

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Joint Verified Petition of Upstate New York Power Producers, Inc.; Cayuga Operating Company, LLC; Somerset Operating Company, LLC; and Riesling Power LLC for Expedited Approval Pursuant to Section 70 of the New York State Public Service Law and Related Approvals

CASE 15-E-_____

Joint Verified Petition of Upstate New York Power Producers, Inc.; Cayuga Operating Company, LLC; Somerset Operating Company, LLC; and Riesling Power LLC for Expedited Approval Pursuant to Section 70 of the New York State Public Service Law and Related Approvals

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Date: September 28, 2015

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PUBLIC SERVICE COMMISSION

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CASE 15-E-_____

I. INTRODUCTION

Upstate New York Power Producers, Inc. (“USNYPP”); Cayuga Operating Company, LLC (“Cayuga”); Somerset Operating Company, LLC (“Somerset”); and Riesling Power LLC (“Riesling”) (collectively, the “Petitioners”) hereby jointly petition (the “Verified Joint Petition”) the Public Service Commission (the “Commission”) for expedited approval under Section 70 of the Public Service Law (“PSL”) for the transfer of 100% of USNYPP’s ownership interests in the owners (*i.e.*, Cayuga and Somerset) of two electric generating plants – a 312 megawatt (“MW”) facility located in Lansing, New York (the “Cayuga Facility”) and a 668 MW facility located in Somerset, New York (the “Somerset Facility”) – to Riesling (the “Proposed Transfer”). Petitioners further request a Commission determination that Somerset and Cayuga will continue to be subject to lightened regulation by the Commission, consistent with the lightened regulatory regime currently afforded USNYPP and other generation assets located within New York State and participating in wholesale electricity markets.¹

¹ See Case 12-E-0174, *Petition of AES Eastern Energy, LP, AES Somerset, LLC, AES Cayuga, LLC and Somerset Cayuga Holding Company, Inc. for Expedited Approval Pursuant to Sections 69 and 70 of the New York Public Service Law and Related Approvals*, Order Approving Transfer and a Financing (Jun. 29, 2012) (the “USNYPP Transfer Order”), at 19; see also Case 99-E-0148, *AES Eastern Energy, LP and AES Creative Resources LP – Petition for a Declaratory Ruling That Light-Handed Regulation Be Applied Concerning the Petitioner’s Purchase*

Petitioners respectfully request that the Commission expedite review of the Proposed Transfer and issue an order approving the transfer under PSL § 70 on or before the Commission’s December 17, 2015 session. Expedited approval is appropriate here because the Proposed Transfer does not raise any issues regarding retail energy sales to captive ratepayers or market power concerns in the competitive wholesale markets in New York and is consistent with Commission precedent. Petitioners also note that all other necessary regulatory approvals or processes associated with the Proposed Transfer of the two generating facilities are expected to be completed on or before that date.² Under these circumstances, the Proposed Transfer should be approved expeditiously.

II. BACKGROUND

A. The Parties

i. USNYPP And Its Subsidiaries

USNYPP is a corporation organized under the laws of the State of Delaware formed for the purposes of acquiring the Cayuga and Somerset Facilities from AES Eastern Energy, LP (“AES Eastern”) in 2012. USNYPP’s outstanding common stock is 100% owned by entities (“Certificate Holders”) that own or owned certain pass-through certificates (“Certificates”) issued by a series of owner trusts that were formed to provide financing under a leveraged lease structure for a transaction in 1999 involving AES Eastern and certain of AES Eastern’s affiliates (collectively, the “AES Entities”), whereby the AES Entities purchased the electric generating facilities now owned by Somerset and Cayuga (*i.e.*, the Somerset Facility and Cayuga Facility,

of Certain Electric Generating Assets from New York State Electric & Gas Corporation, Order Providing for Lightened Regulation (Apr. 23, 1999) (the “Light Regulation Order”), at 4-10.

² Petitioners have also filed an application with the Federal Energy Regulatory Commission (“FERC”) pursuant to Section 203 of the Federal Power Act for approval of the Proposed Transfer. Additionally, detailed advanced notice of the Proposed Transfer has been filed with the Federal Trade Commission and the Antitrust Division of the Department of Justice under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and a designated time period needs to elapse before consummation of the Proposed Transfer. *See* 15 USC § 18A. Early termination of the waiting period has been requested.

respectively) from New York State Electric & Gas Corporation (“NYSEG”) and its affiliate NGE Generation, Inc. The Certificates were transferred to the Certificate Holders in a transaction approved by the Commission in 2012.³ USNYPP wholly-owns Somerset and Cayuga, which, in turn, own and operate the Somerset and Cayuga Facilities, respectively. USNYPP is also the sole shareholder of Somerset Railroad Corporation (“Somerset Rail”), which owns railroad assets used to deliver coal to the Somerset Facility.

USNYPP and its wholly-owned subsidiaries Cayuga and Somerset are subject to lightened regulation by the Commission for electric generators operating in a competitive market.⁴

a) Cayuga

Cayuga is a single-member Delaware limited liability company and a wholly-owned subsidiary of USNYPP. Cayuga is an exempt wholesale generator (“EWG”)⁵ and has been authorized by FERC to sell energy, capacity, and ancillary services at wholesale at market-based rates.⁶ Cayuga owns and operates the Cayuga Facility, which is a coal-fired electric generation station consisting of two generating units with a combined summer rating of 312 MW located on approximately 434 acres in Lansing, New York. The Cayuga Facility is interconnected to NYSEG’s electric transmission system. Except for the Cayuga Facility, Cayuga does not own or control, directly or indirectly, any other electric generation or transmission facilities in the New York control area (“NYCA”). The only relevant affiliate of Cayuga involved in the Proposed Transfer that owns or controls any such facilities is Somerset.

³ USNYPP Transfer Order, at 19-20.

⁴ USNYPP Transfer Order, at 19.

⁵ Notice of Self-Certification of Exempt Wholesale Generator Status of Cayuga Operating Company, LLC, Docket No. EG12-57-000 (Apr. 13, 2012).

⁶ *Somerset Operating Company, LLC et al.*, Docket Nos. ER12-1562-000, *et al.*, (May 25, 2012) (unpublished letter order).

On July 20, 2012, Cayuga filed a notice of intent with the Commission to mothball the Facility by January 16, 2013.⁷ A preliminary study directed by the Commission and prepared by NYSEG and the New York Independent System Operator (“NYISO”) identified a need to retain both units at the Cayuga Facility as available and capable of being committed to maintain near-term electric system reliability.⁸

Following this study, Cayuga and NYSEG filed with the Commission a Term Sheet pursuant to which Cayuga would continue to operate the Facility and provide reliability support services to NYSEG for a period of one year in return for, among other things, monthly payments from NYSEG. The Commission approved the Term Sheet,⁹ and NYSEG and Cayuga subsequently executed a Reliability Support Services Agreement (“RSSA1”) based on the Term Sheet.

During the initial one-year term of RSSA1, NYSEG conducted a solicitation for alternatives to maintain system reliability. Of the numerous proposals received, NYSEG identified the continued operation of the Cayuga Facility as the best option to maintain system reliability. As a result, the Commission accepted a second RSSA (“RSSA2”) between the parties on January 16, 2013.¹⁰ RSSA2’s term expires on June 30, 2017.¹¹ Under the terms of RSSA2, all

⁷ Case 12-E-0400, *Petition of Cayuga Operating Company, LLC to Mothball Generating Units 1 and 2*, Notice of Intent to Mothball Cayuga Units 1 and 2 (Jul. 20, 2012). Cayuga filed its notice pursuant to the Commission’s procedures established in the generation unit retirement proceeding. See Case 05-E-0889: *Policies and Procedures Regarding Generation Unit Retirements*, Order Adopting Notice Requirements for Generation Unit Retirements (Issued Dec. 20, 2005).

⁸ Case 14-E-0400, *Petition of Cayuga Operating Company, LLC to Mothball Generating Units 1 and 2*, Response to DPS Request for Information (Aug. 24, 2012).

⁹ Case 12-E-0400, *Petition of Cayuga Operating Company, LLC to Mothball Generating Units 1 and 2*, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery (Dec. 17, 2012).

¹⁰ Case 12-E-0400, *Petition of Cayuga Operating Company, LLC to Mothball Generating Units 1 and 2*, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery (Jan. 16, 2014).

¹¹ *Id.* at 5.

of the output of the Cayuga Facility is sold into the markets administered by the NYISO.¹² Pursuant to the terms of RSSA2, Cayuga is seeking NYSEG's prior written consent to assign its rights and obligations under RSSA2 to Riesling.¹³

b) Somerset

Somerset is also a single-member Delaware limited liability company and a wholly-owned direct subsidiary of USNYPP. Somerset is an EWG¹⁴ and has been authorized by FERC to sell energy, capacity, and ancillary services at wholesale at market-based rates.¹⁵ Somerset owns and operates the Somerset Facility, which is a coal-fired electric generation unit with a combined summer rating of 668 MW located on approximately 1,800 acres in Somerset, New York. The Somerset Facility is interconnected to NYSEG's electric transmission system. All of the output of the Somerset Facility is sold into the markets administered by the NYISO. Except for the Somerset Facility, Somerset does not own or control any other electric generation or transmission facilities in the NYCA. The only relevant affiliate of Somerset involved in the Proposed Transfer that owns or controls any such facilities is Cayuga.

ii. Riesling

Riesling is a Delaware limited liability company. Riesling is a wholly-owned subsidiary of Bident Power LLC ("Bident Power"), which is also a Delaware limited liability company. Bident Power is affiliated with entities that currently own and operate approximately 487 MW of generating facilities throughout the United States. As relevant herein, neither Riesling nor Bident

¹² Pursuant to the RSSA, Cayuga is required to offer the electric energy associated with the Cayuga Facility, when available, into the NYISO Day-Ahead Energy market. It also is required under the RSSA to offer the Cayuga Facility's available net generating capability into the NYISO Unforced Capacity spot market auction.

¹³ See Case 12-E-0400, *Petition of Cayuga Operating Company, LLC to Mothball Generating Units 1 and 2, Reliability Support Services Agreement 2* (Filed Jan. 21, 2014), Section 10.1.

¹⁴ Notice of Self-Certification of Exempt Wholesale Generator Status of Somerset Operating Company, LLC, Docket No. EG12-58-000 (Apr. 13, 2012).

¹⁵ *Somerset Operating Company, LLC et al.*, Docket Nos. ER12-1562-000, *et al.*, (May 25, 2012) (unpublished letter order).

Power currently own or operate generating facilities in New York. In markets adjacent to New York, Bicient Power currently owns and operates an 85 MW dual fuel combined-cycle generating facility located in Lowell, Massachusetts in the market administered by ISO New England, Inc. (“ISO-NE”). Neither Riesling nor Bicient Power currently own or operate any generating facilities within the market administered by PJM Interconnection, LLC (“PJM”).

Bicient Power was established in 2007 and is an independent power producer with a diverse portfolio of contracted and merchant power generation assets across the United States. Bicient Power’s wholly-owned subsidiaries own natural gas-fired power generation facilities in California, Colorado, and Massachusetts, as well as a coal-fired power generation station in Montana. Bicient Power’s wholly-owned subsidiary, Colorado Energy Management, LLC (“CEM”), specializes in operations and maintenance (“O&M”) services for all of Bicient Power’s generating facilities as well as for independent third parties. CEM possesses over 25 years of experience in providing O&M services to the power generating industry across a wide range of technologies and fuel sources. Following approval of the Proposed Transfer, all plant-level personnel at the Somerset and Cayuga Facilities will remain in place, and CEM will operate and manage both plants in coordination with the respective plant managers.

Investment funds managed or advised by GSO Capital Partners LP (“GSO”) currently hold an approximately 96.5% equity ownership interest in Bicient Power. The remaining minority owners of Bicient Power each hold less than a 10% equity ownership interest in Bicient Power and do not otherwise control Bicient Power.

GSO represents the credit-oriented business of The Blackstone Group LP (“Blackstone”) and is a major participant in the leveraged finance markets. Blackstone is a leading global alternative asset manager and provider of financial advisory services. Blackstone’s alternative

asset management businesses include the management of corporate private equity funds, real estate opportunity funds, funds of hedge funds, mezzanine funds, senior debt funds, proprietary hedge funds, and closed-end mutual funds.

In addition to the generation owned and operated by Bicent Power's subsidiaries discussed above, GSO is affiliated with approximately 1,283 MW of generation facilities located in the market administered by the Electric Reliability Council of Texas, Inc. GSO is not currently affiliated with any generation capacity located in the NYCA, nor in the markets administered by ISO-NE or PJM.

GSO is affiliated with two wholesale power marketers: Twin Eagle Resource Management, LLC ("TERM") and Enserco Energy LLC ("Enserco"). TERM, a Delaware limited liability company, is an energy marketing company. Enserco, a wholly-owned subsidiary of TERM, is a marketing entity that purchases and sells wholesale electricity, natural gas, crude oil, environmental credits, coal, energy-related financial products, and renewable energy credits. Neither TERM nor Enserco do business in New York nor do they own or control any electric generation or transmission facilities or any essential inputs to electricity products or electric power production.

GSO is not currently affiliated with any electric transmission facilities operating in the United States, other than the limited interconnection facilities necessary to connect individual generating facilities to the transmission grid. GSO is affiliated with Champlain Hudson Power Express, Inc. ("CHPE"), which is developing a proposed 1,000 MW 336-mile, +/- 300 to 320 kV high-voltage direct current ("HVDC") underground and submarine merchant transmission line (the "CHPE Project"). The CHPE Project will originate at the Canada-United States border and will terminate in New York City. FERC has authorized CHPE to charge negotiated rates for

the sale of transmission capacity on the CHPE Project;¹⁶ however, CHPE has not yet filed a rate schedule for the CHPE Project. When completed, the CHPE Project will be under the NYISO's operational control.

GSO is also affiliated with Champlain VT, LLC, d/b/a TDI New England ("TDI-NE"), which is developing a proposed 1,000 MW 154-mile, +/- 300 to 320 kV, HVDC underground and submarine merchant transmission line (the "New England Clean Power Link") that will originate at the Canada-United States border and terminate in Cavendish, Vermont. The New England Clean Power Link is expected to be completed and placed into service in 2019. FERC has authorized TDI-NE to charge negotiated rates for the sale of transmission capacity on the New England Clean Power Link;¹⁷ however, TDI-NE has not yet filed a rate schedule for the project. Upon completion of the transmission line, the approximately 154-mile-long section of the New England Clean Power Link located in the United States will be under ISO-NE's operational control.

GSO, Bicent Power, and Riesling are not affiliated with any essential inputs to electricity products or electric power production located in the NYCA.¹⁸ GSO, Bicent Power, and Riesling also are not affiliated with any public utility with a franchised electric service territory in the United States.

¹⁶ *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006 (2010).

¹⁷ *Champlain VT, LLC*, 146 FERC ¶ 61,167 (2014).

¹⁸ GSO is affiliated with Cheniere Energy Partners, L.P. ("Cheniere"), which is primarily engaged in the liquefied natural gas industry. Cheniere is the 100% owner of Sabine Pass LNP, LP; Sabine Pass Liquefaction, LLC; and Cheniere Creole Trail Pipeline, LP, which, among other things, own and develop liquefied natural gas storage and pipelines, currently primarily in the Gulf of Mexico area of Texas and Louisiana. GSO is also affiliated with Lonestar Pipeline, LLC, an approximately 20 mile intrastate natural gas lateral pipeline that supplies Frontera Generation LP and is regulated by the Railroad Commission of Texas. GSO affiliates also own Walnut Creek Mining Company, a bituminous coal and lignite surface mining facility located in Robertson County, Texas, that supplies substantially all of the fuel to the Major Oak Power, LLC generating facility.

B. The Proposed Transfer

Under the Proposed Transfer, USNYPP will transfer 100% of its equity ownership interests in Somerset and Cayuga to Riesling. This will result in Somerset and Cayuga becoming wholly-owned subsidiaries of Riesling. As described below, the Proposed Transfer does not raise any market power concerns and will have no adverse effect on captive ratepayers in New York.

III. DISCUSSION

A. The Proposed Transfer Is In The Public Interest And Should Be Approved

Section 70 of the PSL states that “[no] electric corporation shall transfer or lease its franchise, works or system . . . to any other person or corporation . . . without the written consent of the commission.”¹⁹ Because the Cayuga and Somerset Facilities are electric plants, and, by virtue of their ownership, Cayuga and Somerset are electric corporations, the Proposed Transfer requires Commission approval under PSL § 70.²⁰

Generally, in reviewing an application for the transfer of electric plant under PSL § 70, the Commission’s standard of review is whether the transfer is in the public interest.²¹ The Commission applies a reduced level of scrutiny to transactions, such as the Proposed Transfer, where transfers are between electric corporations operating in competitive wholesale markets.²² Under the Commission’s lightened regulatory regime, PSL § 70 has been implemented in a

¹⁹ PSL § 70 (1).

²⁰ See PSL §§ 2 (12), 2 (13).

²¹ See PSL § 70 (5); Case 13-E-0019, *Dynegy Roseton LLC and CCI Roseton LLC – Petition for Expedited Approval of a Transfer Pursuant to Public Service Law §70 and Related Approvals*, Order Approving Transfer and Authorizing a Retirement Prior to Expiration of the Notice Period (Apr. 22, 2013) (the “Roseton Transfer Order”), at 8.

²² Roseton Transfer Order, at 8.

fashion that limits its impact on the competitive market, with the extent of scrutiny afforded a particular transaction reduced to the level the public interest requires.²³

In conducting a review under PSL § 70 involving lightly-regulated entities, the Commission examines “any affiliations, including those with fully-regulated New York utilities or power marketers, or any other circumstances, that might afford opportunities for the exercise of market power or pose the potential for other harm detrimental to captive ratepayer interests.”²⁴ Specifically, the Commission considers whether (1) the Proposed Transfer will result in a concentration of wholesale generation ownership that might enable the exercise of horizontal market power, (2) the purchasing 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 or that otherwise have the ability to impose prices on captive ratepayers, and (3) the assets involved will be safely and adequately operated.²⁵ The Proposed Transfer will not have an adverse effect on competition because it raises no horizontal or vertical market power concerns and the Cayuga and Somerset Facilities will continue to be safely and adequately operated.

i. The Proposed Transfer Raises No Horizontal Market Power Concerns

The Proposed Transfer will have no impact on the potential to exercise horizontal market power. Riesling is acquiring approximately 980 MW, the aggregate capacity of the Cayuga and Somerset Facilities. Neither Riesling nor its affiliates own or control any other electric generation assets in the NYISO markets. The NYISO market has a total nameplate capacity of

²³ Case 10-E-0042, *Petition of AES ES Westover, LLC for Declaratory Ruling and, in the Alternative, Application for Certificate of Public Convenience and Necessity and Petition for an Order Providing Lightened Regulation and Financing Approval*, Order Providing for Lightened Regulation and Approving Financing (May 14, 2010).

²⁴ *Id.*

²⁵ See USNYPP Transfer Order, at 13-16.

approximately 45,000 MW.²⁶ Following the Proposed Transfer, Riesling will own just 980 MW of generation between the two Facilities, which represents just 2.2% of the total nameplate capacity in the NYISO market. As a result, Riesling's ownership of NYISO generating capacity following the Proposed Transfer represents a *de minimis* share of the total generating capacity in the NYISO market. Such a *de minimis* share has been held in previous Commission orders to be insufficient to raise concerns regarding horizontal market power.²⁷

ii. The Proposed Transfer Raises No Vertical Market Power Concerns

The Proposed Transfer will similarly have no impact on the potential to exercise vertical market power. Riesling does not own or control any existing electric delivery facilities in New York nor does it have substantial influence over the material inputs for generation supply. Neither Riesling nor its affiliates own or operate any electric transmission facilities in New York or elsewhere, except for those limited facilities necessary to interconnect its generation assets into the transmission grid.

Although Riesling is affiliated with entities developing new facilities for the transmission of electric energy from the Canada-United States border to New York City and Cavendish, Vermont, neither of these projects is relevant to the Commission's examination of the Proposed Transfer. As an initial matter, neither the New England Clean Power Link nor the CHPE Project is currently in service, nor will they be in service prior to closing the Proposed Transfer. Moreover, both projects will be under the operational control of an independent system operator pursuant to a FERC-accepted open access transmission tariff.

²⁶ See NYISO, *2015 Load & Capacity Data – “Gold Book”* (2015), at 56 (calculating New York's existing nameplate generation at 44,866 MW).

²⁷ USNYPP Transfer Order, at 14-16. See also Roseton Transfer Order, at 8 (holding “even after the transaction, CCI's ownership interests in generation operating in NYISO markets will amount to only 3.2% of the total generation capacity available in those markets, which falls below the level that would cause concern.”).

In addition, once constructed, the CHPE Project will be a HVDC cable. As currently approved, electricity transmitted by the CHPE Project will be transmitted directly from a converter station located outside Quebec to another converter station located in the New York metro area via the CHPE Project. As such, as currently approved, it is unlikely that any other generation (including the Cayuga and Somerset Facilities) or transmission will have the ability to connect to or transmit electricity over the CHPE transmission line.

Further, consistent with a prior Commission determination, the distance between the proposed merchant transmission lines and the subject generation assets should result in a finding that GSO “will not be treated as owning or controlling . . . transmission for the purpose of a vertical market power analysis.”²⁸ Here, the New England Clean Power Link will terminate in Cavendish, Vermont, within the ISO-NE balancing authority area, and the CHPE Project will terminate in New York City, within the NYISO’s Zone J. Both end points are far removed from NYISO Zones A and C where the Somerset and Cayuga Facilities operate, respectively.²⁹

Riesling’s affiliation with two power marketers, TERM and Enserco, also does not raise vertical market power concerns because neither entity conducts business in New York. Moreover, as the Commission has previously stated, the potential for the exercise of market power through affiliation with a power marketer “can be addressed through PSL §110(1) and

²⁸ USNYPP Transfer Order, at 16. For example, in the USNYPP Transfer Order, CalPERS, one of USNYPP’s Backstop Parties, had ownership interests in the Neptune transmission line. Nevertheless the Commission held that “CalPERS will not be treated as owning or controlling the Neptune transmission line for the purpose of vertical market power analysis.” *Id.* In borrowing some of its reasoning from the horizontal market power analysis, the Commission reasoned that “Neptune’s transmission line, serving Long Island, is located far from the sites of the Somerset and Cayuga Facilities in western New York.” *Id.* Ultimately, the Commission held “for all these reasons, the Generation Facilities Transfer does not raise market power concerns.” *Id.*

²⁹ *See id.* at 14, 16 (holding that to the extent that CalPERS’ interest in the Neptune transmission line, which connects Long Island to New Jersey, could be deemed to enable CalPERS to benefit from potential market power, such potential is mitigated by the distance between the location of the Cayuga and Somerset Facilities and Long Island, and thus, “CalPERS will not be treated as owning or controlling the Neptune transmission line for the purpose of a vertical market power analysis.”).

(2) . . .” which are generally imposed on lightly-regulated wholesale generators to the extent necessary.³⁰

Accordingly, the Proposed Transfer does not raise vertical market power concerns because Riesling does not, and will not as a result of the Proposed Transfer, own or control electric delivery facilities or have substantial influence over the material inputs for generation supply.

iii. The Proposed Transfer Is In The Public Interest

Following approval of the Proposed Transfer, the Cayuga and Somerset Facilities will be safely and adequately operated. As discussed above, all plant-level personnel at the Somerset and Cayuga Facilities will remain in place, and Riesling is affiliated with experienced generation facility operators through Bident Power and is sufficiently capitalized. As a result, specifically with respect to the Cayuga Facility, Riesling has the necessary experience and capitalization to operate the Facility under the terms of RSSA2 and provide reliability support services through the remainder of the term of RSSA2.

Further, no harm to captive ratepayers will occur because neither Riesling nor its affiliates have any cost-based rates that are charged to captive ratepayers. All sales of electric energy, capacity, and ancillary services from the Somerset and Cayuga Facilities are, and will continue to be, made at market-based rates. Given the wholesale generation nature of the Somerset and Cayuga Facilities, the Proposed Transfer will not adversely impact in any way the rates paid by the captive retail customers of any franchised monopoly distribution utility regulated by the Commission.

Based on the foregoing, the Proposed Transfer will result in the Cayuga and Somerset Facilities being safely and adequately operated and is in the public interest. Therefore, the

³⁰ USNYPP Transfer Order, at 15-16; *see also* Roseton Transfer Order, at 9.

Petitioners respectfully request that the Commission approve the Proposed Transfer expeditiously.

B. Cayuga and Somerset Should Continue To Be Subject To Lightened Regulation

Petitioners request that Cayuga and Somerset continue to be regulated pursuant to the lightened regulatory regime applied to other entities engaged in selling electric power in the competitive wholesale markets. In the Commission’s order authorizing the transfer of the Cayuga and Somerset Facilities from the AES Entities to USNYPP, the Commission granted USNYPP’s request that it and its wholly-owned subsidiaries be lightly regulated “in accordance with the Lightened Regulation Order.”³¹ The facts that formed the basis of that Commission determination apply equally to Cayuga and Somerset once the ownership interests in the Cayuga and Somerset Facilities are transferred. Moreover, the Commission has routinely approved similar requests for continued lightened regulation in cases where transferred facilities were previously subject to lightened regulation.³² Accordingly, the Commission should confirm that Riesling will be subject to the same lightened regulation on the same terms as made applicable to other wholesale power generators in New York.

C. Environmental Quality Review

Under the State Environmental Quality Review Act (“SEQRA”), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7), the Commission must determine whether its action in this proceeding may have a significant impact on the environment.

³¹ USNYPP Transfer Order, at 19; *see also* Light Regulation Order, at 4-10.

³² *See e.g.* Roseton Transfer Order, at 10; USNYPP Transfer Order, at 19; Case 11-E-0306, *Astoria Generating Company, LP and USPG DevCo Holdings, LLC – Petition for an Order Approving a Transaction Pursuant to Public Service Law § 70 and Continuing a Lightened Regulatory Regime*, Order Approving Transfer (Aug. 23, 2011), at 6; Case 06-E-1301, *WPS Empire State, Inc., WPS Niagara Generation LLC and USRG Niagara Biomass LLC – Joint Petition for Expedited Approval of the Transfer of All Membership Interests*, Order Approving Transfer and Financing (Jan. 22, 2007), at 7.

As an initial matter, because no additional state or local permits are required for the approval of the Proposed Transfer, the Commission may declare itself the SEQRA “lead agency” to conduct an environmental assessment and determine the significance of the action proposed.³³

The proposed action (*i.e.*, approving the Proposed Transfer of certain membership interests in two electric plants) does not meet the definition of Type I or Type II actions listed in 6 NYCRR §§ 617.4, 617.5, and 16 NYCRR § 7.2 and is, therefore, classified as an “unlisted” action requiring SEQRA review. To facilitate this assessment, Petitioners have attached an Environmental Assessment Form (“EAF”) describing the likely impacts of the action they propose as Exhibit 1.

The Commission previously determined that the proposed transfer of the membership interests in Cayuga and Somerset from the AES Entities to USNYPP would not involve changes to the physical operation of the Cayuga and Somerset Facilities, and, therefore, would not result in any adverse environmental impacts.³⁴ The same is true here in this analogous transaction. Transfer of the membership interests in Cayuga and Somerset from USNYPP to Riesling will not result in any changes to the physical operation of either the Cayuga Facility or the Somerset Facility. Accordingly, Petitioners request that the Commission determine that the Proposed Transfer will not have a significant impact on the environment and adopt a “negative declaration” pursuant to SEQRA.³⁵

D. Notice Under The New York State Administrative Procedure Act

A draft form of notification suitable for publication in the *New York State Register* pursuant to the provisions of the New York State Administrative Procedure Act (“SAPA”) is attached as Exhibit 2.

³³ See 6 NYCRR § 617.6 (a) (3).

³⁴ See USNYPP Transfer Order, at 11-12.

³⁵ See *id.*

IV. CONCLUSION

For the reasons set forth above, Petitioners respectfully request that the Commission issue an order (1) approving the transfer of the membership interests in Cayuga and Somerset from USNYPP to Riesling, and (2) continuing to apply a lightened regulatory regime to Somerset and Cayuga. Petitioners respectfully request expedited consideration of the Verified Joint Petition by the Commission on or before December 17, 2015.

Dated: September 28, 2015
Albany, New York

HARRIS BEACH PLLC

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CASE 15-E-_____

VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK)^{SS:}

Nazar Khan, being duly sworn according to law, upon his oath, deposes and says:

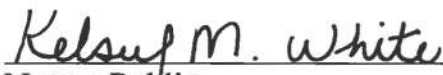
1. I am the Senior Vice President of Bicent Power LLC and am authorized to make this Verification on behalf of Bicent Power LLC and its affiliates, including Riesling Power LLC.

2. I have read the contents of the foregoing Verified Joint Petition and hereby verify that the statements therein contained are true and accurate to the best of my knowledge and belief as to the Bicent Power LLC and its affiliates.



Nazar Khan

Sworn to and subscribed before me
this 25th day of September 2015



Notary Public



STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

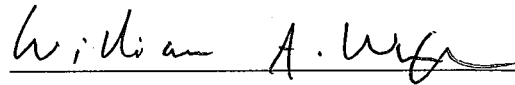
Joint Verified Petition of Upstate New York Power Producers Inc.; Cayuga Operating Company, LLC; Somerset Operating Company, LLC; and Riesling Power LLC for Expedited Approval Pursuant to Section 70 of the New York State Public Service Law and Related Approvals

CASE 15-E-_____

VERIFICATION

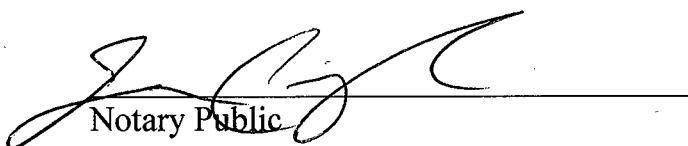
STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

William A. Wexler states that he is the Chief Executive Officer of Upstate New York Power Producers Inc. ("USNYPP") and is authorized to make this Verification on behalf of USNYPP; Cayuga Operating Company, LLC; and Somerset Operating Company, LLC. He has read the contents of the foregoing Verified Joint Petition and hereby verifies that the statements therein contained are true and accurate to the best of his knowledge and belief as to USNYPP; Cayuga Operating Company, LLC; and Somerset Operating Company, LLC.



William A. Wexler

Sworn to and subscribed before me
this 24th day of September 2015



Notary Public

JAMES M. CUNNINGHAM
Notary Public - State of New York
No. 02CU6320761
Qualified in Albany County
Commission Expires March 9, 2019

EXHIBIT 1

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 ownership in Somerset Generating Facility and Cayuga Generating Facility			
Project Location (describe, and attach a location map): 7725 Lake Road, Barker, New York 14012 (Niagara County); 228 Cayuga Drive, Lansing, New York 14882 (Tompkins County)			
Brief Description of Proposed Action: Petitioners seek approval under Section 70 of the New York State Public Service Law for the transfer of 100% of Upstate New York Power Producer, Inc.'s, ownership interests in Cayuga Operating Company, LLC, and Somerset Operating Company, LLC - each the owner of an electric generating plant located in Lansing, New York and Somerset, New York, respectively - to Riesling Power LLC pursuant to a Purchase and Sale Agreement. As a result of the proposed transfer, Cayuga and Somerset will become wholly-owned subsidiaries of Riesling. There will be no physical changes to the Cayuga or Somerset generating facilities as a result of the transfer. Riesling will continue to operate both facilities in accordance with all previous regulatory permits and approvals.			
Name of Applicant or Sponsor: Upstate New York Power Producers, Inc.		Telephone: (607) 533-7913	
		E-Mail:	
Address: 228 Cayuga Drive			
City/PO: Lansing		State: NY	Zip Code: 14882
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: Federal Energy Regulatory Commission: Approval under Section 203 of the Federal Power Act (16 USC § 824b); Federal Trade Commission and Department of Justice notice under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.			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?		N/A acres	
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): N/A _____			
<input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	NO	YES	N/A
	<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? N/A	NO	YES	
	<input type="checkbox"/>	<input 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: N/A	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? N/A	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation service(s) available at or near the site of the proposed action? N/A	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action? N/A	NO	YES	
	<input 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	NO	YES	
	<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: N/A	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: N/A	NO	YES	
	<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? N/A	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input 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? N/A 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: N/A	NO	YES	
	<input type="checkbox"/>	<input 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 type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban	N/A		
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? N/A	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
16. Is the project site located in the 100 year flood plain? N/A	NO	YES	
	<input type="checkbox"/>	<input 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	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

<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: _____ N/A</p> <p>_____</p> <p>_____</p>	<p>NO</p> <p><input 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: _____ N/A</p> <p>_____</p> <p>_____</p>	<p>NO</p> <p><input 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: _____ N/A</p> <p>_____</p> <p>_____</p>	<p>NO</p> <p><input 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>Upstate New York Power Producers, Inc.</u> Date: <u>09/28/2015</u></p> <p>Signature: <u>Steven D. Wilson - attorney for USNYPP</u></p>		

EXHIBIT 2

Notice of Proposed Rule Making

Submitting Agency: **PUBLIC SERVICE COMMISSION**

Approval has been granted by Executive 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:*

The New York State Public Service Commission is considering a Verified Joint Petition filed by Upstate New York Power Producers, Inc.; Cayuga Operating Company, LLC; Somerset Operating Company, LLC; and Riesling Power LLC under Section 70 of the Public Service Law for the transfer of 100% of Upstate New York Power Producers, Inc.'s ownership interests in Cayuga Operating Company, LLC, the owner of a 312 megawatt electric generating facility located in Lansing, New York, and Somerset Operating Company, LLC the owner of a 668 megawatt electric generating facility located in Somerset, New York.

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:*

Section 70 of the Public Service Law.

3. *Subject of the rule:*

A request to approve under PSL § 70 the transfer of 100% of Upstate New York Power Producers, Inc.'s ownership interests in Cayuga Operating Company, LLC, and Somerset Operating Company, LLC, the owners of two electric generating plants, to Riesling Power LLC.

4. *Purpose of the rule:*

To approve the Proposed Transfer.

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 at the following State website: _____

Full text is not posted on a State website.

Full text is not posted on a State website; this is a consensus rule or a rule defined in SAPA § 102 (2)(a)(ii).

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].

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

Agency contact _____
Agency Name New York State Public Service Commission
Office address Three Empire State Plaza
Albany, NY 12223

Telephone _____ *E-mail* _____

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

Agency contact Hon. Kathleen H. Burgess
Agency name New York State Public Service Commission
Office address Three Empire State Plaza
Albany, NY 12223

Telephone (518) 474-6530 *E-mail* secretary@dps.ny.gov

11. *Public comment will be received until:*

45 days after publication of this notice (MINIMUM public comment period when full text is attached because it does not exceed 2,000 words or full text of rule has been posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).

60 days after publication of this notice (MINIMUM public comment period when full text is not attached or full text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).

5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing). This box may not be checked and the minimum 60-day comment period applies if full text is not attached or text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).

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. ***5-Year 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 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.

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.

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.

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.

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 should be e-filed via the Department of State website.