

**BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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Verified Joint Petition of Cricket Valley Energy Center, LLC,
Cricket Valley Energy Holdings LLC, AP Cricket Valley
Holdings II, Inc., APNA Holdings GmbH, 730 Cricket, LLC,
BlackRock Financial Management, Inc. and ASG Frontier Holdings,
LLC for a Declaratory Ruling Regarding Transfers of Upstream
Ownership Interests or, in the Alternative, an Order Approving the
Transfers Pursuant to Section 70 of the New York State Public
Service Law and for a Declaratory Ruling that 730 Cricket, LLC,
BlackRock Financial Management, Inc. and ASG Frontier
Holdings, LLC Will Not Become an Electric Corporation
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16-E-____

**VERIFIED JOINT PETITION FOR A DECLARATORY RULING
REGARDING TRANSFERS OF UPSTREAM OWNERSHIP INTERESTS OR, IN THE
ALTERNATIVE, AN ORDER APPROVING THE TRANSFERS PURSUANT TO
SECTION 70 OF THE NEW YORK STATE PUBLIC SERVICE LAW AND FOR A
DECLARATORY RULING THAT 730 CRICKET, LLC, BLACKROCK FINANCIAL
MANAGEMENT, INC. AND ASG FRONTIER HOLDINGS, LLC WILL NOT BECOME
AN ELECTRIC CORPORATION**

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Dated: July 22, 2016

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I. INTRODUCTION

Cricket Valley Energy Center, LLC (“CVEC”), Cricket Valley Energy Holdings LLC (“Cricket Valley Energy Holdings” or “Company”), AP Cricket Valley Holdings II, Inc. (“APCVHII”), APNA Holdings GmbH (“APNA”), 730 Cricket, LLC (“730 Cricket”), BlackRock Financial Management, Inc. (“BFM”), and ASG Frontier Holdings, LLC (“ASG Frontier”) (collectively, the “Petitioners”) hereby jointly petition the New York State Public Service Commission (“Commission” or “PSC”) for a declaratory ruling that the Commission need not review under New York State Public Service Law (“PSL”) Section 70: 1) APCVHII’s proposed sale of 16 - 30% of the issued and outstanding membership interests in Cricket Valley Energy Holdings to 730 Cricket (the “730 Cricket Proposed Transaction”); 2) APCVHII’s proposed sale of 7.75 - 15% of the issued and outstanding membership interests in Cricket Valley Energy Holdings to ASG Frontier (the “ASG Frontier Proposed Transaction” and

together with the 730 Cricket Proposed Transaction, the “Proposed Transactions”); 3) future transfers by APCVHII to 730 Cricket of up to 3.0% of the issued and outstanding membership interests in Cricket Valley Energy Holdings based on the performance of the Facility (as hereinafter defined) (the “730 Cricket Additional Transfers”); and 4) future transfers by APCVHII to ASG Frontier of up to 3.0% of the issued and outstanding membership interests in Cricket Valley Energy Holdings based on the performance of the Facility (the “ASG Frontier Additional Transfers” and together with the 730 Cricket Additional Transfers, the “Additional Transfers”). In the alternative, the Petitioners respectfully request that the Commission approve the Proposed Transactions and Additional Transfers, without modification or condition, pursuant to PSL Section 70 and any other statutory or regulatory provision deemed applicable.

The Proposed Transactions and Additional Transfers are in the public interest because they will provide needed capital for the development of CVEC’s proposed 1,100 MW electric generating facility in New York.

No competitive issues are raised by the Proposed Transactions or Additional Transfers. 730 Cricket and its affiliates have only *de minimis* ownership interests in and do not control any generation located in the New York Independent System Operator, Inc. (“NYISO”), PJM Interconnection, L.L.C. (“PJM”), and ISO New England Inc. markets (“ISO-NE,” and together with NYISO and PJM, the “Northeastern Markets”). In addition, 730 Cricket and its affiliates do not own or control any transmission or distribution facilities in the Northeastern Markets. Neither ASG Frontier nor BFM (which manages ASG Frontier) have direct equity ownership interests in transmission, distribution or generation located in the Northeastern Markets. Additionally, subject to the final paragraph in Section II(A)(4), BFM does not advise funds or accounts that have direct equity ownership interests in transmission, distribution or generation

located in the Northeastern Markets. Accordingly, the Proposed Transactions and Additional Transfers will have no adverse effect on market concentration in New York and 730 Cricket, BFM and ASG Frontier cannot exercise vertical market power as a result of the Proposed Transactions and Additional Transfers.

Petitioners also request a declaratory ruling that 730 Cricket, BFM and ASG Frontier will not become electric corporations under the PSL as a result of the consummation of the Proposed Transactions and Additional Transfers because they will not be able to directly influence the operations of any electric plant in New York and, therefore, it would not be in the public interest to regulate 730 Cricket, BFM or ASG Frontier as an electric corporation.

Finally, Petitioners request a declaratory ruling that the transfer of up to 15% of the issued and outstanding membership interests in Cricket Valley Energy Holdings to a yet-to-be-determined third party investor is not a jurisdictional transfer under PSL Section 70 and will not cause the investor to become an electric corporation under the PSL if the investor will have the same class of passive ownership interests with limited voting rights that 730 Cricket, BFM and ASG Frontier will have as a result of the consummation of the Proposed Transactions.

CVEC has structured and is seeking commitments from equity sources and debt providers for a \$1.5 billion financing of the Facility.¹ CVEC anticipates a closing of the financing and commencement of construction of the Facility and a 14.5 mile transmission line to interconnect the Facility to the transmission system in the third quarter of 2016. Financing commitments will expire if the financial closing is not achieved within limited time periods. Also, permits will lapse if construction of the Facility is not commenced within specified time frames. Therefore,

¹ The Commission has authorized CVEC to enter into debt instruments in an amount not to exceed \$1.5 billion. Case 15-E-0454 - Petition of Cricket Valley Energy Center, LLC for an Order Approving Financing Pursuant to Section 69 of the Public Service Law, Order Approving Financing (Nov. 19, 2015).

Petitioners request expedited review of this Petition and request Commission action on the Petition no later than the Commission's September 15, 2016 session because the Commission's approvals are needed for CVEC to obtain financing and begin construction of the Facility.

II. BACKGROUND

A. The Parties

1. CVEC, CRICKET VALLEY ENERGY HOLDINGS and APCVHII

CVEC is a limited liability company formed under the New York State Limited Liability Company Law. CVEC was formed for the ownership, development, financing, construction, testing, operation and maintenance of the Facility. The Commission granted CVEC a Certificate of Public Convenience and Necessity for the construction of a combined cycle, natural gas-powered 1,100 MW electric generating facility on an inactive industrial site located in the Town of Dover, Dutchess County, New York (the "Facility").² CVEC is lightly regulated by the Commission.³ The Facility is currently under development.

The Facility will be connected to the NYISO transmission system by a new 14.6 mile transmission line to be constructed and paid for by CVEC in accordance with the requirements of the Commission and the NYISO.⁴

CVEC currently has three members: 1) AP Cricket Valley Holdings I, Inc. holds an approximate 40% interest; 2) APCVHII holds an approximate 40% interest; and 3) MC CVEC

² Case 11-E-0593 - Petition of Cricket Valley Energy Center, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation, Order Granting Certificate of Public Convenience and Necessity and Establishing Lightened Ratemaking Regulation (Feb. 14, 2013) ("CPCN Order").

³ Id.

⁴ The Commission granted CVEC a certificate of environmental compatibility and public need, pursuant to Article VII of the PSL, to construct and operate a new 14.6-mile 345 kilovolt transmission line connecting the Facility to the transmission system. Case 13-T-0585 - Application of Cricket Valley Energy Center, LLC, for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the Public Service Law For Approval of a New 345 kV Line From the Pleasant Valley Substation to the Cricket Valley Energy Center, LLC, and the Reconductoring of an Existing 345 kV Line, in the Town of Dover, Dutchess County, Order Granting Certificate of Environmental Compatibility and Public Need (Apr. 20, 2016).

Project Holdings I, LLC (“MCCVEC”) holds an approximate 20% interest. On April 20, 2016, the Commission authorized J Cricket Holdings, LLC (“JCH”) to acquire a 100% ownership interest in APCVHI (the “JCH Transaction”).⁵ JCH is a wholly owned indirect subsidiary of Chubu Electric Power Company, U.S.A., Inc., which in turn is a wholly owned subsidiary of Chubu Electric Power Company, Inc. (“CEPC”).⁶ APCVHII is indirectly 100% owned by AP Energy Holdings, Inc. (a Massachusetts corporation), a wholly owned subsidiary of APNA. MCCVEC is owned by Marubeni Power International, Inc.

Cricket Valley Energy Holdings is a limited liability company formed under Delaware Limited Liability Company Law. Cricket Valley Energy Holdings is a holding company that will be inserted between CVEC and APCVHI, APCVHII, and MCCVEC and will hold 100% of the membership interests of CVEC. The Company was formed for the ownership, development, financing, construction, testing, operation and maintenance of the Facility, solely through its ownership of CVEC. The current members of CVEC have a petition pending before the Commission requesting that the Commission either declare that the transfer of 100% of their membership interests in CVEC to Cricket Valley Energy Holdings in the same proportion as their interests in CVEC, such that the Company will become the owner of 100% of the membership interests of CVEC (the “Intra-Corporate Restructuring”), is outside the scope of PSL Section 70 or approve such transfer under PSL Section 70 prior to the consummation of the Proposed Transactions.⁷

⁵ 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 (Apr. 20, 2016).

⁶ The Commission also authorized an upstream ownership transfer of JCH from CEPC to JERA Co., Inc., a joint venture owned in equal 50% shares by CEPC and Tokyo Electric Power Company, Inc. Id.

⁷ Case 16-E-0201 - Petition of AP Cricket Valley Holdings I Inc.; AP Cricket Valley Holdings II Inc.; Cricket Valley Energy Center, LLC; Cricket Valley Energy Holdings, LLC for a Declaratory Ruling and Approvals

To facilitate construction financing, the members of CVEC may also form another holding company, called Cricket Valley Energy Partners LLC (“CV Energy Partners”), which would directly wholly own Cricket Valley Energy Holdings and be directly wholly owned by the members in the same proportion as their interests in Cricket Valley Energy Holdings and in the same manner as described in this Petition. Out of an abundance of caution, Petitioners request that the Commission declare that the insertion of CV Energy Partners between the members and Cricket Valley Energy Holdings is not a jurisdictional transfer and no approval is required under PSL Section 70 because no new owner will be brought into the organizational structure, no existing owner will be removed, and the proportionate shares of the indirect owners remain the same after the reorganization.⁸

2. APNA

APNA is a Swiss subsidiary of Advanced Power AG (“APAG”). APNA is a Swiss chartered limited liability company. It is a holding company whose sole purpose is to own the shares of APAG’s various companies in the United States. APNA manages the development activities of CVEC pursuant to a Consulting Services Agreement (“CSA”) between APAG and CVEC. The CSA will terminate at financial closing at which point CVEC will manage itself. APNA owns AP Energy Holdings, Inc., which is the owner of APCVHII. An affiliate of APNA, APCVHII, currently a member of CVEC, will be the manager of the Company (until replaced by

Under Section 70 of the Public Service Law, Verified Joint Petition for a Declaratory Ruling and Approvals of the Transfer of Ownership Interests Pursuant to Section 70 of the New York Public Service Law (April 12, 2016).

⁸ See Case 07-E-0584 - Petition of NRG Energy, Inc. for a Declaratory Ruling that the Public Service Commission Law Section 70 Does Not Apply to Proposed Corporate Reorganization and Stock Transfer, Declaratory Ruling on Review of an Inter-Corporate Transaction (July 23, 2007) (ruling that “[i]nserting a holding company into an ownership structure upstream from lightly-regulated entities that operate electric plant does not amount to a transfer under PSL §70 because there is no change in the identity of the ultimate ownership”); see also Case 05-E-1582 - NRG Energy Inc. and NRG Northeast Generating LLC – Petition for a Declaratory Ruling that the Public Service Law Does not Apply to an Intra-Corporate Dissolution Transaction, Declaratory Ruling on Review of an Intra-Corporate Dissolution Transaction (Jan. 26, 2006).

the members) and another affiliate of APNA will manage construction and operation of the Facility under an asset management agreement.

3. 730 CRICKET

730 Cricket is a limited liability company formed under Delaware Limited Liability Company Law formed for the purpose of owning membership interests in the Company.

730 Cricket is wholly owned by 730 Power Development, LLC, which in turn is wholly owned by Teachers Insurance and Annuity Association of America (“TIAA”).

TIAA is a nonprofit organization that provides investment and insurance services for those working in education, medicine, culture and research.

Affiliates of TIAA have *de minimis* ownership interests in generation located in the Northeastern Markets and do not own or control any transmission or distribution facilities in the Northeastern Markets. Specifically, a subsidiary of TIAA owns a 57% interest in AE Investors II LLC (“AE II”). AE II owns all of the outstanding Class B interests of Astoria Project Partners II LLC (“APP II”). APP II owns 100% of Astoria Energy II LLC, which in turn owns the 575 MW combined cycle natural gas-fired Astoria Energy II LLC power station in Astoria, Queens, New York. The Class B interests in AP II owned by AE II represent an approximate 7.425% interest in the Astoria power station and the interests of TIAA in AE II thus represent an approximate 4.232% interest in the Astoria power station.

TIAA is also a 99.9% limited partner in North American Sustainable Energy Fund, L.P. (“NASEF”) which acquired an indirect 90.52% ownership interest in Talen Renewable Energy, LLC, now known as EPP Renewable Energy, LLC (“EPP Renewable”) in November 2015. EPP Renewable owns 63 MW of renewable gas and electric generation in PJM and ISO-NE, comprised of 24 projects across Pennsylvania (13 projects), New Jersey (9 projects), Vermont (1 project) and New Hampshire (1 project). The projects are primarily small-scale landfill gas sites

selling on-site generation to industrial users or back to the grid. Solar projects and a wind project also are in the portfolio. NASEF is controlled by its general partner North American Sustainable Energy GP, LLC, which in turn is owned by two individuals, Henry Park and Jerry Peters.

In addition, a subsidiary of TIAA owns a 40% membership interest in Carroll County Energy Holdings LLC, which in turn owns 100% of the membership interests in Carroll County Energy Center LLC, an approximately 700 MW natural gas-fired, combined cycle power generation facility being developed in Carroll County, Ohio.

Finally, TIAA owns limited partnership interests in equity funds that in turn own equity investments in the energy sector, including electric generating assets. Such investments are passive, indirect ownership interests that do not provide TIAA with control over the operation of any generating assets. In no case does TIAA own 10% or more of the limited partnership interests in any such equity fund.

4. BFM AND ASG FRONTIER

ASG Frontier is a limited liability company formed under Delaware Limited Liability Company Law for the purpose of owning membership interests in the Company. ASG Frontier is managed by BFM, a registered investment advisor. BFM is indirectly wholly owned by BlackRock, Inc. (“BLK”). BLK is a leading publicly-traded investment management firm that provides a broad range of investment and risk management services to institutional and retail clients worldwide.

Neither ASG Frontier nor BFM have direct equity ownership interests in transmission, distribution or generation located in the Northeastern Markets. Additionally, subject to the following paragraph, BFM does not advise funds or accounts that have direct equity ownership interests in transmission, distribution or generation located in the Northeastern Markets.

BFM and other affiliates of BLK that are investment advisors or investment managers may advise or manage accounts or funds that own equity investments in publicly-traded issuers operating in the energy sector and co-investment or pooled investment vehicles managed by other investment advisors or investments managers which invest in energy assets. Such investments are passive, indirect ownership interests that do not provide BLK or BFM with control over the operation of any transmission, distribution or generating assets.

B. The Proposed Transactions

730 Cricket proposes to purchase between 16 and 30% of APCVHII's membership interests in Cricket Valley Energy Holdings from APCVHII. ASG Frontier proposes to purchase between 7.75 and 15% of APCVHII's membership interests in Cricket Valley Energy Holdings from APCVHII. The exact amount of 730 Cricket's and ASG Frontier's ownership interests will depend on other key economic terms of the financing of the Facility and will be fixed when the financing transaction is closed.

Once the Proposed Transactions, the JCH Transaction, and the Intra-Corporate Restructuring are consummated, 730 Cricket will indirectly own between 16 and 30% of CVEC; ASG Frontier will indirectly own between 7.75 and 15% of CVEC; APCVHII will indirectly hold between 3 and 12% of CVEC;⁹ JCH will indirectly hold approximately 41.0% of CVEC; and MCCVEC will indirectly own the remaining approximately 16.4% of CVEC. Organizational charts comparing the ownership structure of Cricket Valley Energy Holdings before and after the Proposed Transactions, the JCH Transaction, and the Intra-Corporate Restructuring are attached hereto as Exhibit A. There may be adjustments to these percentages if

⁹ APCVHII's interest in CVEC could be further reduced should it secure another yet-to-be-determined third party equity investor as discussed herein.

there are failures to make capital contributions or if the Additional Transfers are made if the Facility does not achieve certain financial milestones.

APNA will continue to manage the development of the Facility under the CSA until financial closing is achieved. The CSA will terminate at financial closing whereupon the Proposed Transactions, the JCH Transaction and the Intra-Corporate Restructuring will close and the Cricket Valley Energy Holdings First Amended and Restated Operating Agreement (“Holdings Operating Agreement”) will be executed, at which point an affiliate of APNA, APCVHII, will be the manager of the Company (until replaced by the members) and another affiliate of APNA, Cricket Valley Asset Management Services LLC (“Asset Manager”), will manage construction and operation of the Facility under an Asset Management Services Agreement. Under the Asset Management Services Agreement, the Asset Manager will provide the following services: 1) manage construction of the CVEC facility, 2) perform asset and energy management functions during operations, 3) monitor and advise of CVEC’s rights and obligations under the Loan Documents and Project Documents; 4) manage the financials and financial reporting obligations of CVEC; and 5) monitor and advise CVEC with respect to third-party and/or affiliate service providers.

Therefore, 730 Cricket’s and ASG Frontier’s ownership interest in CVEC will be operationally passive. 730 Cricket, BFM and ASG Frontier will not exercise control over CVEC’s operation, will not seek to influence its decision-making with respect to the operations of the Facility, and will not appoint any members to the Board of Representatives that have authority to exercise direct control over CVEC’s operations of the Facility.

C. The Additional Transfers

Pursuant to the Purchase and Sale Agreement between APCVHII and 730 Cricket, APCVHII is required to transfer to 730 Cricket up to an additional 3.0% membership interest in

Cricket Valley Energy Holdings depending on whether the Facility does not achieve certain financial milestones (i.e., the 730 Cricket Additional Transfers). Similarly, pursuant to the Purchase and Sale Agreement between APCVHII and ASG Frontier, APCVHII may be required to transfer to ASG Frontier up to an additional 3.0% membership interest in Cricket Valley Energy Holdings depending on whether the Facility does not achieve certain financial milestones (i.e., the ASG Holdings Additional Transfers). ASG Frontier may transfer up to an additional 3.0% to APCVHII upon the occurrence of subsequent events.

III. THE COMMISSION SHOULD EITHER DECLARE THAT THE PROPOSED TRANSACTIONS AND ADDITIONAL TRANSFERS ARE OUTSIDE THE SCOPE OF PSL SECTION 70 OR DECLARE THAT THE WALLKILL PRESUMPTION APPLIES TO THE PROPOSED TRANSACTIONS AND ADDITIONAL TRANSFERS AND DECLINE TO FURTHER REVIEW THEM UNDER PSL SECTION 70

The Commission has established a lightened regulatory regime for wholesale generators in New York under which PSL Section 70 review of changes in ownership is not required.¹⁰ In the Wallkill Order, the Commission decided that under this lightened regulatory regime, PSL Section 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 CVEC such lightened regulation, and it was afforded the Wallkill Presumption for transfers of ownership interests in its upstream parent entities.¹¹

¹⁰ 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 (Apr. 11, 1994) (“Wallkill Order”); see also CPCN Order.

¹¹ CPCN Order at 23.

In past decisions, the Commission has determined that the Wallkill Presumption applies to transactions involving upstream changes in the control of lightly regulated entities, including transfers of ownership interests in generation facilities, and has declined to review those transactions under PSL Section 70 when it has determined that the transaction would not enable the petitioners to exercise market power to the detriment of captive ratepayers.¹² As discussed more fully above, the Proposed Transactions and Additional Transfers involve a change of ownership interests in parent entities upstream from the affiliates owning and operating New York competitive electric generation facilities. The Petitioners request that the Commission follow its precedent, continue to afford the Petitioners the Wallkill Presumption, and issue a declaratory ruling stating that the Commission need not review the Proposed Transactions and Additional Transfers under PSL Section 70.

The Proposed Transactions and Additional Transfers do not create any potential for harm to the interests of captive utility ratepayers because the Petitioners operate in a competitive market and have no captive ratepayers. Furthermore, because 730 Cricket and its affiliates do not own any interest in any electric generating facilities in the Northeastern Markets other than the *de minimis* interests described above, and neither ASG Frontier nor BFM have direct equity ownership interests in transmission, distribution or generation located in the Northeastern

¹² See e.g., Case 07-E-0322 - Verified Joint Petition of Astoria Generating Company, L.P., Astoria Generating Company Holdings, LLC and EBG Holdings, LLC for a Declaratory Ruling or, in the Alternative, for Authorization Under Section 70 of the Public Service Law to Transfer Ownership of Astoria Generating Company, LP, Declaratory Ruling on Review of a Merger Transaction (May 22, 2007); Case 09-E-0055 - Joint Petition of Constellation Energy Nuclear Group, LLC, Nine Mile Point Nuclear Station, LLC, R.E. Ginna Nuclear Power Plant, LLC, EDF Development, Inc. for a Declaratory Ruling Regarding the Application of Section 70 of the PSL, or, in the Alternative, for Approval Under Section 70., Declaratory Ruling on Review of a Transfer Transaction (Apr. 23, 2009); Case 06-M-0210 - Joint Petition of Constellation Energy Group, Inc. and FPL Group, Inc. for a Declaratory Ruling Regarding the Application of Sections 70 and 89-h of the Public Service Law, or, on the Alternative, for Approval Under Sections 70 and 89-h, Declaratory Ruling on Review of Ownership Interest Transfers (July 25, 2006); Case 08-E-0850 - Petition of Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P. for Declaratory Ruling Regarding Acquisition of Common Stock, and, in the Alternative, Approval Under Section 70 of the New York State Public Service Law, Declaratory Ruling on Review of Stock Transfer Transactions (Sept. 19, 2008).

Markets, and, subject to the final paragraph in Section II(A)(4), BFM does not advise funds or accounts that have direct equity ownership interests in transmission, distribution or generation located in the Northeastern Markets, the Proposed Transactions and Additional Transfers will not create or enhance market power in New York.

The Proposed Transactions and Additional Transfers will not result in any adverse impacts in New York. No changes in the management or organization of the Facility are expected to be made as a result of the Proposed Transactions or Additional Transfers. The Proposed Transactions will strengthen CVEC financially by introducing new sources of needed capital for the development of the Facility.

In addition, PSL Section 70 approval for blanket authority to allow for the Additional Transfers is in the public interest because a change in ownership interest of up to 5.0 % of any member will not change the ability of any member to exercise control over the operation of the Facility, will not bring any new owners into the ownership structure of Cricket Valley Energy Holdings, and will not allow any member to exercise horizontal or vertical market power. The Commission has granted blanket authority to transfer ownership interests in a lightly regulated electric corporation when such transfers will not affect horizontal market concentration.¹³

Based on the foregoing, the Wallkill Presumption that no further PSL Section 70 review is required by the Commission is applicable in this case. If the Commission decides to review the Proposed Transactions and Additional Transfers pursuant to PSL Section 70, the Commission should approve the Proposed Transactions and Additional Transfers as in the public interest for the reasons discussed above.

¹³ See Case 05-E-0834 - Joint Petition of MACH Gen, LLC and New Athens Generating Company, LLC for a Declaratory Ruling Declining Jurisdiction or, in the Alternative, Approval of the Indirect Disposition of New Athens Pursuant to Section 70 of the Public Service Law, Declaratory Ruling on Review of Ownership Interest Transfers (Sept. 6, 2005).

IV. THE COMMISSION SHOULD DECLARE THAT 730 CRICKET, BFM AND ASG FRONTIER WILL NOT BE SUBJECT TO REGULATION AS ELECTRIC CORPORATIONS UNDER THE PSL AS A RESULT OF THE PROPOSED TRANSACTIONS

The Commission has ruled that an entity may request a determination on whether it becomes an electric corporation to determine if it must obtain approval before acquiring any stock in another electric corporation under PSL Section 70.¹⁴ The Commission has stated that an entity owning interests in an electric corporation should not be considered an electric corporation if it cannot exert control over the operation of the generation plant to the point where it “own[s], operate[s], or manages” that plant and market power might potentially be exercised.¹⁵ The Commission has declared that certain entities including industrial development agencies (“IDAs”) that own electric generators via sale-leaseback arrangements are not electric corporations because the IDAs are merely passive owners.¹⁶ The Commission has also declared that entities with ownership interests in electric corporations that grant them voting rights that are

¹⁴ See Cases 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 (Sept. 21, 2010).

¹⁵ See Case 08-M-0659, Order Instituting Proceeding and Notice Soliciting Comments at 3 (June 23, 2008).

¹⁶ See e.g., Case 07-E-1003 - Petition of Canandaigua Power Partners II, LLC for an Order Approving Financing Pursuant to Section 69 of the PSL and Approving a Lightened Regulatory Regime, Order Providing for Lightened Regulation and Approving Financing (Jan. 17, 2008); Case 07-E-0138 - Petition of Canandaigua Power Partners, LLC for an Original Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law, Approving Financing Pursuant to Section 69 of the Public Service Law and Approving a Lightened Regulatory Regime, Order Granting Certificates of Public Convenience and Necessity, Providing for Lightened Regulation and Approving Financing (Aug. 16, 2007); Case 06-E-0745 - Petition of AES Greenidge, L.L.C. for an Order Providing for Lightened Regulation and Authorizing a PILOT Transaction, Order on Regulation of a Pilot and Sale-Leaseback Transaction (Sept. 29, 2009); Case 99-E-1629 - Petition of Athens Generating Company L.P. for a Declaratory Ruling that It Will Be Regulated Under a Lightened Regulatory Regime and for Approval to Execute a Sale-Leaseback Agreement with the Greene County Industrial Development Authority, Order providing For Lightened Regulation (July 12, 2000); Case 99-E-0990 - Petition of Oneida County Industrial Development Agency and Griffiss Local Development Corporation for an Original Certificate of Public Convenience and Necessity to Own, Operate and Maintain Existing Electric Plant, to Sell Electricity at Retail and for a Declaratory Ruling that They Will Be Subject Only to Incidental Regulation, Declaratory Ruling On Electric Corporation Regulation (Sept. 28, 1999); Case 99-E-0148 - Joint Petition of AES Eastern Energy, L.P. and AES Creative Resources, L.P. for a Declaratory Ruling that Light-Handed Regulation be Applied Concerning the Petitioners’ Purchase of Certain Electric Generating Assets from New York State Electric & Gas Corporation, Declaratory Ruling On Lightened Regulation (Mar. 23, 1999).

limited to protecting their financial interests are not electric corporations because such entities do not have control over the management or operation of the generation facilities.¹⁷

The Commission should declare that 730 Cricket, BFM and ASG Frontier are not electric corporations because they will not be able to exert control over the management or operation of any electric plant in New York. The Company will be managed pursuant to the Holdings Operating Agreement.¹⁸ The Holdings Operating Agreement establishes two classes of ownership interests in the Company. Class A Members have all voting rights while Class B members are passive owners with limited voting rights. As Class B Members, 730 Cricket's and ASG Frontier's indirect ownership interests in CVEC will be passive, like that of a typical institutional investor. 730 Cricket, BFM and ASG Frontier will not have direct operational rights over CVEC. Moreover, their operational rights in Cricket Valley Energy Holdings are limited to those rights necessary to protect its investment and financial interests. The Commission has previously held that this type of an ownership structure does not create the requisite amount of control to classify 730 Cricket, BFM or ASG Frontier as an electric corporation.

The Holdings Operating Agreement provides that a designated "Manager" shall act on behalf of the Company, CVEC and the Facility as lead developer and provide day-to-day management, development and administration services to CVEC and the Facility during construction and operation of the Facility and carry out CVEC's and the Facility's development activities. APCVHII is designated as the Manager under the Holdings Operating Agreement.

¹⁷ See Case 08-E-1267 - Petition of Noble Altona Windpark, LLC, Noble Chateaugay Windpark, LLC, Noble Wethersfield Windpark, LLC, and EFS Noble II, LLC for a Declaratory Ruling Regarding Transfer of Membership Interests and Regulation, Declaratory Ruling on Review and Regulation of a Passive Ownership Interest Transfer (Dec. 15, 2008).

¹⁸ CVEC will be subject to a Third Amended and Restated Operating Agreement, which provides that its powers will be exercised by and under a Board of Managers, consisting of the Company and an Independent Director. The Independent Director has no right to approve or manage any aspect of CVEC's business or operations except that the Independent Director must provide consent before a bankruptcy action involving CVEC is instituted.

At or around the time of financial closing of the Financing Documentation (i.e., any loan facility, credit agreement, indenture, financing agreement, or equivalent documentation, including bonds, and related security documentation pursuant to which debt financing is made available to construct the Facility), CVEC will execute an Asset Management Agreement with the Asset Manager, an affiliate of APNA and APCVHII, pursuant to which the Asset Manager (under the supervision of the Manager) will provide day-to-day management and administration services to the Facility to the extent provided therein.

CVEC also expects to enter into an Operations and Maintenance Services Agreement with PIC Group, Inc. (“PIC Group”), under which PIC Group will perform operation and maintenance services at the Facility, including but not limited to: 1) performing all day-to-day operations, routine testing, maintenance, and repair of the Facility; and 2) maintaining inventories of, and budget for, replacement equipment, spare parts, consumables and other items; and 3) supervising the receipt and handling of fuel.

While the Manager will provide day-to-day management, development and administration services to CVEC and the Facility, its authority is limited by certain issues that are reserved to the Company’s Board of Representatives or to a vote of the Members. Each Member that owns 5% or more of the membership interests will appoint one Class A Representative except for 730 Cricket and ASG Frontier (the “Class B Members”), which shall each appoint a Class B Representative.¹⁹

Under the Holdings Operating Agreement, the Class B Members and the Class B Representatives are permitted to vote only on certain actions requiring unanimous or super-

¹⁹ The Holdings Operating Agreement provides, however, that upon a direct or indirect sale of a Class B Membership interest or upon a change of applicable law, a Class B Member or the direct or indirect purchaser of a Class B Member’s Membership Interest may, upon any required notice to or order of the PSC, change the designation of its representative to a Class A Representative or continue the right to appoint a Class B Representative, all without requiring the consent of the Company or any Member.

majority approval of the Board of Representatives or the unanimous approval of the Members other than the approval of the sale of another Member's interests and appointment of liquidating trustees, which requires a majority vote. As described below, these issues on which a Class B Member or a Class B Representative is entitled to vote have been limited to matters that are intended to protect its financial investment and interests. All other issues that require the approval of the Board of Representatives are subject to a vote that does not include the Class B Representatives.

Matters requiring unanimous approval upon which the Class B Representative or the Class B Member may vote are limited to the following:

- amending, supplementing, modifying or cancelling the Certificate of Formation of Cricket Valley Energy Holdings;
- amendments to the Holdings Operating Agreement or the CVEC Operating Agreement;
- permitting or causing the abandonment of the Facility or suspension of any activity for a period of at least sixty (60) days;
- creation, issuance, allotment, granting, redemption, conversion, subdivision or consolidation of securities of the Company or CVEC or enter into any agreement or undertaking contemplating the foregoing;
- a request for capital in excess of what the members have committed to provide towards the development and construction of the Facility in accordance with the Financing Documentation for the Facility;
- determining the initial capital contribution and percentage interest for new members;

- making any material Tax decisions and acting with respect to other items concerning accounting procedures and the allocation of profits, gains, deductions, losses and credits among the members;
- permitting or causing CVEC to enter into, amend, terminate or cancel any Material Energy Agreement;²⁰
- removing the existing auditor, and, unless such advisor or auditor is a “Big Four” independent certified public accounting firm, appointing, hiring or retaining any tax advisor or auditor;
- permitting or causing the Company or CVEC to make any investments in any Fiscal Year²¹ not otherwise required in connection with the conduct of the business of the Company or CVEC;
- any material change in accounting methods that would have an adverse effect on a Member or the Company or CVEC;
- engaging in activities covered by Section 13 of the Bank Holding Company Act if applicable to the Company or CVEC, including entering into any derivative

²⁰ A Material Energy Agreement means an agreement for the sale, purchase or hedging of electricity, natural gas, capacity, or ancillary services (including heat rates or revenues) in any such case where (x) the term of the agreement or arrangement is no less than one (1) year, and (y) the agreement or arrangement relates to at least \$100 million. Many of the new power projects financed over the last 2-3 years have used energy hedges to stabilize project revenues for the benefit of lenders and equity owners. These agreements have played a critical role in financings and equity investments and are meant to provide the financial security that power purchase or other off-take agreements would provide lenders and equity owners under those traditional structures. The Material Energy Agreements are contracts of this nature and are a condition of the senior lenders providing the financings and to the equity investors’ investments in the project. The Material Energy Agreements will be entered into at the closing of the financing and will be replaced and supplemented from time to time in accordance with the Holdings Operating Agreement. Since the Material Energy Agreements (i) are conditions of financing and the equity investments, (ii) are purely financial transactions, (iii) are designed to protect the long term viability of the project, and (iv) have no impact on the day-to-day operations of the Facility, permitting the Class B Representative to vote on the Material Energy Agreements would not impact the passive nature of the Class B Members’ investments.

²¹ Any capitalized term not herein defined has the meaning set forth in the Holdings Operating Agreement.

transaction, except in full compliance with all Company and CVEC policies, including the Manuals;

- amending the Risk Management Manual and Volcker Rule Manual (if applicable);
- approving the financial institution providing an equity bridge loan and any documentation related thereto;
- amending the frequency of regular Board of Representatives meetings;
- any merger or consolidation involving the Company or CVEC; any sale, transfer or other disposition by the Company or CVEC of all or substantially all of its assets; any voluntary bankruptcy filing or declaration of insolvency; any dissolution, winding-up or liquidation; and, except as expressly permitted by the Holdings Operating Agreement, the Transfer, sale or purchase of Securities of the Company or CVEC;
- permitting or causing the Company or CVEC to amend, terminate or cancel the Financing Documentation for the initial construction financing of the Project, or any refinancing thereof, amend the Financing Documentation for the initial construction financing of the Project or any refinancing thereof, in any material respect or to increase the credit facilities being extended to the Company or CVEC by an amount in excess of \$10,000,000, or incur any Indebtedness or enter into any Financing Documentation involving credit facilities being extended to the Company or CVEC in an amount in excess of \$10,000,000, or agree or consent to amend any Credit Support Obligation in any material respect; and

- changing the approval process with respect to the Annual Business Plan or approving a matter inconsistent with the Business Plan.

Matters requiring super-majority²² approval upon which the Class B Representative may vote are also intended to protect its financial investment and interests. These matters are limited to:

- permitting or causing the Company to grant or suffer to exist any liens on the property or assets of the Company or CVEC;
- any change in the fiscal year of the Company or CVEC;
- selection of the Tax Matters Member;
- prepay or redeem indebtedness not due under the Financing Documentation;
- approving an Annual Business Plan or any material amendment/modification to such Annual Business Plan;²³
- approve contracts with another Member or its affiliate;
- determining the amount of Net Available Cash; establishing reasonable reserves necessary for the Business; and permitting or causing the Company or CVEC to distribute less than Net Available Cash for any fiscal quarter;
- initiating or settling litigation with consideration of over \$1 million;

²² A super-majority vote is the vote of [85%] of the Board of Representatives. The approval of 730 Cricket is needed for the Board of Representatives to approve a matter by a super-majority vote.

²³ The Holdings Operating Agreement provides that until the Board of Representatives by super-majority approval have approved a revised Annual Business Plan, the Manager shall operate the Facility in accordance with the most recently approved Business Plan, provided that each expense line in the budgets shall be increased by the percentage increase in the Consumer Price Index since the date of the most recent Annual Plan. This provision ensures that the Class B Members will not be able to exert leverage over the Manager by withholding money to operate the Facility. See Case 15-E-0243 - Joint Petition of Cross-Sound Cable Company, LLC, Cross-Sound Cable Company (New York) LLC, and AIA Energy North America LLC for a Declaratory Ruling Regarding an Indirect Ownership Transfer or, in the Alternative, an Order Approving the Transfer, an Order Approving Financing, and for a Declaratory Ruling Regarding Regulation, Order Approving a Transfer Transaction and a Financing and Making Other Findings (Aug. 17, 2015).

- requesting that the Members make loans to the Company and the term related thereto; and
- amending the Financing Documentation for the initial construction financing of the Project or any refinancing thereof in a manner not requiring unanimous board approval.

The Board of Representatives can vote to remove the Manager or Asset Manager only for cause due to the Manager’s “adverse conduct” or a “Manager Event of Default” (which includes the Manager defaulting on its material obligations or a Manager bankruptcy). While the Holdings Operating Agreement does not allow Class B Representatives to propose the removal of the Manager or Asset Manager, if a Class A Representative proposes such a removal due to adverse conduct, the Class B Representatives may vote with the other representatives of Cricket Valley Energy Holdings to remove the Manager or Asset Manager by a majority vote. The Holdings Operating Agreement sets forth definitions of “adverse conduct” that are customary for agreements of this type (e.g., fraud, willful misconduct or gross negligence). If the Manager is so removed, the Class B Representatives have the right to vote with the Board of Representatives to select a replacement Manager. Each Class B Member and its affiliates do not have project management experience so they would be ineligible to be the Manager or Asset Manager.²⁴

The Commission has previously held that these types of expressly limited arrangements, aimed at protecting a passive investor’s financial investment and interests, are sufficient to demonstrate that an upstream owner does not exercise operational control over electric plant, and thus support a holding that the relevant entity is not an electric corporation subject to Commission jurisdiction. For example, the Commission held that the acquisition by EFS II, a

²⁴ The Class B Members would also have the ability to vote on the transfer of any Member’s membership interest or any upstream interest in any Member.

wholly owned subsidiary of General Electric Company, of all Class A interests in a 100% upstream owner in certain wind generating facilities would not make EFS II an electric corporation. The Commission explained that:

a transfer of Class A interests...was not a transfer of ownership within the meaning of PSL §70...the Class A interests...would not carry with them any authority that would enable EFS II to exercise control over, or influence the operations of, the [generators]. Control over the operation and management of the wind generation facilities owned by the Noble Companies remains with Noble Environmental, the indirect owner of all the Class B interests...The owners of the passive Class A interests do not become electric corporations under PSL §2(13) by virtue of that ownership. Those owners are analogous to IDAs, in that both make investments in generation facilities that are passive only and do not carry with them control over the management or operation of the generation facilities. The limited veto rights the Class A interest owners hold, so that they may protect their financial interests, are similar to mechanisms IDAs deploy to protect their financial interests, and do not transform the Class A interests into active instead of passive interests. Since the owners of the Class A interests hold only a passive interest, they will not be regulated as electric corporations.²⁵

The Commission also found that the acquisition by Franklin Resources, Inc. (“Franklin”), through its various constituent entities and subsidiaries, of 32% of the stock in Dynegy Inc., the indirect upstream owner of several New York generating facilities, would not make Franklin an electric corporation. The PSC relied on representations made by Franklin, which stated that:

Franklin does not manage or control electric facility operations through its ownership interests in Dynegy and instead acts only as a passive investor in Dynegy. Franklin...will merely hold the stock of Dynegy in the ordinary course of business only for investment purposes without influencing Dynegy’s operations. Franklin...commits that it will not seek to: ... designate managerial, operational, or other personnel; influence prices at

²⁵ Case 08-E-1267, Declaratory Ruling on Review and Regulation of a Passive Ownership Interest Transfer at 4-6 (Dec. 15, 2008); see also Case 07-E-1283 - Petition of Noble Clinton Windpark, LLC, Noble Ellenburg Windpark, LLC, Noble Bliss Windpark, LLC, and EFS Noble Holdings, LLC for a Declaratory Ruling Regarding Transfer of Membership Interests or, in the Alternative, Approval Under Section 70 of the New York State PSL, Declaratory Ruling on Review of An Ownership Interest Transfer (Dec. 18, 2007).

which power, fuel or other product is sold or purchased in the marketplace; influence whether generation, transmission, distribution, or other physical assets are made available or withheld from the marketplace; influence ratemaking or rates for the sale of power or the provision of transmission or distribution service; influence the wages Dynegy pays its personnel or the positions it takes in labor negotiations; or, influence any other operational decision of Dynegy.²⁶

In holding that Franklin would not become an electric corporation by virtue of the acquisition, the Commission reasoned that:

It promises to act purely as a typical investor, voting its shares in Dynegy without assuming any managerial or operational control over electric plant. These commitments demonstrate, among other things, that Franklin is purchasing shares in a corporation without obtaining control over the corporate board or over management personnel, diluting its influence in comparison to owners of interests of equivalent size in other forms of business organization, such as the limited liability companies at issue in the First Wind Order. Moreover, control over ownership of the remaining shares in Dynegy will be widely dispersed, with no other investor owning more than 10% of the equity interests. As a result, Franklin and just one, or a few other, owners could not collude to achieve control over Dynegy's management, and thereby influence the operations of the generation facilities that Dynegy, it turn, owns indirectly. Since Franklin's involvement in Dynegy ownership is typical of an investor pursuing financial objectives through stock purchases without seeking to manage a company organized as a corporation, it lacks a controlling ownership interest in Dynegy and so will not be deemed to manage or exercise control over Dynegy's indirectly-owned electric plant.²⁷

Each Class B Member's ownership interest in CVEC will be held for investment purposes only. Each Class B Member and its upstream affiliates have no plans to manage or control electric facility operations through its ownership interests in Cricket Valley Energy Holdings and instead plan to act only as an indirect passive investor in CVEC. The Class B

²⁶ Cases 12-M-0351 et al. - Joint Petition of Dynegy Inc. and Franklin Resources, Inc. for a Declaratory Ruling Regarding Application of Public Service Law §70 and §83, Declaratory Ruling on Review of a Stock Acquisition Transaction at 5 (Sept. 14, 2012).

²⁷ Id. at 9-10.

Members will not be able to: designate a Class A Representative to the Board of Representatives; designate managerial, operational, or other personnel; influence prices at which power, fuel or other product is sold or purchased in the marketplace; influence whether generation, transmission, distribution, or other physical assets are made available or withheld from the marketplace; influence ratemaking or rates for the sale of power or the provision of transmission or distribution service; or influence the wages CVEC pays its personnel or influence any other day-to-day operational decision of CVEC.²⁸ Therefore, the Commission should find that the Class B Members will not become an electric corporation as a result of the consummation of the Proposed Transactions.

V. THE COMMISSION SHOULD DECLARE THAT A TRANSFER OF UP TO 15% OF THE ISSUED AND OUTSTANDING MEMBERSHIP INTERESTS IN CRICKET VALLEY ENERGY HOLDINGS TO A YET-TO-BE-DETERMINED THIRD PARTY INVESTOR IS NOT A JURISDICTIONAL TRANSFER UNDER PSL SECTION 70 AND WILL NOT CAUSE THE INVESTOR TO BECOME AN ELECTRIC CORPORATION UNDER THE PSL IF THE INVESTOR WILL HAVE THE SAME CLASS OF PASSIVE OWNERSHIP INTERESTS AS THE CLASS B MEMBERS AS A RESULT OF THE CONSUMMATION OF THE PROPOSED TRANSACTIONS.

As discussed above, the Commission has ruled that a transfer of passive interests that does not give the transferee the ability to exercise control over, or influence the operations of, the jurisdictional electric plant “is not a transfer of ownership within the meaning of PSL § 70” and therefore does not need not be reviewed under PSL Section 70.²⁹ If the Commission declares that the Class B Members’ ownership interests in up to 30% of the issued and outstanding membership interests in Cricket Valley Energy Holdings are passive and they will not become

²⁸ CVEC won’t have any employees. As indicated above, the Facility will be operated by a contract operator (PIC Group) and PIC Group will hire all operating personnel.

²⁹ Case 08-E-1267, Declaratory Ruling on Review and Regulation of a Passive Ownership Interest Transfer at 4-6 (Dec. 15, 2008); see also Case 07-E-0462 - Joint Petition of Horizon Wind Energy LLC, f/k/a Zilkha Renewable Energy, and GS Wind Holdings LLC for a Declaratory Ruling, Declaratory Ruling on Review of Transfer Transactions (Jun. 20, 2007); Case 07-E-1283, Declaratory Ruling on Review of An Ownership Interest Transfer (Dec. 18, 2007).

electric corporations as a result of such ownership, it follows that an entity that also holds Class B ownership interests that are no more than 10% of the membership interests in Cricket Valley Energy Holdings is similarly a passive owner and that transfers of such ownership interests are not transfers of ownership interests under PSL Section 70.

Closing of construction financing for the Facility is contingent on CVEC raising equity through sales of indirect ownership interests in CVEC. Petitioners anticipate that only one additional investor is required to meet the equity requirements that will remain after the transfer of ownership interests to the Class B Members. Petitioners request that the Commission issue a ruling declaring that a transfer of up to 15% of the membership interests in Cricket Valley Energy Holdings to a yet-to-be determined investor does not require review under PSL Section 70 and no filing with the Commission is necessary with respect to such transfer if the investor will have the same class of passive ownership interests (Class B) that 730 Cricket, BFM and ASG Frontier will have as a result of the consummation of the Proposed Transactions. Such ruling will afford the Petitioners the flexibility to consummate the transfer and the construction financing as soon as possible.

VI. STATE ENVIRONMENTAL QUALITY REVIEW ACT

Under the State Environmental Quality Review Act (“SEQRA”), Article 8 of the New York State Environmental Conservation Law, and its implementing regulations (6 NYCRR § 617 et seq.; 16 NYCRR § 7 et seq.), the Commission must determine whether certain actions it is authorized to approve may have a significant impact on the environment. SEQRA review, however, is not required if the Commission issues a declaratory ruling and determines that further PSL Section 70 review is not necessary.³⁰

³⁰ See Case 16-E-0116, Declaratory Ruling on Review of Acquisition Transactions at 6-7, fn 7 (Apr. 20, 2016) (“In accordance with 6 NYCRR §617.5(c)(31), the matters addressed herein constitute ‘interpret[at]ions’ of an

If the Commission decides to review the Proposed Transaction under PSL Section 70 and SEQRA review is undertaken, the Proposed Transactions and Additional Transfers do not meet the definition of a Type I or Type II action listed in 6 NYCRR Sections 617.4, 617.5 and 16 NYCRR Section 7.2 and, therefore, are appropriately classified as an “unlisted action” under SEQRA.³¹ Accordingly, it is proper for the Commission to declare itself the SEQRA “lead agency” to conduct an environmental assessment and determine the significance of the actions proposed. To facilitate such assessment, attached hereto as Exhibit B is a Short Environmental Assessment Form with Part I completed, describing and evaluating the potential impact, if any, of the Proposed Transactions.

The Commission has previously determined that transfers of ownership interests in lightly regulated electric corporations, such as the transfers contemplated by the Proposed Transactions and Additional Transfers, will not result in any significant adverse environmental impacts.³² There will be no physical changes to the Facility as part of the Proposed Transactions or Additional Transfers. Following consummation of the Proposed Transactions and Additional Transfers, the Facility will continue to be developed in accordance with the requirements specified in the CPCN Order, relevant environmental permits and all applicable environmental laws. As such, the Proposed Transactions and Additional Transfers will not cause new

existing code, rule or regulation,’ and are therefore a Type II action not subject to review under the State Environmental Quality Review Act.”).

³¹ See e.g., Case 05-E-1341 - Petition of Orion Power Holdings, Inc., Astoria Generating Company, L.P. and Astoria Generating Company Acquisitions, LLC for Approval of Ownership Transfer Transactions and Authority to Issue Corporate Debt, Order Approving Transfers and Financings and Making Other Findings at 4-5 (Feb. 15, 2006).

³² See e.g., Case 15-E-0580 - Joint Verified Petition of Upstate New York Power Producers, Inc.; Cayuga Operating Company, LLC; Somerset Operating Company, LLC; and Riesling Power LLC for Expedited Approval Pursuant to Section 70 of the New York State Public Service Law and Related Approvals, Order Approving Transfer at 11-12 (Feb. 25, 2006); Case 15-E-0208 - Saranac Power Partners, L.P. - Petition for a Declaratory Ruling Disclaiming the Need to Review a Transfer of a 5% Ownership Interest, or, in the Alternative, an Order Approving the Transfer, Order Approving a Transfer Transaction and Making Other Findings at 6-7 (Aug. 17, 2015).

environmental impacts and, thus, the Commission should follow its precedent and issue a negative declaration and undertake no further environmental review.

VII. CONCLUSION

WHEREFORE, the Petitioners respectfully request that the Commission issue a declaratory ruling that further review of the Proposed Transactions and Additional Transfers are not required, or, in the alternative, issue an order authorizing the Proposed Transactions and Additional Transfers under PSL Section 70, without condition, as in the public interest. In addition, the Petitioners request that the Commission declare that none of 730 Cricket, BFM or ASG Frontier will be subject to regulation as an electric corporation under the PSL as a result of the consummation of the Proposed Transactions. Petitioners also request that the Commission declare that the insertion of CV Energy Partners between the members and Cricket Valley Energy Holdings is not a jurisdictional transfer and no approval is required under PSL Section 70. Finally, Petitioners request that the Commission declare that the transfer of up to 15% of the issued and outstanding membership interests in Cricket Valley Energy Holdings to a yet-to-be-determined third party investor is not a jurisdictional transfer under PSL Section 70 and will not cause the investor to become an electric corporation under the PSL if the investor will have the same class of passive ownership interests that 730 Cricket, BFM and ASG Frontier will have as a result of the consummation of the Proposed Transactions.

Dated: July 22, 2016

Respectfully submitted,

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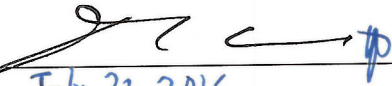
Attorneys for Cricket Valley Energy Center, LLC,

Cricket Valley Energy Holdings LLC, AP Cricket

Valley Holdings II Inc., APNA Holdings GmbH

VERIFICATION

I, Mario Maselli, on behalf of 730 Cricket, LLC, do hereby affirm that the contents of this document as they relate to 730 Cricket, LLC are true to the best of my knowledge.

Signed:  (E-signature)

Date: July 21, 2016

I, Matthew Plak, on behalf of BlackRock Financial Management, Inc., do hereby affirm that the contents of this document as they relate to BlackRock Financial Management, Inc. are true to the best of my knowledge.

BlackRock Financial Management, Inc.

By: 

Name: Matthew Plak

Title: Director

Date: _____

VERIFICATION

I, Robert De Meyere on behalf of Cricket Valley Energy Center, LLC, Cricket Valley Energy Holdings LLC, AP Cricket Valley Holdings II, Inc., APNA Holdings GmbH, do hereby affirm that the contents of this document are true to the best of my knowledge.

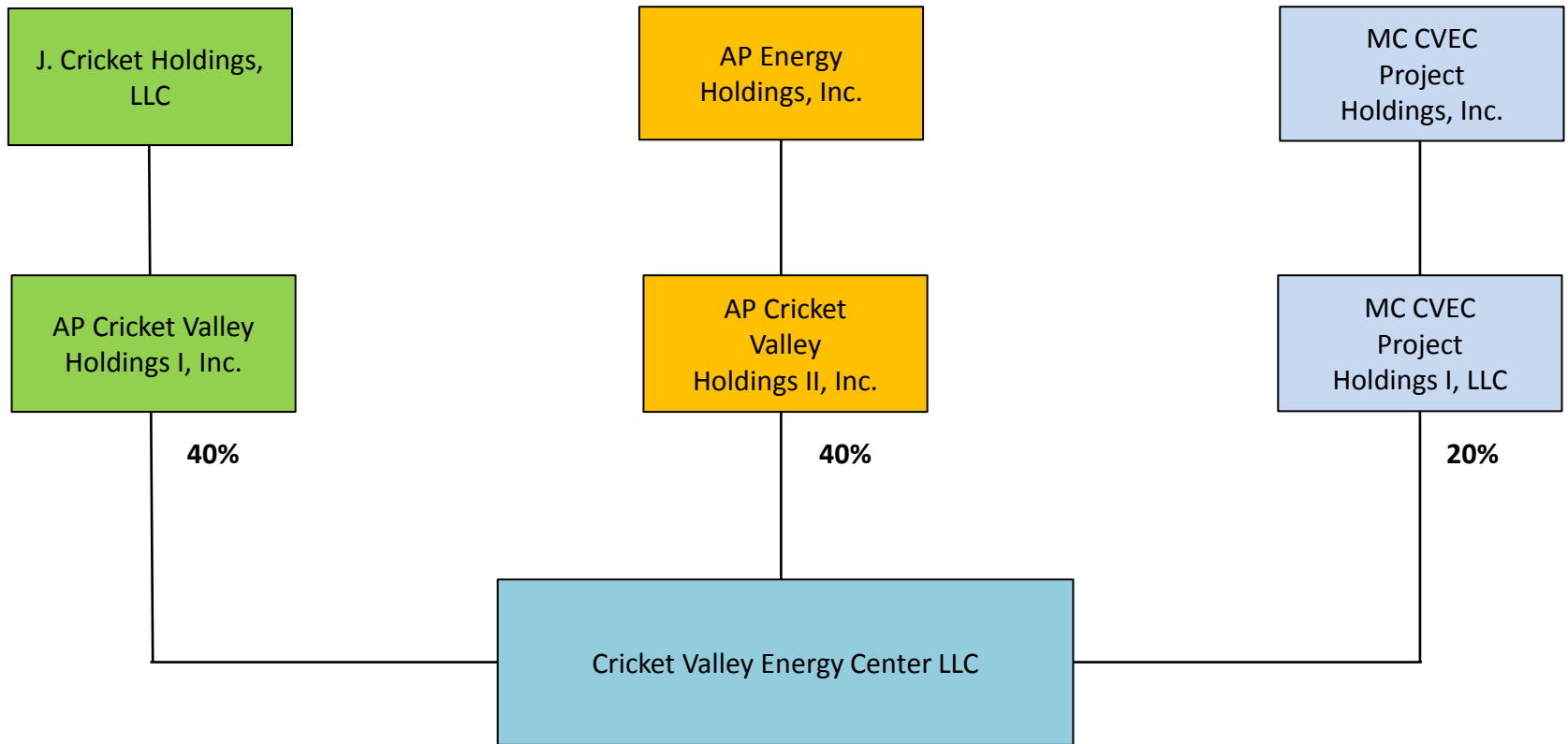
Signed: Robert S. De Meyere

Date: 18 July 2016

EXHIBIT A

**Current Ownership Structure of
Cricket Valley Energy Center LLC**

(Before Reorganization (not including dilution))



**Proposed Ownership Structure of
Cricket Valley Energy Center LLC**

(After Reorganization (including the effects of dilution))

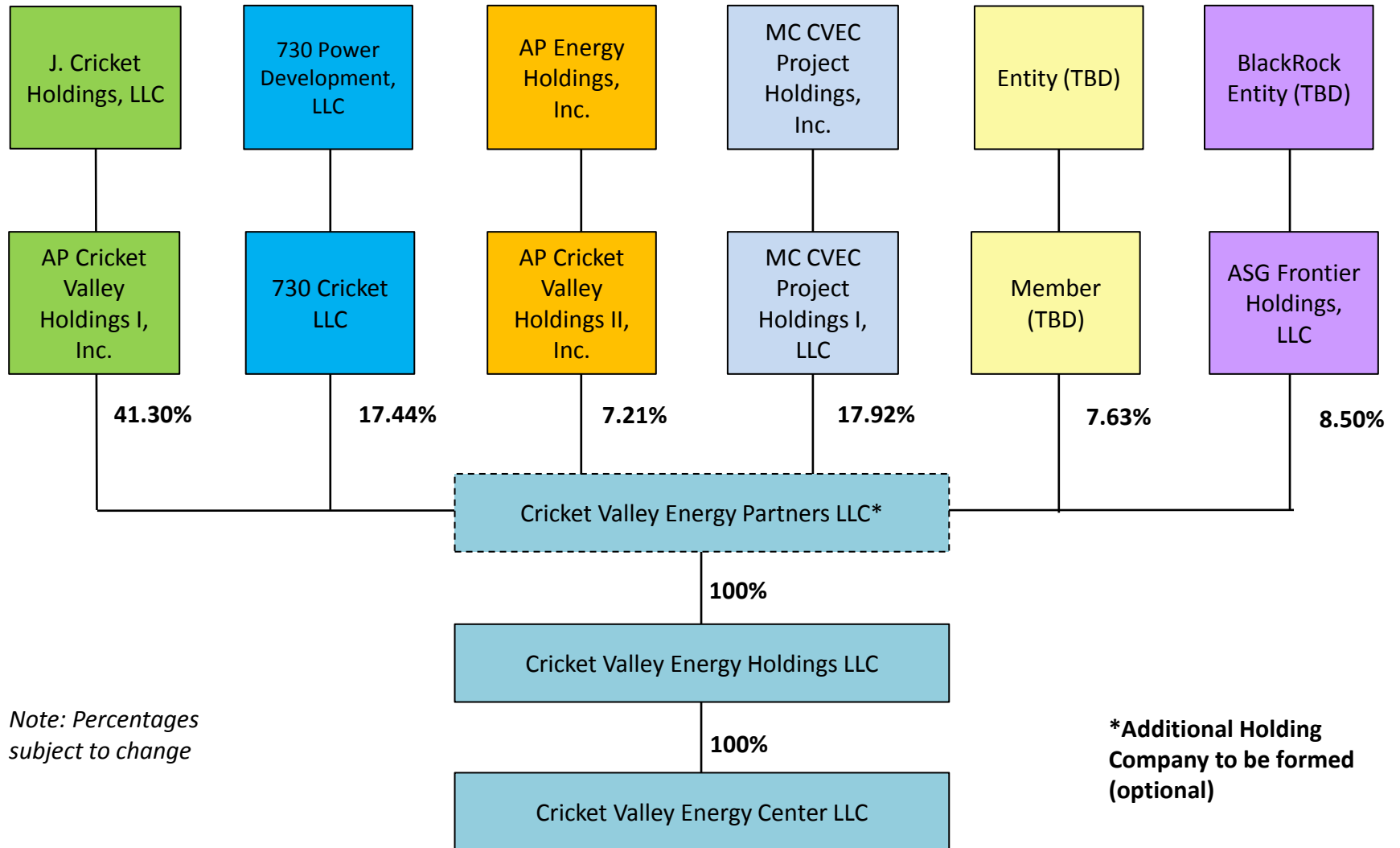


EXHIBIT B

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.

Part 1 - Project and Sponsor Information							
Name of Action or Project: Cricket Valley Energy Center LLC							
Project Location (describe, and attach a location map): N/A							
Brief Description of Proposed Action: Applicants request the Public Service Commission's approval pursuant to Section 70 of the Public Service Law to consummate four transactions: 1) AP Cricket Valley Holdings II, Inc. sale of 16-30% of its interests in Cricket Valley Energy Holdings LLC to 730 Cricket, LLC; 2) AP Cricket Valley Holdings II, Inc. sale of 7.75-15% of its interests in Cricket Valley Energy Holdings LLC to ASG Frontier Holdings, LLC; 3) future transfers of up to 3% of AP Cricket Valley Holdings II, Inc. interests in Cricket Valley Energy Center LLC to 730 Cricket, LLC based on facility performance; and 4) future transfers of up to 3% of AP Cricket Valley Holdings II, Inc. interests in Cricket Valley Energy Center LLC to ASG Frontier Holdings, LLC based on facility performance.							
Name of Applicant or Sponsor: Cricket Valley Energy Center LLC		Telephone: 617-456-2200					
		E-Mail: bdemeyere@advancedpowerna.com					
Address: Advanced Power Services (NA) Inc., 31 Milk Street, Suite 1001							
City/PO: Boston		State: MA	Zip Code: 02109				
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.			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">NO</td> <td style="width: 50%; padding: 2px;">YES</td> </tr> <tr> <td style="text-align: center; padding: 5px;"><input checked="" type="checkbox"/></td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> </tr> </table>	NO	YES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NO	YES						
<input checked="" type="checkbox"/>	<input type="checkbox"/>						
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">NO</td> <td style="width: 50%; padding: 2px;">YES</td> </tr> <tr> <td style="text-align: center; padding: 5px;"><input checked="" type="checkbox"/></td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> </tr> </table>	NO	YES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NO	YES						
<input checked="" type="checkbox"/>	<input 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, adjoining and 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							

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<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?	NO	YES	
	<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? If Yes, identify: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation service(s) available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	NO	YES	
	<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: _____	NO	YES	
	<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: _____	NO	YES	
	<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: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? b. Is the proposed action located in an archeological sensitive area?	NO	YES	
	<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: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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 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 plain?	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, a. Will storm water discharges flow to adjacent properties? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	NO <input checked="checked" type="checkbox"/>	YES <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 <input checked="checked" type="checkbox"/>	YES <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 <input checked="checked" type="checkbox"/>	YES <input type="checkbox"/>
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: <u>Cricket Valley Energy Center LLC</u> Date: <u>7/21/2016</u> Signature: <u>/s/ Robert E. Demevere</u> 