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February 8, 2019

VIA EMAIL

Honorable Kathleen H. Burgess
Secretary of the Commission
New York State Department of Public Service
Three Empire Plaza
Albany, New York 12233-1350

Re: Case 19-E-____ – Verified Joint Petition For A Declaratory Ruling Regarding A Proposed Transfer Of Upstream Interests Or, In The Alternative, Approval Pursuant To Section 70 Of The Public Service Law; And Confirming Financing And Lightened Regulation

Dear Secretary Burgess:

I am filing the attached Verified Joint Petition for a Declaratory Ruling Regarding a Proposed Transfer of Upstream Interests in FPL Energy Rockaway Peaking Facilities, LLC or, in the Alternative, Approval Pursuant to Section 70 of the Public Service Law; and Confirming Financing and Lightened Regulation.

Thank you for your attention to this matter.

Respectfully submitted,

COUCH WHITE, LLP

Leonard H. Singer

Leonard H. Singer

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Verified Joint Petition for a Declaratory Ruling Regarding a Proposed Transfer of Upstream Interests in FPL Energy Rockaway Peaking Facilities, LLC or, in the Alternative, Approval Pursuant to Section 70 of the Public Service Law; and Confirming Financing and Lightened Regulation	**Case No.: 19-E-_______**

VERIFIED JOINT PETITION FOR A DECLARATORY RULING REGARDING A PROPOSED TRANSFER OF UPSTREAM INTERESTS OR, IN THE ALTERNATIVE, APPROVAL PURSUANT TO SECTION 70 OF THE PUBLIC SERVICE LAW; AND CONFIRMING FINANCING AND LIGHTENED REGULATION

Pursuant to Part 8 of the Rules and Regulations of the New York State Public Service Commission ("Commission"), 16 NYCRR Part 8, FPL Energy New York, LLC ("FPL NY" or "Seller"), FPL Energy Rockaway Peaking Facilities, LLC ("FPL Rockaway"), Bayswater Peaking Facility, LLC ("Bayswater"), Jamaica Bay Peaking Facility, LLC ("Jamaica Bay," and together with Bayswater, the "Subsidiaries") and MPH Rockaway Peakers, LLC ("MPH Rockaway" or "Buyer," including any special-purpose, non-public utility affiliate thereof designated solely for the purpose of closing the transaction described herein) (FPL NY, FPL Rockaway, Bayswater, Jamaica Bay, and MPH Rockaway are collectively referred to herein as "Petitioners") hereby jointly submit this verified petition to the Commission for a declaratory ruling that the transfer described herein of certain upstream interests in FPL Rockaway by FPL NY to MPH Rockaway (the "Transaction") will not be reviewed, or further reviewed, under Section 70 of the Public Service Law ("PSL").

The Commission has previously established the presumption that it will not review or regulate the transfer of ownership interests upstream from the owners or operators of New York competitive electric generation under PSL Section 70 unless there is a potential for harm to the interests of captive utility ratepayers, including arising from the exercise of market power, sufficient to overcome the presumption.[1] As demonstrated more fully below, the proposed Transaction does not raise the potential for the exercise of market power, will not adversely impact captive New York ratepayers, and will not have an adverse impact on competition. As a result, the Wallkill Presumption applies. Thus, Petitioners respectfully request that the Commission expeditiously issue a declaratory ruling that it will not further review the Transaction under PSL Section 70.

In the alternative, Petitioners request that the Commission approve the proposed Transaction under PSL Section 70. Petitioners also respectfully request that the Commission confirm that the current financing approvals and lightened regulation will continue to be applied to Bayswater and Jamaica Bay.[2]

Petitioners respectfully request that the Commission expedite approval of this petition and issue a ruling in this proceeding at its March 2019 Session finding that no review (or no further review) of the Transaction under PSL Section 70 is necessary.[3] Alternatively, should the Commission decide to review the Transaction under PSL Section 70, Petitioners respectfully

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[1] *See* Case 91-E-0350, *Wallkill Generating Company, L.P. - Petition for Declaratory Ruling That the Public Service Law is Inapplicable, or That Further Regulation Thereunder is Unnecessary, or in the Alternative That Light-Handed Regulation Be Applied*, "Order Establishing Regulatory Regime" (Apr. 11, 1994). The presumption established by the Commission in this case has become known, and is referred to herein, as the "Wallkill Presumption."

[2] *See* Case 03-E-1145, *Bayswaeter Peaking Facility, LLC and Jamaica Bay Peaking Facility, LLC* – Order Approving Financing (Nov. 3, 2003) ("Financing Order"); Case 01-E-0929, *Bayswater Peaking Facility, LLC* – Order Providing for Lightened Regulation and Approval of Financing (Jan. 31, 2002) ("Bayswater 2002 Order"); Case 02-E-1417, *Jamaica Bay Peaking Facility, LLC* – Order Providing for Lightened Regulation and Approving Financing (Jan. 23, 2003) ("Jamaica Bay 2003 Order").

[3] *See* 16 NYCRR §8.2(e) ("Where a petition seeks a declaratory ruling with respect to whether an action should be taken pursuant to a rule, the ruling or a statement declining to rule will be issued within 60 days of the date the petition is filed.")

request that the Commission issue an order approving the Transaction at its April 2019 Session.

I. CORRESPONDENCE AND COMMUNICATIONS

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

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II. BACKGROUND

A. Bayswater Peaking Facility, LLC

Bayswater, a Delaware limited liability company, is a wholly-owned direct subsidiary of FPL Rockaway. Bayswater owns, operates, and controls the Bayswater Facility, an approximately 53.5 MW, (summer rated), natural gas-fired wholesale electric generation facility, in Far Rockaway, New York. All of the capacity of the Bayswater Facility is fully committed on a firm basis pursuant to a Power Purchase Agreement ("PPA") with Long Island Power Authority ("LIPA"), with a term ending June 28, 2020. Bayswater does not (a) have any retail electric facilities or distribution services or captive customers, and (b) cannot erect barriers to entry.

Prior to the commencement of construction, the Commission issued an order granting Bayswater a Certificate of Public Convenience and Necessity ("CPCN"), and granting permission and approval of Bayswater to perform the functions of an electric corporation within New York

State.[4] On January 31, 2002, the Commission issued an order providing for lightened regulation, and approving the financing for the Facility pursuant to PSL Section 69.[5] By letter dated June 21, 2002, Bayswater informed the Commission that it commenced commercial operation on June 19, 2002. Subsequently, on November 3, 2003, the Commission issued an order approving Bayswater's request for revised financing arrangements.[6]

Bayswater makes no sales outside of the NYISO market. Bayswater does not make, and cannot make or contemplate making, any retail sales of power to any electric customer in New York or otherwise.

B. Jamaica Bay Peaking Facility, LLC

Jamaica Bay, a Delaware limited liability company, is a wholly-owned direct subsidiary of FPL Rockaway. Jamaica Bay owns, operates, and controls the Jamaica Bay Facility, an approximately 54.5 MW (summer rated), natural gas-fired wholesale electric generation facility in Far Rockaway, New York. All of the capacity of the Jamaica Bay Facility is fully committed on a firm basis pursuant to a PPA with LIPA, with a term ending June 28, 2020. Jamaica Bay does not (a) have any retail electric facilities or distribution services or captive customers, and (b) cannot erect barriers to entry.

Prior to the commencement of construction, the Commission issued an order granting Jamaica Bay a CPCN, and granting permission and approval of Bayswater to perform the functions of an electric corporation within New York State.[7] On January 23, 2003, the Commission issued

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[4] *See* Case 01-E-0929, *Bayswater Peaking Facility, LLC*, Order Granting Certificate of Public Convenience and Necessity (Sept. 4, 2001).

[5] *See* Bayswater 2002 Order.

[6] *See* Financing Order.

[7] *See* Case 02-E-1417, *Jamaica Bay Peaking Facility, LLC*, Order Granting Certificate of Public Convenience and Necessity (Dec. 19, 2002).

an order providing for lightened regulation, and approving the financing for the Facility pursuant to PSL Section 69.[8] By letter dated July 8, 2003, as clarified on August 13, 2003, Jamaica Bay informed the Commission that it commenced commercial operation on July 2, 2003. Subsequently, on November 3, 2003, the Commission issued an order approving Bayswater's request for revised financing arrangements.[9]

Jamaica Bay makes no sales outside of the NYISO market. Jamaica Bay does not make, and cannot make or contemplate making, any retail sales of power to any electric customer in New York or otherwise.

III. DESCRIPTION OF THE PARTIES

A. Seller and its Relevant Affiliates (Not Described Above)

1. FPL Energy Rockaway Peaking Facilities, LLC

FPL Rockaway is a Delaware limited liability company established for the purpose of owning all of the direct interests in Jamaica Bay and Bayswater. FPL Rockaway is the sole member of its Subsidiaries. FPL Rockaway is wholly owned by FPL NY.

FPL Rockaway does not directly own any generation or transmission assets and is the parent company of the Subsidiaries.

Neither FPL Rockaway nor its Subsidiaries have a franchised retail service territory, have any "captive customers", or are engaged in the state-regulated sale of electricity at retail. Neither FPL Rockaway nor any of the Subsidiaries is a holding company of any electric utility or any public utility that owns, operates or controls electric transmission rights or electric transmission

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[8] *See* Jamaica Bay 2003 Order.

[9] *See* Financing Order.

facilities (other than limited facilities used solely for the interconnection of generating facilities to the transmission grid).

FPL Rockaway has no retail electric facilities or distribution services or captive customers in the New York City submarket (Zone J), nor could it erect barriers to entry into any market, including the New York City submarket (Zone J), the sole electricity market relevant to this application.

2. FPL Energy NY, LLC

FPL NY is a wholly-owned direct subsidiary of ESI Energy, LLC ("ESI Energy"), a Delaware limited liability company, which in turn is a wholly-owned direct subsidiary of NextEra Energy Resources, LLC, a Delaware limited liability company, which in turn is a wholly-owned indirect subsidiary of NextEra Energy, Inc. ("NextEra"), a Florida corporation that is publicly traded on the New York Stock Exchange. FPL NY neither owns nor controls any retail electric facilities or distribution services within or into New York, nor does it have any New York captive customers or any ability to erect any barriers to entry into the New York market. FPL NY does not have a franchised retail service territory, any "captive customers", nor is it engaged in the state-regulated sale of electricity at retail. It does not own, operate or control electric transmission rights or electric transmission facilities (other than limited facilities used solely for the interconnection of generating facilities to the transmission grid), nor does it own or control any electric facilities (other than QFs and EWGs) or essential inputs to electric generation[10] in New York.

[10] This Petition uses the phrase "essential inputs to generation" to mean intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, sites for generation capacity development, or sources of coal supplies and the transportation of coal supplies.

B. MPH Rockaway and its Relevant Affiliates

Buyer MPH Rockaway is a member-managed Delaware limited liability company that was formed for the purpose of acquiring FPL Rockaway. MPH Rockaway is a wholly owned subsidiary of Hull Street Energy, LLC ("HSE").

HSE is a private equity firm headquartered in Bethesda, Maryland that is primarily involved in the development and acquisition of, and investment in, energy infrastructure assets, and related ownership, operation and management of these assets, including electric generation. HSE currently is not affiliated with any generation capacity in the NYISO Balancing Authority Area ("BAA"), which is the relevant geographic market for this Application.

HSE is affiliated with the following generation facilities in the markets operated by ISO New England, Inc. ("ISO-NE") and PJM Interconnection, LLC ("PJM")[11]:

ISO-NE

HSE or its affiliates indirectly own Maxim Power (USA), Inc. ("MUSA") and are affiliated with the following entities in the ISO-NE BAA:

- Capitol District Energy Center Cogeneration Associates ("CDECCA"), the owner and operator of an approximately 55.2 MW (summer rating) natural gas-fired combined cycle cogeneration power plant located in Hartford, Connecticut.
- Pawtucket Power Associates ("Pawtucket Power"), the owner and operator of an approximately 60 MW (summer rating) natural gas-fired combined cycle cogeneration power plant located in Pawtucket, Rhode Island.
- Pittsfield Generating Company, L.P. ("Pittsfield Generating"), the owner and operator of an approximately 151.4 MW (summer rating) natural gas-fired combined cycle cogeneration power plant located in Pittsfield, Massachusetts.

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11 HSE does not own and is not affiliated with any energy assets in any other First-Tier or neighboring BAA except those identified herein.

Pittsfield Generating owns BFALP-GP, LLC ("BFALP-GP"), a Delaware limited liability company. BFALP-GP is the general partner of Berkshire Feedline Acquisition Limited Partnership ("BFALP"), a Massachusetts limited partnership. BFALP owns the 6.2-mile, 12-inch natural gas pipeline lateral that extends from the Bosquet meter station interconnection on the interstate gas pipeline owned by Tennessee Gas Pipeline Company near Richmond, Massachusetts to the Pittsfield Facility. The pipeline lateral was built to serve the Pittsfield Facility, and the local distribution company that has an exclusive license to operate the 6.2-mile pipeline lateral, Berkshire Gas Company ("Berkshire Gas"), also has rights to capacity on the pipeline lateral.[12]

HSE or its affiliates indirectly own Central Rivers Power MA, LLC ("CRPMA") and are affiliated with five small hydroelectric generation facilities in Massachusetts with a combined capacity totaling 17 MW (summer rating), each of which is a qualifying small power production facility ("QF") under the Public Utility Regulatory Policies Act of 1978, as amended.[13]

HSE or its affiliates indirectly own Central Rivers Power NH, LLC ("CRPNH") and are affiliated with nine hydroelectric generation facilities in New Hampshire with a combined capacity totaling approximately 61 MW (summer rating), each of which is a QF.[14]

PJM

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[12] *See Pittsfield Generating Company, L.P.*, Docket No. ER18-213-001 (Oct. 3, 2018) (delegated letter order accepting notice of change in status).

[13] These facilities include Central Rivers Power MA, LLC [Dwight] (FERC Project No. 10675); Central Rivers Power MA, LLC [Gardner Falls] (FERC Project No. 2334); Central Rivers Power MA, LLC [Indian Orchard] (FERC Project No. 10678); Central Rivers Power MA, LLC [Putts Bridge] (FERC Project No. 10677); , and Central Rivers Power MA, LLC [Red Bridge] (FERC Project No. 10676). *See* Docket Nos. QF16-1151-003, QF16-1152-003, QF16-1153-003, QF16-1154-003, and QF16-1155-003, respectively.

[14] These facilities include the CRP NH Amoskeag, LLC (Project No. P-1893); CRP NH Ayers Island, LLC (Project No. P-2456); CRP NH Canaan, LLC (Project No. P-7528); CRP NH Eastman Falls, LLC (Project No. P-2457); CRP NH Garvin Falls, LLC (Project P-1893); CRP NH Gorham, LLC (Project P-2288); CRP NH Hooksett, LLC (Project No. P-1893); CRP NH Jackman, LLC (not licensed); CRP NH Smith, LLC. *See* Docket Nos. QF18-1852-001; QF18-1853-001; QF18-1854-001; QF18-1855-001; QF18-1856-001; QF18-1857-001; QF18-1858-001; QF18-1859-001; and QF18-1860-001, respectively.

HSE or its affiliates, through their indirect ownership of MUSA, are affiliated with the following entity in the PJM BAA:

- Forked River Power LLC ("Forked River"), the owner and operator of an approximately 77 MW gas-fired combustion turbine power plant located in Ocean County, New Jersey.

Other than as described above, HSE is not affiliated with any entity that owns or controls any electric transmission facilities in the United States, except for limited and discrete equipment necessary to interconnect individual generating facilities to the transmission grid. HSE is not otherwise affiliated with any entity that owns or controls any essential inputs to electricity products or electric power production, as defined in Sections 33.4 and 35.36 of the Commission's regulations. HSE is not affiliated with any public utility with a franchised electric service territory.

HSE is currently controlled by Sarah Wright, an individual. Except through HSE's interests in MUSA, CRPMA and CRPNH, Ms. Wright is not affiliated with, nor holds or controls, directly or indirectly with the power to vote, voting or equivalent securities in any electric generation facility, electric transmission facility, or any essential input to electricity products or electric power production.[15] Ms. Wright is not employed or affiliated with, and does not hold the position of officer or director of any public utility with a franchised electric service territory.

IV. DESCRIPTION OF THE TRANSACTION

Pursuant to the Purchase and Sale Agreement by and between FPL Energy New York, LLC and MPH Rockaway Peakers, LLC ("PSA") (a copy of which is attached hereto as Exhibit A **[CONFIDENTIAL]**), Seller will sell, assign, transfer and deliver to Buyer, and Buyer will purchase and accept from Seller, all of the interests Seller owns in FPL Rockaway, including its

[15] Ms. Wright is a passive investor with respect to four fully-committed run-of-river hydroelectric generation facilities in Ware, Massachusetts (each of which is a QF) having a combined capacity of 2.4 MW. Ms. Wright has no control over the business operations of such facilities.

directly-owned subsidiaries Bayswater and Jamaica Bay and their jurisdictional facilities, as described in the PSA. Following the acquisition, Buyer will indirectly own and operate the Bayswater and Jamaica Bay generating facilities.

As described above, Buyer's parent, HSE, owns and operates three natural gas-fired facilities in ISO-NE and one gas-fired facility in PJM. Additionally, HSE's subsidiaries own and operate 14 hydroelectric generation facilities in ISO-NE. The HSE management team has extensive expertise running a variety of investment and operating energy businesses at leading institutions such as Goldman Sachs, Constellation Energy, and Energy Capital Partners. Members of the team have acquired, developed, and operated over 10,000 MW of power plants, including numerous power plants in the Northeast region, over the last two decades. In addition, they have managed and optimized fuel supply programs for every type of power plant on the North American grid.

Charts showing the current ownership and post-Transaction ownership of FPL Rockaway are attached hereto as Exhibit B.

V. THE COMMISSION SHOULD DECLARE THAT THE WALLKILL PRESUMPTION APPLIES TO THE TRANSACTION AND DECLINE TO REVIEW IT FURTHER TO FURTHER REVIEW THE TRANSACTION UNDER PSL SECTION 70

Pursuant to PSL Section 70, the Commission must review and approve proposed transfers of ownership interests in jurisdictional facilities and properties. As the Commission recently explained, however, the "PSL [Section] 70 review process has been adapted over time to accommodate lightened ratemaking regulation policies."[16] Specifically, the Commission has established a lightened regulatory regime for competitive wholesale generators in New York under

[16] *See* Case 18-E-033, *Cassadaga Wind, LLC*, Declaratory Ruling on Transfer Transactions, at 7 (July 17, 2018).

which PSL Section 70 review of changes in ownership is not required.[17] In the Wallkill Order[18] and numerous subsequent orders,[19] the Commission has determined that full regulatory review is not needed for transfers of indirect, upstream ownership interests in lightly-regulated electric corporations (like Bayswater and Jamaica Bay[20]) unless there is a potential for market power or harm to captive ratepayers. Specifically, in prior decisions, the Commission has determined that the Wallkill Presumption applies to transactions involving upstream changes in the control of lightly regulated entities, including transfers of ownership interests in competitive generation and transmission facilities, and has declined to review those transactions under PSL Section 70 when it has determined that the transaction would not enable petitioners to exercise market power to the

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[17] *See id.*

[18] In the Wallkill Order, the Commission expressly held, "It will be presumed that § 70 regulation does not adhere to transfer of ownership interests in entities upstream from the parents of the New York competitive electric generation subsidiary, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption." *See* Case No. 91-E-0350, n.1.

[19] *See, e.g.*, *Cassadaga Wind, LLC, et al.*, Case 18-E-033, Declaratory Ruling on Transfer Transactions, at 7 (July 17, 2018); *Sithe/Independence Power Partners, L.P. et al.*, Case 17-M-0735, Declaratory Ruling on Transfer and Making Other Findings (Feb. 27, 2018); *AP Cricket Valley Holdings I Inc. et al.*, Case 17-E-0620, Declaratory Ruling on Transfer Transaction (Dec.14, 2017); Case No. 08-E-1147, *supra*, at X (finding that the transaction did not pose the potential for the exercise of horizontal or vertical market power, PSC held that petitioners satisfied the Wallkill Presumption and that "the transfer of an ownership interest in Calpine and the acquisition of Calpine stock that LS Power proposed do not pose the potential for impacts adverse to the interests of captive New York ratepayers. Accordingly, the proposed transaction need not be reviewed further under PSL § 70."); Case No. 09-E-0055, *Constellation Nuclear Energy Group LLC, Nine Mile Point Nuclear LLC and EDF Development, Inc.* – Joint Petition for a Declaratory Ruling Regarding the Application of PSL § 70, or, In the Alternative, For Approval Under § 70, Declaratory Ruling on Review of a Transfer Transaction (Issued and Effective April 23, 2009) (finding that the proposed transaction did not pose the potential for the exercise of horizontal market power, the exercise of vertical market power or other impacts adverse to the interests of captive ratepayers, the Commission held that Wallkill Presumption was satisfied because there was no potential for harm to captive New York ratepayers); Case No. 08-E-0850, *Harbinger Capital Partners Master Fund, Ltd. and Harbinger Capital Partners Special Situations Fund*, Petition for a Declaratory Ruling Regarding the Acquisition of Common Stock, and in the Alternative, Approval Under Public Service Law § 70, Declaratory Ruling (Issued and Effective June 23, 2008) (Wallkill presumption applied where there was no potential for harm to captive New York ratepayers which Commission defined was determined through a market power analysis); Case No. 07-E-1385, et al., supra, at 11 (finding that transaction would not allow the potential for market power to be realized, the Commission held that no potential for harm to captive ratepayers was apparent, and thus, the Wallkill Presumption was satisfied); Case No. 99-E-0148, AES Eastern Energy, L.P. and AES Creative Resources, L.P., Petition on Regulation, Order Providing for Lightened Regulation (Issued April 23, 1999), at 7 (providing that PSL § 70 regulation would not "adhere to transfer of ownership interests in entities upstream from the parents of a 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" and advising that the potential to exercise market power would be sufficient to defeat the presumption) (footnote omitted).

[20] *See* n.2, *supra*.

detriment of captive ratepayers. As demonstrated above, the Transaction involves a change of ownership interest in parent entities from the Subsidiaries, which own and operate competitive wholesale generation facilities that are subject to lightened regulation. The Petitioners request that the Commission follow its precedent, apply the Wallkill Presumption in this case and issue a declaratory ruling stating that the Commission need not review the proposed Transaction under PSL Section 70.

The proposed Transaction will not result in any adverse impacts in New York. The proposed Transaction does not create any potential for harm to the interests of captive utility ratepayers because the Facilities operate in a competitive market and have no captive ratepayers. Furthermore, the Proposed Transaction will not result in the potential to exercise either vertical or horizontal market power because MPH Rockaway and its respective affiliates do not have any ownership interests in any: electric generating facilities in New York, or any transmission or distribution facilities; entities that are scheduling coordinators, reliability coordinators, or balancing area authorities in New York; energy services companies; electric or gas transmission or distribution providers; or entities that can exercise control over the provision of fuels used in generation in New York. Moreover, as noted above, the affiliates of MPH Rockaway that hold such ownership interests in the markets surrounding New York (e.g., ISO-NE and PJM) are limited.

Affiliates of MPH Rockaway currently hold approximately 345 MW (summer rating) of generation capacity in ISO-NE and approximately 77 MW (summer rating) of generation capacity in PJM. The fact that MPH Rockaway is affiliated with electric generation projects in the adjacent PJM and ISO-NE markets does not pose the potential for the exercise of market power because the facility operates in a separate geographic market, and, in any event, the generation capacity represents a *de minimis* amount of the total generation capacity within ISO-NE and PJM (roughly 1% of the approximately 29,000 MW in ISO-NE[21] and less than 1% of the 178,563 MW in PJM[22]). The Commission has previously held that a *de minimis* level of generation owned in an adjacent market would not affect competition.[23] Accordingly, the Proposed Transaction will not result in wholesale generation market ownership that would enable the exercise of horizontal market power.

MPH Rockaway's affiliation with the natural gas pipeline lateral in ISO-NE (described above) does not present any market power concerns either. As discussed, the pipeline lateral was built to serve the Pittsfield Facility, and the local distribution company that has an exclusive license to operate the 6.2-mile pipeline lateral, Berkshire Gas, also has rights to capacity on the pipeline lateral.[24] The proposed Transaction will also not otherwise result in any adverse impacts in New York. No changes in the day-to-day operations of the Bayswater and Jamaica Bay Facilities are expected to be made as a result of the proposed Transaction.

Based on the foregoing, the proposed Transaction will not create or enhance horizontal or vertical market power in New York and, therefore, the Wallkill Presumption that no further PSL Section 70 review is required by the Commission is applicable in this case.

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[21] *See* https://www.iso-ne.com/about/key-stats/resource-mix/.

[22] *See* PJM 2017 Annual Report, at 22, https://www.pjm.com/-/media/about-pjm/newsroom/annual-reports/2017-annual-report.ashx.

[23] *See* Case 11-E-0181 - Joint Petition of ReEnergy Black River LLC, Black River Energy, LLC, EIF Hamakua, LLC, USPF Holdings, LLC, United States Power Fund, LP, Order Approving Transfer and Making Other Findings (Aug. 23, 2011); Cases 12-E-0211 et al. - Joint Verified Petition of Alliance Energy, New York LLC, MEG Development Company, LLC, Massena Energy Holdings, LLC, Massena Energy Holdings GP, LLC, and Power City Partners, LP for a Declaratory Ruling or, in the Alternative, an Order Approving Transfer Pursuant to Public Service Law Section 70, Approval of Financing Pursuant to Public Service Law Section 69, and Continuing Lightened Regulatory Regime, Order Approving Transfer Subject to Conditions Precedent and Approving Financings (Sept. 17, 2012); Case 07-M-0906 - Joint Petition of Iberdrola S.A., Energy East Corporation, RGS Energy, Group, Inc., Green Acquisition Capital, Inc., NYSEG and RGE for Approval of the Acquisition of Energy East Corporation by Iberdrola, S.A., Order Approving Transfer, Providing for Lightened Ratemaking Regulation, Establishing Rate Treatment and Making Other Findings (Oct. 18, 2013).

[24] *See Pittsfield Generating Company, L.P.*, Docket No. ER18-213-001 (Oct. 3, 2018) (delegated letter order accepting notice of change in status).

VI. IF THE COMMISSION DETERMINES THAT REVIEW UNDER PSL SECTION 70 IS REQUIRED, IT SHOULD APPROVE THE TRANSACTION AS IN THE PUBLIC INTEREST

Notwithstanding the facts demonstrated above, if the Commission finds that review under PSL Section 70 is required, Petitioners request, in the alternative, that the Commission expeditiously approve the proposed Transaction.

The Commission reviews proposed transactions under PSL Section 70 using a "public interest" standard.[25] For lightly-regulated entities, the Commission applies a reduced level of scrutiny; that is, the Commission reviews the transfer only for the potential to exercise market power or otherwise cause harm to captive ratepayers. Specifically, the Commission has stated that:

> [i]n conducting a review under §70 that pertains to a lightly-regulated electric corporation operating in wholesale electric markets, we examine any affiliations, including those with fully-regulated New York utilities or power marketers, that might afford opportunities for the exercise of market power or pose the potential for other harms detrimental to captive ratepayer interests.[26]

The proposed Transaction fully satisfies the Commission's standard of review for lightly-regulated entities. Specifically, as discussed above, the Proposed Transaction does not create any potential for harm to the interests of captive utility ratepayers because the Jamaica Bay and Bayswater Facilities operate in a competitive market and have no captive ratepayers. The proposed Transaction will not result in any adverse impacts in New York. No changes in the management or operation of the Facilities will be made as a result of the Proposed Transaction. Thus, to the extent the Commission determines the Wallkill Presumption does not apply, it should approve the proposed Transaction under PSL Section 70.

VII. THE COMMISSION SHOULD FIND THAT LIGHTENED REGULATION AND

[25] N.Y. Pub. Serv. Law § 70 (McKinney 2018).

[26] Case 10-M-0186 - Alliance Energy Renewables, LLC, et al., Order Approving Transfers Upon Conditions and Making Other Findings at 17 (July 23, 2010).

FINANCING APPROVAL CONTINUES TO APPLY

For the reasons set forth in the Bayswater 2002 Order, the Jamaica Bay 2003 Order and the Financing Order, Bayswater and Jamaica Bay should continue to be subject to lightened regulation, and the existing financing approval issued for the Facilities should continue following consummation of the Transaction.[27]

In past decisions, the Commission has determined that lightly-regulated entities continue to be lightly regulated following the consummation of corporate transactions or reorganizations transferring their direct or indirect ownership interests in the New York competitive electric generating facilities.[28] Accordingly, following the consummation of the proposed Transaction, the Commission should follow its precedent and continue the lightened regulation of Bayswater and Jamaica Bay consistent with the Bayswater 2002 Order and in the Jamaica Bay 2003 Order.

VIII. STATE ENVIRONMENTAL QUALITY REVIEW ACT

The State Environmental Quality Review Act ("SEQRA") requires the Commission to determine whether certain actions that it is authorized to approve may have a significant impact on the environment.[29] A declaratory ruling issued by the Commission does not fall within the scope of actions addressed under SEQRA. Given that (i) there is no potential for the exercise of

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27 *See, e.g.*, Case 16-M-0194 – Petition of Dynegy Inc., Sithe/Independence Power Partners, L.P. and Terawatt Holdings, LP for a Declaratory Ruling, Declaratory Ruling on a Transfer Transaction at 6-7 (May 23, 2016).

28 *See, e.g.*, Case 15-E-0462 - Petition of MACH Gen, LLC; New MACH Gen, LLC; Silver Oak Capital, LLC, and New Athens Generating Company, LLC for a Declaratory Ruling, Declaratory Ruling on Review of a Merger Transaction at 8 (Oct. 20, 2015); Case 14-E-0022 - MACH Gen LLC and New Athens Generating Company LLC - Petition for a Declaratory Ruling or, in the Alternative, Approval of the Indirect Transfer of New Athens Generating Company LLC Pursuant to Public Service Law §70, Order Approving Transfers of Ownership Interests and Making Other Findings at 11 (Apr. 25, 2014); Case 07-E-0288 - Astoria Energy LLC, SCS Energy, LLC, and Suez Energy Development NA, Inc. - Petition for a Declaratory Order Finding That Commission Review of a Transaction is Not Required or, in the Alternative, for Approval of a Transaction Pursuant to Public Service Law §70, and for Reaffirmation of Lightened Regulation, Declaratory Ruling on Review of an Ownership Interest Transfer and Making Other Findings at 6 (May 22, 2007).

29 *See* Article 8 of the New York Environmental Conservation Law; 6 NYCRR § 617 and 16 NYCRR § 7.

market power and (ii) neither the operations nor the physical characteristics of the Bayswater nor Jamaica Bay Facilities will change as a result of the Transaction, the Wallkill Presumption clearly attaches, and thus, no further review is warranted. Accordingly, Petitioners respectfully urge the Commission to issue a ruling determining that the Transaction need not be further reviewed. In the event that the Commission issues a declaratory ruling to that effect, SEQRA will not be implicated.

However, should the Commission decide to review the proposed Transaction under Section 70, SEQRA review also would be required because the Commission's action would constitute an "unlisted" action.[30] In that event, it is appropriate for the Commission, as lead agency, to conduct an environmental assessment of the Transaction to determine its significance. To assist in this assessment, Petitioners have completed a Short Environmental Assessment Form ("EAF") describing whether the Transaction has any potential impacts. The Short EAF is attached hereto as Exhibit C.

The Transaction involves the upstream transfer of interests in the Bayswater and Jamaica Bay Facilities. The operation and the physical characteristics of the Bayswater and Jamaica Bay Facilities will not change as a result of the Transaction. In addition, the Transaction will not affect any environmental permits or cause any new environmental impacts. As such, should the Commission review the Transaction under PSL Section 70, it should also issue a negative declaration and undertake no further environmental review.[31]

IX. CONCLUSION

For the reasons set forth above, Petitioners respectfully request that the Commission issue

[30] Transactions that do not meet the definition of either a Type I or Type II action listed in 6 NYCRR §§ 617.4 and 617.5 and 16 NYCRR § 7.2 are appropriately designated as "unlisted actions" that are subject to SEQRA review. See Case 05-E-1341, Orion Power Holdings, Inc., Astoria Generating Company, L.P. and Astoria Generating Company Acquisitions, LLC, Order Approving Transfers and Financings and Making Other Findings (February 15, 2006).

[31] *Id.*

a declaratory ruling that the Wallkill Presumption applies, and thus, no review (or no further review) under PSL Section 70 is necessary. To allow the Transaction to close without delay, Petitioners respectfully request that the Commission expeditiously issue this ruling at its March 2019 Session.

In the alternative, if the Commission determines that it should further review the Transaction pursuant to PSL Section 70, Petitioners respectfully request that the Commission expeditiously approve the proposed Transaction, without condition, as in the public interest at its April 2019Session.

Finally, the Petitioners also request that the Commission declare that following the consummation of the proposed Transaction, financing approvals and lightened regulation of Jamaica Bay and Bayswater will continue after the Transaction.

Respectfully Submitted:

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Counsel for MPH Rockaway Peakers, LLC

Dated: February 8, 2019
Albany, New York

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Verified Joint Petition for a Declaratory Ruling Regarding a Proposed Transfer of Upstream Interests in FPL Energy Rockaway Peaking Facilities, LLC or, in the Alternative, Approval Pursuant to Section 70 of the Public Service Law; and Confirming Financing and Lightened Regulation	**Case No.: 19-E-_______**

VERIFICATION

STATE OF FLORIDA)
COUNTY OF Palm Beach) ss.
)

I, Michael O'Sullivan, being first duly sworn, attest that I am Vice President for FPL ENERGY NEW YORK, LLC and that I have authority to verify the foregoing Verified Joint Petition. I have read the foregoing Verified Joint Petition and I affirm that the facts, representations and statements set forth herein regarding Petitioners FPL ENERGY NEW YORK, LLC, FPL ENERGY ROCKAWAY PEAKING FACILITIES, LLC, BAYSWATER PEAKING FACILITY, LLC and JAMAICA BAY PEAKING FACILITY, LLC are true and correct to the best of my knowledge, information and belief.

____

Sworn to before me this 8 day
of February 2019

____
Notary Public

CHERYL L WAGNER
MY COMMISSION # GG070148
EXPIRES February 06, 2021

Verified Joint Petition for a Declaratory Ruling Regarding a Proposed Transfer of Upstream Interests in FPL Energy Rockaway Peaking Facilities, LLC or, in the Alternative, Approval Pursuant to Section 70 of the Public Service Law; and Confirming Financing and Lightened Regulation

Case No.: 19-E-_______

VERIFICATION

Randall Osteen, being duly sworn according to law, upon his oath, deposes and says:

I, Randall Osteen, being first duly sworn, attest that I am General Counsel of Hull Street Energy, LLC ("HSE") and that I have authority to verify the foregoing Verified Joint Petition. I have read the foregoing Verified Joint Petition and I affirm that the facts, representations and statements set forth herein regarding Petitioners HSE and MPH Rockaway Peakers, LLC are true and correct to the best of my knowledge, information and belief.

Randall Osteen
Hull Street Energy, LLC
General Counsel, Portfolio Companies

WANJIKU KEBUCHI
Notary Public-Maryland
Prince George's County
My Commission Expires
December 12, 2022

Sworn and subscribed before me
this 8th day of February 2019

Notary Public

LIST OF EXHIBITS

Exhibit A: Purchase and Sale Agreement by and between FPL Energy New York, LLC and MPH Rockaway Peakers, LLC [**CONFIDENTIAL**]

Exhibit B: Organizational Charts

Exhibit C: Short Environmental Assessment Form

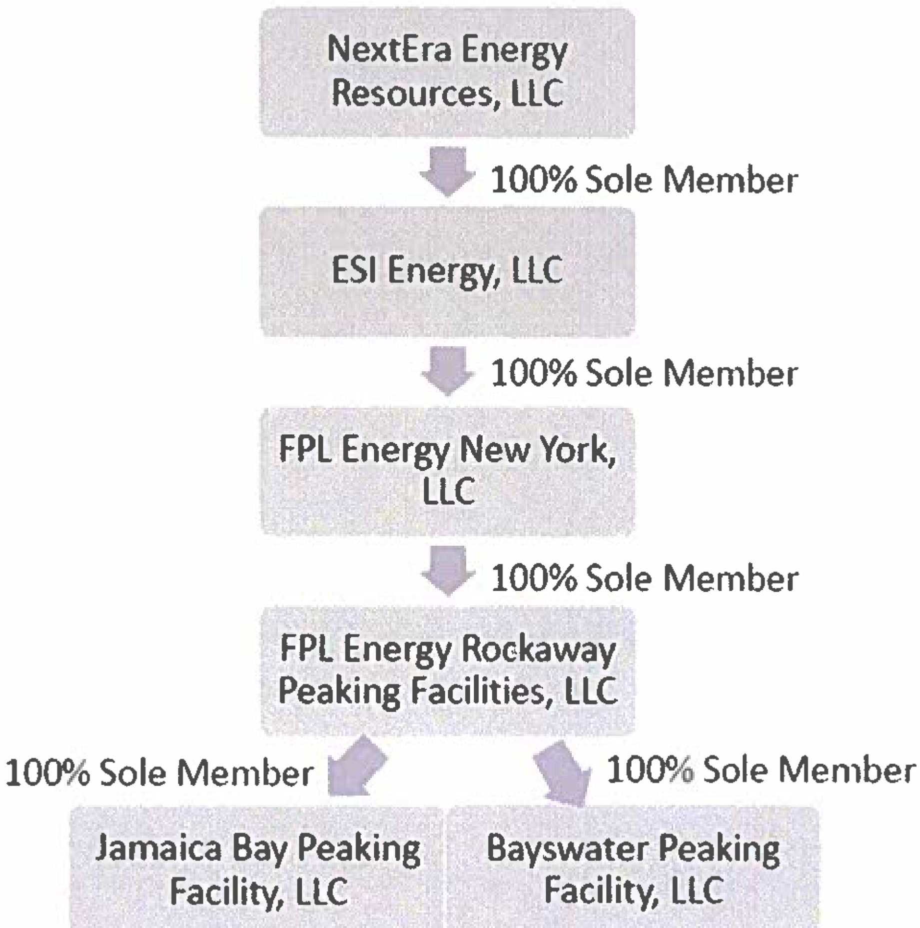
EXHIBIT A:
PURCHASE AND SALE AGREEMENT
BY AND BETWEEN
FPL ENERGY NEW YORK, LLC AND MPH ROCKAWAY PEAKERS, LLC

[CONFIDENTIAL]

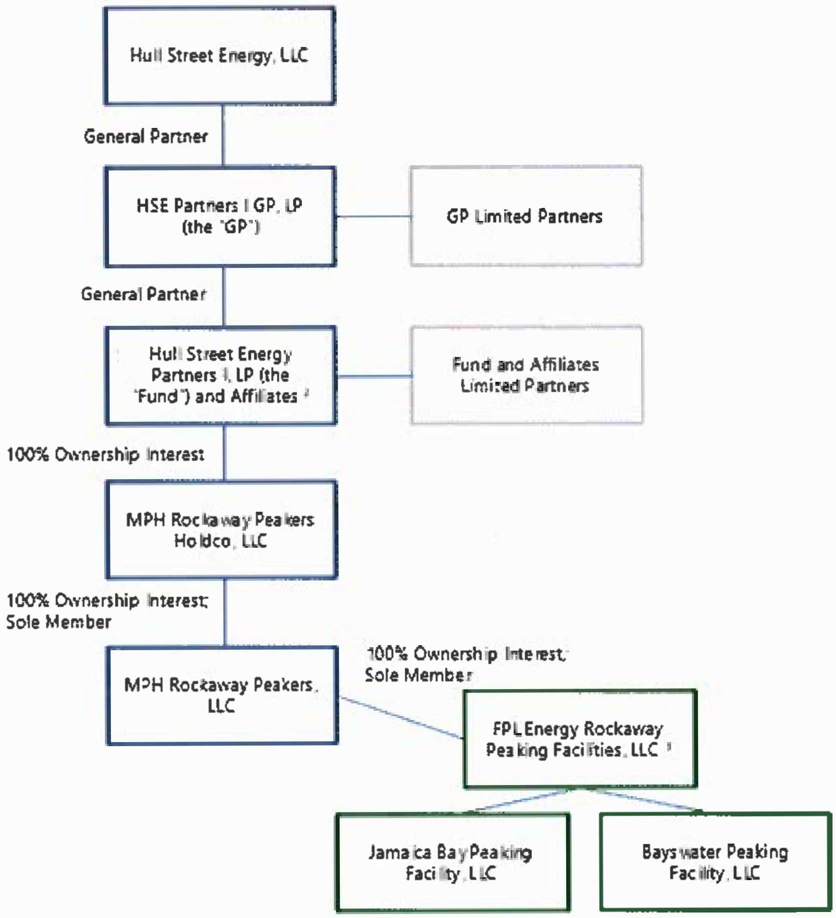
EXHIBIT B

ORGANIZATIONAL CHARTS

Current Ownership



Post-Transaction Structure



Notes:

1. MPH Rockaway Peakers Holdco, LLC is currently 100% owned by Hull Street Energy, LLC which is the Sole Member; Hull Street Energy, LLC will transfer its ownership to Hull Street Energy Partners I, LP and Affiliates prior to, or simultaneous with close, of the transaction
2. Hull Street Energy Partners I, LP may have 1 or more affiliated parallel fund investment vehicles all controlled by HSE Partners I, GP
3. FPL Energy Rockaway Peaking Facilities, LLC is the Sole Member of each of Jamaica Bay Peaking Facility, LLC and Bayswater Peaking Facility, LLC

EXHIBIT C

SHORT ENVIRONMENTAL ASSESSMENT FORM

Short Environmental Assessment Form
Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information

FPL Energy Rockaway Peaking Facilities, LLC

Name of Action or Project:

Upstream ownership change of FPL Energy Rockaway Peaking Facilities, LLC

Project Location (describe, and attach a location map):

1425 Bay 24th Street, Far Rockaway, NY 11691

Brief Description of Proposed Action:

FPL Energy New York, LLC is selling 100% of its interests in FPL Energy Rockaway Peaking Facilities, LLC to MPH Rockaway Peakers, LLC

Name of Applicant or Sponsor:	Telephone: 561.304.6189
Anthony Sibilia	E-Mail: anthony.sibilia@nee.com

Address:

700 Universe Blvd

City/PO:	State:	Zip Code:
Juno Beach	FL	33408

Question	NO	YES
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	☑	☐
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: Approval of Federal Energy Regulatory Commission under Section 203 of the FPA; FCC and the New York Public Service Commission	☐	☑

3. a. Total acreage of the site of the proposed action? NA acres
 b. Total acreage to be physically disturbed? NA acres
 c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? NA acres

4. Check all land uses that occur on, are adjoining or near the proposed action:

5. ☑ Urban ☐ Rural (non-agriculture) ☑ Industrial ☑ Commercial ☑ Residential (suburban)
 ☐ Forest ☐ Agriculture ☑ Aquatic ☐ Other(Specify):
 ☐ Parkland

	NO	YES	N/A
5. Is the proposed action,			
a. A permitted use under the zoning regulations?	☐	☐	☑
b. Consistent with the adopted comprehensive plan?	☐	☐	☑

	NO	YES
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape? NA	☐	☐
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: NA	☐	☐
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	☐	☐
b. Are public transportation services available at or near the site of the proposed action? NA	☐	☐
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	☐	☐
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: NA	☐	☐
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: NA	☐	☐
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: NA	☐	☑
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? NA	☐	☐
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	☐	☐
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	☐	☐
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? NA	☐	☐
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres:		

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: ☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional ☐ Wetland ☐ Urban ☐ Suburban NA		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered? NA	NO ☐	YES ☐
16. Is the project site located in the 100-year flood plan? NA	NO ☐	YES ☐
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, NA	NO ☐	YES ☐
a. Will storm water discharges flow to adjacent properties?	☐	☐
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	☐	☐
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment: NA	NO ☐	YES ☐
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: NA	NO ☐	YES ☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: NA	NO ☐	YES ☐

I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor/name: Anthony Sibilia Date: 2.8.19

Signature: [signature] Title: Project Director, NextEra Energy Resources, LLC

PRINT FORM