STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Verified Petition of Canandaigua Power Partners, LLC, Canandaigua Power Partners II, LLC and Carr Street Generating Station, L.P. for a Declaratory Ruling Regarding Corporate Reorganization, or, in the Alternative, an Approval Pursuant to Section 70 of the Public Service Law

Case 21-E-___

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VERIFIED JOINT PETITION FOR DECLARATORY RULING OR APPROVAL UNDER SECTION 70 OF THE PUBLIC SERVICE LAW

David B. Johnson
Read and Laniado, LLP
25 Eagle Street
Albany, New York 12207
Tel: (518) 465-9313
E-mail: dbj@readlaniado.com

Attorneys for: Canandaigua Power Partners, LLC, Canandaigua Power Partners II, LLC and Carr Street Generating Station, L.P.

Dated: January 5, 2021

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I. INTRODUCTION

Pursuant to Part 8 of the Rules and Regulations of the New York State Public Service Commission ("Commission"), 16 NYCRR Part 8, Canandaigua Power Partners, LLC ("CPP"), Canandaigua Power Partners II, LLC ("CPP II") and Carr Street Generating Station, L.P. ("Carr Street") (collectively, "Petitioners"), the direct owners of two wind energy generation projects and a gas-fired generation project subject to the Commission's lightened regulation,[1] hereby petition the Commission for a declaratory ruling that the proposed reorganization of the ownership of the Class B shares ("Class B Shares") of Brookfield Asset Management Inc. ("BAM"), the indirect owner of the Petitioners, requires no further review under Section 70 of the New York Public Service Law ("PSL")(the "Transaction"). Pursuant to the Transaction, Partners Limited will transfer 100% of the outstanding Class B Shares to the "BAM Partnership," an Ontario trust, the corporate trustee of which will be held, directly or indirectly, by certain longstanding individual stockholders of Partners Limited (the stockholders of Partners Limited being

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[1] Case 07-E-0138, *Canandaigua Power Partners, LLC*, Order Granting Certificates of Public Convenience and Necessity, Providing for Lightened Regulation, and Approving Financing (Aug. 16, 2007); Case 07-E-1003, *Canandaigua Power Partners II, LLC*, Order Providing for Lightened Regulation and Approving Financing (Jan. 17, 2008); Case 98-E-1680, *Carr Street Generation Station, L.P.*, Order Providing for Lightened Regulation (Apr. 23, 1999 (collectively, the "Lightened Regulation Orders").

individually referred to herein as a Partner and, collectively, as Partners). Following the Transaction, two of such Partners will each indirectly hold more than 10% of the outstanding voting securities in the corporate trustee of the BAM Partnership.

No competitive issues are raised by the Transaction nor will it cause any harm to the interests of captive utility ratepayers. Thus, the Commission should declare that Petitioners have satisfied the Wallkill Presumption and no further review of the Transaction is required.[2] In the alternative, Petitioners request that the Commission approve the Transaction under PSL § 70 and any other statutory or regulatory provision deemed applicable.

Petitioners respectfully request expeditious action on this Petition and urge the Commission to issue an order no later than its February 11, 2021 session. Commission approval of this Petition at the soonest possible date is appropriate as the Transaction merely reorganizes the ownership of the Class B Shares of BAM and does not create any new affiliations with entities that own or control electric generation or transmission in the United States.

II. BACKGROUND

A. The Petitioners

CPP and CPP II own and operate 87.5 MW and 37.5 MW wind-powered generating facilities, respectively, in Steuben County, New York. Carr Street owns and operates the East Syracuse Station, an approximately 88.2 MW gas-fired combined-cycle cogeneration facility located in East Syracuse, New York. The Petitioners are indirectly owned and controlled by BAM.

BAM is an Ontario corporation with its principal place of business in Toronto, Ontario, Canada. BAM is a leading global alternative asset manager with approximately US$575 billion

[2] Petitioners and certain of their affiliates submitted an application to the Federal Energy Regulatory Commission requesting approval of the Transaction under Section 203 of the Federal Power Act on January 5, 2021.

of assets under management across real estate, infrastructure, renewable power, private equity, and credit. The Class A Shares ("Class A Shares") of BAM are publicly traded on the Toronto Stock Exchange and New York Stock Exchange under the symbols BAM.A and BAM, respectively. The Class B Shares of BAM are privately held.[3]

Currently, Partners Limited directly owns 100% of the outstanding Class B Shares of BAM. Partners Limited also directly owns approximately 0.1% and indirectly owns approximately 4.5% of the Class A Shares of BAM. Partners Limited is an Ontario corporation whose equity is held by approximately 40 individual Partners. Pursuant to a unanimous shareholders agreement among the Partners, decisions regarding the direction and management of Partners Limited are decided by a majority of the Partners (irrespective of shares held), including the appointment of all officers. The officers of Partners Limited manage its day-to-day affairs. Certain major decisions affecting the Partners' economic interests require approval of a supermajority of shares held by the Partners. The effect of this governance arrangement is that no single Partner, directly or indirectly, exercises control or direction over a 10% or greater voting interest in Partners Limited.

Except for Partners Limited, no person or entity directly or indirectly owns or exercises control or direction over a 10% or greater voting interest in BAM.

BAM indirectly owns or controls the following companies that directly own electric generating facilities in New York, which are not subject to the Commission's jurisdiction under PSL § 70 because they are not electric corporations.

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[3] The share conditions for the Class A Shares and Class B Shares provide that, subject to applicable law and in addition to any other required shareholder approvals, all matters to be approved by shareholders (other than the election of directors of BAM) must be approved by a majority of the votes cast by the holders of Class A Shares and by the holders of Class B Shares who vote in respect of the resolution, each voting as a separate class. Holders of Class A Shares are entitled, as a class, to elect one-half of the board of directors of BAM, and holders of Class B Shares are entitled, as a class, to elect the other one-half of the board of directors of BAM.

- Niagara Wind Power, LLC and Erie Wind, LLC together own and operate 35 MW of wind generation in Erie County, New York.
- Erie Boulevard Hydropower, L.P. owns and operates 73 hydroelectric facilities in the State of New York with a combined generating capacity of approximately 671.5 MW.
- FH Opco LLC owns and operates the Glens Falls project, a 14.79 MW hydroelectric facility located in Glens Falls, New York.
- West Delaware Hydro Associates L.P. owns and operates the West Delaware Project, a 7.0 MW hydroelectric facility in Grahamsville, New York.

BAM is also affiliated with a number of electric generation facilities located throughout the United States.

B. The Transaction

Pursuant to the Transaction, Partners Limited will transfer 100% of the outstanding Class B Shares of BAM to the BAM Partnership. The consideration to be paid for the Class B Shares will equal the current market price of the Class B Shares, the per-share consideration for which will be equal to the per-share current market price of the Class A Shares. The BAM Partnership will be a trust constituted under the laws of the Province of Ontario, the trustee of which will be a corporation existing under the laws of the Province of Ontario and will conduct the affairs of the BAM Partnership. The BAM Partnership will not hold any material assets other than the Class B Shares of BAM.

Two corporations to be formed under the laws of the Province of Ontario each will hold 33.3% of the voting interests in the trustee of the BAM Partnership. The first corporation will be wholly owned, directly or indirectly, by one of the longstanding Partners, Bruce Flatt, a private individual.[4] The second corporation will be wholly owned, directly or indirectly, by another longstanding Partner, Jack Cockwell, also a private individual.[5] No other person or entity will

4 Bruce Flatt and this corporation are referred to herein collectively as "Flatt."

5 Jack Cockwell and this corporation are referred to herein collectively as "Cockwell."

own or control (directly or indirectly and together with its affiliates) a 10% or greater voting interest in the trustee of BAM Partnership. The trustee of the BAM Partnership will vote the Class B Shares of BAM with no single entity or individual controlling the BAM Partnership.[6]

None of the BAM Partnership, its trustee, Flatt, or Cockwell currently exercises control or direction over, directly or indirectly, a 10% or greater voting or ownership interest in (i) any electric generation facilities in the United States, (ii) any electric transmission facilities that are used for the transmission of electricity in interstate commerce in the United States or outside of the United States that can be used to reach markets in the United States, or (iii) any essential inputs to electricity products or electric power production in the United States, including fuel supplies, fuel delivery systems, or intrastate natural gas transportation, interstate natural gas storage or distribution facilities, physical coal supply sources, or ownership of or control over who may access transportation of coal supplies. Neither of Messrs. Flatt or Cockwell is employed by or holds the position of officer or director of any public utility with a franchised electric service territory in the United States.

Following the Transaction, the BAM Partnership and its trustee, Flatt, and Cockwell will be affiliates of BAM. Partners Limited will continue to own, directly and indirectly, Class A Shares of BAM that represent less than 10% of the voting and ownership interests in BAM. Partners Limited will no longer be affiliated with BAM. No other person or entity will own or control (directly or indirectly and together with its affiliates) 10% or more of the voting interests in BAM as a result of the Transaction.

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6 The Class B Shareholder also will have three individual trust governors that will have contingent springing limited authority to act only upon the occurrence of a fundamental disagreement among the shareholders of the trustee of the Class B Shareholder (until the disagreement is resolved). The three trust governors must qualify to serve as independent directors of BAM and the Class B Shareholder under Canadian securities laws.

There will be no change in the day-to-day operations of any of the generation facilities indirectly owned or controlled by BAM as a result of the proposed Transaction.

III. THE COMMISSION SHOULD DECLARE THAT THE WALLKILL PRESUMPTION APPLIES TO THE TRANSACTION AND DECLINE TO FURTHER REVIEW IT UNDER PSL § 70 OR, IN THE ALTERNATIVE, APPROVE IT UNDER PSL § 70.

PSL § 70 requires written consent of the Commission for transfer of a sufficiently controlling interest in an electric plant, including ownership transfer at a holding company (*i.e.*, upstream) level.[7] However, in the Wallkill Order, the Commission established a lightened regulatory regime for wholesale generators in New York under which PSL § 70 review of changes in ownership is not required.[8] In the Wallkill Order, the Commission decided that under this lightened regulatory regime, PSL § 70 regulation would not adhere to a transfer of ownership interests in parent entities upstream from the affiliates owning and operating New York competitive electric generation facilities unless there was a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption (the "Wallkill Presumption"). The Commission granted the Petitioners such lightened regulation and afforded them the Wallkill Presumption for transfers of ownership interests in its upstream parent entities.[9]

In past decisions, the Commission has determined that the Wallkill Presumption applies to transactions involving upstream changes in control of lightly regulated entities and has declined to review those transactions under PSL § 70 when it has determined that the

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[7] *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), at 15.

[8] Case 91-E-0350, *Wallkill Generating Company, L.P*., Order Establishing Regulatory Regime (Apr. 11, 1994) ("Wallkill Order"); *see also* Case 14-E-0195, *Bayonne Energy Center, LLC et al.*, Order Modifying Lightened Ratemaking Regulation Authorizations and Approving Financing and Declaratory Ruling on a Transfer Transaction (Aug. 15, 2014).

[9] Lightened Regulation Orders.

transactions would not provide the petitioners with the ability to exercise horizontal or vertical market power or to harm the interests of captive New York ratepayers.[10] As discussed more fully above, the Transaction involves a change in the ownership interests in parent entities upstream from the affiliates owning and operating New York competitive electric generation facilities. Petitioners request that the Commission follow its precedent, continue to afford Petitioners the Wallkill Presumption, and issue a declaratory ruling stating that the Commission need not further review the Transaction described herein under PSL § 70.

The Transaction does not create the potential for the exercise of horizontal or vertical market power or harm to the interests of captive utility ratepayers. As discussed, *supra*, none of the BAM Partnership, its trustee, Flatt, or Cockwell currently owns or controls, directly or indirectly, a 10% or greater voting or ownership interest in (i) any electric generation facilities in the United States, (ii) any electric transmission facilities that are used for the transmission of electricity in interstate commerce in the United States or outside of the United States that can be used to reach markets in the United States, or (iii) any essential inputs to electricity products or electric power production in the United States, including fuel supplies, fuel delivery systems, or intrastate natural gas transportation, interstate natural gas storage or distribution facilities, physical coal supply sources, or ownership of or control over who may access transportation of coal supplies. Neither of Messrs. Flatt or Cockwell is employed by or holds the position of officer or director of any public utility with a franchised electric service territory in the United States. After the proposed Transaction is consummated, BAM will be affiliated with the same amount of capacity in NYISO as it is currently affiliated with.

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[10] *See, e.g.*, Case 12-M-0351, *Dynegy Inc. and Franklin Resources, Inc.*, Declaratory Ruling on Review of a Stock Acquisition Transaction (Sept. 14, 2012); Case 09-E-0055, *Constellation Energy Nuclear Group LLC et al.*, Declaratory Ruling on Review of a Transfer Transaction (Apr. 23, 2009); Case 06-M-0210, *Constellation Energy Group, Inc. and FPL Group, Inc.*, Declaratory Ruling on Review of Ownership Interest Transfer (July 25, 2006).

Finally, the Transaction will not result in any adverse impacts to captive ratepayers in New York. There will be no change in the day-to-day operations of any of the generation resources indirectly owned by BAM as result of the Transaction. Thus, the Commission should declare that Petitioners have satisfied the Wallkill Presumption and no further review of the Transaction is required. If the Commission decides to review the Transaction pursuant to PSL § 70, the Commission should approve the Transaction as in the public interest for the reasons discussed above.

IV. CONCLUSION

WHEREFORE, Petitioners respectfully request that the Commission issue a declaratory ruling that further review of the Transaction is not required or authorize the Transaction under PSL § 70, without condition, as in the public interest. Finally, Petitioners respectfully request that the Commission issue an order no later than its February 11, 2021 session.

Dated: January 5, 2021

Respectfully submitted,

David B. Johnson
David B. Johnson
Read and Laniado, LLP
25 Eagle Street
Albany, New York 12207
Tel: (518) 465-9313
E-mail: dbj@readlaniado.com

Attorneys for: Canandaigua Power Partners, LLC, Canandaigua Power Partners II, LLC and Carr Street Generating Station, L.P.

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VERIFICATION

I, Jacob A. Pollack, as Senior Vice President and Secretary, of Canandaigua Power Partners, LLC, Canandaigua Power Partners II, LLC and Carr Street Generating Station, L.P., do hereby affirm that the contents of this document are true to the best of my knowledge and belief.

Signed: Jacob A Pollack
Date: January 4, 2021