STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Verified Petition of MPH Cross Island Power, LLC, Edgewood Energy, LLC, Shoreham Energy, LLC, Pinelawn Power LLC, and Equus Power I, L.P., for a Declaratory Ruling Regarding Transfer of Ownership, or, in the Alternative, an Approval Pursuant to Section 70 of the Public Service Law	Case 24-E-

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

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Dated: August 13, 2024

STATE OF NEW YORK
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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, MPH Cross Island Power, LLC ("MPH"), Edgewood Energy, LLC ("Edgewood"), Shoreham Energy, LLC ("Shoreham"), Pinelawn Power LLC ("Pinelawn"), and Equus Power I, L.P., ("Equus" and, with MPH, Edgewood, Shoreham, and Pinelawn, the "Petitioners") hereby petition the Commission for a declaratory ruling that the proposed transfer of the indirect ownership interests in Edgewood, Shoreham, Pinelawn and Equus (collectively, the "Project Companies") to MPH requires no further review under Section 70 of the New York Public Service Law ("PSL"). Specifically, it is proposed that MPH will acquire, indirectly, all of the ownership interests of the Project Companies (the "Proposed Transaction"), which each wholly own electric generating facilities located on Long Island, New York that are subject to the Commission's lightened regulation (the "Facilities").[1] In the alternative, the Petitioners request that the Commission approve the Proposed Transaction under PSL § 70 and any other statutory or regulatory provision deemed applicable.

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[1] *See* Case 01-E-1635, *PPL Global, LLC*, Order Providing for Lightened Regulation (Mar. 28, 2002); Case 01-E-1634, *PPL Global, LLC*, Order Providing for Lightened Regulation (Mar. 28, 2002); Case 04-E-0734, *Pinelawn Power LLC*, Order Granting a Certificate of Public Convenience and Necessity, Providing for Lightened Regulation, and Approving Financing (Aug. 25, 2004); Case 03-E-1179, *Equus Power I, L.P.*, Order Providing for Lightened Regulation and Approving Financing (Oct. 30, 2003) (collectively, the "Lightened Regulation Orders").

No competitive issues are raised by the Proposed Transaction, nor will it cause any harm to the interests of captive utility ratepayers. The Proposed Transaction will not result in the potential to exercise either vertical or horizontal market power.

Petitioners respectfully request that the Commission act on the Petition at or before its October 16, 2024 session.

II. DESCRIPTION OF PETITIONERS AND RELEVANT PARTIES AND AFFILIATES

A. Project Companies

As discussed in greater detail below, each of the Project Companies is an indirect subsidiary of J-POWER North America Holdings Co., Ltd. ("J-POWER"). All of the equity interests of J-POWER are owned by Electric Power Development Co., Ltd., a publicly traded Japanese corporation.

The individual Project Companies are described in more detail below.

1. Edgewood

Edgewood owns an approximately 85 MW (summer rating) generating facility located in Brentwood, New York, within the Long Island ("LI") submarket of the New York Independent System Operator, Inc. ("NYISO") market (the "Edgewood Facility").

All of the membership interests in Edgewood are owned by J-POWER Sound Capital, LLC ("Sound Capital Seller"), all of whose membership interests are owned by J-POWER Sound Partners, LLC ("J-POWER Sound Partners"). All of the equity interests of J-POWER Sound Partners are owned by J-POWER USA Generation Capital, LLC ("J-POWER Generation Capital"). All of the membership interests of J-POWER Generation Capital are owned by J-POWER USA Generation Partners, LLC, all of whose membership interests are owned by J-POWER USA Generation, L.P. ("J-POWER Generation"). The partnership interests of J-

POWER Generation are owned by: (1) J-POWER USA Generation GP, LLC ("J-POWER GP") (0.1 percent general partnership interest); (2) J-POWER USA Investment Co., Ltd. ("J-POWER Investment") (49.9 percent limited partnership interest); (3) John Hancock Infrastructure Master Fund, L.P. ("John Hancock Infrastructure") (25 percent limited partnership interest); and (4) John Hancock Life Insurance Company (U.S.A.) ("John Hancock Insurance," and together with John Hancock Infrastructure, "John Hancock") (25 percent limited partnership interest). All of the membership interests of J-POWER GP are owned by J-POWER Investment, all of whose membership interests are owned by J-POWER.

2. Equus

Equus that owns an approximately 46 MW (summer rating) generating facility located in Nassau County, New York, within the LI submarket of the NYISO market (the "Equus Facility").

The partnership interests of Equus are owned by: (1) Equus GP Holdco LLC ("Equus GP") (1 percent general partnership interest), and (2) Equus LP Holdco LLC ("Equus LP") (99 percent limited partnership interest). All of the membership interests of Equus GP and Equus LP are owned by J-POWER East Coast Capital, LLC ("East Coast Seller"), all of whose membership interests are owned by J-POWER East Coast Partners, LLC ("East Coast Partners"). All of the membership interests of East Coast Partners are owned by J-POWER East Coast Consolidation, LLC, all of whose membership interests are owned by J-POWER Generation Capital.

3. Pinelawn

Pinelawn owns an approximately 75 MW (summer rating) generating facility located in Suffolk County, New York, within the LI submarket of the NYISO market (the "Pinelawn

Facility"). The output of the Pinelawn Facility is fully committed under a long-term firm power sales agreement with Long Island Lighting Company d/b/a LIPA that is scheduled to expire on October 31, 2025.

All of the membership interests of Pinelawn are owned by J-POWER Pinelawn, LLC, all of whose membership interests are owned by East Coast Seller.

4. Shoreham

Shoreham owns an approximately 85 MW (summer rating) generating facility located in Shoreham, New York, within the LI submarket of the NYISO market (the "Shoreham Facility").

All of the membership interests of Shoreham are owned by Sound Capital Seller.

B. MPH

MPH is indirectly owned by affiliates of Hull Street Energy, LLC ("HSE") and is a special purpose entity established for the purpose of acquiring the equity interests in the Project Companies. Prior to consummation of the Proposed Transaction, MPH will not directly or indirectly own, operate, or control any electric generation or transmission facilities or essential inputs to electricity products or electric power production. MPH is wholly owned by MPH Cross Island Power Holdco, LLC, which in turn is owned by Hull Street Energy Partners III, L.P. ("HSEP III") and MPH Cross Island Power Parallel Holdings, LLC ("Parallel Holdings"). Parallel Holdings is wholly owned by Hull Street Energy Partners III (Parallel), L.P. ("HSEP III Parallel"). HSEP III and HSEP III Parallel are managed by their general partner, HSE Partners III GP, L.P. ("HSE Partners III GP"), which owns all of the general partner interests in HSEP III and HSEP III Parallel. The limited partner interests in HSEP III and HSEP III Parallel are owned by passive limited partner investors with only limited rights such as veto and/or consent rights necessary for the limited partners to protect their economic investment interests, and those rights will not affect the ability of the Project Companies to conduct their jurisdictional activities.

HSE Partners III GP is managed and controlled by its general partner, HSE, and through HSE Partners III GP, HSE has sole responsibility and authority for the management and control of HSEP III and HSEP III Parallel.

HSE is a private equity firm headquartered in Bethesda, Maryland that is primarily involved in the development and acquisition of, and investment in, energy infrastructure assets, and related ownership, operation, and management of these assets, including electric generation.

HSE is not affiliated with any entity that owns or controls any electric transmission facilities in the United States, except for limited and discrete equipment necessary to interconnect individual generating facilities to the transmission grid. Other than as described in this Petition, HSE is not affiliated with any entity that owns or controls any electric generation. HSE is not affiliated with any public utility with a franchised electric service territory.

HSE is currently controlled by Sarah Wright, an individual.[2] Except with respect to facilities described in this Petition, Ms. Wright is not affiliated with, nor holds or controls, 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. Ms. Wright is not employed by, or affiliated with, and does not hold the position of officer or director of, any public utility with a franchised electric service territory.

Ms. Wright is a passive investor with respect to four fully-committed run-of-river hydroelectric generation facilities in Ware, Massachusetts (each of which is a qualifying facility) having a combined capacity of 2.4 MW and has no control over the day-to-day management and business operations of these facilities.

[2] Ms. Wright is the managing member of HSE and has sole control and decision-making authority with respect to HSE. No other entity or individual that owns a 10 percent or greater voting interest in HSE owns any other interests, directly or indirectly, in electric generation, transmission, or essential inputs to electricity products or electric power production.

Through its wholly owned subsidiary MPH Rockaway Peakers, LLC, HSE is affiliated with the following entities that own or control generation facilities in the NYISO market:

- **Bayswater Peaking Facility, LLC ("Bayswater")**, a Delaware limited liability company, owns and operates an approximately 53 MW (summer rating) natural gas-fired generating facility located in Far Rockaway, New York, within the LI submarket of the NYISO market. Bayswater sells 100 percent of its output to MPH Rockaway Peakers, LLC, which then sells to NYISO or third parties.

- **Jamaica Bay Peaking Facility, LLC ("Jamaica Bay")**, a Delaware limited liability company, owns and operates an approximately 54 MW (summer rating) oil-fired electric generation facility located in Far Rockaway, New York, within the LI submarket of the NYISO market. Jamaica Bay sells 100 percent of its output to MPH Rockaway Peakers, LLC, which then sells to NYISO or third parties.

With respect to markets adjacent to the NYISO market, HSE is affiliated with 65 MW and 401.6 MW of electric generation in the PJM Interconnection, L.L.C. ("PJM") and ISO New England Inc. ("ISO-NE") markets, respectively.

III. DESCRIPTION OF THE PROPOSED TRANSACTION

Pursuant to the Proposed Transaction, MPH will acquire 100 percent of the ownership interests in Edgewood and Shoreham from Sound Capital Seller and 100 percent of the upstream ownership interests in Equus and Pinelawn from East Coast Seller. Thus, a transfer of control to MPH of the Project Companies will have occurred as a result of consummation of the Proposed Transaction. Following consummation of the Proposed Transaction, J-POWER will no longer be affiliated with the Project Companies, and the Project Companies will be subsidiaries of HSE and its affiliates. Petitioners have included pre-transaction and post-transaction corporate organizational charts in Exhibit A to this Petition.

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

According to Commission precedent, 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.[3] However, in the Wallkill Order (defined below), 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.[4] 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 has previously granted the Project Companies such lightened regulation and afforded them the Wallkill Presumption for transfers of ownership interests in their upstream parent entities.[5]

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 transactions would not provide the petitioners with the ability to exercise horizontal or vertical

[3] *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.

[4] 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).

[5] *See* Lightened Regulation Orders.

market power or to harm the interests of captive New York ratepayers.[6] As discussed more fully above, the Proposed Transaction involves a change in the ownership interests in parent entities upstream from the entities owning and operating New York competitive electric generation facilities. Petitioners request that the Commission follow its precedent, continue to afford the Project Companies the Wallkill Presumption, and issue a declaratory ruling stating that the Commission need not further review the Proposed Transaction described herein under PSL § 70.

The Proposed Transaction does not create the potential for the exercise of horizontal or vertical market power. After the Proposed Transaction is consummated, MPH will be affiliated with approximately 417 MW of generating capacity in New York, which is 1.1% of the entire NYISO market (39,308 MW) and 7.9% of the LI submarket. This is near or below the levels of market concentration that the Commission ruled are insufficient to raise horizontal market power concerns in New York.[7] The Proposed Transaction would result in the Project Companies being affiliated with less than 1% and 1.5% of the capacity available in the PJM and ISO-NE markets, respectively, which is below the market concentration the Commission ruled is insufficient to raise market power concerns because this market share is *de minimis* and is reduced further by transmission constraints that limit the amount of affiliated capacity that potentially could be imported to the NYISO market.[8] The Proposed Transaction does not present a vertical market

[6] *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).

[7] *See* Case 04-E-1364, *Sithe Energies, Inc*., Declaratory Ruling on Review of Stock Transfers (Jan. 14, 2005) (ruling increase in horizonal market concentration to 7% does not create the potential for the exercise of market power); Case 07-E-0332, *Astoria Generating Company Holdings LLC*, Declaratory Ruling on Review of a Merger Transaction (May 22, 2007) (ruling increase in horizonal market concentration to 7.1% does not create the potential for the exercise of market power); Case No. 08-E-0410, *LS Power Development LLC*, Declaratory Ruling on the Acquisition of Common Stock (May 27, 2008) (finding that an 8.1% market share did not present an opportunity to exercise market power).

[8] Case 17-E-0601, *Calpine Corporation*, Declaratory Ruling on Transfer and Making Other Findings (Dec. 19, 2017) (ownership of 6.9% of ISO-NE market insufficient to raise market power concerns).

power risk because neither MPH nor its affiliates exercise control over electric delivery facilities other than interconnections, or have a substantial influence over inputs, like fuel, into the production of generation supply within New York.

Moreover, the Proposed Transaction will not result in any adverse impacts to captive ratepayers in New York. The Project Companies do not make power sales at cost-based rates or provide third party electric transmission service. The Project Companies are exempt wholesale generators ("EWGs") within the meaning of Section 1262(6) of the Public Utility Holding Company Act of 2005 ("PUHCA") and Section 366.1 of the regulations of the Federal Energy Regulatory Commission ("FERC") and are authorized by FERC pursuant to Section 205 of the Federal Power Act to sell electric power, including energy and capacity, at market-based rates. Therefore, the Project Companies' sales of electric power from the Facilities are exclusively at wholesale at market-based rates pursuant to their FERC-approved market-based rate tariff. That will continue to be the case following the consummation of the Proposed Transaction, and there will be no change in the status of the Project Companies as EWGs as a result of the Transaction.

Accordingly, the Wallkill Presumption applies to the Project Companies, as lightly regulated entities, and consistent with Commission precedent, the Commission may decline to review the Proposed Transaction under PSL § 70 because the Proposed Transaction will not provide Petitioners with the ability to exercise horizontal or vertical market power or to harm the interests of captive New York ratepayers. Alternatively, if the Commission decides to review the Proposed Transaction pursuant to PSL § 70, the Commission should approve it as in the public interest for the reasons discussed above.

V. CONTINUED LIGHTENED REGULATION

For all of the reasons set forth in the Lightened Regulation Orders and subsequent Commission decisions, the Project Companies should continue to be subject to lightened regulation. The Facilities will continue to be owned and operated as wholesale power plants. No changes to the day-to-day operations of the Facilities are contemplated as a result of the Proposed Transaction. In past decisions, the Commission has determined that lightly regulated entities continue to be lightly regulated following the consummation of corporate transactions transferring their direct or indirect ownership interests in the New York competitive electric generating facilities.[9] Accordingly, following the consummation of the Proposed Transaction, the Commission should follow its precedent and continue the lightened regulation of the Project Companies consistent with the Lightened Regulation Orders and subsequent Commission decisions.

[9] *See, e.g.*, 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).

VI. CONCLUSION

WHEREFORE, Petitioners respectfully request that the Commission issue a declaratory ruling that no further review of the Proposed Transaction is required under PSL § 70 or authorize the Proposed Transaction under PSL § 70, without condition, as in the public interest. Petitioners respectfully request that the Commission act on the Petition at or before its October 16, 2024 session.

Dated: August 13, 2024

Respectfully submitted,

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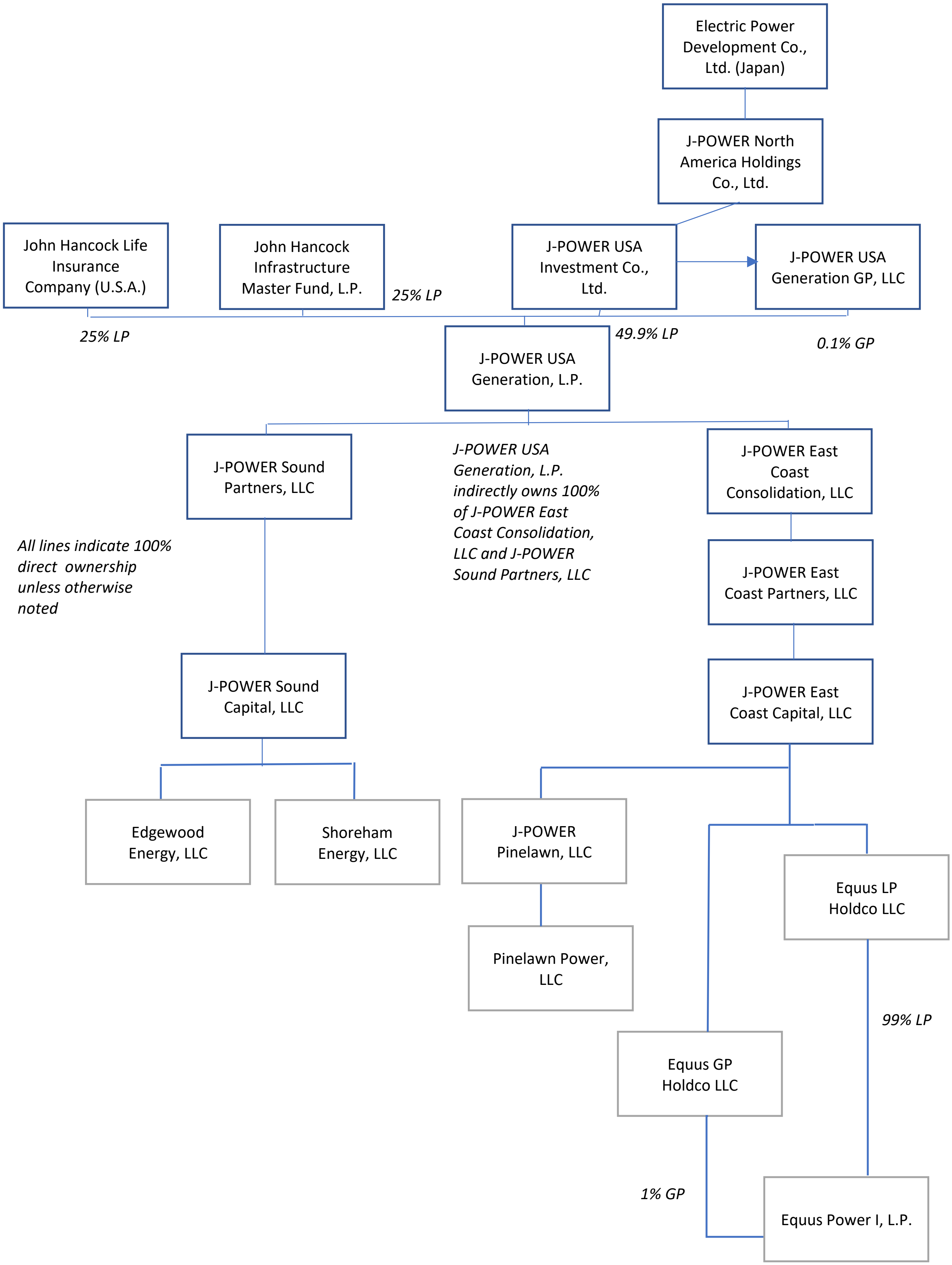
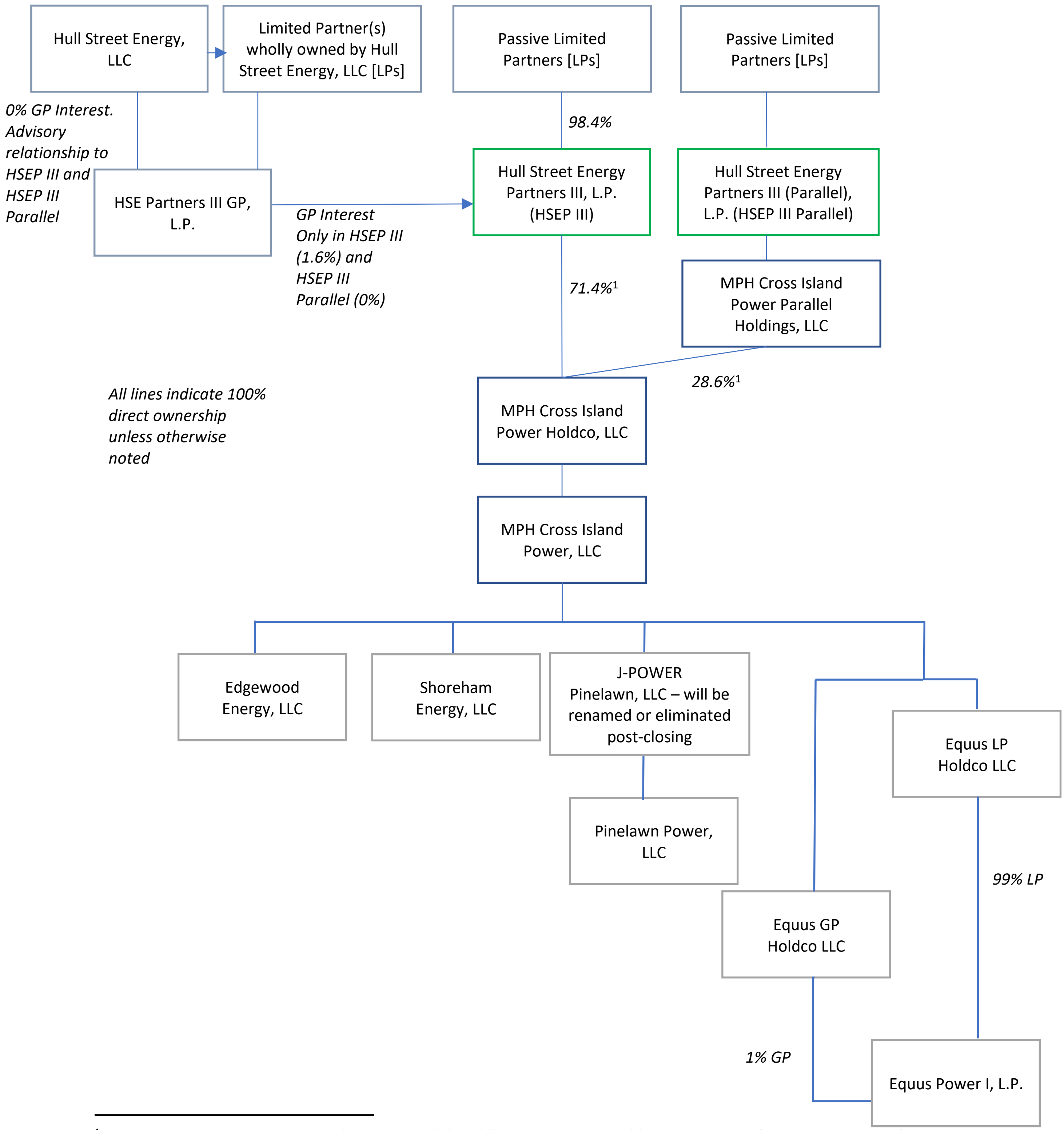
EXHIBIT A

Pre-Transaction Organizational Chart



Post-Transaction Organizational Chart[1]



[1] HSEP III's and MPH Cross Island Power Parallel Holdings, LLC's ownership percentages reflect ownership as of August 13, 2024 and are subject to change.

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VERIFICATION

I, Paul Peterson, as President & CEO, of Edgewood Energy, LLC, Shoreham Energy, LLC, Pinelawn Power LLC, and Equus Power I, L.P, do hereby affirm that the contents of this document are true to the best of my knowledge and belief.

Signed: ____________________
Date: August 12, 2024

STATE OF Illinois)
) ss.;
COUNTY OF Cook)

CHRISTEN PACTON GARCIA
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
September 01, 2024

On this 13 day of August, 2024, before me, the undersigned notary public, personally appeared Paul Peterson, proved to me through satisfactory evidence of identification, which was personally known (state form of identification or state that the signer is personally known to the notary), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)/(she) signed it voluntarily for its stated purpose.

Christen Pacton Garcia
Notary Public
My commission expires: September 1, 2024

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VERIFICATION

I, Randall Osteen, as General Counsel and Secretary of MPH Cross Island Power, LLC, do hereby affirm that the contents of this document are true to the best of my knowledge and belief.

Signed: ____________
Date: August 12, 2024

STATE OF Maryland)
) ss.;
COUNTY OF Montgomery)

On this 12th day of August, 2024, before me, the undersigned notary public, personally appeared Randall Osteen, proved to me through satisfactory evidence of identification, which was ______________ (state form of identification or state that the signer is personally known to the notary), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)/(she) signed it voluntarily for its stated purpose.

WANJIKU KEBUCHI
NOTARY PUBLIC
MONTGOMERY COUNTY
MARYLAND
MY COMMISSION EXPIRES December 12, 2026

Wanjiku Kebuchi
Notary Public
My commission expires: 12/12/2026