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Via Hand Delivery

October 22, 1998

Hon. Debra Renner
Acting Secretary
New York State Public Service Commission
Agency Building 3
Empire State Plaza
Albany, New York 12223

Re: Case 98-E-____ - In the Matter of Carr Street Generating Station, L.P. Application For Certificate of Public Convenience and Necessity and Petition for Declaratory Ruling on Regulatory Regime.

Dear Secretary Renner:

Pursuant to Section 68 of the Public Service Law and Part 21 of the Commission's Rules, please find enclosed an original and three copies of the Application For Certificate of Public Convenience and Necessity and Petition for Declaratory Ruling on Regulatory Regime of Carr Street Generating Station, L.P. ("Carr"). Carr is purchasing U.S. Generating Company's East Syracuse cogeneration facility located at 64 Carr Street, East Syracuse, New York. Carr anticipates that the closing of its purchase of the facility will occur on or about November 19, 1998.

The facility has not previously been subject to Commission jurisdiction because it has been a federal qualifying facility. Carr does not expect that, in the future, the facility will produce any useful thermal energy. Accordingly, the facility will not qualify for federal qualifying facility status pursuant to the Public Utility Regulatory Policies Act of 1978 in calendar year 1999. Because Carr expects to acquire its interest in the facility within 30 days of this filing and the facility's operations will thereafter become subject to the Commission's jurisdiction, Carr requests expedited approval of this petition pursuant to § 21.10 of the Commission's Rules.

In compliance with Section 21.2 of the Commission's Rules Carr has attached to its petition certified copies of the October 1, 1998 order of the Federal Energy Regulatory Commission ("FERC") allowing Carr to sell electricity at market-based rates and the September 29, 1998 letter from FERC's General Counsel finding that Carr is an exempt wholesale generator. Also attached, pursuant to Section 21.10 of the Commission's rules, is the notice Carr intends to publish in the Business Record, a newspaper of general circulation in Onondaga County and surrounding areas.

Very truly yours,

READ AND LANIADO, LLP
Attorneys for Carr Street
Generating Station, L.P.

By: David B. Johnson

DBJ/klh
Enclosures

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 98-E-____	- In the Matter of Carr Street Generating Station, L.P. Application For Certificate of Public Convenience and Necessity and Petition for Declaratory Ruling on Regulatory Regime.

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PETITION FOR DECLARATORY RULING ON REGULATORY REGIME

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By: Howard J. Read
David B. Johnson

Dated: October 22, 1998
Albany, New York

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 98-E-____ -	In the Matter of Carr Street Generating Station, L.P. Application For Certificate of Public Convenience and Necessity and Petition for Declaratory Ruling on Regulatory Regime.

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PETITION FOR DECLARATORY RULING ON REGULATORY REGIME

INTRODUCTION AND SUMMARY OF REQUEST

Carr Street Generating Station, L.P. ("Carr"), as the prospective purchaser of the East Syracuse cogeneration facility (the "facility") located at 64 Carr Street, East Syracuse, New York, hereby petitions the New York State Public Service Commission ("Commission") for a certificate of public convenience and necessity ("CPCN") pursuant to Section 68 of the Public Service Law ("PSL") and Section 21.1 of the Commission's Rules to generate electricity as an electric plant as defined in PSL § 2(12). Carr also petitions the Commission for an order declaring that the facility will be regulated under a regime less stringent than the lightened regulatory regime the Commission has imposed on other independent power producers.[1]

On June 28, 1998, Carr entered into an agreement to purchase the interests of East Syracuse Generating Company, L.P. ("ESGC"), in and to the facility. Carr currently anticipates that the closing of its purchase of the facility will occur on or about November 19, 1998. Upon the closing of Carr's purchase of the facility, Carr will enter into an agreement

[1] Case 96-M-1108 - *Brooklyn Navy Yard Cogeneration Partners, L.P.*, Order Granting Certificates of Public Convenience and Necessity and Denying Request for Declaratory Ruling (April 17, 1997); Case 91-E-0350 - *Wallkill Generating Company, L.P.*, Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company and Notice Soliciting Comments (August 21, 1991); Case 91-E-0350, *Wallkill Generating Co., L.P.*, Order Establishing Regulatory Regime (April 11, 1994) ("*Wallkill*").

with Constellation Power Source, Inc. ("CPS"), pursuant to which CPS will provide fuel to the facility and Carr will make available to CPS the facility's services, in the form of all of the facility's capacity and electric energy (other than station service energy), and certain ancillary services and other products generated by the facility. CPS in turn will sell the resulting energy, capacity and ancillary services of the facility into the emerging wholesale market for competitive generation, both in New York State and in surrounding regions.

ESGC is one of the twenty-seven independent power producers that executed the Master Restructuring Agreement ("MRA") with Niagara Mohawk Power Corporation ("NMPC"). The Commission approved the MRA on March 20, 1998.[2] Pursuant to the MRA, ESGC's power purchase agreement with NMPC (the "PPA") was terminated when the MRA was consummated on June 29, 1998. During the period after June 29, 1998, ESGC has continued to operate the facility and to produce and sell electricity and thermal energy. Carr does not expect that CPS will market any significant portion of the facility's steam output after Carr acquires the facility. Accordingly, the facility will not qualify for federal qualifying facility ("QF") status pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA") in calendar year 1999 and Carr will therefore be subject to the Commission's jurisdiction as an electric corporation. *See* PSL §§ 2(2-a), 2(13).

Carr easily satisfies the requirements of PSL § 68. The facility is already built and is necessary or convenient for the public service because it provides resources to serve the wholesale competitive electricity market. Carr also requests that the CPCN authorize the facility to take any action specified in PSL Sections 69, 70, 106, 107 and 110 without further Commission approval so long as the facility is not subject to rate of return regulation. Because Carr expects to acquire its interest in the facility within 30 days of this filing and the

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[2] Case 94-E-0098 et. al., Opinion and Order Adopting Terms of Settlement Agreement Subject to Modifications and Conditions (March 20, 1998) ("Op. No. 98-8").

facility's operations will thereafter become subject to the Commission's jurisdiction, as described above, Carr requests expedited approval of this petition pursuant to § 21.10 of the Commission's Rules. 16 NYCRR § 21.10. Carr requests that the Commission grant it a CPCN by the closing date even if the Commission is unable to provide expedited treatment on Carr's petition for a declaratory ruling imposing a regulatory regime.

THE FACILITY

The facility is a 101 megawatt natural gas fired cogeneration facility. Carr is a Delaware limited partnership formed for the exclusive purpose of owning and operating the facility. The general partner is Orion Power New York GP, Inc., a Delaware corporation, and the sole limited partner is Orion Power New York LP, Inc., a Delaware corporation. Both Orion Power New York GP, Inc., and Orion Power New York, LP, Inc., are wholly-owned subsidiaries of Orion Power Holdings, Inc. ("Orion"), a Delaware corporation. The sole shareholders of Orion are Goldman Sachs Capital Partners II, L.P., an affiliate of The Goldman Sachs Group, L.P., (collectively "Goldman") and CPS. Goldman is one of the world's leading investment banks engaged, among other things, in commodities and securities activities world-wide. CPS is an indirect, wholly-owned subsidiary of the public utility, Baltimore Gas & Electric Company ("BG&E"), whose retail service territory is located in the State of Maryland.

The Federal Energy Regulatory Commission ("FERC") granted Carr authority to engage in wholesale power sales at market-based rates in an order issued October 1, 1998 (attached as Exhibit 1). On September 29, 1998, FERC's General Counsel found that Carr is an exempt wholesale generator (attached as Exhibit 1).

The address of the facility is 64 Carr Street, East Syracuse, New York 13057.

Correspondence and communications concerning this filing should be directed to:

Carr Street Generating Station, L.P.
c/o Orion Power Holdings, Inc.
111 Market Place, Suite 520
Baltimore, Maryland 21202
Attention: General Counsel

and to Carr's counsel:

Howard J. Read
David B. Johnson
Read and Laniado, LLP
25 Eagle Street
Albany, New York 12207
(518) 465-9313
(518) 465-9315 (fax)

I. THE COMMISSION SHOULD GRANT A CPCN TO THE FACILITY BECAUSE THE FACILITY IS ALREADY OPERATING AND ITS GENERATION OF ELECTRICITY IS IN THE PUBLIC INTEREST.

The facility began commercial operation in December 1993 and historically sold its electric output to NMPC under the PPA (until such PPA was terminated on June 29, 1998 as discussed above) and sold thermal energy to Bristol-Myers Company ("BMS") pursuant to a steam purchase agreement. Since initial commercial operation, the facility has maintained its QF status and satisfied requirements under the PPA and the BMS steam purchase agreement. Carr fully expects the facility to continue to operate reliably.

Carr satisfies the requirements for a CPCN that are set forth in PSL § 68 and sections 21.2 and 21.3 of the Commission's regulations. The regulations require an applicant to show that its plant is in the public interest, that the enterprise is economically feasible, that the applicant is able to finance the project and that it is able to render adequate service. The Commission should consider Carr's CPCN application in light of the fact that the facility has been operating reliably since initial commercial operation. Carr should be granted a CPCN authorizing it to generate electricity because its participation in the market will enhance competition and choice, to the benefit of New York's electricity consumers.

Consistent with the Commission's policy to allow market forces to control the electricity supply function, the Commission should find the PSL § 68 need requirement satisfied if the facility generates electricity for use in the competitive electricity market. In its Competitive Opportunities Order the Commission announced its policy and intention to deregulate the electricity market and encourage competition wherever feasible.[3] One of the Commission's goals articulated in its Order was to make the generation of electricity competitive. To achieve that goal, the Commission strongly encouraged utility divestiture of generating facilities to allay concerns about vertical market power and avoid anti-competitive behavior. The Commission stated:

> Critical to a movement toward a restructured industry is the need to avoid undue concentration of market power and particularly the use of monopoly power on the distribution side to unduly restrict choice on the generation side . . . . Divestiture may create a larger number of competing generating companies and ESCOs, which can result in a dynamic and aggressive market.[4]

The Commission recognized that in the new competitive market, unregulated suppliers will bear more of the risks. Since ratepayers will not be harmed as a result of poor decisions made by electricity suppliers, the Commission's regulatory policies designed to protect ratepayers are no longer relevant or applicable. Where in the past, the need for new generating capacity was subject to close regulatory scrutiny, the Commission's policy now is to let the competitive market determine which plants are needed. In its Competitive Opportunities Order, the Commission discussed how the competitive market would drive

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[3] Case 94-E-0952 - *Opinion and Order Regarding Competitive Opportunities for Electric Service*, Op. No. 96-12 (May 20, 1996)(Competitive Opportunities Order or Op. No. 96-12) at 30.

[4] Op. No. 96-12 at 59.

business decisions by electricity providers rather than traditional regulation by the Commission:

> First, competition should result in lower bills as competitors have a greater incentive to lower costs than do utilities under a regulatory regime. This has generally been the experience of the electric industry abroad and other deregulated industries. As customer choice increases, further pressure is applied to lower cost or provide customers with tailor-made options. And as prices fall, economic growth is encouraged. Additionally, innovation and the introduction of new products and services should be stimulated as competitors vie for customer business. *We also expect to see market-based solutions to public policy issues rather than regulatory mandates. Competitive providers (generators and energy service companies) would bear more of the risk of investment decisions, and customer less, than under regulation.*

Op. No. 96-12 at 29 (emphasis added).

The Commission has issued other orders to implement its vision and goals to bring competition to the wholesale and retail electricity market. On May 19, 1997, the Commission issued an order that laid the groundwork for the creation of a competitive retail energy services market.[5] In that Order the Commission reaffirmed its commitment to developing a competitive generation market and allowing market forces to control the electricity supply function. The Commission stated:

> We remain committed to developing market-based generation supply and to allowing utilities to eventually meet their supply function by relying on the competitive market and passing through a competitive market rate. In the near term, however, the utilities' responsibility for generation supply will be examined in their individual restructuring cases and reflected in their rate plans, in which we will establish reasonable rates. In favoring these policies, we note the well-established principle that we have

[5] Case 94-E-0952 - *Opinion and Order Establishing Regulatory Policies for the Provision of Retail Energy Services*, Op. No. 97-5, 1997 N.Y. PUC LEXIS 328 (May 19, 1997).

> broad discretion to select the means of achieving the Legislature's goals under the Public Service Law. Staff's proposal that we allow market forces to control the supply function clearly falls within that broad discretion.[6]

The Commission recently affirmed its policy to allow market forces to satisfy the need for generating facilities in finding that competition in the electricity generation market is an electricity procurement process that is reasonably consistent with the 1994 State Energy Plan.[7] In initiating steps to create competitive wholesale and retail markets, and deregulating the generation of electricity, the Commission has allowed the development of a market for competitive generation suppliers. By encouraging the divestiture of, and competition between, utility generating facilities and other generators, the Commission's policy is to let the competitive market decide the need for new generating capacity. In full accord with the Commission's policies, the facility will bring diversity to the competitive generation market. Carr respectfully requests that the Commission find that the facility is necessary or convenient for the public service pursuant to PSL § 68.

II. APPLICABLE REGULATORY REGIME

Carr requests a regulatory regime that will provide it with the maximum flexibility to serve the competitive electricity market. Carr requests that it be regulated under a regime less stringent than the lightened regulatory regime the Commission has imposed on other independent power producers (IPPs).[8]

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[6] *Id.* at *18.

[7] Case 98-E-0096, Petition of Athens Generating Company L.P. for a Declaratory Ruling that the Commission's Competitive Initiatives Constitute an Approved Capacity Procurement Process, that said Process is Reasonably Consistent with the 1994 State Energy Plan and that the Proposed Athens Generating Facility has been Selected Pursuant to an Approved Procurement Process, *Declaratory Ruling Concerning Approved Procurement Process* (April 16, 1998).

[8] Case 96-M-1108 - *Brooklyn Navy Yard Cogeneration Partners, L.P.*, Order Granting Certificates of Public Convenience and Necessity and Denying Request for Declaratory Ruling

A. REGULATION OF ELECTRICITY SALES

The Commission first articulated its policy on the regulatory regime of competitive wholesale providers of electricity in its *Wallkill* order.[9] In *Wallkill*, the Commission found that it could relax the regulatory procedures that were intended to apply to monopoly utilities when regulating generators operating in a competitive environment. The Commission's most recent application of the principles announced in *Wallkill* was in its order imposing lightened regulation on Brooklyn Navy Yard Cogeneration Partners ("BNYCP"). With respect to lightened regulation for BNYCP's wholesale electric sales, the Commission required BNYCP to submit, pursuant to PSL § 66(6), annual reports concerning electric sales and copies of any filings made with the Securities and Exchange Commission. The Commission also required approvals for transfers of franchises, works or stocks under PSL § 70 but stated they would receive reduced scrutiny and would not extend to transactions by remote parents of BNYCP. The Commission stated it would act swiftly upon applications for approval under PSL §§ 69 (approval of issues of stocks bonds and other forms of indebtedness) and 70.

The Commission also found that the provisions of PSL §§ 106 and 107, concerning approval of loans and the use of revenues, are applicable to BNYCP's operations as an electric corporation, but would receive reduced scrutiny. The Commission required BNYCP to identify its affiliates under PSL §§ 110(1) and (2) and, as provided by PSL §§ 110(3) and (4), file with the Commission copies of any contracts entered into with its affiliates. Assuming there is no direct or indirect affiliation with entities having an interest in fully-regulated New

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(April 17, 1997); Case 91-E-0350 - *Wallkill Generating Company, L.P.*, Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company and Notice Soliciting Comments (August 21, 1991); Case 91-E-0350, *Wallkill Generating Co., L.P.*, Order Establishing Regulatory Regime (April 11, 1994).

[9] Case 91-E-0350, *Wallkill Generating Co., L.P.*, Order Establishing Regulatory Regime (April 11, 1994).

York utilities, the Commission decided it would not abrogate the contracts nor review the affiliates' accounts and records.

The Commission should apply less regulation to Carr than it applied to BNYCP and the other IPPs. *Wallkill* style regulation is no longer necessary in the case of Carr because Carr is a competitor in a market that has become much more competitive than when the Commission first announced its regulatory regime policy. At the time of the Commission's *Wallkill* decision, competition in the generation sector was in its infancy. The Commission is now in the process of deregulating and making competitive the generation and retail sale of electricity.

Moreover, the Commission's enforcement of the provisions identified in *Wallkill* will not further its statutory mandate to protect the public interest. The facility is a merchant plant whose survival depends solely on the burgeoning competitive market. Carr has no power purchase contract required by State or federal law, or captive ratepayers to subsidize its operations. Carr can only produce electricity when its operations are competitive with the market price. Neither the terms nor the amount of any securities issuance, reorganization, or any other financing transaction will have any impact on the rates charged to the public.

Further, ESGC, which never intended to become an electric corporation, entered into the MRA with NMPC because of the risk of the utility's bankruptcy and in reliance on the Commission's policy and direction to deregulate and make competitive the generation market. The Commission found the MRA prudent in part because it allowed NMPC greater flexibility to make purchases from IPPs when needed, at lower rates. One of the benefits of the MRA is the approximately 5,000 gWh of electricity that will now be available to the competitive energy market.[10] The Commission's regulation over Carr, as the transferee of ESGC's interest in the facility, will serve no purpose and only hinder the facility in its quest to compete in the market.

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[10] Op. No. 98-8, slip Op. at 7.

In light of the Commission's staunch policy and mandate to open the generation and retail services segments to competition, ongoing reviews and approvals of the facility's operations are not necessary. Carr requests that the Commission issue a CPCN that authorizes (i) Carr to issue debt and equity securities pursuant to PSL § 69, (ii) any changes in the Carr partnership structure pursuant to PSL § 69 and (iii) any related asset transfers pursuant to PSL § 70. Further, so long as Carr does not seek rate of return regulation, the CPCN should provide that no additional approvals are required under PSL Sections 69, 70, 106, 107 and 110. All of these statutory provisions were designed to protect captive ratepayers from unfair practices by monopoly utilities and have no applicability to generating facilities selling into a competitive market at market based rates.

Further, ratepayers will not be adversely affected by any contracts Carr enters into, including those with affiliated interests that are not fully regulated New York utilities. The market will dictate the price the facility can charge for its electricity. As the Commission stated in its Wallkill order, "[t]here being no effect on rates, and the impacts of such contracts being limited to Wallkill and its owners rather than the public generally, we see no circumstances (outside the one exception described below), under which Wallkill's § 110 purchase contracts might violate the public interest defined in the statute."[11] Requiring Carr to obtain the approvals while it is actively competing in the electricity market would serve no purpose, would create unnecessary transaction costs for market players and would interfere with the market forces that the Commission is relying to provide a robust and diverse generation market, thereby raising prices unnecessarily.

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[11] Case 91-E-0350 - *Wallkill Generating Company, L.P.*, Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company and Notice Soliciting Comments (August 21, 1991) at 15. If the Commission finds that Carr must file contracts pursuant to § 110(4), Carr's contract with CPS should not have to be filed because the contract is not for the purchase of electric energy, gas or water. It is merely for the sale of the facility's services to convert gas into electricity.

CONCLUSION

Based on the foregoing, Carr respectfully requests that the Commission issue an order on an expedited basis, pursuant to 16 NYCRR Part 21.10, that grants Carr a CPCN, pursuant to PSL § 68, authorizing the facility to generate electricity and take any action specified in PSL Sections 69, 70, 106, 107 and 110 without further Commission approval so long as the facility is not subject to rate of return regulation. If the Commission cannot consider Carr's petition for an order declaring that the facility will be subject to a regulatory regime less stringent than that imposed on Walkill by the closing date, Carr requests that the Commission, nevertheless, grant a CPCN on or before the closing date. Once the Commission decides the regulatory regime to be imposed, Carr should be subject to such regulation as the Commission determines to be proper.

Respectfully submitted,

READ AND LANIADO, LLP
Attorneys for Carr Street Generating Station, L.P.
25 Eagle Street
Albany, NY 12207-1901
(518) 465-9313

By: D. B. Johnson
Howard J. Read
David B. Johnson

Dated: October 22, 1998,
Albany, New York.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 98-E-____	- In the Matter of Carr Street Generating Station, L.P. Application For Certificate of Public Convenience and Necessity and Petition for Declaratory Ruling on Regulatory Regime.

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PETITION FOR DECLARATORY RULING ON REGULATORY REGIME

READ AND LANIADO, LLP
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25 Eagle Street
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By: Howard J. Read
David B. Johnson

Dated: October 22, 1998
Albany, New York

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PUBLIC SERVICE COMMISSION

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APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PETITION FOR DECLARATORY RULING ON REGULATORY REGIME

INTRODUCTION AND SUMMARY OF REQUEST

Carr Street Generating Station, L.P. ("Carr"), as the prospective purchaser of the East Syracuse cogeneration facility (the "facility") located at 64 Carr Street, East Syracuse, New York, hereby petitions the New York State Public Service Commission ("Commission") for a certificate of public convenience and necessity ("CPCN") pursuant to Section 68 of the Public Service Law ("PSL") and Section 21.1 of the Commission's Rules to generate electricity as an electric plant as defined in PSL § 2(12). Carr also petitions the Commission for an order declaring that the facility will be regulated under a regime less stringent than the lightened regulatory regime the Commission has imposed on other independent power producers.[1]

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with Constellation Power Source, Inc. ("CPS"), pursuant to which CPS will provide fuel to the facility and Carr will make available to CPS the facility's services, in the form of all of the facility's capacity and electric energy (other than station service energy), and certain ancillary services and other products generated by the facility. CPS in turn will sell the resulting energy, capacity and ancillary services of the facility into the emerging wholesale market for competitive generation, both in New York State and in surrounding regions.

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Carr easily satisfies the requirements of PSL § 68. The facility is already built and is necessary or convenient for the public service because it provides resources to serve the wholesale competitive electricity market. Carr also requests that the CPCN authorize the facility to take any action specified in PSL Sections 69, 70, 106, 107 and 110 without further Commission approval so long as the facility is not subject to rate of return regulation. Because Carr expects to acquire its interest in the facility within 30 days of this filing and the

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THE FACILITY

The facility is a 101 megawatt natural gas fired cogeneration facility. Carr is a Delaware limited partnership formed for the exclusive purpose of owning and operating the facility. The general partner is Orion Power New York GP, Inc., a Delaware corporation, and the sole limited partner is Orion Power New York LP, Inc., a Delaware corporation. Both Orion Power New York GP, Inc., and Orion Power New York, LP, Inc., are wholly-owned subsidiaries of Orion Power Holdings, Inc. ("Orion"), a Delaware corporation. The sole shareholders of Orion are Goldman Sachs Capital Partners II, L.P., an affiliate of The Goldman Sachs Group, L.P., (collectively "Goldman") and CPS. Goldman is one of the world's leading investment banks engaged, among other things, in commodities and securities activities world-wide. CPS is an indirect, wholly-owned subsidiary of the public utility, Baltimore Gas & Electric Company ("BG&E"), whose retail service territory is located in the State of Maryland.

The Federal Energy Regulatory Commission ("FERC") granted Carr authority to engage in wholesale power sales at market-based rates in an order issued October 1, 1998 (attached as Exhibit 1). On September 29, 1998, FERC's General Counsel found that Carr is an exempt wholesale generator (attached as Exhibit 1).

The address of the facility is 64 Carr Street, East Syracuse, New York 13057.

Correspondence and communications concerning this filing should be directed to:

Carr Street Generating Station, L.P.
c/o Orion Power Holdings, Inc.
111 Market Place, Suite 520
Baltimore, Maryland 21202
Attention: General Counsel

and to Carr's counsel:

Howard J. Read
David B. Johnson
Read and Laniado, LLP
25 Eagle Street
Albany, New York 12207
(518) 465-9313
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I. THE COMMISSION SHOULD GRANT A CPCN TO THE FACILITY BECAUSE THE FACILITY IS ALREADY OPERATING AND ITS GENERATION OF ELECTRICITY IS IN THE PUBLIC INTEREST.

The facility began commercial operation in December 1993 and historically sold its electric output to NMPC under the PPA (until such PPA was terminated on June 29, 1998 as discussed above) and sold thermal energy to Bristol-Myers Company ("BMS") pursuant to a steam purchase agreement. Since initial commercial operation, the facility has maintained its QF status and satisfied requirements under the PPA and the BMS steam purchase agreement. Carr fully expects the facility to continue to operate reliably.

Carr satisfies the requirements for a CPCN that are set forth in PSL § 68 and sections 21.2 and 21.3 of the Commission's regulations. The regulations require an applicant to show that its plant is in the public interest, that the enterprise is economically feasible, that the applicant is able to finance the project and that it is able to render adequate service. The Commission should consider Carr's CPCN application in light of the fact that the facility has been operating reliably since initial commercial operation. Carr should be granted a CPCN authorizing it to generate electricity because its participation in the market will enhance competition and choice, to the benefit of New York's electricity consumers.

Consistent with the Commission's policy to allow market forces to control the electricity supply function, the Commission should find the PSL § 68 need requirement satisfied if the facility generates electricity for use in the competitive electricity market. In its Competitive Opportunities Order the Commission announced its policy and intention to deregulate the electricity market and encourage competition wherever feasible.[3] One of the Commission's goals articulated in its Order was to make the generation of electricity competitive. To achieve that goal, the Commission strongly encouraged utility divestiture of generating facilities to allay concerns about vertical market power and avoid anti-competitive behavior. The Commission stated:

> Critical to a movement toward a restructured industry is the need to avoid undue concentration of market power and particularly the use of monopoly power on the distribution side to unduly restrict choice on the generation side . . . . Divestiture may create a larger number of competing generating companies and ESCOs, which can result in a dynamic and aggressive market.[4]

The Commission recognized that in the new competitive market, unregulated suppliers will bear more of the risks. Since ratepayers will not be harmed as a result of poor decisions made by electricity suppliers, the Commission's regulatory policies designed to protect ratepayers are no longer relevant or applicable. Where in the past, the need for new generating capacity was subject to close regulatory scrutiny, the Commission's policy now is to let the competitive market determine which plants are needed. In its Competitive Opportunities Order, the Commission discussed how the competitive market would drive

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business decisions by electricity providers rather than traditional regulation by the Commission:

> First, competition should result in lower bills as competitors have a greater incentive to lower costs than do utilities under a regulatory regime. This has generally been the experience of the electric industry abroad and other deregulated industries. As customer choice increases, further pressure is applied to lower cost or provide customers with tailor-made options. And as prices fall, economic growth is encouraged. Additionally, innovation and the introduction of new products and services should be stimulated as competitors vie for customer business. *We also expect to see market-based solutions to public policy issues rather than regulatory mandates. Competitive providers (generators and energy service companies) would bear more of the risk of investment decisions, and customer less, than under regulation.*

Op. No. 96-12 at 29 (emphasis added).

The Commission has issued other orders to implement its vision and goals to bring competition to the wholesale and retail electricity market. On May 19, 1997, the Commission issued an order that laid the groundwork for the creation of a competitive retail energy services market.[5] In that Order the Commission reaffirmed its commitment to developing a competitive generation market and allowing market forces to control the electricity supply function. The Commission stated:

> We remain committed to developing market-based generation supply and to allowing utilities to eventually meet their supply function by relying on the competitive market and passing through a competitive market rate. In the near term, however, the utilities' responsibility for generation supply will be examined in their individual restructuring cases and reflected in their rate plans, in which we will establish reasonable rates. In favoring these policies, we note the well-established principle that we have

[5] Case 94-E-0952 - *Opinion and Order Establishing Regulatory Policies for the Provision of Retail Energy Services*, Op. No. 97-5, 1997 N.Y. PUC LEXIS 328 (May 19, 1997).

> broad discretion to select the means of achieving the Legislature's goals under the Public Service Law. Staff's proposal that we allow market forces to control the supply function clearly falls within that broad discretion.[6]

The Commission recently affirmed its policy to allow market forces to satisfy the need for generating facilities in finding that competition in the electricity generation market is an electricity procurement process that is reasonably consistent with the 1994 State Energy Plan.[7] In initiating steps to create competitive wholesale and retail markets, and deregulating the generation of electricity, the Commission has allowed the development of a market for competitive generation suppliers. By encouraging the divestiture of, and competition between, utility generating facilities and other generators, the Commission's policy is to let the competitive market decide the need for new generating capacity. In full accord with the Commission's policies, the facility will bring diversity to the competitive generation market. Carr respectfully requests that the Commission find that the facility is necessary or convenient for the public service pursuant to PSL § 68.

II. APPLICABLE REGULATORY REGIME

Carr requests a regulatory regime that will provide it with the maximum flexibility to serve the competitive electricity market. Carr requests that it be regulated under a regime less stringent than the lightened regulatory regime the Commission has imposed on other independent power producers (IPPs).[8]

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[6] *Id.* at *18.

[7] Case 98-E-0096, Petition of Athens Generating Company L.P. for a Declaratory Ruling that the Commission's Competitive Initiatives Constitute an Approved Capacity Procurement Process, that said Process is Reasonably Consistent with the 1994 State Energy Plan and that the Proposed Athens Generating Facility has been Selected Pursuant to an Approved Procurement Process, *Declaratory Ruling Concerning Approved Procurement Process* (April 16, 1998).

[8] Case 96-M-1108 - *Brooklyn Navy Yard Cogeneration Partners, L.P.*, Order Granting Certificates of Public Convenience and Necessity and Denying Request for Declaratory Ruling

A. REGULATION OF ELECTRICITY SALES

The Commission first articulated its policy on the regulatory regime of competitive wholesale providers of electricity in its *Wallkill* order.[9] In *Wallkill*, the Commission found that it could relax the regulatory procedures that were intended to apply to monopoly utilities when regulating generators operating in a competitive environment. The Commission's most recent application of the principles announced in *Wallkill* was in its order imposing lightened regulation on Brooklyn Navy Yard Cogeneration Partners ("BNYCP"). With respect to lightened regulation for BNYCP's wholesale electric sales, the Commission required BNYCP to submit, pursuant to PSL § 66(6), annual reports concerning electric sales and copies of any filings made with the Securities and Exchange Commission. The Commission also required approvals for transfers of franchises, works or stocks under PSL § 70 but stated they would receive reduced scrutiny and would not extend to transactions by remote parents of BNYCP. The Commission stated it would act swiftly upon applications for approval under PSL §§ 69 (approval of issues of stocks bonds and other forms of indebtedness) and 70.

The Commission also found that the provisions of PSL §§ 106 and 107, concerning approval of loans and the use of revenues, are applicable to BNYCP's operations as an electric corporation, but would receive reduced scrutiny. The Commission required BNYCP to identify its affiliates under PSL §§ 110(1) and (2) and, as provided by PSL §§ 110(3) and (4), file with the Commission copies of any contracts entered into with its affiliates. Assuming there is no direct or indirect affiliation with entities having an interest in fully-regulated New

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(April 17, 1997); Case 91-E-0350 - *Wallkill Generating Company, L.P.*, Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company and Notice Soliciting Comments (August 21, 1991); Case 91-E-0350, *Wallkill Generating Co., L.P.*, Order Establishing Regulatory Regime (April 11, 1994).

[9] Case 91-E-0350, *Wallkill Generating Co., L.P.*, Order Establishing Regulatory Regime (April 11, 1994).

York utilities, the Commission decided it would not abrogate the contracts nor review the affiliates' accounts and records.

The Commission should apply less regulation to Carr than it applied to BNYCP and the other IPPs. *Wallkill* style regulation is no longer necessary in the case of Carr because Carr is a competitor in a market that has become much more competitive than when the Commission first announced its regulatory regime policy. At the time of the Commission's *Wallkill* decision, competition in the generation sector was in its infancy. The Commission is now in the process of deregulating and making competitive the generation and retail sale of electricity.

Moreover, the Commission's enforcement of the provisions identified in *Wallkill* will not further its statutory mandate to protect the public interest. The facility is a merchant plant whose survival depends solely on the burgeoning competitive market. Carr has no power purchase contract required by State or federal law, or captive ratepayers to subsidize its operations. Carr can only produce electricity when its operations are competitive with the market price. Neither the terms nor the amount of any securities issuance, reorganization, or any other financing transaction will have any impact on the rates charged to the public.

Further, ESGC, which never intended to become an electric corporation, entered into the MRA with NMPC because of the risk of the utility's bankruptcy and in reliance on the Commission's policy and direction to deregulate and make competitive the generation market. The Commission found the MRA prudent in part because it allowed NMPC greater flexibility to make purchases from IPPs when needed, at lower rates. One of the benefits of the MRA is the approximately 5,000 gWh of electricity that will now be available to the competitive energy market.[10] The Commission's regulation over Carr, as the transferee of ESGC's interest in the facility, will serve no purpose and only hinder the facility in its quest to compete in the market.

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[10] Op. No. 98-8, slip Op. at 7.

In light of the Commission's staunch policy and mandate to open the generation and retail services segments to competition, ongoing reviews and approvals of the facility's operations are not necessary. Carr requests that the Commission issue a CPCN that authorizes (i) Carr to issue debt and equity securities pursuant to PSL § 69, (ii) any changes in the Carr partnership structure pursuant to PSL § 69 and (iii) any related asset transfers pursuant to PSL § 70. Further, so long as Carr does not seek rate of return regulation, the CPCN should provide that no additional approvals are required under PSL Sections 69, 70, 106, 107 and 110. All of these statutory provisions were designed to protect captive ratepayers from unfair practices by monopoly utilities and have no applicability to generating facilities selling into a competitive market at market based rates.

Further, ratepayers will not be adversely affected by any contracts Carr enters into, including those with affiliated interests that are not fully regulated New York utilities. The market will dictate the price the facility can charge for its electricity. As the Commission stated in its Wallkill order, "[t]here being no effect on rates, and the impacts of such contracts being limited to Wallkill and its owners rather than the public generally, we see no circumstances (outside the one exception described below), under which Wallkill's § 110 purchase contracts might violate the public interest defined in the statute."[11] Requiring Carr to obtain the approvals while it is actively competing in the electricity market would serve no purpose, would create unnecessary transaction costs for market players and would interfere with the market forces that the Commission is relying to provide a robust and diverse generation market, thereby raising prices unnecessarily.

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[11] Case 91-E-0350 - *Wallkill Generating Company, L.P.*, Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company and Notice Soliciting Comments (August 21, 1991) at 15. If the Commission finds that Carr must file contracts pursuant to § 110(4), Carr's contract with CPS should not have to be filed because the contract is not for the purchase of electric energy, gas or water. It is merely for the sale of the facility's services to convert gas into electricity.

CONCLUSION

Based on the foregoing, Carr respectfully requests that the Commission issue an order on an expedited basis, pursuant to 16 NYCRR Part 21.10, that grants Carr a CPCN, pursuant to PSL § 68, authorizing the facility to generate electricity and take any action specified in PSL Sections 69, 70, 106, 107 and 110 without further Commission approval so long as the facility is not subject to rate of return regulation. If the Commission cannot consider Carr's petition for an order declaring that the facility will be subject to a regulatory regime less stringent than that imposed on Walkill by the closing date, Carr requests that the Commission, nevertheless, grant a CPCN on or before the closing date. Once the Commission decides the regulatory regime to be imposed, Carr should be subject to such regulation as the Commission determines to be proper.

Respectfully submitted,

READ AND LANIADO, LLP
Attorneys for Carr Street Generating Station, L.P.
25 Eagle Street
Albany, NY 12207-1901
(518) 465-9313

By: David B. Johnson
Howard J. Read
David B. Johnson

Dated: October 22, 1998,
Albany, New York.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 98-E-____	- In the Matter of Carr Street Generating Station, L.P. Application For Certificate of Public Convenience and Necessity and Petition for Declaratory Ruling on Regulatory Regime.

VERIFICATION

I, David B. Johnson, an attorney for Carr Street Generating Station, L.P., in the above entitled proceeding, have read the foregoing petition and know the contents thereof and that the same is true and accurate to the best of my knowledge.

Dated: October 22, 1998

David B. Johnson

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CERTIFICATE

Carr Street Generating Station, L.P. ("**Carr**"), a Delaware limited partnership, hereby certifies that attached hereto are true and correct copies of (i) the Federal Regulatory Commission's Order Accepting Carr's Market-Based Rate Filing, which order was issued on October 1, 1998; and (ii) the September 29, 1998 letter from Douglas W. Smith, General Counsel for the Federal Energy Regulatory Commission, finding that Carr is an exempt wholesale generator as defined in section 32 of the Public Utility Holding Company Act of 1935.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on this 21st day of October, 1998.

CARR STREET GENERATING STATION, L.P.
By: Orion Power New York GP, Inc.
its General Partner

By: Jack A. Fusco
Jack A. Fusco,
President

FEDERAL ENERGY REGULATORY COMMISSION
ROUTING CODE ____________
WASHINGTON, D.C. 20426

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701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20004

85 FERC ¶ 61,009

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt Hébert, Jr.

Carr Street Generating Station, L.P.) Docket No. ER98-4095-000

ORDER ACCEPTING FOR FILING PROPOSED
MARKET-BASED RATES

(Issued October 1, 1998)

In this order, we accept for filing, without suspension or hearing, the proposed market-based power sales rates filed by Carr Street Generating Station, L.P. (Carr Street).

Background

Carr Street is in the process of acquiring a 101 MW natural gas-fired cogeneration facility from the East Syracuse Generating Company, L.P. Carr Street is a limited partnership formed for the sole purpose of owning and operating this facility, and is an affiliate of Baltimore Gas & Electric Company (BG&E). On August 3, 1998, Carr Street filed an application requesting that the Commission authorize it to engage in wholesale power sales at market-based rates. Among other things, Carr Street seeks the same waivers and authorizations as those granted by the Commission to other power marketers with market-based rate authorization. Carr Street requests an effective date of October 1, 1998.

Notice of Carr Street's application was published in the Federal Register, 63 Fed. Reg. 43,933 (1998), with comments, protests and interventions due on or before August 24, 1998. None was filed.

Discussion

Market-Based Rates

The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. In order for an affiliate of a transmission-owning public utility to demonstrate the absence or mitigation of market power, the public utility must have on file with the Commission an open access transmission tariff for the provision of comparable services. The Commission also considers

whether there is evidence of affiliate abuse or reciprocal dealing. 1/

As we explain below, we find that Carr Street's market-based rate application meets these standards. Accordingly, we will accept the proposed market-based rates for filing, to become effective on October 1, 1998, as requested, without suspension or hearing.

1. Generation Market Power

In support of its market-based rate application, Carr Street relies on prior related orders approving market-based rate authority. The facility it is acquiring was previously included in Niagara Mohawk Power Corporation's (Niagara Mohawk's) market power study in Docket No. ER96-2585-000. At that time, the facility's capacity was controlled by Niagara Mohawk through a power purchase agreement. Our review of Niagara Mohawk's study indicates that Carr Street's market shares of installed and uncommitted capacity in the markets directly connected to Niagara Mohawk will not exceed levels the Commission previously has found to be acceptable. 2/ In addition, Carr Street's affiliate, Constellation Power Source, Inc., has been granted market-based rates. 3/

Accordingly, we find that Carr Street meets the Commission's generation market power standard for approval of market based-rates.

2. Transmission Market Power

When an affiliate of a transmission-owning public utility seeks authorization to charge market-based rates, the Commission has required the public utility to have an open access transmission tariff on file before granting such authorization. 4/ BG&E owns transmission facilities that are included in the

1/ E.g., Progress Power Marketing, Inc., 76 FERC ¶ 61,155 at 61,919 (1996), letter order approving settlement, 79 FERC ¶ 61,149 (1997); Northwest Power Marketing Company, L.L.C., 75 FERC ¶ 61,281 at 61,889 (1996); accord Heartland Energy Services, Inc., et al., 68 FERC ¶ 61,223 at 62,062-63 (1994) (Heartland).

2/ See, e.g., Louisiana Energy and Power v. FERC, 141 F.3d 364 (D.C. Cir. 1998).

3/ 79 FERC ¶ 61,167 (1997).

4/ See Promoting Wholesale Competition Through Open Access Non-
(continued...)

pool-wide open access transmission tariff filed by the PJM Interconnection, L.L.C. in Docket No. OA97-261-000, which became effective March 1, 1997.

Accordingly, we find that Carr Street meets the Commission's transmission market power standard for approval of market-based rates.

3. Other Barriers to Entry/Reciprocal Dealing

Carr Street's affiliate, BG&E, owns and operates a natural gas distribution system. Carr Street is hereby informed that if BG&E or any of its affiliates deny, delay, or require unreasonable terms, conditions, or rates for fuel or services to a potential electric competitor in bulk power markets, the electric competitor may file a complaint with the Commission that could result in the suspension of Carr Street's authority to sell power at market-based rates. 5/

We are satisfied with Carr Street's explanation that there are no other barriers to entry or reciprocal dealing considerations of concern here.

4. Affiliate Abuse

Carr Street commits in its power sales tariff that it will not sell power to, or purchase power from, any affiliate with a franchised service area unless the Commission first approves such a transaction in a separate rate filing under section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994). In addition, Carr Street attaches to its filing a code of conduct governing affiliate transactions. The code of conduct satisfies the Commission's requirements as to the simultaneous public disclosure of all shared market information, the pricing of non-power goods and services, and the separation of personnel.

4/ (...continued) discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 at 31,656-57 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998); accord Southern Company Services, Inc., et al., 71 FERC ¶ 61,392 at 62,536 (1995); Heartland, 68 FERC at 62,059-60.

5/ See, e.g., Louisville Gas & Electric Company, 62 FERC ¶ 61,016 at 61,148 (1993).

With these safeguards, we are satisfied that there are no affiliate abuse considerations of concern here.

Waivers, Authorizations and Reporting Requirements

Carr Street requests the following waivers and authorizations consistent with those granted to other power marketers with market-based rate authorization: (1) waiver of the filing requirements of Subparts B and C of Part 35, except sections 35.12(a), 35.13(b), 35.15 and 35.16; (2) waiver of Parts 41, 101, and 141; (3) abbreviated filings with respect to interlocking directorates under Part 45; and (4) blanket authorization for issuances of securities or assumptions of liabilities pursuant to section 204 of the FPA, 16 U.S.C. § 824c (1994). We will grant the requested waivers and authorizations to the extent granted to other power marketers.

Consistent with procedures we have adopted in other cases, Carr Street may file an umbrella service agreement for short-term power sales (one year or less) within 30 days of the date of commencement of short-term service, to be followed by quarterly transaction summaries of specific sales. For long-term transactions (longer than one year), Carr Street must submit the actual individual service agreement for each transaction within 30 days of the date of commencement of service. 6/

To ensure the clear identification of filings, and in order to facilitate the orderly maintenance of the Commission's files and public access to the documents, long-term transaction service agreements should not be filed together with short-term transaction summaries.

In addition, we will direct Carr Street to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These include, but are not limited to: (1) ownership of generating or transmission facilities or inputs to electric power production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. 7/ Alternatively, Carr Street

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6/ See, e.g., Southern Company Services, Inc., 75 FERC ¶ 61,130 at 61,444-45, clarified, 75 FERC ¶ 61,353 (1996); Plum Street Energy Marketing, Inc., et al., 76 FERC ¶ 61,319 at 62,556 (1996).

7/ See, e.g., Morgan Stanley Capital Group, Inc., 69 FERC ¶ 61,175 at 61,695 (1994), order on reh'g, 72 FERC ¶ 61,082 (continued...)

may elect to report such changes with the updated market analysis it will be required to file every three years. 8/

Effective Date

We will grant waiver of the prior notice requirement to allow the market-based rates to become effective on October 1, 1998, as requested. 9/

The Commission orders:

(A) Carr Street's market-based power sales tariff is hereby accepted for filing, without suspension or hearing, to become effective on October 1, 1998, as requested.

(B) Carr Street's request for waiver of Parts 41, 101, and 141 of the Commission's regulations is hereby granted.

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Carr Street should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Carr Street is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Carr Street, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(E) Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted below, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking

7/ (...continued)
(1995); InterCoast Power Marketing Company, 68 FERC ¶ 61,248 at 62,134, clarified, 68 FERC ¶ 61,324 (1994).

8/ We reserve the right to require such an analysis at any time.

9/ Central Hudson Gas & Electric Corp., 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992).

directorate involving Carr Street. Any such person instead shall file a sworn application providing the following information:

(1) full name and business address; and

(2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Carr Street's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

(G) Carr Street's request for waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, is hereby granted.

(H) Carr Street is hereby directed to conform to the filing and reporting requirements specified in this order. The first quarterly report of transactions undertaken by Carr Street under its market-based power sales tariff will be due within 30 days of the calendar quarter ending December 31, 1998.

(I) Carr Street is hereby directed to file an updated market analysis within three years of the date of this order, and every three years thereafter.

(J) Carr Street is hereby directed to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. Alternatively, as discussed in the body of this order, Carr Street may elect to report any such changes every three years with the updated market analysis filed pursuant to Ordering Paragraph (I) above. Carr Street shall notify the Commission of which option it elects in the first quarterly report filed pursuant to Ordering Paragraph (H) above.

(K) Carr Street is hereby informed of the following rate schedule designations: Carr Street Generating Station, L.P., FERC Electric Tariff, Original Volume No. 1 (Original Sheet Nos. 1-3).

By the Commission.

(S E A L)

David P. Boergers

David P. Boergers,
Secretary.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF THE GENERAL COUNSEL

September 29, 1998

Mr. Jonathan W. Gottlieb
Thelen Reid & Priest LLP
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Docket No. EG98-101-000

Dear Mr. Gottlieb:

On August 10, 1998, you filed an application for determination of exempt wholesale generator status on behalf of Carr Street Generating Station, L.P. pursuant to section 32 of the Public Utility Holding Company Act of 1935 (PUHCA). Notice of the application was published in the Federal Register, 63 Fed. Reg. 49,107 (1998), with interventions or comments due on or before September 17, 1998. None was filed.

Authority to act on this matter is delegated to the General Counsel. 18 C.F.R. 375.309(g). Based on the information set forth in the application, I find that Carr Street Generating Station, L.P. is an exempt wholesale generator as defined in section 32 of PUHCA.

A copy of this letter will be sent to the Securities and Exchange Commission.

Sincerely,

Douglas W. Smith

Douglas W. Smith
General Counsel

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Reorder No. 5109N
JULIUS BLUMBERG, INC.
NYC 10013
®10% P.C.W.

NOTICE OF APPLICATION ON BEHALF OF
CARR STREET GENERATING STATION, L.P.

Carr Street Generating Station, L.P. ("Carr") has petitioned the New York State Public Service Commission for a certificate of public convenience and necessity to generate electricity as an electric corporation. Carr has also petitioned the Public Service Commission for a ruling declaring that Commission will impose a regime of lightened regulation on Carr. Carr has entered into an agreement to purchase a facility located at 64 Carr Street, East Syracuse, New York.

Carr has requested that the hearing required by the Public Service Law be held before the Public Service Commission on the basis of the application and such exhibits, prepared testimony and any other information as may have been filed by any party or the staff of the Public Service Commission.

Any person opposed to the granting of the certificate, within 10 days of the publication of this notice, should notify in writing the secretary of the Public Service Commission at Agency Building 3, Empire State Plaza, Albany, N.Y. 12223, of the reasons for the opposition.

PENDING PETITION MEMO

Date: 10/23/98

TO : Electric Division

FROM: CENTRAL FILES

UTILITY: NEW ELECTRIC COMPANY

SUBJECT: 98-E-1670

Petition of Carr Street Generating Station, L.P. for an Original Certificate of Public Convenience and Necessity and for a Declaratory Ruling on Regulatory Regime.

***** HEARINGS REQUIRED - COPY TO CHIEF ALJ *****

READ AND LANIADO, LLP

ATTORNEYS AT LAW

25 EAGLE STREET

ALBANY, NEW YORK 12207-1901

(518) 465-9313

KEVIN R. BROCKS
CRAIG M. INDYKE
SAM M. LANIADO
HOWARD J. READ

DAVID B. JOHNSON

TELEFAX NO.
(518) 465-9315

1998 OCT 22 PM 4:19

Via Hand Delivery

October 22, 1998

Hon. Debra Renner
Acting Secretary
New York State Public Service Commission
Agency Building 3
Empire State Plaza
Albany, New York 12223

Re: Case 98-E-____ - In the Matter of Carr Street Generating Station, L.P. Application For Certificate of Public Convenience and Necessity and Petition for Declaratory Ruling on Regulatory Regime.

Dear Secretary Renner:

Pursuant to Section 68 of the Public Service Law and Part 21 of the Commission's Rules, please find enclosed an original and three copies of the Application For Certificate of Public Convenience and Necessity and Petition for Declaratory Ruling on Regulatory Regime of Carr Street Generating Station, L.P. ("Carr"). Carr is purchasing U.S. Generating Company's East Syracuse cogeneration facility located at 64 Carr Street, East Syracuse, New York. Carr anticipates that the closing of its purchase of the facility will occur on or about November 19, 1998.

The facility has not previously been subject to Commission jurisdiction because it has been a federal qualifying facility. Carr does not expect that, in the future, the facility will produce any useful thermal energy. Accordingly, the facility will not qualify for federal qualifying facility status pursuant to the Public Utility Regulatory Policies Act of 1978 in calendar year 1999. Because Carr expects to acquire its interest in the facility within 30 days of this filing and the facility's operations will thereafter become subject to the Commission's jurisdiction, Carr requests expedited approval of this petition pursuant to § 21.10 of the Commission's Rules.

In compliance with Section 21.2 of the Commission's Rules Carr has attached to its petition certified copies of the October 1, 1998 order of the Federal Energy Regulatory Commission ("FERC") allowing Carr to sell electricity at market-based rates and the September 29, 1998 letter from FERC's General Counsel finding that Carr is an exempt wholesale generator. Also attached, pursuant to Section 21.10 of the Commission's rules, is the notice Carr intends to publish in the Business Record, a newspaper of general circulation in Onondaga County and surrounding areas.

Very truly yours,

READ AND LANIADO, LLP
Attorneys for Carr Street
Generating Station, L.P.

By: David B. Johnson
David B. Johnson

DBJ/klh
Enclosures