

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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**Joint Petition of Williams Field Services
Company, LLC, Williams Partners, L.P., DMP New
York, Inc., and The Williams Companies, Inc.,
for a Declaratory Ruling Regarding Application
of Section 70 of the New York Public
Service Law**
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Case No. 18-G-_____

**PETITION FOR DECLARATORY RULING REGARDING APPLICATION OF
SECTION 70 OF THE NEW YORK STATE PUBLIC SERVICE
LAW**

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Dated: May 31, 2018

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I. INTRODUCTION

Williams Field Services Company, LLC (“WFS”), DMP New York, Inc. (“DMP”), The Williams Companies, Inc. (“TWC”), and Williams Partners L.P. (“WPZ”) (collectively, the “Petitioners”) hereby jointly request a declaratory ruling that the New York State Public Service Commission (the “Commission”) need not review a wholly intra-corporate restructuring whereby WPZ will merge into TWC with TWC surviving the merger and thereby holding, indirectly, 100% of the equity interests in WFS and DMP, as more fully described below, (the “Intra-Corporate Restructuring”) under Section 70¹ of the New York Public Service Law (“PSL”) under the lightened regulatory regime established for WFS and DMP.² The Intra-Corporate Restructuring will not affect the management of, or control over WFS and DMP.

Specifically, Petitioners request that the Commission issue a ruling:

¹ N.Y. Pub. Serv. Law § 70 (McKinney 2018).

² Case 10-G-0462, *DMP N.Y., Inc. & Laser Ne. Gathering Co., LLC*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Rate Making Regulation (Feb. 22, 2011); Case 13-G-0050, *Laser Ne. Gathering Co., LLC et al.*, Order Approving Transfer (June 18, 2013) (“Merger Order”).

1. Declaring that the Intra-Corporate Restructuring is outside the scope of PSL § 70 because it is not a transfer and the ultimate ownership is not changing, or that the Commission need not review or take action on the Intra-Corporate Restructuring under PSL § 70 and the Wallkill Presumption; and
2. Declaring that the previously established lightened regulatory regime will continue for DMP and WFS.

The Commission should declare that the proposed Intra-Corporate Restructuring is not a jurisdictional transfer and no approval is required under PSL § 70 because no new ultimate owner will be brought into the organizational structure, TWC will remain in control of DMP and WFS, no existing ultimate owner will be removed, no new gas plant is being acquired, and the proportionate shares of the ultimate owners of the jurisdictional facilities will remain the same after the Intra-Corporate Restructuring. If the Commission determines that the Intra-Corporate Restructuring is a jurisdictional transfer, the Commission should issue a declaratory ruling that it need not review or take further action on the Intra-Corporate Restructuring under PSL § 70 under the Wallkill Presumption because the Intra-Corporate Restructuring will not raise any competitive issues and will not otherwise harm captive ratepayers.³ In either event, Petitioners also request that the Commission confirm that WFS and DMP will remain subject to lightened regulation.

Petitioners hereby respectfully request the Commission expedite, to the extent possible, its consideration of the instant Petition. The Intra-Corporate Restructuring is expected to close as quickly as possible, which will allow the Petitioners to realize tax savings, simplify their

³ Case 91-E-0350, *Wallkill Generating Company, L.P.*, Order Establishing Regulatory Regime (Apr. 11, 1994) (the “Wallkill Order”). In the Wallkill Order, the Commission ruled that transactions involving parent entities upstream from the entities owning wholesale electric generation facilities located in New York will be reviewed *only* if there is the potential of harm to captive New York ratepayers (referred to hereafter as the “Wallkill Presumption”).

corporate structure, streamline governance and maintain investment-grade credit ratings. The Intra Corporate Restructuring will allow TWC greater flexibility to invest in an expanding portfolio of large-scale, fully-contracted infrastructure projects. In order to assist in expediting the review of this Petition, Petitioners have served this Petition on the parties indicated on the attached Affidavit of Service, which may be interested in this ruling, and informed them of the twenty-one (21) day comment period applicable to declaratory rulings under Section 8.2 (c) of the Commission's Rules.

II. DESCRIPTION OF PETITIONERS

A. DMP AND WFS

DMP is a pipeline corporation organized under Article 7 of the New York Transportation Corporations Law and is a wholly-owned direct subsidiary of WFS. WFS is a Delaware limited liability company authorized to do business in the State of New York. Currently, WFS and DMP are wholly-owned indirect subsidiaries of WPZ. TWC, owns 100 % of WPZ GP LLC ("WPZ GP"), the general partner of WPZ, and, through its ownership of Williams Gas Pipeline Company LLC, approximately 74% of the limited partner interests of WPZ. A simplified organizational chart depicting the upstream ownership of DMP and WFS is attached hereto as "Exhibit A."

WFS, with the involvement of DMP, owns and operates a 9.82-mile, sixteen-inch, natural gas gathering pipeline in the Town of Windsor, Broome County, New York, which interconnects with the interstate pipeline owned by the Millennium Pipeline Company, LLC ("Millennium Pipeline"), as well as the accompanying Dunbar Compressor Station (this gathering pipeline and

the Dunbar Compressor Station are referred to collectively as the “NY Mainline”).⁴ The NY Mainline provides competitive wholesale gathering transportation services to several natural gas production companies in Susquehanna County and Wyoming County, Pennsylvania, including Cabot Oil & Gas Corporation, BKV Operating LLC, BKV Chelsea LLC, and Southwestern Energy Company. The NY Mainline gathers the natural gas produced from the producer wells in Pennsylvania and transports it to the Millennium Pipeline, where the natural gas enters into interstate commerce. The NY Mainline was determined to be a non-jurisdictional gathering system by the Federal Energy Regulatory Commission (“FERC”) in an order dated March 5, 2010.⁵ The Millennium Pipeline is neither owned nor operated by TWC, WPZ, WFS, DMP, or any of their subsidiaries or affiliates. Neither WFS nor DMP, nor any of their subsidiaries or affiliates, provide any retail services or serve any retail customers in New York..

In 2015, the Commission issued an order granting WFS and DMP the following: (1) a Certificate of Environmental Compatibility and Public Need to construct and operate an additional natural gas gathering pipeline in the Town of Windsor, Broome County, New York (“NY Mainline Loop”), which parallels the NY Mainline within the existing right-of-way (“NY Mainline Loop Article VII Certificate”); (2) an amendment to the NY Mainline Article VII Certificate to construct and operate an expansion of the Dunbar Compressor Station; and (3) an

⁴ The NY Mainline was originally owned by Laser Northeast Gathering Company, LLC (“Laser”) and DMP, both of which were granted a Certificate of Environmental Compatibility and Public Need by the Commission. *See* Case 10-T-0350, *DMP N.Y., Inc. & Laser Ne. Gathering Co., LLC*, Order Granting Certificate of Environmental Compatibility and Public Need (Feb. 22, 2011) (“NY Mainline Article VII Certificate”). Thereafter, the Commission declared that it would not further review an upstream transfer whereby WPZ purchased all of the interests of Laser’s direct parent, LNGC Holdings, LLC (“LNGC”). *See* Case 11-G-0656, *DMP N.Y., Inc. et al.*, Declaratory Ruling On Review Of An Ownership Transfer Transaction (Feb. 21, 2012) (“Acquisition Order”). Subsequently, the Commission approved a merger transaction accomplished through a corporate reorganization where LNGC, Laser, and all of their assets were merged directly into WFS, a wholly-owned indirect subsidiary of WPZ. *See* Merger Order. Currently, WFS and DMP are wholly-owned indirect subsidiaries of WPZ.

⁵ *Laser Marcellus Gathering Co., LLC*, 130 FERC ¶ 61,162 (2010).

amendment to the NY Mainline Article VII Certificate to modify the right-of-way to accommodate the parallel natural gas gathering pipeline certified in the NY Mainline Loop Article VII Certificate.⁶ As of the date of this Petition, the NY Mainline Loop has been constructed and placed into service, and the Dunbar Compressor Expansion is undergoing commissioning and final testing before being placed fully into service. Similar to the NY Mainline, these projects gather the natural gas produced from the producer wells in Pennsylvania and transport it to the Millennium Pipeline, where the natural gas enters into interstate commerce. These projects do not provide any retail services or serve any retail customers in New York.

The assets described here are the only “gas plant” owned by TWC, WPZ, WFS, DMP, or any of their subsidiaries or affiliates within the meaning of PSL § 2(10). The Commission also issued an order granting DMP and WFS’ predecessor-in-interest, Laser, a Certificate of Public Convenience and Necessity, making both DMP and WFS a lightly regulated “gas corporation” within the definition set forth in PSL § 2(11).⁷

B. TWC and WPZ

DMP and WFS are owned indirectly by WPZ and TWC. DMP is a wholly-owned subsidiary of WFS. WFS is a wholly-owned subsidiary of Williams Field Services Group, LLC, which, in turn, is a wholly-owned subsidiary of WPZ. WPZ is a publicly traded, New York Stock Exchange listed master limited partnership. WPZ GP is the general partner of WPZ, and is owned 100% by TWC. Pursuant to the WPZ Partnership agreement, WPZ GP, as general partner of WPZ, has the sole responsibility and authority for the management and control of

⁶ Cases 13-T-0538 et al., *Williams Field Servs. Co., LLC and DMP N.Y., Inc.*, Order Regarding Certificates of Environmental Compatibility and Public Need (Oct. 16, 2015).

⁷ *See* Merger Order.

WPZ.⁸ The limited partnership interests in WPZ are purely passive, economic interests which prohibit their holders from “participat[ing] in the operation, management or control (within the meaning of the Delaware Act) of the Partnership’s business, transact[ing] any business in the Partnership’s name or hav[ing] the power to sign documents for or otherwise bind the Partnership.”⁹ TWC currently owns approximately 74% of the limited partnership interests in WPZ, with the remaining 26% being owned by the public. The public interest holders are a diffuse group of passive investors, none of whom holds 10% or more of the outstanding limited partnership interests. Exhibit A depicts the simplified organizational chart showing the upstream ownership of DMP and WFS as described in this Petition. By virtue of its 100% ownership interest in the general partner of WPZ TWC currently has the sole rights to manage and control WPZ, and indirectly, WFS and DMP.

TWC is an energy infrastructure company that directly, and through its above described ownership and general partner interest in WPZ, owns and operates interstate natural gas pipelines, natural gas gathering and processing facilities, and natural gas liquids and petrochemical facilities located in various areas of the United States.

TWC’s and WPZ’s interstate natural gas pipeline businesses consist primarily of Transcontinental Gas Pipe Line Company, LLC (“Transco”) and Northwest Pipeline, LLC, (“Northwest”). Transco’s pipeline extends from the Gulf of Mexico and south Texas, through Louisiana, Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, Pennsylvania, and New Jersey to the New York City metropolitan area. Northwest’s

⁸ See, Second Amended and Restated Agreement of Limited Partnership of Williams Partners L.P. (Feb 1, 2018) at Section 7.1, available at: <https://www.sec.gov/Archives/edgar/data/1483096/000119312518029307/d482566dex31.htm>

⁹ *Id.* at Section 3.2.

pipeline extends from the San Juan basin in northwestern New Mexico and southwestern Colorado, through Colorado, Utah, Wyoming, Idaho, Oregon, and Washington. Additionally, WPZ indirectly owns 50% of Gulfstream Natural Gas System, L.L.C., which extends from the Mobile Bay area in Alabama to markets in Florida.

TWC's and WPZ's midstream business includes facilities located in Arkansas, Colorado, Kansas, Louisiana, New Mexico, Oklahoma, Wyoming, the Gulf of Mexico, Pennsylvania, West Virginia, New York (described above), Texas, and Ohio. The companies' primary midstream businesses are natural gas gathering, treating, and processing; separation of natural gas liquids into components; storage and transportation; and offshore crude oil transportation.

Also included within TWC's and WPZ's midstream businesses are the natural gas gathering and processing operations (through subsidiaries, including WFS and DMP), which involve thousands of miles of natural gas gathering pipelines, processing plants, compression facilities, and related facilities. These facilities give TWC's subsidiaries and affiliates the capability of gathering, processing, natural gas liquids separation, and compressing and treating billions of cubic feet of natural gas daily throughout the United States, including in the Utica and Marcellus Shale regions. However, none of these midstream assets, nor any of TWC's subsidiaries' or affiliates' midstream assets, with the exception of WFS and DMP and their assets, are located in New York State or are "gas corporations" subject to regulation by the Commission under the PSL.

Further, besides the midstream DMP and WFS facilities, the only facilities owned directly or indirectly by TWC or WPZ in the State of New York are portions of the interstate natural gas pipeline owned and operated by WPZ's subsidiary, Transcontinental Gas Pipe Line Company, LLC ("Transco"), which delivers natural gas to The Brooklyn Union Gas Company,

Keyspan Gas East Corp. dba Brooklyn Union of L.I., and Consolidated Edison Company of New York, Inc. in the New York City metropolitan area through approximately 2 Bcf/day of firm delivery point entitlements. Transco does not engage in any sales of natural gas for resale or any retail sales of natural gas, but rather provides unbundled natural gas transmission and storage services to its customers.¹⁰

III. DESCRIPTION OF THE INTRA-CORPORATE RESTRUCTURING

Pursuant to an Agreement and Plan of Merger (the “Merger Agreement”) entered into on May 16, 2018 between TWC and WPZ and certain of their subsidiaries, the 256.0 million outstanding publicly-held passive, limited partnership interests (without management rights) of WPZ will be converted to TWC common stock at a fixed exchange ratio. In a subsequent transaction that is also part of the Intra-Corporate Restructuring, WPZ will merge into TWC with TWC being the surviving entity. As a result of the Intra-Corporate Restructuring, the ultimate indirect upstream ownership of WFS and DMP will not change. WFS and DMP will be a 100% wholly-owned subsidiary of TWC. The previous holders of the publicly-held passive, limited partnership interests (without management rights) of WPZ will continue to own an indirect interest in WFS and DMP, through a minority ownership of common stock of TWC. The Intra-Corporate Restructuring will not affect the management or operation of WFS and DMP. TWC will continue to control the management and operation of its subsidiaries, including WFS and DMP. The simplified post-restructuring organizational chart is attached hereto as Exhibit B.

¹⁰ In addition to the Transco pipeline, WPZ, through a subsidiary, owns 41% of Constitution Pipeline Company, LLC (“Constitution”), which is a proposed 126-mile interstate pipeline transmission project. Constitution is intended to interconnect a gathering system in Susquehanna County, Pennsylvania, to the Iroquois Gas Transmission and Tennessee Gas Pipeline systems in New York. Constitution is subject to regulation by FERC under the Natural Gas Act, and will not engage in any sales of natural gas and will only provide unbundled natural gas transmission services to its customers.

IV. THE COMMISSION SHOULD DECLARE THAT THE INTRA-CORPORATE RESTRUCTURING IS OUTSIDE THE SCOPE OF PSL § 70 BECAUSE IT IS NOT A TRANSFER OR THAT NO FURTHER REVIEW IS NECESSARY UNDER THE WALLKILL PRESUMPTION.

A. The Intra-Corporate Restructuring Does Not Constitute a Transfer under the PSL Because the Ultimate Ownership Is Not Changing.

In reviewing proposed intra-corporate reorganizations, the Commission has determined that certain transactions do not require review under PSL §70 because they do not affect the ultimate ownership of the operating company and its jurisdictional facilities, or the proportionate shares held by those owners.¹¹ Specifically, the Commission has found that eliminating a holding company from an ownership structure upstream from lightly regulated entities does not amount to a transfer under PSL §70 because the ultimate owner of the membership interests in the operating subsidiaries remains the same, and no new entities are brought into the corporate structure.¹²

After consummating the Intra-Corporate Restructuring, WFS and DMP will remain directly, wholly-owned by Williams Field Services Group, LLC, and no new ultimate owner will be brought into the organizational structure. The result of the transaction will be the elimination of WPZ and WPZ GP from the ownership chain, and the movement of the holders of a 26% passive, limited partnership interest (without management rights) in WPZ to the TWC level. After the Intra-Corporate Restructuring, WFS and DMP will continue to be controlled by TWC and owned by TWC, and through their ownership in TWC, the previous holders of the public limited partnership interests in WPZ.

¹¹ Case 18-E-0032, *Fortistar N. Tonawanda Inc.*, Order Approving Financing and Making Other Findings (Apr. 20, 2018).

¹² Case 05-E-1582, *NRG Energy Inc. and NRG Ne. Generating LLC*, Declaratory Ruling on Review of an Intra-Corporate Dissolution Transaction (Jan. 26, 2006).

In addition, the Intra-Corporate Restructuring cannot create the potential for the exercise of market power. Adding or removing intermediate entities within Petitioners' organizational structure cannot enhance the ability of Petitioners or their affiliates to exercise either horizontal or vertical market power because the transaction does not change the ultimate ownership of Petitioners.

B. If the Commission Finds That the Intra-Corporate Restructuring Constitutes a Transfer under the PSL, It Should Find That No Further Review Is Necessary under the Wallkill Presumption.

If the Commission finds that the Intra-Corporate Restructuring constitutes a transfer under the PSL, it should hold that no further review is needed under the Wallkill Presumption. The Commission has established a lightened regulatory regime for entities operating in competitive markets in New York under which PSL § 70 review of changes in ownership is not required in the absence of the potential for the exercise of market power or other harm to the interests of captive New York ratepayers.¹³ As discussed more fully above, the Intra-Corporate Restructuring involves ownership interests in entities upstream from the affiliates owning and operating New York competitive facilities and, as described below, cannot adversely affect New York captive ratepayers. In fact, the Commission has previously found that the transfer of upstream ownership interests in DMP and WFS qualified for the Wallkill Presumption.¹⁴ That

¹³ See, e.g., Case 07-E-0332, *Astoria Generating Co. Holdings LLC, et al.*, Declaratory Ruling on Review of a Merger Transaction (May 22, 2007); Case 09-E-0055, *Constellation Energy Nuclear Group LLC et al.*, Declaratory Ruling on Review of a Transfer Transaction (Apr. 23, 2009); Case 06-M-0210, *Constellation Energy Group, Inc.*, Declaratory Ruling on Review of Ownership Interest Transfers (July 25, 2006); Case 08-E-0850, *Harbinger Capital Partners Master Fund I, Ltd. & Harbinger Capital Partners Special Situations Fund*, Declaratory Ruling on Review of Stock Transfer Transactions (Sept. 19, 2008).

¹⁴ Case 15-G-0688, *Joint Petition of Williams Field Services Company, LLC, DMP New York, Inc., The Williams Companies, Inc., Energy Transfer Equity, L.P. and Energy Transfer Corp LP for a Declaratory Ruling, or, Alternatively, an Approval Pursuant to Section 70 of the New York Public Service Law*, Declaratory Ruling on a Transfer Transaction (March 17, 2016). That transfer was ultimately not consummated.

case involved the transfer of upstream ownership of the New York facilities to a previously unaffiliated entity. Here, no new ultimate owners are entering or exiting the ownership chain, eliminating any potential for the exercise of market power.

The Intra-Corporate Restructuring does not pose the potential for the exercise of horizontal or vertical market power, or otherwise present any risk to captive ratepayers. The Commission has already found that TWC's ownership and control of WFS and DMP would not create the potential for the exercise of market power. In the Acquisition Order, the Commission explained that the new ownership structure involving WFS and its affiliate entities did not pose the potential for exercise of horizontal market power in gas gathering transportation markets:

[G]as gathering is a highly competitive business characterized by low barriers to entry and vigorous competition over the location and ownership of gas gathering lines. Producers have abundant choice among gas gathering service providers prior to the time they commence production from their wells, and deploy long-term contracts to ensure that appropriate arrangements remain in place as long as they believe they will be needed. Those contracts are characteristic of competitive markets, and the participants in them bear the risks and reap the benefits of the arrangements they make. Therefore, [TWC's] ownership of the Laser Pipeline will not enable it to exercise horizontal market power either by interfering with the long-term contractual relationships established through competition in the pre-existing market for gas gathering services already formed in Pennsylvania, or by monopolizing the formation and development of gas gathering markets that might be created in New York in the future.¹⁵

The same analysis is applicable here because TWC will continue to control the regulated entities, and gas gathering will remain a highly competitive business regardless of the Intra-Corporate Restructuring.

¹⁵ Acquisition Order at 8.

The Commission also found that WFS' ownership of the NY Mainline does not pose the potential for the exercise of vertical market power:

While [TWC] is affiliated with the owners of Transco and its interstate pipeline, the [NY Mainline]'s only current connection to the interstate system is through the Millennium Pipeline. The first additional interstate interconnection Williams plans for the [NY Mainline] is with the Tennessee Pipeline. Therefore, competition among interstate pipelines to carry production delivered to them by the [NY Mainline] will be sufficient to prevent the exercise of vertical market power under these circumstances.¹⁶

The same analysis is applicable to the Intra-Corporate Restructuring since the interstate points of delivery for the NY Mainline (and the NY Mainline Loop) and the competition among interstate pipelines will remain virtually the same as recited by the Commission in the Acquisition Order. Consummating the Intra-Corporate Restructuring will simply convert indirect, passive, non-management limited partnership interests, which do not enable any control or influence over the operation of the WFS and DMP facilities, to TWC common stock. TWC is the current ultimate owner of the regulated companies. The persons receiving TWC common stock are present, indirect, passive ownership interest holders, albeit at a subsidiary level. TWC currently holds, and will continue to hold, the controlling, voting interest in WFS and DMP. The Intra-Corporate Restructuring will not affect the market concentration in any market, and will not change the assets held or controlled by TWC or affect their operation. TWC will continue to control all wholly-owned WPZ subsidiaries, including WFS and DMP.

Accordingly, should the Commission decide that the Intra-Corporate Restructuring constitutes a transfer under PSL § 70, it should find that, because the transaction involves the transfer of interests in an entity upstream of WFS and DMP and there is no potential harm to captive ratepayers, no further review under PSL § 70 is warranted.

¹⁶ *Id.* at 8-9.

V. CONCLUSION

Based on the foregoing, Petitioner respectfully requests that the Commission issue the following expedited rulings:

1. Declaring that the Intra-Corporate Restructuring is outside the scope of PSL §70 because it is not a transfer and the ultimate ownership is not changing, or that the Commission need not review or take action on the Intra-Corporate Restructuring under PSL § 70 and the Wallkill Presumption.
2. In either event, find that WFS and DMP will remain subject to the lightened regulation as requested in this Petition.

Respectfully submitted,

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Albany, NY 12207

Attorneys for Williams Field
Services Company, LLC, DMP New
York, Inc., Williams Partners, L.P.,
and The Williams Companies, Inc.

By: */s/ Konstantin Podolny*
Konstantin Podolny

Dated: May 31, 2018

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VERIFICATION

STATE OF OKLAHOMA)
)
COUNTY OF TULSA) ss.

I, James E. Scheel, being first duly sworn, attest that I am the Senior Vice President – Northeast G&P for The Williams Companies, Inc., and that I have the authority to verify the foregoing Petition. I have read the foregoing Petition and I affirm the facts, representations, and statements set forth herein are true and correct to the best of my knowledge, information, and belief.

Williams Field Services Company,
LLC, DMP New York, Inc.,
Williams Partners, L.P., and The
Williams Companies, Inc.

By: /s/ James E. Scheel

Name: James E. Scheel

Title: Senior Vice President –
Northeast G&P

Exhibit A – Current Simplified Organizational Structure

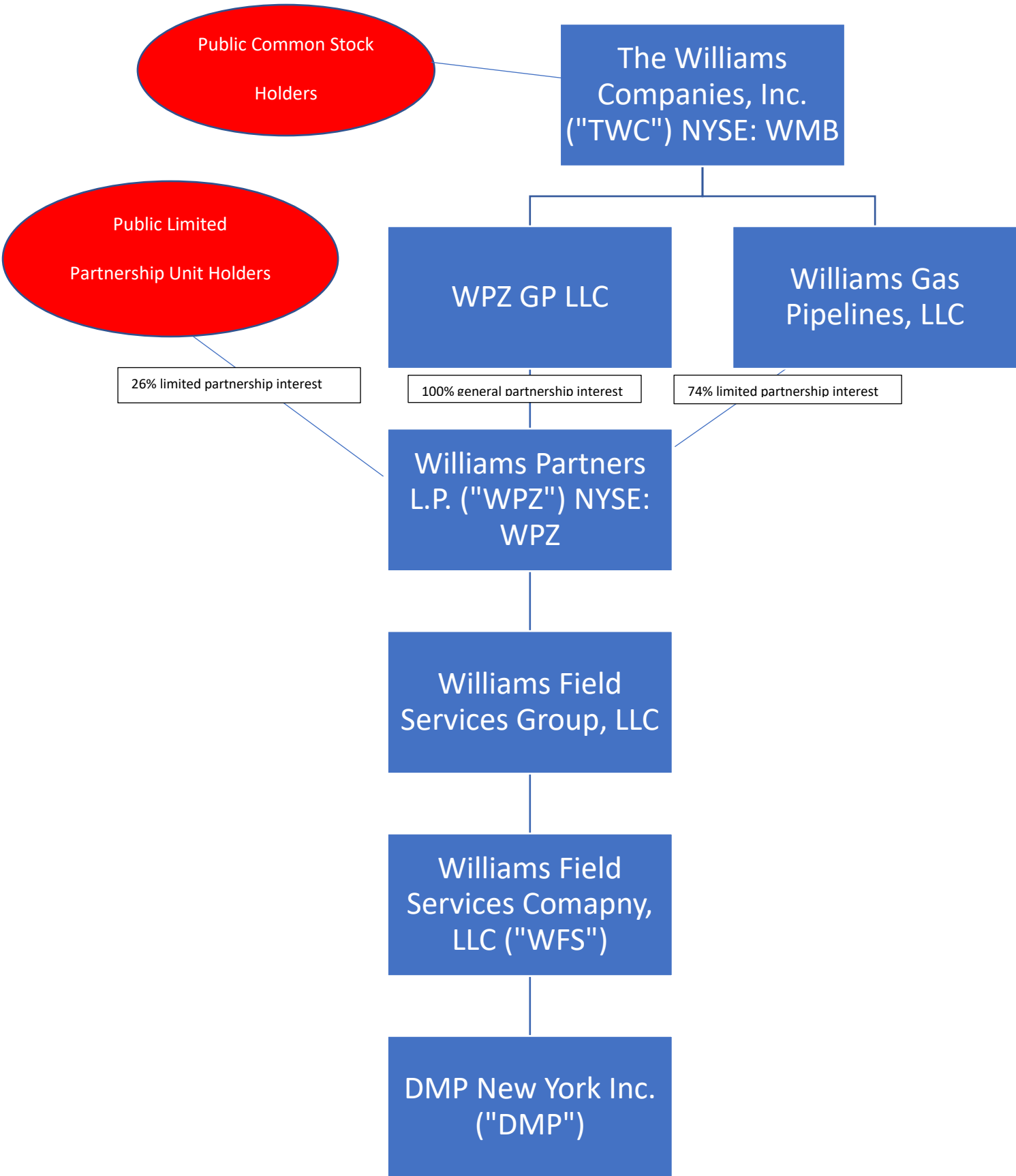
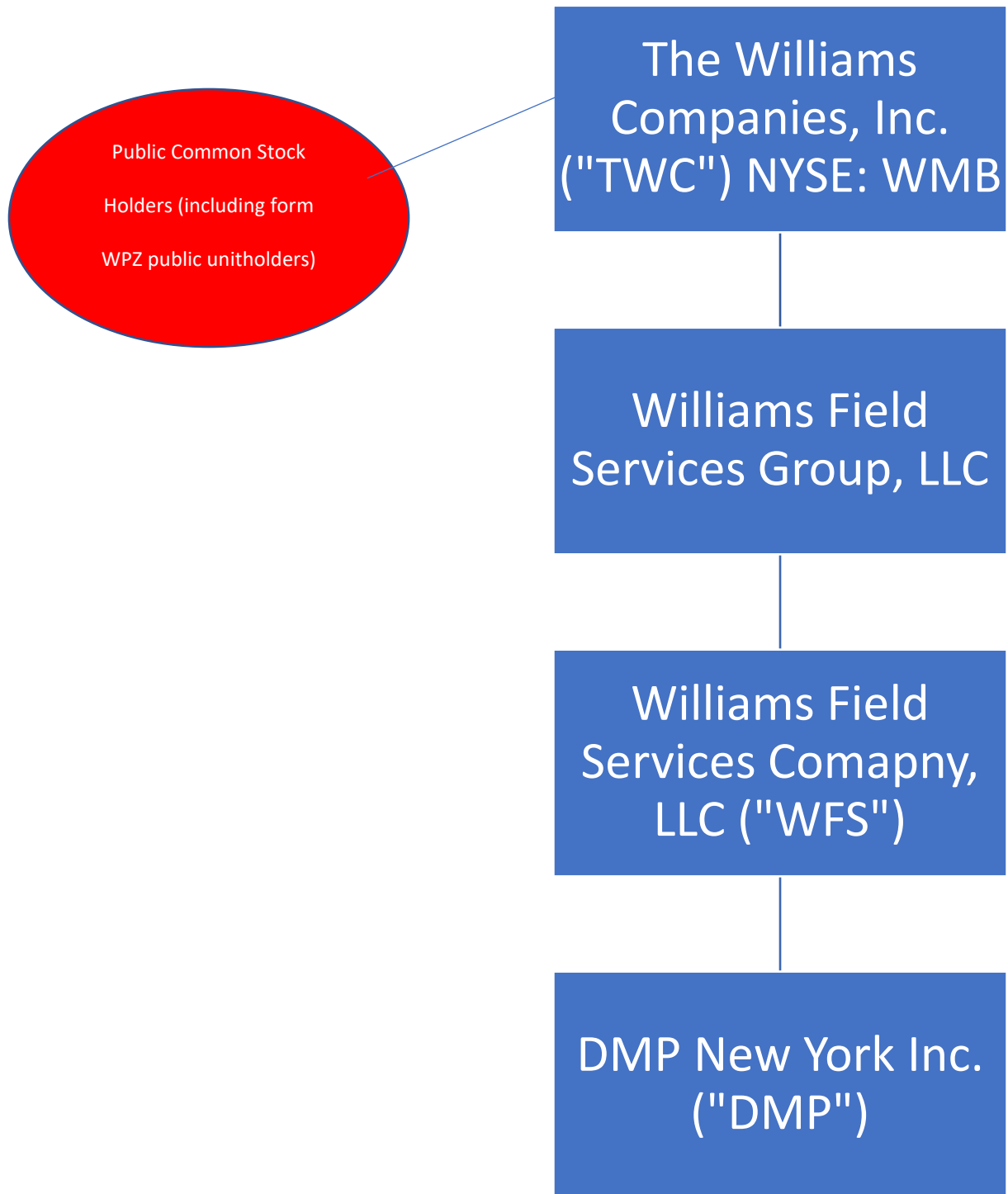


Exhibit B - Post Restructuring Simplified Organizational Structure



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AFFIDAVIT OF SERVICE

STATE OF NEW YORK

)

) SS.:

COUNTY OF ALBANY

)

I, Konstantin Podolny, being duly sworn, deposes and says: that on the 31st day of May, 2018, true and complete copies of the “**PETITION FOR DECLARATORY RULING REGARDING APPLICATION OF SECTION 70 OF THE NEW YORK STATE PUBLIC SERVICE LAW**” were served upon the following persons by electronic mail:

Carolyn W. Price
Town Supervisor
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windsorsupervisor@echoes.net

Mr. Jerry Henehan, on behalf of C.R.O.W.
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/s/ Konstantin Podolny
Konstantin Podolny