

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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Petition of Riverstone Holdings LLC, Talen Energy Supply, LLC, MACH Gen, LLC, New MACH Gen, LLC, and New Athens Generating Company, LLC for Declaratory Ruling or, in the Alternative Approval of the Acquisition of Indirect Ownership Interests in New Athens Generating Company, LLC Pursuant to Section 70 of the Public Service Law

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Case No. 16-E-\_\_\_\_\_

**PETITION**

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Date: July 15, 2016

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Case No. 16-E-\_\_\_\_\_

**PETITION**

Pursuant to Part 8 of the Rules and Regulations of the Public Service Commission (“Commission”), 16 NYCRR Part 8, Riverstone Holdings LLC (“Riverstone”); Talen Energy Supply, LLC (“Talen Energy Supply”); MACH Gen, LLC (“MACH Gen”); New MACH Gen, LLC (“New MACH Gen”); and New Athens Generating Company, LLC (“New Athens”) (collectively, “Petitioners”) hereby petition the Commission for a declaratory ruling that the acquisition of additional upstream ownership interests in New Athens by affiliates of Riverstone, as discussed more fully below, will not be reviewed further under Section 70 of the Public Service Law (“PSL”). Petitioners respectfully submit that the acquisition constitutes a transfer of upstream ownership interests in a lightly regulated wholesale merchant generating facility<sup>1</sup> and

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<sup>1</sup> The Commission granted lightened regulation to Athens Generating Company, L.P., which was the prior owner of the assets now held by New Athens in Case No. 99-E-1629, *Athens Generating Company, L.P.*, Order Providing for Lightened Regulation (issued July 12, 2000). Since then, it repeatedly has confirmed that New Athens is subject to lightened regulation. See, e.g., Case No. 03-E-0516, *Athens Generating Company, L.P.*, Order Approving Transfer and Providing for Lightened Regulation (issued September 17, 2003); Case No. 09-E-0144, *Strategic Value Partners LLC*, Declaratory Ruling on Review of an Ownership Transfer Transaction at 5 (issued April 22, 2009) (“After the SVP acquisition transaction is consummated, lightened regulation of the Athens generating facility, New Athens, and its owners will continue in accordance with the Light Regulation Orders.”); Case No. 14-E-0022,

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qualifies for the presumption established in the *Wallkill* Order.<sup>2</sup> Alternatively, Petitioners request the Commission approve the proposed transaction pursuant to Section 70.

Petitioners respectfully request that the Commission grant expedited review of this Petition so that the transaction contemplated herein is not impeded by any undue delay.

## **I. BACKGROUND**

### **A. Description of the Petitioners**

#### **1. Riverstone**

Riverstone is an energy- and power-focused private equity firm. Riverstone has two classes of membership interests. The Class A membership interests convey full control over the operation and management of Riverstone and are held equally by two individuals. The Class B membership interests convey only economic rights and are held by senior investment professionals employed by Riverstone, or trusts established by them, and senior advisors of Riverstone.

Riverstone controls the general partners of three limited partner investment funds which, in turn, own portfolio companies that, in the aggregate, currently hold approximately 35 percent of the outstanding common stock of Talen Energy Corporation (“Talen Energy”), an upstream owner of Talen Energy Supply, MACH Gen, New MACH Gen, and New Athens. Specifically, approximately 19.8 percent of Talen

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Footnote continued from previous page

*MACH Gen, LLC*, Order Approving Transfers of Ownership Interests and Making Other Findings at 10 (issued April 25, 2014) (“After the transaction is consummated, lightened regulation of . . . New Athens as owner[] of the Athens facility will continue in accordance with the Light Regulation Order.”); Case No. 15-E-0462, *MACH Gen, LLC*, Declaratory Ruling on Review of a Merger Transaction at 8 (issued Oct. 20, 2015) (“After the transaction is consummated, lightened regulation of New Athens will continue as described in the Light Regulation Order.”).

<sup>2</sup> Case No. 91-E-0350, *Wallkill Generating Company, L.P.*, Order Establishing Regulatory Regime (issued Apr. 11, 1994) (“*Wallkill* Order”).

Energy's common stock is held by Raven Power Holdings LLC ("Raven"); approximately 12.7 percent is held by C/R Energy Jade, LLC ("Jade"); and approximately 2.5 percent is held by Sapphire Power Holdings LLC ("Sapphire") (collectively, the "Riverstone Funds").

**a. Raven**

Raven is a Delaware limited liability company. Approximately 99 percent of the Class A Units (voting interests) of Raven are owned by Riverstone V Raven Holdings, L.P. ("Riverstone V Raven Holdings"). Certain individuals who have provided services to or been employed by Raven own less than 1 percent in the aggregate of Raven's outstanding Class A Units and own all Class B Units, which are profits interests without voting rights. The Class A Units constitute 100 percent of the voting interests in Raven. Riverstone V Raven Holdings is controlled by its general partner, Riverstone Energy Partners V, L.P., a Delaware limited partnership ("Riverstone GP"). The general partner of Riverstone GP is Riverstone Energy GP V, LLC, a Delaware limited liability company. Riverstone Energy GP V, LLC is 100 percent owned by Riverstone Energy GP V Corp., a Delaware corporation. Riverstone is the sole shareholder of Riverstone Energy GP V, LLC.

**b. Jade**

Jade is a Delaware limited liability company. Over 90 percent of the Class A Units (voting interests) of Jade are owned by investment vehicle affiliates of Carlyle/Riverstone Global Energy and Power Fund III, L.P. that are controlled by Carlyle/Riverstone Energy Partners III, L.P. ("Fund III GP"), a Delaware limited partnership (such investment vehicle affiliates, collectively, the "Fund III Vehicles"). There are two entities that collectively hold less than 10 percent of the Class A Units of

Jade and are not controlled by the Fund III GP: (i) Carlyle Energy Coinvestment III, L.P., a Delaware limited partnership, whose general partner is Carlyle Energy Coinvestment III GP, L.L.C., a Delaware limited liability company, which is ultimately controlled by the senior executives of The Carlyle Group; and (ii) Riverstone Energy Coinvestment III, L.P., a Delaware limited partnership, whose general partner is Riverstone Coinvestment GP LLC, a Delaware limited liability company whose sole shareholder is Riverstone. Each of the Fund III Vehicles is organized in the State of Delaware. The general partner and controlling entity of Fund III GP is C/R Energy GP III, LLC (“C/R GP LLC”), a Delaware limited liability company. A group of individuals who have provided services to or been employed by Jade owns its Class B Units, which are profits interests without voting rights. Riverstone and Riverstone Investment Group LLC, a Delaware limited liability company and a wholly owned, direct subsidiary of Riverstone, on the one hand, and TC Group Cayman Investment Holdings, L.P., a Cayman Islands limited partnership, and TC Group-Energy LLC, a Delaware limited liability company, both affiliates of Carlyle, on the other hand, hold all of the membership interests of C/R GP LLC. Although both Riverstone and Carlyle have indirect interests in Jade, the authority to appoint all of the directors of Jade is delegated to the managers appointed by Riverstone.

**c. Sapphire**

Sapphire is a Delaware limited liability company. All of the Class A Units or voting interests in Sapphire are held by R/C Sapphire Power IP, L.P., a Delaware limited partnership. Class B Units, which are profits interests without voting rights, are owned by a group of individuals who have provided services to or been employed by Sapphire. R/C Sapphire Power IP, L.P. is controlled by its general partner,

Riverstone/Carlyle Renewable Energy Partners II, L.P., a Delaware limited partnership whose general partner and controlling entity is, in turn, R/C Renewable Energy GP II, LLC, a Delaware limited liability company. The sole member of R/C Renewable Energy GP II, LLC is Riverstone. R/C Sapphire Power IP, L.P. is approximately 92 percent owned by Riverstone/Carlyle Renewable and Alternative Energy Fund II-C, L.P., a Delaware limited partnership that is also controlled by Riverstone/Carlyle Renewable Energy Partners II, L.P. (the same general partner that controls R/C Sapphire Power IP, L.P.). In addition, approximately 5 percent of R/C Sapphire Power IP, L.P. is owned by another Delaware limited partnership that is controlled by Riverstone/Carlyle Renewable Energy Partners II, L.P. The remaining interests (less than 3 percent) in R/C Sapphire Power IP, L.P. are held by the following: (i) Riverstone Renewable Energy Coinvestment II (Cayman), L.P., a Cayman Islands exempted limited partnership that is controlled by its general partner, Riverstone Renewable Energy Coinvestment II GP, LLC, a Delaware limited liability company, which is itself controlled by Riverstone; and (ii) Carlyle Renewable Energy Coinvestment II, L.P., a Delaware limited partnership, which is ultimately controlled by its general partner Carlyle Renewable Energy Co-Investment II GP, L.L.C., a Delaware limited liability company, which is controlled by the senior executives of The Carlyle Group.

## **2. Talen Energy Supply**

Talen Energy Supply is a Delaware limited liability company, and an indirect and wholly owned subsidiary of Talen Energy. Talen Energy is owned approximately 65 percent by public shareholders and 35 percent by affiliates of Riverstone, as described

above.<sup>3</sup> Talen Energy Supply owns various public utility subsidiaries that are primarily engaged in the ownership and operation of generating facilities in the New York Independent System Operator, Inc. (“NYISO”), ISO New England, Inc. (“ISO-NE”), and PJM Interconnection, L.L.C. (“PJM”) markets.<sup>4</sup>

Talen Energy Supply owns, directly or indirectly, three subsidiaries that engage in power marketing: Talen Energy Marketing, LLC; Raven Power Marketing, LLC; and Sapphire Power Marketing, LLC. Each of these subsidiaries is authorized to make sales in the NYISO, ISO-NE, and PJM markets. Through its relationship with Riverstone, Talen Energy Supply also is affiliated with TrailStone Power, LLC, a power marketer authorized to make sales in the NYISO, ISO-NE, and PJM markets.

Talen Energy Supply is also the indirect parent of Interstate Energy Company (“IEC”), which owns an intrastate natural gas and oil distribution system that serves the generation facilities owned by Talen Energy Supply’s wholly owned indirect subsidiaries Martins Creek, LLC (“Martins Creek”) and Lower Mount Bethel Energy, LLC (“LMBE”) in Pennsylvania.<sup>5</sup> Talen Energy Supply does not own any other fuel resources, interstate

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<sup>3</sup> Aside from the Riverstone affiliates discussed herein, no single shareholder currently owns more than 10 percent of Talen Energy.

<sup>4</sup> Talen Energy Supply also owns and/or is affiliated with generation assets in the states of Montana, Arizona, and Texas.

<sup>5</sup> IEC owns two pipelines, one of which transports natural gas to Martins Creek and the other of which may transport natural gas or oil to LMBE. The dual use pipeline has connections with several interstate natural gas pipelines. IEC is regulated by the Pennsylvania Public Utility Commission as a common carrier pipeline. *Interstate Energy Co.*, 46 Pa. P.U.C. 524 (1979) (oil transportation); *Interstate Energy Co.*, 53 Pa. P.U.C. 314 (1979)(same); *Interstate Energy Co.*, Docket No. A-140200 (Order adopted Apr. 13, 1995), *aff’d with modification*, *UGI Utils., Inc. v. Pa. Pub. Util. Comm’n*, 684 A.2d 225 (Pa. Comm. Ct. 1996) (natural gas transportation for the limited purpose of electric generation). The Federal Energy Regulatory Commission specifically has ruled that IEC is not subject to its jurisdiction pursuant to the Interstate Commerce Act. *Interstate Energy Co.*, 32 FERC ¶ 61,294 (1985).

fuel systems, or other inputs to electricity production in any market.<sup>6</sup>

### **3. MACH Gen and New MACH Gen**

Talen Energy Supply owns 100 percent of the membership interests in MACH Gen, a Delaware limited liability company that, in turn, owns 100 percent of the membership interests in New MACH Gen. New MACH Gen is a Delaware limited liability company that owns 100 percent of the membership interests in Petitioner New Athens. New MACH Gen also owns (1) 100 percent of the membership interests in New Harquahala Generating Company, LLC, a Delaware limited liability company that owns and operates a 1,020 MW (summer rating)<sup>7</sup> generating facility located in Maricopa County, Arizona; (2) 0.5 percent of the limited partnership interests in Millennium Power Partners, L.P. ("MPP"), a Delaware limited partnership that owns and operates a 334.9 MW (summer rating) generating facility located in Charlton, Massachusetts; and

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<sup>6</sup> Through Riverstone, Talen Energy Supply is affiliated with the following entities that own or control intrastate natural gas transportation or intrastate natural gas storage or distribution facilities, sites for generation capacity development, sources of physical coal supplies or control who may access transportation of coal supplies: (1) Salt Plains Storage, LLC, which owns an approximately 13 Bcf intrastate natural gas storage facility located in Grant County, Oklahoma; (2) Wild Goose Storage, LLC, which owns an approximately 75 Bcf intrastate natural gas storage facility located in Butte County, California; (3) Thunder Creek Gas Services, LLC, which owns intrastate natural gas gathering and transportation pipelines in Wyoming; and (4) Targe Energy LLC, which operates through its subsidiaries surface coal and limestone mines in Pennsylvania and reclaims coarse and waste coal mines in Pennsylvania. Talen Energy Supply affiliates also own rail cars that are used exclusively to ship coal to their own electric generating facilities. Additionally, Talen Energy Supply is affiliated with entities that own or control products that can be used as inputs to electric power production. Enviva Holdings, LP, acquires, develops and operates facilities in Mississippi, North Carolina, Virginia and Florida that collect, process, and transform wood-based biomass into renewable energy feedstock, primarily wood pellets. The other entities operate construction and demolition debris processing and recycling facilities in New England, from which a portion of the recycled materials are recovered, converted to wood chips, and sold to biomass-fired generation facilities in New England and Quebec.

<sup>7</sup> The summer ratings used throughout this Petition reflect the values reported in the 2014 Form EIA-860 for each facility.



(3) 100 percent of the membership interests in MACH Gen GP, LLC, a Delaware limited liability company that owns 99.5 percent of the general partnership interests in MPP.

#### **4. New Athens**

New Athens is a Delaware limited liability company that owns and operates a three-unit 1,137.9 MW (summer rating)<sup>8</sup> natural gas-fired combined cycle generating facility located in the Town of Athens, Greene County, New York (the “New Athens Facility”). The New Athens Facility is interconnected with the transmission system of Niagara Mohawk Power Corporation. The New Athens Facility sells power to, and receives energy management and marketing services from, Consolidated Edison Energy, Inc. through an Energy Management and Marketing Agreement. Consolidated Edison Energy, Inc., in turn, sells power from the New Athens Facility into the markets administered by NYISO.

#### **B. Relevant Public Utility Affiliates of Petitioners**

As set forth in Exhibit A, and described herein, Petitioners own, control, or are affiliated with 1,229.9 MW of generation in the NYISO control area. In addition to the 1,137.9 MW (summer rating) New Athens Facility, Petitioners own, control, or are affiliated with the following three companies that own or control 92 MW of generation capacity in NYISO; each is an alternative energy qualifying facility under Section 2 (2-b) of the PSL, and is exempt from Commission regulation:

- **Lyonsdale Biomass, LLC** owns a 19 MW (summer rating) generating facility that generates electricity through the burning of wood fuel and is located in Lyons Falls, New York.

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<sup>8</sup> The summer rating of the New Athens Facility produced by the Dependable Maximum Net Capability test conducted for NYISO is 949.9 MW.

- **ReEnergy Black River LLC** owns a 55 MW (summer rating) biomass-fired generating facility located at the Fort Drum army base in Le Ray, New York.
- **ReEnergy Chateaugay LLC** owns an 18 MW (summer rating) biomass-fired generating facility located in the Town of Chateaugay, New York.

Petitioners also own, control, or are affiliated with 524.5 MW of generation in the ISO-NE control area, and 11,335.33 MW of generation capacity in the PJM control area.<sup>9</sup> Neither Petitioners nor any of their affiliates own or control any electric transmission facilities (aside from limited interconnection facilities) in the United States, and they are not affiliated with any franchised public utility (in any region).<sup>10</sup>

### **C. The Proposed Transaction**

Under the terms of the June 2, 2016 Agreement and Plan of Merger by and among RPH Parent, LLC (“RPH”), a Delaware limited liability company and a wholly owned subsidiary of Raven; SPH Parent LLC (“SPH”), a Delaware limited liability

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<sup>9</sup> Because certain generating facilities located in PJM are only partially owned by affiliates of Petitioners, Petitioners have only listed (and included in their calculations) the portion of capacity owned by each affiliate. Exhibit A includes information both about the full generating capacity of those facilities, and the ownership percentages of Petitioners’ affiliates.

<sup>10</sup> Petitioners’ affiliate, New Harquahala, owns electric interconnection facilities consisting of a 22-mile, 500 kV sole-use radial transmission line and a dedicated 500 kV switchyard. New Harquahala does not, however, provide interconnection or transmission services to any party other than itself. Through their relationship with Riverstone, Petitioners are affiliated with Fowler Ridge IV Wind Farm, LLC (“Fowler Ridge”), a wind energy project in Benton and Tippecanoe Counties, Indiana, which is party to a common facilities agreement under which it holds an undivided interest in a common transmission facility designed and intended to interconnect Fowler Ridge and other nearby generation to the PJM transmission grid. See *Fowler Ridge II Wind Farm LLC, et al.*, Filing of Conformed Common Facilities Agreement, Docket No. ER11-3423-000 (filed Apr. 25, 2011); *BP Wind Energy N. Am. Inc., et al.*, Docket No. ER11-3423-000 (May 27, 2011) (accepting Common Facilities Agreement for filing). Also through their affiliation with Riverstone, Petitioners are affiliated with Pattern Energy Group LP (“Pattern Development”), which is developing the Broadview Energy JN and Broadview Energy KW wind power facilities in New Mexico. Pattern Development also indirectly owns the majority interest in Western Interconnect LLC, which is developing the Western Interconnect transmission line, an approximately 35-mile, 345 kV transmission line that will connect the Broadview wind power facilities to the Public Service Company of New Mexico transmission system. Both the Broadview wind power facilities and the Western Interconnect transmission line are expected to commence operations in early 2017.

company and a wholly owned subsidiary of Sapphire; CRJ Parent LLC (“CRJ”), a Delaware limited liability company and a wholly owned subsidiary of Jade; RJS Merger Sub Inc. (“Merger Sub”), a Delaware corporation that is wholly owned by RPH, SPH, and CRJ; and Talen Energy, (1) Merger Sub will merge into Talen Energy, with Talen Energy continuing as the surviving corporation; (2) each share of Talen Energy’s common stock outstanding as of immediately prior to the effective time of the merger (other than shares held in treasury by Talen Energy, shares held by Talen Energy’s subsidiaries, shares held by the Riverstone Funds, and shares pursuant to which dissenting rights under Delaware law have been properly exercised and not withdrawn or lost) will be automatically converted into the right to receive \$14.00 in cash; and (3) the Riverstone Funds will convert their existing ownership of approximately 35 percent of the issued and outstanding shares of Talen Energy’s common stock into shares of the surviving corporation (the “Proposed Transaction”). Upon consummation of the Proposed Transaction, the Riverstone Funds will own 100 percent of the outstanding common stock of Talen Energy. Consequently, the Proposed Transaction will result in the indirect transfer of certain ownership interests in New Athens.

**II. THE COMMISSION SHOULD DECLARE THAT THE PRESUMPTION ESTABLISHED IN THE WALLKILL ORDER APPLIES OR, IN THE ALTERNATIVE, APPROVE THE PROPOSED TRANSACTION UNDER SECTION 70 OF THE PSL**

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.” The Commission has determined that Section 70 of the PSL applies to stock acquisitions and ownership transfers occurring at

a holding company, *i.e.*, upstream, level.<sup>11</sup> However, in *Wallkill*, the Commission determined that it generally need not apply Section 70 oversight to the upstream transfer of ownership interests in lightly regulated wholesale electric generation facilities if there is little potential for harm to captive ratepayers:

[I]t will be presumed that Section 70 regulation does not adhere to transfer of ownership interests in entities upstream from the parents of the New York competitive electric generation subsidiary, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption.<sup>12</sup>

The Commission has applied the presumption established in the *Wallkill* order to a number of transactions involving the upstream transfer of interests in wholesale generation facilities.<sup>13</sup> In these orders, the Commission interpreted the *Wallkill* presumption to mean that no Section 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.

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<sup>11</sup> See Case No. 09-E-0470, *T. Rowe Price Associates, Inc.*, Declaratory Ruling on Review of Stock Transfer Transactions (issued July 21, 2009); Case No. 08-E-0850, *Harbinger Capital Partners Master Fund I, Ltd.*, Declaratory Ruling on Review of Stock Transfer Transactions (issued Sept. 19, 2008); Case No. 07-E-1385, *Calpine Corp. and LS Power Development*, Declaratory Ruling on Review of Stock Transfer and Acquisition Transactions (Issued and Effective Jan. 22, 2008).

<sup>12</sup> *Wallkill* Order at p. 9-10.

<sup>13</sup> See, *e.g.*, Case No. 09-E-0144, *Strategic Value Partners LLC*, Declaratory Ruling on Review of an Ownership Transfer Transaction at p. 5 (issued Apr. 22, 2009) (applying the *Wallkill* Presumption); Case No. 05-E-0834, *MACH Gen, LLC*, Declaratory Ruling on Review of Ownership Interest Transfers (issued Sept. 6, 2005) (same); Case No. 01-E-1900, *Athens Generating Company, L.P.*, Declaratory Ruling on Review of Corporate Reorganization (issued Dec. 21, 2001) (same); Case No. 04-E-1364, *Sithe Energies, Inc., et al.*, Declaratory Ruling on Review of Stock Transfers (entered Jan. 14, 2005) ("*Sithe Energies II*").

Petitioners respectfully submit that the Proposed Transaction qualifies for the *Wallkill* presumption. The proposed transfer of ownership interests in the New Athens Facility will occur at the upstream level, through the acquisition by the Riverstone Funds of the remaining outstanding shares not otherwise owned by the Riverstone Funds in Talen Energy, New Athens' indirect parent. Furthermore, Petitioners respectfully submit that 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. Petitioners are currently affiliated, and neither Petitioners nor their affiliates own any substantial ownership interest in any monopoly electric transmission or delivery facilities, or substantial influence over inputs, like fuel or fuel transportation, into the production of generation supply within New York. 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. No new affiliation between Petitioners and any power marketer will occur as a result of the Proposed Transaction. As the Commission has previously determined, any current affiliations between New Athens and its owners, and any power marketers<sup>14</sup> can be adequately supervised under Section 110 of the PSL.<sup>15</sup>

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<sup>14</sup> The power marketer subsidiaries or affiliates of Petitioners are: (1) Talen Energy Marketing, LLC; Raven Power Marketing, LLC; Sapphire Power Marketing, LLC; and TrailStone Power, LLC.

<sup>15</sup> See, e.g., Case No. 15-E-0462, *MACH Gen, LLC*, Declaratory Ruling on Review of a Merger Transaction at 5 (issued Oct. 20, 2015) (“[T]he affiliations between the lightly regulated electric corporations and any power marketers can adequately be supervised under PSL § 110, as provided in other lightened regulation orders.”); see also Case No. 11-E-0245, *Exelon Corp.*, Declaratory Ruling on Review of a Stock Transfer Transaction at p. 14 (issued Dec. 20, 2011) (finding that Constellation’s affiliations with retail electric suppliers and power marketers can be adequately addressed under PSL Section 110).

Petitioners also submit that the Proposed Transaction does not raise any horizontal market power issues. The total summer installed generation capacity in the New York Control Area (“NYCA”) is approximately 38,576 MW.<sup>16</sup> As described above, Petitioners currently own, control, or are affiliated with 1,229.9 MW of generating capacity in the NYCA, which represents only 3.19 percent<sup>17</sup> of the total installed generation capacity in the NYCA. Because Petitioners are already affiliated, this amount will not change as a result of the proposed transaction. Thus, Petitioners respectfully submit that, following the consummation of the Proposed Transaction, Riverstone will not have the ability to exercise horizontal market power in the NYCA.<sup>18</sup>

Nor will the Proposed Transaction enhance the potential for Riverstone to exercise market power in either of NYCA’s neighboring control areas, ISO-NE and PJM, thus impacting the NYCA. As described above, Petitioners and Riverstone own, control, or are affiliated with 11,335.33 MW of generation capacity in PJM, or approximately 6.16 percent<sup>19</sup> of the reported 183,912 MW installed generation capacity

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<sup>16</sup> *New York Independent System Operator, Inc.*, 2016 Load and Capacity Data (issued Apr. 2016) (the “Gold Book”), available at [http://www.nyiso.com/public/webdocs/markets\\_operations/services/planning/Documents\\_and\\_Resources/Planning\\_Data\\_and\\_Reference\\_Docs/Data\\_and\\_Reference\\_Docs/2016\\_Load\\_\\_Capacity\\_Data\\_Report.pdf](http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/Planning_Data_and_Reference_Docs/Data_and_Reference_Docs/2016_Load__Capacity_Data_Report.pdf).

<sup>17</sup>  $1,229.9/38,576 = 0.03188$  or 3.19 percent.

<sup>18</sup> See, e.g., Case No. 14-E-0022, *MACH Gen, LLC*, Order Approving Transfers of Ownership Interests and Making Other Findings (issued Apr. 25, 2014) (order finding that a 4.2% market share is insufficient to unduly influence or exercise control over the NYISO market); Case No. 08-E-0410, *LS Power Development LLC*, Declaratory Ruling on the Acquisition of Common Stock (issued May 27, 2008) (declaratory ruling finding that an 8.1% market share did not present an opportunity to exercise market power); Case No. 04-E-1384, *Sithe Energies II* (declaratory ruling finding that a 7% market share did not present an opportunity to exercise market power).

<sup>19</sup>  $11,335.33/183,912 = 0.06163$  or 6.16 percent.

in the PJM control area.<sup>20</sup> There will be no increase in this amount as a result of the Proposed Transaction, and in any event, there are transmission constraints that limit the amount of power that can be transferred from PJM into NYCA.<sup>21</sup>

With respect to ISO-NE, the 2016 summer seasonal claimed capacity in the ISO-NE control area is 30,581 MW.<sup>22</sup> Petitioners and Riverstone own, control, or are affiliated with 524.5 MW of generation capacity within the ISO-NE control area, or approximately 1.72 percent<sup>23</sup> of the installed capacity in ISO-NE. There will be no increase in this amount as a result of the Proposed Transaction, and transmission constraints restrict transfers between New York and the markets adjacent to New York.<sup>24</sup>

Finally, across all three control areas of NYCA, PJM, and ISO-NE, Petitioners' and Riverstone's interests in generating facilities would total 13,089.73 MW of the 253,069 MW of installed generation capacity in the three control areas, or approximately 5.17 percent<sup>25</sup> -- again, a level that Petitioners submit is well below the level of concern.

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<sup>20</sup> See PJM 2016 Summer Outlook, available at <http://annualmeeting.pjm.com/~media/pjm-annualmeeting/postings/2016-summer-outlook.ashx>.

<sup>21</sup> See, e.g., Case No. 15-E-0462, *MACH Gen, LLC*, Declaratory Ruling on Review of a Merger Transaction at 7 (issued Oct. 20, 2015) (“[T]ransmission constraints limit the amount of power that can be transferred from PJM to NYISO”); Case No. 11-E-0245, *Exelon Corporation*, Declaratory Ruling on Review of a Stock Transfer Transaction (issued Dec. 20, 2011) (holding that a 21.3% share in PJM Classic market adjacent to New York was insufficient to raise market power concerns within New York because of transmission constraints).

<sup>22</sup> *ISO New England, Inc.*, 2016-2025 Forecast Report of Capacity, Energy, Loads, and Transmission (issued May 1, 2016), available at [http://www.iso-ne.com/static-assets/documents/2016/05/2016\\_celt\\_report.xls](http://www.iso-ne.com/static-assets/documents/2016/05/2016_celt_report.xls).

<sup>23</sup>  $524.5/30,581 = 0.01715$  or 1.72 percent.

<sup>24</sup> See, e.g., Case No. 13-E-0450, *Astoria Generating Company, L.P.*, Declaratory Ruling on Review of a Transfer Transaction at 5 (issued Nov. 19, 2013) (recognizing the existence of “transmission constraints that restrict transfers among the markets adjacent to New York”).

<sup>25</sup>  $13,089.73/253,069 = 0.05172$  or 5.17 percent.

In sum, Petitioners respectfully submit that the Proposed Transaction, as a transfer of certain upstream ownership interests in an electric corporation, with no potential harm to the interests of captive ratepayers, qualifies for treatment under the *Wallkill* Order, and the Commission need not review the Proposed Transaction further. In the alternative, if the Commission decides that review of the Proposed Transaction is required under Section 70 of the PSL, Petitioners request that the Commission approve the Proposed Transaction pursuant thereto. The New Athens Facility will continue to be owned and operated by New Athens, and the Proposed Transaction does not raise any vertical or horizontal market power issues. Accordingly, the Proposed Transaction is in the public interest and should be approved for the reasons discussed above.<sup>26</sup>

### **III. THE COMMISSION SHOULD FIND THAT, FOLLOWING THE CLOSING, NEW ATHENS WILL CONTINUE TO QUALIFY FOR LIGHTENED REGULATION**

The Proposed Transaction will cause no change that should affect the Commission's prior determinations imposing lightened regulation on New Athens. In past decisions, the Commission has found that lightly regulated entities continue to be lightly regulated following the consummation of corporate transactions or reorganizations transferring their upstream ownership interests.<sup>27</sup> Thus, Petitioners

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<sup>26</sup> Should the Commission decide to review the Proposed Transaction, Petitioners specifically request waiver of the information disclosure requirements set forth in 16 NYCRR Part 31.1 as inapplicable to transfers of upstream interests in wholesale merchant generators such as New Athens. See, e.g., Case No. 03-E-0516, *Athens Generating Company, L.P.*, Order Approving Transfer and Providing for Lightened Regulation (issued Sept. 17, 2003) (finding that the certain requirements specified in 16 NYCRR Part 31.1 apply only to transfers of assets involving utility service providers that are subject to retail rate regulation).

<sup>27</sup> See, e.g., Case No. 09-E-0144, *Strategic Value Partners LLC*, Declaratory Ruling on Review of an Ownership Transfer Transaction at 5 (issued Apr. 22, 2009) ("After the SVP acquisition transaction is consummated, lightened regulation of the Athens generating facility, New Athens, and its owners will continue in accordance with the Light Regulation Orders."); Case No. 14-E-0022, *MACH Gen, LLC*, Order Approving Transfers of Ownership Interests and Making Other Findings at 10 (issued Apr. 25, 2014) ("After the transaction is consummated,

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request the Commission's confirmation that upon the closing of the Proposed Transaction, New Athens will continue to be subject to lightened regulation.

#### **IV. OTHER APPROVALS**

Petitioners also are seeking various other regulatory approvals of the Proposed Transaction, including from the Federal Energy Regulatory Commission under Sections 203(a)(1) and, to the extent necessary, Section 203(a)(2) of the Federal Power Act,<sup>28</sup> the Nuclear Regulatory Commission with respect to the change in control and/or indirect transfer of certain licenses, and the Federal Communications Commission with respect to the change in control over wireless radio licenses. In addition, Petitioners have made a filing with the Federal Trade Commission and the Department of Justice in accordance with the Hart-Scott-Rodino Antitrust Improvements Act of 1976,<sup>29</sup> and were granted early termination of the waiting period required by that statute.

#### **V. CORRESPONDENCE AND COMMUNICATIONS**

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

*For Talen Energy Supply, MACH Gen, New MACH Gen, and New Athens:*

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Allentown, PA 18101

Edward McTiernan  
Arnold & Porter LLP  
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lightened regulation of . . . New Athens as owner[] of the Athens facility will continue in accordance with the Light Regulation Order.”); Case No. 15-E-0462, *MACH Gen, LLC*, Declaratory Ruling on Review of a Merger Transaction at 8 (issued Oct. 20, 2015) (“After the transaction is consummated, lightened regulation of New Athens will continue as described in the Light Regulation Order.”).

<sup>28</sup> 16 U.S.C. §§ 824b(a)(1), 824b(a)(2) (2012).

<sup>29</sup> 15 U.S.C. § 18A.

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For Riverstone:

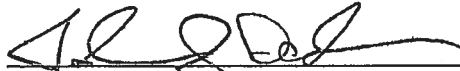
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**VI. CONCLUSION**

Petitioners respectfully request that the Commission review this Petition in an expedited manner and issue a declaratory ruling that the presumption established in the *Wallkill* Order applies and that the Commission need not review the Proposed Transaction under Section 70 of the PSL. Petitioners also request a declaratory ruling that the financing approvals and lightened regulation of New Athens will continue after the acquisition. Alternatively, Petitioners request that the Commission approve the Proposed Transaction pursuant to Section 70 of the PSL.

Respectfully submitted,



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*Attorneys for Talen Energy Supply, LLC;  
MACH Gen, LLC; New MACH Gen, LLC;  
and New Athens Generating Company,  
LLC*

Dated: July 15, 2016

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

Petition of Riverstone Holdings LLC, Talen Energy Supply, LLC, MACH Gen, LLC, New MACH Gen, LLC, and New Athens Generating Company, LLC for Declaratory Ruling or, in the Alternative Approval of the Acquisition of Indirect Ownership Interests in New Athens Generating Company, LLC Pursuant to Section 70 of the Public Service Law

Case No. 16-E-\_\_\_\_\_

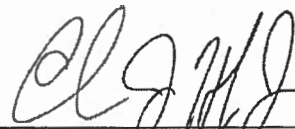
**VERIFICATION**

Clarence J. Hopf, Jr., being duly sworn according to law, upon his oath, deposes and says:

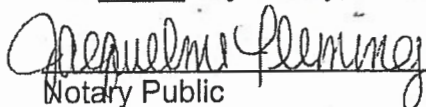
1. I am the Senior Vice President and Chief Commercial Officer of Talen Energy Supply, LLC and the President of each of MACH Gen, LLC, New MACH Gen, LLC, and New Athens Generating Company, LLC, and am authorized to make this Verification on behalf of Talen Energy Supply, LLC, MACH Gen, LLC, New MACH Gen, LLC, and New Athens Generating Company, LLC.

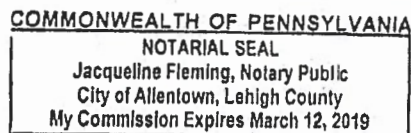
2. I have read the contents of the foregoing Petition and hereby verify that the statements therein contained are true and accurate to the best of my knowledge and belief as to Talen Energy Supply, LLC, MACH Gen, LLC, New MACH Gen, LLC, and New Athens Generating Company, LLC.

By: \_\_\_\_\_

  
Clarence J. Hopf, Jr.

Sworn to and subscribed before me  
this 13<sup>th</sup> day of July, 2016.

  
Notary Public



STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Petition of Riverstone Holdings LLC, Talen Energy  
Supply, LLC, MACH Gen, LLC, New MACH Gen, LLC,  
and New Athens Generating Company, LLC  
for Declaratory Ruling or, in the Alternative  
Approval of the Acquisition of Indirect Ownership  
Interests in New Athens Generating Company, LLC  
Pursuant to Section 70 of the Public Service Law

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Case No. 16-E-\_\_\_\_\_

VERIFICATION

Carl L. Williams, being duly sworn according to law, upon his oath, deposes and  
says:

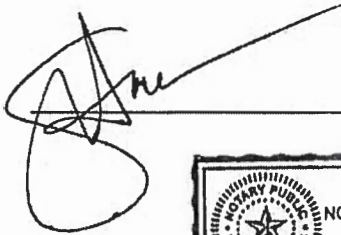
1. I am the Managing Director of Riverstone Holdings LLC, and am  
authorized to make this Verification on behalf of Riverstone Holdings LLC  
("Riverstone").

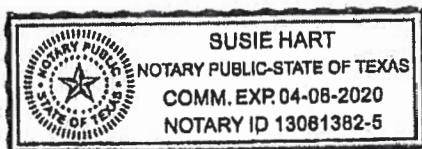
2. I have read the contents of the foregoing Petition and hereby verify that  
the statements therein contained are true and accurate to the best of my knowledge and  
belief as to Riverstone.

By: \_\_\_\_\_

Carl L. Williams

Sworn to and subscribed before me  
this 14<sup>th</sup> day of July, 2016.

  
\_\_\_\_\_



**Exhibit A**

**Petitioners' Subsidiaries and Affiliates Owning  
Generation Assets in NYISO, ISO-NE, and PJM**

**NYISO**

<b>Generating Facility</b>	<b>Location</b>	<b>Generating Capacity (MW) (Seasonal)</b>
ReEnergy Black River LLC	Le Ray, New York	55 MW (summer)
Lyonsdale Biomass, LLC	Lyons Falls, New York	19 MW (summer)
ReEnergy Chateaugay LLC	Chateaugay, New York	18 MW (summer)
New Athens Generating Company, LLC	Town of Athens, Greene County, New York	1,137.9 MW (summer)
		<b>Total: 1,229.9 MW</b>

**ISO-NE**

<b>Generating Facility</b>	<b>Location</b>	<b>Generating Capacity (MW) (Seasonal)</b>
ReEnergy Sterling CT Limited Partnership	Sterling, Connecticut	26 MW (summer)
ReEnergy Livermore Falls LLC	Livermore Falls, Maine	36 MW (summer)
ReEnergy Stratton LLC	Stratton, Maine	45 MW (summer)
Dartmouth Power Associates Limited Partnership	Dartmouth, Massachusetts	82.6 MW (summer)
Millennium Power Partners, LP	Charlton, Massachusetts	334.9 MW (summer)
		<b>Total: 524.5 MW</b>

**PJM**

<b>Generating Facility</b>	<b>Location</b>	<b>Generating Capacity (MW) (Seasonal)</b>
Lower Mount Bethel Energy, LLC	Lower Mount Bethel Township, Northampton County, Pennsylvania	537.5 MW (summer)
Brunner Island, LLC	East Manchester Township, York County, Pennsylvania	1,418.4 MW (summer)
Martins Creek, LLC	Lower Mount Bethel Township, Northampton County, Pennsylvania and nine sites throughout eastern Pennsylvania	2,034.8 MW (summer)

Montour, LLC (Montour Steam Electric Station)	Derry Township, Montour County, Pennsylvania	1,515 MW (summer)
Montour, LLC (12.34% undivided interest in the Keystone generating station)	Armstrong County, Pennsylvania	211.16 MW (summer) [full capacity is 1,711.2 MW (summer)]
Montour, LLC (16.25% undivided interest in the Conemaugh generating station)	Indiana County, Pennsylvania	278.07 MW (summer) [full capacity is 1,711.2 MW (summer)]
Susquehanna Nuclear, LLC (90% interest in Susquehanna Steam Electric Station)	Salem Township, Luzerne County, Pennsylvania	2,268 MW (summer) [full capacity is 2,520 MW (summer)]
Fowler Ridge IV Wind Farm LLC	Benton and Tippecanoe Counties, Indiana	150 MW (summer)
Bayonne Plant Holding, LLC	Bayonne, New Jersey	170.2 MW (summer)
Camden Plant Holding, LLC	Camden, New Jersey	145 MW (summer)
Elmwood Park Power, LLC	Elmwood Park, New Jersey	71.7 MW (summer)
Newark Bay Cogeneration Partnership, LP	Newark, New Jersey	120.2 MW (summer)
Pedricktown Cogeneration Company LP	Pedricktown, New Jersey	117.9 MW (summer)
York Generation Company, LLC	York, Pennsylvania	48.5 MW (summer)
Brandon Shores, LLC	Anne Arundel County, Maryland	1,273 MW (summer)
H.A. Wagner LLC	Anne Arundel County, Maryland	975.9 MW (summer)
		<b>Total: 11,335.33 MW</b>