	4
AP South	W_P	\$ 66	2,053	2.8%	732	1.0%	73,127	934	2,775	3.8%	939	6
AP South	W_OP	\$ 61	2,035	2.9%	685	1.0%	69,234	941	2,707	3.9%	947	6
AP South	SH_SP	\$ 105	1,676	2.4%	571	0.8%	68,889	895	2,241	3.3%	899	4
AP South	SH_P	\$ 44	1,648	2.6%	587	0.9%	62,887	857	2,225	3.5%	862	5
AP South	SH_OP	\$ 33	1,643	2.8%	596	1.0%	59,720	868	2,226	3.7%	873	5

Prices -10%

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Share	MW	Share			MW	Share		
PJM	S_SP1	\$ 135	4,954	2.9%	689	0.4%	171,198	615	5,637	3.3%	618	2
PJM	S_SP2	\$ 54	4,954	2.9%	696	0.4%	171,071	616	5,643	3.3%	619	2
PJM	S_P	\$ 27	2,918	2.1%	656	0.5%	139,600	644	3,558	2.5%	646	2
PJM	S_OP	\$ 23	1,671	1.6%	666	0.6%	105,051	718	2,314	2.2%	719	2
PJM	W_SP	\$ 180	5,295	2.9%	740	0.4%	180,832	588	6,027	3.3%	591	2
PJM	W_P	\$ 45	5,085	3.1%	701	0.4%	166,511	589	5,764	3.5%	591	3
PJM	W_OP	\$ 36	4,782	3.0%	692	0.4%	157,446	591	5,443	3.5%	594	3
PJM	SH_SP	\$ 63	4,286	2.9%	587	0.4%	148,838	590	4,865	3.3%	592	2
PJM	SH_P	\$ 32	3,772	2.8%	590	0.4%	137,154	577	4,346	3.2%	579	2
PJM	SH_OP	\$ 23	1,367	1.5%	558	0.6%	89,205	701	1,896	2.1%	702	2

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Share	MW	Share			MW	Share		
5004/5005	S_SP1	\$ 180	873	1.5%	697	1.2%	56,865	886	1,563	2.7%	890	4
5004/5005	S_SP2	\$ 68	875	1.6%	698	1.2%	56,444	895	1,566	2.8%	899	4
5004/5005	S_P	\$ 32	861	1.7%	725	1.4%	50,870	852	1,573	3.1%	857	5
5004/5005	S_OP	\$ 23	759	2.0%	670	1.7%	38,850	893	1,403	3.6%	900	6
5004/5005	W_SP	\$ 180	943	1.5%	742	1.2%	61,308	890	1,677	2.7%	894	4
5004/5005	W_P	\$ 54	939	1.8%	694	1.4%	51,300	902	1,615	3.1%	907	5
5004/5005	W_OP	\$ 50	926	1.8%	701	1.4%	50,201	897	1,605	3.2%	902	5
5004/5005	SH_SP	\$ 86	784	1.6%	591	1.2%	49,787	857	1,366	2.7%	860	4
5004/5005	SH_P	\$ 36	765	1.7%	614	1.3%	45,488	809	1,364	3.0%	813	4
5004/5005	SH_OP	\$ 27	679	1.8%	555	1.4%	38,435	802	1,207	3.1%	807	5

Prices -10%

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Share	MW	Share			MW	Share		
AP South	S_SP1	\$ 180	1,919	2.5%	664	0.9%	77,509	973	2,579	3.3%	977	4
AP South	S_SP2	\$ 68	1,919	2.5%	665	0.9%	76,226	961	2,580	3.4%	966	4
AP South	S_P	\$ 32	1,903	2.9%	678	1.0%	66,597	944	2,575	3.9%	950	6
AP South	S_OP	\$ 23	1,671	3.4%	650	1.3%	48,716	941	2,308	4.7%	949	9
AP South	W_SP	\$ 180	2,064	2.4%	717	0.9%	84,355	931	2,776	3.3%	935	4
AP South	W_P	\$ 54	2,053	2.9%	684	1.0%	71,521	959	2,724	3.8%	965	5
AP South	W_OP	\$ 50	2,035	3.0%	689	1.0%	68,740	946	2,709	3.9%	952	6
AP South	SH_SP	\$ 86	1,676	2.4%	571	0.8%	68,889	895	2,241	3.3%	899	4
AP South	SH_P	\$ 36	1,647	2.7%	588	1.0%	61,365	868	2,224	3.6%	873	5
AP South	SH_OP	\$ 27	1,432	2.8%	545	1.1%	50,899	835	1,957	3.8%	841	6

DPT Results: Available Economic Capacity**Base Prices**

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Share		
PJM	S_SP1	\$ 150	4,955	4.6%	736	0.7%	107,381	595	5,689	5.3%	602	6
PJM	S_SP2	\$ 60	4,955	4.4%	728	0.7%	111,857	575	5,677	5.1%	581	6
PJM	S_P	\$ 30	4,441	4.1%	795	0.7%	108,811	570	5,226	4.8%	576	6
PJM	S_OP	\$ 25	1,815	2.0%	639	0.7%	88,751	627	2,446	2.8%	630	3
PJM	W_SP	\$ 200	5,296	4.3%	765	0.6%	124,479	539	6,057	4.9%	544	5
PJM	W_P	\$ 50	5,085	4.2%	688	0.6%	120,540	534	5,749	4.8%	539	5
PJM	W_OP	\$ 40	4,782	4.0%	683	0.6%	119,567	533	5,446	4.6%	538	5
PJM	SH_SP	\$ 70	4,287	4.4%	626	0.6%	97,272	542	4,907	5.0%	547	6
PJM	SH_P	\$ 35	3,838	3.9%	645	0.7%	99,141	520	4,475	4.5%	525	5
PJM	SH_OP	\$ 25	1,367	1.9%	530	0.7%	73,286	626	1,885	2.6%	629	3

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Share		
5004/5005	S_SP1	\$ 200	940	2.3%	730	1.8%	41,527	852	1,668	4.0%	860	8
5004/5005	S_SP2	\$ 75	941	2.3%	723	1.7%	41,709	837	1,659	4.0%	844	8
5004/5005	S_P	\$ 35	920	2.3%	761	1.9%	40,175	884	1,675	4.2%	893	9
5004/5005	S_OP	\$ 25	769	2.4%	638	2.0%	31,580	644	1,400	4.4%	654	10
5004/5005	W_SP	\$ 200	1,027	2.1%	756	1.6%	47,914	833	1,779	3.7%	840	7
5004/5005	W_P	\$ 60	1,007	2.5%	676	1.7%	40,034	891	1,669	4.2%	899	8
5004/5005	W_OP	\$ 55	986	2.5%	679	1.7%	39,855	907	1,649	4.1%	915	8
5004/5005	SH_SP	\$ 95	861	2.3%	616	1.7%	36,895	759	1,471	4.0%	767	8
5004/5005	SH_P	\$ 40	825	2.3%	650	1.8%	35,988	796	1,468	4.1%	804	8
5004/5005	SH_OP	\$ 30	823	2.4%	526	1.6%	33,665	729	1,340	4.0%	736	8

Base Prices

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Mkt Share		
AP South	S_SP1	\$ 200	1,990	4.3%	688	1.5%	45,997	757	2,677	5.8%	770	13
AP South	S_SP2	\$ 75	1,987	4.3%	684	1.5%	46,207	743	2,668	5.8%	756	13
AP South	S_P	\$ 35	1,946	4.2%	697	1.5%	46,377	735	2,641	5.7%	748	13
AP South	S_OP	\$ 25	1,681	4.9%	635	1.8%	34,330	584	2,311	6.7%	602	18
AP South	W_SP	\$ 200	2,184	3.9%	736	1.3%	56,290	683	2,917	5.2%	693	10
AP South	W_P	\$ 60	2,130	4.4%	672	1.4%	48,743	707	2,791	5.7%	719	12
AP South	W_OP	\$ 55	2,092	4.3%	674	1.4%	48,211	725	2,754	5.7%	737	12
AP South	SH_SP	\$ 95	1,799	4.2%	601	1.4%	42,701	656	2,395	5.6%	668	12
AP South	SH_P	\$ 40	1,701	4.0%	615	1.5%	42,072	650	2,311	5.5%	662	12
AP South	SH_OP	\$ 30	1,695	4.2%	523	1.3%	40,197	603	2,212	5.5%	614	11

DPT Results: Available Economic Capacity**Prices +10%**

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation			HHI Change
			MW	Share	MW	Share			MW	Share	HHI	
PJM	S_SP1	\$ 165	4,955	4.6%	736	0.7%	107,549	594	5,689	5.3%	600	6
PJM	S_SP2	\$ 66	4,955	4.4%	726	0.6%	111,857	575	5,676	5.1%	581	6
PJM	S_P	\$ 33	4,441	3.9%	765	0.7%	113,421	563	5,199	4.6%	569	5
PJM	S_OP	\$ 28	3,189	3.0%	635	0.6%	105,471	583	3,820	3.6%	587	4
PJM	W_SP	\$ 220	5,296	4.2%	763	0.6%	125,475	544	6,055	4.8%	549	5
PJM	W_P	\$ 55	5,085	4.2%	681	0.6%	120,845	533	5,748	4.8%	538	5
PJM	W_OP	\$ 44	4,782	3.9%	688	0.6%	121,174	523	5,447	4.5%	527	4
PJM	SH_SP	\$ 77	4,287	4.4%	620	0.6%	97,272	542	4,901	5.0%	548	6
PJM	SH_P	\$ 39	3,839	3.8%	640	0.6%	100,603	522	4,474	4.4%	527	5
PJM	SH_OP	\$ 28	2,504	2.9%	532	0.6%	86,187	561	3,022	3.5%	564	4

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation			HHI Change
			MW	Share	MW	Share			MW	Share	HHI	
5004/5005	S_SP1	\$ 220	939	2.2%	724	1.7%	43,363	872	1,661	3.8%	879	7
5004/5005	S_SP2	\$ 83	941	2.3%	722	1.7%	41,709	837	1,658	4.0%	845	8
5004/5005	S_P	\$ 39	920	2.2%	747	1.8%	40,986	875	1,662	4.1%	883	8
5004/5005	S_OP	\$ 28	848	2.3%	634	1.7%	36,316	812	1,478	4.1%	820	8
5004/5005	W_SP	\$ 220	1,025	2.1%	754	1.6%	48,395	843	1,775	3.7%	849	7
5004/5005	W_P	\$ 66	1,007	2.4%	811	2.0%	41,137	862	1,808	4.4%	871	9
5004/5005	W_OP	\$ 61	985	2.5%	674	1.7%	40,043	902	1,648	4.1%	910	8
5004/5005	SH_SP	\$ 105	861	2.3%	616	1.7%	36,895	760	1,471	4.0%	767	8
5004/5005	SH_P	\$ 44	824	2.3%	646	1.8%	36,505	790	1,465	4.0%	798	8
5004/5005	SH_OP	\$ 33	812	2.3%	653	1.9%	35,208	753	1,454	4.1%	762	8

+10% Prices

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Mkt Share		
AP South	S_SP1	\$ 220	1,989	4.2%	685	1.4%	47,834	773	2,673	5.6%	785	12
AP South	S_SP2	\$ 83	1,987	4.3%	684	1.5%	46,207	744	2,668	5.8%	756	13
AP South	S_P	\$ 39	1,946	4.1%	690	1.5%	47,338	729	2,634	5.6%	740	12
AP South	S_OP	\$ 28	1,889	4.6%	633	1.5%	41,235	704	2,519	6.1%	718	14
AP South	W_SP	\$ 220	2,182	3.8%	734	1.3%	56,908	690	2,913	5.1%	700	10
AP South	W_P	\$ 66	2,130	4.3%	772	1.5%	49,845	688	2,895	5.8%	701	13
AP South	W_OP	\$ 61	2,092	4.3%	670	1.4%	48,399	722	2,753	5.7%	733	12
AP South	SH_SP	\$ 105	1,799	4.2%	601	1.4%	42,701	657	2,395	5.6%	668	12
AP South	SH_P	\$ 44	1,701	4.0%	612	1.4%	42,589	647	2,309	5.4%	658	11
AP South	SH_OP	\$ 33	1,686	4.0%	617	1.5%	42,363	618	2,296	5.4%	629	11

Prices -10%

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Share	MW	Share			MW	Share		
PJM	S_SP1	\$ 135	4,955	4.6%	737	0.7%	107,359	596	5,689	5.3%	602	6
PJM	S_SP2	\$ 54	4,955	4.4%	745	0.7%	111,857	574	5,693	5.1%	580	6
PJM	S_P	\$ 27	2,918	3.2%	640	0.7%	92,388	612	3,550	3.8%	616	4
PJM	S_OP	\$ 23	1,671	2.4%	639	0.9%	68,467	713	2,302	3.4%	717	5
PJM	W_SP	\$ 180	5,296	4.3%	771	0.6%	123,273	534	6,063	4.9%	539	5
PJM	W_P	\$ 45	5,086	4.2%	702	0.6%	120,054	531	5,751	4.8%	536	5
PJM	W_OP	\$ 36	4,782	4.1%	668	0.6%	115,943	544	5,443	4.7%	549	5
PJM	SH_SP	\$ 63	4,288	4.4%	639	0.7%	97,272	542	4,920	5.1%	548	6
PJM	SH_P	\$ 32	3,773	3.9%	642	0.7%	96,908	530	4,403	4.5%	536	5
PJM	SH_OP	\$ 23	1,367	2.3%	522	0.9%	59,021	672	1,883	3.2%	676	4

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Share	MW	Share			MW	Share		
5004/5005	S_SP1	\$ 180	942	2.3%	731	1.8%	40,834	840	1,671	4.1%	848	8
5004/5005	S_SP2	\$ 68	941	2.3%	723	1.7%	41,709	836	1,659	4.0%	844	8
5004/5005	S_P	\$ 32	911	2.4%	768	2.0%	38,622	844	1,672	4.3%	853	9
5004/5005	S_OP	\$ 23	790	2.7%	640	2.2%	28,879	709	1,421	4.9%	721	12
5004/5005	W_SP	\$ 180	1,028	2.2%	760	1.6%	47,007	813	1,784	3.8%	820	7
5004/5005	W_P	\$ 54	1,007	2.5%	681	1.7%	39,656	902	1,670	4.2%	910	8
5004/5005	W_OP	\$ 50	986	2.5%	684	1.7%	39,551	913	1,650	4.2%	922	8
5004/5005	SH_SP	\$ 86	861	2.3%	617	1.7%	36,895	759	1,473	4.0%	766	8
5004/5005	SH_P	\$ 36	823	2.3%	652	1.8%	35,258	766	1,466	4.2%	775	8
5004/5005	SH_OP	\$ 27	713	2.4%	530	1.8%	29,561	669	1,231	4.2%	677	8

Prices -10%

Market	Period	Price	Pre-Transaction						Post-Transaction			
			Helix Generation		TransCanada		Market Size	Market HHI	Helix Generation		Market HHI	HHI Change
			MW	Mkt Share	MW	Mkt Share			MW	Mkt Share		
AP South	S_SP1	\$ 180	1,990	4.4%	689	1.5%	45,304	747	2,678	5.9%	761	13
AP South	S_SP2	\$ 68	1,987	4.3%	684	1.5%	46,207	743	2,669	5.8%	756	13
AP South	S_P	\$ 32	1,949	4.6%	710	1.7%	42,583	745	2,655	6.2%	760	15
AP South	S_OP	\$ 23	1,671	5.5%	636	2.1%	30,259	675	2,302	7.6%	698	23
AP South	W_SP	\$ 180	2,192	4.0%	741	1.3%	55,286	671	2,930	5.3%	681	11
AP South	W_P	\$ 54	2,130	4.4%	676	1.4%	48,365	713	2,792	5.8%	725	12
AP South	W_OP	\$ 50	2,092	4.4%	678	1.4%	47,907	730	2,755	5.8%	742	12
AP South	SH_SP	\$ 86	1,799	4.2%	602	1.4%	42,701	656	2,397	5.6%	668	12
AP South	SH_P	\$ 36	1,699	4.1%	616	1.5%	41,166	631	2,309	5.6%	644	12
AP South	SH_OP	\$ 27	1,456	4.3%	526	1.6%	33,793	575	1,973	5.8%	588	13

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Helix Generation, LLC)
TC Ravenswood, LLC)
TC Ironwood LLC)
TransCanada Maine Wind Development Inc.)
Ocean State Power LLC)
TransCanada Power Marketing Ltd.)

Docket No. EC17-___-000

AFFIDAVIT OF
JULIE R. SOLOMON

AFFIDAVIT

§
§
§

District of Columbia

JULIE R. SOLOMON being duly sworn, deposes and states: that she prepared the Affidavit and Exhibits of Julie R. Solomon and that the statements contained therein and the Exhibits attached hereto are true and correct to the best of her knowledge and belief.

Julie R. Solomon

Julie R. Solomon

SUBSCRIBED AND SWORN TO BEFORE ME, this the 17th day of November 2016.

Janet P. Cashion
Notary Public, District of Columbia

Printed Name: Janet P. Cashion

My Commission Expires: July 14, 2017



Attachment 2
Proposed Form of Protective Order

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Helix Generation, LLC)	
TC Ravenswood, LLC)	
TC Ironwood LLC)	
TransCanada Maine Wind Development Inc.)	Docket No. EC17-____-000
Ocean State Power LLC)	
TransCanada Power Marketing Ltd.)	

PROTECTIVE ORDER

1. This Protective Order shall govern the use of all Protected Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Federal Energy Regulatory Commission (the “Commission”).

2. This Protective Order applies to the following two categories of materials: (A) a Participant may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and (B) a Participant shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 C.F.R. § 388.113(c)(1) (“Critical Energy Infrastructure Information”).

3. Definitions – For purposes of this Protective Order:

(a) The term “Participant” shall mean a Participant as defined in 18 C.F.R. § 385.102(b) in the above dockets.

(b) Protected Materials

(1) The term “Protected Materials” means (A) materials (including depositions) provided by a Participant in response to discovery requests and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant producing the Protected Materials shall physically mark them on each page as “**PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER**” or with words of similar import as long as the term “Protected Materials” is included in that designation to indicate that they are Protected Materials. In addition:

(i) If the Protected Materials contain Critical Energy Infrastructure Information, the Participant producing such information shall additionally mark

on each page containing such information the words “**CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION – DO NOT RELEASE.**”

(ii) If the Protected Materials contain market sensitive information, public disclosure of which the disclosing Participant believes in good faith would competitively harm the Participant, the disclosing Participant shall additionally mark on each page containing such information the words “**HIGHLY SENSITIVE PROTECTED MATERIALS.**” Except for the more limited list of persons who qualify as Reviewing Representatives for purposes of reviewing Highly Sensitive Protected Materials, such materials are subject to the same provisions in the Protective Order as Protected Materials.

(2) The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b)(1). Notes of Protected Materials are subject to the same restrictions provided in this Protective Order for Protected Materials except as specifically provided in this Protective Order.

(3) Protected Materials shall not include (A) any information or document contained in the files of the Commission (unless the information or documents were submitted to the Commission subject to a request for privileged treatment pursuant to 18 C.F.R. § 388.112, and such information or documents is accorded privileged treatment by the Commission), or any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, or (C) any information or document labeled as “Non-Internet Public” by a Participant, or in accordance with Paragraph 30 of FERC Order No. 630, FERC Stats. & Regs. ¶ 31,140. Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(c) Non-Disclosure Certificates

(1) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(2) The term “Non-Disclosure Certificate for Competitive Duty Personnel” means the certificate annexed hereto by which Competitive Duty Personnel shall certify their understanding of the terms of their access pursuant to the terms and restrictions of this Protective Order and that such representatives have read the terms and restrictions of this Protective Order applicable to such materials and agree to be bound by them. All

Non-Disclosure Certificates for Competitive Duty Personnel shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(d) The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and:

(1) For purposes of reviewing Protected Materials not covered by Paragraph 3(b)(1)(ii), who is:

(A) An attorney who has made an appearance in this proceeding for a Participant;

(B) Attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Paragraph 3(d)(1)(A);

(C) An expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;

(D) A person designated as a Reviewing Representative by order of the Commission; or

(E) Employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

(2) For purposes of reviewing Highly Sensitive Protected Materials covered by Paragraph 3(b)(1)(ii), who is:

(A) A member or staff of any state or local utilities commission which is a Participant;

(B) An outside attorney who has made an appearance in this proceeding for a Participant;

(C) An attorney, paralegal, or other employee of the firm of the outside attorney described in Paragraph 3(d)(2)(B) working with such outside attorney for purposes of this case;

(D) An outside expert or an employee of an outside expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding who is working under the direction of an attorney described in Paragraph 3(d)(2)(B) or 3(d)(2)(C) and who is an unaffiliated expert (or employees thereof) not directly involved in, or having direct or supervisory responsibilities over, the purchase, sale, or marketing of electricity (including transmission service) at retail or wholesale, the negotiation or development of participation or cost sharing arrangements for transmission or generation facilities, or other activities or transactions of a type with respect to which the disclosure of Highly Sensitive Protected Materials may present an unreasonable risk of harm;

(E) If, after a good faith effort, parties fail to agree on designating a specifically-named inside employee(s) of a non-governmental Participant as a Reviewing Representative for the review of specific Highly Sensitive Protected Material(s) or all Highly Sensitive Protected Material(s), a party may request that the Commission so-designate such a specifically-named inside employee(s) who, for example, is not directly involved in, or having direct or supervisory responsibilities over, the purchase, sale, or marketing of electricity (including transmission service) at retail or wholesale, the negotiation or development of participation or cost-sharing arrangements for transmission or generation facilities, or other activities or transactions of a type with respect to which the disclosure of Highly Sensitive Protected Materials may present an unreasonable risk of harm; or

(F) A person designated as a Reviewing Representative by order of the Commission specifically ruling on and indicating each such person by name.

4. Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives.

5. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Materials is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen (15) days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts, and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraphs 6 and 7. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraphs 6 and 7. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8 and 9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Staff ("Staff"), Staff shall follow the notification procedures of 18 C.F.R. § 388.112 before making public any Protected Materials.

7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing

Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy or generation assets, the direct supervision of any employee or employees whose duties include the marketing of energy or generation assets, the provision of consulting services to any person whose duties include the marketing of energy or generation assets, or the direct supervision of any employee or employees whose duties include the marketing of energy or generation assets, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3(d), the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraph 3(d) with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Commission for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate or, in the case of Competitive Duty Personnel, a Non-Disclosure Certificate for Competitive Duty Personnel; provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial, and clerical personnel employed by the same entity as the attorney and under the attorney's instruction, supervision, or control need not do so. A copy of each Non-Disclosure Certificate and Non-Disclosure Certificate for Competitive Duty Personnel shall be provided to counsel for the Participant asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative entitled to receive the specific category of Protected Materials under Paragraph 3(b)(1), as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

11. Subject to Paragraph 18, the Commission shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Commission, the parties to the dispute shall use their best efforts to resolve it. Any Participant that contests the designation of materials as protected shall notify the party that provided the Protected Materials by specifying in writing the materials whose designation is contested. This Protective Order shall automatically cease to apply to such materials fifteen (15) business days after the notification is made unless the designator, within said 15-day period, files a motion with the Commission, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the Participant seeking protection. If the Commission finds that the materials at issue are not entitled to protection, the procedures of Paragraph 18 shall apply. The procedures described above shall not apply to Protected Materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. Unless filed or served electronically, all copies of all documents reflecting Protected Materials, including the portion of other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "**PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER**" (or words of similar import) with the appropriate designation (as relevant) under Paragraph 3(b)(1) and shall be filed under seal and served under seal upon the Commission and all Reviewing Representatives who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information – Do Not Release." For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such will also be filed with the Commission and served on all parties on the service list. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

13. If any Participant desires to include, utilize, or refer to any Protected Materials or information derived there from in testimony or exhibits in these proceedings in such a manner that might require disclosure of such material to persons other than Reviewing Representatives, such Participant shall first notify both counsel for the disclosing participant and the Commission of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Commission.

14. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

15. Nothing in this Protective Order shall preclude any Participant from requesting the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to

this Protective Order. The Commission may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

16. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Commission.

17. Unless filed or served electronically, all Protected Materials filed with the Commission, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order and with the appropriate designation (as relevant) under Paragraph 3(b)(1). Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information – Do Not Release."

18. If the Commission finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for a time period designated by the Commission, but not less than 15 business days from the date of issuance of the Commission's decision. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Commission's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 C.F.R. § 388.112 shall apply to any requests for Protected Materials in the files of the Commission under the Freedom of Information Act (5 U.S.C. § 552).

19. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

20. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

21. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this proceeding. Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

22. If a Participant believes that Protected Materials previously distributed to Reviewing Representatives was not marked as Protected Materials or was not marked with the appropriate designation under Paragraph 3(b)(1), the Participant must e-mail Participants on the restricted service list and the listserv established for e-mail addresses in this proceeding, specifically state which documents contain such data, identify the specific material which should have received the designation, and seek their consent to such treatment, and such consent shall not be unreasonably withheld. If no agreement is reached, the Participant shall submit the dispute to the Commission.

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Helix Generation, LLC)
TC Ravenswood, LLC)
TC Ironwood LLC)
TransCanada Maine Wind Development Inc.)
Ocean State Power LLC)
TransCanada Power Marketing Ltd.)

Docket No. EC17-____-000

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials in the above-captioned case, including any Protected Materials designated as “Highly Sensitive Protected Materials,” is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order and shall be used only in connection with this proceeding. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Title: _____

Representing: _____

Date: _____

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Helix Generation, LLC)
TC Ravenswood, LLC)
TC Ironwood LLC)
TransCanada Maine Wind Development Inc.)
Ocean State Power LLC)
TransCanada Power Marketing Ltd.)

Docket No. EC17-____-000

NON-DISCLOSURE CERTIFICATE FOR COMPETITIVE DUTY PERSONNEL

I hereby certify my understanding that access to Protected Materials in the above-captioned case is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order and shall be used only in connection with this proceeding. I acknowledge that my duties and responsibilities include "Competitive Duties" as described in the Protective Order and, as such, I understand that I shall neither have access to, nor disclose, the contents of the Protected Materials that are marked "Contains Protected Material Not Available to Competitive Duty Personnel," any notes or other memoranda, or any other form of information that copies or discloses Protected Materials that are marked as "Contains Protected Material Not Available to Competitive Duty Personnel." I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Title: _____

Representing: _____

Date: _____

Attachment 3

Verifications

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Helix Generation, LLC)
TC Ravenswood, LLC)
TC Ironwood LLC)
TransCanada Maine Wind Development Inc.)
Ocean State Power LLC)
TransCanada Power Marketing Ltd.)

Docket No. EC17-___-000

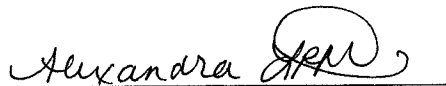
VERIFICATION OF APPLICATION

The undersigned, being duly sworn, states that he is the authorized representative of Helix Generation, LLC; that he has read said application and knows the contents thereof; and that all of the statements contained therein with respect to the foregoing entity are true and correct to the best of his knowledge, information, and belief.



James Bartlett
President

Subscribed and sworn to before me
this 15th day of November, 2016



Notary Public
for the State of New York

My Commission expires: 09/15/2020

ALEXANDRA LINARES-PENA MEJIA
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01LI6192833
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES 09/15/2020

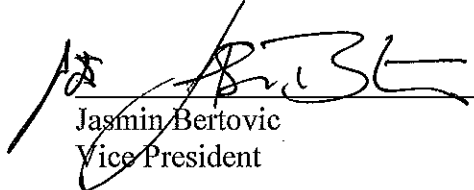
UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Helix Generation, LLC)
TC Ravenswood, LLC)
TC Ironwood LLC)
TransCanada Maine Wind Development Inc.)
Ocean State Power LLC)
TransCanada Power Marketing Ltd.)

Docket No. EC17-___-000


VERIFICATION OF APPLICATION

The undersigned, being duly sworn, states that he is the authorized representative of TC Ravenswood, LLC, TC Ironwood LLC, TransCanada Maine Wind Development Inc., Ocean State Power LLC, and TransCanada Power Marketing Ltd.; that he has read said application and knows the contents thereof; and that all of the statements contained therein with respect to the foregoing entity are true and correct to the best of his knowledge, information, and belief.

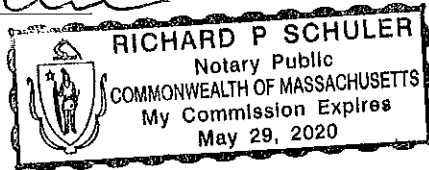


Jasmin Bertovic
Vice President

Subscribed and sworn to before me
this 17 day of November, 2016



Notary Public



My Commission expires: _____

Document Content(s)

FINAL public Helix 203.PDF.....1-125

EXHIBIT 2

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information				
Name of Action or Project: Transfer of certain membership interests from TransCanada Facility USA, Inc. to Helix Generation				
Project Location (describe, and attach a location map): 38-54 Vernon Boulevard, Long Island City, NY 11101				
Brief Description of Proposed Action: Petitioners seek approval under Sections 70 and 83 of the New York Public Service Law for the transfer, as applicable, of all of the membership interests in select entities (a steam corporation and an electric corporation) held by TransCanada Facility USA, Inc. to Helix Generation. The Petition also seeks approvals pursuant to Sections 69 and 82 in connection with a proposed financing, and related relief from the Public Service Commission. There will be no physical changes to the Ravenswood Generating Station as a result of the transfer. The facility will continue to be operated in accordance with all previously issued regulatory permits and approvals.				
Name of Applicant or Sponsor: TC Ravenswood, LLC, TC Ravenswood Services Corp., Helix Generation LLC		Telephone: (508) 475-6088 E-Mail: jim_dandrea@transcanada.com		
Address: 110 Turnpike Road, Suite 300				
City/PO: Westborough		State: MA	Zip Code: 01581	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: The parties are also seeking various other approvals related to the transfer, e.g. from FERC and NYSDEC which would update the permits in relation to the transfer of membership interests.			NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		N/A acres		
b. Total acreage to be physically disturbed?		N/A acres		
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		Approx. 28 acres		
4. Check all land uses that occur on, adjoining and near the proposed action. <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input checked="" type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____ <input checked="" type="checkbox"/> Parkland				

	NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation service(s) available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: N/A	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ No additional connection is required; the facility is already served by public water.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ No additional connection is required; the facility is already served by public wastewater treatment services.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? b. Is the proposed action located in an archeological sensitive area? See Note 1 below.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: The existing site abuts the East River. No changes to operations are proposed and therefore no impacts to wetlands or waterbodies that have not already been reviewed will occur.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input checked="" type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered? See Note 2 below.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16. Is the project site located in the 100 year flood plain? There are no operational changes proposed, therefore no impact to the flood plain will occur.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input type="checkbox"/> YES No new stormwater systems are needed. Existing stormwater conveyance systems will continue to be used, and the existing SPDES permit will be followed.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

EXHIBIT 3

**BEFORE THE
PUBLIC SERVICE COMMISSION
STATE OF NEW YORK**

In the Matter of the Joint Petition of TC RAVENSWOOD, LLC, TC RAVENSWOOD SERVICES CORP., and HELIX GENERATION, LLC, for Expedited Approval Pursuant to Sections 70 and 83 of the Public Service Law for the Proposed Transfer of Ownership Interests in Certain Generating and Related Assets, and Pursuant to Sections 69 and 82 of the Public Service Law for a Proposed Financing and for Related Approvals.

Case 17-M-

AFFIDAVIT OF JULIE R. SOLOMON

INTRODUCTION

1. My name is Julie R. Solomon. I am a Managing Director at Navigant Consulting, Inc. My business address is 1200 19th Street, N.W., Suite 700, Washington, DC 20036. A large portion of my consulting activities involves electric utility industry restructuring and the transition from regulation to competition. I have been involved extensively in consulting on market power issues concerning mergers and other asset transfers. I have filed testimony before the Federal Energy Regulatory Commission (“FERC”) and in some state regulatory proceedings (including New York Public Service Commission (“Commission”) proceedings) in connection with such issues. My resume is included as Exhibit JRS-1.

2. I submit this Affidavit on behalf of Helix Generation, LLC (“Helix Generation”) in connection with the transfer of the membership interests in TC Ravenswood, LLC from TransCanada Facility USA, Inc. (“TC Facility”) to Helix Generation (the “Transfer”). I am fully familiar with the facts described herein based on my personal knowledge and experience.

3. I have been asked by counsel for Petitioners to evaluate the potential competitive impact on electricity markets of the Transfer. In connection with the Transfer, I recently filed

testimony on competition issues before FERC.¹ My testimony here is consistent with my FERC testimony where I concluded the Transfer would not raise any competitive concerns in NYISO markets. However, my FERC testimony focused largely on the lack of horizontal market power arising from the Transfer with respect to generation in NYISO, given that Helix Generation affiliates currently do not own any generation in NYISO. I have further reviewed potential horizontal market power issues in consideration of Helix Generation's affiliated generation in markets first-tier to NYISO (i.e., in PJM Interconnection, L.L.C. ("PJM") and ISO New England Inc. ("ISO-NE")). Helix Generation's affiliated generation ownership in PJM and ISO-NE does not allow it to exercise market power in NYISO. First, because Helix Generation's affiliated generation in PJM and ISO-NE has cleared the respective capacity markets in PJM and ISO-NE, such supply is required to be offered in the PJM and ISO-NE energy markets. Second, Helix Generation's affiliated generation will account for only small shares of total generation capacity in PJM and ISO-NE (about 3 percent). Finally, transmission constraints limit even the theoretical amount of power that can be transferred from PJM or ISO-NE to NYISO.

4. Given that horizontal market power concerns with respect to this Transfer is absent in NYISO, for purposes of this testimony, I am focusing specifically on any concerns regarding vertical market power potentially arising from the proposals that affiliates of Helix Generation (North America Transmission Corporation and North America Transmission LLC (collectively, "NAT")) have pending before the NYISO to construct new transmission lines that would add incremental transfer capability at the Central East and UPNY/SENY interfaces.²

5. As I demonstrate below, the Transfer does not raise any vertical market power concerns even taking into consideration NAT's proposals to construct new transmission lines. Further, should the Commission nevertheless conclude that vertical market power concerns are present if NAT is chosen to construct new transmission, I understand that Petitioners have proposed a series of commitments that should adequately address any such concerns.

¹ *Helix Generation, LLC, et al.*, Docket No. EC17-38, November 21, 2016.

² *See Cases 13-T-0454 et al., Application of North America Transmission Corporation and North America Transmission, LLC – Edic to Fraser 345 kV Transmission Line and a New Scotland to Leeds to Pleasant Valley 345 kV Transmission Line*, Notice of North America Transmission Corporation and North America Transmission LLC of Withdrawal of Certain Transmission Alternatives from Further Consideration (filed January 15, 2016).

ANALYSIS

6. Affiliates of Helix Generation do not currently own any generation or transmission in NYISO. Assuming approval and consummation of the Transfer, Helix Generation will own a single generating facility in NYISO, Ravenswood, located in the New York City zone. As part of the Transfer, Helix Generation also will own transmission facilities necessary to interconnect the Ravenswood facility to the NYISO transmission system, but it will not own or be affiliated with any other existing transmission facilities. Likewise, none of Helix Generation affiliates own any fuel inputs or fuel delivery systems that supply NYISO generation. Thus, on the basis of Helix Generation's current portfolio of affiliated assets, there are no vertical market power concerns in NYISO.

7. While there are no current assets that could potentially give rise to vertical market power concerns relating to the Transfer, I understand that NAT's pending proposals to construct new transmission lines would change the specific facts of the situation as they relate to vertical market power. However, NAT's proposals are competing with multiple proposals under consideration by the NYISO, all such proposals are pending, and there is no assurance that NAT's proposals will be the winning bid(s). Even assuming that NAT's proposals are chosen, any vertical market concerns are, or can be, readily mitigated.

8. Typically, with respect to entities that own generation and transmission assets in the same market (setting aside transmission facilities such as those necessary to interconnect one's own generation to the transmission system), the concern is that one can use transmission to benefit one's own generation. Such concerns are mitigated by oversight and control by third-parties (e.g., NYISO and FERC). Both federal and state regulatory rules limiting the ability to exercise vertical market power are important to the evaluation of potential market power concerns. New transmission facilities, such as those being proposed by NAT, will be subject to the NYISO Open Access Transmission Tariff ("OATT") and under the control of the NYISO.

9. Beyond the presence of an OATT and control by the ISO, one needs to look at the specific facts of the situation more carefully. The Commission identified its concerns about vertical market power in 1998, under its *Statement of Policy Regarding Market Power* ("Policy Statement"). The stated concern there was that "[a] transmission and distribution company

(T&D company) with an affiliate owning generation may, in certain circumstances, be able to adversely influence prices in that generator's market to the advantage of the combined operation."

10. Assuming, *arguendo*, that there is a legitimate vertical market concern if Helix Generation owns the Ravenswood facility and if its affiliate, NAT, builds and owns transmission in NYISO, one has to consider specifically how ownership of transmission might be used to exercise market power. The actual operation of the transmission would clearly be subject to the NYISO OATT and under the control of the NYISO, which significantly limits NAT's control over the constraining interface. It also is relevant that NAT's ownership will be of new transmission, not existing transmission facilities, and the development of additional transmission facilities is generally viewed as a pro-competitive, not anti-competitive activity. NAT's transmission also will represent only a portion of the transmission facilities over a constrained interface, not the entirety of the constrained interface.

11. Typically, the concerns over exercising vertical market power through transmission ownership relate to delaying or obstructing the interconnection process for new generation and/or taking transmission out of service, both to benefit owned generation. Neither of these should be of significant concern, given the oversight and control of these processes by the NYISO. NYISO's involvement in the operations and planning of the bulk power system significantly mitigates the potential for any vertical market power. The NYISO operates and plans the New York State transmission system in an independent, transparent manner in accordance with its FERC-approved OATT. The NYISO operates energy and ancillary services markets, taking into consideration of the capability of the transmission system, which it controls.

12. NAT, if ultimately a transmission owner, will have a role in interconnection studies that relate to connecting a new generator to its transmission facilities, but its role is somewhat limited, both by the limited scope of the facilities it might own and by NYISO's administration of the interconnection process. NYISO is responsible for the interconnection studies for large generators and such studies are performed by NYISO or the developer at NYISO's discretion and it is the NYISO, not the transmission owners, that primarily interfaces with generators seeking interconnection. Further, my understanding is that NYISO is subject to

specific timelines for completing both small and large facility interconnection studies under the relevant tariffs. The developer may negotiate with the NYISO and the transmission owner regarding the interconnection agreement, and may request termination of negotiations; the developer then may request the unexecuted version of the interconnection agreement be submitted to FERC or initiate dispute resolution procedures under the tariff.³ Any disputes arising out of the interconnection process or construction of interconnection facilities also are governed under the NYISO tariff, including dispute resolution under arbitration provisions or other legal avenues. This process provides very limited opportunities for delaying or obstructing the interconnection process, and if such problems do arise, there are procedures for remedying the problem.

13. NAT, if ultimately a transmission owner, will be required to follow NYISO procedures for scheduling outages and/or emergency maintenance. “The NYISO has authority to defer, postpone or cancel scheduled transmission outages of facilities under NYISO operational control” and “has final authority in postponing or canceling outages on transmission facilities under NYISO operational control, if the outage would violate established reliability criteria.”⁴ With respect to emergency outages, NYISO has a procedure to study such requests, and will coordinate the request as conditions permit. The transmission owner is obligated to inform and notify the NYISO, and provide relevant details before starting the outage if time permits. This process mitigates the potential for manipulating the scheduling of planned or emergency outages.

14. The Commission’s Policy Statement established two options for a T&D utility affiliate to overcome any presumption of vertical market power concerns: (i) “demonstrate that vertical market power could not be exercised because the circumstances do not give the T&D company an opportunity to exercise market power, or because reasonable means exist to mitigate market power”; or (ii) “demonstrate that substantial ratepayer benefits, together with mitigation

³ 30 OATT Attachment X - Standard Large Facility Interconnection, https://nyisoviewer.etariff.biz/ViewerDocLibrary//MasterTariffs/9TariffSections/OATT%2030.7%20FID1116%20redline_15381.pdf. Interconnection of small facilities is governed by Attachment Z.

⁴ NYISO Outage Scheduling Manual, section 2.1, http://www.nyiso.com/public/webdocs/markets_operations/documents/Manuals_and_Guides/Manuals/Operations/outage_sched_mnl.pdf.

measures, warrant overcoming the presumption.” With respect to the first option, the Policy Statement identified the following ways to mitigate market power:

- i. Limitation on the degree of control over the constraining transmission interface held by the T&D utility.
- ii. A pledge by the T&D utility to pursue transmission projects recommended by the Commission or by the ISO, together with a proposal that would neutralize profit maximizing incentives on generation that is within the market power control area pending the completion of all reasonable efforts by the T&D company to complete recommended transmission projects.
- iii. An agreement by the T&D company to participate in a binding arbitration in the event of a dispute over a new generator’s interconnection requirements in the T&D utility’s service territory.

15. I have already described why I think the circumstances relating to new transmission provide significant limitations on the degree of control that NAT, if ultimately a transmission owner, would have over its transmission. These circumstances include general FERC and NYISO oversight; presence of a FERC-approved OATT; NYISO control over operation of the transmission; NYISO’s control over interconnection procedures and scheduling planned and emergency outages of transmission facilities, and dispute resolution procedures. These circumstances would not give NAT, if ultimately a transmission owner, an opportunity to exercise market power.

16. Additionally, I understand that, assuming one of NAT’s proposed transmission projects is to be built and the Commission determines that vertical market power concerns are present, NAT have agreed to a series of conditions intended to address any such concerns with respect to using any new transmission to benefit its affiliated generation (including a commitment by NAT to divest its transmission projects following completion thereof which would eliminate such concerns). The proposed conditions are detailed in the Joint Petition. With these commitments, the Commission has been provided with assurances that any concerns regarding vertical market power can be adequately addressed.

CONCLUSION

17. The facts and analysis discussed herein demonstrate that the Transfer will not have adverse vertical competitive effects in NYISO. Further, if NAT is the successful bidder

market power will be addressed pursuant to the conditions NAT has proposed as outlined in the Joint Petition.

18. I swear under penalties of perjury that all of the above is true and accurate.

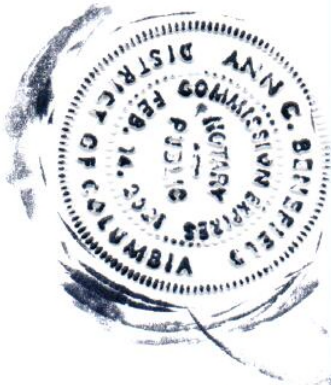


JULIE R. SOLOMON

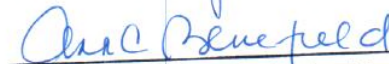
Sworn to and subscribed before me this 13th day of January 2017.



Notary Public



District of Columbia: SS
Subscribed and sworn to before me
this 13 day of January, 2017



Notary Public, District of Columbia
My commission expires on 2/14/2021

EXHIBIT 4

**APPENDIX D – PUBLIC POLICY TRANSMISSION PLANNING PROCESS
DEVELOPMENT AGREEMENT**

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Appendices

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this ___ day of _____ 20___, by and between _____, a [corporate description] organized and existing under the laws of the State/Commonwealth of _____ (“Developer”), and the New York Independent System Operator, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York (“NYISO”). Developer or NYISO each may be referred to as a “Party” or collectively referred to as the “Parties.”

RECITALS

WHEREAS, the NYISO administers the Comprehensive System Planning Process (“CSPP”) in the New York Control Area pursuant to the terms set forth in Attachment Y of the NYISO’s Open Access Transmission Tariff (“OATT”), as accepted by the Federal Energy Regulatory Commission (“FERC”);

WHEREAS, as part of the CSPP, the NYISO administers a Public Policy Transmission Planning Process pursuant to which Public Policy Transmission Need(s) are identified; proposed solutions to the identified need(s) are solicited by the NYISO; and the more efficient or cost-effective transmission solution to satisfy the identified need(s) is selected by the NYISO and reported in the NYISO’s Public Policy Transmission Planning Report;

WHEREAS, the Developer has proposed a Public Policy Transmission Project to satisfy an identified Public Policy Transmission Need (“Transmission Project”);

WHEREAS, the NYISO has selected the Developer’s Transmission Project as the more efficient or cost-effective transmission solution to satisfy an identified Public Policy Transmission Need and has directed the Developer to proceed with the Transmission Project;

WHEREAS, the Developer has agreed to obtain the required authorizations and approvals from Governmental Authorities needed for the Transmission Project, to develop and construct the Transmission Project, and to abide by the related requirements in Attachment Y of the OATT, the ISO Tariffs, and the ISO Procedures;

WHEREAS, the Developer and the NYISO have agreed to enter into this Agreement pursuant to Section 31.4.12.2 of Attachment Y of the OATT for the purpose of ensuring that the Transmission Project will be constructed and in service in time to satisfy the Public Policy Transmission Need (“Required Project In-Service Date”); and

WHEREAS, the Developer has agreed to construct, and the NYISO has requested that the Developer proceed with construction of, the Transmission Project to address the identified Public Policy Transmission Need by the Required Project In-Service Date.

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1. DEFINITIONS

Whenever used in this Agreement with initial capitalization, the following terms shall have the

meanings specified in this Article 1. Terms used in this Agreement with initial capitalization that are not defined in this Article 1 shall have the meanings specified in Section 31.1.1 of Attachment Y of the OATT or, if not therein, in Article 1 of the OATT.

Advisory Milestones shall mean the milestones set forth in the Development Schedule in Attachment C to this Agreement that are not Critical Path Milestones.

Affected System Operator shall mean any Affected System Operator(s) identified in connection with the Transmission Project pursuant to Attachment P of the ISO OATT.

Applicable Laws and Regulations shall mean: (i) all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority, and (ii) all applicable requirements of the ISO Tariffs, ISO Procedures, and ISO Related Agreements.

Applicable Reliability Organizations shall mean the NERC, the NPCC, and the NYSRC.

Applicable Reliability Requirements shall mean the requirements, criteria, rules, standards, and guidelines, as they may be amended and modified and in effect from time to time, of: (i) the Applicable Reliability Organizations, (ii) the Connecting Transmission Owner(s), (iii) *[to insert the name(s) of any other Transmission Owners or developers whose transmission facilities the NYISO has determined may be impacted by the Transmission Project]*, and (iv) any Affected System Operator; *provided, however,* that no Party shall waive its right to challenge the applicability or validity of any requirement, criteria, rule, standard, or guideline as applied to it in the context of this Agreement.

Breach shall have the meaning set forth in Article 7.1 of this Agreement.

Breaching Party shall mean a Party that is in Breach of this Agreement.

Business Day shall mean Monday through Friday, excluding federal holidays.

Calendar Day shall mean any day including Saturday, Sunday, or a federal holiday.

Change of Control shall mean a change in ownership of more than 50% of the membership or ownership interests or other voting securities of the Developer to a third party in one or more related transactions, or any other transaction that has the effect of transferring control of the Developer to a third party.

Confidential Information shall mean any information that is defined as confidential by Article 11.2.

Connecting Transmission Owner shall be the Connecting Transmission Owner(s) identified in connection with the Transmission Project pursuant to Attachment P of the ISO OATT.

Critical Path Milestones shall mean the milestones identified as such in the Development

Schedule in Attachment C to this Agreement that must be met for the Transmission Project to be constructed and operating by the Required Project In-Service Date.

Default shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 7.2 of this Agreement.

Developer shall have the meaning set forth in the introductory paragraph.

Development Schedule shall mean the schedule of Critical Path Milestones and Advisory Milestones set forth in Appendix C to this Agreement.

Effective Date shall mean the date upon which this Agreement becomes effective as determined in Article 2.1 of this Agreement.

FERC shall mean the Federal Energy Regulatory Commission or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practice, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, public authority, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over any of the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; *provided, however*, that such term does not include the NYISO, the Developer, the Connecting Transmission Owner(s), the Affected System Operator(s), or any Affiliate thereof.

In-Service Date shall mean the date upon which the Transmission Project is energized consistent with the provisions of the Transmission Project Interconnection Agreement and available to provide Transmission Service under the NYISO Tariffs.

ISO/TO Agreement shall mean the *Agreement Between the New York Independent System Operator and Transmission Owners*, as filed with and accepted by the Commission in *Cent.*

Hudson Gas & Elec. Corp., et al., 88 FERC ¶ 61,138 (1999) in Docket Nos. ER97-1523, *et al.*, and as amended or supplemented from time to time, or any successor agreement thereto.

New York State Transmission System shall mean the entire New York State electrical transmission system, which includes: (i) the Transmission Facilities Under ISO Operational Control; (ii) the Transmission Facilities Requiring ISO Notification; and (iii) all remaining transmission facilities within the New York Control Area.

NERC shall mean the North American Electric Reliability Corporation or its successor organization.

NPCC shall mean the Northeast Power Coordinating Council or its successor organization.

NYPSC shall mean the New York State Public Service Commission or its successor.

NYSRC shall mean the New York State Reliability Council or its successor organization.

OATT shall mean the NYISO's Open Access Transmission Tariff, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff thereto.

Party or Parties shall mean the NYISO, the Developer, or both.

Point of Interconnection shall mean the point or points at which the Developer's Transmission Project will interconnect to the New York State Transmission System.

Project Description shall mean the description of the Transmission Project set forth in Appendix A to this Agreement that is consistent with the project proposed and evaluated in the NYISO's Public Policy Transmission Planning Process and selected by the NYISO Board of Directors as the more efficient or cost-effective transmission solution to the identified Public Policy Transmission Need.

Public Policy Transmission Planning Process Manual shall mean the NYISO's manual adopted by the NYISO stakeholder Operating Committee describing the NYISO's procedures for implementing the Public Policy Transmission Planning Process component of the NYISO's Comprehensive System Planning Process, as the manual is amended or supplemented from time to time, or any successor manual thereto.

Required Project In-Service Date shall mean the In-Service Date by which the Transmission Project must be constructed and operating, which date shall be: (i) the date by which the Public Policy Transmission Need must be satisfied as prescribed by the NYPSC in its order identifying the need or in a subsequent order, or (ii) if the NYPSC has not prescribed a date, the date proposed by the Developer and reviewed and accepted by the NYISO, which date may be either: (A) the In-Service Date specified by the Developer in the project information it submitted under Attachment Y of the OATT for use by the NYISO in its selection of the Transmission Project as the more efficient or cost-effective transmission solution to satisfy the Public Policy Transmission Need, or (B) such other date accepted by the NYISO as reasonable in light of the

Public Policy Transmission Need. The Required Project In-Service Date is set forth in the Development Schedule contained in Appendix C to this Agreement.

Services Tariff shall mean the NYISO's Market Administration and Control Area Services Tariff, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff thereto.

Significant Modification shall mean a Developer's proposed modification to its Transmission Project that: (i) could impair the Transmission Project's ability to meet the identified Public Policy Transmission Need, (ii) could delay the In-Service Date of the Transmission Project beyond the Required Project In-Service Date, or (iii) would constitute a material change to the project information submitted by the Developer under Attachment Y of the OATT for use by the NYISO in evaluating the Transmission Project for purposes of selecting the more efficient or cost-effective transmission solution to meet the identified Public Policy Transmission Need.

Scope of Work shall mean the description of the work required to implement the Transmission Project as set forth in Appendix B to this Agreement. The Scope of Work shall be drawn from the Developer's submission of the "Information for a Proposed Solution to a Public Policy Transmission Need" and the "Data Submission for Public Policy Transmission Projects," which are set forth in Attachments B and C of the NYISO Public Policy Transmission Planning Process Manual, as may be updated as agreed upon by the Parties. The Scope of Work shall include, but not be limited to, a description of: the acquisition of required rights-of-ways, the work associated with the licensing, design, financing, environmental and regulatory approvals, engineering, procurement of equipment, construction, installation, testing, and commissioning of the Transmission Project; the relevant technical requirements, standards, and guidelines pursuant to which the work will be performed; the major equipment and facilities to be constructed and/or installed in connection with the Transmission Project, and the cost estimates for the work associated with the Transmission Project.

Transmission Owner Technical Standards shall mean the technical requirements and standards (*e.g.*, equipment or facilities electrical and physical capabilities, design characteristics, or construction requirements), as those requirements and standards are amended and modified and in effect from time to time, of: (i) the Connecting Transmission Owner(s), (ii) *[to insert the name(s) of any other Transmission Owners or developers whose transmission facilities the NYISO has determined may be impacted by the Transmission Project]*, and (iii) any Affected System Operator.

Transmission Project shall mean the Developer's proposed Public Policy Transmission Project selected by the NYISO as the more efficient or cost-effective transmission solution to a Public Policy Transmission Need that is subject to this Agreement, as described in the Project Description set forth in Appendix A to this Agreement.

ARTICLE 2. EFFECTIVE DATE AND TERM

2.1. Effective Date

This Agreement shall become effective on the date it has been executed by all Parties;

provided, however, if the Agreement is filed with FERC as a non-conforming or an unexecuted agreement pursuant to Section 31.4.12.2 of Attachment Y of the OATT, the Agreement shall become effective on the effective date accepted by FERC.

2.2. Filing

If the Agreement must be filed with FERC pursuant to Section 31.4.12.2 of Attachment Y of the OATT, the NYISO shall file this Agreement for acceptance with FERC within the timeframe set forth for the filing in Section 31.4.12.2 of Attachment Y of the OATT. The Developer shall cooperate in good faith with the NYISO with respect to such filing and provide any information requested by the NYISO to comply with Applicable Laws and Regulations. Any Confidential Information shall be treated in accordance with Article 11.2 of this Agreement.

2.3. Term of Agreement

Subject to the termination provisions in Article 8 of this Agreement, this Agreement shall remain in effect from the Effective Date until: (i) the Developer executes an operating agreement with the NYISO, and (ii) the Transmission Project: (A) has been completed in accordance with the terms and conditions of this Agreement, and (B) is in-service; *provided, however*, that the terms of this Agreement shall continue in effect to the extent provided in Article 14 of this Agreement.

ARTICLE 3. TRANSMISSION PROJECT DEVELOPMENT AND CONSTRUCTION

3.1. Application for Required Authorizations and Approvals

The Developer shall timely seek and obtain all authorizations and approvals from Governmental Authorities required to develop, construct, and operate the Transmission Project by the Required Project In-Service Date. The required authorizations and approvals shall be listed in the Scope of Work in Appendix B to this Agreement. The Developer shall seek and obtain the required authorizations and approvals in accordance with the milestones set forth in the Development Schedule in Appendix C to this Agreement. The milestones for obtaining the required authorizations and approvals shall be included in the Development Schedule as Critical Path Milestones and Advisory Milestones, as designated by the Parties under Article 3.3.1. The Developer shall notify the NYISO in accordance with the notice requirements in Article 3.3 if it has reason to believe that it may be unable to timely obtain or is denied an approval or authorization by a Governmental Authority required for the development, construction, or operation of the Transmission Project, or if such approval or authorization is withdrawn or modified.

3.2. Development and Construction of Transmission Project

The Developer shall design, engineer, procure, install, construct, test and commission the Transmission Project in accordance with: (i) the terms of this Agreement, including, but not limited to, the Project Description in Appendix A to this Agreement, the Scope of Work in Appendix B to this Agreement, and the Development Schedule in Appendix C to this Agreement; (ii) Applicable Reliability Requirements; (iii) Applicable Laws and Regulations; (iv)

Good Utility Practice; (v) the Transmission Owner Technical Standards, and (vi) any interconnection agreement(s) entered into by and among the NYISO, Developer, and Connecting Transmission Owner(s) for the Transmission Project to interconnect to the New York State Transmission System.

3.3. Milestones

- 3.3.1. The NYISO shall provide the Developer with the Required Project In-Service Date that is set forth in the Public Policy Transmission Planning Report in accordance with Section 31.4.11 of Attachment Y of the OATT. Prior to executing and/or filing this Agreement with FERC, the NYISO and the Developer shall agree to the Critical Path Milestones and Advisory Milestones set forth in the Development Schedule in Appendix C to this Agreement for the development, construction, and operation of the Transmission Project by the Required Project In-Service Date in accordance with Section 31.4.12.2 of Attachment Y of the OATT; provided that any such milestone for the Transmission Project that requires action by a Connecting Transmission Owner or Affected System Operator to complete must be included as an Advisory Milestone.
- 3.3.2. The Developer shall meet the Critical Path Milestones in accordance with the Development Schedule set forth in Appendix C to this Agreement. The Developer's inability or failure to meet a Critical Path Milestone specified in the Development Schedule, as such Critical Path Milestone may be amended with the agreement of the NYISO under this Article 3.3, shall constitute a Breach of this Agreement under Article 7.1.
- 3.3.3. The Developer shall notify the NYISO thirty (30) Calendar Days prior to the date of each Critical Path Milestone specified in the Development Schedule whether, to the best of its knowledge, it expects to meet the Critical Path Milestone by the specified date; *provided, however,* that notwithstanding this requirement:
- (i) the Developer shall notify the NYISO as soon as reasonably practicable, and no later than fifteen (15) Calendar Days, following the Developer's discovery of a potential delay in meeting a Critical Path Milestone, including a delay caused by a Force Majeure event; and
 - (ii) the NYISO may request in writing at any time, and Developer shall submit to the NYISO within five (5) Business Days of the request, a written response indicating whether the Developer will meet, or has met, a Critical Path Milestone and providing all required supporting documentation for its response.
- 3.3.4. The Developer shall not make a change to a Critical Path Milestone without the prior written consent of the NYISO. To request a change to a Critical Path Milestone, the Developer must: (i) inform the NYISO in writing of the proposed change to the Critical Path Milestone and the reason for the change, including the occurrence of a Force Majeure event in accordance with Section 15.5, (ii) submit to the NYISO a revised Development Schedule containing any necessary changes to Critical Path Milestones and Advisory Milestones that provide for the Transmission Project to be completed and

achieve its In-Service Date no later than the Required Project In-Service Date, and (iii) submit a notarized officer's certificate certifying the Developer's capability to complete the Transmission Project in accordance with the modified schedule. If the Developer: (i) must notify the NYISO of a potential delay in meeting a Critical Path Milestone in accordance with one of the notification requirements in Section 3.3.3 or (ii) is requesting a change to a Critical Path Milestone to cure a Breach in Section 7.2, the Developer shall submit any request to change the impacted Critical Path Milestone(s) within the relevant notification timeframe set forth in Section 3.3.3 or the cure period set forth in Section 7.2, as applicable. The NYISO will promptly review the Developer's requested change. The Developer shall provide the NYISO with all required information to assist the NYISO in making its determination and shall be responsible for the costs of any study work the NYISO performs in making its determination. If the Developer demonstrates to the NYISO's satisfaction that the delay in meeting a Critical Path Milestone will not delay the Transmission Project's In-Service Date beyond the Required Project In-Service Date, then the NYISO's consent to extending the Critical Path Milestone date will not be unreasonably withheld, conditioned, or delayed. The NYISO's written consent to a revised Development Schedule proposed by the Developer will satisfy the amendment requirements in Article 15.8, and the NYISO will not be required to file the revised Development Schedule with FERC.

- 3.3.5. Within fifteen (15) Calendar Days of the Developer's discovery of a potential delay in meeting an Advisory Milestone, the Developer shall inform the NYISO of the potential delay and describe the impact of the delay on meeting the Critical Path Milestones. The Developer may extend an Advisory Milestone date upon informing the NYISO of such change; *provided, however*, that if the change to the Advisory Milestone will delay a Critical Path Milestone, the NYISO's written consent to make such change is required as described in Article 3.3.4.

3.4. Modifications to Required Project In-Service Date

- 3.4.1. The Developer shall not make a change to the Required Project In-Service Date without the prior written consent of the NYISO. To request a change, the Developer must: (i) inform the NYISO in writing of the proposed change to the Required Project In-Service Date and the reason for the change, including the occurrence of a Force Majeure event, (ii) submit to the NYISO a revised Development Schedule that provides for the Transmission Project to be completed and achieve its In-Service Date no later than the proposed, modified Required Project In-Service Date, and (iii) demonstrate that the Developer has made reasonable progress against the milestones set forth in the Development Schedule, and is capable of completing the Transmission Project in accordance with the modified schedule. If the Required Project In-Service Date is the date prescribed by the NYPSC in its order identifying the Public Policy Transmission Need or in a subsequent order, the Developer must also demonstrate that the NYPSC has issued an order modifying its prescribed date.
- 3.4.2. The NYISO will promptly review Developer's requested change to the Required Project In-Service Date. The Developer shall provide the NYISO with all required information to assist the NYISO in making its determination and shall be responsible for the costs of

any study work the NYISO performs in making its determination. If the Developer fails to provide the NYISO with the information required to make its determination, the NYISO shall not be obligated to make this determination. The NYISO's consent to extend the Required Project In-Service Date will not be unreasonably withheld, conditioned, or delayed if the Developer demonstrates to the NYISO's satisfaction that: (i) its proposed modified Required Project In-Service Date is reasonable in light of the Public Policy Transmission Need, (ii) it has made reasonable progress against the milestones set forth in the Development Schedule, and (iii) its proposed modified date will not result in a significant adverse impact to the reliability of the New York State Transmission System. The Parties shall amend this Agreement in accordance with Article 15.8 to incorporate a revised Required Project In-Service Date and Development Schedule.

3.5. Modifications to Transmission Project

The Developer shall not make a Significant Modification to the Transmission Project without the prior written consent of the NYISO, including, but not limited to, modifications necessary for the Developer to obtain required approvals or authorizations from Governmental Authorities; *provided, however*, that a proposed Significant Modification that is a proposed modification to the Required Project In-Service Date shall be addressed in accordance with Article 3.4. The NYISO's determination regarding a Significant Modification to the Transmission Project under this Agreement shall be separate from, and shall not replace, the NYISO's review and determination of material modifications to the Transmission Project under Attachment P of the OATT. The Developer may request that the NYISO review whether a modification to the Transmission Project would constitute a Significant Modification. The Developer shall provide the NYISO with all required information to assist the NYISO in making its determination regarding a Significant Modification and shall be responsible for the costs of any study work the NYISO must perform in making its determination. The NYISO's consent to the Significant Modification will not be unreasonably withheld, conditioned, or delayed if the Developer demonstrates to the NYISO's satisfaction that its proposed Significant Modification: (i) does not impair the Transmission Project's ability to satisfy the identified Public Policy Transmission Need, (ii) does not delay the In-Service Date of the Transmission Project beyond the Required Project In-Service Date, (iii) does not change the grounds upon which the NYISO selected the Transmission Project as the more efficient or cost-effective transmission solution to the identified Public Policy Transmission Need, and (iv) will not result in a significant adverse impact to the reliability of the New York State Transmission System. The NYISO's performance of this review shall not constitute its consent to delay the completion of any Critical Path Milestone.

3.6. Billing and Payment

The NYISO shall charge, and the Developer shall pay, the actual costs of: (i) any study work performed by the NYISO or its subcontractor(s) under Articles 3.3, 3.4, and 3.5, or (ii) any assessment of the Transmission Project by the NYISO or its subcontractor(s) under Article 3.8. The NYISO will invoice Developer on a monthly basis for the expenses incurred by the NYISO each month, including estimated subcontractor costs, computed on a time and material basis. The Developer shall pay invoiced amounts to the NYISO within thirty (30) Calendar Days of the

NYISO's issuance of a monthly invoice. In the event the Developer disputes an amount to be paid, the Developer shall pay the disputed amount to the NYISO, pending resolution of the dispute. To the extent the dispute is resolved in the Developer's favor, the NYISO will net the disputed amount, including interest calculated from Developer's date of payment at rates applicable to refunds under FERC regulations, against any current amounts due from the Developer and pay the balance to the Developer. This Article 3.6 shall survive the termination, expiration, or cancellation of this Agreement.

3.7. Project Monitoring

The Developer shall provide regular status reports to the NYISO in accordance with the monitoring requirements set forth in the Development Schedule, the Public Policy Transmission Planning Process Manual and Attachment Y of the OATT.

3.8. Right to Inspect

Upon reasonable notice, the NYISO or its subcontractor shall have the right to inspect the Transmission Project for the purpose of assessing the progress of the development and construction of the Transmission Project and satisfaction of milestones. The exercise or non-exercise by the NYISO or its subcontractor of this right shall not be construed as an endorsement or confirmation of any element or condition of the development or construction of the Transmission Project, or as a warranty as to the fitness, safety, desirability or reliability of the same. Any such inspection shall take place during normal business hours, shall not interfere with the construction of the Transmission Project and shall be subject to such reasonable safety and procedural requirements as the Developer shall specify.

3.9. Exclusive Responsibility of Developer

As between the Parties, the Developer shall be solely responsible for all planning, design, engineering, procurement, construction, installation, management, operations, safety, and compliance with Applicable Laws and Regulations, Applicable Reliability Requirements, and Transmission Owner Technical Standards associated with the Transmission Project, including, but not limited to, scheduling, meeting Critical Path Milestones and Advisory Milestones, timely requesting review and consent to any project modifications, and obtaining all necessary permits, siting, and other regulatory approvals. The NYISO shall have no responsibility and shall have no liability regarding the management or supervision of the Developer's development of the Transmission Project or the compliance of the Developer with Applicable Laws and Regulations, Applicable Reliability Requirements, and Transmission Owner Technical Standards. The NYISO shall cooperate with the Developer in good faith in providing information to assist the Developer in obtaining all approvals and authorizations from Governmental Authorities required to develop, construct, and operate the Transmission Project by the Required Project In-Service Date, including, if applicable, information describing the NYISO's basis for selecting the Transmission Project as the more efficient or cost-effective transmission solution to satisfy an identified Public Policy Transmission Need.

3.10. Subcontractors

- 3.10.1. Nothing in this Agreement shall prevent a Party from using the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; *provided, however*, that each Party shall require, and shall provide in its contracts with its subcontractors, that its subcontractors comply with all applicable terms and conditions of this Agreement in providing such services; *provided, further*, that each Party shall remain primarily liable to the other Party for the performance of such subcontractor.
- 3.10.2. The creation of any subcontractor relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made.

3.11. No Services or Products Under NYISO Tariffs

This Agreement does not constitute a request for, nor agreement by the NYISO to provide, Transmission Service, interconnection service, Energy, Ancillary Services, Installed Capacity, Transmission Congestion Contracts or any other services or products established under the ISO Tariffs. If Developer wishes to receive or supply such products or services, the Developer must make application to do so under the applicable provisions of the ISO Tariffs, ISO Related Agreements, and ISO Procedures.

3.12. Tax Status

Each Party shall cooperate with the other Party to maintain each Party's tax status to the extent the Party's tax status is impacted by this Agreement. Nothing in this agreement is intended to affect the tax status of any Party.

ARTICLE 4. COORDINATION WITH THIRD PARTIES

4.1. Interconnection Requirements for Transmission Project

The Developer shall satisfy all requirements set forth in the Transmission Interconnection Procedures in Attachment P of the OATT applicable to a "Transmission Project" to interconnect the Transmission Project to the New York State Transmission System by the Required Project In-Service Date, including, but not limited to, submitting a Transmission Interconnection Application; participating in all necessary studies; executing, and/or requesting the NYISO to file for FERC acceptance, a Transmission Project Interconnection Agreement; and constructing, or arranging for the construction of, all required Network Upgrade Facilities; *provided, however*, if the Developer began the interconnection process in Attachment X of the OATT or the transmission expansion process in Sections 3.7 or 4.5 of the OATT prior to the effective date of the Transmission Interconnection Procedures, the Developer shall satisfy the requirements of the Transmission Interconnection Procedures in accordance with the transition rules in Section 22.3.3 of Attachment P of the OATT..

If the NYISO determines that the proposed interconnection of a "Transmission Project" under Attachment P could affect the Transmission Project under this Agreement, the Developer

shall participate in the Transmission Interconnection Procedures as an Affected System Operator in accordance with the requirements set forth in Section 22.4.4 of Attachment P. If the NYISO determines that the proposed interconnection of a “Large Generating Facility,” “Small Generating Facility,” or “Merchant Transmission Facility” under Attachments X or Z of the OATT could affect the Transmission Project, the Developer shall participate in the interconnection process as an Affected System Operator in accordance with the requirements set forth in Section 30.3.5 of Attachment X of the OATT. If the NYISO determines that a proposed transmission expansion under Sections 3.7 and 4.5 of the OATT could affect the Transmission Project, the Developer shall participate in the transmission expansion process as an affected Transmission Owner in accordance with the requirements set forth in Sections 3.7 and 4.5 of the OATT.

4.2. Interconnection with Affected System

If part of the Transmission Project will affect the facilities of an Affected System as determined in Attachment P of the OATT, the Developer shall satisfy the requirements of the Affected System Operator for the interconnection of the Transmission Project.

4.3. Coordination of Interregional Transmission Project

If the Transmission Project is or seeks to become an Interregional Transmission Project selected by the NYISO and by the transmission provider in one or more neighboring transmission planning region(s) to address an identified Public Policy Transmission Need, the Developer shall coordinate its development and construction of the Transmission Project in New York with its responsibilities in the relevant neighboring transmission planning region(s) and must satisfy the applicable planning requirements of the relevant transmission planning region(s).

ARTICLE 5. OPERATION REQUIREMENTS FOR THE TRANSMISSION PROJECT

If the Developer is a Transmission Owner, the Developer shall comply with the operating requirements set forth in the ISO/TO Agreement. If the Developer is not a Transmission Owner, the Developer shall: (i) execute, and/or obtain a FERC accepted, interconnection agreement for the Transmission Project in accordance with the requirements in Attachment P of the OATT; (ii) satisfy the applicable requirements set forth in the interconnection agreement and ISO Procedures for the safe and reliable operation of the Transmission Project consistent with the Project Description set forth in Appendix A by the In-Service Date, including satisfying all applicable testing, metering, communication, system protection, switching, start-up, and synchronization requirements; (iii) enter into required operating protocols as determined by the NYISO; (iv) register with NERC as a Transmission Owner, be certified as a Transmission Operator unless otherwise agreed by the Parties, and comply with all NERC Reliability Standards and Applicable Reliability Requirements applicable to Transmission Owners and Transmission Operators; and (v) prior to energizing the Transmission Project, execute an operating agreement with the NYISO.

ARTICLE 6. INSURANCE

The Developer shall, at its own expense, maintain in force throughout the period of this Agreement, and until released by the NYISO, the following minimum insurance coverages, with insurers authorized to do business in the state of New York and rated “A- (minus) VII” or better by A.M. Best & Co. (or if not rated by A.M. Best & Co., a rating entity acceptable to the NYISO):

6.1 Workers’ Compensation and Employers’ Liability Insurance providing statutory benefits in accordance with the laws and regulations of New York State under NCCI Coverage Form No. WC 00 00 00, as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO; *provided, however*, if the Transmission Project will be located in part outside of New York State, Developer shall maintain such Employers’ Liability Insurance coverage with a minimum limit of One Million Dollars (\$1,000,000).

6.2 Commercial General Liability Insurance – under ISO Coverage Form No. CG 00 01 (04/13), as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO – with minimum limits of Two Million Dollars (\$2,000,000) per occurrence/Four Million Dollars (\$4,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

6.3 Commercial Business Automobile Liability Insurance – under ISO Coverage Form No. CA 00 01 10 13, as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO – for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.

6.4 Umbrella/Excess Liability Insurance over and above the Employers’ Liability, Commercial General Liability, and Commercial Business Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty-Five Million Dollars (\$25,000,000) per occurrence/Twenty-Five Million Dollars (\$25,000,000) aggregate.

6.5 Builder’s Risk Insurance in a reasonably prudent amount consistent with Good Utility Practice.

6.6 The Commercial General Liability Insurance, Commercial Business Automobile Liability Insurance and Umbrella/Excess Liability Insurance policies of the Developer shall name the NYISO and its respective directors, officers, agents, servants and employees (“NYISO Parties”) as additional insureds. For Commercial General Liability Insurance, the Developer shall name the NYISO Parties as additional insureds under the following ISO form numbers, as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO: (i) ISO Coverage Form No. CG 20 37 04 13 (“Additional Insured – Owners, Lessees or Contractors – Completed Operations”) and (ii) (A) ISO Coverage Form No. CG 20 10 04 13 (“Additional Insured – Owner, Lessees or Contractors – Scheduled Person or Organization”), or (B) ISO Coverage Form No. CG 20 26 04 13 (“Additional Insured – Designated Person or Organization”). For Commercial Business Automobile Liability Insurance, the Developer shall

name the NYISO Parties as additional insureds under ISO Coverage Form No. CA 20 48 10 13 (“Designated Insured for Covered Autos Liability Coverage”), as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO.

6.7 All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the NYISO Parties and provide thirty (30) Calendar days advance written notice to the NYISO Parties prior to non-renewal, cancellation or any material change in coverage or condition.

6.8 The Commercial General Liability Insurance, Commercial Business Automobile Liability Insurance and Umbrella/Excess Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer’s liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. The Developer shall be responsible for its respective deductibles or retentions.

6.9 The Commercial General Liability Insurance, Commercial Business Automobile Liability Insurance and Umbrella/Excess Liability Insurance policies, if written on a Claims First Made Basis in a form acceptable to the NYISO, shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of an extended reporting period (ERP) or a separate policy, if agreed by the Developer and the NYISO.

6.10 The requirements contained herein as to the types and limits of all insurance to be maintained by the Developer are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Developer under this Agreement.

6.11 The Developer shall provide certification of all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer: (A) within ten (10) days following: (i) execution of this Agreement, or (ii) the NYISO’s date of filing this Agreement if it is filed unexecuted with FERC, and (B) as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within thirty (30) days thereafter.

6.12 Notwithstanding the foregoing, the Developer may self-insure to meet the minimum insurance requirements of Articles 6.2 through 6.10 to the extent it maintains a self-insurance program; *provided that*, the Developer’s senior debt is rated at investment grade, or better, by Standard & Poor’s and that its self-insurance program meets the minimum insurance requirements of Articles 6.2 through 6.10. For any period of time that the Developer’s senior debt is unrated by Standard & Poor’s or is rated at less than investment grade by Standard & Poor’s, the Developer shall comply with the insurance requirements applicable to it under Articles 6.2 through 6.11. In the event that the Developer is permitted to self-insure pursuant to this Article 6.12, it shall notify the NYISO that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Article 6.11.

6.13 The Developer and the NYISO agree to report to each other in writing as soon as

practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Agreement.

6.14 Notwithstanding the minimum insurance coverage types and amounts described in this Article 6, the Developer: (i) shall also maintain any additional insurance coverage types and amounts required under Applicable Laws and Regulations, including New York State law, and under Good Utility Practice for the work performed by the Developer and its subcontractors under this Agreement, and (ii) shall satisfy the requirements set forth in Articles 6.6 through 6.13 with regard to the additional insurance coverages, including naming the NYISO Parties as additional insureds under these policies.

ARTICLE 7. BREACH AND DEFAULT

7.1. Breach

A Breach of this Agreement shall occur when: (i) the Developer notifies the NYISO in writing that it will not proceed to develop the Transmission Project for reasons other than those set forth in Articles 8.1(i) through (iv); (ii) the Developer fails to meet a Critical Path Milestone, as the milestone may be extended with the agreement of the NYISO under Article 3.3.4 of this Agreement, set forth in the Development Schedule in Appendix C to this Agreement; (iii) the Developer makes a Significant Modification to the Transmission Project without the prior written consent of the NYISO; (iv) the Developer fails to pay a monthly invoice within the timeframe set forth in Article 3.6; (v) the Developer misrepresents a material fact of its representations and warranties set forth in Article 12; (vi) a Party assigns this Agreement in a manner inconsistent with the terms of Article 10 of this Agreement; (vii) the Developer fails to comply with any other material term or condition of this Agreement; (viii) a custodian, receiver, trustee or liquidator of the Developer, or of all or substantially all of the assets of the Developer, is appointed in any proceeding brought by the Developer; or (ix) any such custodian, receiver, trustee, or liquidator is appointed in any proceeding brought against the Developer that is not discharged within ninety (90) Days after such appointment, or if the Developer consents to or acquiesces in such appointment. A Breach shall not occur as a result of a Force Majeure event in accordance with Article 15.5. A Breach shall also not occur as a result of a delay caused by a Connecting Transmission Owner or an Affected System Operator.

7.2. Default

Upon a Breach, the non-Breaching Party shall give written notice of the Breach to the Breaching Party describing in reasonable detail the nature of the Breach and, where known and applicable, the steps necessary to cure such Breach, including whether and what such steps must be accomplished to complete the Transmission Project by the Required Project In-Service Date. The Breaching Party shall have thirty (30) Calendar Days from receipt of the Breach notice to cure the Breach, or such other period of time as may be agreed upon by the Parties, which agreement the NYISO will not unreasonably withhold, condition, or delay if it determines a longer cure period will not threaten the Developer's ability to complete the Transmission Project by the Required Project In-Service Date; *provided, however*, that if the Breach is the result of a Developer's inability or failure to meet a Critical Path Milestone, the Developer may only cure the Breach if either: (i) it meets the Critical Path Milestone within the cure period and

demonstrates to the NYISO's satisfaction that, notwithstanding its failure to timely meet the Critical Path Milestone, the Transmission Project will achieve its In-Service Date no later than the Required Project In-Service Date, or (ii) the Developer requests in writing within the cure period, and the NYISO consents to, a change to the missed Critical Path Milestone in accordance with Article 3.3.4. If the Breach is cured within such timeframe, the Breach specified in the notice shall cease to exist. If the Breaching Party does not cure its Breach within this timeframe or cannot cure the Breach in a manner that provides for the Transmission Project to be completed by the Required Project In-Service Date, the non-Breaching Party shall have the right to declare a Default and terminate this Agreement pursuant to Article 8.1.

7.3. Remedies

Upon the occurrence of an event of Default, the non-defaulting Party shall be entitled: (i) to commence an action to require the defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof; and (ii) to exercise such other rights and remedies as it may have in equity or at law; *provided, however,* the defaulting Party's liability under this Agreement shall be limited to the extent set forth in Article 9.1. No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies. This Article 7.3 shall survive the termination, expiration, or cancellation of this Agreement.

ARTICLE 8. TERMINATION

8.1. Termination by the NYISO

The NYISO may terminate this Agreement by providing written notice of termination to the Developer in the event that: (i) the Developer notifies the NYISO that it is unable to or has not received the required approvals or authorizations by Governmental Authorities required to develop, construct, and operate the Transmission Project by the Required Project In-Service Date; (ii) the Developer notifies the NYISO that its required approvals or authorizations by Governmental Authorities have been withdrawn by the Governmental Authorities; (iii) the Developer cannot complete the Transmission Project by the Required Project In-Service Date for any reason: (A) including the occurrence of a Force Majeure event that will prevent the Developer from completing the Transmission Project by the Required Project In-Service Date, but (B) excluding a delay caused by a Connecting Transmission Owner or an Affected System Operator; or (iv) the NYISO declares a default pursuant to Article 7.2 of this Agreement.

If the NYISO identifies grounds for termination under Articles 8.1(iii) or (iv) or receives notice from the Developer under Articles 8.1(i) or (ii), the NYISO may, prior to providing a written notice of termination, take action in accordance with Section 31.4.12.3.1.3 of Attachment Y of the OATT to address the Public Policy Transmission Need and, notwithstanding the confidentiality provisions in Article 11.2, may disclose information regarding the Transmission Project to Governmental Authorities as needed to implement such action. If the NYISO decides to terminate this Agreement under Article 8.1(i), (ii), (iii), or (iv), it will provide written notice of

termination to the Developer, which notice will specify the date of termination. If the Agreement was filed and accepted by FERC pursuant to Section 31.4.12.2 of Attachment Y of the OATT, the NYISO will, following its provision of a notice of termination to the Developer, promptly file with FERC for its acceptance a notice of termination of this Agreement.

In the event of termination under Articles 8.1 (i) or (ii), the Developer may be eligible for cost recovery under the OATT in the manner set forth in Attachment Y of the OATT. In the event of termination under Articles 8.1(iii) or (iv), cost recovery may be permitted as determined by FERC. In the event of termination for any reason under this Article 8.1, the Developer shall use commercially reasonable efforts to mitigate the costs, damages, and charges arising as a consequence of termination and any transfer or winding up of the Transmission Project.

8.2. Reporting of Inability to Comply with Provisions of Agreement

Notwithstanding the notification requirements in Article 3 and this Article 8 of this Agreement, each Party shall notify the other Party promptly upon the notifying Party becoming aware of its inability to comply with any provision of this Agreement. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply.

8.3. Transmission Project Transfer Rights Upon Termination

If the NYISO terminates this Agreement pursuant to Article 8.1, the NYISO shall have the right, but shall not be required, to request an entity other than the Developer to complete the Transmission Project. The NYISO may exercise this right by providing the Developer with written notice within sixty (60) days after the date on which this Agreement is terminated. If the NYISO exercises its right under this Article 8.3 and Section 31.4.12.3.1.3 of Attachment Y of the OATT, the Developer shall work cooperatively with the NYISO's designee pursuant to the requirements set forth in Section 31.4.12.3.1.4 of Attachment Y of the OATT to implement the transition, including entering into good faith negotiations with the NYISO's designee to transfer the Transmission Project to the NYISO's designee. All liabilities under this Agreement existing prior to such transfer shall remain with the Developer, unless otherwise agreed upon by the Developer and the NYISO's designee as part of their good faith negotiations regarding the transfer. This Article 8.3 shall survive the termination, expiration, or cancellation of this Agreement.

ARTICLE 9. LIABILITY AND INDEMNIFICATION

9.1. Liability

Notwithstanding any other provision in the NYISO's tariffs and agreements to the contrary, neither Party shall be liable, whether based on contract, indemnification, warranty, equity, tort, strict liability, or otherwise, to the Other Party or any Transmission Owner, NYISO Market Participant, third party or any other person for any damages whatsoever, including, without limitation, direct, incidental, consequential (including, without limitation, attorneys' fees and litigation costs), punitive, special, multiple, exemplary, or indirect damages arising or

resulting from any act or omission under this Agreement, except in the event the Party is found liable for gross negligence or intentional misconduct in the performance of its obligations under this Agreement, in which case the Party's liability for damages shall be limited only to direct actual damages. This Article 9.1 shall survive the termination, expiration, or cancellation of this Agreement.

9.2. Indemnity

Notwithstanding any other provision in the NYISO's tariffs and agreements to the contrary, each Party shall at all times indemnify and save harmless, as applicable, the other Party, its directors, officers, employees, trustees, and agents or each of them from any and all damages (including, without limitation, any consequential, incidental, direct, special, indirect, exemplary or punitive damages and economic costs), losses, claims, including claims and actions relating to injury to or death of any person or damage to property, liabilities, judgments, demands, suits, recoveries, costs and expenses, court costs, attorney and expert fees, and all other obligations by or to third parties, arising out of, or in any way resulting from this Agreement, *provided, however*, that the Developer shall not have any indemnification obligation under this Article 9.2 with respect to any loss to the extent the loss results from the negligence or intentional misconduct of the NYISO; *provided, further*, that the NYISO shall not have any indemnification obligation under this Article 9.2 with respect to any loss to the extent the loss results from the negligence or intentional misconduct of the Developer. This Article 9.2 shall survive the termination, expiration, or cancellation of this Agreement.

ARTICLE 10. ASSIGNMENT

This Agreement may be assigned by a Party only with the prior written consent of the other Party; *provided that*:

- (i) any Change of Control shall be considered an assignment under this Article 10 and shall require the other Party's prior written consent;
- (ii) an assignment by the Developer shall be contingent upon the Developer or assignee demonstrating to the satisfaction of the NYISO prior to the effective date of the assignment that: (A) the assignee has the technical competence, financial ability, and materials, equipment, and plans to comply with the requirements of this Agreement and to construct and place in service the Transmission Project by the Required Project In-Service Date consistent with the assignor's cost estimates for the Transmission Project; and (B) the assignee satisfies the requirements for a qualified developer pursuant to Section 31.4.4 of Attachment Y of the OATT; and
- (iii) the Developer shall have the right to assign this Agreement, without the consent of the NYISO, for collateral security purposes to aid in providing financing for the Transmission Project and shall promptly notify the NYISO of any such assignment; *provided, however*, that such assignment shall be subject to the following: (i) prior to or upon the exercise of the secured creditor's, trustee's, or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee, or the mortgagee will notify the NYISO of the date and particulars of any such exercise of assignment right(s),

and (ii) the secured creditor, trustee, or mortgagee must demonstrate to the satisfaction of the NYISO that any entity that it proposes to complete the Transmission Project meets the requirements for the assignee of a Developer described in Article 10(ii).

For all assignments by any Party, the assignee must assume in a writing, to be provided to the other Party, all rights, duties, and obligations of the assignor arising under this Agreement, including the insurance requirements in Article 6 of this Agreement. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reasons thereof, absent the written consent of the other Party. Where required, consent to assignment will not be unreasonably withheld, conditioned, or delayed. Any attempted assignment that violates this Article 10 is void and ineffective, is a Breach of this Agreement under Article 7.1 and may result in the termination of this Agreement under Articles 8.1 and 7.2.

ARTICLE 11. INFORMATION EXCHANGE AND CONFIDENTIALITY

11.1. Information Access

Subject to Applicable Laws and Regulations, each Party shall make available to the other Party information necessary to carry out obligations and responsibilities under this Agreement and Attachment Y of the OATT. The Parties shall not use such information for purposes other than to carry out their obligations or enforce their rights under this Agreement or Attachment Y of the OATT.

11.2. Confidentiality

11.2.1. Confidential Information shall mean: (i) all detailed price information and vendor contracts; (ii) any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential Information"; and (iii) information designated as Confidential Information by the NYISO Code of Conduct contained in Attachment F of the OATT; *provided, however*, that Confidential Information does not include information: (i) in the public domain or that has been previously publicly disclosed; (ii) required by an order of a Governmental Authority to be publicly submitted or divulged (after notice to the other Party); or (iii) necessary to be divulged in an action to enforce this Agreement.

11.2.2. The NYISO shall treat any Confidential Information it receives in accordance with the requirements of the NYISO Code of Conduct contained in Attachment F of the OATT. If the Developer receives Confidential Information, it shall hold such information in confidence, employing at least the same standard of care to protect the Confidential Information obtained from the NYISO as it employs to protect its own Confidential Information. Each Party shall not disclose the other Party's Confidential Information to any third party or to the public without the prior written authorization of the Party providing the information, except: (i) to the extent required for the Parties to perform their obligations under this Agreement, the ISO Tariffs, ISO Related Agreements, or ISO Procedures, or (ii) to fulfill legal or regulatory requirements, provided that if the Party must submit the information to a Governmental Authority in response to a request by the

Governmental Authority on a confidential basis, the Party required to disclose the information shall request under applicable rules and regulations that the information be treated as confidential and non-public by the Governmental Authority.

ARTICLE 12. REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1. General

The Developer makes the following representations, warranties, and covenants, which are effective as to the Developer during the full time this Agreement is effective:

12.2. Good Standing

The Developer is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable. The Developer is qualified to do business in the state or states in which the Transmission Project is located. The Developer has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and to perform and carry out covenants and obligations on its part under and pursuant to this Agreement.

12.3. Authority

The Developer has the right, power, and authority to enter into this Agreement, to become a Party hereto, and to perform its obligations hereunder. This Agreement is a legal, valid, and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

12.4. No Conflict

The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of the Developer, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon the Developer or any of its assets.

12.5. Consent and Approval

The Developer has sought or obtained, or, in accordance with this Agreement will seek or obtain, such consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this Agreement, and it will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

12.6. Compliance with All Applicable Laws and Regulations

The Developer will comply with all Applicable Laws and Regulations, including all approvals, authorizations, orders, and permits issued by any Governmental Authority; all Applicable Reliability Requirements, and all applicable Transmission Owner Technical Standards in the performance of its obligations under this Agreement.

ARTICLE 13. DISPUTE RESOLUTION

If a dispute arises under this Agreement, the Parties shall use the dispute resolution process described in Article 11 of the NYISO's Services Tariff, as such process may be amended from time to time. Notwithstanding the process described in Article 11 of the NYISO's Services Tariff, the NYISO may terminate this Agreement in accordance with Article 8 of this Agreement.

ARTICLE 14. SURVIVAL

The rights and obligations of the Parties in this Agreement shall survive the termination, expiration, or cancellation of this Agreement to the extent necessary to provide for the determination and enforcement of said obligations arising from acts or events that occurred while this Agreement was in effect. The remedies and rights and obligation upon termination provisions in Articles 7.3 and 8.3 of this Agreement, the liability and indemnity provisions in Article 9, and the billing and payment provisions in Article 3.6 of this Agreement shall survive termination, expiration, or cancellation of this Agreement.

ARTICLE 15. MISCELLANEOUS

15.1. Notices

Any notice or request made to or by any Party regarding this Agreement shall be made to the Parties, as indicated below:

NYISO:

[Insert contact information.]

Developer:

[Insert contact information.]

15.2. Entire Agreement

Except as described below in this Section 15.2, this Agreement, including all Appendices attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings of agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligation under this

Agreement.

Notwithstanding the foregoing, this Agreement is in addition to, and does not supersede or limit the Developer's and NYISO's rights and responsibilities, under any interconnection agreement(s) entered into by and among the NYISO, Developer, and Connecting Transmission Owner(s) for the Transmission Project to interconnect to the New York State Transmission System, as such interconnection agreements may be amended, supplemented, or modified from time to time.

15.3. Cost Recovery

The Developer may recover the costs of the Transmission Project in accordance with the cost recovery requirements in the ISO Tariffs.

15.4. Binding Effect

This Agreement, and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties hereto.

15.5. Force Majeure

A Party that is unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party in writing as soon as reasonably practicable after the occurrence of the Force Majeure event and no later than the timeframe set forth in Article 3.3.3(i) if the Force Majeure event will result in a potential delay for the Developer to meet a Critical Path Milestone. If the notifying Party is the Developer, it shall indicate in its notice whether the occurrence of a Force Majeure event has the potential to delay its meeting one or more Critical Path Milestones and/or completing the Transmission Project by the Required Project In-Service Date. If the Force Majeure will delay the Developer's ability to meet one or more Critical Path Milestones, the Developer shall request with its notice a change to the impacted milestones in accordance with the requirements in Section 3.3.4 and must satisfy the requirements in Section 3.3.4 to change any Critical Path Milestones. A Party shall not be responsible for any non-performance or considered in Breach or Default under this Agreement, for any failure to perform any obligation under this Agreement to the extent that such failure is due to Force Majeure and will not delay the Developer's ability to complete the Transmission Project by the Required Project In-Service Date. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises reasonable efforts to alleviate such situation. As soon as the nonperforming Party is able to resume performance of its obligations excused because of the occurrence of Force Majeure, such Party shall resume performance and give prompt notice thereof to the other Party. In the event that Developer will not be able to complete the Transmission Project by the Required Project In-Service Date because of the occurrence of Force Majeure, the NYISO may terminate this Agreement in accordance with Section 8.1 of this Agreement.

15.6. Disclaimer

Except as provided in this Agreement, the Parties make no other representations,

warranties, covenants, guarantees, agreements or promises regarding the subject matter of this Agreement.

15.7. No NYISO Liability for Review or Approval of Developer Materials

No review or approval by the NYISO or its subcontractor(s) of any agreement, document, instrument, drawing, specifications, or design proposed by the Developer nor any inspection carried out by the NYISO or its subcontractor(s) pursuant to this Agreement shall relieve the Developer from any liability for any negligence in its preparation of such agreement, document, instrument, drawing, specification, or design, or its carrying out of such works; or for its failure to comply with the Applicable Laws and Regulations, Applicable Reliability Requirements, and Transmission Owner Technical Standards with respect thereto, nor shall the NYISO be liable to the Developer or any other person by reason of its or its subcontractor's review or approval of an agreement, document, instrument, drawing, specification, or design or such inspection.

15.8. Amendment

The Parties may by mutual agreement amend this Agreement, including the Appendices to this Agreement, by a written instrument duly executed by both of the Parties. If the Agreement was filed and accepted by FERC pursuant to Section 31.4.12.2 of Attachment Y of the OATT, the NYISO shall promptly file the amended Agreement for acceptance with FERC.

15.9. No Third Party Beneficiaries

With the exception of the indemnification rights of the NYISO's directors, officers, employees, trustees, and agents under Article 9.2, this Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and their permitted assigns.

15.10. Waiver

The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Any waiver of this Agreement shall, if requested, be provided in writing.

15.11. Rules of Interpretation

This Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this Agreement), document, instrument or tariff means such

agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this Agreement, such Appendix to this Agreement, or such Section of this Agreement, as the case may be; (6) “hereunder”, “hereof”, “herein”, “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, “from” means “from and including”, “to” means “to but excluding” and “through” means “through and including”.

15.12. Severability

Each provision of this Agreement shall be considered severable and if, for any reason, any provision is determined by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated, and such invalid, void, or unenforceable provision should be replaced with valid and enforceable provision or provisions that otherwise give effect to the original intent of the invalid, void, or unenforceable provision.

15.13. Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original, but all constitute one and the same instrument.

15.14. No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership among the Parties or to impose any partnership obligation or partnership liability upon any Party. No Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or otherwise bind, any other Party.

15.15. Headings

The descriptive headings of the various Articles and Sections of this Agreement have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this Agreement.

15.16. Governing Law

This Agreement shall be governed, as applicable, by: (i) the Federal Power Act, and (ii) the substantive law of the State of New York, without regard to any conflicts of laws provisions thereof (except to the extent applicable, Sections 5-1401 and 5-1402 of the New York General Obligations Law).

15.17. Jurisdiction and Venue

Any legal action or judicial proceeding regarding a dispute arising out of or relating to this Agreement or any performance by either Party pursuant thereto that: (i) is within the primary or exclusive jurisdiction of FERC shall be brought in the first instance at FERC, or (ii) is not within the primary or exclusive jurisdiction of FERC shall be brought in, and fully and finally resolved in, either, as applicable, the courts of the State of New York situated in Albany County, New York or the United States District Court of the Northern District of New York situated in Albany, New York.

IN WITNESS WHEREFORE, the Parties have executed this Agreement in duplicate originals, each of which shall constitute an original Agreement between the Parties.

NYISO

By: _____

Title: _____

Date: _____

[Insert name of Developer]

By: _____

Title: _____

Date: _____

Appendix A
Project Description

Appendix B
Scope of Work

Appendix C Development Schedule

[To be prepared by Developer consistent with the Developer's project information submission, pursuant to Attachment C of the Public Policy Transmission Planning Process Manual, and subject to acceptance by the NYISO, as required by Article 3.3 of this Agreement.]

The Developer shall demonstrate to the NYISO that it timely meets the following Critical Path Milestones and Advisory Milestones and that such milestones remain in good standing.

Critical Path Milestones: *[To be developed with consideration of each of the work plan requirements submitted by the Developer pursuant to Attachment C to the Public Policy Transmission Planning Process Manual and presented herein according to the sequence of the critical path. The NYISO anticipates that the Developer's critical path schedule will include many of the example milestones set forth below and that most of the other example milestones will be included as Advisory Milestones. The composition and sequence of the Critical Path Milestones will differ depending on the Developer's Transmission Project and schedule.]*

Advisory Milestones: *[To include in Development Schedule other milestones (e.g., periodic project review meetings) that are not determined to be on the critical path, but that will be monitored by the Developer and reported to NYISO.]*

[Example Milestones:

- *Interconnection studies (e.g. Optional Feasibility Study, System Impact Study, Facilities Study)*
- *Siting activities (e.g. locating line routing, access roads, and substation site location options)*
- *Environmental impact studies (relative to siting options)*
- *Engineering (initial)*
- *Permitting and regulatory activities (e.g. Certificate of Environmental Compatibility and Public Need)*
- *Public outreach plan*
- *Initiation of negotiation of key contracts and financing*
- *Acquisition of all necessary approvals and authorizations of Governmental Authorities, including identification of all required regulatory approvals*
- *Closing of project financing*

- *Completion of key contracts*
- *Engineering (detailed)*
- *Procurement of major equipment and materials*
- *Environmental management & construction plan (for Article VII certification)*
- *Acquisition of [all or %] required rights of way and property / demonstration of site control*
- *Surveying and geotechnical assessment (relative to line and station layouts)*
- *Execution, or filing of unexecuted version, of interconnection agreement*
- *Engineering (completed)*
- *Delivery of major electrical equipment*
- *Line and substation site work including milestones for foundations, towers, conductor stringing, equipment delivery and installation, substation controls and communication, security, etc.*
- *Construction outage and restoration coordination plan*
- *Completion, verification and testing*
- *Operating and maintenance agreements and instructions*
- *In-Service Date*
- *Required Project In-Service Date]*

Record Content Description, Tariff Record Title, Record Version Number, Option Code:
NYISO OATT, 31.11 OATT Att Y Appendix H - Form of Operating Agreement, 0.0.0, A
Record Narrative Name:
Tariff Record ID: 469
Tariff Record Collation Value: 471296668 Tariff Record Parent Identifier: 373
Proposed Date: 2016-04-01
Priority Order: 500
Record Change Type: NEW
Record Content Type: 1
Associated Filing Identifier: