

February 14, 2020

VIA ELECTRONIC FILING

Hon. Michelle L. Phillips
Acting Secretary
New York State Public Service
Commission
Empire State Plaza
Agency Building 3
Albany, New York 12233-1350

Re: Case 20-E-_____-VERIFIED JOINT PETITION FOR AN
EXPEDITED DECLARATORY RULING INVOKING THE WALLKILL
PRESUMPTION, OR IN THE ALTERNATIVE APPROVAL OF THE
TRANSFER OF CERTAIN UPSTREAM OWNERSHIP INTERESTS IN
ASTORIA I AND ASTORIA II

Dear Secretary Phillips:

Attached for filing is the Verified Joint Petition for an Expedited Declaratory Ruling Invoking the Wallkill Presumption, or in the Alternative Approval of the Transfer of Certain Upstream Ownership Interests in Astoria I and Astoria II.

Please let me know if you have any questions.

Respectfully submitted,

COUCH WHITE, LLP

Leonard H. Singer

Leonard H. Singer

LHS/sr
Attachments

In the Matter of the Verified Joint)
Petition of Astoria Energy LLC, Astoria)
Energy II LLC and Astoria Power Partners) **Case No. 20-E-_____**
Holding, LLC for a Declaratory Ruling)
Invoking the Wallkill Presumption or for)
Approval Pursuant to Section 70 of the)
Public Service Law)

Astoria Energy LLC (“Astoria I”), Astoria Project Partners LLC (“APP I”), Astoria Energy II LLC (“Astoria II”), Astoria Project Partners II LLC (“APP II” and together with Astoria I, APP I and Astoria II the “Astoria Entities”), East River Fundco LLC (“ERF”), East River Energy Investments LLC (“EREI”), Suez Energy Astoria, LLC (“SEA”), MIT Astoria LLC (“MIT”), Steinway Creek Electric Generating Company LLC (“SCEGC,” and together with ERF, EREI, SEA and MIT the “Astoria I Sellers”), Charles R. McCall (“McCall”), AE Investor II LLC (“AEII”), JEMB Astoria II LLC (“JEMB”), NM Harbert Astoria LLC (“NMH”), Suez Energy Astoria II, LLC (“SEAI” and together with AEII, JEMB, NMH and McCall the “Astoria II Sellers”) and Astoria Power Partners Holding, LLC (“APPH” or the “Purchaser”) (collectively, the Astoria Entities, Astoria I Sellers, Astoria II Sellers and Purchaser hereinafter referred to as “Petitioners”) submit this Verified Joint Petition for An Expedited Declaratory Ruling Invoking the Wallkill Presumption or in the alternative Approval of the Transfer of Certain Upstream Ownership Interests in Astoria I and Astoria II (the “Proposed Transactions”) pursuant to Section

70 of the Public Service Law and Rules 3.5 and 8.1 of the New York State Public Service Commission's ("Commission") Procedural Rules, 16 N.Y.C.R.R. §§ 3.5 and 8.1.

INTRODUCTION AND REQUEST FOR EXPEDITED ACTION

In this proceeding, the Petitioners request Commission approval for the Proposed Transactions, under which, following an internal reorganization of APP II that is part of the Proposed Transactions: (i) the Astoria I Sellers will transfer to Purchaser all of the equity interests in APP I, which in turn owns all of the equity interests in Astoria I; and (ii) the Astoria II Sellers will transfer to Purchaser 54.9451% of the equity interests in APP II, which in turn owns all of the equity interests in Astoria II.¹ Astoria I directly owns the Astoria Energy I generating station located in Astoria, Queens, New York (the "Astoria I Facility"). Astoria II directly owns the Astoria Energy II generating station located in Astoria, Queens, New York (the "Astoria II Facility" and together with the Astoria I Facility the "Astoria Facilities"). The Proposed Transactions will occur simultaneously upstream of Astoria I and Astoria II, and Astoria I and Astoria II will remain the direct and sole owners of the Astoria I Facility and the Astoria II Facility, respectively.

The Purchase and Sale Agreements (each, a "PSA")² among the Purchaser and the Astoria I Sellers and the Purchaser and the Astoria II Sellers, for which Petitioners seek trade secret protection pursuant to 16 NYCRR § 6-1.3, Sections 87 and 89 of the Public Officers Law and Section 15 of the Public Service Law, and exemption from public disclosure as authorized by the New York Freedom of Information Law ("FOIL"). N.Y. Pub. Off. Law § 87; 16 N.Y.C.R.R. § 6-

¹ The remaining 45.0549% indirect upstream equity interest in Astoria II will remain unchanged, with GPP New York LLC continuing to hold a 12.0879% indirect equity interest in Astoria II and GPP Astoria II LLC continuing to hold a 32.9670% indirect equity interest in Astoria II.

² The Proposed Transactions involve two PSAs; one between the Purchaser and the Astoria I Sellers for 100% of the outstanding interests in APP I; and one between the Purchaser and the Astoria II Sellers for 54.9451% of the outstanding interests in APP II.

1.3, are attached hereto as confidential **Exhibit A**. Simplified ownership structures pre and post-closing are attached hereto as **Exhibit B**.

Because the Proposed Transactions will not harm captive retail customers in New York State, and because the Proposed Transactions involve a transfer of ownership interests upstream of the owner of the Facilities, Petitioners request that the Commission disclaim jurisdiction to review the Proposed Transactions in accordance with the Wallkill Presumption.³ In the event that the Commission concludes that the Wallkill Presumption does not apply, Petitioners respectfully request that the Commission find the Proposed Transactions to be in the public interest and approve the Proposed Transactions pursuant to section 70 of the Public Service Law (“PSL”). The Petitioners also request that the Commission confirm that lightened regulation will continue to be applied to the Astoria Entities upon closing.

Petitioners are targeting a closing in the first half of 2020 for the Proposed Transactions. Therefore, Petitioners request expedited review of this Petition and request Commission action on the Petition no later than the Commission’s May 14, 2020 Session. The Petitioners are contemporaneously filing with the Federal Energy Regulatory Commission (“FERC”) for approval of the Proposed Transactions pursuant to Section 203 of the Federal Power Act.

³ Case 91-E-0350, *Wallkill Generating Company L.P. - Petition For a 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*, Declaratory Ruling On Regulatory Policies Affecting Wallkill Generating Company And Notice Soliciting Comments (Issued and Effective August 21, 1991) (the “Wallkill Ruling”).

BACKGROUND

I. CORRESPONDENCE AND COMMUNICATIONS

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

Charles R. McCall
CEO and General Manager
Astoria Energy LLC
17-10 Steinway Street
Administrative Building, 2nd Floor
Astoria, NY 11105

Leonard H. Singer, Esq.
Couch White, LLP
540 Broadway, 7th Floor
Albany, New York 12207
(518) 320-3406
lsinger@couchwhite.com

Stephen J. Humes, Esq.
Graham T. Coates, Esq.
Holland & Knight, LLP
31 West 52nd Street
New York, NY 10019
(212) 513-3473
steve.humes@hklaw.com
graham.coates@hklaw.com

II. DESCRIPTION OF PETITIONERS AND THEIR RELEVANT AFFILIATES

A. Astoria Entities and Their Current Owners

1. Astoria I

Astoria I is the 100% owner of the Astoria I Facility, a 615 megawatt (“MW”)⁴ nominal dual fuel (natural gas and low sulfur No. 2 fuel oil) combined cycle electric generation facility located in Queens, New York. Astoria I was organized solely for the purpose of developing, owning and operating the Astoria I Facility. Astoria I is wholly owned by APP I.

The Astoria I Facility was placed in service on May 21, 2006. Astoria I is an Exempt Whole Generator (“EWG”)⁵ with market-based rate authorization (“MBRA”).⁶ The Astoria I Facility sells

⁴ This amount is the approximate average of the summer and winter dependable maximum net capability of the Astoria I Facility.

⁵ See FERC Docket FERC Docket Nos. EG-01-335.

⁶ The FERC has found (most recently, by order issued March 29, 2018) that Astoria I and Astoria II do not have market power in any market, even when Astoria I and Astoria II are analyzed collectively with all of their

its products as a full merchant facility into the Zone J wholesale power market operated by New York Independent System Operator Inc. (“NYISO”).⁷ By order dated July 30, 2004, the Commission granted lightened regulation to Astoria I (the “Astoria Lightened Regulation Order”).⁸ Consolidated Edison Company of New York, Inc. (“Con Ed”) provides the Astoria I Facility with interconnection service into the NYISO grid.⁹ Astoria I makes no sales outside of and is not interconnected outside of the NYISO Zone J submarket, which is the sole relevant market.

i. Astoria Project Partners LLC

APP I is a Delaware limited liability company established for the purpose of owning all of the direct interests in Astoria I. APP I is the sole member of Astoria I. APP I does not directly own any generation or transmission assets, and is a parent company of only Astoria I. None of Astoria I, APP I, nor their affiliates has a franchised retail service territory, has any captive customers, or is engaged in the state- regulated sale of electricity at retail. None of Astoria I, APP I, or their affiliates 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).

upstream owners and affiliated capacity. See, *Updated Market Power Analysis*, Docket Nos. ER10-2253-014 and ER10-3319-018, et al. (delegated order March 29, 2018).

⁷ Astoria I previously held a long-term power purchase contract with Consolidated Edison Company of New York, Inc. which expired in May of 2016.

⁸ Case 04-E-0058, *Petition of Astoria Energy, LLC for Declaratory Ruling Providing for Lightened Regulation as an Electric Corporation*, Order Providing for Lightened Regulation (issued July 30, 2004). Astoria I is also an exempt wholesale generator under the Public Utility Holding Company Act of 2005. See FERC Docket Nos. EG-01-335, Market Based Rate Authority under the Federal Power Act (see FERC Docket Nos. ER10-2253 and ER11-4333).

⁹ See FERC Docket No. ER12-1554 (Letter Order June 8, 2012).

ii. *Astoria I Sellers*

APP I is directly held by East River Fundco LLC (3.53%), East River Energy Investments LLC (4.12%), Suez Energy Astoria, LLC (23.25%), MIT Astoria LLC (19.10%) and Steinway Creek Electric Generating Company LLC (50.00%). The approximate upstream ownership structure of APP I is as follows:

Owner	Class A Ownership %	Class B Ownership %
Suez Energy Astoria, LLC	46.50	0.00
East River Energy Investments LLC	8.23	0.00
MIT Astoria LLC	38.21	0.00
East River FundCo LLC	7.05	0.00
Steinway Creek Electric Generating Company LLC	0.00	100.00
Total	100.00	100.00

2. Astoria II

Astoria II is the 100% owner of the Astoria II Facility, 615 MW¹⁰ nominal dual fuel (natural gas and low sulfur No. 2 fuel oil) combined cycle generation facility co-located with the Astoria I Facility. Astoria II was organized solely for the purpose of developing, owning and operating the Astoria II Facility. Astoria II is wholly owned by APP II.

In 2008, the Commission granted authorization for the transfer of ownership interests in the Astoria II Facility from Astoria I to Astoria II.¹¹ The New York State Board on Electric Generation Siting and the Environment in Case No. 08-F-1367 granted the request of Astoria I and

¹⁰ This amount is the approximate average of the summer and winter dependable maximum net capability of the Astoria II Facility.

¹¹ Case 08-E-1111, *Astoria Energy II LLC and Astoria Energy LLC- Petition for Approval of a Transaction pursuant to Public Service Law Section 70, Authority to Issue Debt Pursuant to Public Service Law Section 69 and for Lightened Regulation and Request for Expedited Action*, Order Approving Transfer and Financings and Making Other Findings (December 15, 2008).

Astoria II to transfer the Certificate of Environment Compatibility and Public Need issued for the Astoria I Facility under Article X of the Public Service Law, from Astoria I to Astoria I and Astoria II jointly.¹² The Astoria II Facility is now separately owned by Astoria II.

The Astoria II Facility was placed in-service on July 1, 2011. Astoria II is an EWG¹³ under the Federal Power Act, and has been granted MBRA.¹⁴ The output of the Astoria II Facility is fully committed to the Power Authority of the State of New York (“New York Power Authority” or “NYPA”) under a bilateral long term power purchase agreement that expires in June, 2031. Under the terms of the power purchase agreement, NYPA procures and schedules all fuel (and emissions) necessary to operate the Astoria II Facility, performs all of the day-ahead and real-time bidding of the Astoria II Facility in the NYISO administered wholesale power market, and directly settles the sales of all products from the Astoria II facility with the NYISO. Astoria II does not own or control any other generating facility. By order dated December 15, 2008, the Commission granted lightened regulation to Astoria II (the “Astoria II Lightened Regulation Order” and together with the Astoria I Lightened Regulation Order “Lightened Regulation Orders”).¹⁵ NYPA and NYISO provide the Astoria II Facility with interconnection service into the NYISO grid under a three-party interconnection agreement.¹⁶ Astoria II makes no sales outside of, and is not interconnected outside of, the NYISO Zone J submarket, which is the sole relevant market. Astoria

¹² Case 08-F-1367, *Petition of Astoria Energy LLC and Astoria Energy II LLC for the Amendment and Transfer of Certificate of Environmental Compatibility and Public Need*, Order Granting Transfer and Amendment of Certificate of Environmental Compatibility and Public Need (April 7, 2009).

¹³ See FERC Docket EG09-42.

¹⁴ The Federal Energy Regulatory Commission has found (most recently, by order issued March 29, 2018) that Astoria I and Astoria II do not have market power in any market, even when Astoria I and Astoria II are analyzed collectively with all of their upstream owners and affiliated capacity. See, *Updated Market Power Analysis*, Docket Nos. ER10-2253-014 and ER10-3319-018, et al. (delegated order March 29, 2018).

¹⁵ Case 08-E-1111, *Astoria Energy II LLC and Astoria Energy LLC- Petition for Approval of a Transaction pursuant to Public Service Law Section 70, Authority to Issue Debt Pursuant to Public Service Law Section 69 and for Lightened Regulation and Request for Expedited Action*, Order Approving Transfer and Financings and Making Other Findings (Dec. 15, 2008).

¹⁶ See FERC Docket ER11-2654 (Letter Order February 9, 2011).

II does not make, and cannot make or contemplate making, any retail sales of power to any electric customer in New York or otherwise.

i. Astoria Project Partners II LLC

APP II is a Delaware limited liability company established for the purpose of owning all of the direct interests in Astoria II. APP II is the sole member of Astoria II. APP II does not directly own any generation or transmission assets and is a parent company of only one public utility company, Astoria II. None of Astoria II, APP II, nor any of their affiliates has a franchised retail service territory, has any captive customers, or is engaged in the state-regulated sale of electricity at retail. None of Astoria II, APP II, or their affiliates owns, operates or controls electric transmission rights or electric transmission facilities (other than limited facilities used solely for the interconnection of generating facilities to the transmission grid).

ii. Astoria II Sellers

APP II is directly held by NM Harbert Astoria LLC (6.29%), GPP New York, LLC (12.21%), Suez Energy Astoria II, LLC (27.75%), GPP Astoria II, LLC (33.30%), JEMB Astoria II LLC (12.95%) and AE Investor II LLC (7.50%). Immediately prior to the closing, the Astoria II Sellers will complete a conversion transaction pursuant to which, *inter alia*, the Class A and Class B equity interests in APP II will be converted into a single class of equity interests. The upstream ownership structure of APP II immediately prior to closing will be as follows:

Owner	Company Ownership Percentage
GPP Astoria II, LLC	32.9670
GPP New York, LLC	12.0879
NM Harbert Astoria LLC	6.2271
JEMB Astoria II LLC	12.8205
SUEZ Energy Astoria II, LLC	27.4725
AE Investor II LLC	7.4250
Charles R. McCall	1.0000
Total	100.0000

B. Purchaser and Relevant Affiliates

1. Astoria Power Partners Holding, LLC

APPH is a Delaware limited liability company formed solely as a holding company for the purpose of investing in the upstream owners of the Astoria Facilities. APPH holds no interests, including any interest in any jurisdictional facilities in NYISO or any adjoining Balancing Area Authority. APPH is directly owned 5.5% by Clal Astoria Blocker LP, 20.0% by MR Gotham LP, and 74.5% by Gotham Power Investors LLC. APPH is managed by a Board of Managers comprised of up to ten (10) managers, with each member of APPH having the ability to appoint one (1) manager for each 10% equity interest that such member owns. The following sections describe the upstream ownership of APPH and its energy affiliates that have interests in the NYISO, PJM Interconnection, LLC (“PJM”) and ISO New England (“ISO-NE”) markets.

i. Clal Astoria Blocker LP

Clal Astoria Blocker LP is a Delaware limited partnership of which Canaf-Clal Financial Management, Ltd. is the general partner. Both Clal Astoria Blocker LP and Canaf-Clal Financial Management, Ltd. are indirectly owned by Clal Insurance Enterprises Holding Ltd. (“Clal Holding”). Clal Holding is a publicly traded company, listed on the Tel Aviv Stock Exchange, and

the parent company of Clal Insurance Company Ltd. ("Clal"), with holdings of 99.98% of its issued share capital. Clal is an insurance and long term savings company incorporated and based in Israel. As one of the largest insurance companies in Israel, Clal manages approximately \$65 billion in assets. Neither Clal Holding nor Clal nor Clal Astoria Blocker LP or any of their affiliates has a franchised retail service territory, has any captive customers, or is engaged in the state-regulated sale of electricity at retail. Neither Clal Holding nor Clal nor Clal Astoria Blocker LP or any of their affiliates owns, operates or controls electric transmission rights or electric transmission facilities (other than limited facilities used solely for the interconnection of generating facilities to the transmission grid). Neither Clal Holding nor Clal nor Clal Astoria Blocker LP or any of their affiliates owns or controls any electric generating facilities or essential inputs to electric generation anywhere in NYISO or an adjacent Balancing Authority Area.

ii. MR Gotham LP

MR Gotham LP is a Delaware limited partnership. MR Gotham LP is a wholly owned indirect subsidiary of Münchener Rückversicherungs-Gesellschaft Aktiengesellschaft in München ("Munich Re"). Munich RE is a leading global provider of reinsurance, primary insurance and insurance-related risk solutions. Neither MR Gotham LP nor Munich RE or any of their affiliates has a franchised retail service territory, has any captive customers, or is engaged in the state-regulated sale of electricity at retail. Neither MR Gotham LP nor Munich RE or any of their affiliates owns, operates or controls electric transmission rights or electric transmission facilities (other than limited facilities used solely for the interconnection of generating facilities to the transmission grid). Neither MR Gotham LP nor Munich RE or any of their affiliates owns or controls any electric generating facilities or essential inputs to electric generation anywhere in NYISO or an adjacent Balancing Authority Area.

iii. *Gotham Power Investors LLC*

Gotham Power Investors LLC is a Delaware limited liability company. As of the date of consummation of the Proposed Transactions, Gotham Power Investors LLC will be directly owned¹⁷ 46.32% by Golden Inferno LLC, 53.18% by Pomarina LLC and 0.5% by Harbert GPI MM, LLC (“Harbert”). The Amended and Restated Limited Liability Company Agreement for Gotham Power Investors LLC appoints Harbert as the Managing Member and Harbert will provide management and administrative services to Gotham Power Investors LLC. Harbert will not have voting rights or representation on the Board of Directors, or the ability to direct certain strategic decisions, such as business plans, budgets, or major investments, without the unanimous approval by Gotham Power Investors LLC’s members.

Harbert, a Delaware limited liability company, is a wholly owned subsidiary of Harbert Power, LLC (“Harbert Power”), an Alabama limited liability company. Harbert Power is majority owned and controlled by Harbert Management Corporation (“HMC”), an Alabama corporation.¹⁸ No other entity owns 10% or more of the outstanding voting securities of Harbert Power. HMC and certain affiliates of Harbert already hold, in the aggregate, an ownership interest of greater than 10% in APP through its current owner Harbert Power Fund V, LLC and JEMB/Harbert Astoria Holdings LLC. HMC and affiliates of Harbert already have an ownership interest in APP II through current owner GPP Astoria II, LLC, GPP New York, LLC, NM Harbert Astoria LLC and JEMB Astoria II LLC.

¹⁷ Exact ownership percentages of Gotham Power Investors LLC may vary slightly to account for closing adjustment mechanics in the two purchase agreements. The ownership percentages of Golden Inferno LLC and Pomarina LLC in Gotham Power Investors LLC will be adjusted at closing based on the final net purchase price required by each of the purchase agreements. Any change in the ownership percentages between Golden Inferno LLC and Pomarina LLC is not expected to be more than 200 basis points (or, not more than 2 percent).

¹⁸ HMC is owned and controlled by Raymond J. Harbert and members of his immediate family, with no one person but for Mr. Harbert, owning or controlling any voting or equivalent interest of HMC of greater than 10%.

Harbert, through HMC, is affiliated with Waterside Power, LLC (“Waterside Power”), which owns and operates a 69.6 MW (nameplate) liquid fuel-fired electric generating facility located in Stamford, Connecticut (the “Waterside Facility”) and interconnected to the transmission system operated by ISO-NE. Waterside Power is an EWG under PUHCA¹⁹ and has been granted authorization to sell electric energy, capacity, and certain ancillary services at market-based rates.²⁰ All of the output of the Waterside Facility is currently sold in the wholesale markets administered by ISO-NE. Harbert also is affiliated with the Colver power project (“Colver”), a 110 MW (summer rating) waste coal-fired qualifying facility in Colver, Pennsylvania, interconnected with Pennsylvania Electric Company in the PJM balancing authority area. The Colver project is comprised of a single circulating fluidized bed combustion boiler burning bituminous coal waste and a condensing steam turbine generator. The Colver project is fully committed under a long-term power purchase agreement to Pennsylvania Electric Company under the Public Utilities Regulatory Policy Act.²¹

With the exception of Waterside Power, the Colver power project, Astoria I and Astoria II, none of Harbert or its affiliates owns or controls any electric generation or transmission facilities in NYISO, or markets first-tier to NYISO. In addition, none of Harbert or its affiliates owns or controls any essential inputs to electric power production, or is affiliated with a franchised public utility.

Golden Inferno LLC is a Delaware limited liability company and is wholly owned by the California State Teachers Retirement System (“CalSTRS”). CalSTRS is a California state agency and retirement fund formed for the purpose of funding retirement, disability and survivor benefits

¹⁹ *Waterside Power, L.L.C.*, 100 FERC ¶ 62,001 (2002).

²⁰ *Waterside Power, L.L.C.*, Docket No. ER02-1884-000, *et al.* (June 13, 2002) (unpublished letter order).

²¹ See Notice of Self-Recertification as a Qualifying Small Power Production Facility, filed on January 12, 2015 in Docket No. QF87-632-011.

for California pre-kindergarten through community college educators and their families. CalSTRS is a passive equity investor and was established by California law to provide retirement, disability and survivor benefits to California's public school educators from prekindergarten through to community college.

Pomarina LLC is a Delaware limited liability company and is wholly owned by Pomarina Investments Holdings B.V., which in turn is wholly owned by APG Infrastructure Pool 2017 II (the "Pool"). The Pool is managed by APG Asset Management N.V. ("APG"). The Pool is owned by two pension plans formed under the laws of the Netherlands: Stichting Pensioenfond ABP ("ABP"), which owns 99.8%, and Stichting Personeelspensioenfonds APG ("PPF") which owns the remaining 0.2%. ABP, which is the pension fund for the Dutch civil servants and education workers, indirectly controls and has majority ownership of APG. APG Asset Management US Inc., which is the manager of Pomarina, LLC, is a wholly owned subsidiary of APG.

Both CalSTRS and APG hold indirect, passive, non-controlling interests²² in two transmission lines the Cross-Sound Cable ("CSC")²³ and the Hudson Transmission Project

²² On June 1, 2015, the FERC authorized a transaction in which Buyer's affiliate purchased certain passive ownership interests in CSC. See *Cross-Sound Cable Company, LLC*, 151 FERC ¶ 62,145 (2015); *Cross-Sound Cable Company, LLC*, Notice of Consummation, Docket No. EC15-122-000 (filed August 24, 2015) and on August 29, 2013, the FERC authorized a transaction involving certain passive ownership interests in HTP. See *CalPeak Power – Border LLC*, Letter Order, Docket Nos. ER10-3071-001, *et al.*, (Aug. 29, 2013) (accepting nonmaterial change in status informing the FERC of the acquisition of passive interests in HTP); Notice of Change in Status with Respect to Passive Investments in Hudson Transmission Partners, LLC and Limited Requests for Privileged and Confidential Treatment of CalPeak Power – Border LLC, *et al.*, Docket No. ER10-3071-001, *et al.*, at 5 (May 20, 2013) (demonstrating that the interest in HTP was a passive interest consistent with the FERC's determinations in *AES Creative*). Affiliates of Buyer's upstream owners acquired these passive interests.

²³ The Commission has determined that the interests in CSC held by CalSTRS and an affiliate of APG, Sogra, are passive because they lack the ability to direct the operation and management of CSC and do not possess the authority to influence CSC's participation in competitive markets. Accordingly, the Commission held that neither CalSTRS nor APG are electric corporations under the Public Service Law. See Case 15-E-0243, Joint Petition of Cross-Sound Cable Company, LLC, Cross-Sound cable Company (New York) LLC, and AIA Energy North America, LLC for A Declaratory Ruling Regarding an Indirect Ownership Transfer or, in the Alternative, an Order Approving the Transfer, an Order Approving Financing, and for a Declaratory Ruling Regarding Regulation, ORDER APPROVING A TRANSFER TRANSACTION AND A FINANCING AND MAKING OTHER FINDINGS (August 17, 2015) at 7.

(“HTP”).²⁴ As the holders of indirect passive, non-controlling interests, neither CalSTRS nor APG manage the operations of these facilities nor do they control rates charged or availability of the facilities.²⁵ CalSTRS and APG also hold indirect, passive, non-controlling interests²⁶ in Duquesne Light Company (“Duquesne Light”), a large regulated electric transmission and distribution utility serving over a half million customers in the southwestern Pennsylvania.

(a) Cross-Sound Cable

CSC is a 24 mile high voltage direct current transmission line with bi-directional transfer capacity of approximately 330 MW and runs beneath Long Island Sound from the Halvarsson Converter Station in New Haven, Connecticut to the Tomson Converter Station in Shoreham, New York. The CSC Project connects the transmission systems of UIL Holdings Corporation and the Long Island Power Authority. It is one of several interconnections between the ISO-NE and the NYISO. The CSC Project is under the operational control of ISO-NE pursuant to Section 9.3 of Attachment K to the ISO-NE open access transmission tariff (“OATT”), and Cross Sound Cable Company LLC provides service over the CSC Project under Schedule 18 of the ISO-NE OATT.²⁷ ISO-NE schedules transmission service on the CSC Project under its OATT in coordination with NYISO.²⁸

The CSC Project is wholly-owned by Cross-Sound Company, LLC (“Cross-Sound Company”) a Connecticut limited liability company. Cross-Sound Company is a direct, wholly-

²⁴ The Commission also has determined that the interests in HTP held by CalSTRS and APG do not provide either entity with the ability to influence HTP’s operations, management or its participation in competitive markets and, therefore, are passive and non-controlling. Accordingly, the Commission held that neither CalSTRS nor APG are electric corporations under the Public Service Law. See Case 18-E-0621, Joint Petition for a Declaratory Ruling Regarding Transfer of Upstream Ownership Interests or, in the Alternative, an Order Approving the Transfer Pursuant to § 70 of the New York State Public Service Law, DECLARATORY RULING ON TRANSFER AND MAKING OTHER FINDINGS (December 18, 2018) at 15.

²⁵ *Id.*

²⁶ See *AIA Energy North America LLC*, 158 FERC ¶ 62,194 (2017).

²⁷ See *Cross-Sound Cable Co., LLC*, 109 FERC ¶ 61,223 (2004).

²⁸ See generally, Section II, ISO-NE OATT, http://www.iso-ne.com/regulatory/tariff/sect_2/oatt/sect_ii.pdf

owned subsidiary of CSC Holdco LLC, a Delaware limited liability company (“CSCHC”). CSCHC is a direct, wholly-owned subsidiary of AIA Energy North America, LLC (“AIA Energy”), a Delaware limited liability company. AIA Energy is an indirectly owned subsidiary of CalSTRS, ABP and PPF. arGo Energy North America MM LLC (“arGo Energy MM”) is the managing member of AIA Energy and controls all of its day-to-day management and operations. arGo Energy MM is controlled by its management committee, composed of three individuals.

(b) Hudson Transmission Project

HTP is a 660 MW high voltage direct current electric transmission cable connecting the PSEG-North zone of PJM to the NYISO Zone J power market via a subsea cable beneath the Hudson River. Operation of HTP is subject to a lighted regulatory regime.²⁹ HTP runs approximately 7.1 miles from the Public Service Electric and Gas Company’s Bergen Substation in Ridgefield, New Jersey to the Con Ed W. 49th Street Substation in New York City. The HTP includes a back-to-back AC/DC/AC converter station in Ridgefield, New Jersey, providing operator control and scheduling capability to the flow of energy between PJM and NYISO. HTP and NYPA have entered into a long-term Firm Transmission Capacity Purchase Agreement, pursuant to which 87.12% (575 MW) of HTP’s capacity is sold to NYPA. In addition, the remaining 85 MW of HTP’s transmission capacity (12.88%) is sold in accordance with HTP’s market-based rate authority granted by FERC.³⁰

The HTP Project is wholly-owned by Hudson Transmission Partners, LLC (“Hudson Partners”). Hudson Transmission Partners is an indirectly owned subsidiary of CalSTRS, ABP and

²⁹ Case 10-E-03339, *Hudson Transmission Partners, LLC*, Order Providing for Lightened Rate Making Regulation (Apr. 14, 2011). The Commission has jurisdiction over the portion of HTP that lies within New York State.

³⁰ HTP does not directly schedule energy, capacity or other products across the HTP. Instead, under FERC authorization, HTP sells its transmission capacity to third parties. Accordingly, HTP has a contract with Con Ed providing for the marketing of the energy, capacity and ancillary services associated with the remaining 85 MW block under a profit sharing arrangement.

PPF via indirect ownership of non-voting, passive Class C interests in Hudson Partners. The Class C interests are passive economic interests that entitle their owners to a share of the distributions but do not convey any authority to influence the daily operations or management of either Hudson Partners or HTP. Hudson Power Ventures, LLC, sole owner of the Class A interests in Hudson Partners, and unaffiliated with CalSTRS, ABP, and PPF, controls all of its day-to-day management and operations of Hudson Partners and HTP.

(c) Duquesne Light

Duquesne Light is an electric utility that purchases, transmits, and distributes electric energy to customers in southwestern Pennsylvania. Duquesne Light divested its generation in 2000 and presently owns no generation resources. Duquesne Light's transmission facilities are under the operational control of PJM, and service on Duquesne Light's transmission facilities is provided under PJM's OATT. Duquesne Light is authorized to make wholesale sales of electric capacity, energy and ancillary services at market-based rates. The FERC has also granted Duquesne Light waivers of the code of conduct requirements and affiliates sales prohibition. Duquesne Light's retail customers have access to retail choice, and therefore Duquesne Light has no captive customers.

III. THE PROPOSED TRANSACTIONS³¹

On January 16, 2020, Purchaser and the Astoria I Sellers executed a PSA providing for the purchase and sale of equity interests in APP I, and Purchaser and the Astoria II Sellers executed a PSA providing for the purchase and sale of equity interests in APP II. The Proposed Transactions will occur simultaneously pursuant to the terms of each PSA attached hereto in confidential **Exhibit A**. Upon closing, Purchaser will directly acquire 100% of the interests in APP I from the

³¹ Organization charts comparing the ownership structure of the Astoria Facilities before and after the Proposed Transactions are attached hereto as **Exhibit B**.

Astoria I Sellers. APP I directly owns 100% of the interests in Astoria I. Astoria I, in turn, directly owns the Astoria I Facility. To effectuate Purchaser's acquisition in Astoria II, upon closing Purchaser will directly acquire 54.9451% of the equity interest in APP II from the Astoria II Sellers. APP II directly owns 100% of the interests in Astoria II. Astoria II, in turn, directly owns the Astoria II Facility. Each of the Proposed Transactions will occur upstream of Astoria I and Astoria II. Post-closing, both APP I and APP II will remain the direct and sole owners of Astoria I and Astoria II, respectively. APP I will become wholly owned by APPH. APP II will be jointly owned by APPH (54.9451%), GPP New York, LLC (12.0879%) and GPP Astoria II, LLC (32.9670%). Post-closing, APPH will remain under its current ownership structure, which consists of Cal Astoria Blocker LP (5.50%), MR Gotham LP (20.00%) and Gotham Power Investors LLC (74.50%).

ANALYSIS

I. THE COMMISSION SHOULD ISSUE A DECLARATORY RULING FINDING THAT IT NEED NOT REVIEW OR FURTHER REVIEW THE PROPOSED TRANSACTIONS UNDER PSL SECTION 70

The Commission should decline to further review the Proposed Transactions under PSL § 70 based on the Wallkill Presumption. The Commission has established a lightened regulatory regime for competitive wholesale generators in New York under which PSL § 70 review of changes in ownership is not required.³² In the Wallkill Order, the Commission decided that under this lightened regulatory regime, PSL § 70 regulation would not adhere to a transfer of ownership interests in parent entities upstream from the affiliates owning and operating New York competitive electric generation facilities unless there was a potential for harm to the interests of

³² See Wallkill Order.

captive utility ratepayers sufficient to override the presumption (the “Wallkill Presumption”). The Commission has granted Astoria I and Astoria II such lightened regulation.³³

In past 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 § 70 when it has determined that the transaction would not enable the petitioners to exercise market power to the detriment of captive ratepayers.³⁴ As discussed more fully above, the Proposed Transactions involve a change of ownership interests in parent entities upstream from the subsidiaries that own and operate New York competitive generation facilities. The Petitioners request that the Commission follow its precedent, afford the Petitioners the Wallkill Presumption, and issue a declaratory ruling stating that the Commission need not review the Proposed Transactions under PSL § 70.

The Proposed Transactions will not result in any adverse impacts in New York. The Proposed Transactions do not create any potential for harm to the interests of captive utility ratepayers because the Petitioners operate in a competitive market and have no captive ratepayers. Furthermore, the Proposed Transactions will not result in the potential to exercise either vertical

³³ See Lightened Regulation Orders.

³⁴ See e.g., Case 07-E-0322, *Verified Joint Petition of Astoria Generating Company, L.P., Astoria Generating Company Holdings, LLC and EBG Holdings, LLC for a Declaratory Ruling or, in the Alternative, for Authorization Under Section 70 of the Public Service Law to Transfer Ownership of Astoria Generating Company, LP*, Declaratory Ruling on Review of a Merger Transaction (May 22, 2007); Case 09-E-0055, *Joint Petition of Constellation Energy Nuclear Group, LLC, Nine Mile Point Nuclear Station, LLC, R.E. Ginna Nuclear Power Plant, LLC, EDF Development, Inc. for a Declaratory Ruling Regarding the Application of Section 70 of the PSL, or, in the Alternative, for Approval Under Section 70*, Declaratory Ruling on Review of a Transfer Transaction (Apr. 23, 2009); Case 06-M-0210, *Joint Petition of Constellation Energy Group, Inc. and FPL Group, Inc. for a Declaratory Ruling Regarding the Application of Sections 70 and 89-h of the Public Service Law, or, on the Alternative, for Approval Under Sections 70 and 89-h*, Declaratory Ruling on Review of Ownership Interest Transfers (July 25, 2006); Case 08-E-0850, *Petition of Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P. for Declaratory Ruling Regarding Acquisition of Common Stock, and, in the Alternative, Approval Under Section 70 of the New York State Public Service Law*, Declaratory Ruling on Review of Stock Transfer Transactions (Sept. 19, 2008).

or horizontal market power. As noted above, the only New York energy related assets that any of Purchaser's investors' affiliates have is the indirect, passive and non-controlling financial interests held by affiliates of Golden Inferno LLC and Pomarina LLC in the CSC and HTP transmission lines.

The nature of the interests that CalSTRS and APG have in CSC and HTP are similar to the interests California Public Employees Retirement System ("CalPERS") has in the Neptune Regional Transmission LLC transmission line which, like CSC and HTP, is a direct current transmission facility. In Case 13-E-0302³⁵, the Commission determined that the purchase of an interest in APP II by Gulf Pacific Power, LLC ("Gulf PPL"), 97 percent of which is owned by CalPERS, did not pose the potential for the exercise of vertical market power. In that case, the Commission held:

Nor does the proposed transaction pose the potential for the exercise of vertical market power. Neither Harbert, nor CalPERS, nor their affiliates control electric delivery facilities in New York, other than interconnections, or exert a substantial influence over inputs, like fuel, into the production of generation supply within New York, other than CalPERS' interest in Neptune's transmission line. Because that interest is passive, and contractual arrangements prevent CalPERS from influencing pricing or allocation of capacity on that line, the interest does not enable CalPERS to exercise vertical market power. Since this transaction, as described in the petition, poses no other potential harm to the interests of captive ratepayers, we find, in conformance with the Wallkill Order, that we need not review the transaction further.³⁶

The same is true here. CalSTRS and APG's interests in CSC and HTP are passive and contractual arrangements prevent CalSTRS and APG from influencing pricing or allocations of

³⁵ Case 13-E-0302, Astoria Energy II LLC, EIF Management LLC and Gulf Pacific Power LLC - Joint Petition for a Declaratory Ruling Regarding the Transfer of Upstream Interests in Astoria Energy II LLC, or in the Alternative, Approval Pursuant to Public Service Law §70, DECLARATORY RULING ON REVIEW OF AN OWNERSHIP INTEREST TRANSFER TRANSACTION (September 19, 2013).

³⁶ *Id.*, at 6.

capacity on those transmission lines. As such, CalSTRS and APG's interests do not create the potential for the exercise of vertical market power.

Furthermore, Purchaser and its investors' respective affiliates do not have ownership interests in any: (i) electric generating or distribution facilities in New York; (ii) entities that are scheduling coordinators, reliability coordinators, or balancing area authorities in New York; (iii) energy services companies or electric or gas transmission or distribution providers in New York; or (iv) entities that can exercise control over the provision of fuels used in generation in New York.

Moreover, the investor affiliates of Purchaser that hold such ownership interests in the markets surrounding New York (e.g., PJM) are limited. As noted above, CalSTRS and APG have investments in a large regulated electric transmission and distribution utility serving over a half million customers in southwestern Pennsylvania, which is in PJM and is not electrically adjacent to NYISO Zone J. The fact that CalSTRS and APG are affiliated with an electric transmission and distribution utility in PJM does not pose the potential for the exercise of market power because the utility operates in a separate geographic market. Accordingly, the Proposed Transactions will not result in wholesale market ownership that would enable the exercise of horizontal or vertical market power in New York. This Commission in the past has determined that CalSTRS's and APG's affiliates' interests in the Duquesne Light, HTP and CSC are passive and non-controlling interests that do not raise any market power concerns.³⁷

As noted herein, with the exception of Waterside Power, the Colver power project, Astoria I and Astoria II, none of Harbert or its affiliates owns or controls any electric generation or transmission facilities in NYISO, or markets electrically adjacent to NYISO Zone J. Waterside

³⁷ See, Case 18-E-0621, *Joint Petition for a Declaratory Ruling Regarding Transfer of Upstream Ownership Interests or, in the Alternative, an Order Approving the Transfer Pursuant to § 70 of the New York State Public Service Law*, Declaratory Ruling on Transfer and Making Other Findings (December 18, 2018).

Power's 69.6 MW of generating capacity represents a *de minimis* 0.2% of the total 31,242 MW of installed capacity in the ISO-NE market and would not enable the exercise of horizontal market power in either ISO-NE or NYISO.³⁸ The Colver project also would not enable the exercise of horizontal market power in PJM or NYISO given that it is fully committed under a long-term power purchase agreement to Pennsylvania Electric Company.

The Proposed Transactions will also not otherwise result in any adverse impacts in New York. No changes in the day-to-day operations of the Astoria Facilities will be made as a result of the Proposed Transactions. The Proposed Transactions will not result in any change in the role of Astoria I or Astoria II as the entities responsible for the operation and maintenance of the Astoria Facilities will not change as a result of the Proposed Transactions. Based on the foregoing, the Proposed Transactions will not create or enhance horizontal or vertical market power in New York and, therefore, the Wallkill Presumption that no further PSL § 70 review is required by the Commission is applicable in this case.

II. IF THE COMMISSION DECIDES TO REVIEW THE PROPOSED TRANSACTIONS UNDER PSL § 70, IT SHOULD APPROVE THE TRANSFERS AS IN THE PUBLIC INTEREST

The Commission reviews proposed transactions under PSL § 70 using a “public interest” standard.³⁹ For lightly regulated entities, the level of scrutiny accorded to PSL § 70 transfers is reduced, and 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

³⁸ See ISO-NE 2019 CELT Report, *2019-2028 Forecast Report of Capacity, Energy, Loads and Transmission*, April 30, 2019, https://www.iso-ne.com/static-assets/documents/2019/04/2019_celt_report.xls.

³⁹ N.Y. Pub. Serv. Law § 70 (McKinney 2019).

might afford opportunities for the exercise of market power or pose the potential for other harms detrimental to captive ratepayer interests.⁴⁰

The Proposed Transactions fully satisfy the Commission's standard of review for lightly regulated entities. As discussed above, the Proposed Transactions do not create any potential for harm to the interests of captive utility ratepayers because the Astoria Facilities operate in a competitive market and have no captive ratepayers. The Proposed Transactions will not result in any adverse impacts in New York. No changes in the management or operation of the Astoria Facilities will be made as a result of the Proposed Transactions. The Astoria Facilities will continue to be operated by Astoria I and Astoria II, which will not be affected by the Proposed Transactions. The Astoria Facilities will also continue to provide safe and adequate service. Thus, if the Commission finds that the Wallkill Presumption does not apply and decides to review the Proposed Transactions pursuant to PSL § 70, the Commission should approve the Proposed Transactions as in the public interest for the reasons discussed above.

III. THE COMMISSION SHOULD CONTINUE TO APPLY LIGHTENED REGULATION TO THE ASTORIA ENTITIES

For all of the same reasons set forth in the Astoria I and Astoria II Lightened Regulation Orders, the Astoria Entities should continue to be subject to lightened regulation after consummation of the Proposed Transactions. 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 New York competitive electric generating and transmission facilities.⁴¹ Accordingly, following

⁴⁰ Case 10-M-0186, *Alliance Energy Renewables, LLC, et al.*, Order Approving Transfers Upon Conditions and Making Other Findings at 17 (July 23, 2010).

⁴¹ See, e.g., Case 18-E-0501 - *Joint Petition of Bayonne Energy Center, LLC, MIC Thermal Power Holdings, LLC and NHIP II Bayonne Holdings LLC for a Declaratory Ruling Regarding Transfer of Upstream Ownership Interests or, in the Alternative, an Order Approving the Transfer Pursuant to Section 70 of the New York State Public Service Law*, Declaratory Ruling on Transfer and Making Other Findings at 11-12 (Sept. 18, 2018); Case 15-E-0462 - *Petition of MACH Gen, LLC; New MACH Gen, LLC; Silver Oak Capital, LLC, and New Athens*

the consummation of the Proposed Transactions, the Commission should follow its precedent and continue the lightened regulation of the Astoria Entities as consistent with the Astoria I and Astoria II Lightened Regulation Orders.

IV. STATE ENVIRONMENTAL QUALITY REVIEW ACT

Under the State Environmental Quality Review Act (“SEQRA”), Article 8 of the New York State Environmental Conservation Law, and its implementing regulations (6 NYCRR § 617 *et seq.*; 16 NYCRR § 7 *et seq.*), the Commission must determine whether certain actions it is authorized to approve may have a significant impact on the environment. SEQRA review, however, is not required if the Commission issues a declaratory ruling and determines that further PSL § 70 review is not necessary.⁴²

If the Commission decides to review the Proposed Transactions under PSL § 70 and SEQRA review is undertaken, the Proposed Transactions does not meet the definition of a Type I or Type II action listed in 6 NYCRR §§ 617.4, 617.5 and 16 NYCRR § 7.2 and, therefore, is appropriately classified as an “unlisted action” under SEQRA.⁴³ Accordingly, it is proper for the Commission to declare itself the SEQRA “lead agency” to conduct an environmental assessment

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).

⁴² See Case 18-E-0501, Declaratory Ruling on Transfer and Making Other Findings at 10 (Sept. 18, 2018) (“Declaratory rulings are not “actions” within the meaning of [SEQRA] and its implementing regulations (16 NYCRR §7.2) and, therefore, they may be issued without further SEQRA review.”); Case 16-E-0116, *Joint Petition of J Cricket Holdings LLC, AP Cricket Valley Holdings I, Inc., and Cricket Valley Energy Center LLC for a Declaratory Ruling Regarding Transfers of Upstream Ownership Interests or, in the Alternative, an Approval Pursuant to Section 70 of the Public Service Law*, Declaratory Ruling on Review of Acquisition Transactions at 6-7, fn 7 (Apr. 20, 2016) (“In accordance with 6 NYCRR §617.5(c)(31), the matters addressed herein constitute ‘interpret[at]ions’ of an existing code, rule or regulation,’ and are therefore a Type II action not subject to review under [SEQRA].”).

⁴³ See e.g., Case 05-E-1341, *Petition of Orion Power Holdings, Inc., Astoria Generating Company, L.P. and Astoria Generating Company Acquisitions, LLC for Approval of Ownership Transfer Transactions and Authority to Issue Corporate Debt*, Order Approving Transfers and Financings and Making Other Findings at 4-5 (Feb. 15, 2006).

and determine the significance of the actions proposed. To facilitate such assessment, attached hereto as **Exhibit C** is a Short Environmental Assessment Form with Part I completed, describing and evaluating the potential impact, if any, of the Proposed Transactions.

The Commission has previously determined that transfers of upstream ownership interests in lightly regulated electric corporations, such as the transfers contemplated by the Proposed Transactions, will not result in any significant adverse environmental impacts.⁴⁴ No significant adverse environmental effect will result from the Proposed Transactions. There will be no physical changes to the Astoria Facilities as part of the Proposed Transactions. Following consummation of the Proposed Transactions, the Astoria Facilities will continue to be operated in accordance with all applicable Commission Orders, environmental permits and environmental laws. As such, the Proposed Transactions will not cause new environmental impacts and, thus, the Commission should follow its precedent and issue a negative declaration and undertake no further environmental review should it decline to issue a declaratory ruling

CONCLUSION

WHEREFORE, for the above stated reasons, Petitioners respectfully request that the Commission issue an expedited declaratory ruling declaring that the Proposed Transactions satisfy the requirements of the Wallkill Presumption and, accordingly, may be consummated without the Commission's prior approval under PSL § 70, or in the alternative, that the Commission grant expedited approval of the Proposed Transactions pursuant to PSL § 70. The Petitioners further respectfully request that the Commission declare that following consummation of the Proposed

⁴⁴ See e.g., Case 15-E-0580, *Joint Verified Petition of Upstate New York Power Producers, Inc.; Cayuga Operating Company, LLC; Somerset Operating Company, LLC; and Riesling Power LLC for Expedited Approval Pursuant to Section 70 of the New York State Public Service Law and Related Approvals*, Order Approving Transfer at 11-12 (Feb. 25, 2006); Case 15-E-0208, *Saranac Power Partners, L.P. - Petition for a Declaratory Ruling Disclaiming the Need to Review a Transfer of a 5% Ownership Interest, or, in the Alternative, an Order Approving the Transfer*, Order Approving a Transfer Transaction and Making Other Findings at 6-7 (Aug. 17, 2015).

Transactions, the Astoria Entities will continue to be afforded lightened regulation consistent with the Astoria I and Astoria II Lightened Regulation Orders.

Respectfully submitted,

Leonard H. Singer

Leonard H. Singer, Esq.
Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
(518) 320-3406
lsinger@couchwhite.com

Attorney for Astoria Energy LLC, Astoria Energy II LLC, Astoria Project Partners LLC and Astoria Project Partners II LLC



Stephen J. Humes, Esq.
Graham T. Coates, Esq.
Holland & Knight, LLP
31 West 52nd Street
New York, NY 10019
(212) 513-3473
steve.humes@hklaw.com
graham.coates@hklaw.com

Attorneys for Astoria Power Partners Holding LLC

Dated: February 14, 2020

VERIFICATION

STATE OF NEW YORK

) SS:

COUNTY OF NEW YORK

Sean Hannon, being duly sworn, deposes and says that he is a Manager and duly Authorized Representative of Astoria Power Partners Holding LLC, that he has read the foregoing Verified Joint Petition and knows that contents thereof as to Astoria Power Partners Holding LLC and that the contents set forth therein as to Astoria Power Partners Holding LLC are true to the best of his knowledge, information and belief.



Sworn to before me this 14th day of
February, 2020


Notary Public

NATALIE T RAGHUNATH
NOTARY PUBLIC-STATE OF NEW YORK
No. 01RA6352767
Qualified in Queens County
My Commission Expires 01-03-2021

**BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION**

In the Matter of the Verified Joint)	
Petition of Astoria Energy LLC, Astoria)	
Energy II LLC and Astoria Power Partners)	Case No. 20-E-_____
Holding, LLC for a Declaratory Ruling)	
Invoking the Wallkill Presumption or for)	
Approval Pursuant to Section 70 of the)	
Public Service Law)	

VERIFICATION

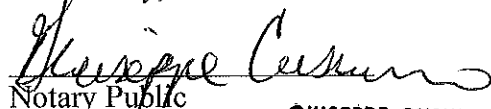
STATE OF New York)
) ss.
COUNTY OF Queens)

I, Charles R. McGill, being first duly sworn, attest that I am Chief Executive Officer of Astoria Energy LLC and Astoria Energy II LLC and that I have authority to verify the foregoing Verified Joint Petition. I have read the foregoing Verified Joint Petition and I affirm the facts, representations and statements set forth herein regarding Joint Petitioners Astoria Energy LLC and Astoria Energy II LLC are true and correct to the best of my knowledge, information and belief.



By: _____
Charles R. McGill
Chief Executive Officer

Sworn to before me this 13 day
of February, 2020

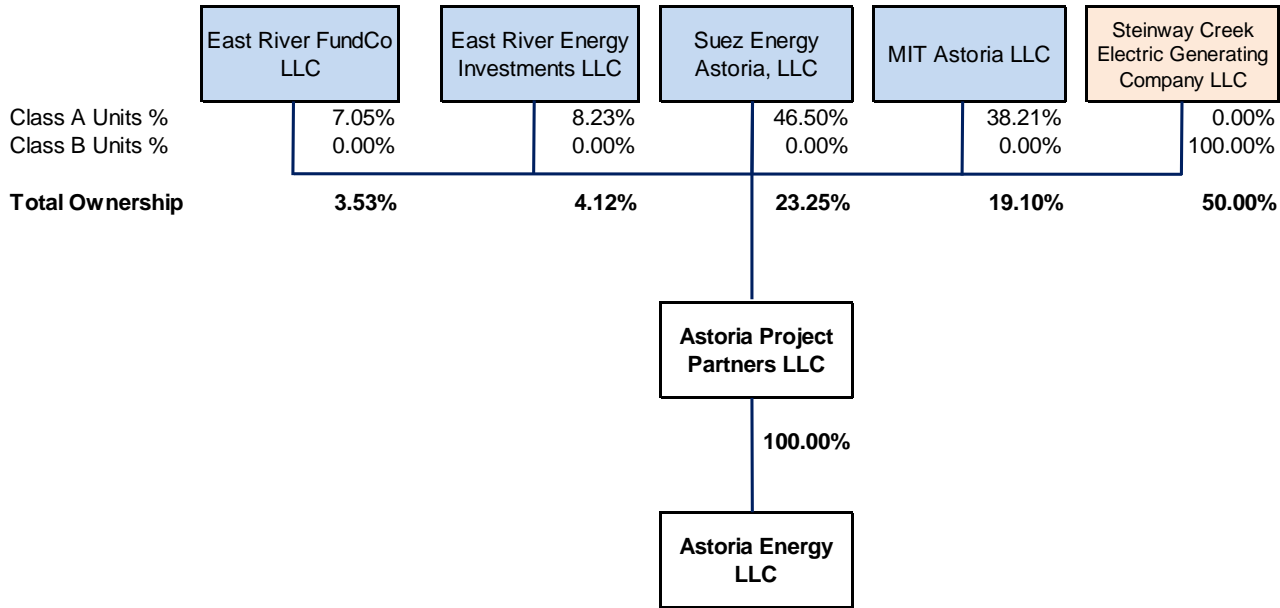

Notary Public

GIUSEPPE CUSUMANO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01CU6126942
Qualified in Queens County
My Commission Expires May 16, ~~2017~~
2021

EXHIBIT A
(CONFIDENTIAL)

EXHIBIT B

APP Current Simplified Ownership Chart



APP II Current (Post-Conversion) Simplified Ownership Chart

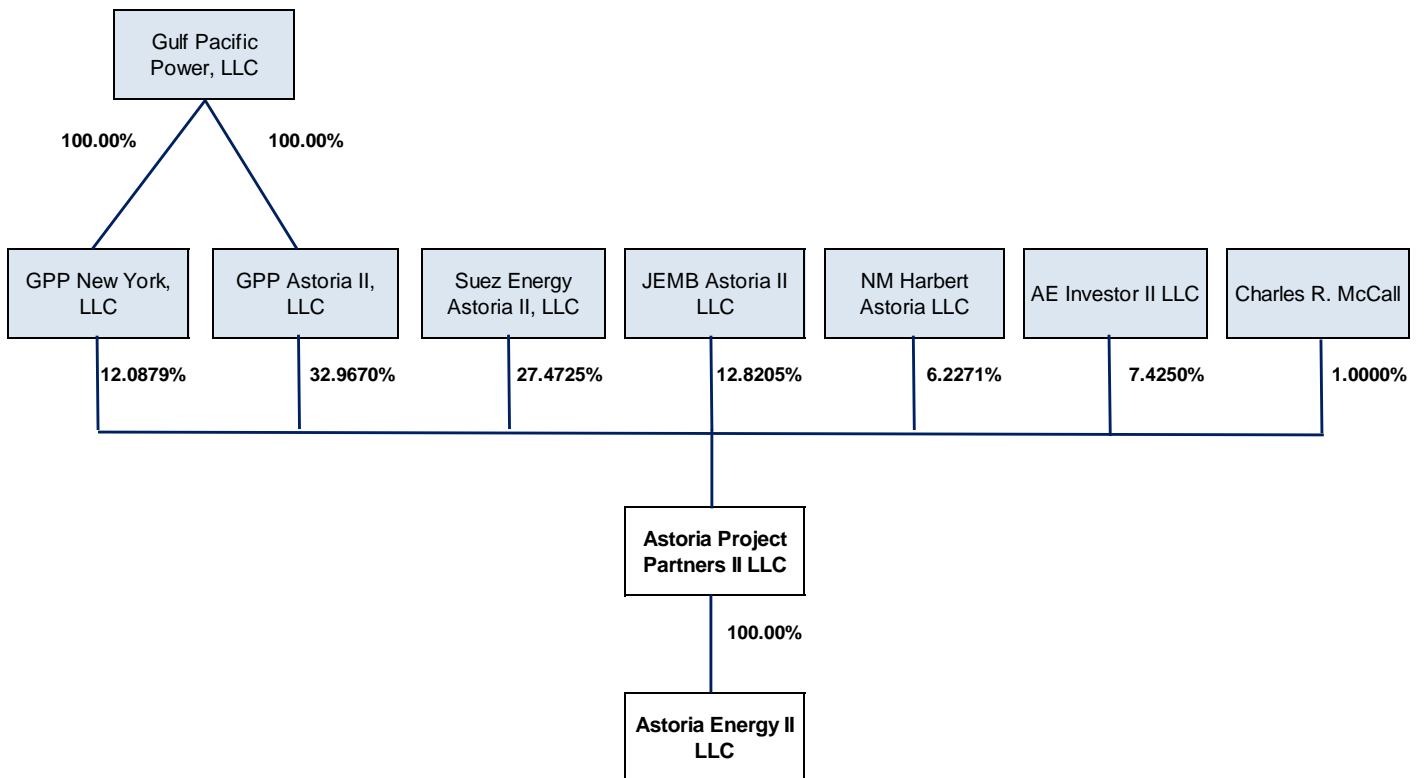


EXHIBIT B
POST-CLOSING ORGANIZATIONAL CHART – Part I

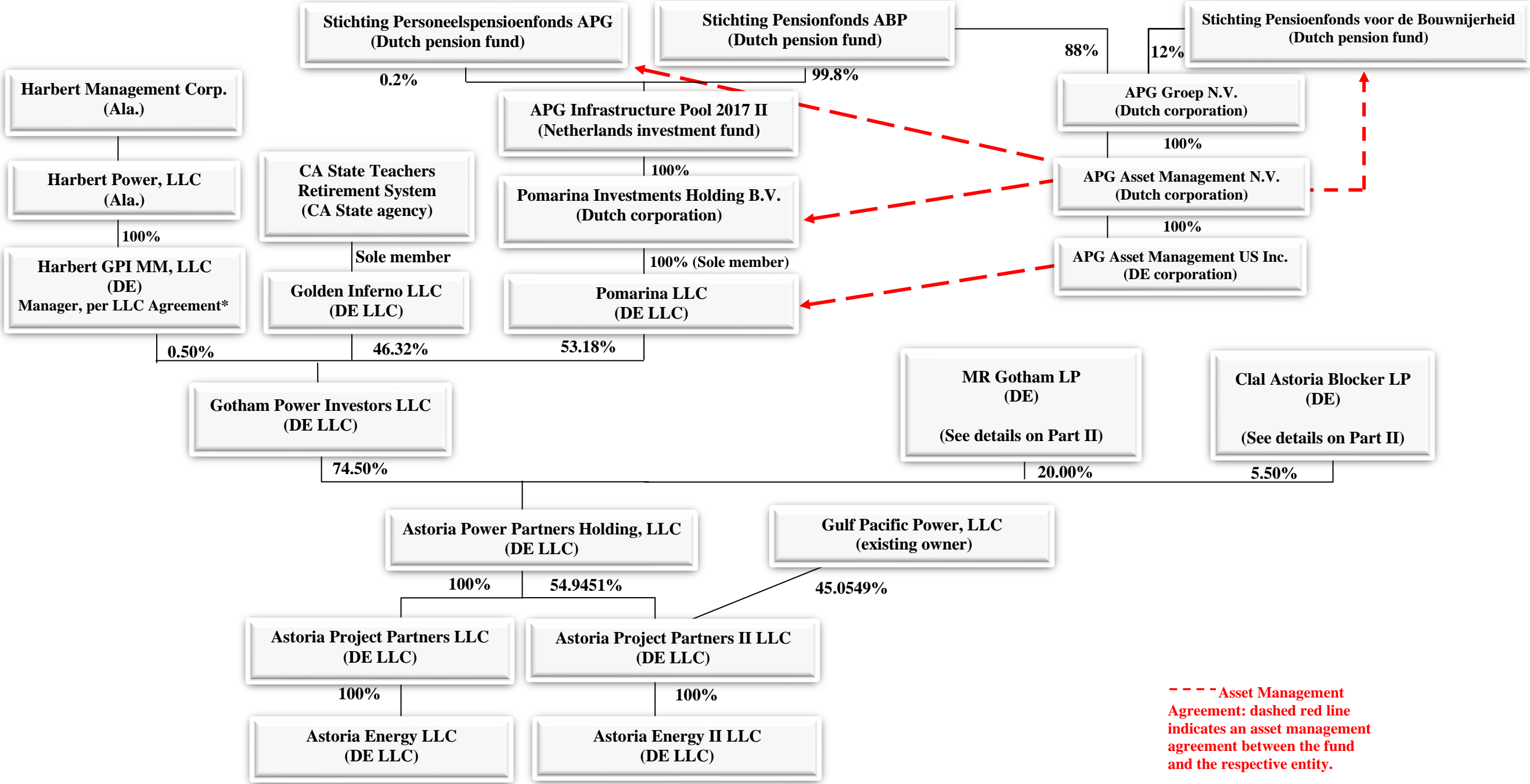


EXHIBIT B
POST-CLOSING ORGANIZATIONAL CHART – Part II

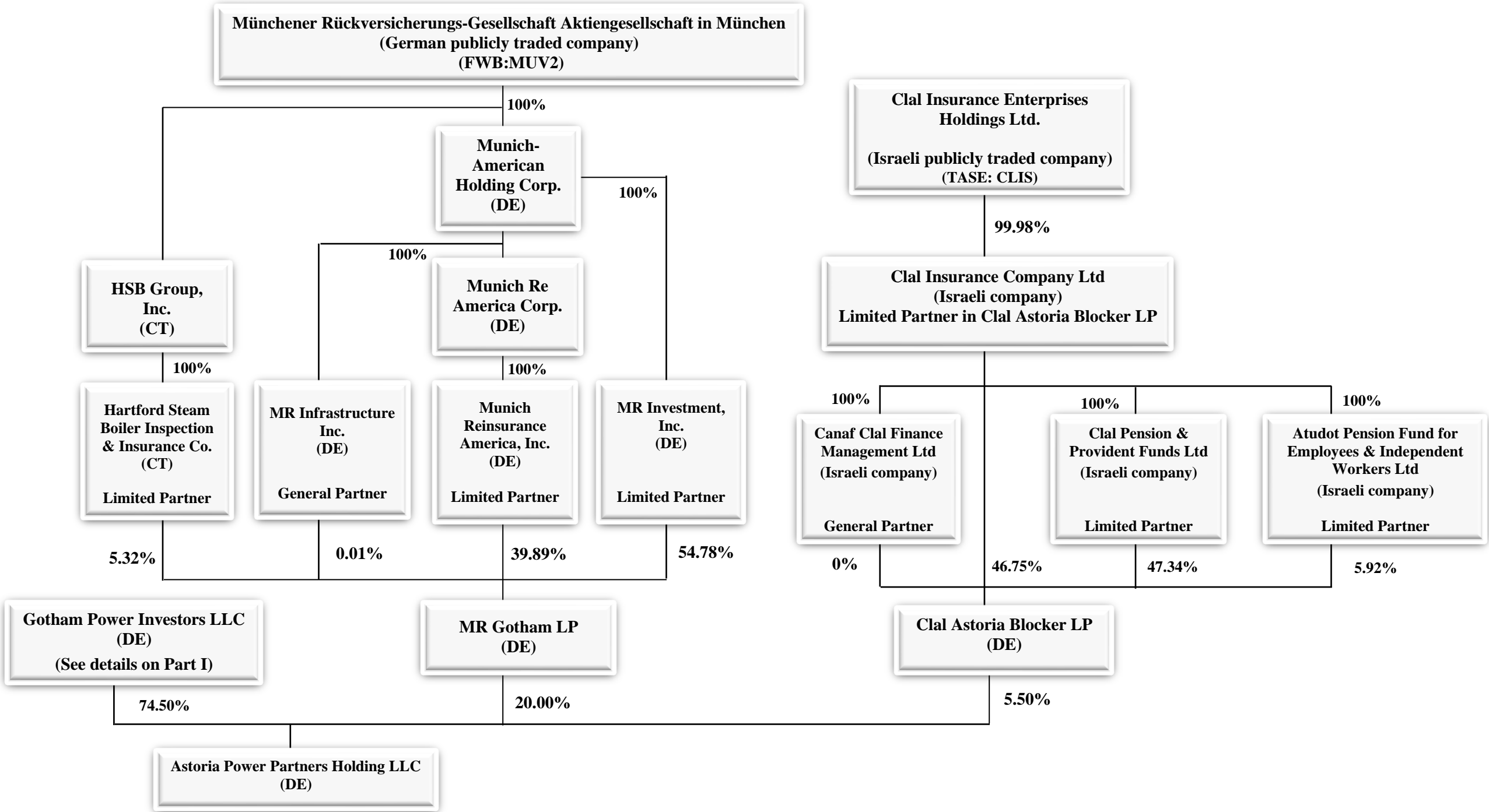


EXHIBIT C

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

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

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

Part 1 – Project and Sponsor Information			
Name of Action or Project: Astoria Energy LLC, Astoria Energy II LLC and Astoria Power Partners Holding, LLC ("Petitioners")			
Project Location (describe, and attach a location map): N/A			
Brief Description of Proposed Action: Petitioners request that, pursuant to Section 70 of the Public Service Law, the Public Service Commission disclaim jurisdiction to review, or in the alternative approve, a transfer of upstream ownership interests in Astoria Energy LLC and Astoria Energy II LLC			
Name of Applicant or Sponsor: Astoria Energy LLC, Astoria Energy II LLC and Astoria Power Partners Holding, LLC		Telephone: E-Mail:	
Address:			
City/PO:		State:	Zip Code:
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input checked="" type="checkbox"/>
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:			YES <input type="checkbox"/>
3. a. Total acreage of the site of the proposed action? b. Total acreage to be physically disturbed? c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?			N/A acres N/A acres N/A acres
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input checked="" type="checkbox"/> Other(Specify): N/A <input type="checkbox"/> Parkland			


5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?	NO	YES	
If Yes, identify: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation services available at or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements?	NO	YES	
If the proposed action will exceed requirements, describe design features and technologies: _____ _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply?	NO	YES	
If No, describe method for providing potable water: _____ _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities?	NO	YES	
If No, describe method for providing wastewater treatment: _____ _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban		
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?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. Will storm water discharges flow to adjacent properties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>

I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor/name: <u>Astoria Energy LLC, Astoria Energy II LLC and Astoria Power Partners</u> Date: <u>2/14/20</u>		
Signature: <u></u> Title: <u>Attorney</u>		