

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Verified Joint Petition of CPV Valley, LLC; GIP II CPV Intermediate Holdings Partnership, L.P.; CPV Power Holdings GP, LLC; and CPV Group LP 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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Case 20-E-\_\_\_\_\_

**VERIFIED 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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Dated: November 2, 2020

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**I. INTRODUCTION**

Pursuant to 16 NYCRR Part 8, CPV Valley, LLC (“CPV Valley”); GIP II CPV Intermediate Holdings Partnership, L.P. (“GIP II CPV”); CPV Power Holdings GP, LLC (“CPV Power Holdings GP”); and CPV Group LP (“CPV Group”) (collectively, the “Joint Petitioners”) hereby jointly petition the New York State Public Service Commission (the “Commission”) for a declaratory ruling that, pursuant to the *Wallkill* Presumption,<sup>1</sup> further review of the proposed upstream corporate transaction resulting in GIP II CPV and CPV Power Holdings GP transferring their indirect ownership interests in CPV Valley, the owner and operator of a 770 megawatt (“MW”) electric generating facility in Wawayanda, New York, to CPV Group (the “Transaction”)

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<sup>1</sup> Case 91-E-0350: *Petition of Wallkill 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) (“*Wallkill Order*”), at 9 n.1 (determining that PSL Section 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 potential harm to captive ratepayers).

is not required pursuant to Section 70 of the New York State 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 lightened regulation and the existing financing approval will continue to be applied to CPV Valley.<sup>2</sup>

As discussed in more detail below, no competitive issues are raised by the changes in the upstream ownership of CPV Valley presented in this Joint Petition, nor will the changes cause any harm to the interests of captive utility ratepayers. CPV Valley will continue to operate in a competitive market and has no captive ratepayers. With the exception of a 5.5% indirect interest in two electric generating facilities in New York, CPV Group and its affiliates do not own or control any other electric generating facilities located in New York. Accordingly, the transfer of upstream ownership interests in CPV Valley described herein will have no adverse effect on market concentration in New York. In addition, CPV Group and its affiliates currently do not have any ownership interests or control in any electric transmission or distribution facilities; entities that are scheduling coordinators, reliability coordinators, or balancing area authorities; energy services companies; electric or gas transmission or distribution providers; or entities that can exercise control over the provision of fuels used in generation in New York. Therefore, CPV Group and its affiliates cannot exercise vertical market power as a result of the transfer of upstream ownership interests described herein.

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<sup>2</sup> See Case 10-E-0501: *Petition of CPV Valley, LLC for a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law, Approval of Financing Pursuant to Section 69 and for Approval of a Lightened Regulatory Regime*, Order Granting Certificate of Public Convenience and Necessity, Authorizing Lightened Ratemaking Regulation, and Approving Financing at 17-22 (Issued May 9, 2014) (the “CPV Valley Order”) (determining that CPV Valley may be lightly regulated because it will provide electric service on a wholesale basis as a participant in organized wholesale electric markets); *see also id.* at 22-23 (determining that CPV Valley may substitute financing entities and change payment terms and amounts of financing without Commission approval so long as the total financing is less than or equal to \$680 million because lightly-regulated participants in competitive markets bear the financial risk associated with their financial arrangements).

For these reasons, the Joint Petitioners respectfully request, pursuant to 16 NYCRR Part 8, that the Commission approve this Joint Petition and issue a declaratory ruling that the *Wallkill* Presumption applies to the proposed transfer of upstream indirect ownership interests in CPV Valley and decline to further review this transfer under PSL § 70. In the alternative, the Joint Petitioners respectfully request that the Commission approve this Joint Petition pursuant to PSL § 70 and issue an order approving the transfer of upstream indirect ownership interests in CPV Valley described in this Joint Petition.

The Joint Petitioners seek to close on the Transaction documents by the end of the year. The Joint Petitioners expect to have all other relevant regulatory approvals from the appropriate agencies by that time, including the Committee on Foreign Investment in the United States, the Federal Energy Regulatory Commission, the Federal Communications Commission, as well as the requisite approval under the Hart-Scott-Rodino Antitrust Improvements Act.<sup>3</sup> Accordingly, because the Joint Petitioners intend to complete the Transaction promptly once all necessary regulatory approvals have been obtained, the Joint Petitioners respectfully request expedited review of this Joint Petition and that the Commission act on the Joint Petition no later than its December 17, 2020 session.

## **II. BACKGROUND**

### **A. CPV Valley**

CPV Valley is a limited liability company organized under the laws of the State of Delaware and is a wholly-owned subsidiary of CPV Valley Holdings, LLC (“CPV Holdings”).

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<sup>3</sup> Specifically, the Joint Petitioners are seeking prior approval by the Federal Energy Regulatory Commission under Section 203 of the Federal Power Act, the Committee on Foreign Investment in the United States, license transfer approval from the Federal Communications Commission, and pre-merger clearance by the Federal Trade Commission and the Department of Justice, Antitrust Division under the Hart-Scott-Rodino Antitrust Improvements Act.

CPV Valley owns and operates a 770 MW (nameplate) natural gas-fired, combined-cycle electric generating facility (the “Valley Energy Center”), located in the Town of Wawayanda, Orange County, New York.<sup>4</sup> The Commission previously granted CPV Valley a Certificate of Public Convenience and Necessity pursuant to PSL § 68 for Valley Energy Center, determined that CPV Valley would be subject to lightened regulation as an electric corporation, and approved its financing.<sup>5</sup>

### **B. Upstream Ownership of CPV Valley**

GIP II CPV and CPV Power Holdings GP are organized under the laws of the State of Delaware and own a 99.8% limited partner interest and 0.2% general partner interest in CPV Power Holdings, LP (“CPV Power”), respectively.<sup>6</sup> CPV Power owns 50% of the interest in CPV Holdings, which, in turn, owns 100% of the interest in CPV Valley, the owner and operator of Valley Energy Center. DGC Valley, LLC, a Delaware limited liability company and a wholly-owned subsidiary of Diamond Generating Corporation, which is wholly and indirectly owned by Mitsubishi Corporation (“Mitsubishi”), owns the other 50% interest in CPV Holdings. Mitsubishi’s indirect 50% ownership interest in CPV Valley will not change as a result of the Transaction.

Through Competitive Power Ventures, Inc., CPV Renewable Energy Company, Inc.,<sup>7</sup> and CPV Power (collectively, “CPV”), CPV is a leading North American electric power generation development and asset management company. Since its inception in 1999, CPV has been dedicated to increasing America’s electrical sustainability—both economically and environmentally. Using

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<sup>4</sup> See *CPV Valley Order*.

<sup>5</sup> *CPV Valley Order* at 17-23.

<sup>6</sup> This represents 100% of the equity interests in CPV Power.

<sup>7</sup> Competitive Power Ventures, Inc. and CPV Renewable Energy Company, Inc. are wholly-owned subsidiaries of GIP CPV Intermediate Holdings Partnership 2, L.P., which has no ownership interest in CPV Valley, and is, therefore, not a party to this Joint Petition.

domestically-available fuel sources, like wind and natural gas, and partnering with host communities to support their tax base and school districts, CPV works to stabilize and improve local and state economies. CPV and its partners currently have nearly 10.6 gigawatts (“GW”) actively under management, approximately 5.7 GW (nameplate) generating facilities operating or under construction, and more than 14.8 GW developed, sold, financed, and acquired power generation facilities since 1999. In particular, CPV has brought 5.2 GW of natural gas and wind generation facilities online since 2010, with 762 MW of wind projects in various stages of development across the county.

As relevant here, in addition to Valley Energy Center discussed above, CPV subsidiaries have approximately 2,745 MW (nameplate) generating facilities operating in the PJM Interconnection, LLC (“PJM”) balancing area authority: the approximately 773 MW (nameplate) Woodbridge Energy Center in New Jersey, the 775 MW (nameplate) St. Charles Energy Center in Maryland, and the 1,197 MW (nameplate) Fairview Energy Center in Pennsylvania.<sup>8</sup> A CPV subsidiary also has approximately 842 MW (nameplate) generating capacity within the ISO New England, Inc. (“ISO-NE”) balancing area authority through the Towantic Energy Center.

### **C. CPV Group LP**

CPV Group is a newly formed entity formed for the purpose of implementing the Transaction, and following closing, indirectly owning CPV Valley through its direct and indirect ownership of the interests in CPV Power. CPV Group is controlled by its general partner, OPC US Inc. (“OPC US”), which holds 100% of the general partner interests. OPC US’s general partner interests in CPV Group are non-economic, and 100% of the economic interests in CPV Group are

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<sup>8</sup> In addition, the CPV Three Rivers Energy Center in Illinois at 1,250 MW (nominal) is under construction. Accounting for this facility, CPV subsidiaries have approximately 3,994 MW (nameplate) generating facilities operating or under construction in PJM.

held by its sole limited Partner, OPC Power Ventures LP, a Delaware limited partnership (“OPC PV”). The general partnership interests in CPV Group may instead be held by an entity wholly-owned by OPC PV, where OPC PV will own 99.99% of the economic interests in CPV Group and the general partner will own 0.01% of the economic interests in CPV Group.

CPV Group GP, LLC (“CPV Group GP”), a Delaware limited liability company, 100% owned and controlled by CPV Group, will be formed prior to closing of the Transaction solely for the purpose of implementing the Transaction and holding the non-economic general partner interest in CPV Power following closing of the Transaction.

OPC PV was formed solely for the purpose of implementing the Transaction and holding the limited partnership interest in CPV Group<sup>9</sup> following closing of the Transaction. OPC PV is controlled by its general partner OPC US, which also holds a 0.01% economic interest in OPC PV. OPC PV’s limited partnership interests are passive.<sup>10</sup>

OPC US was formed solely for the purpose of implementing the Transaction and holding the general partnership interests in each of OPC PV and CPV Group following closing of the Transaction. OPC US is 100% owned by OPC Energy Ltd., a company organized and existing under the laws of Israel (“OPC Energy”).<sup>11</sup>

OPC Energy is a public company listed on the Tel-Aviv Stock Exchange. OPC Energy was incorporated in 2010 and operates in the field of electrical generation and supply, including

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<sup>9</sup> Subject to the change in the structure noted above, *i.e.*, that the general partnership interests in CPV Group may instead be held by an entity wholly-owned by OPC PV, where OPC PV will own 99.99% of the economic interests in CPV Group and the general partner will own 0.01% of the economic interests in CPV Group.

<sup>10</sup> The limited partners of OPC PV are: OPC Energy Ltd. (“OPC Energy” – 69.99% interest); Clal Insurance Enterprises Holdings Ltd. (“Clal Holding” – 12.75%); Migdal Insurance & Financial Holdings Ltd. (“Migdal” – 12.75%); and Poalim Capital Markets Ltd. (“Poalim” – 4.5%). Each limited partner may hold its limited partnership interest directly or indirectly through one or more wholly-owned “blocker” intermediate holding company(ies).

<sup>11</sup> OPC Energy may hold its interests in OPC US directly or indirectly through one or more wholly-owned “blocker” intermediate holding companies; however, in either event, the existence or not of such a blocker entities is not material to the Commission’s analysis and ruling.

development, construction, and operation of power plants, as well as power generation and supplying to private customers and to Israel Electricity Corporation (“IEC”). OPC Energy is active in the development of natural gas-powered electrical generation facilities in Israel. Currently, OPC Energy, through subsidiaries, owns two operating natural gas-powered electrical generation facilities in Israel and is constructing a third. OPC Energy is owned approximately 62% by Kenon Holding Ltd. (“Kenon”), a company organized and existing under the laws of Singapore, and the remaining 38% (approximately) is held by public shareholders, including institutional investors, none of whom own 10% or more of the voting securities of OPC Energy.<sup>12</sup> Decisions with respect to the operations of OPC Energy, including decisions relating to development projects, operating projects, and acquisitions of other business (such as the acquisition of CPV Valley by OPC Energy), are made under the ultimate control of the Board of Directors of OPC Energy.<sup>13</sup>

Kenon is a limited liability company organized and existing under the laws of Singapore. Kenon is a public company dual listed on Tel Aviv Stock Exchange and on New York Stock Exchange. Kenon is a holding company that owns businesses primarily in the energy, industrial, transportation, and manufacturing sectors, including OPC Energy. Kenon is owned approximately 58% by Ansonia Holdings Singapore B.V., a private company with limited liability incorporated under the laws of the Netherlands (“Ansonia”) and approximately 42% by public shareholders, including institutional investors. Clal Holding, a regulated institutional investor organized and existing under the laws of Israel, currently owns 9.43% of the voting securities of Kenon. Other

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<sup>12</sup> Clal Holding holds a 7.39% interest and Migdal a 8.34% interest. Their holdings are in an amount less than the 10% threshold at which control is presumed for purposes of PSL § 70, and their interests are purely passive. *See* Case 08-M-0659, *Regulation of Owners of Stock Interests in Electric and Steam Corporations*, Order Establishing Presumption and Closing Proceedings Without Prejudice (Issued September 21, 2010). Further, neither Clal nor Migdal has the right to appoint a director to the OPC Energy Board of Directors.

<sup>13</sup> OPC Energy’s Board of Directors is elected by majority vote of its shareholders (provided that two “External Directors” (independent) are appointed by supermajority vote of the shareholders which includes a majority of the non-controlling public shareholders).

than Ansonia, no Kenon shareholder owns 10% or more of the voting securities of Kenon. Decisions with respect to Kenon's interest in OPC are made by the Board of Directors of Kenon.<sup>14</sup>

Clal Holding is a public 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 or any of their affiliates owns or controls, directly or indirectly, 10% or more of any electric generating facilities or essential inputs to electric generation in the United States. Clal Holding holds an indirect 5.5% interest in Astoria Energy LLC ("Astoria I") and Astoria Energy II LLC ("Astoria II").<sup>15</sup> Astoria I owns and operates a 580 MW (summer rating) electric generation facility in Queens, New York, interconnected to the NYISO and located within in the NYISO Zone J submarket ("Astoria I Facility"). Astoria II owns and operates a 573 MW electric generation facility ("Astoria II Facility") located adjacent to the Astoria I Facility and similarly interconnected with the NYISO.

Ansonia is a holding company that indirectly owns businesses primarily in the energy, industrial, transportation, and manufacturing sectors, including Kenon and OPC Energy. Ansonia is 100% owned and controlled by the Jelany Corporation N.V., a limited liability company organized and existing under the laws of Curacao ("Jelany").

Jelany is a holding company that, through Ansonia, indirectly owns businesses primarily in the energy, industrial, transportation, and manufacturing sectors, including Kenon and OPC

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<sup>14</sup> Kenon's Board of Directors is elected by majority vote of its shareholders; Clal Holding does not have the right to appoint a Board member.

<sup>15</sup> See Case 20-E-0083: *Joint Petition of Astoria Energy LLC, Astoria Energy II LLC and Astoria Power Partners Holding, LLC for a Declaratory Ruling Invoking the Wallkill Presumption or for Approval Pursuant to Section 70 of the Public Service Law*, Declaratory Ruling on Review of Transfer Transactions (Issued May 19, 2020).

Energy. Jeleny is 100% owned and controlled by Court Investments Ltd., a limited liability company organized and existing under the laws of Liberia (“Court”).

Court is a holding company that, through Jeleny, indirectly owns businesses primarily in the energy, industrial, transportation, and manufacturing sectors, including Kenon and OPC Energy. Court is 100% owned and controlled by a discretionary trust (the “Trust”).

The Trust, in which Mr. Idan Ofer is the beneficiary (“Beneficiary”), is the 100% owner of Court. The Trust is managed by the trustee of the trust, which is CIBC Bank and Trust Company (Cayman) Limited (the “Trustee”). The Trustee is a professional service firm that is part of Canadian Imperial Bank of Commerce, a publicly-listed banking organization (the “Bank”). To buyer’s knowledge<sup>16</sup> (i) no person owns more than 10% of the shares of the Bank, or (ii) neither the Bank nor the Trustee owns, operates or controls (directly or indirectly) (1) any electric transmission facilities in the United States or outside of the United States that can be used to reach markets in the United States; (2) electric generation facilities or capacity located in in the United States; (3) a franchised utility with captive customers in the United States; or (4) 10% or more of the voting securities of any company that owns or controls natural gas pipelines, storage, or distribution facilities, physical coal supply sources or ownership of or control over who may access transportation of coal supplies in the United States.

Other than as described above, neither CPV Group nor its affiliates owns, operates, or controls (directly or indirectly): (i) any electric transmission facilities in the United States or outside of the United States that can be used to reach markets in the United States, other than

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<sup>16</sup> Joint Petitioners note that CPV Group and its affiliates are not part of the corporate family of the Bank and Trustee, have no visibility into the upstream shareholders of the Bank or of the holdings of the Bank or the Trustee other than reasonably identifiable public filings made by the Bank and Trustee with the Bank’s securities regulators or the Commission, if and as applicable, and have no ability to compel either to provide CPV Group with additional non-public information or confirm the continuing accuracy of the publicly available information.

limited and discrete interconnection facilities necessary to connect individual electric generation facilities to the transmission grid; (ii) electric generation facilities or capacity located in the United States; (iii) a franchised utility with captive customers in the United States; or (iv) 10% or more of the voting securities of any company that owns or controls natural gas pipelines, storage, or distribution facilities, physical coal supply sources or ownership of or control over who may access transportation of coal supplies in the United States.

### **III. THE TRANSACTION**

The Transaction will be effectuated through a Purchase and Sale Agreement, dated as of October 9, 2020, by and among GIP II CPV, GIP II CPV Intermediate Holdings Partnership 2, L.P., CPV Power Holdings GP, CPV Group and, solely for purposes of Article 11 thereof, CPV Group GP (the “PSA”). Pursuant to the terms and conditions set forth in the PSA, among other things, GIP II CPV and CPV Power Holdings GP will sell to CPV Group (or, in the case of the general partnership interests in CPV Power, to CPV Group GP) and CPV Group will purchase (or will cause CPV Group GP to purchase, as applicable) 100% of the partnership interests in CPV Power. Following consummation of the Transaction, GIP II CPV and CPV Power Holdings GP will no longer hold any interests in CPV Valley, and CPV Group will indirectly own and control 50% of the ownership interests in CPV Valley. There will be no change in the day-to-day operations of Valley Energy Center as a result of the Transaction, and Competitive Power Ventures, Inc. will continue to serve as Valley Energy Center’s asset manager.

Organizational charts depicting the upstream ownership of CPV Valley before and after the Transaction are included in “**Exhibit A.**”

The Joint Petitioners now respectfully petition the Commission concerning the Transaction.

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

Pursuant to 16 NYCRR § 8.1, declaratory rulings may be issued with respect to, among other things, “the applicability to any person, property, or state of facts of any rule or statute enforceable by the commission or the validity of any such rule” and “whether any action by the commission should be taken pursuant to a rule.”<sup>17</sup> Here, the Joint Petitioners seek a Commission ruling that PSL § 70 does not apply to, and no further review or approval is required of, the transfer of 100% of the indirect ownership interests in CPV Valley to CPV Group. Accordingly, the requested relief squarely fits within the Commission’s powers under the 16 NYCRR § 8.1.

With respect to transfers of ownership interests in a New York electric generation facility, 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.”<sup>18</sup>

The Commission has established a lightened regulatory regime for competitive wholesale generators and merchant transmission lines in New York under which PSL § 70 review of changes in ownership is not required.<sup>19</sup> Specifically, in the *Wallkill* Order, the Commission held that, under

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<sup>17</sup> 16 NYCRR § 8.1 (a) (1), (2).

<sup>18</sup> PSL § 70 (1).

<sup>19</sup> *Wallkill* Order; see also Case 15-E-0086: *Petition of Bayonne Energy Center, LLC, et al. for a Declaratory Ruling Regarding a Proposed Upstream Corporate Transaction, or in the Alternative, for an Order Approving the Transaction Under Public Service Law Section 70*, Declaratory Ruling on Review of an Acquisition Transaction (Issued Mar. 27, 2015); Case 14-E-0195: *Bayonne Energy Center, LLC, Hess Corporation, LLC and AL Bayonne Holdings, LLC – Petition for an Order Confirming that Sections 69, 69-a and 70 of the Public Service Law Will Not Be Applied; or in the Alternative, Either Confirming that a Proposed Upstream Corporate Transaction is Not Subject to Section 70 Approval or Granting Such Approval, and Approving Proposed Financing; and Confirming Lightened Regulation*, Order Modifying Lightened Ratemaking Regulation Authorizations and Approving Financing and Declaratory Ruling on a Transfer Transaction (Issued Aug. 15, 2014); Case 13-E-0392: *Champlain Hudson Power Express, Inc., Declaratory Ruling and Order Concerning Ownership Transfer and Providing For Lightened Ratemaking Regulation* (Jan. 21, 2014); Case 10-E-0339: *Hudson Transmission Partners, LLC*, Order Providing for Lightened Rate Making Regulation (Issued Apr. 14, 2011).

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 generation facilities unless there was a potential for harm to the interests of captive utility ratepayers sufficient to override what became known as the “*Wallkill* Presumption.”<sup>20</sup> Since its *Wallkill* decision, the Commission has applied the presumption to many transactions involving the upstream transfer of interests in wholesale generation facilities. In those orders, the Commission determined that 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.

The *Wallkill* Presumption should be applied equally to this Joint Petition because the Transaction will not result in any potential harm to captive ratepayers, including the potential to exercise either horizontal or vertical market power. As an initial matter, CPV Valley and Valley Energy Center will continue to operate in a competitive market and have no captive ratepayers. Further, the Transaction will not result in the potential to exercise either vertical or horizontal market power. With the exception of Clal Holding’s indirect 5.5% interest in Astoria I and Astoria II, CPV Group and its respective affiliates do not have any ownership interests in any: other electric generating facilities in New York, or any transmission or distribution facilities; entities that are scheduling coordinators, reliability coordinators, or balancing area authorities in New York; energy services companies; electric or gas transmission or distribution providers; or entities that can exercise control over the provision of fuels used in generation in New York. CPV Power currently holds 50% of CPV Valley’s 770 MW (nameplate) of generating capacity in the NYCA.

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<sup>20</sup> *Wallkill* Order 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”).

Even conservatively assuming Clal Holding owned 100% of CPV Power, which it will not because it owns only a 12.75% limited partnership interest in OPC PV and 9.43% of the voting securities of Kenon, CLAL Holdings' proportional ownership interests in Astoria I and Astoria II of 63.4 MW (5.5% \* 1,153 MW) combined with 50% of the 770 MW Valley Energy Center represents a *de minimis* amount of the NYCA's total generating capacity (approximately 1% of 40,191 MW).<sup>21</sup> The Commission has held that such *de minimis* market penetration is inadequate to create market power.<sup>22</sup> Moreover, as noted above and discussed further below, the affiliates that CPV Group is also acquiring as part of the Transaction that hold such ownership interests in the markets adjacent to New York (*e.g.*, PJM and ISO-NE) are limited.

More specifically, in PJM, affiliates of CPV currently hold approximately 2,745 MW of generation capacity.<sup>23</sup> The fact that CPV Power is affiliated with electric generation projects in the adjacent PJM market does not pose the potential for the exercise of market power because Valley Energy Center operates in a separate geographic market, and, in any event, the generation capacity represents a *de minimis* amount of the total generation capacity within PJM (a little over 1% of the 186,788 MW in PJM).<sup>24</sup> Likewise, affiliates of CPV Power currently hold approximately 842 MW (nameplate) of generation capacity in ISO-NE, representing a *de minimis* (approximately 2%) of its 34,078 MW<sup>25</sup> generating capacity. The Commission has previously held that such *de minimis*

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<sup>21</sup> See NYISO 2020 Load and Control Data at 63. <https://www.nyiso.com/documents/20142/2226333/2020-Gold-Book-Final-Public.pdf/>.

<sup>22</sup> See *e.g.*, Case 13-M-0004: *EIF BNY LLC, et al.*, Declaratory Ruling on Review of an Acquisition and Stock Transaction (Issued February 15, 2013); Case 14-E-0022: *MACH Gen, LLC et al.*, Order Approving Transfers of Ownership Interests and Making Other Findings (Issued April 25, 2014).

<sup>23</sup> As noted above, the total generating capacity will be 3,994 MW including the Three Rivers Energy Center, which is currently under construction.

<sup>24</sup> See PJM 2019 Annual Report at 1. <https://services.pjm.com/annualreport2019/welcome>. Affiliates of CPV would still hold a *de minimis* amount of the total generation capacity within PJM even with the addition of the 1,250 MW (nominal) Three Rivers Energy Center, which is currently under construction (totaling approximately 2% of the 186,788 MW in PJM).

<sup>25</sup> See ISO New England Seasonal Claimed Capability (SCC) Report as of 9/11/2020 (showing total winter generating capability of 34,078 MW in the ISO-NE "Monthly Listing of ISO-New England Participant Generator Assets and

levels of generation owned in an adjacent market will not affect competition.<sup>26</sup> Accordingly, the Transaction will not result in wholesale generation market ownership that will enable the exercise of horizontal market power.

The Transaction will also not otherwise result in any adverse impacts in New York. No changes in Valley Energy Center's day-to-day operations are expected to be made as a result of the Transaction. Further, the Transaction will not result in any change in the role of Competitive Power Ventures, Inc. serving as CPV Valley's asset manager.

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 PURSUANT TO PSL § 70**

In the alternative, the Joint Petitioners respectfully request that the Commission approve the Transaction pursuant to PSL § 70.

The Commission applies a "public interest" standard to its review of proposed transfers under PSL § 70.<sup>27</sup> In conducting PSL § 70 review of asset transactions between electric

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Demand Response Resources and Their Seasonal Capabilities"). <https://www.iso-ne.com/isoexpress/web/reports/operations/-/tree/seasonal-claimed-capability>.

<sup>26</sup> See e.g. Case 11-E-0181: *Joint Petition of ReEnergy Black River LLC, Black River Energy, LLC, EIF Hamakua, LLC, USPF Holdings, LLC, United States Power Fund, LP*, Order Approving Transfer and Making Other Findings (Issued Aug. 23, 2011); Cases 12-E-0211 *et al.*: *Joint Verified Petition of Alliance Energy, New York LLC, MEG Development Company, LLC, Massena Energy Holdings, LLC, Massena Energy Holdings GP, LLC, and Power City Partners, LP for a Declaratory Ruling or, in the Alternative, an Order Approving Transfer Pursuant to Public Service Law Section 70, Approval of Financing Pursuant to Public Service Law Section 69, and Continuing Lightened Regulatory Regime*, Order Approving Transfer Subject to Conditions Precedent and Approving Financings (Issued Sept. 17, 2012); Case 07-M-0906: *Joint Petition of Iberdrola S.A., Energy East Corporation, RGS Energy, Group, Inc., Green Acquisition Capital, Inc., NYSEG and RGE for Approval of the Acquisition of Energy East Corporation by Iberdrola, S.A.*, Order Approving Transfer, Providing for Lightened Ratemaking Regulation, Establishing Rate Treatment and Making Other Findings (Issued Oct. 18, 2013).

<sup>27</sup> 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*

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.”<sup>28</sup>

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 captive ratepayers. There will be no change in the day-to-day operations of Valley Energy Center as a result of the Transaction. Thus, the Transaction is in the public interest, fully satisfies the Commission’s standard of review under PSL § 70, and should be approved.

## **VI. THE COMMISSION SHOULD DECLARE THAT CPV VALLEY WILL CONTINUE TO BE AFFORDED LIGHTENED REGULATION AND FINANCING APPROVAL**

For all of the reasons set forth in the Commission’s order granting a CPCN, CPV Valley should continue to be afforded lightened regulation and financing approval following consummation of the Transaction.<sup>29</sup> The Commission has previously 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.<sup>30</sup> Similarly, the Commission has

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*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.*

<sup>28</sup> 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), at 6.

<sup>29</sup> *CPV Valley Order* at 17-22.

<sup>30</sup> *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*

allowed financing approval to continue following the consummation of such transactions.<sup>31</sup> Accordingly, the Joint Petitioners respectfully request that the Commission affirm and declare that the Transaction will not affect the lightened regulatory regime or financing approval applied to CPV Valley and its owners upon consummation of the Transaction.

#### **VII. THE COMMISSION SHOULD ACT ON THE JOINT PETITION NO LATER THAN ITS DECEMBER 17, 2020 SESSION**

The Joint Petitioners respectfully request that the Commission act on or before its December 17, 2020 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 review and approval of the Transaction will allow the Joint Petitioners to move forward with closing before year end and 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.

#### **VIII. 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

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*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 (Issued Apr. 25, 2014), at 10; 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.*

<sup>31</sup> *See e.g. Case 17-E-0583: Joint Petition of GenOn Energy, Inc., NRG Bowline LLC, and the Major Noteholders Regarding Application of Section 70 of the New York State Public Service Law, Declaratory Ruling on Transfer and Making Other Findings, (Issued Nov. 21, 2017) at 25.*

a significant impact on the environment. SEQRA review, however, is not required if the Commission issues a declaratory ruling that PSL § 70 does not apply to the Transaction under the *Wallkill* Presumption.<sup>32</sup>

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. To facilitate any such assessment, attached hereto as **Exhibit B** is an Environmental Assessment Form describing the potential impacts, if any, of the Transaction.

No significant adverse environmental effect will result from the Transaction. The Transaction involves a transfer of upstream ownership interests of CPV Valley and will not result in any physical alterations to land or structures, or modify, in any way, the existing operation or maintenance of Valley Energy Center. Further, Valley Energy Center will continue to be operated in accordance with the requirements specified in the Commission’s lightened regulation order, 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.<sup>33</sup>

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<sup>32</sup> See 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, n.7 (Issued 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 the State Environmental Quality Review Act.”).

<sup>33</sup> 6 NYCRR § 617.7.

**IX. NEW YORK STATE ADMINISTRATIVE PROCEDURE ACT**

In the event the Commission decides this petition under PSL § 70, the Commission’s consideration of the Transaction is a rulemaking requiring that notice be published in the *New York State Register* allowing 60 days for public comment pursuant to Section 202 of the State Administrative Procedure Act (“SAPA”).<sup>34</sup> A draft form of notification suitable for publication in the *New York State Register* pursuant to SAPA is attached as **Exhibit C**, if necessary.

**X. CONCLUSION**

For all of these reasons, the Joint Petitioners respectfully request that the Commission issue a declaratory ruling no later than its December 17, 2020 session 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, as in the public interest. The Joint Petitioners further request that the Commission declare that lightened regulation and the existing financing approval will continue to be applied to CPV Valley.

Dated: November 2, 2020  
Albany, New York

Respectfully submitted,

**HARRIS BEACH PLLC**

**READ AND LANIADO LLP**

*/s/ John T. McManus*

*/s/ David B. Johnson*

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<sup>34</sup> SAPA § 202 (1).

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smix@harrisbeach.com

*Attorneys for CPV Valley, LLC;  
GIP II CPV Intermediate Holdings  
Partnership, L.P.; and  
CPV Power Holdings GP, LLC*

*Attorneys for CPV Group LP*

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Case 20-E-\_\_\_\_\_

Verified Joint Petition of CPV Valley, LLC; GIP II CPV Intermediate Holdings Partnership, L.P.; CPV Power Holdings GP, LLC; and CPV Group LP 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

**VERIFICATION**

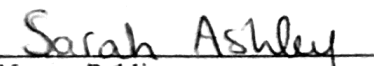
STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF NEW YORK        )

Jonathan Bram, being duly sworn, deposes and states as follows:

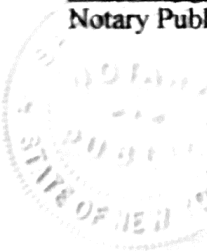
1. I am a Partner of GIP II CPV Intermediate Holdings Partnership, L.P., which is one of the Joint Petitioners in this proceeding.
2. I am authorized to sign this verification on behalf of GIP II CPV Intermediate Holdings Partnership, L.P.
3. I have reviewed the foregoing Joint Petition, and the statements of fact contained therein pertaining to GIP II CPV Intermediate Holdings Partnership, L.P. and the transactions addressed in the Joint Petition are true and correct to the best of my knowledge, information, and belief.

  
Jonathan Bram

Sworn to and subscribed before me  
this 30th day of October 2020.

  
Notary Public

**SARAH ASHLEY**  
Notary Public, State of New York  
Registration #01AS6208781  
Qualified in Kings County  
Commission Expires July 13, 2021







**Authentication of Signature of  
Person Signing on behalf of a  
Body Corporate or in the  
Name of Another Person**

**אימות חתימתו של אדם בשם  
תאגיד או בשם אדם אחר**

I, the undersigned Yuval Rosen Notary, holding license no. 02063383, of 46 Bodenheimer Str., Tel Aviv hereby certify that on November 1, 2020 appeared before me, at the offices of OPC Energy Ltd., at 121 Menachem Begin Road, floor 40, Tel Aviv:

אני הח"מ, יובל רוזן נוטריון, בעל רישיון מס' 02063383, שמושרדי ברח' בודנהיימר 46 בתל אביב, מאשר כי ביום 1.11.2020, ניצב לפני במשרדי או.פי.סי אנרגיה בע"מ, בדרך מנחס בגין 121, קומה 40, תל אביב:

מר צחי גושן.

Mr. Zahi Goshen,

whose identity was proved to me by Israeli Driving License No. 6432423 issued by the Ministry of Transport on August 15, 2018, and

שזהותו הוכחה לי על פי רישיון נהיגה מס' 6432423 שהוצא על ידי משרד התחבורה ביום 15.8.2018, ו-

And I am convinced that the person standing before me understood fully the significance of the action and voluntarily signed the attached document marked with the letter **A** after confirming to me that the contents of the document are known to him and that he is so authorized to sign and state,

ושוכנעתי כי הניצב בפני הבין הבנה מלאה את משמעות הפעולה וחתם מרצונם החופשי על המסמך המצורף והמסומן באות **A**, לאחר שאישר בפני כי תוכנו בידיעתו וכי הוא מורשה לחתום ולהצהיר,

בשם CPV Group, L.P.

on behalf of CPV Group, L.P.

אני מאשר שהוגשו לי החלטה בהסכמה בכתב של דירקטוריון OPC US INC. מיום 9 באוקטובר 2020, והחלטה בהסכמה בכתב של השותף הכללי של CPV Group, LP מיום 9 באוקטובר 2020, כראיה בכתב, להנחת דעתי, לשם הוכחת רשותו לחתום ולהצהיר כאמור.

I confirm that an Action by Written Consent of the Board of Directors of OPC US INC. dated October 9, 2020 and an Action by Written Consent of the General partner of CPV Group, LP dated October 9 2020, have been submitted to me as written evidence, to my satisfaction, for the purpose of proving his competence to sign as aforesaid.

In witness whereof, I hereby authenticate the signature of Mr. Zahi Goshen by my own signature and seal this

ולראיה הנני מאמת את חתימתו של מר צחי גושן בחתימת ידי ובחותמי, היום

November 1, 2020

1 בנובמבר 2020

I.I.S. 842 fees demanded  
I.I.S. 143 V.A.T. demanded

שכר בסך 842 ₪ נדרש  
מע"מ בסך 143 ₪ נדרש

חותם הנוטריון  
Notary's Seal

חתימה  
Signature



*[Handwritten mark]*

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Verified Joint Petition of CPV Valley, LLC; GIP II CPV Intermediate Holdings Partnership, L.P.; CPV Power Holdings GP, LLC; and CPV Group LP 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 20-E-\_\_\_\_\_

VERIFICATION

I, **Zahi Goshen**, as an Authorized Signatory of CPV Group LP, do hereby affirm that the contents of this document are true to the best of my knowledge and belief.

Signed: *[Signature]*  
Date: November 1, 2020

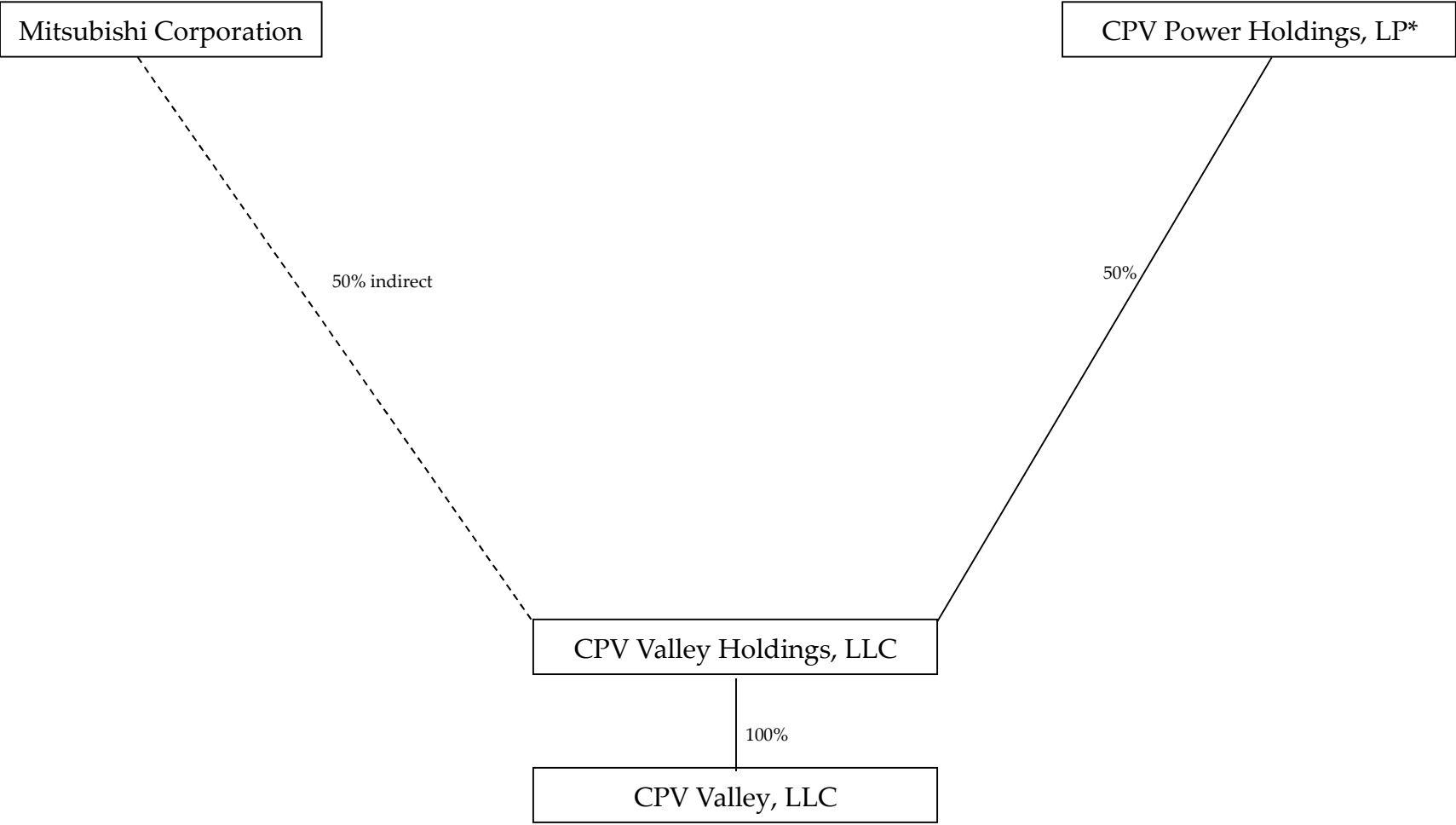
Sworn to and subscribed before me  
This 1<sup>st</sup> day of November 2020

Notary Public,  
Yuval Rosen, Adv. & Notary



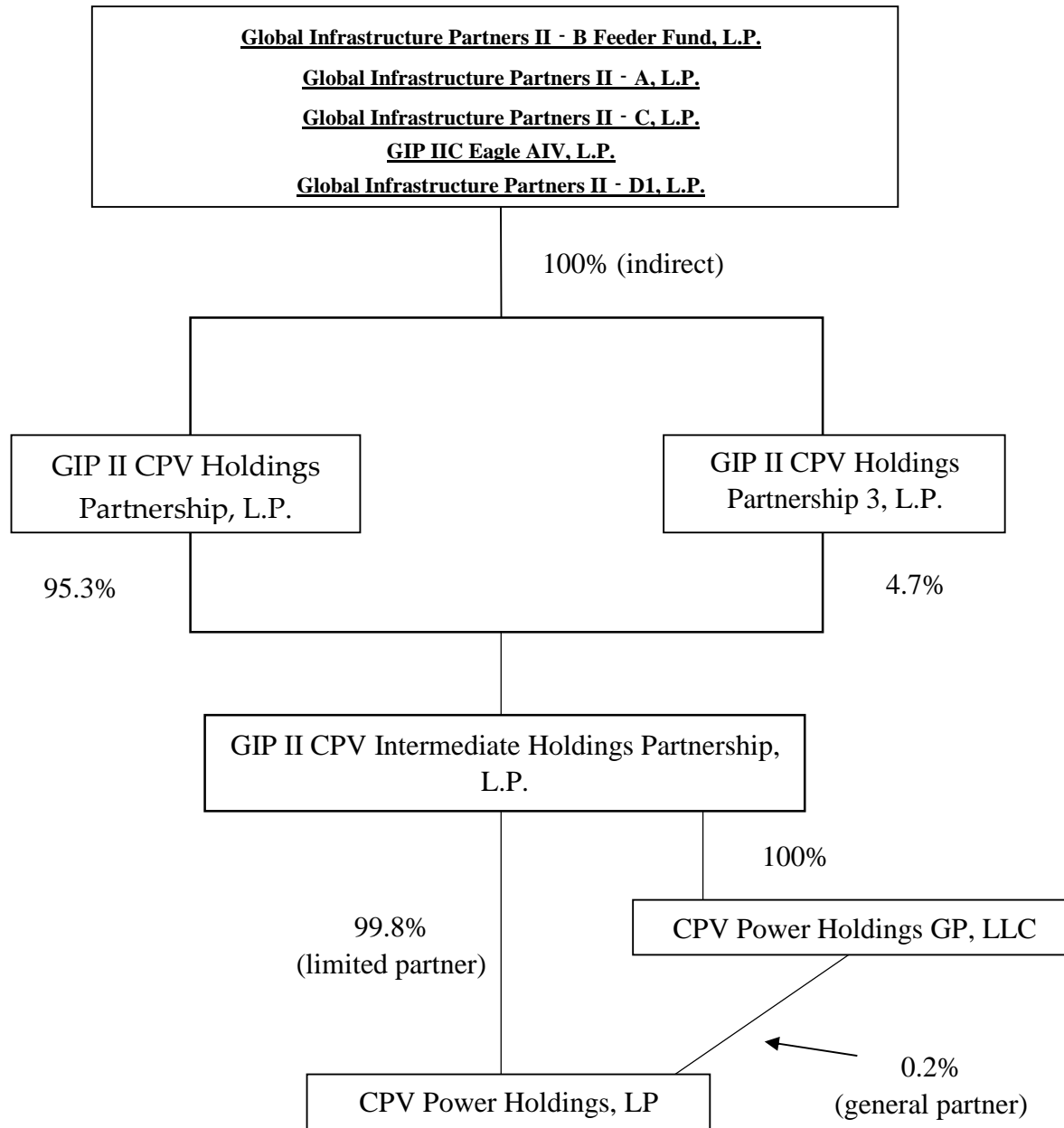
# EXHIBIT A

**Exhibit A-1: Pre- and Post-Transaction Organizational Chart  
CPV Valley, LLC (upstream through CPV Power Holdings, LP)**

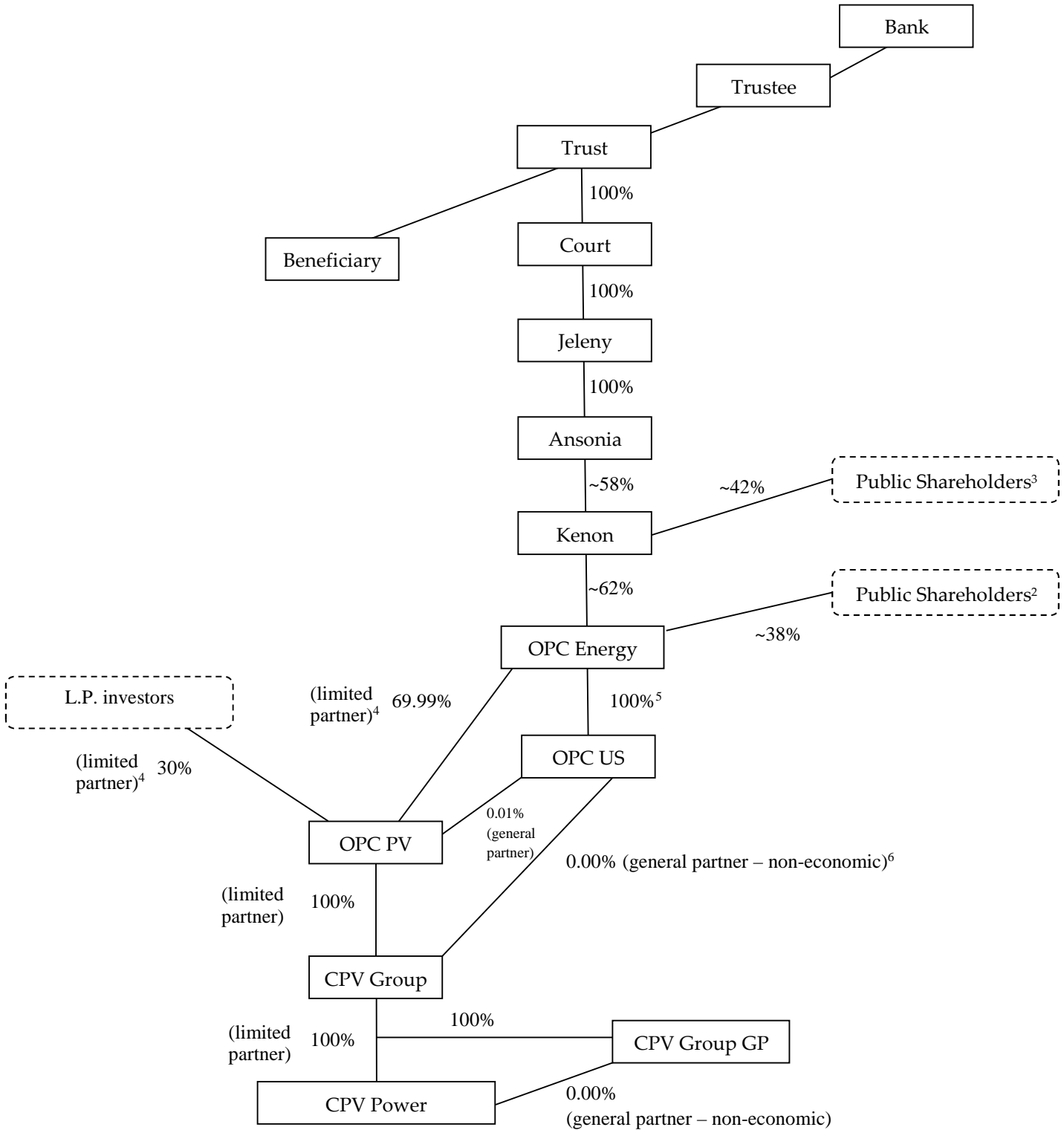


\*As noted in the Petition, the Transaction will not affect the ownership interests of Mitsubishi Corporation.

**Exhibit A-2: Pre-Transaction Organizational Chart  
CPV Power Holdings, LP**



**Exhibit A-3: Post-Transaction Organizational Chart  
CPV Power Holdings, LP<sup>1</sup>**



## Notes

- <sup>1</sup> Defined terms used for a party are as defined in the Petition.
- <sup>2</sup> No public shareholder owns 10% or more of the voting securities of OPC Energy.
- <sup>3</sup> No public shareholder owns 10% or more of the voting securities of Kenon.
- <sup>4</sup> Each limited partner may hold its limited partnership interests through one or more wholly-owned “blocker” intermediate holding companies.
- <sup>5</sup> OPC Energy may hold its interests in OPC US either directly or indirectly through one or more wholly-owned “blocker” intermediate holding companies.
- <sup>6</sup> The general partnership interests in CPV Group may be held by an entity wholly-owned by OPC PV, where OPC PV will own 99.99% of the economic interests in CPV Group and the general partner will own 0.01% of the economic interests in CPV Group.

# EXHIBIT B

# 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.

<b>Part 1 – Project and Sponsor Information</b>			
CPV Valley, LLC; GIP II CPV Intermediate Holdings Partnership, L.P.; CPV Power Holdings GP, LLC; and CPV Group LP			
Name of Action or Project: Joint Petition to Approve the Proposed Transfer of Upstream Ownership Interest in CPV Valley, LLC Pursuant to Section 70 of Public Service Law			
Project Location (describe, and attach a location map): N/A			
Brief Description of Proposed Action: CPV Valley, LLC ("CPV Valley"); GIP II CPV Intermediate Holdings Partnership, L.P. ("GIP II CPV"); CPV Power Holdings GP, LLC ("CPV Power Holdings GP"); and CPV Group LP ("CPV Group") (collectively, the "Joint Petitioners") jointly petition the New York State Public Service Commission (the "Commission") for an order approving the proposed upstream corporate transaction resulting in GIP II CPV and CPV Power Holdings GP transferring their indirect ownership interests in CPV Valley to CPV Group (the "Transaction") pursuant to Section 70 of the New York State Public Service Law ("PSL"). The Joint Petitioners further request that the Commission declare that lightened regulation and the existing financing approval will continue to be applied to CPV Valley.  A full description of the Proposed Action is in the Joint Petition.			
Name of Applicant or Sponsor: GIP II CPV Intermediate Holdings Partnership, L.P.		Telephone: 212 315-8100	
		E-Mail:	
Address: 1345 Avenue of the Americas, 30th Floor			
City/PO: New York		State: New York	Zip Code: 10105
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 type="checkbox"/>
			YES <input 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: Approval from Federal Energy Regulatory Commission pursuant to section 203 of the Federal Power Act. See Joint Petition for more.			NO <input type="checkbox"/>
			YES <input checked="" type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		_____ N/A acres	
b. Total acreage to be physically disturbed?		_____ N/A acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ N/A acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
<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			

		NO	YES	N/A
5. Is the proposed action,	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? N/A		<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? N/A If Yes, identify: _____		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. a. Will the proposed action result in a substantial increase in traffic above present levels? N/A b. Are public transportation services available at or near the site of the proposed action? N/A c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action? N/A		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: N/A		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: N/A		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: N/A		<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? N/A 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"/>	
		<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? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: N/A		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	



# EXHIBIT C

**PROPOSED RULEMAKING  
NO HEARING (S) SCHEDULED**

**Transfer of Certain Upstream Ownership Interests in CPV Valley, LLC from GIP II CPV Intermediate Holdings Partnership, L.P. and CPV Power Holdings GP, LLC to CPV Group LP**

**I.D. No. PSC-**

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

***Proposed action:*** The New York State Public Service Commission (the “Commission”) is considering a joint petition filed by CPV Valley, LLC (“CPV Valley”); GIP II CPV Intermediate Holdings Partnership, L.P. (“GIP II CPV”); CPV Power Holdings GP, LLC (“CPV Power Holdings GP”); and CPV Group LP (“CPV Group”) (collectively, the “Joint Petitioners”) to transfer upstream ownership interests in CPV Valley from GIP II CPV Intermediate Holdings Partnership, L.P. and CPV Power Holdings GP, LLC to CPV Group LP.

***Statutory authority:*** New York Public Service Law Section 70.

***Subject:*** Joint Petition for expedited approval of the transfer of upstream ownership interests pursuant to Section 70 of the New York State Public Service Law (“PSL”).

***Purpose:*** To (i) authorize the transfer of upstream ownership interests in CPV Valley from GIP II CPV and CPV Power Holdings GP to CPV Group (the “Transaction”) under PSL § 70, and (ii) declare that lightened regulation and the existing financing approval will continue to be applied to CPV Valley.

***Substance of proposed rule:*** The Commission is considering a petition filed on November 2, 2020 by Joint Petitioners requesting an order approving the Transaction, as in the public interest, without further modification or condition. The Commission is also considering Joint Petitioners’ further request that the Commission declare that lightened regulation and the existing financing approval will continue to be applied to CPV Valley.

The details of the Transaction are described in Section III of the Joint Petition. As relevant here, upon consummation of the Transaction, GIP II CPV and CPV Power Holdings GP will sell 100% of their respective partnership interests in CPV Power to CPV Group and will no longer hold any interests in CPV Valley. CPV Valley owns and operates a lightly-regulated, natural gas-fired, combined-cycle electric generating facility with a rating of 770 megawatts (“MW”) (nameplate) (the “Valley Energy Center”), located in the Town of Wawayanda, Orange County, New York. There will be no change in the day-to-day operations of Valley Energy Center as a result of the Transaction, and Competitive Power Ventures, Inc. will continue to serve as Valley Energy Center’s asset manager.

The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

***Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: [\_\_\_\_\_].***

***Data, views or arguments may be submitted to:*** Michelle Phillips, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6517, email: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov).

***Public comment will be received until:*** 60 days after publication of this notice.

***Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement***

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(20-E-\_\_\_\_\_)