STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Joint Petition of Noble Altona Windpark, LLC; Noble Bliss Windpark, LLC; Noble Chateaugay Windpark, LLC; Noble Clinton Windpark, LLC; Noble Ellenburg Windpark, LLC; Noble Wethersfield Windpark, LLC and Zephyr Wind Energy, LLC for a Declaratory Ruling that Further Review of a Transfer of Upstream Ownership Interests is Not Required Pursuant to Section 70 of the New York State Public Service Law, or, in the Alternative, for Expedited Approval of the Transfer Pursuant to Section 70.

Case 18-E-_____

JOINT PETITION FOR A DECLARATORY RULING THAT FURTHER REVIEW OF A TRANSFER OF UPSTREAM OWNERSHIP INTERESTS IS NOT REQUIRED PURSUANT TO SECTION 70 OF THE NEW YORK STATE PUBLIC SERVICE LAW, OR, IN THE ALTERNATIVE, FOR EXPEDITED APPROVAL OF THE TRANSFER PURSUANT TO SECTION 70

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I. INTRODUCTION

Noble Altona Windpark, LLC ("Noble Altona"); Noble Bliss Windpark, LLC ("Noble Bliss"); Noble Chateaugay Windpark, LLC ("Noble Chateaugay"); Noble Clinton Windpark, LLC ("Noble Clinton"); Noble Ellenburg Windpark, LLC ("Noble Ellenburg"); and Noble Wethersfield Windpark, LLC (individually, "Noble Wethersfield" and collectively with Noble Altona, Noble Bliss, Noble Chateaugay, Noble Clinton, and Noble Ellenburg, the "Noble Wind Project Companies") and Zephyr Wind Energy, LLC (individually, "Zephyr" and collectively with the Noble Wind Project Companies, the "Joint Petitioners") hereby petition the New York State Public Service Commission (the "Commission") for a declaratory ruling that, pursuant to the *Wallkill Presumption*,[1] further review of the transfer of 100 percent of the indirect ownership

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[1] Case 91-E-0350: *Petition of Walkill Generating Company, L.P. for a Declaratory Ruling with Regard to its Sales of Electric Power or in the Alternative for a Certificate of Public Convenience and Necessity, Pursuant to Section 68*

interests in the Noble Wind Project Companies' to Zephyr as further described herein (the "Transaction") is not required pursuant to Section 70 of the New York Public Service Law ("PSL"). In the alternative, the Joint Petitioners respectfully request an order approving the Transaction, as in the public interest, without further modification or condition. The Joint Petitioners further request that the Commission declare that the lightened regulatory regime approved for the Noble Wind Project Companies will continue.[2]

No competitive issues are raised by the changes in the upstream ownership of the Noble Wind Project Companies presented in this Petition nor will the changes cause any harm to the interests of captive utility ratepayers. Zephyr and its affiliates do not own or control any other electric generating facilities located in New York, and the market shares of generation owned by Zephyr's affiliates in adjacent markets administered by ISO-New England ("ISO-NE") and PJM Interconnection, L.L.C. ("PJM") are insufficient to enable the exercise of market power in New York. Accordingly, the transfer of upstream ownership interests in the Noble Wind Project Companies described herein will have no adverse effect on market concentration in New York.

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of the Public Service Law, Order Establishing Regulatory Regime (Issued Apr. 11, 1994), at 9 n.1 (determining that PSL § 70 does not apply to a transfer of ownership interests in parent entities upstream from the affiliates owning and operating electric generating distribution facilities in New York provided there is no harm to captive ratepayers).

[2] Case 05-E-1634: *Petition of Noble Clinton Windpark I, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Oct. 19, 2006); Case 05-E-1633: *Petition of Noble Ellenburg Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Nov. 9, 2006); Case 06-E-0135: *Petition of Noble Bliss Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Nov. 9, 2006); Case 06-E-0216: *Petition of Noble Altona Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Nov. 9, 2006); Case 07-E-0257: *Petition of Noble Chateaugay Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Nov. 19, 2007); Case 07-E-0258: *Petition of Noble Wethersfield Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Dec. 18, 2007).

In addition, Zephyr and its affiliates do not have any ownership interests or control in any electric transmission or distribution facilities in New York. Therefore, Zephyr and is affiliates cannot exercise vertical market power as a result of the transfer of upstream ownership interests described herein.

The Joint Petitioners respectfully request that the Commission approve this Petition and issue a declaratory ruling that the Wallkill Presumption applies to the proposed transfer of upstream indirect ownership interests in the Noble Wind Project Companies and decline to further review this transfer under PSL § 70. In the alternative, the Joint Petitioners respectfully request that the Commission approve this Petition and issue an order approving the transfer of upstream indirect ownership interests in the Noble Wind Project Companies described in this Petition.

The Joint Petitioners executed the Transaction documents on August 31, 2018, conditioned on Commission approval. Accordingly, the Joint Petitioners respectfully request expedited review of this petition and that the Commission act no later than its October 18, 2018 session.

II. BACKGROUND

A. The Noble Wind Project Companies

i. Noble Altona Windpark, LLC

Noble Altona, a Delaware limited liability company, owns and operates the Altona Project, an approximately 97.5 MW wind energy project located in the Town of Altona in Clinton County, New York. The Altona Project is interconnected with transmission facilities that are owned by the New York Power Authority ("NYPA") and are under the operational control of the New York Independent System Operator, Inc. ("NYISO"). The output of the Altona Project is sold into the NYISO markets. Noble Altona is a wholly-owned direct subsidiary of Noble Environmental Power 2008 Hold Co., LLC ("2008 HoldCo"), which is owned by Noble Environmental Power 2008 Hold Co. Prime, LLC ("Noble 2008 Prime") and EFS Noble II, LLC ("EFS Noble II").

ii. Noble Bliss Windpark, LLC

Noble Bliss, a Delaware limited liability company, owns and operates the Bliss Project, an approximately 100.5 MW wind energy project located in the Town of Eagle in Wyoming County, New York. The Bliss Project is interconnected with transmission facilities that are owned by the Village of Arcade, New York, and the output is sold into the NYISO markets. Noble Bliss is a wholly-owned direct subsidiary of Noble Environmental Power 2006 Hold Co., LLC ("2006 HoldCo"), which is owned by Noble Environmental Power Hold Co. Prime, LLC ("Noble Prime") and EFS Noble Holdings, LLC ("EFS Noble").

iii. Noble Chateaugay Windpark, LLC

Noble Chateaugay, a Delaware limited liability company, owns and operates the Chateaugay Project, an approximately 106.5 MW wind energy project located near the Town of Chateaugay in Franklin County, New York. The Chateaugay Project is interconnected with transmission facilities that are owned by NYPA and are under the operational control of the NYISO, and the output is sold into the NYISO markets. Noble Chateaugay is a wholly-owned direct subsidiary of 2008 HoldCo.

iv. Noble Clinton Windpark I, LLC

Noble Clinton, a Delaware limited liability company, owns and operates the Clinton Project, an approximately 100.5 MW wind energy facility located in the Town of Clinton in Clinton County, New York. The Clinton Project is interconnected with transmission facilities that are owned by NYPA and are under the operational control of the NYISO, and the output is sold into the NYISO markets. Noble Clinton is a wholly-owned direct subsidiary of 2006 HoldCo.

v. Noble Ellenburg Windpark, LLC

Noble Ellenburg, a Delaware limited liability company, owns and operates the Ellenburg Project, an approximately 81 MW wind energy project facility located in the Town of Ellenburg in Clinton County, New York. The Ellenburg Project is interconnected with transmission facilities that are owned by NYPA and are under the operational control of the NYISO, and the output is sold into the NYISO markets. Noble Ellenburg is a wholly-owned direct subsidiary of 2006 HoldCo.

vi. Noble Wethersfield Windpark, LLC

Noble Wethersfield, a Delaware limited liability company, owns and operates the Wethersfield Project, an approximately 126 MW wind energy project located near the Town of Wethersfield in Wyoming County, New York. The Wethersfield Project is interconnected with transmission facilities that are owned by New York State Electric and Gas Corporation, which are under the operational control of the NYISO, and the output is sold into the NYISO markets. Noble Wethersfield is a wholly-owned direct subsidiary of 2008 HoldCo.

B. Upstream Ownership of the Noble Wind Project Companies

i. Noble Environmental Power Hold Co. Prime, LLC and EFS Noble Holdings, LLC

Noble Prime and EFS Noble are the owners, respectively, of the Class B managing and Class A non-voting membership interests in 2006 HoldCo, representing 100% of the equity interests in 2006 HoldCo. Upon consummation of the Transaction, Noble Prime and EFS Noble will sell 100% of their respective Class A and Class B membership interests in 2006 HoldCo to Zephyr and will no longer hold any interests in the Noble Wind Project Companies.

ii. Noble Environmental Power 2008 Hold Co. Prime, LLC and EFS Noble II, LLC

Noble 2008 Prime and EFS Noble II are the owners, respectively, of the Class B managing and Class A non-voting membership interests in 2008 HoldCo, representing 100% of the equity interests in 2008 HoldCo. Upon consummation of the Transaction, Noble 2008 Prime and EFS Noble II will sell 100% of their respective Class A and Class B membership interests in 2008 HoldCo to Zephyr and will no longer hold any interests in the Noble Wind Project Companies.

iii. Noble Environmental Power, LLC ("NEP")

Each of Noble Prime and Noble 2008 Prime is a wholly-owned direct subsidiary of NEP. Paragon Noble LLC ("Paragon Noble") holds all of the ownership interests in NEP. Paragon Noble is a special purpose vehicle established on October 5, 2006, as a Delaware limited liability company, with funds affiliated with and controlled by MSD Capital, L.P. ("MSD"), a Delaware limited partnership, as an owner of interests in Paragon Noble that amount to greater than 90 percent; other owners hold less than 10 percent interests.

Organizational charts depicting the upstream ownership of the Noble Wind Project Companies before and after the Transaction are included in "**Exhibit A**."

C. Zephyr Wind Energy, LLC and its Affiliates

At the closing of the proposed Transaction, Zephyr will be controlled by Cogentrix Zephyr Holdings, L.L.C. ("Cogentrix Zephyr"), which will either directly own all of the membership interests of Zephyr, or will indirectly own all such interests through one or more wholly owned special purpose subsidiaries formed for the sole purpose of holding a direct or indirect equity interest in Zephyr.

Upon closing the proposed Transaction, Cogentrix Zephyr will have two members: (1) Carlyle Power CPP II Zephyr, L.L.C. ("Carlyle CPP II Zephyr"), which will own a majority of the membership interests, and control the right to designate a majority of the board members, of Cogentrix Zephyr, and (2) Carlyle Power Partners II-C, L.P. ("CPP II-C"). Carlyle CPP II Zephyr will be managed by its members (collectively, and together with CPP II-C, the "CPP II Fund Vehicles"). The CPP II Fund Vehicles are investment fund vehicles sponsored and managed by The Carlyle Group, L.P. ("The Carlyle Group") or affiliates thereof.

Each of the CPP II Fund Vehicles has as its general partner CPP II General Partner, L.P. ("CPP II GP"). The general partner of CPP II GP is TC Group CPP II, L.L.C., whose managing member is TC Group Sub L.P. ("TC Group Sub"). The general partner of TC Group Sub is TC Group, L.L.C., a wholly-owned direct subsidiary of Carlyle Holdings I L.P. ("Holdings I LP"). The general partner of Holdings I LP is Carlyle Holdings I GP Sub L.L.C., a wholly-owned direct subsidiary of Carlyle Holdings I GP Inc., which, in turn, is a direct subsidiary of The Carlyle Group.

The Carlyle Group is a global alternative investment management firm that is a publicly traded entity listed on NASDAQ. No unitholder of The Carlyle Group owns 10% or more of the publicly traded units of The Carlyle Group. Three individuals, William E. Conway, Jr., Daniel A. D'Aniello, and David Rubenstein (collectively, "the Founders"), each owns more than 10% of Carlyle Group Management LLC, the general partner of The Carlyle Group. Except through affiliates of The Carlyle Group, none of the Founders owns or controls, directly or indirectly, a 10% or greater voting interest in any electric generation or transmission facilities in the United

States, any public utility with a franchised service territory in the United States, or any essential inputs to electricity products or inputs to electric power production in the United States. Further, none of the Founders holds the position of officer or director of any public utility with a franchised service territory in the United States.

The Carlyle Group is affiliated with the following power marketers:[3]

- SEPG Energy Marketing Services, LLC ("SEMS"), which has authorization from the Federal Energy Regulatory Commission ("FERC") to make wholesale power sales at market-based rates on a nationwide basis.[4]

- Nautilus Power, LLC ("Nautilus Power"), which holds authorization from FERC to make wholesale power sales at market-based rates within the Northeast region.[5]

Neither SEMS nor Nautilus Power directly owns or controls any electric generation facilities. Moreover, neither SEMS nor Nautilus Power purchases any capacity and/or energy from an unaffiliated third party under a long-term firm agreement. From time to time, SEMS and Nautilus Power may market generation capacity owned or controlled by their affiliates through The Carlyle Group.

The Carlyle Group is affiliated with entities that own or control generation facilities located in various markets throughout the United States. However, The Carlyle Group currently is not affiliated with any entities that own or control any generation capacity located in the NYISO balance authority area. As set forth in "**Exhibit B**," the Carlyle Group is affiliated with

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[3] The Carlyle Group also is affiliated Cogentrix Virginia Financing Holding Company, LLC (CVFHC) and James River Genco, LLC (JRG), each of which currently operates as power marketer with market-based rate authorization solely within the market operated by PJM Interconnection, LLC (PJM). *See Cogentrix Virginia Financing Holding Company, LLC*, Docket No. ER16-328-001 (Jan. 29, 2016) (unpublished letter order); *Cogentrix Virginia Leasing Corp., et al.*, Docket Nos. ER08-201-000, *et al.*, (Jan. 10, 2008) (unpublished letter order); *see also James River Genco, LLC, et al.*, Docket Nos. ER11-4028-000, *et al.*, (Sept. 1, 2011) (unpublished letter order) (accepting for filing notice of succession). On July 19, 2018, CVFHC and JRG filed notices of cancellation of their market-based rate tariffs in Docket Nos. ER18-2038-000 and ER18-2040-000, respectively. These notices remains pending.

[4] *See SEPG Energy Marketing Services, LLC, et al.*, Docket Nos. ER15-1657-000, *et al.* (July 23, 2015) (unpublished letter order).

[5] *See Essential Power, LLC*, Docket Nos. ER12-952-000, *et al.* (Mar. 22, 2012) (unpublished letter order); *Nautilus Power, LLC*, Docket Nos. ER17-1836, *et al.* (Aug. 9, 2017) (unpublished letter order) (accepting for filing notice of succession).

approximately 1,313 MW (summer) and 1,855 MW (summer) of generating capacity in ISO-NE and PJM, respectively.

An affiliate of The Carlyle Group, Essential Power Rock Springs, LLC ("Rock Springs"), currently owns a 50% undivided interest[6] in certain limited transmission facilities that are necessary to accommodate the interconnection of the Rock Springs facility to the grid ("Rock Springs Transmission Facilities").[7] These transmission facilities do not transmit energy into New York. The Rock Springs Transmission Facilities are subject to the operational control of PJM and the terms and conditions of PJM's Open Access Transmission Tariff ("OATT").[8] Aside from the Rock Springs Transmission Facilities, neither The Carlyle Group nor any of its affiliates owns a 10% or greater voting interest in or controls any electric transmission facilities in the United States, except for the limited and discrete equipment necessary to interconnect individual generation facilities to the transmission grid.

The Carlyle Group is affiliated with entities that own or control potential inputs to electricity products and electric power production in the United States. The Carlyle Group is affiliated with Targe Energy LLC ("Targe Energy"), which, through its subsidiaries, operates

[6] On July 3, 2018, Rock Springs and Old Dominion Electric Cooperative filed, in Docket No. EC18-118-000, a joint application requesting FERC authorization for a transaction pursuant to which Rock Springs will acquire (i) Units 1 and 2 and the remaining 50% interest in certain common facilities of the Rock Springs facility, and (ii) the remaining 50% interest in the Rock Springs Transmission Facilities from ODEC ("ODEC Transaction"). As a result of the ODEC Transaction, Rock Springs will be the sole owner of the Rock Springs facility and the Rock Springs Transmission Facilities. This application remains pending.

[7] The Rock Springs Transmission Facilities consist of: (1) a 500 kV substation, which is interconnected to the Rock Springs facility by radial lines; and (2) two 900-foot, 500 kV transmission lines, which connect the substation to PECO Energy Company's 500 kV transmission system. Rock Springs has a fixed transmission rate on file with FERC pursuant to which Rock Springs receives an annual transmission revenue requirement for its 50% share of the mandatory reliability compliance costs associated with the Rock Springs Transmission Facilities. *See PJM Interconnection, LLC, et al.*, 142 FERC ¶ 61,073 (2013) (order accepting and suspending transmission rate filing), 146 FERC ¶ 61,037 (2014) (order accepting settlement), Docket No. ER13-488-002 (Mar. 27, 2014) (unpublished letter order) (accepting compliance filing).

[8] The Rock Springs Transmission Rate Schedule is incorporated in Attachment H of the PJM OATT. *See* PJM OATT, Attachment H-23 EP Rock Springs Annual Transmission Rate, 0.1.0 (effective July 1, 2013). Upon the consummation of the ODEC Transaction, the Rock Springs Transmission Facilities will remain subject to the operational control of PJM and the terms and conditions of PJM's OATT.

surface coal and limestone mines in Pennsylvania and reclaims coarse and waste coal mines in Pennsylvania. The Carlyle Group is not affiliated with any public utility with a franchised electric service territory in the United States.

III. THE TRANSACTION

A. Purchase and Sale Agreements

Pursuant to the terms and conditions in the Purchase and Sale Agreements, Noble Prime, EFS Noble, Noble 2008 Prime, and EFS Noble II will sell 100% of their respective interests in 2006 HoldCo and 2008 HoldCo to Zephyr. Upon completion of the Transaction, Zephyr will own 100% of the Class A and the Class B membership interests in 2006 HoldCo and 2008 HoldCo and, accordingly, will be the indirect owner of 100% of the ownership interests in the Noble Wind Project Companies. Following the consummation of the Transaction, Noble Prime, EFS Noble, Noble 2008 Prime, and EFS Noble II will no longer own any interests in the Noble Wind Project Companies.

As described below, the transfer of upstream ownership in the Noble Wind Project Companies described in this Petition does not create the potential for the exercise of horizontal or vertical market power or harm to the interests of captive utility ratepayers. Accordingly, the Joint Petitioners request that the Commission issue an order approving the Transaction as described herein.

IV. THE COMMISSION SHOULD ISSUE A DECLARATORY RULING THAT FURTHER REVIEW OF THE TRANSACTION IS NOT REQUIRED UNDER PSL § 70

With respect to transfers of ownership interests in a New York electric plant, PSL § 70 (1) states that "[n]o gas corporation or electric corporation shall transfer or lease its franchise, works or system . . . to any other person or corporation . . . without the written consent of the Commission."[9] Further, PSL § 70(4) prohibits a company or limited liability partnership from acquiring more than ten percent "of the voting capital stock issued by any. . . electric corporation organized or existing under or by virtue of the laws of [New York]" unless authorized to do so by the Commission.[10]

In the Wallkill Order, the Commission decided that 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 captive utility ratepayers (the "Wallkill Presumption").[11] Since its decision in Wallkill, the Commission has applied the presumption to a number of transactions involving the upstream transfer of interests in wholesale generation facilities, including those involving the Noble Wind Project Companies.[12] In these orders, the Commission determined that

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[9] PSL § 70 (1).
[10] PSL § 70 (4).
[11] Case 91-E-0350: *Petition of Walkill Generating Company, L.P. for a Declaratory Ruling with Regard to its Sales of Electric Power or in the Alternative for a Certificate of Public Convenience and Necessity, Pursuant to Section 68 of the Public Service Law*, Order Establishing Regulatory Regime (Issued Apr. 11, 1994), at 9 n.1 (holding that "[i]t 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").
[12] Case 18-M-0276: *Joint Petition of AEIF BNY Holdings, LLC; Axium BNY Cogeneration Partners LLC; EIF BNY II, LLC; EIF BNY, LLC and Brooklyn Navy Yard Cogeneration Partners L.P. for a Declaratory Ruling Concerning the PSL Sections 70 and 83 that do not Apply to the Proposed Transaction, or in the Alternative, for Expedited Approval of the Proposed Transaction Pursuant to Sections 70 and 83 of the Public Service Law*, Declaratory Ruling on Transfer and Making Other Findings (Issued July 17, 2018), at 11 (finding that the transaction did not pose the potential for the exercise of horizontal or vertical market power and that petitioners satisfied the Wallkill Presumption); Case 18-E-0333: *Petition of Cassadaga Wind LLC, Trireme Energy Development LLC, and Innogy Renewables US LLC for a Declaratory Ruling That Public Service Law Section 70 Does Not Apply to a Proposed Acquisition or, That No Further Review of the Acquisition is Required*, Declaratory Ruling on Transfer Transactions (Issued July 17, 2018), at 8 (holding same); Case 15-E-0597: *Petition of Noble Environmental Power, LLC, Noble Altona Windpark, LLC, Noble Bliss Windpark, LLC, Noble Clinton Windpark I, LLC, Noble Ellenburg Windpark, LLC, Noble Chateaugay Windpark, LLC, Noble Great Plains Windpark, LLC, Noble Wethersfield Windpark, LLC for a Declaratory Ruling Invoking the Wallkill Presumption or for Expedited Approval Pursuant to Section 70 of the Public Service Law*, Declaratory Ruling on Review of Ownership Interest Transfer Transactions (Issued Dec. 17, 2015), at 7-8 (holding same); Case 10-E-0493: *Noble Altona Windpark LLC, Noble Bliss Windpark LLC, Noble Chateaugay Windpark LLC, Noble Clinton Windpark I LLC, Noble Ellenburg Windpark LLC, Noble Wethersfield Windpark LLC, Noble Environmental Power, LLC, and MSD Capital, L.P. - Joint Petition for Declaratory Ruling*

PSL § 70 review was not required because there existed no potential for the exercise of horizontal or vertical market power sufficient to override the Wallkill Presumption.

As demonstrated herein, the Wallkill Presumption should be applied equally to this petition because the Transaction will not lead to the potential exercise of either horizontal or vertical market power and will not result in any potential harm to captive ratepayers.

A. The Transaction Raises No Horizontal Market Power Concerns

The Transaction poses no potential for horizontal market power because the Joint Petitioners do not currently conduct business in the same geographic markets. Specifically, neither Zephyr nor any of its affiliates owns or controls any generation in the NYISO control area and the market shares of generation owned by Zephyr's affiliates in ISO-NE and PJM are insufficient to enable the exercise of market power in New York. Zephyr's affiliated generation accounts for only 4.2% of the total generation capacity of 30,974 MW[13] in the ISO-NE market and 1.0% of the total generating capacity of 183,489 MW[14] in the PJM market. After its acquisition of the Noble Wind Project Companies, Zephyr will control approximately 612 MW of generation in the NYISO, which accounts for less than 2% of the total generating capacity of 39,066 MW[15] in the NYISO. The Commission recently ruled that a company's ownership of approximately 4.8% of the NYISO's total installed generating capacity and its affiliation with 13.9% and 6.34% of the total installed generating capacity in the ISO-NE and PJM markets,

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Regarding Change in Ownership or, in the Alternative, Approval Pursuant to Public Service Law §70, Declaratory Ruling on Review of a Transfer Transaction (Issued Dec. 17, 2010), at 5 (determining same).

[13] *See* CELT Report, 2018-2027 Forecast Report of Capacity, Energy, Loads, and Transmission, ISO-New England, https://www.isone.com/staticassets/documents/2018/04/2018_celt_report.xls.

[14] *See* State of the Market Report for PJM January Through June 2018, at 6, http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2018/2018q2-som-pjm.pdf.

[15] *See* NYISO 2018 Load & Capacity Data "Gold Book," at p. 37, https://home.nyiso.com/wp-content/uploads/2018/04/2018-Load-Capacity-Data-Report-Gold-Book.pdf ("The existing Summer 2018 NYCA installed generating capacity as of March 1st, 2018 is 39,066 MW.").

respectively, was insufficient to raise market power concerns.[16] Accordingly, the Transaction will not result in any new affiliation or combination of electric generating assets that could have an impact on the competitive situation in the NYISO control area.

B. The Transaction Raises No Vertical Market Power Concerns

The Transaction does not raise the potential for the exercise of vertical market power. Other than the limited and discrete interconnection facilities necessary to connect Joint Petitioners' facilities to the grid, the Transaction does not involve any transmission facilities. As noted above, Zephyr is affiliated with the Rock Springs Transmission Facilities that are under the operational control of PJM and subject to the PJM OATT,[17] but these facilities do not transmit energy into New York. Further, Zephyr and its affiliates do not have any ownership or control in any other electric transmission or distribution facilities in New York, except for limited and discrete interconnection facilities necessary to connect individual generating facilities to the transmission grid.

In addition, the Transaction will not result in a combination of generation facilities with transmission facilities or other upstream relevant products. None of the Joint Petitioners, nor any of Zephyr's affiliates, owns or controls any essential inputs to electricity products or electric power production in the NYISO control area.[18] Accordingly, the Transaction will have no adverse effect on vertical market power.

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[16] Case 17-M-0735: *Joint Petition of Sithe/Independence Power Partners, L.P., Vistra Energy Corp., and Dynegy Inc. for a Declaratory Ruling,* Declaratory Ruling on Transfer and Making Other Findings (Issued Feb. 27, 2018), at 10. The Commission also determined that "the potential ability of these assets to manipulate prices in New York is moderated by existing transmission constraints that reduce the amount of affiliated generation that could be imported from these markets to the New York market . . . ." *Id.*

[17] *See supra* page 9.

[18] As noted above, The Carlyle Group is affiliated with Targe Energy, which operates surface coal mines in the Appalachian region of Pennsylvania. This affiliation does not raise vertical market power concerns because Targe Energy is located remotely from the NYISO balance authority area.

For all of the foregoing reasons, the Commission should determine that the Wallkill Presumption applies to the Transaction, and thus, no further review pursuant to PSL § 70 is necessary.

V. IN THE ALTERNATIVE, THE COMMISSION SHOULD APPROVE THE TRANSACTION UNDER PSL § 70

In the alternative, the Joint Petitioners respectfully request that the Commission approve the Proposed Transaction pursuant to PSL § 70 on an expedited basis.

The Commission applies a "public interest" standard to its review of proposed transfers under PSL § 70.[19] In conducting PSL § 70 review of asset transactions between electric corporations operating in wholesale electric markets, the Commission applies a reduced level of scrutiny, which matches the risks posed by transfers between merchant generators, examining "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."[20]

As set forth in detail above, the Transaction will not result in horizontal or vertical market power, and will not result in any harm to ratepayers. There will be no change in the day-to-day operations of the Noble Wind Project Companies as a result of the proposed Transaction. As a result, the Transaction is in the public interest, fully satisfies the Commission's standard of review under PSL § 70, and should be approved.

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[19] PSL § 70; *see also* Case 10-M-0186 *et al.*: *Joint Petition of Alliance Energy Renewables, LLC, AER NY-Gen, LLC, AG-Energy, LP, Alliance Energy, New York LLC, Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, Eagle Creek Land Resources, LLC, and Eagle Creek Ogdensburg, LLC for an Order Approving Transfer Pursuant to PSL Sections 70 and 83 and Approving a Limited Lightened Regulatory Regime,* Order Approving Transfers Upon Conditions and Making Other Findings (Issued Jul. 23, 2010), at 18.

[20] Case 10-M-0186 *et al.*, *supra*, at 17; *see also* Case 16-E-0244: *Joint Petition of Castleton Energy Center, LLC, Castleton Power, LLC and Fortistar Castleton LLC for Approval of the Transfer of Ownership Interests Pursuant to Section 70 of the Public Service Law*, Order Approving Transfer and Continuing Lightened Regulation (Issued Jul. 14, 2016) ("Castleton Order"), at 6.

VI. OTHER APPROVALS

Joint Petitioners are also seeking approval of the Transaction from FERC under Section 203 of the Federal Power Act.[21] The FERC jurisdictional facilities owned, operated, or controlled by Joint Petitioners consist of the Noble Wind Project Companies' market-based rate tariffs, interconnection agreements, and associated books, records and accounts.

VII. THE COMMISSION SHOULD DECLARE THAT THE TRANSACTION WILL NOT ALTER THE REGULATORY FRAMEWORK OTHERWISE APPLICABLE TO THE NOBLE WIND PROJECT COMPANIES

For all of the reasons set forth in the Commission's previous decisions, the Noble Wind Project Companies should continue to be subject to lightened regulation following consummation of the Transaction.[22] 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 and transmission facilities.[23]

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[21] 16 USC § 824b (a)(1).

[22] *See* Case 05-E-1634: *Petition of Noble Clinton Windpark I, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Oct. 19, 2006); Case 05-E-1633: *Petition of Noble Ellenburg Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Nov. 9, 2006); Case 06-E-0135: *Petition of Noble Bliss Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Nov. 9, 2006); Case 06-E-0216: *Petition of Noble Altona Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Nov. 9, 2006); Case 07-E-0257: *Petition of Noble Chateaugay Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Nov. 19, 2007); Case 07-E-0258: *Petition of Noble Wethersfield Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Dec. 18, 2007).

[23] 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 (Issued Oct. 20, 2015), at 8; 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

Accordingly, the Joint Petitioners respectfully request that the Commission affirm and declare that the Transaction will not affect the lightened regulatory regime applied to the Noble Wind Project Companies and their owners upon consummation of the Transaction.

VIII. THE COMMISSION SHOULD TAKE ACTION ON THE JOINT PETITION AT ITS OCTOBER 18, 2018 SESSION

The Joint Petitioners respectfully request that the Commission take action on or before its October 18, 2018 session and issue a declaratory ruling that further review of the Transaction is not required, or, in the alternative, issue an order authorizing the Transaction under PSL § 70. Prompt approval is warranted here because, as demonstrated above, the Transaction does not raise any issues regarding retail energy sales to captive ratepayers, it does not raise any market power concerns in the competitive wholesale markets in New York or the adjoining regions, and it is consistent with Commission precedent. Further, prompt review and approval of the Transaction would allow the Joint Petitioners to move forward with closing in a timely manner.

IX. STATE ENVIRONMENTAL QUALITY REVIEW ACT

Under the State Environmental Quality Review Act ("SEQRA"), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7), the Commission must determine whether its action in this proceeding may have a significant impact on the environment. However, SEQRA review is not required if the Commission issues a declaratory ruling that PSL § 70 does not apply to the Transaction under the Wallkill Presumption.

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and Making Other Findings (Issued Apr. 25, 2014), at 11; 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 (Issued May 22, 2007), at 6.

In the alternative, should the Commission decide for any reason that PSL § 70 review is required, the proposed action (*i.e.*, approving the Transaction) does not meet the definition of Type I or Type II actions listed in 6 NYCRR §§ 617.4, 617.5, and 16 NYCRR § 7.2 and is, therefore, classified as an "unlisted" action requiring SEQRA review. Accordingly, in such case, the Commission should declare itself lead agency under SEQRA to conduct the environmental review and determine the significance of the proposed Transaction.

No significant adverse environmental effect will result from the Transaction. The Transaction involves a transfer of upstream ownership interests in the Noble Wind Projects and will not result in any physical alterations to land or structures, or modify, in any way, the existing operation or maintenance of the projects. Further, the Noble Wind Projects will continue to be operated in accordance with the requirements specified in the Commission's lightened regulation orders, relevant environmental permits, and all applicable environmental laws. As such, the Commission should determine that the Transaction will not have a significant impact on the environment, adopt a negative declaration pursuant to SEQRA, and undertake no further environmental review.[24]

X. CONCLUSION

For all of the reasons identified above, the Joint Petitioners respectfully request that the Commission issue an expedited order no later than its October 18, 2018 session determining that further review of the Transaction is not required, or, in the alternative, issue an order authorizing the Transaction under PSL § 70, without further modifications or conditions. The Joint

[24] 6 NYCRR § 617.7.

Petitioners further request that the Commission declare that the lightened regulatory regime approved for the Noble Wind Project Companies and their owners will continue.[25]

Dated: August 31, 2018
Albany, New York

Respectfully submitted,

HARRIS BEACH, PLLC

/s/ ***Steven D. Wilson***

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Attorneys for Zephyr Wind Energy, LLC

[25] Case 05-E-1634: *Petition of Noble Clinton Windpark I, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Oct. 19, 2006); Case 05-E-1633: *Petition of Noble Ellenburg Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Nov. 9, 2006); Case 06-E-0135: *Petition of Noble Bliss Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Nov. 9, 2006); Case 06-E-0216: *Petition of Noble Altona Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Nov. 9, 2006); Case 07-E-0257: *Petition of Noble Chateaugay Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Nov. 19, 2007); Case 07-E-0258: *Petition of Noble Wethersfield Windpark, LLC for a Certificate of Public Convenience and Necessity and an Order Providing for Lightened Regulation*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Dec. 18, 2007).

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Joint Petition of Noble Altona Windpark, LLC; Noble Bliss Windpark, LLC; Noble Chateaugay Windpark, LLC; Noble Clinton Windpark, LLC; Noble Ellenburg Windpark, LLC; Noble Wethersfield Windpark, LLC and Zephyr Wind Energy, LLC for a Declaratory Ruling that Further Review of a Transfer of Upstream Ownership Interests is Not Required Pursuant to Section 70 of the New York State Public Service Law, or, in the Alternative, for Expedited Approval of the Transfer Pursuant to Section 70.

Case 18-E-_____

VERIFICATION

Matthew O'Connor, being duly sworn according to law, upon [his/her] oath, deposes and says:

1. I am Matthew O'Connor of Zephyr Wind Energy, LLC ("Zephyr") and I am authorized to make this Verification on behalf of Zephyr.
2. I have read the contents of the foregoing Petition and hereby verify that the statements contained therein with respect to Zephyr are true and correct to the best of my knowledge and belief.

Matt O'C
Name: Matthew O'Connor

Sworn to and subscribed before me
This 31 day of August, 2018

Julianne E. Fox
Notary Public

JULIANNE E. FOX
Notary Public - State of New York
No. 01FO6269522
Qualified in Westchester County
My Commission Expires September 24, 2020

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Joint Petition of Noble Altona Windpark, LLC; Noble Bliss Windpark, LLC; Noble Chateaugay Windpark, LLC; Noble Clinton Windpark, LLC; Noble Ellenburg Windpark, LLC; Noble Wethersfield Windpark, LLC and Zephyr Wind Energy, LLC for a Declaratory Ruling that Further Review of a Transfer of Upstream Ownership Interests is Not Required Pursuant to Section 70 of the New York State Public Service Law, or, in the Alternative, for Expedited Approval of the Transfer Pursuant to Section 70.	Case 18-E-_____ **VERIFICATION**

C Kay McCall, being duly sworn according to law, upon [his/her] oath, deposes and says:

1. I am the President of the Noble Project Companies and I am authorized to make this Verification on behalf of the companies.
2. I have read the contents of the foregoing Petition and hereby verify that the statements contained therein with respect to the Noble Project Companies and its upstream parents are true and correct to the best of my knowledge and belief.

/s/ ***Kay McCall***

C Kay McCall

EXHIBIT A

EXHIBIT A

Pre-Transaction Organization Chart

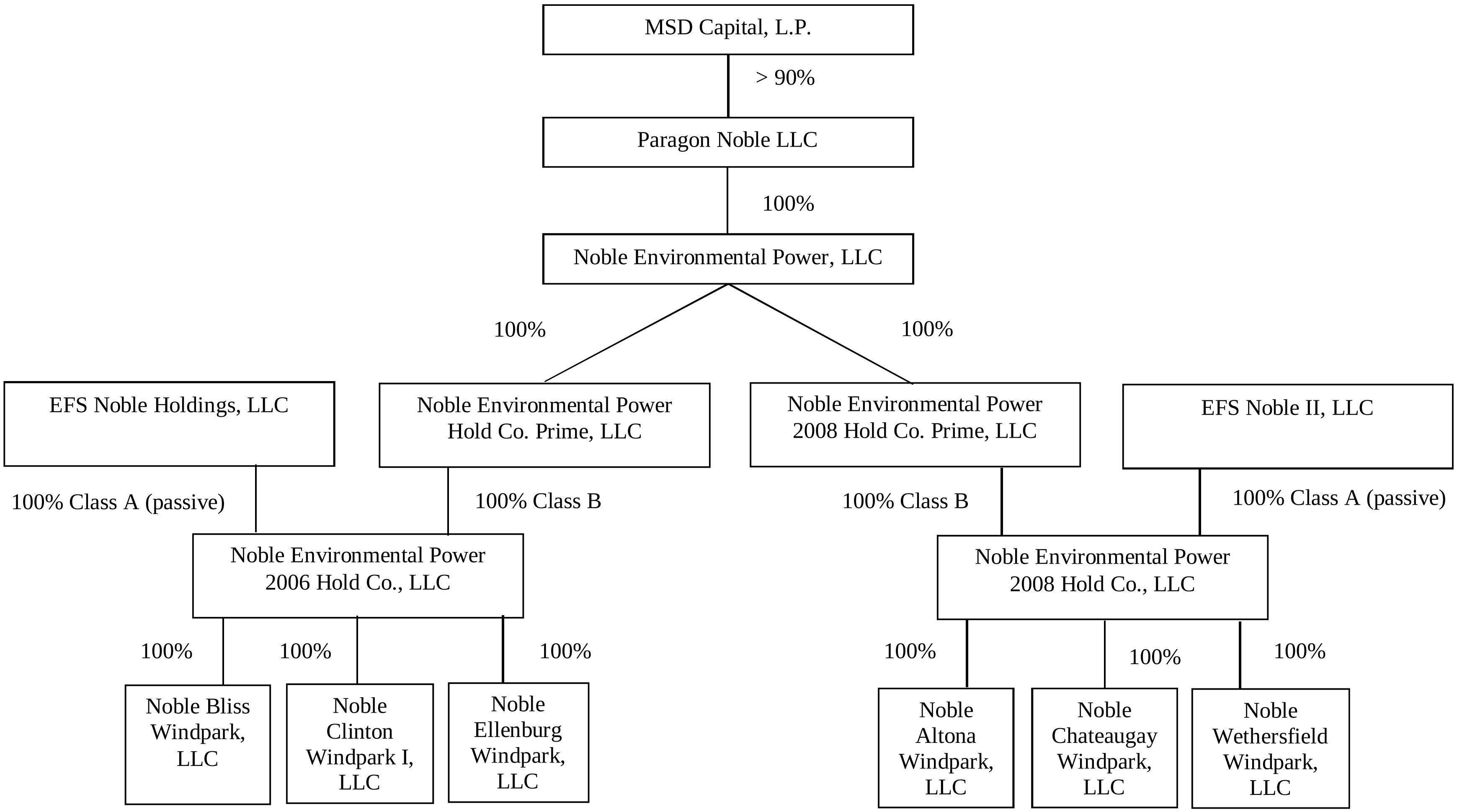

EXHIBIT A (CONT'D)

Post-Transaction Organization Chart

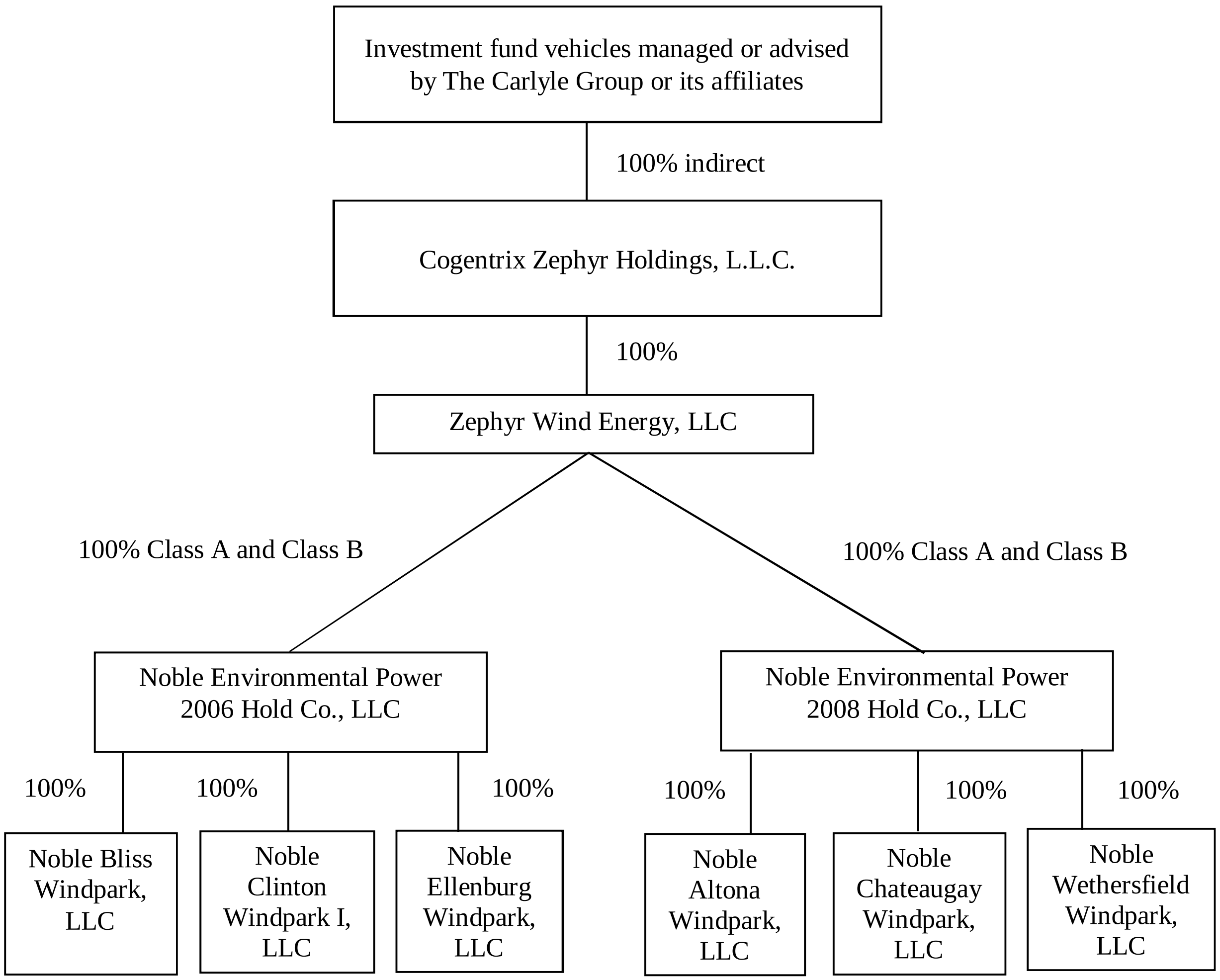

EXHIBIT B

EXHIBIT B

Carlyle Affiliates in PJM and ISO-NE	State	Market / Balancing Authority Area	Capacity Rating: (Summer MW)
Essential Power Massachusetts, LLC	Massachusetts	ISO-NE	15.8
Essential Power Massachusetts, LLC	Massachusetts	ISO-NE	185.7
Essential Power Massachusetts, LLC	Massachusetts	ISO-NE	15.8
Essential Power Newington, LLC	New Hampshire	ISO-NE	557
Rhode Island State Energy Center, LP	Rhode Island	ISO-NE	539
Elgin Energy Center, LLC	Illinois	PJM	460
Essential Power OPP, LLC	New Jersey	PJM	325.6
Essential Power Rock Springs, LLC	New Jersey	PJM	330
Lakewood Cogeneration, L.P.	New Jersey	PJM	233.1
Rocky Road Power, LLC	Illinois	PJM	330.4
Tilton Energy LLC	Illinois	PJM	176