

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**JOINT PETITION OF CALPINE
CORPORATION AND ECP CONTROLCO, LLC
FOR A DECLARATORY RULING THAT
PUBLIC SERVICE LAW SECTION 70 DOES
NOT APPLY TO THE PROPOSED
TRANSACTION, OR IN THE ALTERNATIVE,
FOR APPROVAL OF THE PROPOSED
TRANSACTION PURSUANT TO SECTION 70 OF
THE PUBLIC SERVICE LAW**

Case 22-E-_____

JOINT PETITION

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Date: April 19, 2022

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JOINT PETITION

On September 15, 2017, Calpine Corporation (“Calpine”) and ECP ControlCo, LLC (“ECP” and together with Calpine, “Petitioners”) petitioned the Public Service Commission (the “Commission”) for a declaratory ruling pursuant to Part 8 of the Rules and Regulations of the Commission¹ that Section 70 of the Public Service Law (“PSL”) does not apply to a proposed transaction pursuant to which ECP would have an indirect ownership interest of Calpine, or alternatively, Commission approval of that proposed transaction under Section 70 (the “2017 Petition”).² In the 2017 Petition, the individual persons with control over ECP were identified in a simplified organizational chart attached to that petition as Exhibit 2-B (“ECP Managing

¹ 16 NYCRR Part 8.

² Case 17-E-0601, *Calpine Corp., and ECP ControlCo, LLC*, Joint Petition for a Declaratory Ruling that Public Service Law Section 70 Does Not Apply to the Proposed Transaction, or in the Alternative, for Approval of the Proposed Transaction Pursuant to Section 70 of the Public Service Law (Sept. 15, 2017) (“2017 Petition”).

Members”).³ The Commission granted the 2017 Petition on December 14, 2017, ruling that no further review was required under Section 70 (the “2017 Order”).⁴

In the proposed transaction described in this petition, which the Federal Energy Regulatory Commission (“FERC”) has approved,⁵ ECP seeks to add two individuals that were not previously ECP Managing Members (the “Proposed Transaction”). This petition also provides an update to the list of relevant generation assets with which ECP is affiliated in the New York Control Area (“NYCA”), all of which are either subject to the Commission’s lightened regulation or are exempt from the Commission’s jurisdiction under Section 70, and an update to the list of relevant generation assets with which ECP is affiliated in NYCA’s neighboring control areas.

As recognized and approved in the 2017 Order, ECP is an indirect owner of Calpine, which in turn, indirectly owns three lightly regulated wholesale merchant generating facilities—Bethpage Energy Center 3, LLC (“Bethpage 3”), CPN Bethpage 3rd Turbine, Inc. (“CPN Bethpage”) and TBG Cogen Partners (“TBG,” and together with Bethpage 3 and CPN Bethpage, the “Calpine Facilities”).⁶

Because Petitioners indirectly own only lightly regulated wholesale merchant generating facilities, Petitioners respectfully submit that the Proposed Transaction qualifies for the *Wallkill* presumption and request a declaratory order that Section 70 of the PSL does not apply.

³ *Id.* Each ECP Managing Member has a right to vote on certain day-to-day operating matters and other matters internal to ECP.

⁴ Case 17-E-0601, *Calpine Corp., and ECP ControlCo, LLC*, Declaratory Ruling on Transfer and Making Other Findings (Dec. 19, 2017) (“2017 Order”).

⁵ *ECP ControlCo, LLC*, 175 FERC ¶ 62,163 (2021).

⁶ *Id.* at 3; *see also* Case 04-E-1710, *Re TBG Cogen Partners*, Order Providing for Lightened Regulation (Mar. 17, 2005); Case 04-E-0884, *Re Bethpage Energy Center 3, LLC*, Order Providing for Lightened Regulation and Approving Financing (Sept. 23, 2004); Case 01-E-1730, *CPN Bethpage T1 Turbine*, Order Providing for Lightened Regulation (Mar. 22, 2002) (the “Calpine Lightened Regulation Orders”).

Alternatively, Petitioners request that the Commission approve the Proposed Transaction pursuant to Section 70 of the PSL. Petitioners also request that the lightened regulation and financing approvals of the Calpine Facilities continue after the Proposed Transaction.

Petitioners intend to complete the Proposed Transaction as soon as possible and thus respectfully request that the Commission grant expedited review of this Petition and a ruling granting the relief requested prior to or at the Commission's upcoming session on June 16, 2022.

I. DESCRIPTION OF PETITIONERS

A. The Calpine Entities

Calpine is a Delaware corporation whose shares were publicly traded on the New York Stock Exchange under the symbol "CPN" prior to the 2017 Petition. Calpine is engaged through its subsidiaries in the development, financing, acquisition, ownership, and operation of independent power production facilities, and the wholesale and competitive retail marketing of electricity and natural gas in the United States and Canada. Through various subsidiaries, Calpine owns, leases, and operates natural gas-fired and renewable geothermal power plants in the United States and Canada with an aggregate generating capacity of approximately 26,000 megawatts ("MW").

In the NYCA, Calpine indirectly owns three lightly regulated electric generating facilities that own or control a total of approximately 184 MW (summer) of generation capacity:

- **Bethpage Energy Center 3, LLC:** Bethpage 3 owns and operates a lightly regulated natural gas-fired generation facility (Bethpage Power Plant, Units 6-7) with a generating capacity of approximately 82 MW (summer) in Hicksville, New York (New York Independent System Operator, Inc. (“NYISO”) market; Long Island (“LI”) sub-market).⁷ Bethpage 3 is an exempt wholesale generator (“EWG”) under the Public Utility Holding Company Act of 2005.⁸
- **CPN Bethpage 3rd Turbine, Inc.:** CPN Bethpage owns and operates a lightly regulated natural gas-fired generation facility (Bethpage Power Plant, Unit 5) with a generating capacity of approximately 47 MW (summer) in Hicksville, New York (NYISO market; LI sub-market).⁹ CPN Bethpage is an EWG.¹⁰
- **TBG Cogen Partners:** TBG owns and operates a lightly regulated natural gas-fired generation facility (Bethpage Power Plant, Units 1-3) with a generating capacity of approximately 55 MW (summer) in Hicksville, New York (NYISO market; LI sub-market).¹¹ TBG is an EWG.¹²

Calpine also indirectly owns two alternate energy production facilities that are exempt from the Commission’s jurisdiction under Section 70 of the PSL¹³—KIAC Partners, with a generating capacity of approximately 123 MW (summer) and Nissequogue Cogen Partners, with a generating capacity of approximately 44.5 MW (summer)—and three energy services

⁷ Case 04-E-0884, *Re Bethpage Energy Center 3, LLC*, Order Providing for Lightened Regulation and Approving Financing (Sept. 23, 2004).

⁸ *See Bethpage Energy Ctr. 3, LLC*, 110 FERC ¶ 62,108 (2005) (granting EWG status); *Bethpage Energy Ctr. 3, LLC*, Docket No. ER04-1099-000 (Sept. 16, 2004) (unreported) (granting market-based rate authority).

⁹ Case 01-E-1730, *CPN Bethpage T1 Turbine*, Order Providing for Lightened Regulation (Mar. 22, 2002).

¹⁰ *See CPN Bethpage 3rd Turbine, Inc.*, 100 FERC ¶ 62,002 (2002) (granting EWG status); *CPN Bethpage 3rd Turbine, Inc.*, Docket No. ER02-1959-000 (Jul. 23, 2002) (unreported) (granting market-based rate authority).

¹¹ Case 04-E-1710, *Re TBG Cogen Partners*, Order Providing for Lightened Regulation (Mar. 17, 2005).

¹² *See TBG Cogen Partners*, 108 FERC ¶ 62,228 (2004) (granting EWG status); *TBG Cogen Partners*, Docket No. ER04-1100-000 (Sept. 16, 2004) (unreported) (granting market-based rate authority).

¹³ *See* N.Y. Pub. Serv. Law. §§ 2(2-b), 13 (defining “electric corporation” as excluding “alternate energy production facility”); *id.* § 70 (providing that Section 70 applies to only gas corporations and electric corporations).

companies that make retail sales of electricity and/or natural gas within the State of New York—Calpine Energy Solutions, LLC, Champion Energy Marketing LLC and North American Power and Gas, LLC.

Calpine does not own or control any traditional franchised utilities with captive customers, and neither it nor its affiliates own or control any transmission facilities other than the limited interconnection equipment necessary to connect their generating facilities to the transmission grid and limited and discrete transmission facilities located in California and New Mexico subject to a FERC-approved open access transmission tariffs (“OATT”). None of Calpine or any of its affiliates is a scheduling coordinator, reliability coordinator, electric or gas transmission or distribution provider or balancing authority within (or into) the NYCA or has control over the provision of fuels used in generation within the State of New York.

As set forth in Exhibit 1, Calpine currently owns various companies that own or control approximately 1,946.8 MW (summer) of generation capacity in the ISO New England Inc. (“ISO-NE”) control area and approximately 5,376.3 MW (summer) of generation capacity in the PJM Interconnection, L.L.C. (“PJM”) control area.¹⁴

Calpine is indirectly and wholly owned by Volt Parent, LP (“Volt Parent”), a limited partnership organized under Delaware law, as limited partner. Volt Parent, in turn, is directly and wholly owned by (i) Volt Parent, GP, as general partner, (ii) Access Industries, Inc. (“Access”), as

¹⁴ In addition, Calpine, through a different upstream owner, Canada Pension Plan Investment Board (as described below), is also affiliated with Pattern Energy Group LP, which owns generation facilities in NYCA, PJM, and ISO-NE. Other than its affiliation with Pattern, Calpine is not affiliated with any other entity, through an upstream owner different from ECP, that owns generation facilities in NYCA, PJM, or ISO-NE.

limited partner, (iii) CPPIB Calpine Canada Inc. (“CPPIB”),¹⁵ as limited partner, and (iv) various passive limited partner investors.¹⁶ Volt Parent, GP, in turn is indirectly and wholly owned by ECP.

ECP ControlCo, LLC

As stated in the 2017 Petition, ECP is a Delaware limited liability company owned by individual persons (referred to herein as the ECP Managing Members) that is focused on the development and acquisition of, and investment in, energy infrastructure assets, and related ownership, operation and management of these assets, including electric generation and inputs to electric generation in North America.¹⁷ And as approved in the 2017 Order, ECP indirectly owns and controls generation capacity in NYCA through its interest in Calpine.¹⁸

Since the 2017 Order, ECP continues to indirectly own or control only lightly regulated generation facilities and alternate energy production facilities, which are exempt from the Commission’s jurisdiction under Section 70 of the PSL.¹⁹ However, ECP’s generation assets in NYCA have changed in the following two respects: (1) ECP is no longer affiliated with Wheelabrator Westchester, L.P. and Wheelabrator Hudson Falls L.L.C.;²⁰ and (2) ECP is now

¹⁵ CPPIB is a wholly owned subsidiary of Canada Pension Plan Investment Board. *See* Case 18-E-0256, *Calpine Corp. and CPPIB Calpine Canada Inc.*, Declaratory Ruling on Transfer and Making Other Findings (July 18, 2018).

¹⁶ Access and CPPIB each holds more than 10% of the limited partnership interests in Volt Parent plus certain additional limited governance rights. *See id.*; Case 17-E-0805, *Calpine Corp. and Access Industries, Inc.*, Declaratory Ruling on Transfer and Making Other Findings (Feb. 27, 2018).

¹⁷ 2017 Petition at 5.

¹⁸ 2017 Order at 11.

¹⁹ *See supra* n.13.

²⁰ *See* 2017 Petition at 5-6.

affiliated with nine small alternate energy production facilities identified in Exhibit 1.²¹

None of ECP or its individual owners owns or controls any traditional franchised utilities with captive customers, and neither it nor its affiliates own or control any transmission facilities other than limited and discrete equipment necessary to interconnect individual generating facilities to the transmission grid or limited and discrete transmission facilities used to interconnect generating facilities to the transmission grid that are subject to a FERC-approved OATT or that have waivers from the requirement to file an OATT. None of ECP or any of its affiliates is a scheduling coordinator, reliability coordinator, retail marketer, electric or gas transmission or distribution provider or a balancing authority within (or into) the NYCA or has control over the provision of fuels used in generation within the State of New York. Further, none of ECP's individual owners is employed or affiliated with, and does not hold the position of officer or director of any public utility with a franchised electric service territory.

As outlined in Exhibit 1, other than through Calpine, ECP currently indirectly owns approximately 20 MW of generation capacity in the PJM control area, and, other than through Calpine, does not own any company that owns or controls generation capacity in the ISO-NE control area.

In sum, since the 2017 Order, the changes to ECP's downstream ownership have been limited to the following: (1) indirectly owning or controlling the nine, small alternate energy production facilities in NYCA through indirect ownership or control identified in Exhibit 1; (2) no longer owning or controlling the two Wheelabrator-affiliated alternate energy production facilities

²¹ As noted in the 2017 Petition, ECP held an interest Terawatt Holdings, LP, which in turn held 14.88% of the total outstanding shares of Dynegy Inc.'s ("Dynegy's") common stock, but ECP sold its interests prior to the closing of the proposed transaction contemplated in the 2017 Petition, such that "as of closing of the [proposed transaction contemplated in the 2017 Petition], ECP . . . indirectly own[ed] less than 10% of the outstanding shares of Dynegy's common stock." See 2017 Petition at 5 n.12.

in NYCA; and (3) no longer owning or controlling any generation facility in the ISO-NE control area.

II. DESCRIPTION OF THE PROPOSED TRANSACTION

Pursuant to the Proposed Transaction, which FERC has already authorized,²² ECP will add two individuals (Mr. Karp and Mr. Leininger) as ECP Managing Members. While this will result in a change in the composition of the individuals that comprise the ECP Managing Members, ECP will continue to be controlled by the ECP Managing Members, and there are no additional changes in control of Calpine. ECP will ultimately be controlled by the ECP Managing Members. None of the ECP Managing Members are affiliated with, nor hold or control, directly or indirectly with the power to vote, voting or equivalent securities in any electric generation facility, electric transmission facility, or any essential input to electricity products or electric power production, other than through ECP. Further, none of the ECP Managing Members are employed or affiliated with, or hold the position of officer or director of any public utility with a franchised electric service territory. Lastly, there will be no changes to the downstream ownership structure of ECP: Calpine will remain an indirect subsidiary of ECP and the day-to-day operations of the Calpine Facilities will remain the same.

Updated organizational charts depicting the change in the upstream ownership of the Calpine Facilities since the 2017 Order (*i.e.*, Exhibit 2-B of the 2017 Petition), including the Proposed Transaction, are included in Exhibit 2.

²² *ECP ControlCo, LLC*, 175 FERC ¶ 62,163.

III. DISCUSSION

A. The Proposed Transaction Qualifies for the *Wallkill* Presumption

Section 70(1) of the PSL provides that “[n]o . . . electric corporation shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the commission.” PSL Section 70(1) has been construed to apply to situations in which a person or corporation purchases a sufficient interest in an electric corporation, through the acquisition of stock or otherwise, to achieve control of the electric corporation.²³ Section 70(4) of the PSL prohibits a company or limited liability partnership from acquiring more than 10% “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.

The Commission has determined that Section 70 of the PSL applies to stock acquisitions and ownership transfers occurring at a holding company (*i.e.*, upstream) level.²⁴ However, in *Wallkill*, the Commission determined that the Commission presumes that Section 70 oversight would not apply to the upstream transfer of ownership interests in lightly regulated wholesale electric generation facilities where, as here, there is little potential for harm to captive ratepayers:

[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

²³ See, e.g., Case 07-E-1385, *Calpine Corp. and LS Power Development*, Declaratory Ruling on Review of Stock Transfer and Acquisition Transactions (Jan. 22, 2008) (“Calpine/LS Power Ruling”).

²⁴ See Case 91-E-0350, *Wallkill Generating Company, L.P.*, Order Establishing Regulatory Regime, (Apr. 11, 1994) (“*Wallkill* Order”); Case 09-E-0470, *T. Rowe Price Associates, Inc.*, Declaratory Ruling on Review of Stock Transfer Transactions (Jul. 21, 2009); Case 08-E-0850, *Harbinger Capital Partners Master Fund I, Ltd. et al.*, Declaratory Ruling on Review of Stock Transfer Transactions (Sept. 19, 2008); Calpine/LS Power Ruling.

is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption.²⁵

The Commission has since interpreted the *Wallkill* presumption to mean that no Section 70 regulation would adhere to any upstream stock acquisition or transfer of ownership interests unless a potential for the exercise of horizontal or vertical market power sufficient to override the presumption would arise as a result of the transfer.²⁶ The Proposed Transaction similarly qualifies for the *Wallkill* presumption. Furthermore, the Proposed Transaction will not result in the potential to exercise either vertical or horizontal market power.

The Proposed Transaction also does not raise any horizontal market issues. The total resource capability in the NYCA for the summer of 2021 was approximately 41,071 MW.²⁷ As described above, ECP, through Calpine, owns or controls 351.5 MW (summer) of installed capacity, and through its other affiliates, owns or controls 57 MW (summer) of installed capacity, for a total of approximately 408.5 MW (summer) installed generating capacity in NYCA, or just less than 1% of the NYCA's installed capacity. Neither of the two new ECP Managing Members own or control any interest in generation facilities in NYCA. Consequently, following the Proposed Transaction, ECP will continue to indirectly own or control just less than 1% of the NYCA's installed capacity following the Proposed Transaction, which is the same percentage

²⁵ *Wallkill* Order at 9-10.

²⁶ See, e.g., Case 15-E-0462, *MACH Gen, LLC et. al*, Declaratory Ruling on Review of a Merger Transaction (Oct. 20, 2015) (“MACH Gen Ruling”); Case 14-M-0491, *EIF Management, LLC et. al*, Declaratory Ruling on Review of an Acquisition Transaction (Jan. 13, 2015) (“EIF Management Ruling”); Case 03-E-1136, *Sithe Energies, Inc., et al.*, Declaratory Ruling on Review of Ownership Transactions (Oct. 28, 2003); Case 02-E-1184, *Sithe Energies, Inc. and Apollo Energy LLC*, Declaratory Ruling on Review of Stock Transaction (Nov. 26, 2002); Case 01-E-1680, *Reliant Resources, Inc. et al.*, Declaratory Ruling on Review of Stock Transfer (Dec. 20, 2001); Case 00-E-1585, *Sithe Energies, Inc. et al.*, Order on Review of Stock Transfer and Other Transactions (Nov. 16, 2000); *Wallkill* Order.

²⁷ *New York Independent System Operator, Inc.*, “2021 Load and Capacity Data” (April 2021) at p. 3.

share of installed capacity ECP and its affiliates owned or controlled following the proposed transaction approved by the Commission in the 2017 Order and which the Commission in the 2017 Order held was below levels previously found insufficient to create market power.²⁸ Moreover, since the 2017 Order, ECP's indirect ownership or control over generating capacity continues to have no concentrating effect in the NYC or LI sub-markets (Zones K and J), where the Calpine Facilities are located, because ECP's other interests in generating capacity are not in those sub-markets.²⁹

The Proposed Transaction also will not raise horizontal market power issues in either of the two neighboring control areas, ISO-NE and PJM. In PJM, the total reported installed generation capacity in 2021 was approximately 186,593 MW.³⁰ As described above, ECP indirectly owns or controls approximately 20 MW of installed generation capacity in PJM, and through Calpine, owns or controls an additional approximately 5,376.3 MW (summer) of installed generation capacity in PJM, for a total of 5,396.3 MW of installed generation capacity, or approximately 2.9% of the total installed generation capacity in PJM. Neither of the two new ECP Managing Members own or control any interest in generation facilities in PJM. Consequently, ECP will continue to indirectly own or control approximately 2.9% of the total installed generation capacity in PJM following the Proposed Transaction, which amounts to a percentage share of the PJM control area that is smaller than the amount ECP owned or controlled following the 2017

²⁸ See 2017 Order at 11; 2017 Petition at 10. In fact, the amount of generating capacity owned or controlled by ECP through its affiliates is approximately 10 MW (summer) less than the amount ECP owned or controlled following the proposed transaction approved by the 2017 Order. See 2017 Petition at 10.

²⁹ See *infra* Exhibit 1.

³⁰ See 2021 State of the Market Report for PJM, Monitoring Analytics, LLC (March 10, 2022), at p. 5 Table 1, available at https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2021/2021-som-pjm-vol1.pdf.

Order, and does not raise horizontal market power concerns in PJM.³¹ In any event, there are transmission constraints that limit the amount of power that can be transferred from PJM into NYCA.³²

With respect to the ISO-NE control area, the 2021 summer seasonal claimed capability in ISO-NE was 31,493 MW.³³ As described above, ECP, through Calpine, owns or controls approximately 1,946.8 MW (summer) of installed capacity in ISO-NE, or approximately 6.2% of the total installed generation capacity in ISO-NE. Neither of the two new ECP Managing Members own or control any interest in generation facilities in ISO-NE. Consequently, ECP will continue to indirectly own or control approximately 6.2% of the total installed generation capacity in ISO-NE following the Proposed Transaction, which also amounts to a percentage share of the ISO-NE control area that is smaller than the amount ECP owned or controlled following the 2017 Order, and does not raise horizontal market power concerns in ISO-NE.³⁴ Further, transmission constraints limit the amount of power that can be transferred from ISO-NE into the NYCA,³⁵ and

³¹ See 2017 Petition at 11 (stating that post-transaction, ECP would own 3.2% of the total installed generation capacity in PJM); 2017 Order at 12 (holding that the proposed transaction would not raise market power concerns).

³² See Case 10-E-0454, *GDF SUEZ, S.A. et al.*, Declaratory Ruling on Review of a Merger Transaction, at 5-6 (Nov. 22, 2010) (“GDF Suez Ruling”) (finding a 10.1% share in ISO-NE insufficient to raise market power concerns within New York because of transmission constraints); Case 11-E-0245, *Exelon Corp. et al.*, Declaratory Ruling on Review of a Stock Transfer Transaction, at 11-12 (Dec. 20, 2011) (finding that a 21.3% share of PJM Classic market adjacent to New York insufficient to raise market power concerns within New York because of transmission constraints).

³³ ISO-New England Inc., 2021-2030 Forecast Report of Capacity, Energy, Loads and Transmission (Apr. 2021), available at <https://www.iso-ne.com/system-planning/system-plans-studies/celt>.

³⁴ See 2017 Order at 12 (holding that post-transaction, ECP and its affiliates would own approximately 6.9% of the capacity available in the ISO-NE market and that this level is insufficient to raise market power concerns).

³⁵ See GDF Suez Ruling at 5-6.

as stated in the 2017 Petition and recognized in the 2017 Order, “the potential ability of these assets to manipulate prices in New York is moderated by . . . asset commits in the ISO-NE market.”³⁶

The Proposed Transaction does not raise any vertical market issues because Petitioners and their affiliates, and the ECP Managing Members, do not have any ownership interests in any electric or gas transmission or distribution providers or entities that can exercise control over the provision of fuels used in generation within the NYCA. While Calpine is affiliated with energy service companies that engage in competitive retail marketing and wholesale trading, none of these entities have any captive customers, and these affiliates do not possess market power in the competitive wholesale markets that operate within the NYCA (*e.g.*, the NYISO markets). Thus, there is no threat that the parties to the Proposed Transaction will be able to benefit from the market power of any transmission or distribution utility subject to cost-based regulation by the Commission. The Commission has held that the affiliations between the lightly regulated electric corporations and any retail energy suppliers or power marketers can be adequately supervised under Section 110 of the PSL.³⁷

The Proposed Transaction has no effects on any other potential means for exercising any other form of market power within New York, and does not otherwise pose the potential for harm to captive New York ratepayers.

In sum, Petitioners respectfully submit that the Proposed Transaction, an addition of two individual persons owning and controlling the ultimate upstream owner of lightly regulated

³⁶ 2017 Order at 12; 2017 Petition at 11 (noting that “generation affiliated with ECP and Calpine in ISO-NE that clears the ISO-NE Forward Capacity Market is required to be offered into both the day-ahead and real-time energy markets in ISO-NE, which would significantly limit ECP’s ability to participate in the NYISO energy markets with its affiliated ISO-NE generation”).

³⁷ *See, e.g.*, MACH Gen Ruling at 5; EIF Management Ruling at 4 (citing Case 11-E-0245, *Exelon Corporation*, Declaratory Ruling on Review of a Stock Transfer Transaction, at 14 (Dec. 20, 2011)).

wholesale merchant generating facilities with no potential for harm to captive ratepayers, qualifies for treatment under the *Wallkill* Order, and the Commission need not review the Proposed Transaction further.

B. Continued Lightened Regulation and Financial Approval

For all of the reasons set forth in the Lightened Regulation Orders and subsequent Commission decisions, the Calpine Facilities should continue to be subject to lightened regulation, and the existing financing approval issued for the Calpine Facilities should continue following consummation of the Proposed Transaction.³⁸ The Calpine Facilities will continue to be owned and operated as wholesale power plants. No changes to the day-to-day operations of the Calpine Facilities are contemplated as a result of the Proposed Transaction. Because Bethpage 3, CPN Bethpage, and TPG will continue to own and operate the Bethpage Power Plant Units 6-7, Unit 5, and Units 1-3, respectively, and will continue to participate exclusively in the wholesale generation market, their status as lightly regulated entities should continue.

In past decisions, the Commission has determined that lightly regulated entities continue to be lightly regulated following the consummation of corporate transactions or reorganizations transferring their direct or indirect ownership interests in the New York competitive electric generating facilities.³⁹ Accordingly, following the consummation of the Proposed Transaction,

³⁸ See Case 04-E-1710, *Re TBG Cogen Partners*, Order Providing for Lightened Regulation (Mar. 17, 2005); Case 04-E-0884, *Re Bethpage Energy Center 3, LLC*, Order Providing for Lightened Regulation and Approving Financing (Sept. 23, 2004); Case 01-E-1730, *CPN Bethpage T1 Turbine*, Order Providing for Lightened Regulation (Mar. 22, 2002).

³⁹ See, e.g., MACH Gen Ruling, at 8.; Case 14-E-0022, *MACH Gen, LLC and New Athens Generating Company LLC*, Order Approving Transfers of Ownership Interests and Making Other Findings, at 11 (Apr. 25, 2014); Case 07-E-0288, *Astoria Energy LLC, SCS Energy, LLC, and Suez Energy Development NA, Inc.*, Declaratory Ruling on Review of an Ownership Interest Transfer and Making Other Findings, at 6 (May 22, 2007).

the Commission should follow its precedent and continue the lightened regulation of the Calpine Facilities consistent with the Lightened Regulation Orders and subsequent Commission decisions.

C. Alternatively, the Commission Should Approve the Proposed Transaction

In the alternative, if the Commission finds that review under Section 70 of the PSL is required for the Proposed Transaction, Petitioners request that the Commission approve the Proposed Transaction pursuant to that section.⁴⁰ The Proposed Transaction satisfies the public interest requirement in Section 70 and will not result in vertical or horizontal market power as discussed above. Accordingly, the Proposed Transaction is in the public interest and should be approved.

D. Other Approvals

The only other approval required for the Proposed Transaction is from FERC under Section 203 of the Federal Power Act,⁴¹ which as stated above, has been obtained.⁴²

⁴⁰ To assist the Commission in fulfilling its responsibilities under the State Environmental Quality Review Act, Petitioners have included a short Environmental Assessment Form. A proposed SAPA notice, as required by 16 NYCRR § 3.5(i), is also attached.

⁴¹ 16 U.S.C. § 824b(a)(1) (2018).

⁴² *ECP ControlCo, LLC*, 175 FERC ¶ 62,163.

IV. CONCLUSION

Petitioners respectfully request that the Commission review this Petition in an expedited manner and issue a declaratory ruling prior to June 16, 2022 that: (i) Section 70 of the PSL does not apply to the Proposed Transaction; and (ii) the lightened regulation and financing approvals of the Calpine Facilities will continue after the Proposed Transaction. Alternatively, Petitioners request that the Commission approve the Proposed Transaction pursuant to Section 70 of the PSL prior to June 16, 2022.

Respectfully submitted,

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LIST OF EXHIBITS

Exhibit 1 – Calpine and ECP Affiliates in Adjacent Markets

Exhibit 2 – Organizational Charts

Exhibit 3 – Short Environmental Assessment Form

Exhibit 4 – SAPA Notice of Proposed Rulemaking

EXHIBIT 1:
Calpine and ECP Affiliates in New York and Adjacent
Markets

Calpine Corporation – New York and Adjacent-Market Electricity Assets

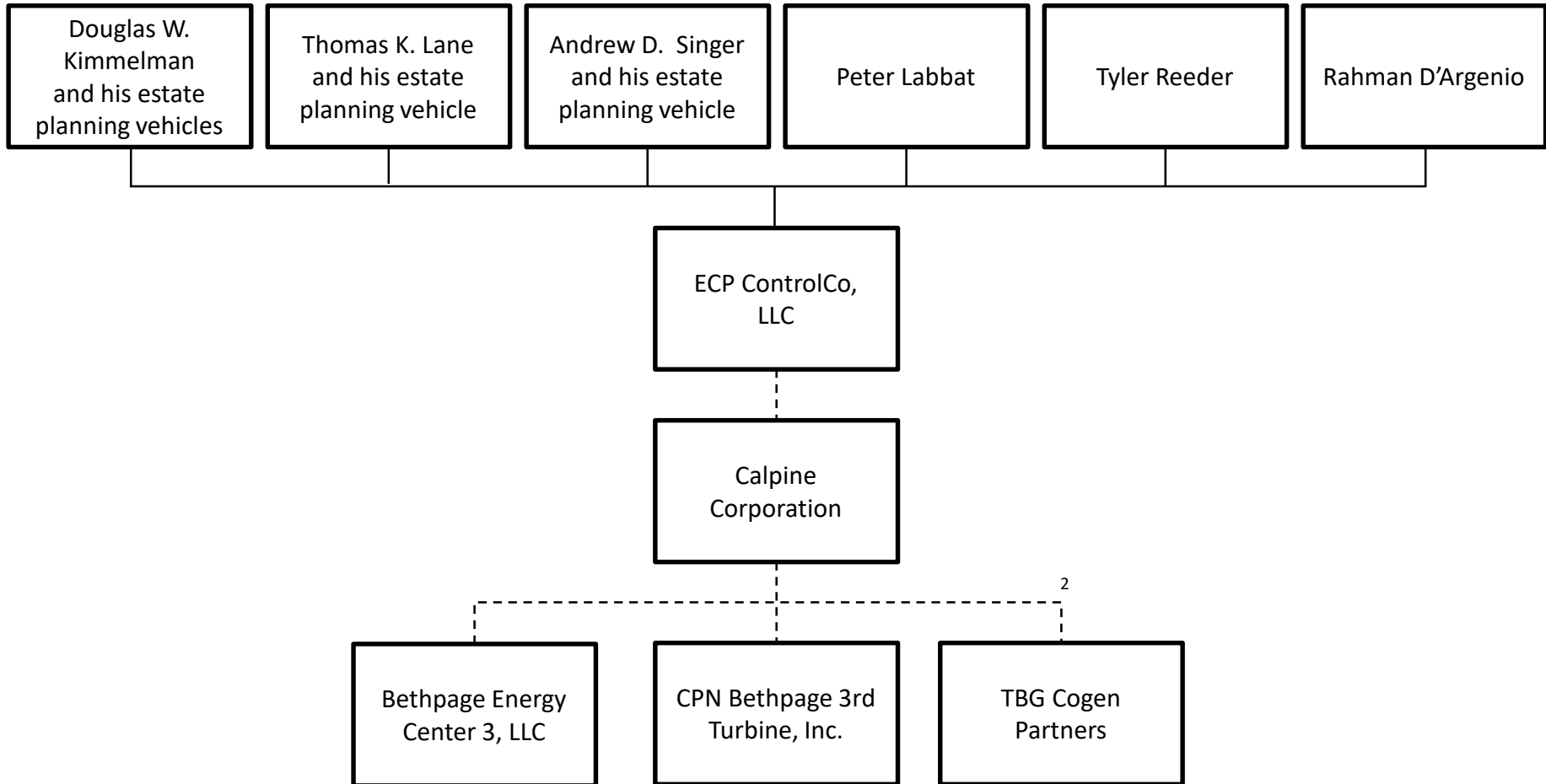
RTO/ Market	Zone/ Submarket	Entity	Plant Name	Total Capacity (MW) (summer)
ISO-NE	CMA/NEMA	Calpine Fore River Energy Center, LLC	Fore River	726.0
ISO-NE	ME	Westbrook Energy Center, LLC	Westbrook Energy Center	534.8
ISO-NE	NH	Granite Ridge Energy, LLC	Granite Ridge Energy	678.0
ISO-NE	ME	Calpine Northeast Development, LLC	Westbrook Blackstart	8.0
Subtotal, ISO-NE				1,946.8
PJM	East	Calpine Mid-Atlantic Generation, LLC	Bayview	12.6
PJM	East	Calpine Bethlehem, LLC	Bethlehem 1-7	939.0
PJM	5004/5005	Calpine Bethlehem, LLC	Bethlehem 8	195.0
PJM	East	Calpine New Jersey Generation, LLC	Carll's Corner	78.6
PJM	East	Calpine Mid-Atlantic Generation, LLC	Christiana	50.0
PJM	East	Calpine Mid-Atlantic Generation, LLC	Crisfield	10.4
PJM	East	Calpine New Jersey Generation, LLC	Cumberland 1	86.9
PJM	East	Calpine New Jersey Generation, LLC	Cumberland 2	96.5
PJM	East	Calpine Vineland Solar, LLC	Vineland Solar	4.1
PJM	East	Calpine Mid-Atlantic Generation, LLC	Delaware City	18.0
PJM	5004/5005	Calpine Mid Merit, LLC	York Energy Center	545.0
PJM	5004/5005	Calpine Mid Merit II, LLC	York Energy Center 2	827.7
PJM	East	Calpine Mid-Atlantic Generation, LLC	Edge Moor Units 3-5, 10	725.0
PJM	East	Calpine Mid-Atlantic Generation, LLC	Hay Road Units 1-8	1,136.0
PJM	East	Calpine New Jersey Generation, LLC	Mickleton	63.7
PJM	East	Calpine New Jersey Generation, LLC	Sherman Avenue	86.9
PJM	East	Calpine Mid-Atlantic Generation, LLC	Tasley	29.9
PJM	East	Calpine Mid-Atlantic Generation, LLC	West Station	15.0
PJM	PJM	Zion Energy LLC	Zion Energy Center	456.0
Subtotal, PJM				5,376.3
NYISO	Zone K (LI)	Bethpage Energy Center 3, LLC	Bethpage Power Plant, Units 6-7	82.0
NYISO	Zone K (LI)	CPN Bethpage 3rd Turbine, Inc.	Bethpage Power Plant, Unit 5	47.0
NYISO	Zone K (LI)	TBG Cogen Partners	Bethpage Power Plant, Units 1-3	55.0
NYISO	Zone J (NYC)	KIAC Partners	Kennedy International Airport Cogen	123
NYISO	Zone K (LI)	Nissequogue Cogen Partners	Stony Brook Power Plant	44.5
Subtotal, NYISO				351.5

ECP ControlCo, LLC – New York and Adjacent-Market Electricity Assets

RTO/ Market	Zone/Submarket	Entity	Plant Name	Total Capacity (MW) (summer)
PJM	East	Hazle Spindle, LLC	Hazle Spindle	20.0
Subtotal, PJM				20.0
NYISO	Zone F	Stephentown Spindle, LLC	Stephentown Spindle	20.0
NYISO	Zone E	NSF Chaumont Site 1 LLC	NSF Chaumont Site 1	5.0
NYISO	Zone E	NSF Chaumont Site 2 LLC	NSF Chaumont Site 2	3.0
NYISO	Zone E	NSF Chaumont Site 3 LLC	NSF Chaumont Site 3	5.0
NYISO	Zone E	NSF Chaumont Site 4 LLC	NSF Chaumont Site 4	5.0
NYISO	Zone E	NSF Chaumont Site 5 LLC	NSF Chaumont Site 5	5.0
NYISO	Zone C	Cicero Energy Storage 1 LLC	Cicero Energy Storage 1	5.0
NYISO	Zone C	Cicero Energy Storage 2 LLC	Cicero Energy Storage 2	5.0
NYISO	Zone B	NSF Parma Site 2 LLC	NSF Parma Site 2	4.0
Subtotal, NYISO				57.0

EXHIBIT 2:
Organizational Charts

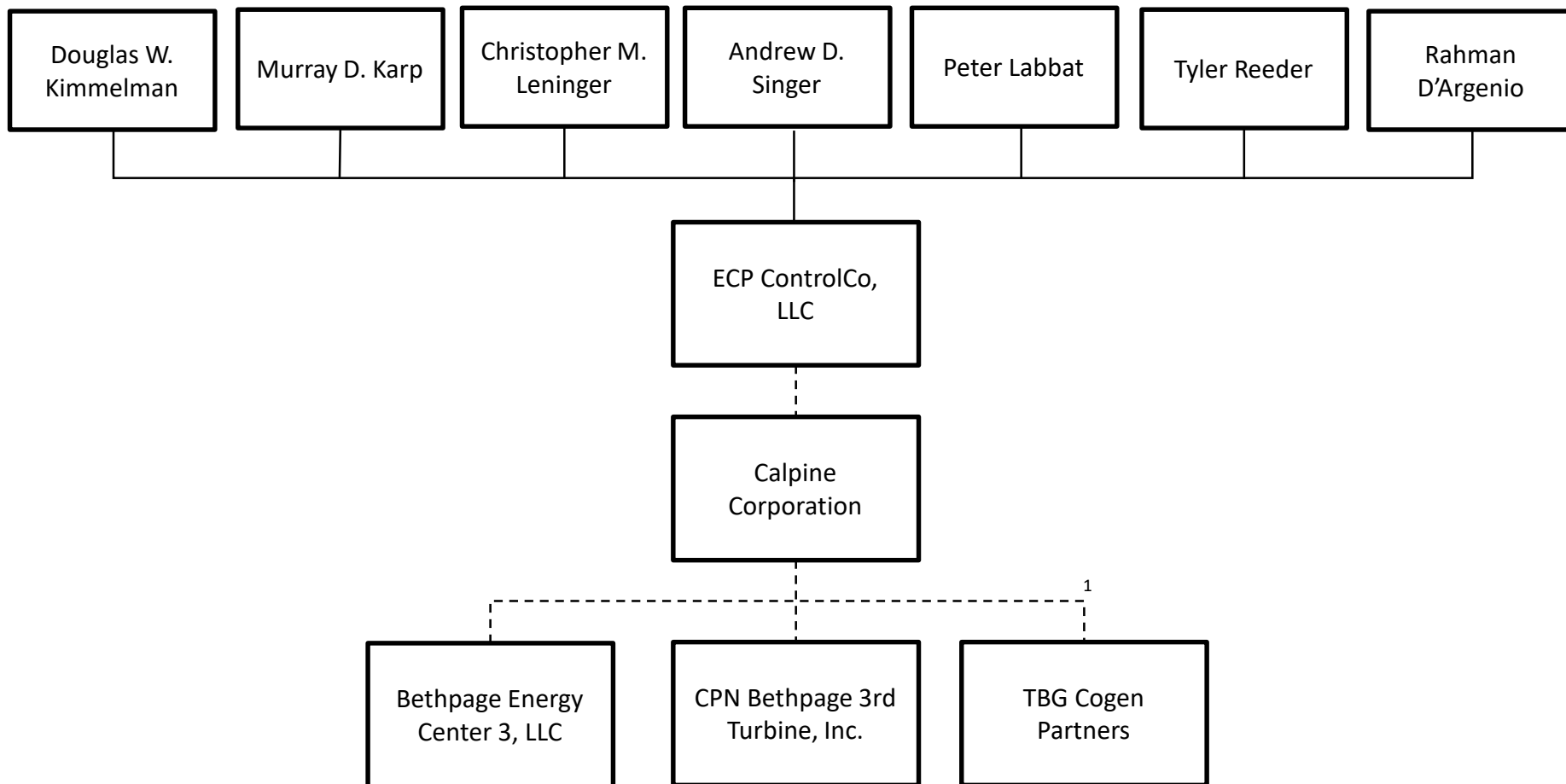
**Exhibit 2-A:
Simplified Organizational Chart from the 2017
Petition¹**



¹ Exhibit 2-A corresponds to Exhibit 2-B in the 2017 Petition.

² Dotted lines indicate indirect interests.

**Exhibit 2-B:
Simplified Organizational Chart following the
Proposed Transaction**



¹ Dotted lines indicate indirect interests.

EXHIBIT 3:
Short Environmental Assessment Form

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

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

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

Part 1 – Project and Sponsor Information				
Name of Action or Project:				
Project Location (describe, and attach a location map):				
Brief Description of Proposed Action:				
Name of Applicant or Sponsor:			Telephone:	
			E-Mail:	
Address:				
City/PO:		State:	Zip Code:	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?			NO	YES
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.			<input type="checkbox"/>	<input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency?			NO	YES
If Yes, list agency(s) name and permit or approval:			<input type="checkbox"/>	<input type="checkbox"/>
3. a. Total acreage of the site of the proposed action? _____ acres b. Total acreage to be physically disturbed? _____ acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres				
4. Check all land uses that occur on, are adjoining or near the proposed action: <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify): </div> <div style="margin-top: 5px;"><input type="checkbox"/> Parkland</div>				

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

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
a. Will storm water discharges flow to adjacent properties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor/name: <u>Bonnie Schwartz</u> Date: <u>4/18/22</u>		
Signature: <u><i>Bonnie Schwartz</i></u> Title: <u>Vice President, Environmental Health & Safety</u>		

EXHIBIT 4:
SAPA Notice of Proposed Rulemaking

Attachment to SAPA Notice

1. *Proposed Action:*

The Public Service Commission (the “Commission”) is considering a petition by Calpine Corporation Inc. (“Calpine”), et al., for a declaratory ruling that the Commission need not review under Public Service Law (“PSL”) Section 70, a proposed transaction pursuant to which ECP ControlCo, LLC (“ECP”) will add two individuals with control over ECP (the “Proposed Transaction”). Calpine exercises ownership control over Bethpage Energy Center 3, LLC, CPN Bethpage 3rd Turbine, Inc. and TBG Cogen Partners (collectively, the “Calpine Facilities”). In the alternative, Calpine, et al., requests expedited Commission approval, pursuant to PSL Section 70 and any other statutory or regulatory provision deemed applicable, to consummate the Proposed Transaction. Calpine, et al., requests confirmation that the Proposed Transaction will have no impact on the status of the Calpine Facilities as lightly regulated entities.

8. *Substance of proposed rule:*

The Public Service Commission is considering a petition filed on April 19, 2022 addressing review of the addition of two individuals with control over ECP ControlCo, LLC, which is the ultimate upstream owner of Bethpage Energy Center 3, LLC, CPN Bethpage 3rd Turbine, Inc. and TBG Cogen Partners. The Public Service Commission may adopt, reject or modify, in whole or in part, the relief proposed.

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**JOINT PETITION OF CALPINE
CORPORATION AND ECP CONTROLCO, LLC
FOR A DECLARATORY RULING THAT
PUBLIC SERVICE LAW SECTION 70 DOES
NOT APPLY TO THE PROPOSED
TRANSACTION, OR IN THE ALTERNATIVE,
FOR APPROVAL OF THE PROPOSED
TRANSACTION PURSUANT TO SECTION 70 OF
THE PUBLIC SERVICE LAW**

Case 22-E-_____

VERIFICATION

Jennifer Gray, being duly sworn according to law, upon her oath, deposes and says:

1. I am a Managing Director and Deputy General Counsel of ECP ControlCo, LLC ("ECP") and am authorized to make this Verification on behalf of ECP.
2. I have read the contents of the foregoing Petition and hereby verify that the statements therein contained as to the entities listed above are true and accurate to the best of my knowledge and belief.



Jennifer Gray
Managing Director & Deputy General
Counsel
ECP ControlCo, LLC

State of California
County of San Diego

On this 11 day of April 2022, before me, Jennifer Gray, Managing Director and Deputy General Counsel of ECP ControlCo, LLC, personally appeared who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

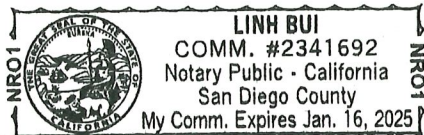
See attached

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

Subscribed and sworn to (or affirmed) before me on this April
day of 11, 2022, by Jennifer Gray

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

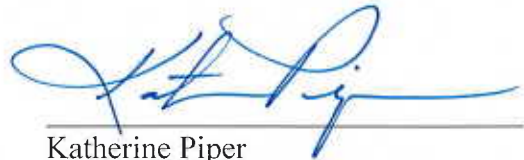
**JOINT PETITION OF CALPINE
CORPORATION AND ECP CONTROLCO, LLC
FOR A DECLARATORY RULING THAT
PUBLIC SERVICE LAW SECTION 70 DOES
NOT APPLY TO THE PROPOSED
TRANSACTION, OR IN THE ALTERNATIVE,
FOR APPROVAL OF THE PROPOSED
TRANSACTION PURSUANT TO SECTION 70 OF
THE PUBLIC SERVICE LAW**

Case 22-E-_____

VERIFICATION

Katherine Piper, being duly sworn according to law, upon her oath, deposes and says:

1. I am the Senior Vice President, General Counsel and Corporate Secretary of Calpine Corporation and am authorized to make this Verification on behalf of Calpine Corporation and its affiliates.
2. I have read the contents of the foregoing Petition and hereby verify that the statements therein contained as to the entities listed above are true and accurate to the best of my knowledge and belief.



Katherine Piper
Senior Vice President, General Counsel and
Corporate Secretary
Calpine Corporation



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF

On April 12, 2022, before me, Shaenine Turner, Notary Public, personally appeared Katherine Piper, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(seal)



Signature

Shaenine Turner