

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**JOINT PETITION OF DYNEGY INC.,
SITHE/INDEPENDENCE POWER PARTNERS,
L.P., AND VISTRA ENERGY CORP. FOR A
DECLARATORY RULING THAT PUBLIC
SERVICE LAW SECTIONS 70 AND 83 DO NOT
APPLY TO THE PROPOSED MERGER
TRANSACTION, OR IN THE ALTERNATIVE,
FOR APPROVAL OF THE PROPOSED MERGER
TRANSACTION PURSUANT TO SECTIONS 70
AND 83 OF THE PUBLIC SERVICE LAW**

Case 17-M-_____

JOINT PETITION FOR A DECLARATORY RULING

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Date: November 28, 2017

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JOINT PETITION FOR A DECLARATORY RULING

Pursuant to Part 8 of the Rules and Regulations of the Public Service Commission (the “Commission”),¹ Dynegy Inc. (“Dynegy”), Sithe/Independence Power Partners, L.P. (“SIPP”), Vistra Energy Corp. (“Vistra”, and collectively with Dynegy and SIPP, the “Petitioners”) hereby petition the Commission for a declaratory ruling that Sections 70 and 83 of the Public Service Law (“PSL”) do not apply to the parties’ proposed merger transaction, discussed more fully below (“Proposed Transaction”).

Petitioners respectfully submit that the Proposed Transaction constitutes a transfer of the upstream ownership interests of a lightly regulated wholesale merchant generating and steam facility and qualifies for the *Wallkill* presumption.² Alternatively, Petitioners request that the Commission approve the Proposed Transaction pursuant to PSL §§ 70 and 83.

¹ 16 NYCRR Part 8.

² Case 91-E-0350, *Wallkill Generating Company, L.P.*, Order Establishing Regulatory Regime (Apr. 11, 1994) (“*Wallkill Order*”).

Petitioners also request that the current financing approvals and lightened regulation of SIPP continue after the Proposed Transaction.

Petitioners respectfully request that the Commission grant expedited review of this Petition and a ruling granting the relief requested on or before the Commission's February 22, 2018 session so that the Proposed Transaction is not impeded by any undue delay.

I. DESCRIPTION OF PETITIONERS

A. The Dynegy Entities

1. Dynegy

Dynegy is a Delaware corporation and utility holding company that is publicly traded on the New York Stock Exchange under the symbol DYN. Through its public utility subsidiaries, Dynegy controls approximately 27,000 megawatts ("MW") of electric generation in various U.S. markets and produces and sells electric energy, capacity, and ancillary services in U.S. markets. Dynegy does not own or control any traditional franchised utilities with captive customers.

Dynegy indirectly owns an 80% equity stake in Electric Energy, Inc. ("EEInc"). EEInc owns six parallel generation tie lines, which are approximately eight miles long.³ Other than its interest in EEInc, Dynegy does not own or control any transmission facilities other than facilities interconnecting its generation facilities to the grid. Neither Dynegy nor any of its affiliates is a scheduling coordinator, reliability coordinator, retail marketer, electric or gas transmission or distributed provider within (or into) the New York Independent System Operator, Inc. ("NYISO") balancing area authority or has control over the provision of fuels used in generation within New York State.

³ Because the lines could conceivably be used by an unaffiliated third-party for transmission service, the Federal Energy Regulatory Commission ("FERC") has required EEInc to file an open access transmission tariff but has granted waivers of certain other transmission owner requirements. *See Elec. Energy, Inc.*, 144 FERC ¶ 61,028 (2013); *Elec. Energy, Inc.*, 147 FERC ¶ 61,082 (2014); *Elec. Energy, Inc.*, 125 FERC ¶ 61,365 (2008).

As relevant to this Petition and set forth in Exhibit 1, Dynegy currently owns, or is affiliated with, various companies that own or control approximately 911 MW of generating capacity in the New York Control Area (“NYCA”)⁴; 3,148 MW of generating capacity in the ISO New England, Inc. (“ISO-NE”) control area; and 10,451 MW of generating capacity in the PJM Interconnection, L.L.C. (“PJM”) control area. In NYCA, Dynegy is only affiliated with SIPP, as described in Section I.A.2 below.

2. SIPP

SIPP is a limited partnership organized under the laws of the State of Delaware. SIPP is the owner and operator of a 911 MW co-generation facility located in Oswego, New York within NYISO Zone C (the “Independence Facility”). By virtue of its ownership of the Independence Facility, SIPP is an electric corporation subject to lightened regulations under the PSL.⁵ SIPP also sells steam at retail to a nearby large commercial customer and is also a steam corporation subject to lightened and incidental regulation under the PSL.⁶ SIPP is currently authorized to enter into financing transactions.⁷ In 2002, the Federal Energy Regulatory Commission (“FERC”) granted SIPP status as an exempt wholesale generator (“EWG”) pursuant to Section 32 of the federal Public Utility Holding Company Act of 1935, as amended by the federal

⁴ In New York State most parties use the term “NYCA”. However, the North American Electric Reliability Council currently refers to the NYCA as the New York Balancing Area Authority. For clarity, the designation “NYCA” is used in this petition.

⁵ Case 02-M-1443, *Sithe Independence Power Partners, L.P.*, Order Providing for Lightened and Incidental Regulation and Granting a Certificate of Public Convenience and Necessity (Jan. 23, 2003); Case16-M-0194, *Sithe/Independence Power Partners, L.P.*, Declaratory Ruling on a Transfer Transaction (May 23, 2016) (“2016 Sithe Ruling”) (continuing lightened and incidental regulation and financing approval of SIPP).

⁶ *Id.*

⁷ Case 15-M-0297, *Sithe/Independence Power Partners, L.P.*, Order Approving Financing (Sept. 21, 2015); 2016 Sithe Ruling.

Energy Policy Act of 1992 (“FPA”).⁸ SIPP is also authorized to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates.⁹ SIPP is a wholly-owned and indirect subsidiary of Dynegy.

B. The Vistra Entities

1. Vistra

Vistra is a corporation organized under the laws of the State of Delaware that is publicly traded on the New York State Stock Exchange under the symbol VST. Vistra is the ultimate parent company of, and conducts its principal operations through, Vistra Asset Company, LLC (“Vistra Asset,” a Delaware limited liability company) and Vistra Asset’s wholly or indirectly owned retail electric provider and power generation company subsidiaries. Vistra’s power generation facilities are owned by a number of companies, each of which is certified as an EWG. Each of those companies are wholly owned subsidiaries of Vistra Asset, except for Luminant Generation Company LLC (“Luminant”), which has a number of power plants located solely in the Electric Reliability Council of Texas (“ERCOT”).

Vistra does not own or control any transmission facilities other than facilities interconnecting its electric generation assets to the grid.

Vistra does not own or control any generating capacity in the NYCA. However, Vistra is affiliated with companies that own or control approximately 964 MW of generating capacity in the NYCA. In addition, Vistra is affiliated with companies that own or control approximately

⁸ *Sithe/Independence Power Partners, L.P.*, 101 FERC ¶ 61,287 (2002).

⁹ *Sithe/Independence Power Partners, L.P.*, 101 FERC ¶ 61,210 (2002).

1,691 MW of generating capacity in the ISO-NE control area, and 1,153 MW of generating capacity in the PJM control area.¹⁰

In the NYCA, Vistra is affiliated with the companies described in Section I.B.2.a. below.

2. Brookfield Asset Management Private Institutional Capital Adviser (Canada), L.P. (“Brookfield”)

Brookfield owns or controls the right to vote approximately 15.5% of the outstanding voting shares of Vistra. Brookfield’s ultimate upstream parent is Brookfield Asset Management Inc. (“BAM”), an Ontario corporation with its principal place of business in Toronto, Ontario, Canada. BAM is a global alternative asset manager focused on property, renewable power, infrastructure assets, and private equity. BAM is a publicly traded company listed on the Toronto Stock Exchange, New York Stock Exchange, and Euronext Amsterdam under the symbols BAM.A, BAM, and BAMA, respectively.

BAM’s subsidiaries own generation across the United States and Canada, and in countries outside of North America. Orion US Holdings 1 L.P., an indirect, partially owned subsidiary of Brookfield Renewable Partners L.P., a Bermuda limited partnership which is publicly traded on the Toronto Stock Exchange and New York Stock Exchange under the symbols BEP.UN and BEP, respectively, recently acquired 51 percent of the Class A voting common stock in TerraForm Power, Inc. (“TerraForm”), which has generation in the NYCA, ISO-NE, and PJM control areas, as well as other markets in the United States and Canada.¹¹

¹⁰ References to generation megawatts generally refer to summer ratings as reported by the Energy Information Administration, Annual Electric Generator data, Form EIA- 860 (<http://www.eia.gov/electricity/data/eia860/>), NYISO Gold Book or company information. These ratings may not precisely match the generator ratings used for other purposes.

¹¹ *Bishop Hill Energy LLC*, 160 FERC ¶ 62,162 (2015).

a. NYCA Assets

Brookfield's affiliates own approximately 964 MW of generating capacity in the NYCA, as identified below. *See generally* Exhibit 2.

- Carr Street Generating Station, L.P. ("Carr Street") – Carr Street owns and operates an 88.5 MW gas-fired combined cycle cogeneration facility located in East Syracuse, New York.¹²
- Erie Boulevard Hydropower, L.P. ("Erie Boulevard") – Erie Boulevard directly owns and operates 73 hydroelectric facilities in New York State with a combined generating capacity of 679.3 MW. Erie Boulevard also owns the interests in West Delaware and FH Opco, as described below.¹³
- West Delaware Hydro Associates L.P. ("West Delaware") – West Delaware owns and operates the West Delaware Tunnel Project in Sullivan County, New York, which is a 7 MW qualifying facility ("QF") in the NYCA.
- FH Opco LLC ("FH Opco") – FH Opco owns and operates the Glens Falls facility, a 13.8 MW QF located in Glens Falls, New York.
- Canandaigua Power Partners, LLC ("CPP") and Canandaigua Power Partners II, LLC ("CPP II") – CPP owns the Cohocton Wind Project, an 87.5 MW wind-powered generating facility located in Steuben County, New York, which is interconnected with the transmission system of New York State Electric and Gas Corporation ("NYSEG"). CPP II owns and operates the Dutch Hill Wind Project, a 37.5 MW wind-powered

¹² Case 98-E-1670, *Carr Street Generating Station, L.P.*, Order Providing for Lightened Regulation (Apr. 23, 1999).

¹³ Case 99-E-0679, *Erie Boulevard Hydropower, L.P.*, Order Providing for Lightened Regulation (June 28, 1999) ("June Order"); *Id.*, Approved as Recommended and So Ordered (Sept. 23, 1999) (adopting June Order on permanent basis).

generating facility located in Steuben County, New York, which is interconnected, through interconnection facilities owned by the Cohocton Wind Project as described above, with the NYSEG transmission system.¹⁴

- Niagara Wind Power, LLC (“Niagara Wind”) and Erie Wind, LLC (“Erie Wind”) – Niagara Wind owns the Steel Winds Wind Farm (“Steel Winds”), a 20 MW wind-powered, electric generating facility, and Erie Wind owns Steel Winds II, a 15 MW wind-powered, electric generating facility – both located in Erie County, New York.¹⁵ Steel Wind and Steel Winds II have each received a declaratory ruling from the Commission that they are QFs, and not electric corporations within the meaning of PSL § 2(13).¹⁶
- TerraForm also indirectly owns miscellaneous QFs that range in size and configuration from less than 1 MW residential rooftop solar photovoltaic (“PV”) projects (behind the meter) to 20 MW solar PV projects that sell to utilities or commercial and industrial buyers. The generating capacity associated with these facilities is committed to unaffiliated third-party purchasers. These facilities represent approximately 15.1 MW in the NYCA.

¹⁴ Case 14-E-0509, *First Wind Holdings, LLC, et al.*, Declaratory Ruling on Review of an Acquisition Transaction (Jan. 13, 2015).

¹⁵ *Id.*

¹⁶ Case 06-E-01203, *Steel Winds Project LLC and Steel Winds LLC*, Declaratory Ruling on Electric Corporation Jurisdiction (Dec. 13, 2006) (Steel Winds); Case 10-E-0260, *Steel Winds LLC, Niagara Wind Power LLC, and Erie Wind LLC*, Declaratory Ruling on Restoration of Qualifying Facility Status (July 19, 2010) (Steel Winds II).

b. Assets in ISO-NE and PJM Control Areas

Brookfield's affiliates own approximately 1,691 MW of generating capacity in the ISO-NE control area and 1,153 MW of generating capacity in the PJM control area. *See generally Exhibit 2.*

II. THE PROPOSED TRANSACTION

On October 30, 2017, Dynegy and Vistra entered into an Agreement and Plan of Merger ("Merger Agreement"). Under the terms of the Merger Agreement, Dynegy will merge with and into Vistra in an all-stock transaction, with Vistra being the surviving corporation. At the effective time of the merger, each eligible share of common stock of Dynegy will automatically be converted into the right to receive 0.652 shares of Vistra common stock. As a result of the merger, all of the eligible Dynegy stock will be converted into shares of Vistra common stock and will cease to exist in accordance with the terms of the Merger Agreement. As a result of the merger, Vistra shareholders will own approximately 79% of the combined company and Dynegy shareholders will own approximately 21% of the combined company.

Petitioners request an expedited decision on the petition so that the closing of the Proposed Transaction may occur on a timely basis. The Proposed Transaction, which is structured as a straightforward all-stock merger (subject to typical conditions such as obtaining all necessary regulatory approvals, compliance with all covenants, and the continuing applicability of warranties and representations), is scheduled to close in the second quarter of 2018.

Pre- and post-transaction corporate organizational charts are attached at Exhibit 3.

III. DISCUSSION

A. The Proposed Transaction Qualifies for the *Wallkill* Presumption

Section 70(1) of the PSL provides that “[n]o . . . electric corporation shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the commission.” PSL § 70(1) has been construed to apply to situations in which a person or corporation purchases a sufficient interest in an electric corporation, through the acquisition of stock or otherwise, to achieve control of the electric corporation.¹⁷ PSL § 70(4) prohibits a company or limited liability partnership from acquiring more than 10% “of the voting capital stock issued by any . . . electric corporation organized or existing under or by virtue of the laws of [New York]” unless authorized to do so by the Commission. PSL § 83 contains similar provisions applicable to steam corporations.

The Commission has determined that PSL § 70 applies to stock acquisitions and ownership transfers occurring at a holding company (*i.e.*, upstream) level.¹⁸ However, in *Wallkill*, the Commission established a presumption that PSL § 70 oversight would not apply to the upstream transfer of ownership interests in lightly regulated wholesale electric generation facilities (such as SIPP) where, as here, there is little potential for harm to captive ratepayers:

[I]t will be presumed that § 70 regulation does not adhere to transfer of ownership interests in entities upstream from the parents of the New York competitive electric generation

¹⁷ See, e.g., Case 07-E-1385, *Calpine Corp. and LS Power Development*, Declaratory Ruling on Review of Stock Transfer and Acquisition Transactions (Jan. 22, 2008) (“Calpine/LS Power Ruling”).

¹⁸ See *Wallkill* Order; Case 09-E-0470, *T. Rowe Price Associates, Inc.*, Declaratory Ruling on Review of Stock Transfer Transactions (Jul. 21, 2009); Case 08-E-0850, *Harbinger Capital Partners Master Fund I, Ltd. et al.*, Declaratory Ruling on Review of Stock Transfer Transactions (Sept. 19, 2008); Calpine/LS Power Ruling.

subsidiary, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption.¹⁹

SIPP is both a lightly regulated electric corporation and a lightly regulated steam corporation. The Commission has determined that treatment of lightly regulated steam corporations “generally follows” the treatment of lightly regulated electric corporations.²⁰ Accordingly, the Commission has applied the *Wallkill* presumption to the electric and steam assets of SIPP itself when it approved the upstream transfer of ownership interests in the Independence Facility from RCSE, LLC and ExRes SHC, Inc. to Dynegey in 2005.²¹ In the 2005 *Sithe* Ruling, the Commission noted that “[b]ecause the transaction [was] accomplished through transfers of stock well upstream from [SIPP], the electric and steam assets subject to PSL . . . jurisdiction [would] remain within [SIPP]’s control.”²² The Commission then interpreted the *Wallkill* presumption to mean that no PSL § 70 regulation would adhere to any upstream stock acquisition or transfer of ownership interests unless a potential for the exercise of horizontal or vertical market power sufficient to override the presumption would arise as a result of the transfer.²³ The Commission has applied this interpretation to numerous other upstream transfers of ownership interests involving both electric and steam assets.²⁴

¹⁹ *Wallkill* Order at 9-10.

²⁰ Case 08-M-0659, *Proceeding on Motion of the Commission Regarding Regulation of Owners of Stock Interests in Electric and Steam Corporations*, Order Establishing Presumption and Closing Proceedings Without Prejudice, at 6, n.8 (Sept. 21, 2010) (stating “treatment of lightly-regulated steam corporations generally follows treatment of lightly-regulated electric corporations”).

²¹ Case 04-E-1364, *Sithe Energies, Inc., et al.*, Declaratory Ruling on Review of Stock Transfers, at 6 (Jan. 14, 2005) (“2005 *Sithe* Ruling”).

²² *Id.* at 6.

²³ *Id.* at 6-9.

²⁴ See, e.g., Case 15-E-0462, *MACH Gen, LLC et. al.*, Declaratory Ruling on Review of a Merger Transaction (Oct. 20, 2015) (“MACH Gen Ruling”); Case 14-M-0491, *EIF Management, LLC et. al.*, Declaratory Ruling on Review of an Acquisition Transaction (Jan. 13, 2015) (“EIF Management Ruling”); Case 03-E-1136, *Sithe Energies, Inc., et al.*, Declaratory Ruling on Review of Ownership Transactions (Oct. 28, 2003); Case 02-E-

It is respectfully submitted that the Proposed Transaction similarly qualifies for the *Wallkill* presumption. The proposed transfer of indirect control over SIPP's generating facilities will occur at the parent (*i.e.*, upstream level) through an all-stock transaction wherein Dynegy will merge with and into Vistra. Furthermore, the Proposed Transaction will not result in the potential to exercise either vertical or horizontal market power.

The Proposed Transaction does not raise any vertical market power issues because neither Dynegy, SIPP, nor Vistra (or Vista's affiliates) have any ownership interests in any monopoly electric transmission or delivery facilities, or control of fuel supplies, fuel delivery systems, or other inputs into the production of generation supply within the NYCA. Thus, there is no threat that the parties to the Proposed Transaction will be able to benefit from the market power of any transmission or distribution utility subject to cost-based regulation by the Commission. The Commission has held that the affiliations between the lightly regulated electric corporations and any retail energy suppliers or power marketers can be adequately supervised under PSL § 110.²⁵

The Proposed Transaction also does not raise any horizontal market power issues. In the 2005 *Sithe* Ruling, the Commission found that a 7% market share did not present an opportunity to exercise horizontal market power.²⁶ The total resource capability in the NYCA for the summer of 2017 was approximately 39,000 MW.²⁷ SIPP has a total installed capacity of

1184, *Sithe Energies, Inc. and Apollo Energy LLC*, Declaratory Ruling on Review of Stock Transaction (Nov. 26, 2002); Case 01-E-1680, *Reliant Resources, Inc. et al.*, Declaratory Ruling on Review of Stock Transfer (Dec. 20, 2001); Case 00-E-1585, *Sithe Energies, Inc. et al.*, Order on Review of Stock Transfer and Other Transactions (Nov. 16, 2000); *Wallkill* Order.

²⁵ See, e.g., MACH Gen Ruling at 5; EIF Management Ruling at 4 (citing Case 11-E-0245, *Exelon Corporation*, Declaratory Ruling on Review of a Stock Transfer Transaction, at 14 (Dec. 20, 2011)); 2016 *Sithe* Ruling at 6.

²⁶ 2005 *Sithe* Ruling at 5-6.

²⁷ *New York Independent System Operator, Inc.*, "2017 Load and Capacity Data" (April 2017) (the "Gold Book") at p. 3.

approximately 911 MW (summer). Affiliates of Vistra currently own or control approximately 964 MW (summer) of generating capacity in the NYCA.²⁸ Following the merger with Dynegy, Vistra and its affiliates will indirectly own or control approximately 1,875 MW (summer) of electric generating capacity – or approximately 4.8% of the NYCA’s installed capacity – which is significantly below levels which the Commission previously found would be insufficient to exercise horizontal market power.²⁹

Nor will the Proposed Transaction enhance the potential to exercise market power in either of the two neighboring control areas, ISO-NE and PJM, as much of the Brookfield affiliates’ generation capacity is committed under long-term contract.³⁰ Importantly, generation in ISO-NE that clears the ISO-NE Forward Capacity Market is required to be offered into both the day-ahead and real-time energy markets in ISO-NE, which would significantly limit Petitioners’ ability to participate in the NYISO energy markets with its affiliated ISO-NE generation.

Furthermore, Petitioners’ affiliated generation accounts for a relatively small share of the total generation capacity in the ISO-NE and PJM markets. Moreover, the amount of power that can theoretically be imported from Petitioners’ affiliated resources into NYCA is limited by existing transmission constraints.³¹

²⁸ Gold Book.

²⁹ See, e.g., *id.*; Case No. 08-E-0410, *LS Power Development LLC*, Declaratory Ruling on the Acquisition of Common Stock, at 8 (May 27, 2008) (declaratory ruling finding that an 8.1% market share did not present an opportunity to exercise market power); Calpine/LS Power Ruling, at 12.

³⁰ Case 17-E-0308, *Canandaigua Power Partners, LLC, et al.*, Declaratory Ruling on Transactions, at 11-12 (Sept. 19, 2017) (“2017 TerraForm Declaratory Ruling”) (“the potential utility of these assets for price manipulation in New York is moderated by existing asset commitments in the ISO-NE and PJM markets.”).

³¹ See Case 11-E-0245, *Exelon Corp. et al.*, Declaratory Ruling on Review of Stock Transfer Transaction, at 11-12 (Dec. 20, 2011) (“Exelon Ruling”) (“[i]mpediments arise at the boundaries where transmission interfaces link the ... markets, because the markets are managed separately by ... independent system operators. Constraints at

The merger of Vistra and Dynegy will have the following impacts on ownership/affiliate concentration in the NYCA and the other control areas:

Control Area	Dynegy Capacity (MW)	Vistra/Affiliates Capacity (MW)	Combined Capacity (MW)	Total Control Area Capacity (MW)	Post-Merger Ownership/Affiliate Concentration
NYCA	911	964	1,875	38,777	4.8%
ISO-NE	3,148	1,691	4,839	29,174	16.59% ³²
PJM	10,451	1,153	11,603	183,089	6.34%

Across NYCA and the two neighboring control areas – ISO-NE and PJM – Petitioners will own or control only about 18,317 MW of the approximately 251,000 MW of generating capacity following the Proposed Transaction, which represents 7.3% of total capacity in these markets. Given that transmission constraints limit transfers between these three control areas, these levels of concentration should not be of concern.³³

Accordingly, the Proposed Transaction has no effect on any other potential means for exercising any other form of market power within New York State, and does not otherwise pose the potential for harm to captive New York ratepayers.

In sum, it is respectfully submitted that the Proposed Transaction, as an upstream stock transfer of ownership interests in steam and electric corporations, with no potential to harm the

the interfaces ... limit the import of generation into the NYISO markets...”); Case 13-E-0450, *Astoria Generating Company, L.P.*, Declaratory Ruling on Review of Transaction, at 5 (Nov. 19, 2013) (recognizing the existence of “transmission constraints that restrict transfers among the markets adjacent to New York.”); 2017 TerraForm Declaratory Ruling, at 12 (“transmission constraints ... reduce the amount of affiliated generation that could be imported into the New York market”); Case 10-E-0454, *GDF SUEZ, S.A. et al.*, Declaratory Ruling on Review of a Merger Transaction, at 5-6 (Nov. 22, 2010) (“GDF SUEZ Ruling”).

³² 788 MW of Brookfield’s capacity is committed under long-term contract. Eliminating this capacity from the calculation reduces the concentration in the ISO-NE control area to 13.9%.

³³ See Exelon Ruling at 11-12 (finding that a 21.3% share of PJM Classic market adjacent to New York and a 14.6% share of the combined PJM Classic and NYISO markets as a result of the merger was insufficient to raise market power concerns within New York because of transmission constraints); MACH Gen Ruling at 6-8 (finding that transaction resulting in aggregate post-transaction market share of 6.94% across NYCA, PJM and ISO-NE control areas satisfies *Wallkill* presumption); Case 10-E-0454, GDF SUEZ Ruling, at 5-6.

interests of captive ratepayers, qualifies for the presumption under the *Wallkill* Order that PSL §§ 70 and 83 oversight does not apply, and the Commission need not review the Proposed Transaction further.

B. Alternatively, the Commission Should Approve the Proposed Transaction

In the alternative, if the Commission finds that review under PSL §§ 70 and 83 is required for the Proposed Transaction, Petitioners request that the Commission approve the Proposed Transaction pursuant to those sections.³⁴ The Proposed Transaction satisfies the public interest requirements in PSL §§ 70 and 83 and will not result in vertical or horizontal market power as demonstrated above. In addition, the Proposed Transaction will result in the merger of two experienced companies with a proven history. The merger with Vistra will accelerate Dynegy's strategic initiatives of strengthening its balance sheet while creating an integrated power company with significant earnings diversification and scale, providing a platform for future growth. Accordingly, the Proposed Transaction is in the public interest and should be approved.

C. Continued Lightened Regulation and Financing Approval

For all the reasons set forth in the 2003 *Sithe* Order and subsequent Commission decisions, SIPP and the Independence Facility should continue to be subject to lightened regulation, and the existing financing approvals issued for the Independence Facility should continue following consummation of the Proposed Transaction.³⁵ The Independence Facility will continue to be owned and operated as a wholesale power plant. Because SIPP will continue

³⁴ To assist the Commission in fulfilling its responsibilities under the State Environmental Quality Review Act, Petitioners have included a short Environmental Assessment Form (Exhibit 4). A proposed SAPA notice, as required by 16 NYCRR § 3.5(i) is also attached as Exhibit 5.

³⁵ See 2003 *Sithe* Order; Case 15-M-0297, *Sithe Independence Power Partners, L.P.*, Order Approving Financing (Sept. 21, 2015); 2016 *Sithe* Ruling.

to own and operate the Independence Facility, and participate exclusively in the wholesale generation market, its status as a lightly regulated entity should continue.

D. Other Approvals

Petitioners are also seeking approval of the Proposed Transaction from FERC under Section 203 of the FPA,³⁶ the Federal Communications Commission, the Public Utility Commission of Texas, and antitrust clearance under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

IV. CONCLUSION

Petitioners respectfully request that the Commission review this Petition in an expedited manner and issue a declaratory ruling that: (i) Sections 70 and 83 of the PSL do not apply to the Proposed Transaction; and (ii) the financing approvals and lightened regulation of SIPP will continue after the Proposed Transaction. Alternatively, Petitioners request that the Commission approve the Proposed Transaction pursuant to Sections 70 and 83 of the PSL.

³⁶ 16 USC § 824b(a)(1).

Respectfully submitted,

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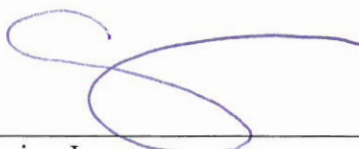
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VERIFICATION

Catherine James, being duly sworn according to law, upon her oath, deposes and says:

1. I am the Executive Vice President and General Counsel of Dynegy Inc., and am authorized to make this Verification on behalf of Dynegy and SIPP.
2. I have read the contents of the foregoing Petition and hereby verify that the statements therein contained are true and accurate to the best of my knowledge and belief as to Dynegy and SIPP.

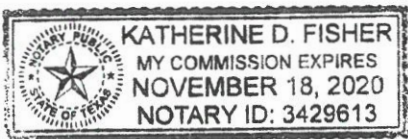


Catherine James

Sworn to and subscribed before me
this 27th day of November, 2017



Notary Public



STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

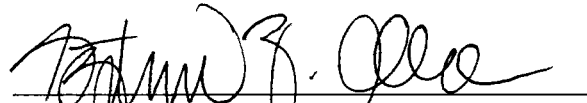
JOINT PETITION OF DYNEGY INC.,
SITHE/INDEPENDENCE POWER PARTNERS,
L.P., AND VISTRA ENERGY CORP. FOR A
DECLARATORY RULING THAT PUBLIC
SERVICE LAW SECTIONS 70 AND 83 DO NOT
APPLY TO THE PROPOSED MERGER
TRANSACTION, OR IN THE ALTERNATIVE,
FOR APPROVAL OF THE PROPOSED MERGER
TRANSACTION PURSUANT TO SECTIONS 70
AND 83 OF THE PUBLIC SERVICE LAW

Case 17 -M- _____

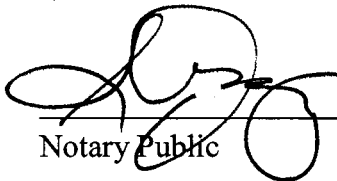
VERIFICATION

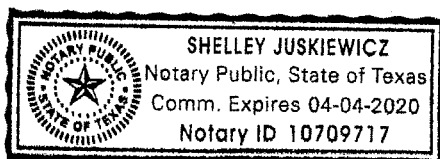
Stephanie Zapata Moore, being duly sworn according to law, upon her oath, deposes and says:

1. I am Executive Vice President and General Counsel of Vistra Energy Corp., and am authorized to make this Verification on behalf of Vistra.
2. I have read the contents of the foregoing Petition and hereby verify that the statements therein contained are true and accurate to the best of my knowledge and belief as to Vistra Energy Corp.


Stephanie Zapata Moore

Sworn to and subscribed before me
this 27th day of November 2017


Notary Public



LIST OF EXHIBITS

Exhibit 1 – Relevant Dynegy-Affiliated Wholesale Generating Assets

Exhibit 2 – Relevant Vistra-Affiliated Wholesale Generating Assets

Exhibit 3 – Organizational Charts

Exhibit 4 – Short Environmental Assessment Form

Exhibit 5 – SAPA Notice of Proposed Rulemaking

EXHIBIT 1:

Relevant Dynegy-Affiliated Wholesale Generating Assets

Exhibit 1

Relevant Dynegy-Affiliated Wholesale Generating Assets

RTO / Market	Plant Name	Total Owned / Controlled (MW) (Summer)
NYCA	Independence Energy Facility	910.8
		<u>Total NYCA: 910.8</u>
PJM	Calumet Energy Facility	321.2
PJM	Dicks Creek Energy Facility	136.2
PJM	Fayette Energy Facility	644.0
PJM	Hanging Rock Energy Facility	1,322.0
PJM	Hopewell Energy Facility	348.3
PJM	J M Stuart Power Station	903.6
PJM	Kendall Energy Facility	1,140.0
PJM	Killen Power Station	203.9
PJM	Kincaid Power Station	1,158.0
PJM	Liberty Electric Energy Facility	541.0
PJM	Miami Fort CT Station	56.0
PJM	Miami Fort 7&8	652.8
PJM	Northeastern Power Station	52.0
PJM	Ontelaunee Energy Facility	526.0
PJM	Pleasants Energy Facility	321.3
PJM	Richland Energy Facility	369.0
PJM	Stryker Energy Facility	17.0
PJM	Sayreville Energy Facility	146.0
PJM	Washington Energy Facility	626.0
PJM	Zimmer Power Station	966.3
		<u>Total PJM: 11,018.6</u>
ISO-NE	Bellingham Energy Facility	502.0
ISO-NE	Bellingham NEA Energy Facility	132.0
ISO-NE	Blackstone Energy Facility	486.6
ISO-NE	Casco Bay Energy Facility	490.0
ISO-NE	Lake Road Energy Facility	757.3
ISO-NE	MASSPOWER Energy Facility	245.0

RTO / Market	Plant Name	Total Owned / Controlled (MW) (Summer)
ISO-NE	Milford Energy Facility	534.7
		<u>Total ISO-NE: 3,147.6</u>

EXHIBIT 2:

Relevant Vistra-Affiliated Wholesale Generation Assets

Exhibit 2

Relevant Vistra Energy Corp. Wholesale Generating Assets

Wholesale Generating Assets through Brookfield's Affiliates

RTO / Market	Plant or Owner Name	Total Owned / Controlled (MW) (Summer)
NYCA	Carr Street Generating Station, L.P.	88.5
NYCA	Glens Falls	13.8
NYCA	Erie Boulevard Hydropower, L.P.	679.3
NYCA	West Delaware Tunnel Project	7.0
NYCA	Cohocton Wind Project	87.5
NYCA	Dutch Hill Wind Project	37.5
NYCA	Steel Winds Wind Farm	20.0
NYCA	Steel Winds II	15.0
NYCA	Miscellaneous QFs	15.1
		<u>Total NYISO: 963.7</u>
ISO-NE	Androscoggin 3	3.4
ISO-NE	Aziscohos Hydroelectric Project	6.8
ISO-NE	Bar Mills	4.0
ISO-NE	Bear Swamp	600.0
ISO-NE	Berlin Gorham (Great Lakes Hydro)	30.4
ISO-NE	Bonny Eagle	9.0
ISO-NE	Brassua Hydroelectric Project	3.6
ISO-NE	Brunswick Hydro	20.0
ISO-NE	Cataract Hydro	8.0
ISO-NE	Charles E. Monty	28.0
ISO-NE	Deer Rips	6.2
ISO-NE	Ellsworth Hydroelectric Station	9.3
ISO-NE	Errol Hydroelectric Project	3.0
ISO-NE	Fife Brook	11.2
ISO-NE	Granite Reliable Power	99.0
ISO-NE	Great Lakes Hydro America – ME	131.5
ISO-NE	Gulf Island	23.2
ISO-NE	Harris Hydro	87.4

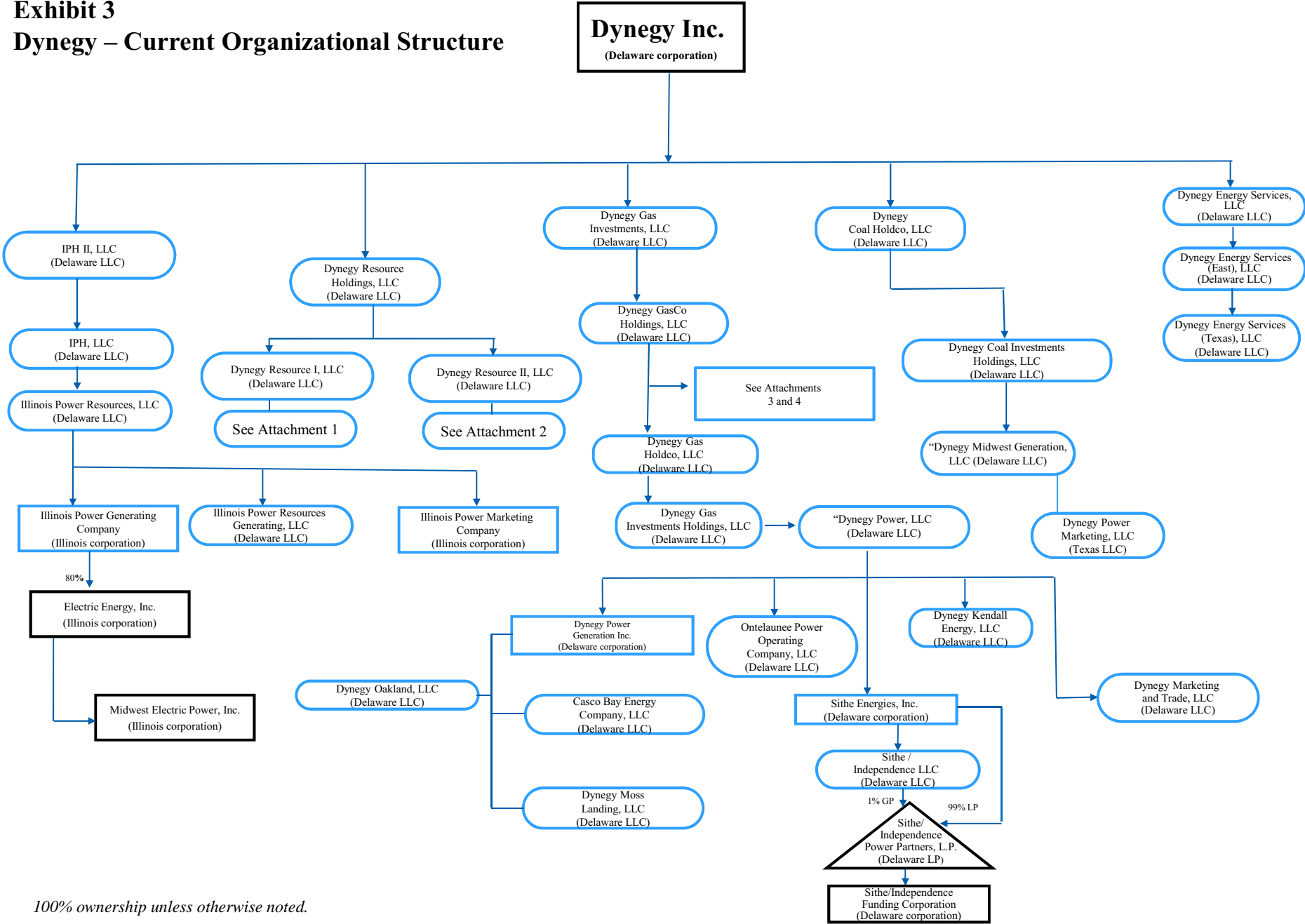
RTO / Market	Plant or Owner Name	Total Owned / Controlled (MW) (Summer)
ISO-NE	Hiram	11.6
ISO-NE	Hydro Kennebec Project	15.4
ISO-NE	Lockwood Hydroelectric Facility	6.4
ISO-NE	Medway Hydro	3.9
ISO-NE	Milford Hydro Station	7.8
ISO-NE	North Gorham	2.0
ISO-NE	Orono B	3.9
ISO-NE	Orono Hydro Station	2.7
ISO-NE	Pejepscot Hydroelectric Project	13.1
ISO-NE	Pontook Hydro Facility	10.5
ISO-NE	Rumford Falls Hydro Facility	44.5
ISO-NE	Shawmut	9.2
ISO-NE	Skelton	21.6
ISO-NE	Stillwater B	2.4
ISO-NE	Stillwater Hydro Station	2.1
ISO-NE	West Buxton	7.7
ISO-NE	West Enfield Hydro	9.5
ISO-NE	Weston Hydro	13.2
ISO-NE	Williams Hydro	14.9
ISO-NE	Wyman Hydro	83.0
ISO-NE	Bull Hill Wind Project	34.5
ISO-NE	Rollins Wind Project	60.0
ISO-NE	Sheffield Wind	40.0
ISO-NE	Stetson Wind	57.0
ISO-NE	Stetson Wind II	25.5
ISO-NE	Miscellaneous QFs	104.9
		<u>Total ISO-NE: 1,691.3</u>
PJM	Safe Harbor	417.5
PJM	Holtwood	249.0
PJM	Wallenpaupack	44.0
PJM	Deep Creek	18.0
PJM	Piney	33.2
PJM	Glen Ferris Hydro	6.2

RTO / Market	Plant or Owner Name	Total Owned / Controlled (MW) (Summer)
PJM	Hawks Nest Hydro	96.8
PJM	Bishop Hill Energy LLC	200.0
PJM	Miscellaneous QFs	87.8
		<u>Total PJM: 1,152.5</u>

EXHIBIT 3:

Organizational Charts

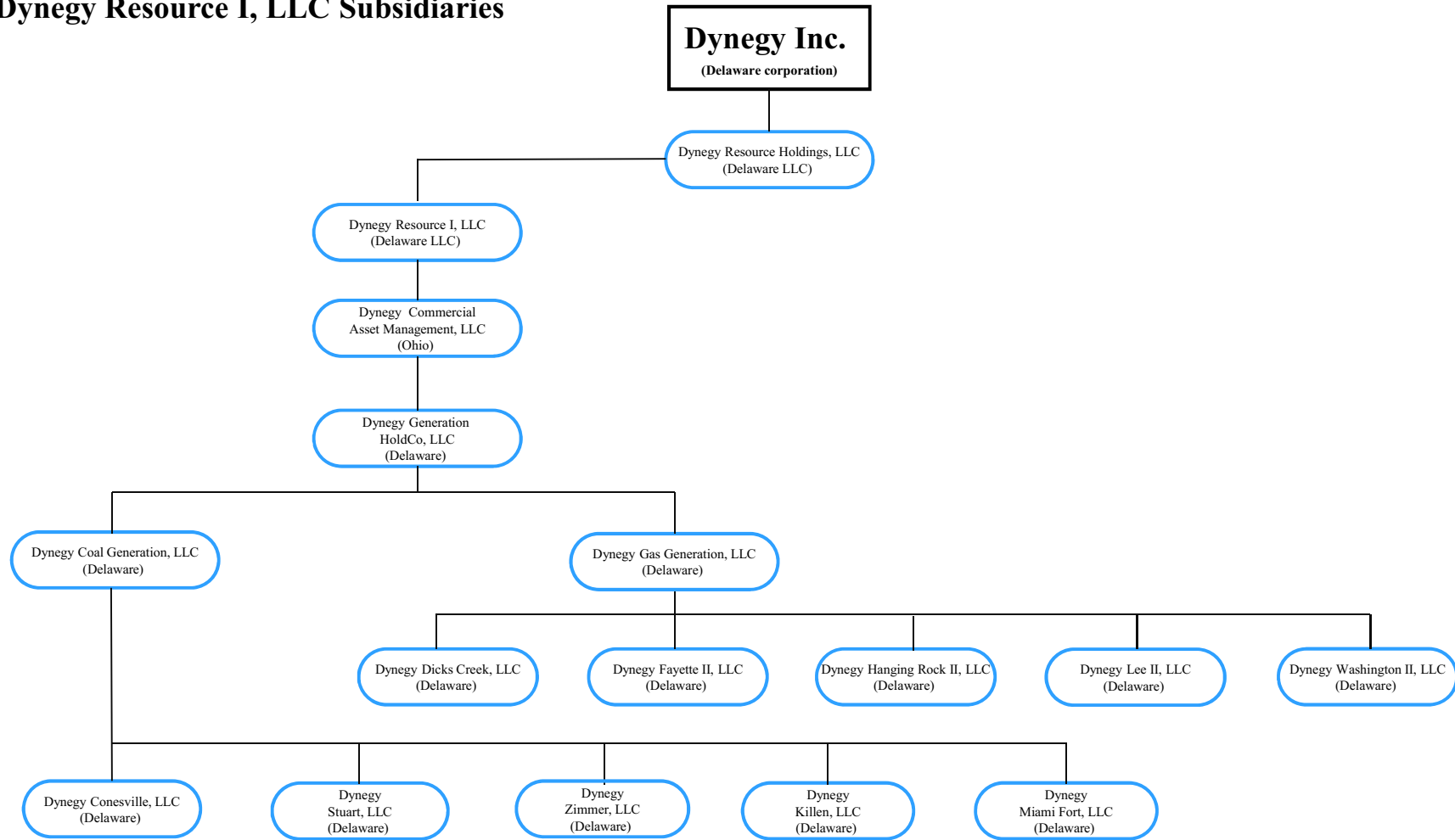
**Exhibit 3
Dynergy – Current Organizational Structure**



100% ownership unless otherwise noted.

Attachment 1

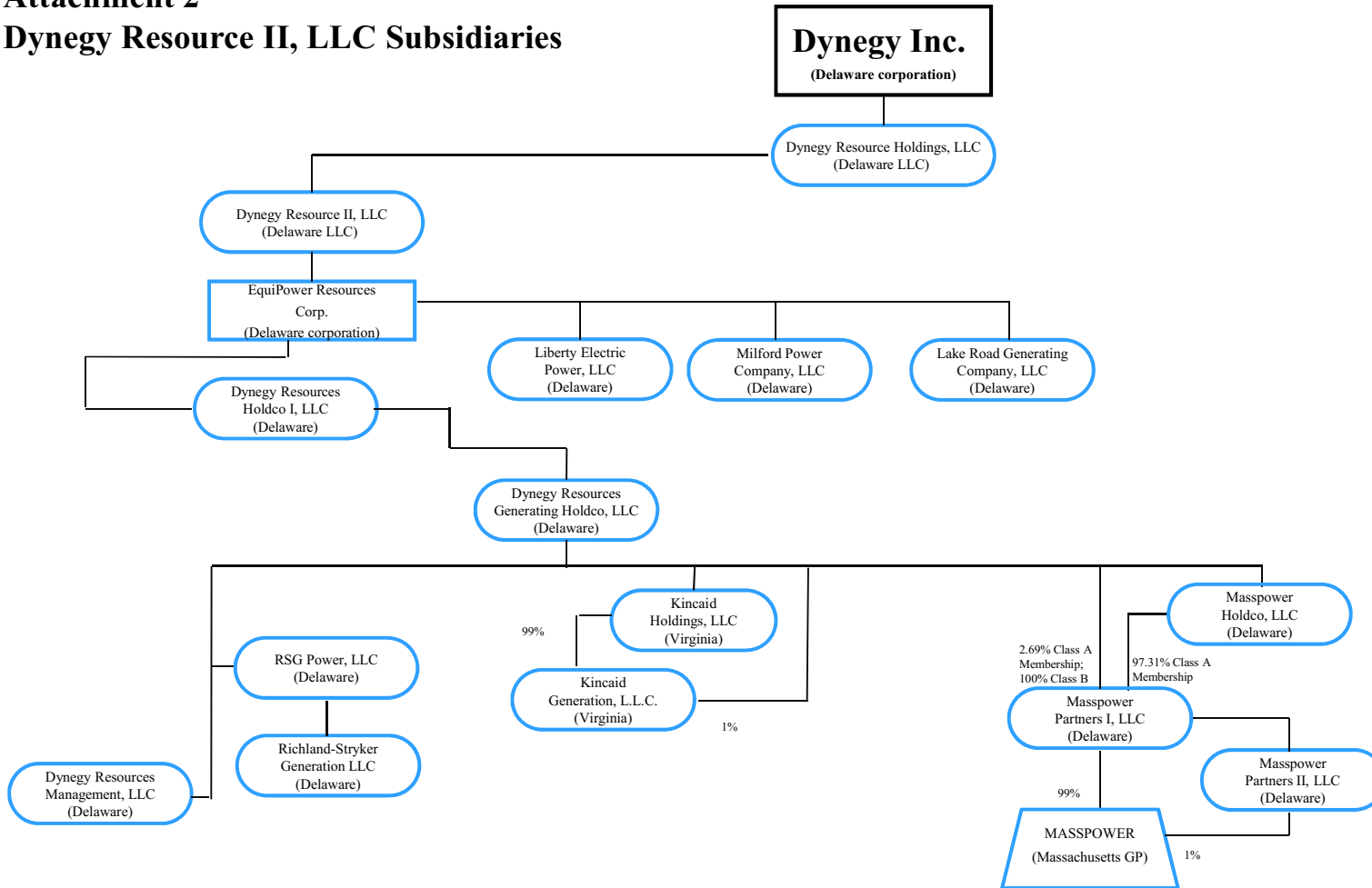
Dynergy Resource I, LLC Subsidiaries



100% ownership unless otherwise noted.

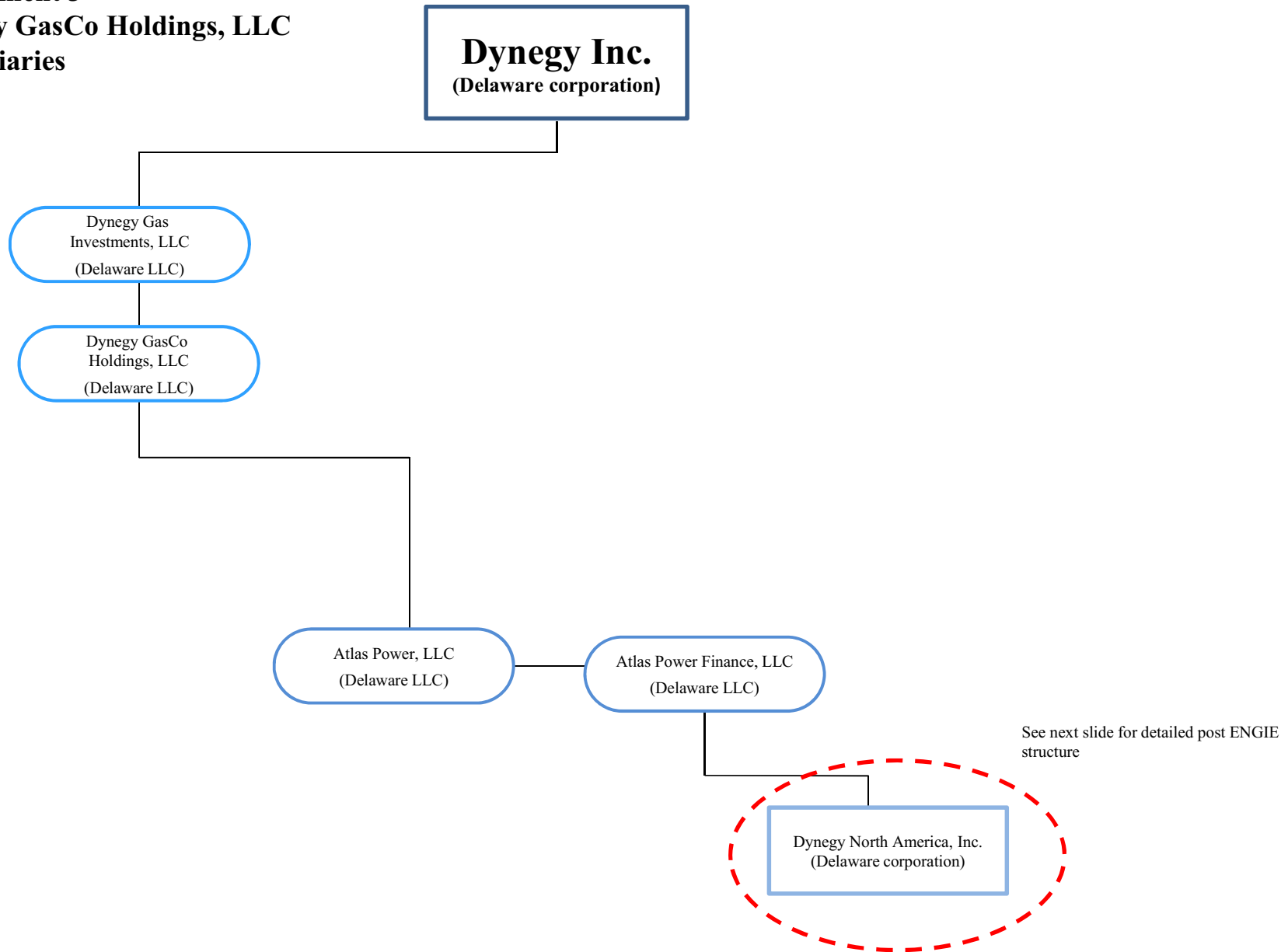
Attachment 2

Dynegy Resource II, LLC Subsidiaries



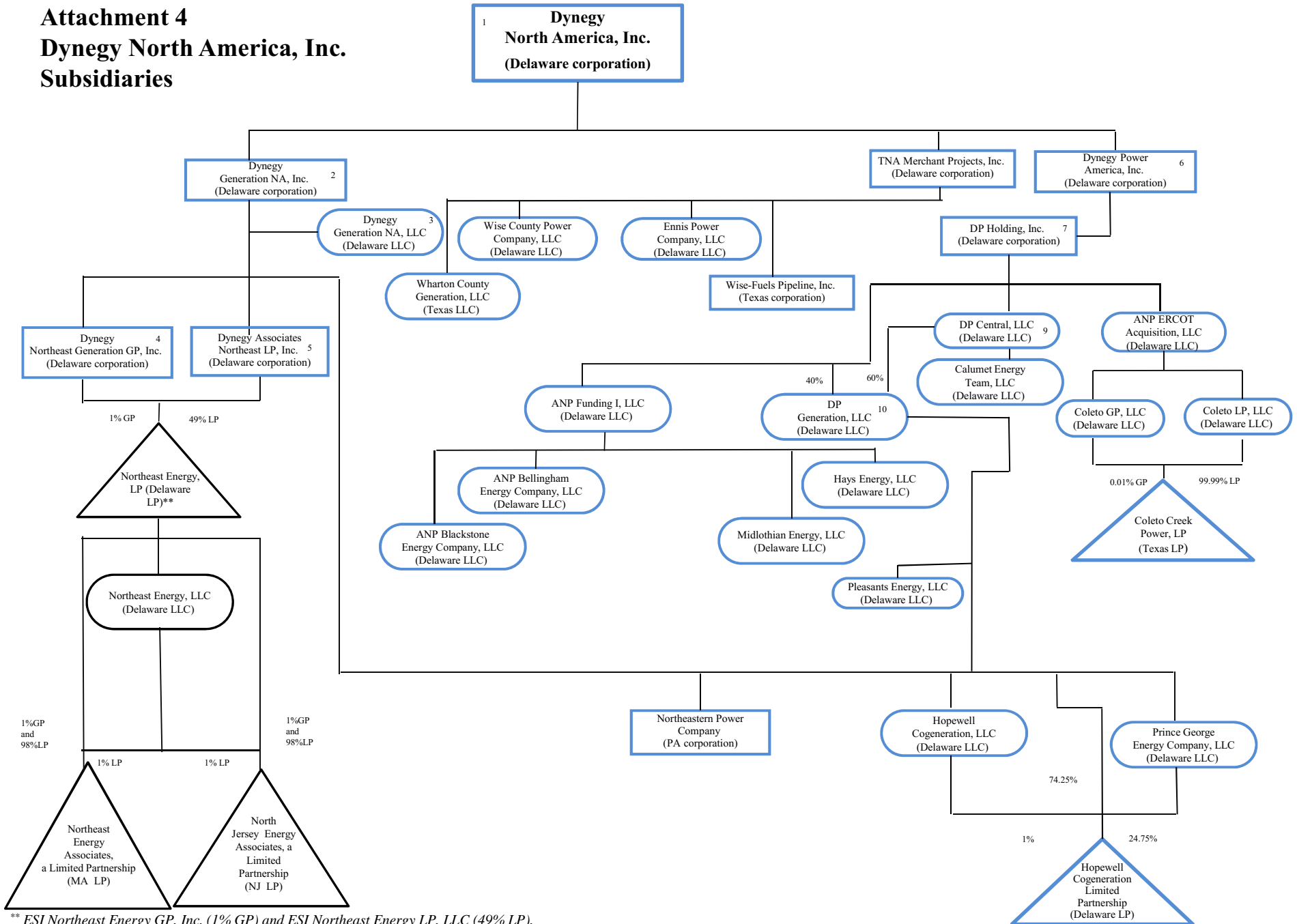
100% ownership unless otherwise noted.

Attachment 3
Dynegy GasCo Holdings, LLC
Subsidiaries



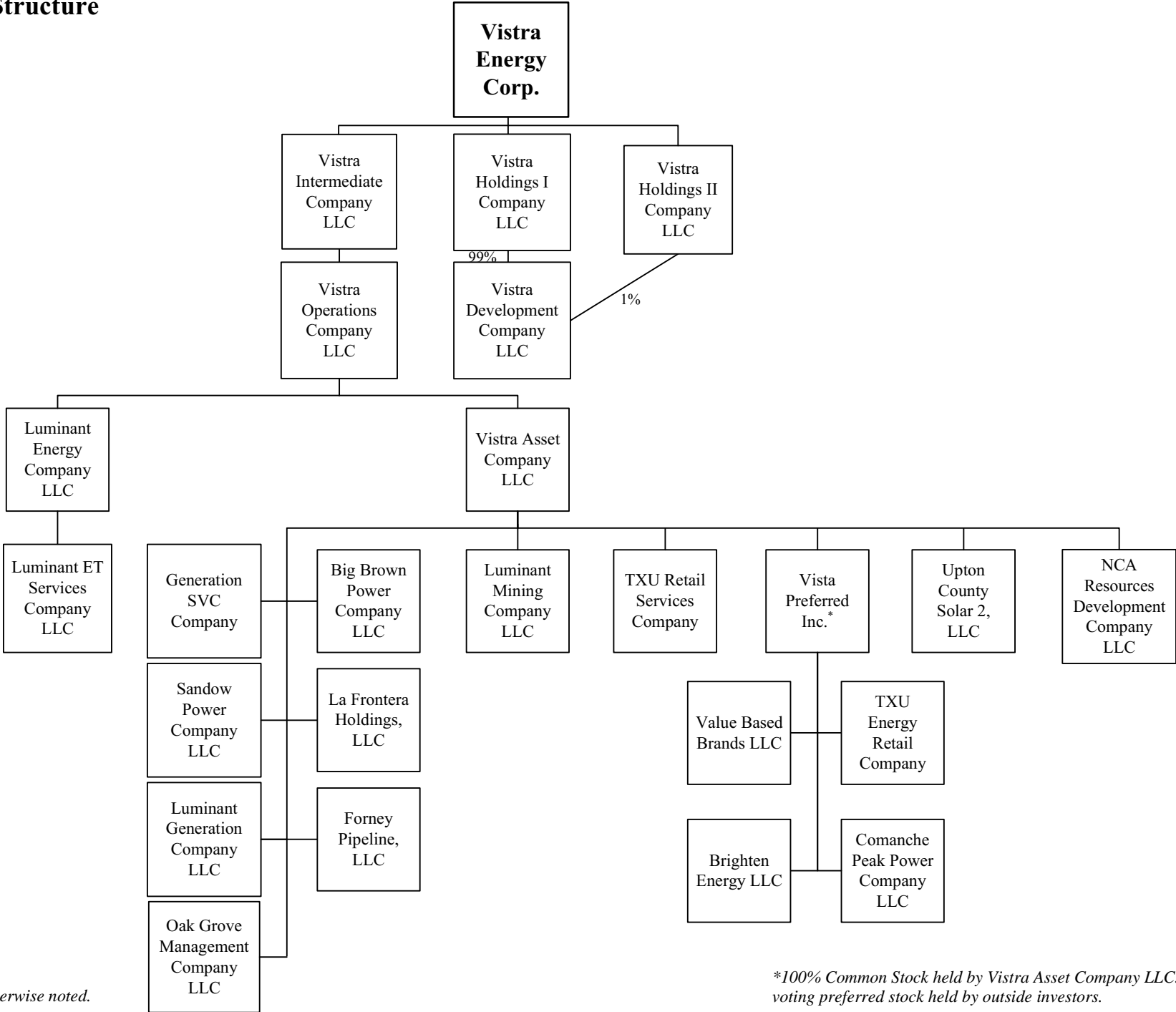
100% ownership unless otherwise noted.

Attachment 4 Dynergy North America, Inc. Subsidiaries



** ESI Northeast Energy GP, Inc. (1% GP) and ESI Northeast Energy LP, LLC (49% LP).
100% ownership unless otherwise noted.

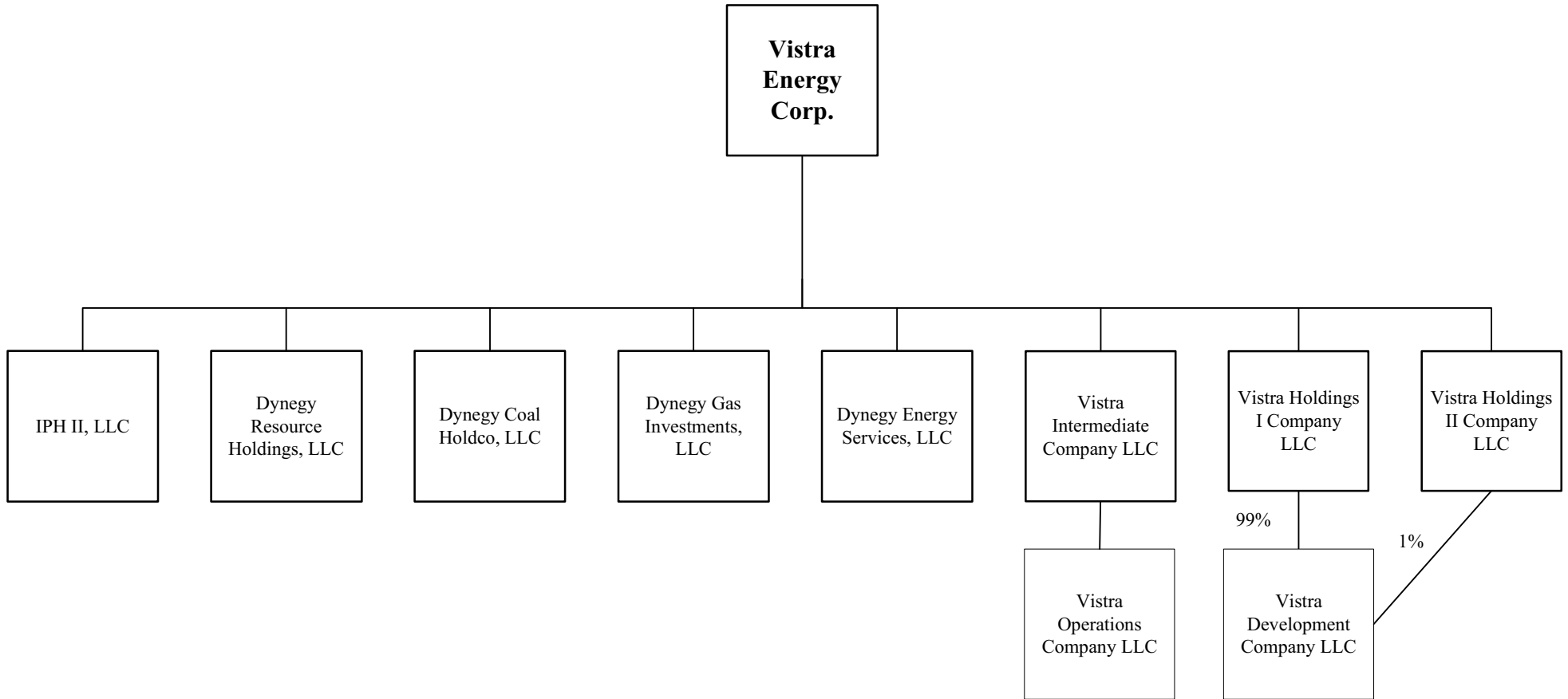
Exhibit 3
Pre-Transaction Vistra Energy Corp.
Organizational Structure



100% ownership unless otherwise noted.

*100% Common Stock held by Vistra Asset Company LLC. Non-voting preferred stock held by outside investors.

Exhibit 3
Post-Transaction Vistra Energy Corp.
Organizational Structure



The subsidiaries of each Dynege and Vistra entity identified in the Post-Transaction Organizational Structure chart are the same as those identified in the Pre-Transaction Organizational Structure charts for Dynege and Vistra.

100% ownership unless otherwise noted.

EXHIBIT 4:

Short Environmental Assessment Form

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				
Sithe Independence Power Partners, L.P.				
Name of Action or Project: Upstream ownership change regarding Sithe Independence Power Partners, L.P.				
Project Location (describe, and attach a location map): 76 Independence Way, Oswego, NY 13126				
Brief Description of Proposed Action: Dynergy, Inc. ("Dynergy") will merge with and into Vistra Energy Corp. ("Vistra") in an all-stock transaction, with Vistra being the surviving corporation. At the effective time of the merger, each eligible share of common stock of Dynergy will automatically be converted into the right to receive 0.652 shares of Vistra common stock. As a result of the merger, all of the eligible Dynergy stock will be converted into shares of Vistra common stock and will cease to exist in accordance with the terms of the merger agreement. As a result of the merger, Vistra shareholders will own approximately 79% of the combined company and Dynergy shareholders will own approximately 21% of the combined company.				
Name of Applicant or Sponsor: Dynergy Inc., et al.		Telephone: (713) 767-0387		
		E-Mail: michelle.d.grant@dynergy.com		
Address: 601 Travis Street, Suite 1400				
City/PO: Houston		State: TX	Zip Code: 77002	
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	YES
			<input checked="" type="checkbox"/>	<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: Approval of Federal Energy Regulatory Commission under Section 203 of the FPA; Federal Communications Commission; Public Utility Commission of Texas; and antitrust clearance the Hart-Scott-Rodino Antitrust Improvements Act of 1976.			NO	YES
			<input type="checkbox"/>	<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?		_____ N/A acres		
4. Check all land uses that occur on, adjoining and near the proposed action.				
<input type="checkbox"/> Urban <input checked="" type="checkbox"/> Rural (non-agriculture) <input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)				
<input checked="" type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____				
<input type="checkbox"/> Parkland				

<p>18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)?</p> <p>If Yes, explain purpose and size: _____</p> <p>_____</p>	<p>NO</p> <p><input checked="" type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p>
<p>19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?</p> <p>If Yes, describe: _____</p> <p>_____</p>	<p>NO</p> <p><input checked="" type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p>
<p>20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?</p> <p>If Yes, describe: _____</p> <p>_____</p>	<p>NO</p> <p><input checked="" type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p>
<p>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</p> <p>Applicant/sponsor name: <u>Dynergy Inc. et al.</u> Date: <u>11/28/17</u></p> <p>Signature: <u>Michelle Grant</u></p>		

EXHIBIT 5:

SAPA Notice of Proposed Rulemaking

Notice of Proposed Rule Making

Public Service Commission
(SUBMITTING AGENCY)

- Approval has been granted by Executive Chamber to propose this rule making.
- This rule making does not require Executive Chamber approval.

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice.

1. A. Proposed action:

See attachment

Title _____ NYCRR

Title _____ NYCRR

Title _____ NYCRR

Title _____ NYCRR

Title _____ NYCRR

Title _____ NYCRR

- B. This is a consensus rule making. A statement is attached setting forth the agency's determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].
- C. This rule was previously proposed as a consensus rule making under I.D. No. _____ . Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].
- D. This rule is proposed pursuant to [SAPA §207(3)], 5-Year Review of Existing Rules (see also item 16).

2. Statutory authority under which the rule is proposed:

Public Service Law Sections 70 and 83.

3. Subject of the rule:

Review of a transfer of upstream ownership in Sithe/Independence Power Partners, L.P. to Vistra Energy Corp.

4. Purpose of the rule:

Review of a transfer of upstream ownership in Sithe/Independence Power Partners, L.P. to Vistra Energy Corp.

5. Public hearings (check box and complete as applicable):

- A public hearing is not scheduled. (*SKIP TO ITEM 8*)
- A public hearing is required by law and is scheduled below. (**Note:** first hearing date must be at least 45 days **after** publication of this notice unless a different time is specified in statute.)
- A public hearing is not required by law, but is scheduled below.

Time: _____ Date: _____ Location: _____

6. *Interpreter services* (check only if a public hearing is scheduled):
 Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

7. *Accessibility* (check appropriate box only if a public hearing is scheduled):
 All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.
 Attached is a list of public hearing locations that are **not** reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.

8. *Terms of rule* (SELECT ONE SECTION):
 A. The full text of the rule is attached because it does not exceed 2,000 words.
 B. A summary of the rule is attached because the full text of the rule exceeds 2,000 words.
 Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

 C. Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making]. Web posting of full text of such rule is not required [SAPA §202(1)(a)].

9. *The text of the rule and any required statements and analyses may be obtained from:*

Agency contact: Honorable Kathleen Burgess
 Agency Name: Public Service Commission
 Office address: 3 Empire State Plaza
 Albany, NY 12223-1350
 Telephone: (518) 474-6530 E-mail: secretary@dps.ny.gov

10. *Submit data, views or arguments to* (complete only if different than previously named agency contact):

Agency contact: _____
 Agency name: _____
 Office address: _____

 Telephone: _____ E-mail: _____

11. *Public comment will be received until:*
 45 days after publication of this notice (MINIMUM public comment period).
 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing).
 Other: (specify) _____

12. A prior emergency rule making for this action was previously published in the _____ issue of the *Register*, I.D. No. _____.

13. *Expiration date* (check only if applicable):

This proposal will not expire in 365 days because it is for a "rate making" as defined in SAPA §102(2)(a)(ii).

14. *Additional matter required by statute:*

Yes (include below material required by statute).

No additional material required by statute.

15. *Regulatory Agenda* (See SAPA §202-d[1]):

This rule was a Regulatory Agenda item for this agency in the following issue of the *State Register*:

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the *Register*.

Not applicable.

16. **Review of Existing Rules** (ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

This rule is proposed pursuant to SAPA §207 (item 1D applies) (check applicable boxes):

Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a discussion of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.

Attached is an assessment of public comments received by the agency in response to its publication of a list of rules to be reviewed.

An assessment of public comments is not attached because no comments were received.

Not applicable.

17. **Regulatory Impact Statement (RIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits]):

A. The attached RIS contains:

The full text of the RIS.

A summary of the RIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.

B. A RIS is **not attached**, because this rule is:

subject to a consolidated RIS printed in the *Register* under I.D. No.: _____ ;
issue date: _____

exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

exempt, as defined in SAPA §102(11) [Consensus Rule Making].

C. A **statement is attached** claiming exemption pursuant to SAPA § 202-a (technical amendment).

18. Regulatory Flexibility Analysis (RFA) for small businesses and local governments

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RFA contains:

 The full text of the RFA. A summary of the RFA. Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]: A consolidated RFA, because this rule is one of a series of closely related rules.B. A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.C. A RFA is **not** attached, because this rule: is subject to a consolidated RFA printed in the *Register* under I.D. No.: _____ ;
issue date: _____ . is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. is exempt, as defined in SAPA §102(11) [Consensus Rule Making].**19. Rural Area Flexibility Analysis (RAFA)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RAFA contains:

 The full text of the RAFA. A summary of the RAFA. Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]: A consolidated RAFA, because this rule is one of a series of closely related rules.B. A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements.C. A RAFA is **not attached**, because this rule: is subject to a consolidated RAFA printed in the *Register* under I.D. No.: _____ ;
issue date: _____ . is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

20. **Job Impact Statement (JIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached JIS contains:

The full text of the JIS.

A summary of the JIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated JIS, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and explains the agency's finding that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

A JIS/Request for Assistance [SAPA §201-a(2)(c)] is attached.

C. A JIS is **not attached**, because this rule:

is subject to a consolidated JIS printed in the *Register* under I.D. No.: _____ ;
issue date: _____ .

is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

is proposed by the State Comptroller or Attorney General.

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice.)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name _____ Signature _____

Address _____

Telephone _____ E-Mail _____

Date _____

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's Register procedures manual, *Rule Making in New York*.
2. Rule making notices, with any necessary attachments (in MS Word), should be e-filed via the Department of State website.

Attachment to SAPA Notice

1. *Proposed Action*

The Public Service Commission (“Commission”) is considering a petition proposing a transfer of ownership interests in Sithe/Independence Power Partners, L.P.

2. *Substance of the Proposed Rule*

The Commission is considering a petition for a declaratory ruling filed by Dynegy Inc. (“Dynegy”), Sithe/Independence Power Partners, L.P. (“SIPP”) and Vistra Energy Corp. (“Vistra”) (collectively, “Petitioners”) that a proposed transfer of upstream ownership interests in SIPP qualifies for the *Wallkill* presumption and thus need not be reviewed under N.Y. Public Service Law (“PSL”) Sections 70 and 83. In the alternative, Petitioners request expedited Commission approval under PSL Sections 70 and 83 and any other statutory or regulatory provision deemed applicable to consummate the proposed transaction. SIPP owns and operates an approximately 911 MW co-generation facility located in Oswego, New York. Under the terms of the merger agreement, Dynegy will merge with and into Vistra in an all-stock transaction, with Vistra being the surviving corporation. As a result of the merger, Vistra shareholders will own approximately 79% of the combined company and Dynegy shareholders will own approximately 21% of the combined company. The Petitioners request confirmation that the proposed transaction will have no impact on the status of SIPP as a lightly regulated entity.