The Dax Law Firm, P.C.

54 State Street, Suite 805
Albany, New York 12207
www.daxlawfirm.com

Telephone: (518) 432-1002
Facsimile: (518) 432-1028

John W. Dax **William F. McLaughlin***
**Also Admitted in Massachusetts & District of Columbia*

April 7, 2015

Via Electronic Mail secretary@dps.ny.gov

Hon. Kathleen H. Burgess
Secretary to the Commission
New York State Public Service Commission
Agency Building 3
Albany, NY 12223-1350

Re: Case 15-E-_____ – SARANAC POWER PARTNERS, L.P.

Dear Secretary Burgess:

On behalf of Saranac Power Partners, L.P., and affiliates, enclosed please find the *Verified Petition of Saranac Power Partners, L.P. for a Declaratory Ruling Disclaiming the Need to Review a Transfer of a 5% Ownership Interest to an Existing Upstream Owner, or in the Alternative, an Order Approving the Transfer* and the Verification of Robert D. Garman, Assistant General Counsel of Saranac Energy Company, Inc.

Respectfully submitted,

John W. Dax

JWD:lmd

Enclosures

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of	:	
SARANAC POWER PARTNERS, L.P.	:	Case 15-E-_____
Verified Petition of Saranac Power Partners, L.P. for a Declaratory Ruling Disclaiming the Need to Review a Transfer of a 5% Ownership Interest to an Existing Upstream Owner, or in the Alternative, an Order Approving the Transfer.	:	

VERIFIED PETITION OF SARANAC POWER PARTNERS, L.P. FOR A DECLARATORY RULING DISCLAIMING THE NEED TO REVIEW A TRANSFER OF A 5% OWNERSHIP INTEREST TO AN EXISTING UPSTREAM OWNER, OR IN THE ALTERNATIVE, AN ORDER APPROVING THE TRANSFER

Dated: April 7, 2015
Albany, New York

John W. Dax
William F. McLaughlin
THE DAX LAW FIRM, P.C.
54 State Street, Suite 805
Albany, New York 12207
Telephone: (518) 432-1002
Facsimile: (518) 432-1028
Email: jdax@daxlawfirm.com

Attorneys for Saranac Power Partners, L.P. and BHE Geothermal, LLC

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of SARANAC POWER PARTNERS, L.P. Verified Petition of Saranac Power Partners, L.P. for a Declaratory Ruling Disclaiming the Need to Review a Transfer of a 5% Ownership Interest to an Existing Upstream Owner, or in the Alternative, an Order Approving the Transfer.	:	Case 15-E-_____

INTRODUCTION

Saranac Power Partners, L.P. (Saranac Power), on behalf of itself and its upstream owner BHE Geothermal, LLC (BHE Geothermal)[1] and TIFD III-A Inc. (TIFD), the owner of five percent (5%) of its limited partnership interests, petitions the New York State Public Service Commission (Commission) for a declaratory ruling pursuant to Part 8 of the Commission's Rules and Regulations, 16 NYCRR Part 8, that a proposed acquisition of five percent (5%) of the limited partnership interests in Saranac Power by an existing upstream owner (the Transaction) does not require Commission approval under Section 70 of the Public Service Law (PSL).[2]

Saranac Power is an "electric corporation," as defined in PSL Section 2(13) that owns an electric plant located in Plattsburgh, New York. Saranac Power seeks a ruling that Commission approval is not required for its indirect parent company, BHE Geothermal, to acquire TIFD's five percent (5%) limited partnership interest in Saranac Power. Currently, BHE Geothermal,

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1 BHE Geothermal was previously known as MidAmerican Geothermal LLC.

2 Saranac Power and TIFD will file simultaneously with this petition an application with the Federal Energy Regulatory Commission seeking authorization of this transaction under Section 203 of the Federal Power Act. (*See* FERC Docket No. EC15-______, *Joint Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Action and Confidential Treatment*.)

through its several wholly-owned subsidiaries owns a seventy-five percent (75%) interest in Saranac Power. After the Transaction, BHE Geothermal would continue to own the same seventy-five percent (75%) indirect interest in Saranac Power, but would also own a five percent (5%) direct interest in the limited partnership. No new owners will be brought into the ownership structure and no changes will occur in the management or operation of the facility.

For the reasons described below, the Commission should find that the transfer is not subject to review under Section 70 because the Transaction involves the transfer of less than ten percent (10%) of the ownership interests to a current upstream owner and will not result in a change in management or control of Saranac Power. The Transaction will not affect retail customers in New York State, or result in the creation of horizontal or vertical market power. If the Commission concludes that PSL Section 70 review is required, Saranac Power requests that the Commission approve the Transaction.

BACKGROUND

Saranac Power owns a 252 MW natural gas-fired electric plant located in Plattsburgh, New York (the Saranac Facility). By Order dated March 15, 1996 in Case 96-S-0054, the Commission granted Saranac Power a Certificate of Public Convenience and Necessity (CPCN).[3] Saranac Power sells electricity at wholesale as an exempt wholesale generator (EWG) under the

[3] Case 96-S-0054, Saranac Power Partners, L.P., *Order Issuing Certificate of Public Convenience and Necessity* (Issued March 15, 1996).

Public Utility Holding Company Act of 2005. By Order dated June 19, 2009 in Case 09-M-0251, the Commission granted Saranac Power's petition for lightened regulation. [4]

In addition to the Saranac Facility, Saranac Power is the sole owner of the corporate interests of its direct subsidiary North Country Gas Pipeline Corporation, a New York corporation (North Country), which, owns and operates an intrastate gas pipeline with a capacity of approximately 100 dekatherms per day (the Pipeline Facility). The Pipeline Facility runs approximately 22 miles from an interconnection with TransCanada Pipelines Limited in Napierville, Quebec, Canada, to Plattsburgh, New York, where it interconnects with the Saranac Facility. By Order dated February 3, 1993, in Case 92-M-0322, the Commission granted North Country an exemption from the provisions of Article 4 of the PSL, except those affecting matters of public safety.[5]

THE PARTIES AND OTHER RELEVANT ENTITIES.

Saranac Power Partners, L.P.

Saranac Power is a Delaware limited partnership that owns and operates the Saranac Facility. The Saranac Facility is interconnected with the transmission system operated by the New York Independent System Operator, Inc. (NYISO). Saranac Power has been authorized by the Federal Energy Regulatory Commission (FERC) to sell energy, capacity and ancillary services at market-based rates.[6] Saranac Power is owned by the following entities in the percentages shown: TIFD, a Delaware Corporation and a subsidiary of General Electric Capital

[4] *See* Case 09-M-0251, Saranac Power Partners, L.P., *Application for a Certificate of Public Convenience and Necessity, Petition for an Order Providing for Lightened Regulation, and Motion for Expedited Proceeding, Order Providing for Lightened Regulation of an Electric Corporation and Making Findings on Steam Corporation Regulation*, (Issued June 19, 2009).

[6] *See* Saranac Power Partners, L.P., FERC Docket No. ER09-708-000 (April 30, 2009) (unreported).

Corporation (5%); OGPA Saranac Partner One, LLC, a Delaware limited liability company (OPGA 1) (10%); OGPA Saranac Partner Two, LLC, a Delaware limited liability company, (OPGA 2) (10%); and Saranac Energy Company, Inc., a Delaware corporation (Saranac Energy) (75%).[7] Saranac Energy holds one hundred percent (100%) of the general partnership interests of Saranac Power with full control over the day-to-day operations of the Saranac Facility.

Saranac Energy, in turn is a wholly-owned, direct subsidiary of SECI Holdings, Inc., a Delaware corporation (SECI Holdings). SECI Holdings is a direct, wholly-owned subsidiary of CE Gen Power Corporation, a Texas corporation (CE Gen Power). CE Gen Power is a direct, wholly-owned subsidiary of FSRI Holdings, Inc., a Texas corporation (FSRI). FSRI is a direct, wholly-owned subsidiary of CE Generation LLC (CE Generation), which is, in turn, a direct, wholly-owned subsidiary of BHE Geothermal. OGPA 1 and OGPA 2 are both affiliates of Osaka Gas Energy America Corporation, an entity which is not otherwise affiliated with BHE Geothermal.

CE Generation is a Delaware limited liability company and, as noted, a direct, wholly-owned subsidiary of BHE Geothermal. CE Generation operates as a holding company for a number of direct and indirect subsidiaries that in turn own and operate various electric generation facilities predominantly located outside of New York State. In New York State, CE Generation's only asset is the indirect ownership of a seventy five percent (75%) interest in Saranac Power, which owns and operates the Saranac Facility.

Except for the indirect ownership interest in the Saranac Facility and the related Pipeline Facility, neither CE Generation nor any of its affiliates owns or controls other facilities for the

[7] Each of TIFD, OGPA 1 and OGPA 2 are limited partners and Saranac Energy is the general partners.

transmission or distribution of electric power or natural gas in New York State or within the NYISO control area.

BHE Geothermal is a Delaware limited liability company and a direct, wholly-owned subsidiary of BHE Renewables, LLC (BHE Renewables). BHE Geothermal is a holding company that owns a one hundred percent (100%) of the membership interests in CE Generation. BHE Geothermal's ownership interest in generating facilities is co-extensive with those of its subsidiary CE Generation, but once removed. Except for its indirect ownership of the Saranac Facility and the Pipeline Facility, neither BHE Geothermal nor any of its affiliates owns or controls any other facilities for the transmission or distribution of electric power or natural gas in New York State or within the NYISO.

BHE Renewables is a Delaware limited liability company that is a direct wholly-owned subsidiary of Berkshire Hathaway Energy Company (BHEC), an Iowa corporation. BHE Renewables was formed to acquire, own, operate, and invest in renewable energy facilities. BHEC is a holding company that is a consolidated subsidiary of Berkshire Hathaway Inc. (Berkshire Hathaway). In addition to its direct ownership of BHE Geothermal and its subsidiaries, including the Saranac Facility and the Pipeline Facility, BHE Renewables also has direct and indirect interests in approximately the following amount of generating capacity in the following control areas:

a. Approximately 1,900 MW of generating capacity interconnected to the transmission systems operated by the California Independent System Operator Corporation.

b. Approximately 81 MW of generating capacity interconnected to the transmission systems operated by the Midcontinent Independent System Operator, Inc.; and

c. Approximately 521 MW of generating capacity interconnected with the transmission systems operated by PJM.

In addition, BHEC has direct and indirect interests in the operation of two interstate natural gas pipelines located outside of New York State.

<u>TIFD III-A Inc.</u>

TIFD is an indirect, wholly-owned subsidiary of General Electric Company ("GE"). Through subsidiaries, GE is a passive owner of, and investor in, Saranac Power, through the limited partnership. GE's interest in Saranac Power is limited to its five percent (5%) limited partnership interest, which does not give it authority, directly or indirectly, to make or manage any sale of power from, or to otherwise control the operation of, the Saranac Facility.

<u>CORRESPONDENCE AND COMMUNICATION.</u>

Correspondence and communications concerning this filing should be directed to:

Robert D. Garman
Assistant General Counsel
BHE Geothermal, LLC
666 Grand Avenue, Suite 500
Des Moines, Iowa 50309
Telephone: (515) 281-2354
Email: RGarman@bherenewables.com

John W. Dax
The Dax Law Firm, P.C.
54 State Street, Suite 805
Albany, New York 12207
Telephone: (518) 432-1002
Email: jdax@daxlawfirm.com

For TIFD:

Adam Wenner
Orrick, Herrington & Sutcliffe, LLP
1152 15th Street, NW
Washington DC 20005
Telephone: (202)-339-8515
Email: awenner@orrick.com

Amy Fisher
800 Long Ridge Road
Stamford, Connecticut 06927
Telephone: (203) 357-4417
Email: Amy.Fisher@ge.com

DISCUSSION

I. THE COMMISSION SHOULD DISCLAIM PSL SECTION 70 AUTHORITY OVER THE TRANSACTION.

The Transaction will result in no change to the corporate structure of Saranac Power, or the management or operation of the Saranac Facility. The Transaction consists entirely of the transfer of limited partnership interests in Saranac Power from one existing direct owner to another existing indirect owner, wherein BHE Geothermal will acquire from TIFD direct ownership of five percent (5%) of the limited partnership interests in Saranac Power, while retaining its existing seventy-five percent (75%) indirect ownership interest. After consummation of the Transaction, Saranac Power will remain an indirect subsidiary of BHE Geothermal. BHE Geothermal will also be a direct owner of five percent (5%) of the limited partnership interests in Saranac Power. No additional owners will be brought into the ownership structure. No other changes in the upstream ownership of Saranac Power or the Saranac Facility will occur. Accordingly, the Transaction would not result in the transfer of assets or works within the meaning of PSL Section 70(1) or would otherwise be presumed exempt from further review because it constitutes a transfer of less than ten percent (10%) of the ownership interests in a lightly regulated, wholesale merchant generating facility, without a consequent change of control.

Section 70(1) of the PSL requires Commission approval for transfers of ownership interests in jurisdictional electric plant. The Commission, however, has declared that such review and approval are not required where, as here, the transaction (i) involves the transfer of less than ten percent (10%) of the ownership interests in a generation facility, other than common stock, and (ii) no change in ownership control will occur.[8] However, although the Transaction involves the transfer of only five percent (5%) of the limited partnership interests in Saranac Power and will result in no change in ownership control of the jurisdictional electric corporation, Saranac Power is mindful of the Commission's observation in its *Order Establishing Presumption* at Footnote 7 that:

> Once the 10% ownership level in an electric corporation is exceeded, each additional acquisition of ownership interests in that electric corporation by that owner would raise anew the question of the need for PSL §70(1) review and approval.

(*Id.* at 6).

Here BHE Geothermal's ownership interests will increase from its seventy-five percent (75%) indirect ownership to include an additional five percent (5%) direct ownership interest. Nevertheless, the Transaction will not bring any new direct or indirect owners into Saranac Power's corporate structure. Nor will the Transaction result in an increase in ownership or market concentration that could create or enhance horizontal market power. The Transaction will not increase the amount of electric generating capacity under the buyer's or buyer's affiliates' control. Neither BHE Geothermal nor its affiliates will acquire control of additional generating capacity in the NYISO or adjoining control areas. Because the transfer merely adds to the ownership position of the existing controlling entity, the Transaction cannot create either

[8] Case 08-M-0659 *et al.*, Proceeding on Motion of the Commission Regarding Regulation of Owners of Stock Interests in Electric and Steam Corporations, *Order Establishing Presumption and Closing Proceedings Without Prejudice* (September 21, 2010). In establishing the presumption, the Commission stated:

> To assist entities in deciding when PSL §70 adheres to a transaction, it will be presumed that a transfer of less than 10% of the ownership interests in a generation facility, other than common stock, does not require our review or approval under PSL §§70(1). It is appropriate to apply the 10% ownership level, used in PSL §70(4) to trigger review of common stock acquisitions, to the transfer of ownership interests that would be presumed outside the scope of PSL §70(1) because a change in ownership control would not have occurred.

horizontal or vertical market power in New York State or result in potential harm to New York ratepayers.

Saranac Power is a lightly regulated EWG that owns and operates the Saranac Facility, which it will continue to own and operate after consummation of the Transaction.[9] Its share of the NYISO market is *de minimis* (less than one percent [1%]).[10] The Transaction relates only to the transfer of five percent (5%) of the limited partnership interests in Saranac Power.[11] The Transaction will not result in any change in the role of Saranac Power as the operator of the Saranac Facility and will not result in any adverse changes to the financial qualifications or technical qualifications of Saranac Power. No physical changes will be made to the Saranac Facility and there will be no changes made to the daily operations as a result of the Transaction. Accordingly, the Transaction will not increase the potential for horizontal power within either the PJM or the NYISO control areas.

Nor will the Transaction create vertical market power because Saranac Power has no captive ratepayers and operates only in a competitive market and neither BHE Geothermal nor any of its affiliates owns any electric or gas utilities serving captive retail customers in New York. Therefore, the Transaction does not create any potential for harm to the interests of utility ratepayers in New York, nor create or enhance either vertical or horizontal power that could result in potential harm to New York ratepayers.

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[9] *See, e.g.*, Case 13-E-0476, Astoria Energy II LLC, Astoria Project Partners II LLC, SNC-Lavalin Generation, Inc. and Gulf Pacific Power LLC, *Declaratory Ruling on Review of an Ownership Interest Transfer Transaction* (Issued December 23, 2013) at 5.

[10] The Saranac Facility accounts for less than 0.7% of the generation in the NYISO market which equals approximately 37,925 MW. *See* http://www.nyiso.com/public/media_room/key_facts/index.jsp.

[11] *See, e.g.*, SUEZ Energy Astoria, LLC, Astoria Project Partners LLC, Astoria Energy LLC, and MyPower Corp., *Declaratory Ruling on Review of a Transfer Transaction* (Issued October 21, 2013) at 6.

The Commission has previously determined that BHE Geothermal's seventy-five percent (75%) indirect ownership interest in Saranac Power does not pose the potential for the exercise of either horizontal or vertical power.[12] Although the Commission's previous ruling involved application of the Wallkill Presumption rather than the ten percent (10%) presumption, the Commission specifically determined that BHE Geothermal's resulting ownership interest in Saranac Power would have no impact on market concentration, or enable the exercise of horizontal or vertical market power.[13] The Transaction does not alter the facts and reasoning relied upon by the Commission in its previous order.

For the foregoing reasons and, because the Transaction involves a transfer of only five percent (5%) of the limited partnership interests of a lightly regulated facility to an existing upstream owner, which affects no transfer of control of a lightly-regulated generation facility, the Commission should apply the ten percent (10%) presumption. Further, the Transaction will not result in additional market concentration in NYISO markets or create any potential for the exercise of market power, or otherwise harm the interests of captive New York ratepayers. Therefore, the Commission should forego review of the Transaction under PSL Section 70.

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[12] Case 14-M-0069, *Saranac Power Partners, L.P., Declaratory Ruling on Review of a Transfer Transaction* (May 9, 2014). In this previously approved transaction, BHE Geothermal (f/k/a MidAmerican Geothermal, LLC) acquired an additional fifty percent (50%) ownership interest in its subsidiary CE Generation, resulting in CE Generation becoming a wholly-owned subsidiary of BHE Geothermal.

[13] *Id.* at 4 states:

> Because [BHE Geothermal] is merely expanding the size of its already controlling interest in Saranac, the transaction does not cause market concentration in NYISO wholesale electric markets to increase; instead, market concentration remains the same. Since the share of NYISO markets [BHE Geothermal] held prior to this transaction was attributable only to Saranac, which was too small to enable it to exert anti-competitive influence over the state-wide NYISO market, [BHE Geothermal's] retention of that existing market share similarly will not enable it to exercise horizontal market power.

II. **IF THE COMMISSION DOES NOT DISCLAIM FURTHER REVIEW, IT SHOULD NEVERTHELESS APPROVE THE TRANSACTION BECAUSE THERE ARE NO MARKET POWER CONCERNS AND THE SARANAC POWER'S ASSETS WILL CONTINUE TO BE SAFELY OPERATED AFTER THE TRANSACTION IS CONSUMMATED.**

If the Commission determines that the ten percent (10%) presumption does not apply, Saranac Power requests that the Commission approve the Transaction. When reviewing a petition involving the disposition of lightly-regulated entities pursuant to PSL Section 70, the Commission evaluates whether: (i) the transaction will result in concentration of wholesale generation ownership that might enable the exercise of horizontal market power post-closing; (ii) the acquiring entity is affiliated with entities that own or control traditional public utilities, electric transmission facilities, or fuel inputs into generation that operates in markets affecting New York; and (iii) the assets involved will be safely and adequately operated.[14] As demonstrated above, the Transaction raises no concern under any of these considerations and thus should be approved.

III. **STATE ENVIRONMENTAL QUALITY REVIEW ACT**

A declaratory ruling issued by the Commission does not fall within the scope of actions addressed under the State Environmental Quality Review Act (SEQRA).[15] Therefore, if the Commission issues the requested declaratory ruling, SEQRA will not apply. If, however, the Commission declines to apply the ten percent (10%) presumption, the Transaction is appropriately classified as "unlisted" and requires SEQRA review. Part 1 of the SEQRA environmental assessment form has been prepared for that purpose (*see* **Attachment A**).

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[14] *See, e.g.,* Case 04-E-0789, Orion Power Holdings, Inc. and Great Lakes Power, Inc., *Order Approving Transfers and a Financing and Making Other Finding* (Issued September 22, 2004) at 14-15.

[15] *See* Article 8 of the New York Environmental Conservation Law, 6 NYCRR § 617 and 16 NYCRR § 7.

If the Commission reviews the Transaction under PSL Section 70, the Commission should, as lead agency, issue a negative declaration and undertake no further review. The Transaction relates only to the transfer of ownership interests in Saranac Power and will not change the operation of the Saranac Facility or otherwise result in an adverse environmental impact. The Saranac Power will continue to operate the Saranac Facility in accordance with its environmental permits and all applicable environmental laws and the Transaction will not affect any environmental permits or cause new environmental impacts. Therefore, a decision to issue a negative declaration and review would be appropriate.

CONCLUSION

For the above stated reasons, Saranac Power and TIFD respectfully request that the Commission issue a declaratory ruling finding that the Transaction satisfies the requirements of the ten percent (10%) presumption and, accordingly, may be consummated without the Commission's prior approval under PSL Section 70. Alternatively, the Commission should issue an order approving the Transaction.

Dated: April 7, 2015
Albany, New York

Respectfully submitted,

By: ______________________________

John W. Dax
William F. McLaughlin
THE DAX LAW FIRM, P.C
54 State Street, Suite 805
Albany, New York 12207
Telephone: (518) 432-1002
Facsimile: (518) 432-1028
Email: jdax@daxlawfirm.com
Attorneys for Saranac Power Partners, L.P. and BHE Geothermal, LLC

STATE OF NEW YORK
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Verified Petition of Saranac Power Partners, L.P. for a Declaratory Ruling Disclaiming the Need to Review a Transfer of a 5% Ownership Interest to an Existing Upstream Owner, or in the Alternative, an Order Approving the Transfer.	:	

VERIFICATION

STATE OF CALIFORNIA)
) SS:
COUNTY OF IMPERIAL)

I, ROBERT D. GARMAN, being duly sworn, deposes and says: I am the assistant general counsel of SARANAC ENERGY COMPANY, INC., a Delaware corporation, which corporation is the general partner of SARANAC POWER PARTNERS, INC., the petitioner herein; I have read the foregoing Verified Petition and know the facts presented therein with respect to SARANAC POWER PARTNERS, L.P., to be true and accurate based on the information and records available to me as the assistant general counsel of the company.

ROBERT D. GARMAN

Sworn to before me this
1 day of April, 2015

Notary Public

ERIN BRADLEY
Commission Number 781787
My Commission Expires
December 13, 2016