ATTACHMENT B

Hearing Date: October 30, 2013 at 8:30 a.m. (prevailing Eastern Time)
Objection Deadline: October 29, 2013 at 5:00 p.m. (prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
DYNEGY HOLDINGS, LLC, et al.,[1]	:	Case No. 11-38111 (CGM)
	:	Jointly Administered
Debtors.	:	

OPERATING DEBTORS' MOTION TO AMEND (I) THE ASSET PURCHASE AGREEMENT BY AND BETWEEN HELIOS POWER CAPITAL, LLC AND DYNEGY DANSKAMMER, L.L.C.; AND (II) ORDER UNDER 11 U.S.C. §§ 105, 363, 365, 1127(b) AND FED. R. BANKR. P. 2002, 6004, 6006, AND 9014 APPROVING (A) SALE OF ASSETS FREE AND CLEAR OF LIABILITIES AND LIENS, (B) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS TO HELIOS POWER CAPITAL, LLC, AND (C) RELATED RELIEF

TO THE HONORABLE CECELIA G. MORRIS,
CHIEF UNITED STATES BANKRUPTCY JUDGE:

Dynegy Northeast Generation, Inc. ("DNE"), Hudson Power, L.L.C., Dynegy Danskammer, L.L.C. ("Dynegy Danskammer"), and Dynegy Roseton, L.L.C. ("Dynegy

[1] The Operating Debtors, together with the last four digits of each Operating Debtor's federal tax identification number, are Dynegy Northeast Generation, Inc. (6760); Hudson Power, L.L.C. (NONE); Dynegy Danskammer, L.L.C. (9301); and Dynegy Roseton, L.L.C. (9299). The location of the corporate headquarters and the service address for Dynegy Northeast Generation, Inc. and Hudson Power, L.L.C. is 601 Travis Street Ste. 1400, Houston, Texas 77002. The location of the service address for Dynegy Roseton, L.L.C. is 992 River Road, Newburgh, New York 12550. The location of the service address for Dynegy Danskammer, L.L.C. is 994 River Road, Newburgh, New York 12550.

Roseton"), as debtors and debtors in possession (the "Operating Debtors"), by and through their undersigned counsel, hereby file this motion (the "Motion") to amend the (I) Order under 11 U.S.C. §§ 105, 363, 365, 1127(b) and Fed. R. Bankr. P. 2002, 6004, 6006, and 9014 Approving (a) Sale of Assets Free and Clear of Liabilities and Liens, (b) Assumption and Assignment of Executory Contracts to Helios Power Capital, LLC, and (c) Related Relief (the "Sale Order") [Docket No. 1478]; and (II) Related Asset Purchase Agreement (the "APA") by and between Helios Power Capital, LLC ("Helios" or "Purchaser") and Dynegy Danskammer[2] memorializing the sale of the Danskammer power generation facility (the "Danskammer Facility") and all other related assets (collectively, the "Danskammer Assets"). In support of this Motion, the Operating Debtors respectfully state and represent as follows:

PRELIMINARY STATEMENT

1. As this Court is aware, Dynegy Danskammer sought and received authority to enter into an asset purchase agreement with Helios. The asset purchase agreement approved by this Court required Dynegy Danskammer to retire the Danskammer Facility at or prior to closing. Based upon the terms of the APA (and statements made by Helios), Dynegy Danskammer, among other things, sought and received the requisite regulatory approval from the Federal Energy Regulatory Commission ("FERC") for the transfer of the Danskammer Facility, as a retired asset. On October 22, 2013, in FERC Docket No. EC13-144-000, Dynegy Danskammer obtained authorization for the transfer of the Danskammer Facility to Helios (the "FERC Order"), based on representations set forth in its application, including a representation, made in reliance on Helios's representations to Dynegy Danskammer, that Helios would not operate the Danskammer Facility and would demolish the facility after acquiring it.

[2] Filed as Exhibit 1 to the Sale Order.

2. Subsequent to this Court approving the sale of the Danskammer Facility to Helios ***and*** Dynegy Danskammer submitting the FERC Application, certain parties entered into discussions with Helios regarding the potential for operating the Danskammer Facility. These discussions were precipitated by a change in the region's capacity zones – the effect of which could result in an increase in commercial and residential energy rates. Helios, in turn, sought the Operating Debtors' assistance in seeking the regulatory approvals that would allow Helios the option to operate the Danskammer Facility. At the time Helios made its request, the Operating Debtors had no assurances that such a request would be approved and seeking such approvals would not delay a closing on the sale of the Danskammer Facility. In addition, the Operating Debtors believed that the New York Public Service Commission ("NYPSC") could take up to six (6) months to issue its approval of the transaction. Thus, the Operating Debtors were and currently are in an awkward position – while the Operating Debtors support the possibility of economic development and job creation in the Hudson Valley region, the Operating Debtors cannot (and are not contractually required to) delay the closing of the transaction contemplated in the APA or the effective date of their plan of liquidation.

3. Recognizing this, representatives from the NYPSC contacted the Operating Debtors on October 23, 2013 and indicated that, during the week of October 28, 2013, the NYPSC would provide the necessary state approvals to allow Helios the option to restart the Danskammer Facility. The NYPSC reiterated this to the Court at the status conference held on October 25, 2013.

4. While these assurances from the NYPSC were comforting from a state perspective, they provided the Operating Debtors with no comfort with respect to the FERC Order. Specifically, in the FERC Application, the Operating Debtors made statements regarding

Helios' intention to dismantle the Danskammer Facility, and the FERC Order specifically referenced those statements. While the statements in the FERC Application were made based on Helios' intention and, from the Operating Debtors' perspective, accurate at the time the FERC Application was filed, the Operating Debtors were concerned about transferring the Danskammer Facility on the terms outlined by the NYPSC without undertaking some discussion with FERC.

5. After the October 25, 2013 status conference, the Operating Debtors consulted with their regulatory advisors, as well as certain parties supporting the changes to the transaction. As a result, the Operating Debtors have agreed to modify the APA and transfer the Danskammer Facility on the terms outlined by the NYPSC on the following conditions: (i) the NYPSC issues an order approving the transfer of the Danskammer Facility on the terms described in its calls with the Operating Debtors on October 23 and 24, 2013, as well as on the record at the October 25, 2013 status conference; (ii) a closing occur by November 2, 2013; (iii) the Court approve the proposed modifications to the APA; and (iv) the Court modify the Sale Order to require Helios to comply with the Federal Power Act in the event that it seeks to operate the Danskammer Facility.

6. The Operating Debtors believe that if all of these conditions are satisfied, the estate will not be harmed by Helios' proposed changes, and the public interest will be best served by Helios' option to operate the Danskammer Facility – and the associated economic benefits to the region.

BACKGROUND

7. In support of the relief requested herein, the Operating Debtors hereby incorporate by reference the factual background set forth in the Debtors' Motion for Entry of an Order Approving Bid Procedures and Notice Procedures for a Sale, Auction and Sale Hearing (the "Original Sale Motion") [Docket No. 930], the Operating Debtors' Supplemental Sale Motion (the "Supplemental Sale Motion") [Docket No. 1199], the Declaration of Jonathan Lurvey in

support of the Supplemental Sale Motion (the "Lurvey Declaration") [Docket No. 1202] and Operating Debtors' Motion to Authorize the Operating Debtors to Enter into the APA with Helios and Approve the Sale of Assets to Helios (the "Helios Sale Motion") [Docket No. 1462].

8. On August 29, 2013, this Court entered the Sale Order approving the sale of the Danskammer Assets to Helios. At that time, it was understood by all parties (and required by the terms of the APA) that the Danskammer Facility would be shut down and demolished. On this basis, the Operating Debtors (with the cooperation of Helios) submitted to FERC an application to transfer the Danskammer Facility on September 9, 2013 (the "FERC Application"). A copy of the FERC Application is attached hereto as Exhibit B.

9. Under the APA, the sale can be terminated if it has not been consummated on or before the date that is 60 days after entry of the Sale Order – October 28, 2013 – unless the transaction had not been consummated because of a pending regulatory approval, in which case, either party could terminate 120 days after entry of the Sale Order. See APA § 8.1(d).

10. On October 22, 2013 the FERC issued the FERC Order authorizing the transfer of the Danskammer Facility, a copy of which is attached hereto as Exhibit C.

11. As was explained to the Court by counsel to the NYPSC, the recent creation of a new capacity zone has caused local and state officials to desire Helios to have the option to operate the Danskammer Facility. A description and additional background of the recent events precipitating the renewed interest in the operation of the Danskammer Facility can be found in the article attached as Exhibit D.

12. Subsequent to the status conference held on October 25, 2013, the Operating Debtors worked with the various parties present at the status conference in an attempt to modify

the terms of the APA to facilitate a transfer of the Danskammer Facility consistent with the terms proposed by the NYPSC.

RELIEF REQUESTED

13. In order to transfer the Danskammer Facility and preserve the option for Helios to operate the Danskammer Facility, the Operating Debtors request that this Court enter an order, substantially in the form attached hereto as Exhibit A, authorizing the amendments to the APA and modifying the Sale Order.

BASIS FOR RELIEF REQUESTED

A. Modification of the Sale Order is Permitted Under Rule 60(b)

14. Bankruptcy courts retain jurisdiction to review and modify or set aside their own orders, including orders approving section 363 sales, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, made applicable by Rule 9024 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). See In re Marcus Hook Development Park, Inc., 943 F.2d 261, 265 n.5 (3d Cir. 1991) (holding that the bankruptcy court can vacate or modify its sale order under Rule 60(b), stating that "[i]t is well settled that a bankruptcy court has the power to vacate or modify its orders, as long as it is equitable to do so.") (citing In re Texlon Corp., 596 F.2d 1029, 1101 (2d Cir. 1979)); In re Lehman Brothers Holding Inc., 445 B.R. 143, 149-50 (Bankr. S.D.N.Y. 2011) (observing that section 363 sale orders are subject to challenges under Rule 60(b)); In re Lawrence, 293 F.3d 615, 622 (2d Cir. 2002) (considering that undoing or modifying a bankruptcy court sale order should be evaluated under Rule 60(b)); In re Rome Family Corp., 2010 WL 1381093, at *2 (Bankr. D. Vt. March 31, 2010) (holding that Rule 60(b) can be used to challenge a section 363 sale order that was not appealed); In re F.A. Potts & Co., Inc., 86 B.R. 853, 856-57 (Bankr. E.D. Pa. 1988) (describing that bankruptcy courts may, in the exercise of their equitable powers, set aside a prior sale order); In re Metzger, 346 B.R. 806, 819 (Bankr.

N.D. Cal. 2006) (providing relief from sale order by voiding the offensive portion of the order under Rule 60(b)); see also In re Petition of the Board of Directors of Hopewell International Insurance, Ltd., 281 B.R. 200, 207 (Bankr. S.D.N.Y. 2002) (noting that bankruptcy courts have used Rule 60(b) to provide relief from plan confirmation orders and to modify injunctions).

15. Rule 60(b) enumerates several grounds upon which the Court could set aside or modify the Sale Order. Specifically, the courts have held that an order can be modified or vacated if a significant change in factual conditions renders continued enforcement of the order inequitable under Rule 60(b)(5). See Rufo v. Inmates of Suffolk Jail, 502 U.S. 367, 384 (1992) ("Modification of a consent decree may be warranted because of changed factual conditions"); Hopewell, 281 B.R. 200, 206, 208 (holding that Rufo applies to bankruptcy court orders and stating that "[c]hanged circumstances include conditions that make compliance with the [order] 'substantially more onerous' or impractical because of unforeseen developments, or where enforcement of the decree would be detrimental to the public interest."); In re W.R. Grace & Co., 476 B.R. 114 (Bankr. D. Del. 2012) (citing Horne v. Flores, 129 S.Ct. 2579, 2593 (2009) (stating that the Supreme Court has held that Rule 60(b)(5) "provides a means by which a party can ask a court to modify or vacate a judgment or order if a significant change in either factual conditions or in law renders continued enforcement detrimental to the public interest."); In re Lebanon Steel Foundry, 48 B.R. 520 (Bankr. M.D. Pa. 1985) (noting that "[t]he duty of the court to invoke its equitable powers is particularly great in those cases where it has assumed responsibility for supervising the continued conduct of the parties in the face of changing conditions.").

16. In relevant part, Rule 60(b)(5) authorizes the Court, "[o]n motion and just terms . . . to relieve a party or its legal representative from a final judgment, order or proceeding" (Fed. R. Civ. P. 60(b)) because "applying [that judgment] prospectively is no longer equitable." Fed. R.

Civ. P. 60(b)(5). To satisfy Rule 60(b)(5), the final order in question must first have "prospective application," meaning that it is either "executory" or involves "the supervision of changing conduct or conditions." See In re Salander, 450 B.R. 37, 56 (Bankr. S.D.N.Y. 2011) (citing Twelve John Does v. D.C., 841 F.2d 1133, 1139 (D.D.C. 1988)); DeWeerth v. Baldinger, 38 F.3d 1266, 1275-76 (2d Cir. 1994) (holding that judgments involving injunctions have "prospective application"). Sale orders – including the one in this case – are unquestionably orders with "prospective application" as they include broad injunctive provisions and require continued supervision by this Court in light of changing conditions. See, e.g., Sale Order ¶¶ 6, 10, 44; see also In re F.A. Potts & Co., Inc., 86 B.R. 853, 858 (holding that "the broad equitable reach of Rule 60(b)(5)" applies in the context of a request to vacate a sale order).

17. If the final order has prospective application, the Court can use Rule 60(b)(5) to modify or vacate such order if it is "inequitable" to continue applying that final order. "It is within the court's broad discretion to grant relief under Rule 60(b). . . . In exercising this discretion, courts should balance the policy in favor of serving the ends of justice against the policy in favor of finality." Mazzone v. Stamler, 157 F.R.D. 212, 214 (S.D.N.Y. 1994) (citations omitted); Nemaizer v. Baker, 793 F.2d 58, 61 (2d Cir. 1986) (stating that Rule 60(b) "should be broadly construed to do 'substantial justice.'"); In re Schwartz, 64 B.R. 948, 957 (Bankr. S.D.N.Y. 1986) ("Rule 60(b) should be broadly construed so as to do 'substantial justice'"). Because the purpose of Rule 60(b) is to strike a balance between the finality of judgments and doing substantial justice, the Rule should be "broadly construed to do substantial justice." In re FA Potts & Co., Inc., 86 B.R. 853 (Bankr. E.D. Pa. 1988). "Rule 60(b) motions are, in general, addressed to the discretion of the court with equitable principles taken into account." In re Govola, 306 B.R. 733, 737 (Bankr. D. Conn. 2004); see also In re Benhil Shirt Shops, Inc., 87

B.R. 275, 277 (S.D.N.Y. 1988) (citing Wright & Miller, Federal Practice and Procedure: Civil § 2857) ("Decisions under Fed. R. Civ. P. 60(b) are solidly within the equitable discretion of the court. A court must weigh the countervailing principles of deciding a claim on its merits and achieving a final result.").

18. Courts have recognized and protected the important interest of ensuring finality of court-approved bankruptcy sales. See, e.g., In re WestPoint Stevens, Inc., 600 F.3d 231, 248-49 (2d Cir. 2010) (finding that assuring the finality of a sale is a "uniquely important interest"); In re Lawrence, 293 F.3d 615, 621 (2d Cir. 2002) (finality "particularly important" in the context of a bankruptcy sale order). In the absence of the certainty provided by this strong policy favoring finality in bankruptcy sales, bids on bankruptcy assets would be priced downwards to reflect uncertainty as to the stability and integrity of a bankruptcy sale if courts are more willing to set aside or modify a sale that is final and no longer appealable. See WestPoint Stevens, 600 F.3d at 248-49; In re Edwards, 962 F.2d 641, 643,645 (7th Cir. 1992) ("If purchasers at judicially approved sales of property of a bankrupt estate, and their lenders, cannot rely on the deed that they receive at the sale, it will be difficult to liquidate bankrupt estates at positive prices."); In re Met-L-Wood Corp., 861 F.2d 1012, 1019 (7th Cir. 1988) ("Unless bankruptcy sales are final when made, rather than subject to being ripped open years later, high prices will not be offered for the assets of bankrupt firms."); In re W.R. Grace & Co., 476 B.R. 114 (Bankr. D. Del. 2012) ("When investors and other third parties can rely on a confirmed plan of reorganization and other bankruptcy judgments, they have the footing and confidence they need to pursue investments and business arrangements with the reorganized debtor, all of which foster the debtor's successful reorganization.").

19. In this case, the proposed amendment modifies the Sale Order to require Helios (including any affiliate and/or successor) to comply with the Federal Power Act in the event the Danskammer Facility is operated post-closing. Allowing the amendment of the Sale Order would not interfere in any way with the finality of the Sale Order – in fact, the amendment would (a) ensure a closing of the transaction authorized by the Sale Order; (b) provide the Operating Debtors' estates with a high level of comfort that Helios complies with all obligations under the Federal Power Act; and (c) preserve the possibility for the Danskammer Facility to be operated as a going concern.

20. Given the unusual nature of the changed circumstances in this case – which were outside of the Operating Debtors' control – and the willingness for the State of New York to act in a manner that protects the Operating Debtors' estates from undue delay and expense, equity dictates that the requested modification to the Sale Order be approved, especially where the modification benefits the local economy and the power needs of the State of New York while providing protection to the Operating Debtors' estates.

21. In light of the foregoing, the relief requested herein satisfies Rule 60(b) and, thus, the Sale Order should be amended in the manner set forth herein and in the proposed order, substantially in the form attached hereto as Exhibit A.

B. Modification of the Sale Order and the APA Satisfies Section 363(b) of the Bankruptcy Code

22. Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate[.]" 11 U.S.C. § 363(b)(1). It was under that provision that this Court determined in the Sale Order that the sale of Danskammer Assets to Helios pursuant to the APA was (i) in the sound business judgment of the Operating Debtors and in the best interests of the Operating

Debtors' estates and their creditors, (ii) the highest or otherwise best offer for the Danskammer Assets, (iii) made with a purchaser that was proceeding with the sale in good faith, and (iv) adequately noticed. See Sale Order; Helios Sale Motion.

23. The amendment simply modifies the Sale Order and the APA – both of which had previously prohibited Helios from restarting the Danskammer Facility – in a manner consistent with providing Helios with an option to operate the Danskammer Facility. A key component of the proposed modifications involved a shifting of risk from the estates to Helios. Specifically, the proposed modifications, in part, require Helios to assume certain liabilities for acts taken by the Operating Debtors consistent with the retirement of the Danskammer Facility.[3] As such, the Operating Debtors submit that the proposed modifications are fair, reasonable and were negotiated at arm's length and in good faith with Helios. Moreover, the Operating Debtors submit the proposed modifications are necessary in order to transfer the Danskammer Facility and preserve Helios' option to operate the facility post-closing.

24. Thus, approval of the modification is warranted under section 363(b) of the Bankruptcy Code, because it is in the sound business judgment of the Operating Debtors and is in the best interest of the Operating Debtors and their estates.

WAIVER OF BANKRUPTCY RULES 6004(h) AND 6006(d)

25. As sought in the Helios Sale Motion, the Operating Debtors request that the Sale Order, as amended, be effective immediately upon entry of such order, and that the 14-day stay under Bankruptcy Rules 6004(h) and 6006(d), to the extent applicable, be waived.

[3] In all instances, the terms of the modified APA control.

NOTICE

26. Notice of this Motion has been provided to all parties required to be noticed pursuant to the prior orders of this Court and consistent with the representations made to the Court at the hearing held on October 28, 2013. Accordingly, the Operating Debtors submit that good and sufficient notice of this Motion has been provided, and that no other or further notice need be provided.

WHEREFORE, the Operating Debtors respectfully request that the Court (i) enter the order substantially in the form attached hereto as Exhibit A, and (ii) grant such other and further relief as is just and proper.

Dated: October 28, 2013
New York, New York

SIDLEY AUSTIN LLP

/s/ Brian J. Lohan

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EXHIBIT A

Proposed Form of Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
DYNEGY HOLDINGS, LLC, et al.,[1]	:	Case No. 11-38111 (CGM)
	:	Jointly Administered
Debtors.	:	

ORDER AUTHORIZING THE AMENDMENT OF (I) THE ASSET PURCHASE AGREEMENT BY AND BETWEEN HELIOS POWER CAPITAL, LLC AND DYNEGY DANSKAMMER, L.L.C.; AND (II) ORDER UNDER 11 U.S.C. §§ 105, 363, 365, 1127(b) AND FED. R. BANKR. P. 2002, 6004, 6006, AND 9014 APPROVING (A) SALE OF ASSETS FREE AND CLEAR OF LIABILITIES AND LIENS, (B) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS TO HELIOS POWER CAPITAL, LLC, AND (C) RELATED RELIEF, AND (C) RELATED RELIEF

Upon the motion dated October 28, 2013 (the "Motion")[2] of Dynegy Northeast Generation, Inc. ("DNE"), Hudson Power, L.L.C., Dynegy Danskammer, L.L.C. ("Dynegy Danskammer"), and Dynegy Roseton, L.L.C. ("Dynegy Roseton"), as debtors and debtors in possession (the "Operating Debtors") in the above captioned chapter 11 cases (the "Chapter 11 Cases"), for entry of an order amending the (I) Order under 11 U.S.C. §§ 105, 363, 365, 1127(b) and Fed. R. Bankr. P. 2002, 6004, 6006, and 9014 Approving (a) Sale of Assets Free and Clear of Liabilities and Liens, (b) Assumption and Assignment of Executory Contracts to Helios Power Capital, LLC, and (c) Related Relief (the "Sale Order") [Docket No. 1478]; and (II) Related Asset Purchase Agreement (the "APA") by and between Helios Power Capital, LLC

[1] The Operating Debtors, together with the last four digits of each Operating Debtor's federal tax identification number, are Dynegy Northeast Generation, Inc. (6760); Hudson Power, L.L.C. (NONE); Dynegy Danskammer, L.L.C. (9301); and Dynegy Roseton, L.L.C. (9299). The location of the corporate headquarters and the service address for Dynegy Northeast Generation, Inc. and Hudson Power, L.L.C. is 601 Travis Street Ste. 1400, Houston, Texas 77002. The location of the service address for Dynegy Roseton, L.L.C. is 992 River Road, Newburgh, New York 12550. The location of the service address for Dynegy Danskammer, L.L.C. is 994 River Road, Newburgh, New York 12550.

[2] Capitalized terms used herein but not defined herein shall have the meaning ascribed to such terms in the Motion.

("Purchaser") and Dynegy Danskammer;[3] and a hearing having been held on August 23, 2013 to consider the Sale Order; and having entered the Sale Order, dated August 29, 2013 approving the sale of the Danskammer Assets to Purchaser; and due and proper notice of the Motion having been given; and a hearing having been held on October 30, 2013 with respect to the Motion, and upon the record of such hearing and all of the other proceedings before the Court; and all parties in interest having been afforded an opportunity to be heard with respect to the Motion and all of the relief related thereto; and under the circumstances, all parties in interest having been afforded an opportunity to be heard with respect to this Order; and it appearing that the relief requested by the Motion and as contemplated by this Order are in the best interests of the Operating Debtors' estates, their creditors, and other parties in interest; and it appearing that no party in interest filed a timely appeal to the entry of the Sale Order; and it appearing that the Court has jurisdiction over this matter; and after due deliberation thereon; and sufficient cause appearing therefor; **IT IS HEREBY FOUND, DETERMINED AND ORDERED THAT:**

1. The Motion and the relief requested therein is GRANTED and APPROVED, as set forth herein. This Order supplements the Sale Order.

2. All objections to the entry of this Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, or settled, or not otherwise resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits, with prejudice.

3. The Sale Order shall remain in full force and effect, except to the extent expressly modified by this Order.

4. The modified APA (the "Modified APA"), attached hereto as Exhibit 1, is hereby

[3] Filed as Exhibit 1 to the Sale Order.

approved. The Operating Debtors are hereby authorized to (i) execute the Modified APA and the Sale Order, as amended herein, along with any additional instruments or documents that may be reasonably necessary or appropriate to implement the modifications therein; (ii) consummate the sale as set forth in the Modified APA and the Sale Order, as amended herein; and (iii) take all other and further actions as may be reasonably necessary to implement the Sale Order, as amended herein, and this Order.

5. The Sale Order is hereby modified to include the following as a finding of fact in decretal paragraph V thereof:

> V. On October 22, 2013, in Federal Energy Regulatory Commission ("FERC") Docket No. EC13-144-000, Dynegy Danskammer obtained authorization for the transfer of the Danskammer Facility to Purchaser, based on representations set forth in its application, including a representation, made in reliance on Purchaser's representations to Dynegy Danskammer, that Purchaser would not operate and would demolish the Danskammer Facility after acquiring it. The representations made by the Operating Debtors related to the foregoing were true and correct, and consistent with the intent of the Parties under the APA.

6. The Sale Order is hereby modified to include the following as a conclusion of law in decretal paragraph 55 thereof:

> 55. Notwithstanding anything to the contrary contained in this Order, the APA, or any of the Transaction Documents, prior to operating the Danskammer Facility, Purchaser, any affiliate thereof and/or any successor thereto must obtain FERC approval under Section 203 of the Federal Power Act for the acquisition of the Danskammer Facility and associated interconnection facilities. FERC may exercise jurisdiction to enforce this Order as it relates to the obligations of Purchaser, any affiliate thereof and/or any successor thereto under the Federal Power Act, provided however, this Court shall retain jurisdiction to enforce this provision with respect to any other person or entity. The Operating Debtors, their affiliates, agents, professionals, and any officer, director, member, manager, employee or partner thereof shall have no liability for (i) the transfer of the Danskammer Facility pursuant to this Order, (ii) any action taken in furtherance of any transaction contemplated under the APA prior or subsequent to the closing of the transaction, or (iii) any violation of paragraph 55 of this Order by Purchaser, any affiliate thereof and/or any successor thereto.

7. The terms and provisions of the APA, the Sale Order, this Order and the Modified APA shall be binding in all respects upon the Operating Debtors, the Operating Debtors' estates, all creditors (whether known or unknown) and holders of equity interests in the Operating Debtors, Purchaser and its respective affiliates, successors and assigns, and any trustee that may be appointed in these cases or if any of these cases are converted to cases under chapter 7 of the Bankruptcy Code.

8. Notwithstanding the provisions of Bankruptcy Rule 6004 and Bankruptcy Rule 6006 or any applicable provisions of the Local Rules, this Order shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon entry. Time is of the essence in approving the Modified APA and this Order, and the Operating Debtors and Purchaser intend to close the sale described in the Modified APA, this Order and the Sale Order, as amended herein, as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

9. This Court retains jurisdiction to, among other things, interpret, implement and enforce the terms and provisions of this Order, the Sale Order (as amended herein), the Modified APA and all amendments thereto and any waivers and consents thereunder, provided, however, that FERC shall have sole and exclusive jurisdiction with respect to the enforcement of rules and regulations promulgated by FERC.

10. The terms of this Order (other than paragraph 5 of this Order) shall remain in effect after November 2, 2013, only in the event the Operating Debtors provide notice to the Court that the transaction contemplated in the APA has been consummated on or prior to November 2, 2013. Paragraph 5 of this Order shall remain in effect regardless of whether the

transaction is consummated.

Dated: October __, 2013
Poughkeepsie, New York

HONORABLE CECELIA G. MORRIS
CHIEF UNITED STATES BANKRUPTCY
JUDGE

Exhibit 1

Modified APA

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT (this "***Amendment***") is made and entered into as of October 28, 2013 (the "***Amendment Effective Date***"), by and between Dynegy Danskammer, L.L.C., a Delaware limited liability company (the "***Seller***"), and Helios Power Capital, LLC, a Texas limited liability company (the "***Purchaser***"). The Seller and the Purchaser are sometimes hereinafter referred to individually as a "***Party***" and together as the "***Parties***."

RECITALS:

A. WHEREAS, the Seller and the Purchaser are parties to that certain Asset Purchase Agreement dated as of August 22, 2013 (the "***APA***").

B. WHEREAS, the Parties wish to amend the APA as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

Article 1.

AMENDMENTS TO THE APA

1.1 New Definitions. The following definitions are hereby added to Section 1.1 of the APA where alphabetically appropriate:

> ""***Environmental Laws***" means all Laws relating to pollution, Hazardous Materials, the protection of the environment, natural resources or human health (to the extent related to environmental exposure to Hazardous Materials) or the transport, treatment, storage, disposal or release into the environment of Hazardous Materials."
>
> "***Hazardous Materials***" means any material, pollutant, contaminant, substance or waste defined, listed or regulated as "hazardous" or "toxic" (or words of similar meaning or intent) under any applicable Environmental Law, including materials exhibiting the characteristics of ignitability, corrosivity, reactivity or toxicity, as such terms are defined in connection with hazardous materials or hazardous wastes or hazardous or toxic substances in any applicable Environmental Law."

1.2 Assumed Liabilities.

(a) Section 2.1(c)(ii) of the APA is hereby amended and restated to read in its entirety as follows:

> ["(ii) all environmental Liabilities and obligations (other than those discharged by bankruptcy) with respect to ownership or operation of the Assets, including any Liabilities and obligations arising from or relating to permits or other

authorizations relating to the ownership or operation, from and after [INSERT], except for penalties, fines, sanctions and other similar Liabilities arising from actions or circumstances from prior to [X], including any violation of the Clean Air Act or other Environmental Law;"][1]

1.3 Excluded Liabilities. Section 2.1(d)(iii) of the APA is hereby amended and restated to read in its entirety as follows:

"(iii) penalties, fines, sanctions and other similar Liabilities arising from actions or circumstances prior to October 1, 2012, including any violation of the Clean Air Act or other Environmental Laws;"

1.4 Covenant. Section 5.19 of the APA is hereby amended and restated to read in its entirety as follows:

"5.19 Operation of the Assets. The Parties hereby acknowledge that the Assets are being sold to the Purchaser on the basis of such Assets being non-operational as of the Closing. If at any time after the Closing, the Purchaser intends to operate the Assets, then the Purchaser shall take all actions and make all filings (in addition to any filings described on Schedule 5.14) necessary to obtain any required Consents in order to operate the Assets in compliance with all applicable Laws. The Purchaser hereby agrees to indemnify the Seller for any losses that the Seller or any of Seller's Affiliates suffer as a result of violations of applicable Laws with respect to, or arising out of, the ownership or operation of the Assets following the Closing based on any breach or violation of Purchaser's obligations under the immediately preceding sentence."

1.5 No Affiliate Liabilities. Article IX of the APA is hereby amended by adding a new Section 9.16 to read in its entirety as follows:

"9.16 No Affiliate Obligations or Liabilities. The Purchaser hereby acknowledges and agrees that none of the Seller's Affiliates, or the officers, employees or consultants of the Seller or Seller's Affiliates shall be obligated to perform, or otherwise take any actions with respect to, any of the Seller's obligations under or arising out of this Agreement."

Article 2.

GENERAL PROVISIONS

2.1 Definitions and Rules of Interpretation. Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings ascribed to them in the APA. The rules of interpretation set forth in Section 1.2 of the APA shall apply to this Amendment.

[1] The Parties will continue to discuss the amendments to this section and will present agreed upon language at or prior to the Hearing. Each Party reserves all rights with respect to any proposed modifications to the APA. Either Party may raise additional language or modifications to the APA at any time prior to the Court approving modifications to the APA.

2.2 Governing Law; Stipulations. This Amendment shall be construed and interpreted, and the rights of the Parties shall be determined, in accordance with the Laws of the State of New York, without giving effect to any provision thereof that would require the application of the substantive Laws of any other jurisdiction, except to the extent that such Laws are superseded by the Bankruptcy Code.

2.3 Force and Effect. The APA, as amended hereby, remains in full force and effect.

2.4 Severability. The invalidity of one or more phrases, sentences, clauses, Sections or Articles contained in this Amendment shall not affect the validity of the remaining portions of this Amendment so long as the material purposes of this Amendment can be determined and effectuated.

2.5 Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original but all of which together will constitute one instrument, binding upon all Parties hereto, notwithstanding that all of such Parties may not have executed the same counterpart. The delivery of an executed counterpart of this Amendment by facsimile or portable document format (.pdf) shall be deemed to be valid delivery thereof.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, this Amendment has been executed and delivered by the duly authorized representatives of the Seller and the Purchaser as of the Amendment Effective Date.

SELLER:

DYNEGY DANSKAMMER, L.L.C., a Delaware limited liability company

By: _____
Name:
Title:

PURCHASER:

HELIOS POWER CAPITAL, LLC, a Texas limited liability company

By: _____
Name:
Title:

EXHIBIT B

FERC Application

KING & SPALDING

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September 9, 2013

VIA EFILING

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: ***Dynegy Danskammer, L.L.C.***
Application For Approval Under Section 203 of the Federal Power Act and Request for Expedited Action, Docket No. EC13- -000

Dear Secretary Bose:

Enclosed for filing please find the application (the "Application") pursuant to Section 203 of the Federal Power Act (the "FPA")[1] and Part 33 of the regulations of the Federal Energy Regulatory Commission (the "Commission")[2] of Dynegy Danskammer, L.L.C. ("Dynegy Danskammer") for all FPA Section 203 approvals deemed to be required in connection with a transaction under which Dynegy Danskammer will acquire legal and beneficial title to Units 3 and 4 at the Danskammer Generating Station from the passive lessor and then sell them, together with the other units at the Danskammer Generating Station and certain associated assets (which Dynegy Danskammer already owns), to Helios Power Capital, LLC (the "Transaction").

Dynegy Danskammer respectfully requests that the Commission issue an order approving the Transaction ***on or before October 24, 2013.***

1 16 U.S.C. § 824b (2006).

2 18 C.F.R. Pt. 33 (2013).

Thank you for your consideration of this matter. Please do not hesitate to contact counsel listed below with any questions.

Very truly yours,

/s/
Neil L. Levy
David G. Tewksbury

Counsel for **Dynegy Danskammer, L.L.C.**

Enclosures

cc: Steve P. Rodgers (FERC Staff)
Andrew P. Mosier, Jr. (FERC Staff)

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Dynegy Danskammer, L.L.C.) **Docket No. EC13-___-000**

APPLICATION FOR AUTHORIZATION UNDER SECTION 203 OF THE FEDERAL POWER ACT AND REQUEST FOR EXPEDITED ACTION

Pursuant to Section 203 of the Federal Power Act ("FPA")[1] and Part 33 of the regulations of the Federal Energy Regulatory Commission (the "Commission"),[2] Dynegy Danskammer, L.L.C. ("Dynegy Danskammer") hereby submits an application (this "Application") requesting such FPA Section 203 approvals as may be deemed to be required in connection with a transaction (the "Transaction") under which Dynegy Danskammer will acquire legal and beneficial title to Units 3 and 4 at the Danskammer Generating Station ("Danskammer 3 & 4") from the passive lessor, Danskammer OL LLC ("Danskammer OL"), and then sell them, together with the other units at the Danskammer Generating Station and certain associated assets (which Dynegy Danskammer already owns), to Helios Power Capital, LLC ("Helios").[3] As

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1 16 U.S.C. § 824b (2006).

2 18 C.F.R. Pt. 33 (2013).

3 Dynegy Danskammer requests approval under FPA Sections 203(a)(1)(B) and 203(a)(1)(D), 16 U.S.C. §§ 824b(a)(1)(B), 824b(a)(1)(D) (2006), for the acquisition of the legal and beneficial ownership of the Danskammer Generating Station from Danskammer OL, consistent with the fact that it obtained approval under FPA Section 203, 16 U.S.C. §§ 824b (2006), when such ownership transferred to Danskammer OL. *See Dynegy Danskammer, L.L.C.*, 94 FERC ¶ 62,207 (2001) ("*Dynegy Danskammer*"). In addition, Dynegy Danskammer seeks Commission approval pursuant to FPA Section 203(a)(1)(A), 16 U.S.C. § 824b(a)(1)(A) (2006), for any transfer of control over Commission-jurisdictional assets deemed to occur as a result of the sale of the Danskammer Generating Station to Helios. Danskammer OL and Helios are not parties to this Application, but have authorized Dynegy Danskammer to represent that they support this Application. Neither Danskammer OL nor Helios is a "public utility" under Section 201(e) of the FPA. 16 U.S.C. § 824(e) (2006). Accordingly, Danskammer OL did not require or obtain approval under FPA Section 203, 16 U.S.C. §§ 824b (2006), when it acquired such ownership, and neither Danskammer OL nor Helios requires such approval in connection with its part in the Transaction. As discussed below, the Danskammer Generating Station is currently inoperable, and Helios intends to demolish it after the Transaction is consummated.

demonstrated herein, the Transaction satisfies the requirements of Section 203 of the FPA and Part 33 of the Commission's regulations, because it is consistent with the public interest and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

I. REQUEST FOR EXPEDITED ACTION

Dynegy Danskammer respectfully requests that the Commission issue an order granting the requested approval of the Transaction ***on or before October 24, 2013***. Pursuant to Sections 33.11(b) and (c) of the Commission's regulations,[4] expedited consideration is appropriate to the extent this Application is not contested,[5] because it does not involve a merger, is consistent with Commission precedent, and does not require analysis under Appendix A of the *Merger Policy Statement*.[6] In order to allow for expedited approval, Dynegy Danskammer also requests that, consistent with Order No. 669,[7] the Commission establish a comment period of 21 days in order to allow for the issuance of an order on or before October 24, 2013.

On November 7, 2011, Dynegy Holdings, LLC ("Dynegy Holdings") and certain of its subsidiaries, including Dynegy Danskammer, commenced bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") with the filing of petitions for voluntary protection under Chapter 11 of the United States Bankruptcy

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4 18 C.F.R. §§ 33.11(b), 33.11(c) (2013).

5 Dynegy Danskammer has no reason to expect that this Application will be contested.

6 *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (the "*Merger Policy Statement*"), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997). *See also Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005) ("Order No. 669"), *on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

7 *See* Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 194.

Code (the "Bankruptcy Code").[8] On September 10, 2012, the Bankruptcy Court entered an order confirming a joint plan of reorganization for Dynegy Inc. ("Dynegy") and Dynegy Holdings (the "Plan").[9] As contemplated by the Plan, an auction of Dynegy Danskammer's generating facilities commenced on November 19, 2012, and Dynegy Danskammer entered into an agreement to sell the facilities to the winning bidder in that auction.[10] When that entity failed to consummate the transaction by the deadline prescribed by the Bankruptcy Court,[11] Dynegy Danskammer and its affiliated debtors resumed their marketing efforts with respect to the generating facilities, and Helios was selected as the buyer. The sale to Helios was subsequently approved by the Bankruptcy Court.[12] Expedited approval of this Application will permit the

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8 11 U.S.C. §§ 1101, *et seq.* (2006). The voluntary petitions and other materials relating to the Chapter 11 proceedings of Dynegy and certain of its affiliates are available at: http://dm.epiq11.com/DHL/Project#. In filing this Application and otherwise participating in this proceeding, none of Dynegy Danskammer or any of its affiliates intends to waive any protections which might be afforded to it under the Bankruptcy Code. Dynegy and its public utility subsidiaries (including Dynegy Danskammer) and Franklin Resources, Inc. and certain of its investment management subsidiaries and managed investment funds (the "Franklin Funds") sought and obtained approval under Section 203 of the FPA, 16 U.S.C. § 824b (2006), for the acquisition of up to 35 percent of the voting securities of a reorganized Dynegy by one or more of the Franklin Funds. *See Dynegy Inc.*, 140 FERC ¶ 62,161 (2012). Dynegy Danskammer previously filed, and later withdrew, an application for FPA Section 203 approval in connection with the proposed rejection pursuant to Section 365 of the Bankruptcy Code, 11 U.S.C. § 365 (2006), of the Danskammer Lease. *See* Application for Approval under Section 203 of the Federal Power Act and Request for Shortened Notice Period and Expedited Action, Docket No. EC12-27-000 (filed Nov. 8, 2011); Motion to Withdraw Application, Docket No. EC12-27-000 (filed Aug. 8, 2012).

9 *See Dynegy Inc.*, Order Confirming the Joint Chapter 11 Plan of Reorganization for Dynegy Holdings, LLC and Dynegy Inc., Case No. 12-36728 (CGM) (Sept. 10, 2012), *available at* http://dm.epiq11.com/DHL/Document/GetDocument/2125089.

10 *See Dynegy Danskammer, L.L.C.*, 142 FERC ¶ 62,197 (2013) ("March 11 Order") (granting FPA Section 203 approval for that sale).

11 *See* Order Approving Operating Debtors' Emergency Motion to Enforce the Confirmation Order and Sale Order, and Compelling Performance under the Danskammer APA, Case No. 11-38111 (CGM) (July 25, 2013), *available at* http://dm.epiq11.com/DHL/Document/GetDocument/2401132. *See also* Notification of Non-Consummation of Transaction, Docket No. EC13-70-000 (filed Sept. 5, 2013) (notifying the Commission that the previously-approved sale will not be consummated).

12 *See* Order under 11 U.S.C §§ 105, 363, 365, 1127(b) and Fed. R. Bankr. P. 2002, 6004, 6006, and 9014 Approving (A) Sale of Assets Free and Clear of Liabilities and Liens; (B) Assumption and Assignment of Executory Contracts to Helios Power Capital, LLC, and (C) Related Relief Case No. 11-

Transaction to close as expeditiously as possible and thereby facilitate the administration of the Bankruptcy Court proceedings.

II. BACKGROUND

A. Description of Applicant and Helios

1. Dynegy Danskammer

Dynegy Danskammer is an exempt wholesale generator ("EWG")[13] with market based-rate authority[14] that leases Danskammer 3 & 4, coal-fired electric generating facilities with a net capacity of approximately 373 MW (summer rating), and associated interconnecting transmission facilities from Danskammer OL. Dynegy Danskammer also owns and operates the remaining units at the Danskammer Generating Station, namely, two oil- and natural gas-fired units with a net capacity totaling approximately 130 MW (Units 1 and 2) and two emergency diesel generators (Units 5 and 6) each with a net capacity of approximately 2.5 MW, as well as the interconnecting transmission facilities associated with those units. The Danskammer Generating Station is located in Newburgh, New York, and is interconnected with the transmission grid controlled by the New York Independent System Operator, Inc. (the "NYISO").

The Danskammer Generating Station is currently inoperable. On January 3, 2013, Dynegy Danskammer filed a notice of intent to retire the Danskammer Generating Station with the New York Public Service Commission.[15]

38111 (CGM) (Aug. 29, 2013), *available at* http://dm.epiq11.com/DHL/Docket#Debtors=4476&RelatedDocketId=&ds=true&maxPerPage=25&page=1.

13 *See Dynegy Danskammer, L.L.C.*, 94 FERC ¶ 62,102 (2001).

14 *See Dynegy Danskammer, L.L.C.*, Docket No. ER01-140-000 (Dec. 5, 2000) (unreported).

15 *See* Notice of Intent to Retire Dynegy Danskammer, L.L.C. Units 1–6, Case No. 05-E-0889 (filed Jan. 3, 2013) *available at* http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=

Danskammer 3 & 4 are leased from Danskammer OL[16] pursuant to a lease (the "Danskammer Lease") entered as part of a sale/leaseback arrangement.[17] Pursuant to the lease, Dynegy Danskammer controls the operation of, and sales from, Danskammer 3 & 4. Danskammer OL is a purely passive owner of Danskammer 3 & 4, and is not, therefore, a "public utility" under Section 201(e) of the FPA.[18]

Dynegy Danskammer is a Delaware limited liability company and is a direct, wholly owned subsidiary of Hudson Power, L.L.C. ("Hudson Power"), a Delaware limited liability company. Hudson Power is a direct, wholly owned subsidiary of Dynegy Northeast Generation, Inc. ("Dynegy Northeast"), a Delaware corporation, which is a wholly owned subsidiary of Dynegy, also a Delaware corporation. Through various subsidiaries, Dynegy produces and sells electric energy, capacity, and ancillary services in various U.S. markets. Dynegy's power generation portfolio currently consists of approximately 9,800 MW of baseload, intermediate, and peaking power plants fueled by a mix of natural gas, coal, and fuel oil.

2. Helios

Helios is a Texas limited liability company that specializes in capturing the value of power generation assets at any point in the course of their life cycle, including through demolition and salvage and site redevelopment efforts. Neither Helios nor any of its affiliates owns or controls operational generation or transmission facilities in the NYISO market or in any

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{27F01CCA-271A-464F-9718-7365D4E51B4F}.

16 *See Danskammer OL LLC*, 95 FERC ¶ 62,120 (2001). Danskammer OL, a Delaware limited liability company, is an indirect wholly owned subsidiary of Public Service Enterprise Group and an EWG.

17 *See Dynegy Danskammer*, 94 FERC ¶ 62,207.

18 16 U.S.C. § 824(e) (2006).

market first-tier to the NYISO market. Helios intends to demolish the Danskammer Generating Station once it acquires ownership.

B. The Transaction

Dynegy Danskammer will acquire legal and beneficial title to Danskammer 3 & 4 from Danskammer OL pursuant to the Transfer Agreement, dated as of January 14, 2013, by and between Dynegy Danskammer and Danskammer OL (the "Transfer Agreement"), provided in Exhibit I-A1 to this Application, as amended by the First Amendment to Asset Transfer Agreement, dated as of August 22, 2013, by and between Dynegy Danskammer and Danskammer OL (the "Transfer Agreement Amendment"), provided in Exhibit I-A2 to this Application. Following closing under the Transfer Agreement and the satisfaction of other conditions precedent (including Commission approval of this Application), Helios will purchase, and Dynegy Danskammer will sell, the Danskammer Generating Station, including the Commission-jurisdictional interconnection facilities, and certain associated assets pursuant to the Asset Purchase Agreement, dated August 22, 2013, by and between Dynegy Danskammer and Helios (the "APA"), provided in Exhibit I-B to this Application.

III. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST

Section 203(a)(4) of the FPA provides that the Commission "shall approve [a] proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be consistent with the public interest, and will not result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. . . ."[19] In determining whether a proposed transaction is in the public interest, the Commission considers whether it will have any adverse impact on

19 16 U.S.C. § 824b(a)(4) (2006).

(i) competition, (ii) rates, or (iii) regulation.[20] The Transaction satisfies the requirements of Section 203 because it will have no adverse impact on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of any associate company. Indeed, in terms of the factors relevant to the Commission's analysis under FPA Section 203, the Transaction is indistinguishable from the earlier sale of the Danskammer Generating Station approved by the Commission.[21]

A. The Transaction Will Not Have an Adverse Effect on Competition.

1. The Transaction Presents No Horizontal Market Power Concerns.

The Transaction will result in a transfer of control over the Danskammer Generating Station from Dynegy Danskammer, which currently controls Danskammer 3 & 4 pursuant to the Danskammer Lease and owns the remainder of the Danskammer Generating Station, to Helios. As Helios and its affiliates do not control any generation in the NYISO market or in any market first-tier to the NYISO market, the Transaction does not involve any combination of generating facilities and thus will not result in any single corporate entity obtaining ownership or control over the generating facilities of previously unaffiliated entities. Accordingly, the Transaction presents no horizontal market power concerns, and no horizontal market power analysis is required.[22]

2. The Transaction Presents No Vertical Market Power Concerns.

As the Transaction does not involve any electric transmission facilities, other than facilities used to interconnect generating facilities with the transmission grid, or any other

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20 *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

21 *See* March 11 Order, 142 FERC ¶ 62,197.

22 *See* 18 C.F.R. § 33.3(a)(1) (2013).

upstream inputs to electricity products, the Transaction presents no vertical market power concerns. Moreover, as noted above, Helios and its affiliates do not control any generation in the NYISO market or in any market first-tier to the NYISO market. Consequently, no vertical market power analysis is required.[23]

B. The Transaction Will Not Have an Adverse Effect on Rates.

The Transaction will not adversely affect rates because, among other things, (1) no wholesale sales are currently being made from the Danskammer Generating Station; (2) the Danskammer Generating Station will be dismantled following the consummation of the Transaction; (3) no further sales will be made from the Danskammer Generating Station either before or after the consummation of the Transaction; and (4) neither Dynegy Danskammer nor Helios provides Commission-jurisdictional services at cost-based rates. Thus, the Transaction will have no effect on rates for wholesale sales or transmission to captive customers. Moreover, Neither Dynegy Danskammer nor Helios is, or is affiliated with, any traditional utility with captive retail or wholesale customers or with an entity that currently provides unbundled transmission service.

C. The Transaction Will Not Impair the Effectiveness of Regulation.

The Transaction will not have any adverse effect on the effectiveness of federal or state regulation because Helios will not be making wholesale sales of electric energy from the station. Helios has informed Dynegy Danskammer that because Helios will not operate, or make wholesale sales from, the Danskammer Generating Station, it will not be a "public utility" under

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23 *See* 18 C.F.R. § 33.4(a)(2) (2013).

Section 201(e) of the FPA,[24] and the Commission will, therefore, not have jurisdiction over Helios as a result of the Transaction.

Similarly, the Transaction will not affect the extent to which any state authority can regulate retail rates.

D. The Transaction Will Not Result in Cross-Subsidization or the Pledge or Encumbrance of Utility Assets as to Any Associate Company.

Pursuant to Section 203(a)(4) of the FPA and Section 2.26(f) of the Commission's regulations,[25] the Commission evaluates whether a proposed transaction will result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Recognizing three classes of transactions that are unlikely to present cross-subsidization concerns, the Commission has adopted three "'safe harbors' for meeting the section 203 cross-subsidization demonstration, absent concerns identified by the Commission or evidence from interveners that there is a cross-subsidy problem based on the particular circumstances presented."[26] The Transaction falls squarely within the safe harbor for transactions that do not involve a franchised public utility with captive customers.[27] Under such circumstances, the Commission has recognized that "there is no potential for harm to customers."[28]

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24 16 U.S.C. § 824(e) (2006).

25 18 C.F.R. § 2.26(f) (2013).

26 *FPA Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060 at P 16 (2007).

27 *See id.* at P 17.

28 *Id.*

IV. INFORMATION REQUIRED BY THE COMMISSION'S REGULATIONS

In support of this Application, the following information is provided as required by section 33.2 of the Commission's regulations.[29] Dynegy Danskammer respectfully requests that the Commission grant certain waivers of these requirements consistent with those granted under similar circumstances.[30]

A. Section 33.2(a) – The Exact Name of the Applicant and Its Principal Business Addresses

Dynegy Danskammer's exact legal name and the address of its principal business office are:

Dynegy Danskammer, L.L.C.
601 Travis Street, Suite 1400
Houston, TX 77002

B. Section 33.2(b) – Names and Addresses of Persons Authorized to Receive Notices and Communications Regarding the Application

Dynegy Danskammer requests that the names of the following persons be placed on the official service list compiled by the Secretary in this proceeding:[31]

Neil L. Levy
David G. Tewksbury
KING & SPALDING LLP
1700 Pennsylvania Ave., NW
Washington, DC 20006-4706
(202) 737-0500
(202) 626-3737 (facsimile)
nlevy@kslaw.com
dtewksbury@kslaw.com

Michelle D. Grant
Corporate Counsel
Dynegy Inc.
601 Travis Street, Suite 1400
Houston, TX 77002
(713) 767-0387
(713) 507-6834 (facsimile)
michelle.d.grant@dynegy.com

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29 18 C.F.R. § 33.2 (2013).

30 *See, e.g., Northeast Generation Co.*, 117 FERC ¶ 61,068 at P 17 (2006) (rejecting objections to applicants' request to waive the requirements to file certain information).

31 Dynegy Danskammer respectfully requests waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3) (2013), to the extent necessary to permit designation of more than two persons for service on their behalf in these proceedings.

C. Section 33.2(c) – Description of the Applicant

1. Exhibit A – Description of the Applicant's Business Activities

Descriptions of Dynegy Danskammer's and Helios's business activities are provided above in Part II.A of this Application. Dynegy Danskammer respectfully requests waiver of Section 33.2(c)(1) of the Commission's regulations[32] to the extent it would require the submission of additional information in Exhibit A.

2. Exhibit B – List of Energy Subsidiaries and Affiliates

Dynegy Danskammer's relevant energy subsidiaries and affiliates are described in Part II.A of this Application. Dynegy Danskammer respectfully requests waiver of Section 33.2(c)(2) of the Commission's regulations[33] to the extent it would require the submission of additional information in Exhibit B.[34]

3. Exhibit C – Organizational Charts

The Transaction involves a disposition of assets, and thus will have no effect on Dynegy Danskammer's organizational structure. Dynegy Danskammer therefore respectfully requests waiver of the requirement of Section 33.2(c)(3) of the Commission's regulations[35] to file Exhibit C.

4. Exhibit D – Description of Joint Ventures, Strategic Alliances, Tolling Arrangements or Other Business Arrangements

The Transaction will have no effect on any joint ventures, strategic alliances, or other business arrangements of Dynegy Danskammer separate from the Transaction. Dynegy

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32 18 C.F.R. § 33.2(c)(1) (2013).

33 18 C.F.R. § 33.2(c)(2) (2013).

34 *See, e.g., Sunoco Power Generation LLC*, 138 FERC ¶ 62,255 (2012); *Cottonwood Energy Co. LP*, 118 FERC ¶ 62,151 (2007); *National Power of Am., Inc.*, 109 FERC ¶ 62,214 (2004).

35 18 C.F.R. § 33.2(c)(3) (2013).

Danskammer, therefore, requests waiver of the requirement of Section 33.2(c)(4) of the Commission's regulations[36] to file Exhibit D.

5. Exhibit E – Identity of Common Officers

There are currently no common officers or directors between Dynegy Danskammer and Helios, and there will be no common officers or directors between Dynegy Danskammer and Helios following the consummation of the Transaction. Dynegy Danskammer respectfully requests waiver of the requirement of Section 33.2(c)(5) of the Commission's regulations[37] to the extent it would require the submission of additional information in Exhibit E.

6. Exhibit F – Wholesale Power Sales and Transmission Customers

Dynegy Danskammer respectfully requests waiver of the requirement of Section 33.2(c)(6) of the Commission's regulations[38] to submit Exhibit F. As discussed above, the Transaction does not have any detrimental impact on competition, rates, or regulation and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

D. Section 33.2(d) – Description of Jurisdictional Facilities

The only jurisdictional facilities that are subject to the proposed Transaction are certain interconnecting transmission facilities associated with the Danskammer Generating Station. Dynegy Danskammer respectfully requests waiver of the requirement of Section 33.2(d) of the Commission's regulations[39] to provide additional information in Exhibit G.

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36 18 C.F.R. § 33.2(c)(4) (2013).

37 18 C.F.R. § 33.2(c)(5) (2013).

38 18 C.F.R. § 33.2(c)(6) (2013).

39 18 C.F.R. § 33.2(d) (2013).

E. Section 33.2(e) – Description of the Transaction

A description of the Transaction has been provided above in Part II.B. Dynegy Danskammer requests waiver of Section 33.2(e)(2) of the Commission's regulations[40] to the extent it would require submission of additional information in Exhibit H.

F. Section 33.2(f) – All Contracts Related to the Transaction

Copies of the Transfer Agreement, the Transfer Agreement Amendment, and the APA are provided in Exhibit I. Dynegy Danskammer requests waiver of the requirements of Section 33.2(f) of the Commission's regulations[41] to the extent that it would require the filing of the exhibits and schedules to the Transfer Agreement and the APA.[42]

G. Section 33.2(g) – Facts Relied upon to Show that the Transaction Is Consistent with the Public Interest

The facts relied upon by Dynegy Danskammer to show that the Transaction is consistent with the public interest are set forth above in Part III. Dynegy Danskammer will supplement this Application promptly to reflect in its analysis any material changes that may occur after the date this filing is made with the Commission, but before final Commission action. Because such information is provided in the body of this Application, Dynegy Danskammer requests waiver of the requirement of Section 33.2(g) of the Commission's regulations[43] to provide such information in Exhibit J.

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40 18 C.F.R. § 33.2(e)(2) (2013).

41 18 C.F.R. § 33.2(f) (2013).

42 *See, e.g., Montenay Montgomery Ltd. P'ship*, 128 FERC ¶ 62,111 (2009) (granting FPA Section 203 application based on application containing a copy of the transaction document from which the schedules and exhibits were omitted). There are no exhibits or schedules to the Transfer Agreement Amendment.

43 18 C.F.R. § 33.2(g) (2013).

H. Section 33.2(h) – Map of Physical Property

Dynegy Danskammer respectfully requests waiver of the requirement of Section 33.2(h) of the Commission's regulations[44] to provide a map identifying the physical property owned by Dynegy Danskammer in Exhibit K, because the Transaction does not involve any combination of utilities with franchised service territories.

I. Section 33.2(i) – Licenses, Orders, or Other Approvals Required from Other Regulatory Bodies in Connection with the Proposed Transaction and the Status of Other Regulatory Actions

The Bankruptcy Court issued an order approving the Transaction on August 29, 2013.[45] No regulatory approvals, other than Commission approval of this Application, are required in connection with the Transaction. Accordingly, Dynegy Danksammer respectfully requests waiver of the requirement of Section 33.2(i) of the Commission's regulations[46] to provide Exhibit L.

J. Section 33.2(j) – Explanation that the Transaction Will Not Result in Cross-Subsidization or the Pledge or Encumbrance of Utility Assets as to any Associate Company

Dynegy Danskammer provides the required verification in Exhibit M.

V. PROPOSED ACCOUNTING ENTRIES

Dynegy Danskammer has not included proposed accounting entries showing the effect of the Transaction because neither it nor Helios is required to maintain its books and records in accordance with the Commission's Uniform System of Accounts.

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44 18 C.F.R. § 33.2(h) (2013).

45 *See supra* n.12.

46 18 C.F.R. § 33.2(i) (2013).

VI. VERIFICATIONS

Pursuant to Section 33.7 of the Commission's regulations,[47] a signed verification of Dynegy Danskammer's authorized representative is included as Attachment 1.

VII. CONCLUSION

For the reasons set forth in this Application, Dynegy Danskammer respectfully requests that the Commission issue an order on or before October 24, 2013, granting all FPA Section 203 approvals required in connection with the Transaction.

Respectfully submitted,

DYNEGY DANSKAMMER, L.L.C.

By: /s/

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Counsel for **Dynegy Danskammer, L.L.C.**

Dated: September 9, 2013

47 18 C.F.R. § 33.7 (2013).

Exhibit I

Agreements Related to the Proposed Transaction

Exhibit I-A1

The Transfer Agreement

Execution Version

TRANSFER AGREEMENT

dated as of January 14, 2013

by and between

DANSKAMMER OL, LLC,

and

DYNEGY DANSKAMMER, L.L.C.

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TRANSFER AGREEMENT

This transfer agreement is dated as of January 14, 2013 (the "***Effective Date***"), by and between DANSKAMMER OL, LLC, a Delaware limited liability company ("***Transferor***") and DYNEGY DANSKAMMER, L.L.C., a Delaware limited liability company ("***Transferee***"). Transferor and Transferee are each sometimes referred to herein as a "***Party***" and, collectively, as the "***Parties***."

WHEREAS, Transferor and Transferee are parties to various agreements in connection with the sale and leaseback transaction (the "***Sale and Leaseback Transaction***") described in the Participation Agreement (the "***Participation Agreement***"), dated as of May 1, 2001, by and among Transferor (as owner lessor), Transferee, Wilmington Trust Company (as lessor manager and as trust company), Danskammer OP LLC (as owner participant), Chase Manhattan Bank (as lease indenture trustee), and Chase Manhattan Bank (as pass through trustee),

WHEREAS pursuant to the Original Deed and the Original Bill of Sale, Transferee sold the Acquired Assets to Transferor; pursuant to the Site Lease Agreement, Transferee leased the Ground Interest to Transferor; pursuant to the Facility Lease Agreement, Transferor leased back to Transferee the Acquired Assets; and pursuant to the Site Sublease, Transferor subleased back to Transferee the Ground Interest (such documents, together with the Participation Agreement and the other Operative Documents (as defined in the Participation Agreement), the "***Sale and Leaseback Documents***");

WHEREAS, Transferor currently owns the Acquired Assets, all of which are leased to, and occupied and controlled by, Transferee pursuant to the Facility Lease Agreement, and Transferee currently owns the Excluded Assets, the Ground Interest and all other property associated with the Facility;

WHEREAS, Transferee and several of its Affiliates have each filed a voluntary petition and commenced a case (collectively, the "***Chapter 11 Cases***") under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***") in the United States Bankruptcy Court for the Southern District of New York, Poughkeepsie Division (the "***Bankruptcy Court***");

WHEREAS, Transferee and ICS NY Holdings, LLC (the "***Ultimate Buyer***") have entered into that certain Asset Purchase Agreement, dated as of the date hereof (the "***APA***"), whereby, subject to the approval of the Bankruptcy Court and to the other terms and conditions thereof, Transferee has agreed to sell to the Ultimate Buyer the Acquired Assets, the Ground Interest, the Excluded Assets and all other assets owned by Transferee and associated with or forming a part of the Facility; and

WHEREAS, Transferor, Transferee and certain of their respective Affiliates and other Persons are party to that certain Amended and Restated Settlement Agreement, dated May 30, 2012 (the "***Settlement Agreement***") and this Agreement the transfer of the Acquired Assets by Transferor to Transferee and the cancellation, if necessary, of the Facility Lease Agreement, the Site Lease Agreement and the Site Sublease, are being executed and performed in furtherance of certain provisions of the Settlement Agreement and to facilitate the sale of the Facility by Transferee to the Ultimate Buyer.

NOW, THEREFORE, in consideration of the premises, representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and, intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Defined Terms. As used herein, the terms below shall mean the following:

"***Acquired Assets***" means a collective reference to Transferor's right, title and interest, if any, in and to (a) each of the assets listed on Exhibit A to the Original Bill of Sale and each of the assets listed on Exhibit A to the Original Deed, and (b) the Interconnection Agreement; in each case except for (i) those assets so listed which have been replaced or removed by Transferee, (ii) Excluded Assets, and (iii) the Ground Interest.

"***Affiliate***" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the Person specified, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, through ownership of voting securities or rights, by contract, as trustee, executor or otherwise.

"***Agreement***" means this Transfer Agreement, together with all exhibits hereto and the Schedules.

"***Allocation***" has the meaning set forth in Section 3.3.

"***APA***" has the meaning set forth in the recitals.

"***Assumed Liabilities***" has the meaning set forth in Section 2.2.

"***Bankruptcy Code***" has the meaning set forth in the recitals.

"***Bankruptcy Court***" has the meaning set forth in the recitals.

"***Bill of Sale***" means the Bill of Sale from Transferor to Transferee, dated as of the Closing Date and substantially in the form of Exhibit A, pursuant to which, together with the Deed, Transferee will acquire Transferor's right, title and interest, if any, in the Acquired Assets from Transferor.

"***Business Day***" means any day other than a Saturday, Sunday or a legal holiday on which banking institutions in the State of New York are not required to open.

"***Chapter 11 Cases***" has the meaning set forth in the recitals.

"***Claims***" has the meaning set forth in Section 9.19(a).

"***Closing***" has the meaning set forth in Section 3.1(a).

"***Closing Date***" has the meaning set forth in Section 3.1(a).

"***Code***" means the Internal Revenue Code of 1986.

"***Confirmation Order***" means an Order or Orders of the Bankruptcy Court confirming a chapter 11 plan of reorganization or liquidation for the Transferee and any affiliated debtors that, *inter alia*, approves the transactions contemplated by this Agreement.

"***Contract***" means any written contract, lease, license, purchase order, sales order or other agreement, arrangement, understanding or commitment that is binding upon a Person or its property.

"***Deed***" means the Quitclaim Deed by Transferor in favor of Transferee, dated as of the Closing Date and substantially in the form of Exhibit B, pursuant to which, together with the Bill of Sale, Transferee will acquire the Acquired Assets from Transferor.

"***Effective Date***" has the meaning set forth in the preamble.

"***Environmental Laws***" means all Laws as in effect on the Effective Date relating to pollution, Hazardous Materials or protection of the environment, natural resources or human health (to the extent related to environmental exposure to Hazardous Materials).

"***Excluded Assets***" means the property and assets described in the second grammatical paragraph of Exhibit A to the Original Bill of Sale and on Exhibit B to the Original Bill of Sale, any replacements or additions to them, the Ground Interest, and any other assets used in connection with the Facility but not described or identified as Acquired Assets.

"***Facility***" means those fuel oil and natural gas dual fuel electric generating units with an aggregate capacity of approximately 125 MW (known as Danskammer Units 1 and 2) those coal and natural gas generating units with an aggregate capacity of approximately 374 MW (known as Danskammer Units 3 and 4) and those two 2.5 MW emergency diesel generators (known as Danskammer Units 5 and 6) used to black start the other Danskammer units in the event that the electrical grid loses power, all of which units are located in Newburgh, New York, together with certain auxiliary equipment, ancillary and associated facilities and equipment associated with the operation or maintenance of the Danskammer units.

"***Facility Lease Agreement***" means that certain Facility Lease Agreement dated as of May 8, 2001 entered into by and between Transferor, as owner lessor, and Transferee, as facility lessee.

"***FERC***" means the Federal Energy Regulatory Commission.

"***GAAP***" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

"***Governmental Entity***" means any federal, state, local, municipal, foreign or other (a) government, (b) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official or entity and any court or other tribunal),

(c) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature or (d) governmental, quasi-governmental or non-governmental body administering, regulating or having general oversight over gas, electricity, power or other markets, or over reliability matters.

"***Ground Interest***" has the meaning given to it in Section 2.1 of the Site Lease Agreement.

"***Hazardous Materials***" means any material, substance or waste defined, listed or regulated as "hazardous" or "toxic" (or words of similar meaning or intent) under any applicable Environmental Law, including materials exhibiting the characteristics of ignitability, corrosivity, reactivity or toxicity, as such terms are defined in connection with hazardous materials or hazardous wastes or hazardous or toxic substances in any applicable Environmental Law.

"***HSR Act***" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"***Independent Manager***" has the meaning set forth in Section 9.18.

"***Interconnection Agreement***" means the Interconnection Agreement for Danskammer Generating Station, dated as of February 4, 2001, between Transferee and Central Hudson Gas & Electric Corporation.

"***Interim Period***" has the meaning set forth in Section 6.1.

"***Knowledge***" means with respect to (a) Transferor, the actual knowledge of the individuals set forth in Schedule 1.1(a) and (b) Transferee, the actual knowledge of the individuals set forth in Schedule 1.1(b).

"***Law***" means any federal, state, provincial, local or foreign statute, law, ordinance, regulation, rule, code, Order, principle of common law, judgment or decree enacted, promulgated, issued, enforced or entered by any Governmental Entity, or court of competent jurisdiction, or other requirement or rule of law.

"***Lien***" means any claim, pledge, option, charge, hypothecation, easement, security interest, right-of-way, encroachment, mortgage, deed of trust, defect in title, restriction on transferability or other similar restriction or encumbrance, in each case, whether imposed by agreement, Law, equity or otherwise.

"***Material Adverse Effect***" means any change, effect or circumstance that has had or would reasonably be expected to have a material adverse effect on the Facility or Acquired Assets or a material adverse effect on the ability of Transferor to perform its obligations under the Transaction Documents or to consummate the transactions contemplated thereby; *provided*, however that in no event shall any of the following be taken into account in determining whether a "Material Adverse Effect" has occurred: (a) any change generally affecting the international, national or regional electric generating, transmission or distribution industry; (b) any change generally affecting the international, national or regional wholesale or retail markets for electric power, ancillary services, or capacity; (c) any change generally affecting the international, national or regional wholesale or retail markets for coal or natural gas; (d) any change in markets

or availability of commodities or supplies, including backup, standby, or station electric power, water, replacement parts, consumables, or materials, used in connection with operations related to the Facility; (e) any change in market design and pricing; (f) any change in general macroeconomic, financial market, regulatory or political conditions, including any engagements of hostilities, acts of war or terrorist activities, or changes imposed by a Governmental Entity associated with additional security; (g) changes in Law, GAAP or official interpretations of the foregoing (including, for the avoidance of doubt, compliance with any Order of the Bankruptcy Court and any developments with respect to the Chapter 11 Cases); (h) compliance with this Agreement, including any effect resulting from failure to take any action to which Transferee unreasonably refused consent under this Agreement; or (i) the transactions contemplated hereby or any announcement hereof or the identity of Transferee; it being understood that the failure of Transferor to achieve any operating results or achieve any internal or external forecasts or projections, by itself, will not constitute a Material Adverse Effect.

"***NERC***" means the North American Electric Reliability Corporation or any successor thereto, and any committee, division, or unit thereof.

"***Non-Party Affiliates***" has the meaning set forth in Section 9.16.

"***Notices***" has the meaning set forth in Section 9.5.

"***NYPSC***" means the New York State Public Service Commission.

"***Original Bill of Sale***" means the Bill of Sale from Transferor to Transferee, dated as of May 8, 2001 and pursuant to which, together with the Original Deed, the Transferor acquired from Transferee the Acquired Assets described in those documents.

"***Original Deed***" means the Bargain and Sale Deed by Transferee in favor of Transferor, dated as of May 8, 2001 pursuant to which, together with the Bill of Sale, Transferor acquired from Transferee the Acquired Assets described in those documents.

"***Order***" means any judgment, order, injunction, writ, ruling, decree, consent agreement, stipulation or award of any Governmental Entity.

"***Ordinary Course of Business***" means actions that are taken in the ordinary course of the normal day-to-day operations of a Person consistent with the past practices of such Person, recognizing as to the Transferee that it has filed the Chapter 11 Cases.

"***Owner Lessor Liens***" has the meaning given to such term in Appendix A to the Participation Agreement.

"***Participation Agreement***" has the meaning set forth in the recitals.

"***Party***" and "***Parties***" have the meanings set forth in the preamble.

"***Permits***" means permits, licenses, registrations, certificates of occupancy, approvals, consents, clearances and other authorizations issued by any Governmental Entity.

"***Permitted Liens***" means: (a) all defects, exceptions, restrictions, easements, rights-of-way and encumbrances disclosed in policies of title insurance; (b) statutory Liens for current Taxes, assessments or other governmental charges not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings; (c) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the Ordinary Course of Business, either for amounts not yet due or for amounts being contested in good faith and by appropriate proceedings timely instituted; (d) environmental Liens imposed by any Governmental Entity; (e) title of a lessor under a capital or operating lease; (f) all covenants, conditions, restrictions, easements, charges, rights-of-way, other encumbrances on title and similar matters filed of record in the real property records in the jurisdictions in which the Facility to which they relate or affect are located and that do not materially interfere with the use, development or operation of the Facility in the Ordinary Course of Business, render title unmarketable, or require the payment of any monies or the receipt of consent from any third parties; (g) such Liens, imperfections in title, charges, easements, restrictions, encumbrances or other matters that are due to zoning or subdivision, entitlement, and other land use Laws or regulations and, if imposed after the Effective Date, which do not and will not materially impair the use, development or operation of the Facility for its intended purpose; (h) encumbrances on title arising by operation of any applicable United States federal, state or foreign securities Law; or (i) Liens or encumbrances that arise solely by reason of acts of or with the approval of the Transferee.

"***Person***" means an individual, a partnership, a joint venture, a corporation, a business trust, a limited liability company, a trust, an unincorporated organization, a joint stock company, a labor union, an estate, a Governmental Entity or any other entity.

"***Proceeding***" means any claim, action, arbitration, audit, known investigation (including a notice of preliminary investigation or formal investigation), Notice of violation, hearing, litigation or suit (whether civil, criminal or administrative), other than the Chapter 11 Cases, asserted, commenced, brought, conducted or heard by or before any Governmental Entity or arbitrator.

"***Representative***" means, with respect to any Person, such Person's officers, directors, managers, employees, agents, representatives and financing sources (including any investment banker, financial advisor, accountant, legal counsel, agent, representative or expert retained by or acting on behalf of such Person or its subsidiaries).

"***Sale and Leaseback Documents***" has the meaning set forth in the recitals.

"***Sale and Leaseback Transaction***" has the meaning set forth in the recitals.

"***Schedules***" means the disclosure schedules delivered in connection with the execution of this Agreement.

"***Securities Act***" means the Securities Act of 1933.

"***Settlement Agreement***" has the meaning set forth in the recitals.

"***Site Lease Agreement***" means the Site Lease Agreement dated as of May 8, 2001 entered into by and between Transferee, as ground lessor, and Transferor, as ground lessee, relating to the Ground Interest.

"***Site Sublease***" means the Site Sublease Agreement dated as of May 8, 2001 entered into by and between Transferee, as ground sublessee, and Transferor, as ground sublessor, relating to the Ground Interest.

"***Tax***" means (a) any and all taxes, assessments, levies, duties or other governmental charges imposed by any Governmental Entity, including any income, alternative or add-on minimum, accumulated earnings, franchise, capital stock, environmental, profits, windfall profits, gross receipts, sales, use, value added, transfer, registration, stamp, premium, excise, customs duties, severance, real property, special district charges, school district, personal property, ad valorem, occupancy, license, occupation, unclaimed property liabilities, employment, payroll, social security, disability, unemployment, withholding, corporation, inheritance, stamp duty reserve, estimated or other similar tax, assessment, levy, duty (including duties of customs and excise) or other governmental charge of any kind whatsoever, including any payments in lieu of taxes or other similar payments, chargeable by any Tax Authority together with all penalties, interest and additions thereto, whether disputed or not and (b) any liability for taxes (as described in (a)) of another Person imposed by Law, including U.S. Treasury Regulations section 1.1502-6 or similar provision of foreign, state or local Law, by contract or otherwise.

"***Tax Authority***" means any taxing or other authority (whether within or outside the United States) competent to impose any Tax.

"***Tax Return***" means any and all returns, declarations, reports, documents, claims for refund, or information returns, statements or filings that are required to be supplied to any Tax Authority or any other Person, including any schedule or attachment thereto, and including any amendments thereof.

"***Transaction Documents***" means this Agreement, the Bill of Sale and all other agreements, documents and instruments necessary to effect the transactions contemplated hereby.

"***Transfer Tax***" means any sales, use, transfer, conveyance, documentary transfer, stamp, recording or other similar Tax imposed upon the sale, transfer or assignment of property or any interest therein or the recording thereof, and any penalty, addition to Tax or interest with respect thereto, but such term shall not include any Tax on, based upon or measured by, the net income, gains or profits from such sale, transfer or assignment of the property or any interest therein.

"***Transferee***" has the meaning specified in the preamble.

"***Transferee Released Parties***" has the meaning set forth in Section 9.19(a).

"***Transferee Releasing Parties***" has the meaning set forth in Section 9.19(b).

"***Transferor Released Parties***" has the meaning set forth in Section 9.19(b).

"***Transferor Releasing Parties***" has the meaning set forth in Section 9.19(a).

"***Transferor***" has the meaning set forth in the preamble.

"***Ultimate Buyer***" has the meaning set forth in the recitals.

1.2 Interpretation.

(a) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

(b) Words denoting any gender shall include all genders.

(c) Subject to Section 9.3, a reference to any Party to this Agreement or any other agreement or document shall include such Party's successors and permitted assigns.

(d) A reference to any legislation or to any provision of any legislation shall include any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(e) All references to "$" and dollars shall be deemed to refer to United States currency.

(f) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section, schedule and exhibit references are to this Agreement, unless otherwise specified. All article, section, paragraph, schedule and exhibit references used in this Agreement are to articles, sections, paragraphs, schedules and exhibits to this Agreement, unless otherwise specified.

(g) The meanings given to terms defined herein shall be equally applicable to both singular and plural forms of such terms.

(h) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day.

(i) A reference to any agreement or document (including a reference to this Agreement) is to the agreement or document as amended, restated, supplemented or otherwise modified from time to time, except to the extent prohibited by this Agreement or that other agreement or document.

(j) Exhibits, Schedules, annexes and other documents referred to as part of this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement. Any capitalized terms used in any exhibit or Schedule but not otherwise defined therein shall be defined as set forth in this Agreement.

(k) The table of contents and the headings of the Articles and Sections herein are inserted for convenience of reference only and shall not be a part of, or affect the meaning or interpretation of, this Agreement.

(l) This Agreement is the result of the joint efforts of the Parties, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of the Parties and there is to be no construction against any Party based on any presumption of that Party's involvement in the drafting thereof.

ARTICLE 2
TRANSFER OF ACQUIRED ASSETS

2.1 Assets to be Acquired. Subject to the terms and conditions of this Agreement and the entry of the Confirmation Order, at the Closing, Transferor shall convey, assign, transfer and deliver to Transferee, and Transferee shall acquire and accept, all of the Transferor's right, title and interest in and to the Acquired Assets.

2.2 Liabilities to be Acquired. Subject to the terms and conditions of this Agreement and the entry of the Confirmation Order, at the Closing, Transferee shall assume all liabilities related to the Facility and Acquired Assets other than any liabilities relating to Owner Lessor Liens (the "***Assumed Liabilities***").

ARTICLE 3
CLOSING; CONSIDERATION

3.1 Closing; Transfer of Possession; Certain Deliveries.

(a) The consummation of the transactions contemplated herein (the "***Closing***") shall take place on the same day as closing under the APA, subject to the satisfaction or waiver of the conditions set forth in Article 7, or on such other date as the Parties otherwise agree. The Closing shall be held at the offices of Sidley Austin LLP at 1000 Louisiana Street in Houston, TX 77002, an instant before the closing under the APA, unless the Parties otherwise agree. The actual date of the Closing is the "***Closing Date.***" For purposes of this Agreement, from and after the Closing, the Closing shall be deemed to have occurred at 12:01 a.m. on the Closing Date, an instant before the closing under the APA.

(b) At the Closing, Transferor shall deliver to Transferee:

(i) a duly executed Bill of Sale.

(ii) the Deed, in recordable form, duly executed and acknowledged.

(iii) a duly executed release as contemplated by Section 9.19(a);

(iv) a duly executed affidavit of Transferor (or, in the case of an entity that is disregarded for U.S. federal income tax purposes, the owner of such entity), prepared in

accordance with U.S. Treasury Regulations section 1.1445-2(b), certifying as to the Transferor's or owner's, as the case may be, non-foreign status;

(v) a properly completed New York State Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate, and Certificate of Exemption from the Payment of Estimated Personal Income Tax (Form TP-584), duly executed by Transferor, which documents shall be prepared by Transferee;

(vi) a properly completed New York State Board of Real Property Services Real Property Transfer Report (Form RP-5217), duly executed by Transferor, which documents shall be prepared by the Transferee; and

(vii) an acknowledgment of cancellation signed by Transferor, or, in lieu thereof, proof of cancellation of the Facility Lease Agreement, the Site Lease Agreement, and the Site Sublease.

(viii) such other documents, instruments and certificates as Transferee may reasonably request.

(c) At the Closing, Transferee shall deliver to Transferor:

(i) a duly executed release as contemplated by Section 9.19(b);

(ii) a properly completed New York State Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate, and Certificate of Exemption from the Payment of Estimated Personal Income Tax (Form TP-584), duly executed by Transferee, which documents shall be prepared by Transferee; and

(iii) a properly completed New York State Board of Real Property Services Real Property Transfer Report (Form RP-5217), duly executed by Transferee, which documents shall be prepared by the Transferee.

(iv) an acknowledgment of cancellation signed by Transferee or, in lieu thereof, proof of cancellation of the Facility Lease Agreement, the Site Lease Agreement, and the Site Sublease.

3.2 Consideration. Transferor is receiving good, valuable and sufficient consideration for the transfer of the Acquired Assets in the form of the right of Transferor and certain of its Affiliates to receive the distributions described in and contemplated by Section II.d(iv).2.B of the Settlement Agreement.

3.3 Allocation of Value. The sum of the fair market value of the Acquired Assets and the value of the liabilities associated with the Acquired Assets (to the extent properly taken into account under the Code) shall be allocated among the Acquired Assets in accordance with section 1060 of the Code and the U.S. Treasury Regulations promulgated thereunder (and any similar provision of state or local Law, as appropriate). A draft allocation shall be delivered by Transferee to Transferor within 60 days after the Closing Date. Transferor will have the right to raise reasonable objections to the draft allocation within 30 days after Transferee's delivery

thereof, in which event Transferor and Transferee will negotiate in good faith to resolve such dispute. If Transferor and Transferee cannot resolve such dispute within 30 days after Transferor notifies Transferee of such objections, each will use their own allocation determinations and neither shall be bound by the other Party's allocation. If the Parties are able to agree on an allocation, (a) such allocation shall constitute the "***Allocation***," (b) Transferor and Transferee shall file all Tax Returns (including Internal Revenue Service Form 8594) consistent with the Allocation, (c) Transferor and Transferee shall provide the other with any information required to complete IRS Form 8594 within 14 days of the request for such information, (d) Transferor and Transferee shall notify and provide the other with reasonable assistance in the event of an examination, audit or other proceeding relating to Taxes regarding the Allocation and (e) the agreements contained in this sentence shall survive the Closing Date without limitation. Notwithstanding the preceding sentence, Transferor and Transferee may settle any proposed deficiency or adjustment by any Tax Authority based upon or arising out of the Allocation, and neither Transferor and Transferee shall be required to litigate before any court any proposed deficiency or adjustment by any Tax Authority challenging such Allocation.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF TRANSFEROR

Except as set forth on the Schedules, Transferor represents and warrants to Transferee as follows:

4.1 Organization. Transferor is duly organized, validly existing and in good standing under the Laws of Delaware.

4.2 Due Authorization, Execution and Delivery; Enforceability. Transferor has the requisite limited liability company power and authority to enter into, execute and deliver the Transaction Documents and to perform its obligations thereunder and has taken all necessary limited liability company action required for the due authorization, execution, delivery and performance by it of the Transaction Documents and the transactions contemplated thereby. Subject to the Confirmation Order having been entered by the Bankruptcy Court, the Transaction Documents constitute the legally valid and binding obligation of Transferor, enforceable against it in accordance with their terms.

4.3 Consents. Except as set forth on Schedule 4.3, none of the execution, delivery or performance of the Transaction Documents by Transferor will require any consent of, authorization by, exemption from, filing with or notice to any Governmental Entity or any other Person.

4.4 No Conflicts. Except as set forth on Schedule 4.4, the execution, delivery and performance of the Transaction Documents by Transferor and the consummation of the transactions contemplated thereby does not and will not (a) conflict with or result in any breach of any provision of its certificate of incorporation or limited liability company agreement or comparable governing documents, or (b) result in a violation of any Law or Order applicable to it, except as would not reasonably be expected to result in a material adverse effect on the ability of it to perform its obligations under the Transaction Documents or to consummate the transactions contemplated thereby.

4.5 Litigation. There are no Proceedings pending or, to the Knowledge of Transferor, threatened against Transferor, or to which Transferor is otherwise a party before any Governmental Entity, which, if adversely determined, would reasonably be expected to have a material adverse effect on the ability of Transferor to perform its obligations under the Transaction Documents or to consummate the transactions contemplated thereby. Transferor is not subject to any Order except to the extent the same would not reasonably be expected to have a material adverse effect on the ability of Transferor to perform its obligations under the Transaction Documents or to consummate the transactions contemplated thereby.

4.6 Liens. The Acquired Assets are not subject to any Owner Lessor Liens.

4.7 Financial Advisors. Except as set forth on Schedule 4.7, (a) no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Transferor in connection with the transactions contemplated by this Agreement, and (b) no Person engaged by Transferor is entitled to any fee or commission or like payment in respect thereof.

4.8 No Contracts. Except as set forth on Schedule 4.8, Transferor is not party to or bound by any material agreement, arrangement or other contractual relationship which will result in a claim against the Acquired Assets following their sale to Transferee. Except as set forth on Schedule 4.8, Transferor has not received any written Notice of any default or event that with notice or lapse of time, or both, would constitute a default by Transferor under any agreement, arrangement or other contractual relationship set forth on Schedule 4.8, except for defaults that would not reasonably be expected to have a material adverse effect on the ability of Transferor to perform its obligations under the Transaction Documents or to consummate the transactions contemplated thereby.

4.9 Taxes. Except as set forth on Schedule 4.9: (a) all Tax Returns required to be filed by Transferor or any of its Affiliates with respect to the Acquired Assets have been timely filed (taking into account any extension of time to file granted, or to be obtained on behalf of such Person) with the appropriate Tax Authority in all jurisdictions in which such Tax Returns are required to be filed, and all such Tax Returns are complete and accurate except to the extent failure to so file or failure to file completely and accurately would not result in a Lien (other than a Permitted Lien) on any Acquired Asset or would not adversely affect Transferee's ability to operate the Facility; (b) all Taxes due and payable by Transferor, or required to be withheld by Transferor with respect to the Facility, have been paid or withheld and paid over to the applicable Tax Authority, except to the extent failure to do so would not result in a Lien (other than a Permitted Lien) on any Acquired Asset or would not adversely affect Transferee's ability to operate the Facility; (c) Transferor has not received written Notice from any Tax Authority that any audit of any such Tax Return is currently in progress by any Tax Authority; (d) Transferor has not received written Notice from any Tax Authority that any Tax deficiencies have been claimed, proposed or assessed by any Tax Authority with respect to the Acquired Assets; and (e) there are no outstanding waivers of the statute of limitations relating to the assessment or collection of any Tax imposed with respect to the Acquired Assets. Notwithstanding anything to the contrary in this Agreement, this Section 4.9 contains the sole and exclusive representation and warranty of such Person with respect to Taxes.

4.10 Compliance with Laws. To the Knowledge of Transferor, Transferor is in compliance with all applicable Laws and has not received any notice of any alleged violation of applicable Law by Transferor, except where such failure to comply or violation (a) arises out of the use or operation of the Acquired Assets or its control by Transferee, or (b) would not have a Material Adverse Effect. Notwithstanding the foregoing, Transferor makes no representations or warranties as to Environmental Laws.

4.11 Business. Transferor has held its interest in the Acquired Assets in its own name.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF TRANSFEREE

Except as set forth on the Schedules, Transferee represents and warrants to Transferor as follows:

5.1 Organization. Transferee is duly organized, validly existing and in good standing under the Laws of Delaware.

5.2 Due Authorization, Execution and Delivery; Enforceability. Subject to the Confirmation Order having been entered by the Bankruptcy Court, Transferee has the requisite limited liability company power and authority to enter into, execute and deliver the Transaction Documents to which it is a party and to perform its obligations thereunder and has taken all necessary limited liability company action required for the due authorization, execution, delivery and performance by it of the Transaction Documents to which it is a party and the transactions contemplated thereby. Subject to the Confirmation Order having been entered by the Bankruptcy Court, the Transaction Documents to which it is a party constitute the legally valid and binding obligation of Transferee, enforceable against it in accordance with their terms.

5.3 Consents. Except as set forth on Schedule 5.3 and subject to the Confirmation Order having been entered by the Bankruptcy Court, none of the execution, delivery or performance of the Transaction Documents by Transferee will require any consent of, authorization by, exemption from, filing with or notice to any Governmental Entity or any other Person.

5.4 No Conflicts. Except as set forth on Schedule 5.4 and subject to the Confirmation Order having been entered by the Bankruptcy Court, the execution, delivery and performance of the Transaction Documents by Transferee and the consummation of the transactions contemplated thereby does not and will not (a) conflict with or result in any breach of any provision of its certificate of incorporation or limited liability company agreement or comparable governing documents, or (b) result in a violation of any Law or Order applicable to it, except as would not reasonably be expected to result in a material adverse effect on the ability of it to perform its obligations under the Transaction Documents or to consummate the transactions contemplated thereby.

5.5 Litigation. There are no Proceedings pending or, to the Knowledge of Transferee, threatened against Transferee, or to which Transferee is otherwise a party before any Governmental Entity (other than the Chapter 11 Cases), which, if adversely determined, would reasonably be expected to have a material adverse effect on the ability of Transferee to perform

its obligations under the Transaction Documents or to consummate the transactions contemplated thereby. Transferee is not subject to any Order (other than Orders pursuant to the Chapter 11 Cases) except to the extent the same would not reasonably be expected to have a material adverse effect on the ability of Transferee to perform its obligations under the Transaction Documents or to consummate the transactions contemplated thereby.

5.6 Financial Advisors. Except as set forth Schedule 5.6, (a) no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Transferee in connection with the transactions contemplated by this Agreement, and (b) no Person engaged by Transferee is entitled to any fee or commission or like payment in respect thereof.

5.7 Opportunity for Independent Investigation. Prior to its execution of this Agreement, Transferee has conducted to its satisfaction an independent investigation of the Facility and the Acquired Assets. Transferee is, and has been assisted by advisors, consultants and legal counsel, knowledgeable and experienced in businesses similar to the business of Transferor with respect to analyzing and evaluating the merits and risks of entering into this Agreement and the transactions contemplated hereby. In making its decision to execute this Agreement and undertake the obligations set forth herein, Transferee has relied and will rely solely upon the advice of its advisors, consultants and legal counsel and the results of its independent investigation and verification. Transferee acknowledges and affirms that (a) all materials and information requested by Transferee have been provided to Transferee to Transferee's reasonable satisfaction, and (b) except as set forth in Article 4, none of Transferor or any of its Affiliates makes any representation or warranty, express or implied, as to Transferor, its Affiliates, the Acquired Assets, the Facility or otherwise. Transferee has completed its investigation, verification, analysis, review and evaluation of the Acquired Assets as Transferee has deemed necessary or appropriate.

ARTICLE 6
COVENANTS OF THE PARTIES

6.1 Operations Pending the Closing.

(a) During the period from the Effective Date and continuing until the earlier of the termination of this Agreement in accordance with its terms or the Closing (the "***Interim Period***"), Transferee shall conduct the operations of the Facility in all material respects in the Ordinary Course of Business and subject to any Orders of the Bankruptcy Court that have affected or may affect such operations.

(b) Except as may be required by applicable Law, as may be required by or deemed advisable with respect to any Order of the Bankruptcy Court, as contemplated, permitted, or authorized hereby, or as would not reasonably be expected to have a Material Adverse Effect Transferor shall not:

(i) enter into any Contract relating to the Acquired Assets;

(ii) institute, settle or agree to settle any material Proceeding before any Governmental Entity relating to the Acquired Assets;

(iii) sell, lease, license or otherwise dispose of any of the Acquired Assets;

(iv) agree to do anything prohibited by this Section 6.1(b),

without the prior written consent of Transferee, which consent shall not be unreasonably withheld, delayed or conditioned.

6.2 Notification of Certain Matters. During the Interim Period, each Party shall notify the other Party of any event that would reasonably be expected to cause any of the conditions in Sections 7.1 or 7.2 not to be satisfied. During the Interim Period, Transferee shall promptly provide Transferor with a copy of any notice sent or received by Transferee or its Affiliates pursuant to or in connection with the APA.

6.3 Public Announcements. Except for filings required by applicable Law or for disclosures deemed necessary or appropriate by Transferor or any of its Affiliates in connection with any filings made pursuant to securities Laws, the Parties shall consult with each other before issuing, and provide each other the opportunity to review and comment upon, any press release or public announcement of this Agreement and the transactions contemplated hereby, and no Party shall issue any such press release or public announcement without the prior approval of the other Parties, such consent not to be unreasonably withheld. Notwithstanding the preceding sentence, this Section 6.3 shall not preclude any press release or public announcement being made to the extent required by Law, court process (including the filing of this Agreement with the Bankruptcy Court as an exhibit to the Sale Motion) or the rules and regulations of, and any listing agreement with, any national securities exchange, on condition that if a Party is required to make any such announcement, the disclosing Party shall promptly before the announcement is made deliver Notice to the other Party thereof where practicable and lawful to do so, and the disclosing Party shall use its commercially reasonable efforts to agree upon the text of any such announcement with the other Party prior to the release of the announcement. The Parties shall cause their respective Affiliates and Representatives to comply with this Section 6.3.

6.4 Tax Matters.

(a) The Parties shall cooperate to timely prepare and file any Tax Returns relating to all Transfer Taxes arising out of the transfer of the Acquired Assets pursuant to this Agreement, if any, including any claim for exemption or exclusion from the application or imposition of any Transfer Taxes. Transferee or Transferor, as applicable, shall file all necessary documentation and returns with respect to such Transfer Taxes when due and shall promptly, following the filing thereof, furnish a copy of such return or other filing. Notwithstanding the foregoing, the Parties shall petition the Bankruptcy Court for an explicit Order (which may be included as part of the Sale Order) to provide that the transfer, assignment and conveyance of the Acquired Assets to Transferee hereunder shall be deemed made pursuant to a confirmed plan under chapter 11 of title 11 of the Bankruptcy Code and thereby shall be entitled to the protections afforded under section 1146(a) of the Bankruptcy Code.

(b) Transferee, on the one hand, and Transferor, on the other hand, shall furnish or cause to be furnished to the other, upon request, as promptly as practicable, such

information and assistance relating to the Acquired Assets as is reasonably necessary for filing of all Tax Returns, including any claim for exemption or exclusion from the application or imposition of any Taxes, the preparation for any audit by any Tax Authority, and the prosecution or defense of any Proceeding relating to any Tax Return.

(c) Notwithstanding anything to the contrary in this Agreement, Transferee agrees to pay the Transfer Taxes, if any, that are payable in connection with the transactions contemplated by this Agreement.

6.5 Regulatory Approvals.

(a) Each Party shall use commercially reasonable efforts and proceed diligently and in good faith to cooperate with each other Party and its Affiliates, and to cause its Affiliates to cooperate with each other Party and its Affiliates, to obtain as promptly as practicable all required regulatory approvals related to the Transaction Documents and the transactions contemplated thereby and to provide as promptly as practicable such other information and communications to any relevant Governmental Entity or other Person as may be required or reasonably requested in connection therewith in order to lawfully complete the transactions contemplated by this Agreement and to secure the transfer to Transferee of all of the Acquired Assets. In addition to the foregoing (i) the Parties shall jointly file or cause to be filed with FERC (within 10 Business Days following the date of the Bankruptcy Court's entry of the Sale Order, subject to extension by mutual agreement), an application for the prior authorization by FERC under section 203 of the Federal Power Act, 16 U.S.C. Sec. 791, et. seq. of the transactions contemplated hereby, (ii) if required, Transferee shall prepare, with Transferor's cooperation, and Transferor shall file or cause to be filed with NYPSC (within 10 Business Days following the date of the Bankruptcy Court's entry of the Sale Order, subject to extension by mutual agreement), an application for the prior authorization by NYPSC under section 70 of the New York Public Service Law of the transactions contemplated hereby, and (iii) the Parties shall cooperate with regard to all NERC reliability standards compliance filings.

(b) The Parties shall furnish to each other's counsel such necessary information and assistance as such other Party may request in connection with its preparation of any such filing or submission that is necessary to obtain the foregoing consents and approvals. The Parties shall consult with each other as to the appropriate time of making such filings and submissions and shall make such filings and submissions at the agreed upon time. To the extent permitted by law, the Parties shall keep each other apprised of the status of any communications with and any inquiries or requests for additional or supplemental information from applicable Governmental Entities and shall provide any such additional or supplemental information that may be reasonably requested in connection with any such filings or submissions.

(c) To the extent permitted by applicable Law, Transferee shall pay for and/or reimburse Transferor for all filing fees and other fees due to Governmental Entities reasonably incurred with respect to or in connection with any and all filings, notices, authorizations or consents contemplated by this Section 6.5.

(d) The Parties shall cooperate and use commercially reasonable efforts to contest and resist any action, including administrative or judicial action, and to have vacated,

lifted, reversed or overturned, any order (whether temporary, preliminary or permanent) of any court or other Governmental Entity that is in effect and that restricts, prevents or prohibits the consummation of the transactions contemplated by this Agreement, including the pursuit of all available avenues of administrative and judicial appeal, to the extent commercially reasonable.

6.6 Sale Leaseback Documentation. At or prior to the Closing, the Parties shall cause the termination of the Facility Lease Agreement, the Site Lease Agreement, and the Site Sublease if they have not already been terminated by Order of the Bankruptcy Court.

6.7 Further Assurances. Subject to the terms and conditions herein provided, prior to the Closing Date Transferor shall execute and deliver to Transferee such bills of sale, endorsements, assignments and other good and sufficient instruments of assignment, transfer and conveyance, in form and substance reasonably satisfactory to Transferee, and take such additional actions as Transferee may reasonably request, to vest in Transferee all of Transferor's right, title and interest in and to the Acquired Assets.

6.8 Transferee's Acknowledgements; Nature of Representations.

(a) Except for the specific representations and warranties expressly made by Transferor in Article 4, Transferee acknowledges and agrees that:

(i) NONE OF TRANSFEROR, ANY NON-PARTY AFFILIATE, OR ANY OF THEIR RESPECTIVE AFFILIATES IS MAKING OR HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AT LAW OR IN EQUITY, FINANCIAL OR OTHERWISE, IN RESPECT OF THE FACILITY OR ACQUIRED ASSETS, INCLUDING, WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY ASSETS, THE NATURE OR EXTENT OF ANY LIABILITIES OR THE ACCURACY OR COMPLETENESS OF ANY DOCUMENTS, PROJECTIONS, MATERIAL OR OTHER INFORMATION (FINANCIAL OR OTHERWISE) REGARDING THE FACILITY OR ACQUIRED ASSETS FURNISHED TO TRANSFEREE OR ITS REPRESENTATIVES OR MADE AVAILABLE TO TRANSFEREE AND ITS REPRESENTATIVES IN ANY "DATA ROOMS," "VIRTUAL DATA ROOMS," MANAGEMENT PRESENTATIONS OR IN ANY OTHER FORM IN EXPECTATION OF, OR IN CONNECTION WITH, THE TRANSACTIONS CONTEMPLATED HEREBY, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER; AND

(ii) NO REPRESENTATIVE OF TRANSFEROR, OR ANY OF THEIR RESPECTIVE AFFILIATES HAS ANY AUTHORITY, EXPRESS OR IMPLIED, TO MAKE ANY REPRESENTATIONS, WARRANTIES OR AGREEMENTS NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT.

(b) EXCEPT FOR THE SPECIFIC REPRESENTATIONS AND WARRANTIES EXPRESSLY MADE BY TRANSFEROR IN ARTICLE 4, TRANSFEREE SPECIFICALLY DISCLAIMS (I) THAT IT IS RELYING UPON OR HAS RELIED UPON ANY INFORMATION OR STATEMENTS THAT MAY HAVE BEEN MADE BY ANY PERSON, AND ACKNOWLEDGES AND AGREES THAT TRANSFEROR HAVE SPECIFICALLY DISCLAIMED AND DO HEREBY SPECIFICALLY DISCLAIM ANY SUCH OTHER INFORMATION OR STATEMENT MADE BY ANY PERSON; AND (II) ANY OBLIGATION OR DUTY BY TRANSFEROR TO MAKE ANY DISCLOSURES OF FACT OR CIRCUMSTANCES NOT REQUIRED TO BE DISCLOSED PURSUANT TO THE SPECIFIC REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 4.

(c) TRANSFEREE IS ACQUIRING THE ACQUIRED ASSETS SUBJECT ONLY TO THE SPECIFIC REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 4. TRANSFEREE ACKNOWLEDGES THAT IT HAS CONDUCTED TO ITS SATISFACTION, ITS OWN INDEPENDENT INVESTIGATION OF THE FACILITY AND ACQUIRED ASSETS AND, IN MAKING THE DETERMINATION TO PROCEED WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, TRANSFEREE HAS RELIED ON THE RESULTS OF ITS OWN INDEPENDENT INVESTIGATION. TRANSFEREE IS NOT AWARE OF ANY FACTS, EVENTS OR CIRCUMSTANCES THAT WOULD CAUSE ANY OF THE REPRESENTATIONS OR WARRANTIES OF TRANSFEROR SET FORTH IN ARTICLE 4 TO BE UNTRUE OR INCORRECT IN ANY RESPECT.

(d) THE ACQUIRED ASSETS ARE BEING SOLD "AS IS", "WHERE IS" AND WITH ALL FAULTS, LIMITATIONS AND DEFECTS (HIDDEN AND APPARENT) AND, SUBJECT ONLY TO THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE 4 WITHOUT ANY OTHER REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER AND WITHOUT ANY GUARANTEE OR WARRANTY (WHETHER EXPRESS OR IMPLIED) AS TO THEIR TITLE, QUALITY, VALUE, CONDITION, QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT, COPYRIGHT, OR TRADEMARK INFRINGEMENT, OR AS TO THE ABSENCE OF ANY OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, COMPLIANCE WITH ANY LAWS, INCLUDING ANY ZONING REGULATIONS, ENVIRONMENTAL LAWS, OR OTHER BUILDING RESTRICTIONS, MERCHANTABILITY OR THEIR FITNESS FOR TRANSFEREE'S INTENDED USE OR A PARTICULAR PURPOSE OR ANY USE OR PURPOSE WHATSOEVER.

ARTICLE 7
CONDITIONS TO OBLIGATIONS OF THE PARTIES

7.1 Conditions Precedent to Obligations of Transferee. The obligation of Transferee to consummate the transactions contemplated by this Agreement is subject to the satisfaction (or waiver by Transferee in Transferee's sole discretion) at or prior to the Closing Date of each of the following conditions:

(a) Each of the representations and warranties of Transferor contained herein shall be true and correct in all respects (in the case of any representation or warranty containing any materiality qualifiers) or in all material respects (in the case of any representation or warranty without any materiality qualification) on and as of the Closing Date, with the same force and effect as though such representation and warranty had been made on and as of the Closing Date, except to the extent that any such representation or warranty is expressly made as of a specified date, in which case such representation or warranty shall have been true in all material respects as of such specified date. The failure of any such representations or warranties to be true in all material respects on and as of the Closing Date shall not constitute a basis for Transferee to refuse to consummate the transactions contemplated hereby unless such failure has resulted in or would reasonably be expected to result in a Material Adverse Effect.

(b) Transferor shall have performed in all material respects all obligations and agreements contained in this Agreement required to be performed by it on or prior to the Closing Date.

(c) Transferee shall have received certificates, dated the Closing Date, of an authorized Person of each of Transferor to the effect that the conditions specified in Sections 7.1(a) and (b) have been fulfilled and/or waived.

(d) (i) All approvals of Governmental Entities (including the Bankruptcy Court) required prior to Closing shall have been obtained and (ii) there shall be no Law or Order that restrains or prevents the transactions contemplated by this Agreement.

(e) Transferor shall have delivered to Transferee the item set forth in Section 3.1(b)(iii).

(f) The APA shall have been duly executed and delivered and all of the conditions precedent to closing under the APA shall have been fulfilled or are ready and able to be fulfilled at closing of the SPA (other than Closing hereunder).

(g) The Bankruptcy Court shall have entered the Confirmation Order and no Order staying, reversing, modifying or amending the Confirmation Order shall be in effect on the Closing Date.

(h) All consents contemplated by the Settlement Agreement shall have been obtained.

(i) The Facility Lease Agreement, the Site Lease Agreement and the Site Sublease shall have been terminated in accordance with Section 6.6.

7.2 Conditions Precedent to the Obligations of Transferor. The obligation of Transferor to consummate the transactions contemplated by this Agreement is subject to the satisfaction (or waiver by Transferor in Transferor's sole discretion) at or prior to the Closing Date of each of the following conditions:

(a) Each of the representations and warranties of Transferee contained herein shall be true and correct in all respects (in the case of any representation or warranty containing any materiality qualifiers) or in all material respects (in the case of any representation or warranty without any materiality qualification) on and as of the Closing Date, with the same force and effect as though such representation and warranty had been made on and as of the Closing Date, except to the extent that any such representation or warranty is expressly made as of a specified date, in which case such representation or warranty shall have been true in all material respects as of such specified date. The failure of any such representations or warranties to be true in all material respects on and as of the Closing Date shall not constitute a basis for Transferor to refuse to consummate the transactions contemplated hereby unless such failure has resulted in or would reasonably be expected to result in a material adverse effect on the ability of Transferee to consummate the transactions contemplated hereby.

(b) Transferee shall have performed in all material respects all obligations and agreements contained in this Agreement required to be performed by it on or prior to the Closing Date.

(c) The APA shall have been duly executed and delivered and all of the conditions precedent to closing under the APA shall have been fulfilled or are ready and able to be fulfilled at closing of the APA (other than Closing hereunder).

(d) Transferor shall have received a certificate, dated the Closing Date, of an executive officer of Transferee to the effect that the conditions specified in Sections 7.2(a), (b) and (c) have been fulfilled and/or waived.

(e) (i) All approvals of Governmental Entities (including the Bankruptcy Court) required prior to Closing shall have been obtained and (ii) there shall be no Law or Order that restrains or prevents the transactions contemplated by this Agreement.

(f) Transferee shall have delivered to Transferor the items set forth in Section 3.1(c)(i).

(g) The Bankruptcy Court shall have entered the Confirmation Order and no Order staying, reversing, modifying or amending the Confirmation Order shall be in effect on the Closing Date.

(h) All consents contemplated by the Settlement Agreement shall have been obtained.

ARTICLE 8
TERMINATION

8.1 Termination of Agreement. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

(a) by written agreement of the Parties;

(b) by either Party:

(i) if the APA is terminated; or

(ii) if there shall be any Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited, or if any Order permanently restraining, prohibiting or enjoining any Party from consummating the transactions contemplated hereby is entered and such Order shall become final.

8.2 Consequences of Termination. In the event of any termination of this Agreement by any Party pursuant to Section 8.1, written Notice thereof shall be given by the terminating Party to the other Parties, specifying the provision hereof pursuant to which such termination is made, this Agreement shall thereupon terminate and become void and of no further force and effect (other than the Section 8.2 and Article 9 and, to the extent applicable in respect of such Sections and Article, Article 1), and the transactions contemplated hereby shall be abandoned without further action of the Parties, except that such termination shall not relieve any Party of its obligations under the Settlement Agreement or any liability for any prior breach of this Agreement.

ARTICLE 9
MISCELLANEOUS

9.1 Expenses. Subject to any Order of the Bankruptcy Court or other agreement between the Parties, except as set forth in Section 6.5(c) or elsewhere in this Agreement and whether or not the transactions contemplated hereby are consummated, each Party shall bear all costs and expenses incurred or to be incurred by such Party in connection with this Agreement and the consummation of the transactions contemplated hereby.

9.2 Nonsurvivability of Representations and Warranties. None of the representations and warranties contained in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Closing and no Party shall thereafter have any liability whatsoever with respect thereto.

9.3 Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by any Party without the prior written consent of the other Party; provided, however, that prior to Closing, Transferee may assign its rights and obligations hereunder in full and not in part to a Person who is an Affiliate of Transferee as of the date hereof. For the avoidance of doubt, Transferee may not assign its rights or obligations hereunder to the Ultimate Buyer, any Affiliate of the Ultimate Buyer, or any Person who is not an Affiliate of Transferee as of the date hereof. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, including any liquidating trustee, responsible Person or similar representative for Transferee or Transferee's estate appointed in connection with the Chapter 11 Cases.

9.4 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of the Parties and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement, except as otherwise expressly set forth herein.

9.5 Notices. All notices, demands, requests, consents, approvals or other communications (collectively, "***Notices***") required or permitted to be given hereunder or that are given with respect to this Agreement shall be in writing and shall be deemed given on the date personally served, delivered by a nationally recognized overnight delivery service with charges prepaid, or transmitted by hand delivery, or facsimile with confirmation of receipt, addressed as set forth below, or to such other address as such Party shall have specified most recently by written Notice; except that if delivered or transmitted on a day other than a Business Day or after 5:00 p.m., New York time, notice shall be deemed given on the next Business Day.

If to Transferor:

Danskammer OP, LLC
80 Park Plaza, T-20
Newark, New Jersey 07102
Attention: Scott S. Jennings
Facsimile: (973) 643-8385

and

Attention: Shawn P. Leyden
Facsimile: (973) 643-8385

With copies (which shall not constitute notice) to:

Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654-3456
Attention: Daniel R. Murray
Facsimile: (312) 840-7353

If to Transferee:

Dynegy Danskammer, L.L.C.
601 Travis, Suite 1400
Houston, TX 77002
Attention: Clayton L. Smith
Facsimile: (713) 507-6955

With copies (which shall not constitute notice) to:

Sidley Austin LLP
One South Dearborn
Chicago, IL 60603
Attention: Paul Caruso
Facsimile: (312) 853-7036

and

before February 2, 2013:

Sidley Austin LLP
600 Travis Street
Houston, TX 77002
Attention: Cliff Vrielink
Facsimile: (713) 315-9199

after February 2, 2013:

Sidley Austin LLP
1000 Louisiana Street
Suite 6100
Houston, TX 77002
Attention: Cliff Vrielink
Facsimile: (713) 495-7799

Rejection of or refusal to accept any Notice, or the inability to deliver any Notice because of changed address of which no Notice was given, shall be deemed to be receipt of the Notice as of the date of such rejection, refusal or inability to deliver.

9.6 Choice of Law. This Agreement shall be construed and interpreted, and the rights of the Parties shall be determined, in accordance with the Laws of the State of New York, without giving effect to any provision thereof that would require the application of the substantive Laws of any other jurisdiction, except to the extent that such Laws are superseded by the Bankruptcy Code.

9.7 Entire Agreement; Amendments and Waivers. The Transaction Documents and all certificates and instruments delivered pursuant thereto constitute the entire agreement among the Parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties. This Agreement may be amended, supplemented or modified, and any of the terms, covenants, representations, warranties or conditions may be waived, only by a written instrument executed by the Parties, or in the case of a waiver, by the Party waiving compliance. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), and no such waiver shall constitute a continuing waiver unless otherwise expressly provided.

9.8 Schedules; Supplementation and Amendment of Schedule. The Transferor may, at their option, include in the Schedules items that are not material in order to avoid any misunderstanding, and such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement. Information disclosed in the Schedules shall constitute a disclosure for all purposes under this Agreement notwithstanding any reference to a specific section, and all such information shall be deemed to qualify the entire Agreement and not just such section. From time to time prior to the Closing, Transferor shall have the right to supplement or amend the Schedules with respect to any matter hereafter arising or discovered after the delivery of the Schedules pursuant to this Agreement, but such supplement or amendment shall have no effect on the satisfaction of the condition to Closing set forth in Section 7.1(a).

9.9 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Counterparts to this Agreement may be delivered via facsimile or electronic mail. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the Party against whom enforcement is sought.

9.10 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions

shall be limited or eliminated only to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

9.11 Exclusive Jurisdiction and Specific Performance.

(a) (i) The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all Proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive Notices at such locations as indicated in Section 9.5.

(b) The Parties acknowledge that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by any of the Parties in accordance with the specific terms contained herein or were otherwise breached by and of the Parties and each Party shall be entitled to an injunction or injunctions to prevent breaches or termination of this Agreement by the other Party and to enforce specifically the terms and provisions of this Agreement.

9.12 Waiver Of Right To Trial By Jury. THE PARTIES HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

9.13 No Consequential Damages. IN NO EVENT SHALL ANY PARTY BE LIABLE UNDER OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, LOST PROFITS OR COSTS OF ANY OTHER PARTY OR ITS AFFILIATES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), WARRANTY OR OTHERWISE, AND ALL SUCH INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY AND INCIDENTAL DAMAGES, LOST PROFITS AND COSTS ARE HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVED, RELEASED AND DISCHARGED.

9.14 Survival. Each and every representation, warranty, covenant and agreement contained in this Agreement (other than the covenants contained in Section 3.3 (Allocation of Value), Section 7.3 (Public Announcements), Section 6.4 (Tax Matters), Section 6.5 (Regulatory Approvals), Section 6.8 (Transferee's Acknowledgements; Nature of Representations), and Article 9 (Miscellaneous) that by their terms are to be performed by the Parties following the Closing) shall expire and be of no further force and effect as of the Closing and no Party shall thereafter have any liability with respect thereto. The covenant and agreement contained in Section 7.3 (Public Announcements) shall expire and be of no force and effect 30 days after the Closing, and no Party shall thereafter have any liability with respect thereto.

9.15 Computation of Time. In computing any period of time prescribed by or allowed with respect to any provision of this Agreement that relates to Transferor, the provisions of rule 9006(a) of the Federal Rules of Bankruptcy Procedure shall apply.

9.16 Non-Recourse. All claims or causes of action (whether in contract or in tort, in law or in equity) that may be based upon, arise out of or relate to this Agreement or any other document, certificate or instrument delivered pursuant hereto, or the negotiation, execution, performance or non-performance of this Agreement or any other document, certificate or instrument delivered pursuant hereto (including any representation or warranty made in or in connection with this Agreement or any other document, certificate or instrument delivered pursuant hereto or as an inducement to enter into this Agreement and the other documents delivered pursuant hereto) may be made only against the Persons that are expressly identified as parties hereto or thereto. In no event shall any Party, or party to the other documents delivered pursuant hereto, have any shared or vicarious liability for the actions or omissions of any other Person. No Person who is not a named party to this Agreement or the other documents delivered pursuant hereto, including any past, present or future director, manager, officer, employee, incorporator, member, partner, equity holder, Affiliate, agent, attorney or representative of any Party, including, for the avoidance of doubt, any Affiliates of Transferor and their respective, successors, and predecessors (other than Transferor) ("***Non-Party Affiliates***"), shall have any liability (whether in contract or in tort, in law or in equity, or based upon any theory that seeks to impose liability of an entity party against its owners or affiliates) for any obligations or liabilities arising under, in connection with or related to this Agreement or any other document, certificate or instrument delivered pursuant hereto or for any claim based on, in respect of, or by reason of this Agreement or any other document, certificate or instrument delivered pursuant hereto or its negotiation or execution; and each party hereto or thereto waives and releases all such liabilities, claims and obligations against any such Non-Party Affiliates. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of Section 6.8 and this Section 9.16.

9.17 Obligations Several and Not Joint. The obligations of each Party under this Agreement shall be several and not joint, and no Party shall be liable for any breach or violation of the terms of this Agreement or the transactions contemplated hereby by any other Party.

9.18 Concerning the Independent Manager of Danskammer OL LLC. Notwithstanding anything contained herein to the contrary, this Agreement has been executed by Wilmington Trust Company not in its individual capacity but solely in its capacity as independent manager of Danskammer OL LLC (in such capacity the "***Independent Manager***"), and in no event shall Wilmington Trust Company in its individual capacity or as Independent Manager have any liability for the representations, warranties, covenants, agreements or other obligations of Danskammer OL LLC or any other Person hereunder or other documents delivered pursuant hereto. For all purposes of this Agreement, in the performance of any duties or obligations of the Independent Manager hereunder, the Independent Manager shall be entitled to the benefits of the terms and provisions of the Limited Liability Company Agreements of Danskammer OL LLC.

9.19 Releases.

(a) *Release by Transferor*. Transferor will cause to be delivered at or prior to the Closing a release, effective as of the Closing, whereby each of the Transferor and its present and former Affiliates and Representatives (collectively, the "***Transferor Releasing Parties***") voluntarily and knowingly, unconditionally and absolutely waives, remises, releases, settles, acquits, satisfies and forever discharges Transferee and its present and former Affiliates and Representatives, and any Person claimed to be liable derivatively through any of the foregoing (collectively, the "***Transferee Released Parties***"), of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, damages, charges, judgments, executions, claims and demands whatsoever, except for the obligations set forth in Section 9.14 of this Agreement and in the Settlement Agreement (including, for the avoidance of doubt, any obligations with respect to the "PSEG Settlement" as defined in the Settlement Agreement) ("***Claims***"), in law or in equity, whether known or unknown, asserted or unasserted, suspected or claimed, which any of the Transferor Releasing Parties ever had or now has against any of the Transferee Released Parties for, upon or by reason of any matter, cause or thing whatsoever, attributable to actions, events or circumstances occurring from the beginning of the world through the Closing Date, regardless of whether such Claim arises before or after the Closing Date. The Transferor Releasing Parties shall also be deemed to knowingly and voluntarily waive and relinquish any and all provisions, rights and benefits conferred by any law of the United States or any state or territory of the United States, or principle of common law, which governs or limits a person's release of unknown claims, comparable or equivalent to California Civil Code § 1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

(b) *Release by Transferee*. Transferee will cause to be delivered at or prior to the Closing a release, effective as of the Closing, whereby each of the Transferee and its present and former Affiliates and Representatives (collectively, the "***Transferee Releasing Parties***") voluntarily and knowingly, unconditionally and absolutely waives, remises, releases, settles, acquits, satisfies and forever discharges Transferor and its respective present and former Affiliates and Representatives, and any Person claimed to be liable derivatively through any of the foregoing (collectively, the "***Transferor Released Parties***"), of and from all Claims, in law or in equity, whether known or unknown, asserted or unasserted, suspected or claimed, which any of the Transferee Releasing Parties ever had or now has against any of the Transferor Released Parties for, upon or by reason of any matter, cause or thing whatsoever, attributable to actions, events or circumstances occurring from the beginning of the world through the Closing Date, regardless of whether such Claim arises before or after the Closing Date. The Transferee Releasing Parties shall also be deemed to knowingly and voluntarily waive and relinquish any and all provisions, rights and benefits conferred by any law of the United States or any state or territory of the United States, or principle of common law, which governs or limits a person's release of unknown claims, comparable or equivalent to California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the Parties as of the date first above written.

TRANSFEROR:

DANSKAMMER OL, LLC

By: Wilmington Trust Company, not in its individual capacity, but solely as Independent Manager

By: _____
Name: Jacqueline E. Solone
Title: Assistant Vice President

TRANSFEREE:

DYNEGY DANSKAMMER, L.L.C.

By: _____
Name:
Title:

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the Parties as of the date first above written.

TRANSFEROR:

DANSKAMMER OL, LLC

By: Wilmington Trust Company, not in its individual capacity, but solely as Independent Manager

By:_____
Name:
Title:

TRANSFEREE:

DYNEGY DANSKAMMER, L.L.C.

By: Robert C. Flexon
Name: Robert C. Flexon
Title: President and Chief Executive Officer

Exhibit I-A2

The Transfer Agreement Amendment

Execution Version

FIRST AMENDMENT TO ASSET TRANSFER AGREEMENT

THIS FIRST AMENDMENT TO ASSET TRANSFER AGREEMENT (this "***Amendment***") is made and entered into as of August 22, 2013, by and between Danskammer OL, LLC, a Delaware limited liability company (the "***Transferor***"), and Dynegy Danskammer, L.L.C., a Delaware limited liability company (the "***Transferee***"). The Transferor and the Transferee are sometimes hereinafter referred to individually as a "***Party***" and together as the "***Parties***."

RECITALS:

A. WHEREAS, the Transferor and the Transferee are parties to that certain Asset Transfer Agreement dated as of January 14, 2013 (the "***ATA***").

B. WHEREAS, the Parties wish to amend the ATA as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

Article 1.

AMENDMENTS TO THE ATA

1.1 Recitals. The fifth recital to the ATA is hereby amended and restated in its entirety as follows:

> "Transferee and Helios Power Capital, LLC (the "***Ultimate Buyer***") will enter into that certain Asset Purchase Agreement, dated as of August 22, 2013 (the "***APA***"), whereby, subject to the approval of the Bankruptcy Court and to the other terms and conditions thereof, Transferee has agreed to sell to the Ultimate Buyer the Acquired Assets, the Ground Interest, the Excluded Assets and all other assets owned by Transferee and associated with or forming a part of the Facility; and"

Article 2.

GENERAL PROVISIONS

2.1 Definitions and Rules of Interpretation. Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings ascribed to them in the ATA. The rules of interpretation set forth in Section 1.2 of the ATA shall apply to this Amendment.

2.2 Governing Law; Stipulations. This Amendment shall be construed and interpreted, and the rights of the Parties shall be determined, in accordance with the Laws of the State of New York, without giving effect to any provision thereof that would require the

application of the substantive Laws of any other jurisdiction, except to the extent that such Laws are superseded by the Bankruptcy Code.

2.3 Force and Effect. The ATA, as amended hereby, remains in full force and effect.

2.4 Severability. The invalidity or unenforceability of a provision of this Amendment shall not affect the validity or enforceability of any other provisions of this Amendment. In the event that any provisions of this Amendment shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Amendment shall otherwise remain in full force and effect.

2.5 Counterparts; Facsimile and Electronic Signatures. This Amendment may be executed in two or more counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument. Counterparts to this Amendment may be delivered via facsimile or electronic mail. In proving this Amendment, it shall not be necessary to produce or account for more than one such counterpart signed by the Party against whom enforcement is sought.

2.6 Concerning the Independent Manager. Notwithstanding anything contained herein to the contrary, this Amendment has been executed by Wilmington Trust Company not in its individual capacity but solely in its capacity as independent manager of the Transferor (in such capacity, the "Independent Manager"), and in no event shall Wilmington Trust Company in its individual capacity or as Independent Manager have any liability for the representations, warranties, covenants, agreements or other obligations of the Transferor or any other Person hereunder or other documents delivered pursuant hereto. For all purposes of this Agreement, in the performance of any duties or obligations of the Independent Manager hereunder, the Independent Manager shall be entitled to the benefits of the terms and provisions of the Limited Liability Company Agreement of the Transferor.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered by the duly authorized officers of the Parties as of the date first above written.

TRANSFEROR:

DANSKAMMER OL, LLC

By: Wilmington Trust Company, not in its individual capacity, but solely as Independent Manager

By: _____
Name: Mark H. Brzoska
Title: Assistant Vice President

TRANSFEREE:

DYNEGY DANSKAMMER, L.L.C.

By: _____
Name:
Title:

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered by the duly authorized officers of the Parties as of the date first above written.

TRANSFEROR:

DANSKAMMER OL, LLC

By: Wilmington Trust Company, not in its individual capacity, but solely as Independent Manager

By:_____
Name:
Title:

TRANSFEREE:

DYNEGY DANSKAMMER, L.L.C.

By:_____
Name: Mario Alonso
Title: Vice President
Strategic Planning & Development

Exhibit I-B

The APA

Execution Version

ASSET PURCHASE AGREEMENT

dated as of August 22, 2013

among

DYNEGY DANSKAMMER, L.L.C.,

as the Seller

and

HELIOS POWER CAPITAL, LLC

as the Purchaser

TABLE OF CONTENTS

Schedule 5.14: Post-Closing Filings

Exhibit A Sale Order

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement is dated as of August 22, 2013 (the "***Effective Date***"), between DYNEGY DANSKAMMER, L.L.C., a Delaware limited liability company (the "***Seller***") and Helios Power Capital, LLC, a Texas limited liability company (the "***Purchaser***"). The Seller and the Purchaser are each referred to herein as a "***Party***" and collectively as the "***Parties***."

WHEREAS, the Seller or its Affiliates will own as of Closing all right, title and interest to the Assets (as defined herein);

WHEREAS, Dynegy Holdings LLC, a Delaware limited liability company, Dynegy Northeast Generation, Inc., a Delaware corporation, Hudson Power L.L.C., a Delaware limited liability company, Dynegy Roseton, L.L.C., a Delaware limited liability company and the Seller have each filed a voluntary petition and commenced a case (collectively, the "***Chapter 11 Cases***") under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***") in the United States Bankruptcy Court for the Southern District of New York, Poughkeepsie Division (the "***Bankruptcy Court***");

WHEREAS, upon the terms and subject to the conditions contained in this Agreement and the approval of the Bankruptcy Court, the Seller wishes to sell to the Purchaser and the Purchaser wishes to purchase from the Seller all of the right, title and interest of the Seller as of the Closing Date in the Assets free and clear of any Lien except as expressly provided herein and to assume from the Seller the Assumed Liabilities; and

WHEREAS, prior to the Closing, Danskammer OL, LLC will transfer certain of the Assets to the Seller and the Seller will accept legal and beneficial title thereto, pursuant to an agreement between Danskammer OL, LLC and the Seller (such agreement, the "***Transfer Agreement***").

NOW, THEREFORE, in consideration of the premises, representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I
DEFINITIONS

1.1 Defined Terms. As used herein, the terms below shall mean the following:

"***Action***" means any litigation, action, suit, charge, binding arbitration or other legal, administrative or judicial proceeding, other than the Chapter 11 Cases.

"***Affiliate***" means, as to any Person, any other Person that directly or indirectly through one or more intermediaries controls, or is under common control with or is controlled by, such Person.

"***Agreement***" means this Asset Purchase Agreement, together with all exhibits hereto and the Schedules.

"***Ancillary Agreements***" means, in each case in a form reasonably acceptable to the Seller and the Purchaser: (a) the Bill of Sale (b) the Deed and (c) the Assignment and Assumption Agreement.

"***Asset Allocation Schedule(s)***" has the meaning set forth in Section 2.2(c).

"***Assets***" has the meaning set forth in Section 2.1(a).

"***Assigned Contract***" means the Settlement and Release Agreement, dated October 24, 2012, between Dynegy Northeast Generation, Inc., Hudson Power, L.L.C., Dynegy Roseton, L.L.C., Dynegy Danskammer, L.L.C. and Central Hudson Gas & Electric Corporation, insofar as it relates to Danskammer.

"***Assignment and Assumption Agreement***" means an assignment and assumption agreement for the Purchaser's assumption of the Seller's obligations under the Assigned Contract, to be entered into by the Seller and the Purchaser concurrently with the Closing, in form and substance reasonably acceptable to the Parties.

"***Assumed Liabilities***" has the meaning set forth in Section 2.1(c).

"***Auction***" has the meaning set forth in the Bid Procedures.

"***Bankruptcy Code***" has the meaning set forth in the recitals.

"***Bankruptcy Court***" has the meaning set forth in the recitals.

"***Bankruptcy Rules***" means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under section 2075 of title 28 of the Bankruptcy Code, 28 U.S.C. § 2075, as applicable to the Chapter 11 Cases, and the general, local and chambers rules of the Bankruptcy Court.

"***Bid Procedures***" means the bid procedures approved by the Bankruptcy Court pursuant to the Bid Procedures Order.

"***Bid Procedures Order***" means the Order of the Bankruptcy Court entered in the Chapter 11 Cases on September 27, 2012, as modified, approving the Bid Procedures.

"***Bill of Sale***" means a bill of sale for the Assets to be delivered by the Seller to the Purchaser at Closing, in form and substance reasonably acceptable to the Parties.

"***Business Day***" means a day on which the banks are opened for business (Saturdays, Sundays, statutory and civic holidays excluded) in New York, New York.

"***Chapter 11 Cases***" has the meaning set forth in the recitals.

"***Claims***" has the meaning set forth in the Bankruptcy Code.

"***Closing***" has the meaning set forth in Section 2.3(a).

"***Closing Date***" has the meaning set forth in Section 2.3(a).

"***Code***" means the United States Internal Revenue Code of 1986.

"***Confidentiality Agreement***" shall have the meaning set forth in Section 5.12.

"***Confirmation Order***" means the Order Confirming the Operating Debtors' Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code [Doc. No. 1357].

"***Consent***" means any approval, authorization, consent, order, license, permission, permit, qualification, exemption or waiver by any Government Entity (including any order by the Bankruptcy Court authorizing any sale or transfer pursuant to sections 363 or 365 of the Bankruptcy Code) or other Third Party.

"***Contract***" means any written contract, agreement, obligation, license, undertaking, instrument, lease, ground lease, commitment or other arrangement.

"***Courts***" has the meaning set forth in Section 9.8(b).

"***Credit Support Arrangements***" has the meaning set forth in Section 5.10.

"***Cure Costs***" means any amounts or assurances required by section 365 of the Bankruptcy Code (or, if inapplicable, pursuant to other applicable Laws or the terms of the applicable Contract, Lease, or Consent) under the Assigned Contract.

"***Data Room***" means the electronic documentation site established by Intralinks on behalf of the Seller containing disclosure documents made available to the Purchaser, including any supplemental materials made available to the Purchaser, in connection with this Agreement.

"***Deed***" means a bargain and sale deed with covenants against grantor's acts in form and substance reasonably acceptable to the Parties, containing such covenants, if any, as may be required by statute, so as to convey to the Purchaser all right, title and interest of the Seller to the Owned Real Property

"***Deposit***" has the meaning set forth in Section 2.2(b).

"***Effective Date***" has the meaning set forth in the preamble to this Agreement.

"***Equipment***" means those items of tangible personal or movable property owned by the Seller and used in operation of the facilities located on the Owned Real Property, including all express or implied warranties with respect thereto and all coal handling equipment located on the Owned Real Property. Notwithstanding the foregoing, Equipment shall not include (a) any assets contemplated by the Assigned Contract to be transferred from the Seller to Central Hudson Gas & Electric Corporation and (b) the Nuclear Gauges.

"***Excluded Assets***" has the meaning set forth in Section 2.1(b).

"***Excluded Liabilities***" has the meaning set forth in Section 2.1(d).

"***GAAP***" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

"***Government Entity***" means any U.S., Canadian, foreign, domestic, federal, territorial, provincial, state, municipal or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization, bureau, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing having jurisdiction.

"***Inventory***" means all inventories of spare parts used in connection with the Assets, including the inventory listed on Schedule 2.1(a)(iii), and all coal located on the Owned Real Property, other than inventory consumed, except as used in the Ordinary Course prior to Closing.

"***IRS***" means the United States Internal Revenue Service.

"***Knowledge***" means, with respect to the Seller, the actual knowledge of those individuals listed on Schedule A–1, on condition that none of the individuals named in this definition shall have any personal liability or obligation regarding such Knowledge (including the lack of any such Knowledge).

"***Law***" means any U.S., Canadian, foreign, domestic, federal, territorial, state, provincial, local or municipal statute, law, common law, ordinance, rule, regulation, order, writ, injunction, directive, judgment, decree or policy or guideline having the force of law.

"***Leased Real Property***" means real and immovable property under which the Seller is a lessee, licensee or occupant.

"***Leases***" means all unexpired leases, licenses or other occupancy agreements (or other property interests) for Leased Real Property.

"***Liabilities***" means debts, liabilities, Claims and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or undeterminable, including those arising under any Law or Action and those arising under any Contract or otherwise, including any Tax liability.

"***Lien***" means any lien, mortgage, pledge or security interest, hypothec (including legal hypothecs), encumbrance, servitude, easement, encroachment, right-of-way, restrictive covenant on real or immovable property, including without limitation any prohibition on the future use of the Danskammer site for gas-fired power generation, real property license, other real rights in favor of Third Parties, charge, prior claim, lease, occupancy agreement, leasing agreement, statutory or deemed trust or conditional sale arrangement.

"***Material Adverse Effect***" means any fact, condition, change, violation, inaccuracy, circumstance or event, individually or in the aggregate that (a) materially and adversely impairs the Assets (excluding the Excluded Assets and the Excluded Liabilities), taken as a whole, or (b) materially and adversely delays or impedes the consummation by the Seller of the transactions contemplated by this Agreement, except that in no event shall any of the following be taken into account in determining whether a "Material Adverse Effect" has occurred: (i) any change generally affecting the international, national or regional electric generating, transmission or distribution industry; (ii) any change generally affecting the international, national or regional wholesale or retail markets for electric power, ancillary services, or capacity; (iii) any change generally affecting the international, national or regional wholesale or retail markets for natural gas; (iv) any change in markets or availability of commodities or supplies, including backup,

standby, or station electric power, water, replacement parts, consumables, or materials, used in connection with the Assets; (v) any change in market design and pricing; (vi) any change in general macroeconomic, financial market, regulatory or political conditions, including any engagements of hostilities, acts of war or terrorist activities, or changes imposed by a Government Entity associated with additional security; (vii) changes in Law, GAAP or official interpretations of the foregoing; (viii) compliance with this Agreement, including any effect on the Assets resulting from failure to take any action to which the Purchaser unreasonably refused consent under this Agreement; (ix) the transactions contemplated hereby or any announcement hereof or the identity of the Purchaser; or (x) the pendency of the Chapter 11 Cases and any action approved by the Bankruptcy Court upon the motion of a Person (other than a motion by the Seller or any of its Affiliates).

"***Nuclear Gauges***" means analytical or measuring devices containing a radioactive source subject to regulation or licensing by any Government Entity and any ancillary equipment thereto.

"***NYISO***" means the New York Independent System Operator.

"***Order***" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Government Entity.

"***Ordinary Course***" means actions that are taken in the ordinary course of the normal day-to-day operations of a Person consistent with the past practices of such Person, recognizing as to the Seller that it has filed the Chapter 11 Cases. For the avoidance of doubt, the Seller and its Affiliates shall have no obligation to seek additional funding or make any capital contributions or loans in order to continue operations of the Assets or otherwise and if the Seller fails as a result of a lack of capital to take any action that would otherwise be considered within the Ordinary Course, the Seller shall not be deemed to have acted outside of the Ordinary Course as a result of such failure.

"***Owned Real Property***" means all of the real and immovable property owned by the Seller and listed on Schedule 2.1(a)(ii) hereto (which are to be transferred to the Purchaser together with all existing servitudes, easements, licenses and appurtenances benefiting such owned real and immovable property, including all buildings, erections, improvements, fixtures, fittings and structures thereon).

"***Party***" or "***Parties***" has the meaning set forth in the preamble to this Agreement.

"***Permitted Encumbrances***" means (a) all defects, exceptions, restrictions, easements, rights-of-way and encumbrances disclosed in policies of title insurance; (b) statutory Liens for current Taxes, assessments or other governmental charges not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings (provided that to the Seller's Knowledge, no such Liens have arisen post-petition); (c) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the Ordinary Course, either for amounts not yet due or for amounts being contested in good faith and by appropriate proceedings timely instituted (provided that to the Seller's Knowledge, no such Liens have arisen post-petition); (d) environmental Liens and closure obligations imposed by any Government Entity; (e) title of a lessor under a capital or operating lease (which capital and operating leases in effect as of Closing are set forth on Schedule A-2, except to the extent immaterial); (f) terms and conditions of any Designated Seller Contract that have been disclosed on an appropriate

Schedule to this Agreement; (g) all covenants, conditions, restrictions, easements, charges, rights-of-way, other encumbrances on title and similar matters filed of record in the real property records in the jurisdictions in which the Assets to which they relate or affect are located and that do not materially interfere with the use, development or operation of the Assets in the Ordinary Course, render title unmarketable, or require the payment of any monies or the receipt of consent from any Third Parties; (h) such Liens, imperfections in title, charges, easements, restrictions, encumbrances or other matters that are due to zoning or subdivision, entitlement, and other land use Laws or regulations and, if imposed after the Effective Date, which do not and will not materially impair the use, development or operation of the Assets for their intended purpose; (i) with respect to the Assets other than the Owned Real Property, encumbrances on title arising by operation of any applicable United States federal, state or foreign securities Law; or (j) Liens or encumbrances that arise solely by reason of acts of or with the approval of the Purchaser.

"***Person***" means an individual, a partnership, a corporation, an association, a limited or unlimited liability company, a joint stock company, a trust, a joint venture, an unincorporated organization or other legal entity or Government Entity.

"***Purchase Price***" has the meaning set forth in Section 2.2(a).

"***Purchaser***" has the meaning set forth in the preamble to this Agreement.

"Real Property Taxes" has the meaning set forth in Section 2.1(c)(i).

"***Sale Order***" has the meaning set forth in Section 5.1(b).

"***Seller***" has the meaning set forth in the preamble to this Agreement.

"***Seller Trademarks and Logos***" has the meaning set forth in Section 5.15.

"***Tax***" means any domestic or foreign federal, state, local, provincial, territorial or municipal taxes or other impositions by any Government Entity, including Transfer Taxes and the following taxes and impositions: net income, gross income, capital, value added, goods and services, harmonized sales, capital gains, alternative, net worth, gross receipts, sales, use, ad valorem, business rates, transfer, franchise, profits, business, real or immovable property, municipal, school, withholding, workers' compensation levies, payroll, employment, unemployment, employer health, occupation, social security, excise, stamp, customs, and all other taxes, fees, duties, assessments, deductions, contributions, withholdings or charges of the same or of a similar nature, however denominated, together with any interest and penalties, additions to tax or additional amounts imposed or assessed with respect thereto.

"***Tax Authority***" means any local, municipal, governmental, state, provincial, territorial, federal, including any U.S., Canadian or other fiscal, customs or excise authority, body or officials anywhere in the world with responsibility for, and competent to impose, collect or administer, any form of Tax.

"***Tax Returns***" means all returns, reports (including elections, declarations, disclosures, statements, schedules, estimates and information returns) and other information filed or required to be filed with any Tax Authority relating to Taxes.

"***Third Party***" means any Person that is neither a Party nor an Affiliate of a Party.

"***Transaction Documents***" means this Agreement, the Ancillary Agreements and all other agreements, documents and instruments necessary to effect the transactions contemplated hereby.

"***Transfer Agreement***" has the meaning set forth in the recitals.

"***Transfer Agreement Closing***" means the "Closing" as defined in the Transfer Agreement.

"***Transfer Taxes***" means all goods and services, sales, excise, use, transfer, gross receipts, documentary, filing, recordation, value-added, stamp, stamp duty reserve, and all other similar taxes, duties or other like charges, however denominated, in each case including interest, penalties or additions attributable thereto whether or not disputed, arising out of or in connection with the transaction, regardless of whether the Governmental Entity seeks to collect the Transfer Tax from the Seller or the Purchaser.

"***U.S.***" means the United States of America.

1.2 Interpretation.

(a) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

(b) Words denoting any gender shall include all genders.

(c) A reference to any Party to this Agreement or any other agreement or document shall include such Party's successors and permitted assigns.

(d) A reference to any legislation or to any provision of any legislation shall include any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(e) All references to "$" and dollars shall be deemed to refer to United States currency.

(f) All references to any financial or accounting terms shall be defined in accordance with GAAP, unless otherwise defined herein.

(g) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section, schedule and exhibit references are to this Agreement, unless otherwise specified. All article, section, paragraph, schedule and exhibit references used in this Agreement are to articles, sections, paragraphs, schedules and exhibits to this Agreement, unless otherwise specified.

(h) The meanings given to terms defined herein shall be equally applicable to both singular and plural forms of such terms.

(i) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is

the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day.

(j) If a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(k) A reference to any agreement or document (including a reference to this Agreement) is to the agreement or document as amended, restated, supplemented or otherwise modified from time to time, except to the extent prohibited by this Agreement or that other agreement or document.

(l) Exhibits, Schedules, annexes and other documents referred to as part of this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement. Any capitalized terms used in any exhibit or Schedule but not otherwise defined therein shall be defined as set forth in this Agreement.

(m) The table of contents and the headings of the Articles and Sections herein are inserted for convenience of reference only and shall not be a part of, or affect the meaning or interpretation of, this Agreement.

(n) This Agreement is the result of the joint efforts of the Parties, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of the Parties and there is to be no construction against any Party based on any presumption of that Party's involvement in the drafting thereof

ARTICLE II
PURCHASE AND SALE OF ASSETS

2.1 Purchase and Sale.

(a) Assets. Subject to the terms and conditions of this Agreement, at the Closing, the Purchaser shall purchase, acquire and accept from the Seller, and the Seller shall sell, transfer, assign, convey and deliver to the Purchaser all of its right, title and interest in the below-listed assets (herein collectively called the "***Assets***") free and clear of all Liabilities and Liens (other than Permitted Encumbrances and Assumed Liabilities) pursuant to the Sale Order:

(i) the Equipment, including the Equipment set forth on Schedule 2.1(a)(i);

(ii) the Owned Real Property;

(iii) the Inventory;

(iv) the Assigned Contract; and

(v) insurance proceeds for casualty loss occurring after the Effective Date but before the Closing as contemplated by Section 5.9.

(b) Excluded Assets. The Seller shall retain its right, title and interest in and to, and the Purchaser shall not acquire and shall have no rights with respect to the right, title and

interest of the Seller in and to, any assets not listed in Section 2.1(a) (collectively, the "***Excluded Assets***"). For the avoidance of doubt, (i) any assets contemplated by the Assigned Contract to be transferred from the Seller to Central Hudson Gas & Electric Corporation and (ii) the Nuclear Gauges are Excluded Assets.

(c) Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, the Purchaser shall assume and become responsible for, and perform, discharge and pay when due, the following Liabilities (the "***Assumed Liabilities***"):

(i) all the real property Taxes for the Owned Real Property owed by the Seller (the "***Real Property Taxes***") relating to the period from and after January 1, 2013 (*provided, however*, that the Purchaser shall be responsible to pay, at the Closing, the sum of $2,650,000 in respect of such Real Property Taxes owed by the Seller for Real Property Taxes that were due and payable prior to June 30, 2013), and all Liabilities for, or related to any obligation for, any Tax that the Purchaser bears under ARTICLE VI (including, for the avoidance of doubt, Transfer Taxes, if any, imposed in connection with this Agreement and the transactions contemplated hereunder or any other Transaction Document and the transactions contemplated thereunder);

(ii) all environmental Liabilities and obligations (other than those discharged by bankruptcy) with respect to ownership or operation of the Assets, including any Liabilities and obligations arising from or relating to permits or other authorizations relating to the ownership or operation from and after the Closing of any landfill located on the Owned Real Property except for penalties, fines, sanctions and other similar Liabilities arising from pre-Closing actions or circumstances including any violation of the Clean Air Act or other Environmental Law;

(iii) all Liabilities and obligations with respect to ownership or operation of the Assets from and after the Closing;

(iv) all Liabilities in respect of Consents relating to the period from and after the Closing Date, including filing and other fees relating thereto; and

(v) all Liabilities under the Assigned Contract.

(d) Excluded Liabilities. Other than the Assumed Liabilities, (x) the Purchaser shall not assume or be obligated to assume or be obligated to pay, perform or otherwise discharge any Liability of the Seller or its Affiliates, and (y) the Seller shall be solely and exclusively liable as between the Parties with respect to all Liabilities of the Seller (collectively, the "***Excluded Liabilities***"). For the avoidance of doubt, the Excluded Liabilities include the following:

(i) any Liability of the Seller or its directors, officers, stockholders or agents (acting in such capacities), arising out of, or relating to, this Agreement or the transactions contemplated by this Agreement, whether incurred prior to, at or subsequent to the Closing Date, including all finder's or broker's fees, commissions and expenses and any and all fees and expenses of any representatives of the Seller;

(ii) all Real Property Taxes relating to the period prior to January 1, 2013;

(iii) penalties, fines, sanctions and other similar Liabilities arising from pre-Closing actions or circumstances including any violation of the Clean Air Act or other Environmental Law;

(iv) accounts payable; and

(v) any Liability relating to or arising out of the ownership or operation of any Excluded Asset.

(e) [Reserved].

(f) Non-Assignable Assets. Notwithstanding anything in this Agreement to the contrary, if an attempted direct or indirect sale, transfer or assignment of an Asset without the Consent of a Third Party (including a Government Entity) would constitute a breach, default, violation or other contravention of the rights of such Third Party or would be ineffective with respect to any party to a Contract concerning such Asset, unless a Consent to such sale, transfer or assignment has been obtained on or prior to Closing then, unless and until such Consent is subsequently obtained, this Agreement shall not constitute a sale, transfer or assignment, directly or indirectly, of such Asset or any obligation or benefit arising thereunder. For greater certainty, failure to obtain any such Consent, except as set forth in Section 7.3, shall not entitle the Purchaser to terminate this Agreement or fail to complete the transactions contemplated hereby or entitle the Purchaser to any adjustment of the Purchase Price.

2.2 Purchase Price.

(a) Purchase Price. Pursuant to the terms and subject to the conditions set forth in this Agreement, in consideration of the sale of the Assets pursuant to the terms hereof, the Purchaser shall (i) assume from the Seller and become obligated to pay, perform and discharge, when due, the Assumed Liabilities, and (ii) pay to the Seller at the Closing an amount equal to $3,500,000 in cash, in accordance with Sections 2.3(a) and 2.3(b) ((i) and (ii), collectively, the "***Purchase Price***").

(b) Deposit. The Purchaser has deposited, by wire transfer to the account designated by the Seller, an amount equal to $500,000 in cash (the "***Deposit***"), which Deposit shall be distributed to either the Purchaser or the Seller as follows:

(i) if the Closing shall occur, then the Deposit shall be applied towards the Purchase Price payable by the Purchaser to the Seller under Section 2.2(a) and shall be paid to the Seller;

(ii) if this Agreement is terminated pursuant to Section 8.1(a) or Section 8.1(d), then the Deposit shall be returned to the Purchaser;

(iii) if this Agreement is terminated by the Purchaser pursuant to Section 8.1(b), then the Deposit shall be returned to the Purchaser; or

(iv) if this Agreement is terminated by the Seller pursuant to Section 8.1(b), then the Deposit shall be forfeited by the Purchaser and paid to the Seller.

(c) Purchase Price Allocation. Within 60 days after the Closing Date (as defined below), the Seller shall deliver to the Purchaser allocation schedules (the "***Asset Allocation Schedule(s)***") allocating the Purchase Price (including specific allocation of the Assumed Liabilities that are liabilities for federal income Tax purposes) on a dollar basis among the Assets. The Asset Allocation Schedule(s) shall be reasonably acceptable to the Purchaser and, to the extent applicable, shall be prepared in accordance with Section 1060 of the Code and the regulations thereunder. The Purchaser will have the right to raise reasonable objections to the draft allocation within 30 days after the Seller's delivery thereof, in which event the Purchaser and the Seller will negotiate in good faith to resolve such dispute. If the Purchaser and the Seller cannot resolve such dispute within 30 days after the Purchaser notifies the Seller of such objections, each will use its own allocation determinations and neither shall be bound by the other Party's allocation. The Purchaser and the Seller will each file IRS Form 8594, to the extent applicable, and all Tax Returns, in accordance with the Asset Allocation Schedule(s), and for greater certainty, the Parties shall not take any position inconsistent with the Asset Allocation Schedule(s) in the course of any audit by any Governmental Authority, Tax review or Tax proceeding. To the extent applicable, the Purchaser, on the one hand, and the Seller, on the other hand, each agrees to provide the other promptly with any other information reasonably required to complete IRS Form 8594. To the extent allocations reflected on the Purchaser's and the Seller's IRS Form 8594 are considered acceptable for GAAP, such allocations shall be used by the Purchaser and the Seller in the preparation of their financial statements.

2.3 Closing.

(a) The consummation of the transactions contemplated herein (the "***Closing***") shall take place on the fifth Business Day after all of the conditions set forth in ARTICLE VII, other than those conditions that by their nature are to be satisfied at the Closing, have been either satisfied or waived by the Party entitled to waive such condition or on such other date as the Parties shall mutually agree. The Closing shall be held at the offices of Sidley Austin LLP at 787 Seventh Avenue in New York, NY 10019, at 10:00 a.m., local time, unless the Parties otherwise agree, which agreement may include Closing by electronic means. The actual date of the Closing is the "***Closing Date***." For purposes of this Agreement, from and after the Closing, the Closing shall be deemed to have occurred at 12:01 a.m. on the Closing Date.

(b) At the Closing:

(i) the Purchaser shall pay the Purchase Price, less the Deposit as set forth in Section 2.2(b), to the Seller by wire transfer of immediately available funds to an account designated by the Seller;

(ii) the Purchaser and the Seller shall deliver any Consents received by them required to consummate the transactions contemplated by this Agreement;

(iii) the Purchaser shall pay to the appropriate Tax Authority all applicable Transfer Taxes in connection with this Agreement and the transactions contemplated herein and the other Transaction Documents and the transactions

contemplated therein. For the avoidance of doubt, the Purchaser shall not be required to pay any Transfer Taxes in connection with the Transfer Agreement or transactions contemplated thereby;

(iv) the Seller and the Purchaser shall deliver duly executed copies of and enter into the Ancillary Agreements to which it is contemplated that they will be parties, respectively;

(v) the Seller and the Purchaser shall deliver the officer's certificates required to be delivered pursuant to Section 7.2(a), Section 7.2(b), Section 7.3(a) and Section 7.3(b), as applicable;

(vi) the Seller shall deliver (i) a copy of the Sale Order and (ii) with respect to the Owned Real Property, any existing surveys, legal descriptions and title policies in the possession of the Seller;

(vii) if the Seller is transferring a "United States Real Property Interest" as defined by Section 897(c) of the Code, the Seller shall deliver to the Purchaser a duly executed and acknowledged certificate, in form and substance reasonably acceptable to the Purchaser and in compliance with the Code and the treasury regulations thereunder, certifying such facts as reasonably necessary to establish that the sale of the United States Real Property Interest is exempt from withholding under Section 1445 of the Code;

(viii) the Purchaser shall deliver to the Seller a fully completed and executed resale certificate and any other similar certificate reasonably requested by the Seller; and

(ix) each Party shall deliver, or cause to be delivered, to the other any other documents reasonably requested by such other Party in order to effect, or evidence the consummation of, the transactions contemplated herein or otherwise provided for under this Agreement.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the Seller as follows:

3.1 Organization and Corporate Power.

(a) The Purchaser is duly organized and validly existing under the Laws of the jurisdiction in which it is organized. The Purchaser has the requisite corporate power and authority to enter into, deliver and perform its obligations pursuant to each of the Transaction Documents to which it is or will become a party.

(b) The Purchaser is qualified to do business as contemplated by the Transaction Documents and to own or lease and operate its properties and assets, including the Assets, except to the extent that the failure to be so qualified would not materially hinder, delay or impair the Purchaser's ability to carry out its obligations under, and to consummate the transactions contemplated by, the Transaction Documents to which it is or will become a party.

3.2 Authorization; Binding Effect; No Breach.

(a) The execution, delivery and performance of each Transaction Document to which the Purchaser is a party, or is to be a party, has been duly authorized by the Purchaser at the time of its execution and delivery. Assuming due authorization, execution and delivery by the Seller, each Transaction Document to which the Purchaser is a party constitutes, or upon execution thereof will constitute, a valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of public policy.

(b) The execution, delivery and performance by the Purchaser of the Transaction Documents to which the Purchaser is, or on the Closing Date will be, a party do not and will not conflict with or result in a breach of the terms, conditions or provisions of, constitute a default under, result in a violation of or require any Consent pursuant to (i) the articles, charter, by-laws, partnership agreement or operating agreement of the Purchaser, (ii) any Contract or other document to which the Purchaser is a party or to which any of its assets is subject or (iii) any Laws to which the Purchaser or any of its assets is subject, except, in the case of (ii) and (iii) above, for such defaults, violations, actions and notifications that would not individually or in the aggregate materially hinder, delay or impair the performance by the Purchaser of any of its obligations under any Transaction Document.

3.3 Consents. Except as set forth on Schedule 3.3 and subject to the Sale Order having been entered by the Bankruptcy Court, none of the execution, delivery or performance of this Agreement by the Purchaser will require any Consent of, registration, notice, declaration or filing with or to any Government Entity or any other Person.

3.4 Litigation. There are no Actions pending or, to the Knowledge of the Purchaser, threatened against the Purchaser, or to which the Purchaser is otherwise a party before any Government Entity, which, if adversely determined, would reasonably be expected to have a material adverse effect on the ability of the Purchaser to perform its obligations under this Agreement or to consummate the transactions contemplated herein. The Purchaser is not subject to any Order except to the extent the same would not reasonably be expected to have a material adverse effect on the ability of the Purchaser to perform its obligations under this Agreement or to consummate the transactions contemplated herein.

3.5 Financial Capability. The Purchaser, at the Closing, will have (a) sufficient funds (without giving effect to any unfunded financing regardless of whether any such financing is committed) available to pay the Purchase Price and any expenses incurred by the Purchaser in connection with the transactions contemplated by this Agreement, and (b) the resources and capabilities (financial or otherwise) to perform its obligations hereunder.

3.6 Market Concentration. The Purchaser does not own, lease, operate or otherwise control any power generation assets that generate power in the NYISO market and does not otherwise generate power, or cause power to be generated, in the NYISO market.

3.7 No Other Representations or Warranties. Notwithstanding anything contained in this Agreement to the contrary, the Purchaser acknowledges and agrees that none of the Seller, its Affiliates or any other Person is making any representations or warranties whatsoever, express or

implied, beyond those expressly given by the Seller in ARTICLE IV, or with respect to any other information provided to the Purchaser in connection with the transactions contemplated hereby, including as to the probable success or profitability of the ownership, use or operation of the Assets. The Purchaser further represents that none of the Seller, its Affiliates or any other Person has made any representation or warranty, express or implied as to the accuracy or completeness of any information regarding the Seller, the Assets or the transactions contemplated by this Agreement not expressly set forth in this Agreement, and none of the Seller, its Affiliates or any other Person will have or be subject to liability to the Purchaser or any other Person resulting from the distribution to the Purchaser or its representatives or the Purchaser's use of any such information, including Data Room information provided to the Purchaser or its representatives, in connection with the sale of the Assets. The Purchaser acknowledges that it has conducted to its satisfaction its own independent investigation of the current condition and affairs of the Assets. The Purchaser is and has been assisted by advisors, consultants and legal counsel, knowledgeable and experienced in businesses similar to the operation of the Assets and in purchasing and operating power generation facilities similar to the Assets with respect to analyzing and evaluating the merits and risks of entering into this Agreement and the transactions contemplated hereby. In making its decision to execute this Agreement and undertake the obligations set forth herein, the Purchaser has relied and will rely solely upon the advice of its advisors, consultants and legal counsel and the results of its independent investigation and verification. The Purchaser acknowledges and affirms that all materials and information requested by the Purchaser have been provided to the Purchaser to the Purchaser's reasonable satisfaction. The Purchaser has completed its investigation, verification, analysis, review and evaluation of the Assets and the transactions contemplated by this Agreement as the Purchaser has deemed necessary or appropriate.

3.8 As Is Transaction. THE PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ARTICLE IV OF THIS AGREEMENT, THE SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE ASSETS OR OTHERWISE. WITHOUT IN ANY WAY LIMITING THE FOREGOING, THE PURCHASER ACKNOWLEDGES THAT THE SELLER HAS NOT GIVEN, WILL NOT BE DEEMED TO HAVE GIVEN AND HEREBY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE ASSETS. ACCORDINGLY, THE PURCHASER SHALL ACCEPT THE ASSETS AT THE CLOSING "AS IS," "WHERE IS," AND "WITH ALL FAULTS."

3.9 Brokers. Except for fees and commissions that will be paid by the Purchaser, no broker, finder or investment banker is entitled to any brokerage, finder's or similar fee or commission in connection with the transactions contemplated by this Agreement and the other Transaction Documents based upon arrangements made by or on behalf of the Purchaser or any of its Affiliates.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE SELLER

4.1 Organization; Corporate Power.

(a) The Seller is duly organized and validly existing under the Laws of the jurisdiction in which it is organized. Subject to the entry of the Sale Order from the Bankruptcy Court in connection with the transactions contemplated hereby and in the other Transaction Documents, the Seller has the requisite corporate power and authority to own or lease and to operate and use the Assets as now conducted and to enter into, deliver and perform its obligations pursuant to each of the Transaction Documents to which it is or will become a party.

(b) The Seller is qualified to do business as contemplated by the Transaction Documents and to own and operate the Assets in each jurisdiction in which its ownership of property or conduct of business relating to the Assets requires it to so qualify, except to the extent that the failure to be so qualified would not have, or reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.2 Authorization; Binding Effect; No Breach.

(a) Subject to the entry of the Sale Order, the execution, delivery and performance of this Agreement by the Seller has been duly authorized by the Seller. Subject to entry of the Sale Order, and assuming due authorization, execution and delivery by the Purchaser, this Agreement will constitute, a legal, valid and binding obligation of the Seller, enforceable against it in accordance with its terms.

(b) The execution, delivery and performance by the Seller of the Transaction Documents to which the Seller is, or on the Closing Date will be, a party do not and will not conflict with or result in a breach of the terms, conditions or provisions of, constitute a default under or result in a violation of (i) the organizational documents of the Seller, (ii) any material Order to which the Seller, any of the Assets or any property or asset of the Seller is subject or (iii) any material Laws to which the Seller or any of the Assets or any property are subject.

4.3 Consents. Except as set forth on Schedule 4.3 and subject to the Sale Order having been entered by the Bankruptcy Court, none of the execution, delivery or performance of this Agreement by the Seller will require any Consent of, registration, notice, declaration or filing with or to any Governmental Entity or any other Person.

4.4 Litigation. There are no Actions pending or, to the Knowledge of the Seller, threatened against the Seller, or to which the Seller is otherwise a party before any Government Entity, which, if adversely determined, would reasonably be expected to have a material adverse effect on the ability of the Seller to perform its obligations under this Agreement or to consummate the transactions contemplated herein. The Seller is not subject to any Order except to the extent the same would not reasonably be expected to have a material adverse effect on the ability of the Seller to perform its obligations under this Agreement or to consummate the transactions contemplated herein.

4.5 Title to Assets. At Closing, the Seller will have, and, upon delivery to the Purchaser on the Closing Date of the instruments of transfer contemplated by Section 2.3(b), and

subject to the terms of the Sale Order, the Seller will thereby transfer to the Purchaser good, legal, and valid title to all of the Assets, free and clear of all Liens and Liabilities, except (a) for the Assumed Liabilities and (b) for Permitted Encumbrances.

4.6 Environmental Matters.

(a) Except as otherwise disclosed in the Data Room, to the Knowledge of the Seller, the Seller has not received written notice that remains outstanding from any Government Entity or other Person alleging that the Seller or any of the Assets is in material violation of, or subject to material Liability under, any Laws governing pollution or the protection of human health, natural resources or the environment, in each case except such matters as would not reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise disclosed in the Data Room or identified in the NYSDEC Spill Incidents Database or National Response Center Database, to the Knowledge of the Seller, the Seller has not caused a "release" of a "hazardous substance" (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq.), in excess of a reportable and actionable quantity on any Owned Real Property or Leased Real Property which release remains unresolved, except as would not reasonably be expected to have a Material Adverse Effect.

(c) The representations and warranties contained in this Section 4.6 constitute the sole and exclusive representations and warranties made by the Seller concerning environmental matters.

4.7 Brokers. Except for fees and commissions that will be paid by the Seller or one of its Affiliates, no broker, finder or investment banker is entitled to any brokerage, finder's or similar fee or commission in connection with the transactions contemplated by the Transaction Documents based upon arrangements made by or on behalf of the Seller or any of its Affiliates.

4.8 Cure Costs. There are no Cure Costs related to the Assigned Contract.

ARTICLE V
COVENANTS AND OTHER AGREEMENTS

5.1 Bankruptcy Actions.

(a) The Seller and the Purchaser acknowledge that this Agreement and the transactions contemplated hereby are subject to the approval of the Bankruptcy Court.

(b) The Seller shall use commercially reasonable efforts to have the Bankruptcy Court enter an Order, substantially in the form annexed hereto as Exhibit A, on or before August 30, 2013 in the Chapter 11 Cases approving the sale of the Assets to the Purchaser pursuant to this Agreement, subject to the satisfaction of all conditions to Closing, including modifying the Confirmation Order (the "***Sale Order***"). The Sale Order shall be in form and substance reasonably acceptable to the Purchaser.

(c) In the event leave to appeal is sought, an appeal is taken or a stay pending appeal is requested with respect to the Sale Order, the Seller shall promptly notify the Purchaser of such leave to appeal, appeal or stay request and shall promptly provide to the Purchaser a copy

of the related notice(s) or order(s). The Seller shall also provide the Purchaser with written notice of any motion or application filed in connection with any leave to appeal or appeal from such orders.

(d) With respect to the Assigned Contract, the Purchaser will provide adequate assurance of future performance on its behalf as required under the Bankruptcy Code, including section 365(f)(2)(B) thereof. The Purchaser and the Seller agree that they will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under each Assigned Contract, such as furnishing affidavits, non-confidential financial information or other documents or information for filing with the Bankruptcy Court and making the Purchaser's and the Seller's employees and representatives available to testify before the Bankruptcy Court, as necessary.

5.2 Cooperation.

(a) Prior to the Closing, upon the terms and subject to the conditions of this Agreement, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under applicable Law to consummate the transactions contemplated by this Agreement as soon as practicable, including the preparation and filing of all forms, registrations and notices required to be filed to consummate the Closing, the taking of such actions as are necessary to obtain any requisite Consent, provided that the Seller shall not be obligated to make any payment or deliver anything of value to any Third Party (other than filing with and payment of any application fees to Government Entities, all of which shall be paid or reimbursed by the Purchaser) in order to obtain any Consent.

(b) Each of the Seller and the Purchaser shall promptly notify the other of the occurrence, to such Party's knowledge, of any event or condition, or the existence, to such Party's knowledge, of any fact, that would reasonably be expected to result in (i) any of the conditions set forth in ARTICLE VII not being satisfied or (ii) any of the representations and warranties in ARTICLE III and ARTICLE IV, as applicable, not being true and correct.

5.3 Regulatory Approvals.

(a) To the extent required by applicable Laws, each of the Parties agrees to prepare and file as promptly as practicable and, in any event, within 10 Business Days from the execution of this Agreement all necessary documents, registrations, statements, petitions, filings and applications for any Consent.

(b) Each of the Parties shall use commercially reasonable efforts to (i) cooperate with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (ii) keep the other Party informed in all material respects of any material communication received by such Party from, or given by such Party to, any Government Entity and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby, and (iii) permit the other Party to review any material communication given to it by, and consult with each other in advance of any

meeting or conference with any Government Entity, including in connection with any proceeding by a private party. The foregoing obligations in this Section 5.3 shall be subject to any attorney-client, work product or other privilege and each of the Parties hereto shall coordinate and cooperate fully with the other Party hereto in exchanging such information and providing such assistance as such other Party may reasonably request in connection with the foregoing. The Parties will not take any action that will have the effect of delaying, impairing or impeding the receipt of any required authorizations, Consents, Orders or approvals. Fees incurred in connection with complying with any Law shall be borne solely by the Purchaser (but for the avoidance of doubt shall not include any fees incurred in connection with the Transfer Agreement).

(c) If any objections are asserted with respect to the transactions contemplated hereby under any Law or if any suit is instituted by any Government Entity or any private party challenging any of the transactions contemplated hereby as violating any Law or if a filing pursuant to this Section 5.3 is reasonably likely to be rejected or conditioned by federal or a state Government Entity, each of the Parties shall use commercially reasonable efforts to resolve such objection or challenge as such Government Entity or private party may have to such transactions, including to vacate, lift, reverse or overturn any Action, whether temporary, preliminary or permanent, so as to permit consummation of the transactions contemplated by this Agreement.

(d) In addition, the Seller and the Purchaser shall each use its commercially reasonable efforts to satisfy (or cause the satisfaction of) the conditions precedent to its obligations hereunder as set forth in Section 7.2 and Section 7.3, respectively, to the extent the same is within its control and to take, or cause to be taken, all other action and to do, or cause to be done, all other things necessary, proper or advisable under all applicable Laws to consummate the transactions contemplated by this Agreement, including using its commercially reasonable efforts to obtain all Consents required to be obtained in order for the Parties to consummate the transactions contemplated by this Agreement.

5.4 Pre-Closing Access to Information. Following the execution of this Agreement by the Purchaser and the Seller, and prior to the Closing, the Seller shall (a) give the Purchaser and its authorized representatives, upon advance written notice and during regular business hours, access to all books, records, reports, plans, certificates, files, documents and information related to the Assets, (b) permit the Purchaser to make such copies and inspections thereof, upon advance written notice and during regular business hours, as the Purchaser may reasonably request, and (c) upon reasonable prior notice, give the Purchaser reasonable access, during normal business hours, to the Assets; *provided*, *however*, that (i) any such access shall be conducted at the Purchaser's expense, in accordance with Law (including any applicable Bankruptcy Rules), under the supervision of the Seller's personnel in accordance with all procedures in place at the Seller's premises and in such a manner as to maintain confidentiality and not to interfere with the normal operations of the businesses of the Seller and its Affiliates; (ii) the Seller will not be required to provide to the Purchaser access to or copies of any employee records to the extent such would be in violation of Laws relating to the protection of privacy; and (iii) any physical access shall not include physical testing or samplings and Purchaser hereby agrees to indemnify Seller for any losses that Seller or any third party may suffer as a result of Purchaser's exercise of its rights to such physical access except to the extent due to Seller's gross negligence or willful misconduct.

5.5 Further Actions. From and after the Closing Date, each of the Parties shall execute and deliver such documents and other papers and take such further actions as may reasonably be required to carry out the provisions of this Agreement and give effect to the transactions contemplated herein, including the execution and delivery of such assignments, deeds and other documents as may be necessary to transfer any Assets as provided in this Agreement; provided that, except as otherwise set forth in this Agreement, neither the Purchaser nor the Seller shall be obligated to make any payment or deliver anything of value to any Third Party in order to obtain any Consent to the transfer of Assets or the assumption of Assumed Liabilities.

5.6 Allocation of Certain Items. The Purchaser shall promptly pay in cash to the Seller any amount received by the Purchaser to the extent such amount (a) relates to the operation of the Assets prior to the Closing Date or (b) is a refund, rebate or other adjustment with respect to a payment made by the Seller prior to the Closing Date.

5.7 Transaction Expenses. Except as otherwise provided in this Agreement, each Party shall bear its own costs and expenses (including brokerage commissions, finders' fees or similar compensation, and legal fees and expenses) incurred in connection with the Transaction Documents and the transactions contemplated hereby and thereby.

5.8 Notification of Certain Matters. The Seller shall give written notice to the Purchaser promptly after becoming aware of (a) the occurrence of any event, which would be likely to cause any condition set forth in Section 7.1 or Section 7.3 to be unsatisfied in any material respect at any time from the date hereof to the Closing Date or (b) any written notice from any Person alleging that the Consent of such Person is or may be required in connection with any of the transactions contemplated by this Agreement; *provided, however*, that the delivery of any written notice pursuant to this Section 5.8 shall not limit or otherwise affect the remedies available hereunder to the Purchaser.

5.9 Casualty Loss. Notwithstanding any provision in this Agreement to the contrary, if, between the Effective Date and the Closing, all or any portion of the Assets is (a) condemned or taken by eminent domain, or (b) a material portion is damaged or destroyed by fire or other casualty, the Seller shall notify the Purchaser promptly in writing of such fact, and (i) in the case of condemnation or taking, the Seller shall assign or pay, as the case may be, any proceeds thereof to the Purchaser at the Closing, and (ii) in the case of fire or other casualty, the Seller shall assign the insurance proceeds therefrom to the Purchaser at Closing.

5.10 Replacement of Credit Support Arrangements. At Closing, the Purchaser shall (a) deliver to the applicable beneficiary or counterparty duly executed replacement or substitute guaranties, letters of credit, bonds, security deposits, and other surety obligations and evidence of financial capacity, in each case reasonably acceptable to the relevant beneficiary or counterparty, in replacement of those credit support arrangements set forth in Schedule 5.10 (the "***Credit Support Arrangements***"), and (b) effect the full and unconditional release as of Closing of the Seller and its Affiliates from all obligations relating to the Credit Support Arrangements and any liabilities related thereto.

5.11 Public Announcements. The Parties shall consult with each other before issuing, and provide each other the opportunity to review and comment upon, any press release or public announcement of this Agreement and the transactions contemplated hereby, and no Party shall

issue any such press release or public announcement without the prior consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the preceding sentence, this Section 5.11 shall not prevent any such press release or public announcement being made to the extent required by Law, court process (including the filing of this Agreement with the Bankruptcy Court as an exhibit to the motion seeking entry of the Sale Order) or the rules and regulations of, and any listing agreement with, any national securities exchange, on condition that if a Party is required to make any such announcement, the disclosing Party shall promptly before the announcement is made deliver written notice to the other Party thereof where practicable and lawful to do so, and the disclosing Party shall use its commercially reasonable efforts to agree upon the text of any such announcement with the other Party prior to the release of the announcement. The Parties shall cause their respective Affiliates and representatives to comply with this Section 5.11.

5.12 Confidentiality. Until the Closing, the confidentiality of any data or information received by the Purchaser regarding the Assets (including any information obtained pursuant to Section 5.4) shall be maintained by the Purchaser and its Affiliates and representatives in accordance with the confidentiality agreement between Bay Ltd. and Dynegy Northeast Generation, Inc., dated as of July 31, 2012 (the "***Confidentiality Agreement***"), the terms of which are incorporated herein by reference. Notwithstanding any other provision in this Agreement or in the Confidentiality Agreement to the contrary, the terms of the Confidentiality Agreement shall continue in full force and effect as to all information other than information related to the Assets for two years after the Effective Date.

5.13 Insurance. All property and casualty insurance policies and binders maintained for the benefit of the Seller and related to the Assets shall, effective upon the Closing, cease to apply and the Purchaser acknowledges and agrees that it shall be solely responsible for providing insurance with respect to the Assets for any event or occurrence of any kind whatsoever first occurring after Closing.

5.14 Post-Closing Filings. Promptly following Closing, the Purchaser shall make the notice and other filings required to be made after the Closing as described on Schedule 5.14 with respect to the Closing of the transactions contemplated hereby.

5.15 Seller Trademarks and Logos. It is expressly agreed that the Purchaser is not purchasing, acquiring or otherwise obtaining any right, title or interest in the name "Dynegy" or any derivative thereof, or any trade names, trademarks, identifying logos or service marks related thereto or employing the word "Dynegy" or any part or variation of any of the foregoing or any confusingly similar trade names, trademarks, logos or service marks (collectively, the "***Seller Trademarks and Logos***"). Neither the Purchaser nor any of its Affiliates shall make any use of the Seller Trademarks and Logos from and after the Closing, including through the use of stationery or letterhead. The Purchaser shall, at its own cost and within 30 days after the Closing Date remove or cause to be removed from the Assets any and all of the Seller Trademarks and Logos. For the avoidance of doubt, this Section 5.15 does not restrict the Purchaser's use of the word "Danskammer."

5.16 Restrictive Covenant. Seller has not, and shall not, agree to the imposition of a restrictive covenant running with the land prohibiting future use of the Danskammer site for gas-fired power generation.

5.17 Interim Operations. Except as may be required by the Bankruptcy Court, from the date hereof until the Closing, Seller shall continue to preserve and maintain the Assets substantially consistent with the Ordinary Course of such maintenance during the last six (6) months.

5.18 Certain Transfers. Notwithstanding Section 5.17 or any other restriction herein, between the date hereof and the Closing, Seller shall have the right (a) to remove, or cause the removal of, the Nuclear Gauges and (b) to transfer to Central Hudson Gas & Electric Corporation or an affiliate thereof any assets contemplated by the Assigned Contract to be transferred from the Seller to Central Hudson Gas & Electric Corporation and to grant to such transferee an easement for placement of and access to such assets.

5.19 Retirement Notice. The Seller shall provide written notice to the New York State Public Service Commission regarding the retirement of the Equipment on or prior to the Closing (with the applicable date subject to the reasonable agreement of the Parties).

ARTICLE VI
TAX MATTERS

6.1 Transfer Taxes.

(a) Notwithstanding anything in this Agreement to the contrary, unless exempt from payment under the Bankruptcy Code, an Order of the Bankruptcy Court or applicable state law, the Purchaser shall promptly pay directly to the appropriate Tax Authority, or promptly reimburse the Seller upon demand and delivery of proof of payment of, all applicable Transfer Taxes arising out of the transfer of the Assets in connection with this Agreement and the transactions contemplated herein and the other Transaction Documents and the transactions contemplated therein.

(b) If the Purchaser wishes to claim any exemption relating to, or a reduced rate of, Transfer Taxes, in connection with this Agreement or the transactions contemplated herein or the other Transaction Documents and the transactions contemplated therein, the Purchaser shall be solely responsible for ensuring that such exemption or election applies and, in that regard, shall provide the Seller prior to Closing with any appropriate certificate of exemption, election and/or other document or evidence to support the claimed entitlement to such exemption or reduced rate by the Purchaser. The Seller shall make reasonable efforts to cooperate to the extent necessary to obtain any such exemption or reduced rate.

6.2 Tax Characterization of Payments Under This Agreement. The Seller and the Purchaser agree to treat all payments made either to or for the benefit of the other Party under this Agreement as adjustments to the Purchase Price for Tax purposes and that such treatment shall govern for purposes hereof to the extent permitted under applicable Tax Law.

6.3 Records. After the Closing Date, the Purchaser on the one hand, and the Seller, on the other hand, will make available to the other, as reasonably requested, and to any Tax Authority, all information, records or documents relating to liability for Taxes with respect to the Assets and the Assumed Liabilities for all periods prior to or including the Closing Date, and will preserve such information, records or documents until the expiration of any applicable statute of limitations or extensions thereof, *provided*, *however*, that if the Purchaser provides such information, records and documents (or provide the opportunity to obtain such information,

records and documents) to the Seller or its Affiliates, or if the Seller or any of its Affiliate provides such information, records and documents (or provides the opportunity to obtain such information, records and documents) to the Purchaser, then such information, records and documents are no longer required to be preserved, subject to Section 5.12. In the event that one Party needs access to records in the possession of a second Party relating to any of the Assets or the Assumed Liabilities for purposes of preparing Tax Returns or complying with any Tax audit request, subpoena or other investigative demand by any Tax Authority, or for any other legitimate Tax-related purpose not injurious to the second Party, the second Party will allow representatives of the other Party access to such records during regular business hours at the second Party's place of business for the sole purpose of obtaining information for use as aforesaid and will permit such other Party to make extracts and copies thereof as may be necessary or convenient. Subject to the provisions in the first sentence of this Section 6.3, the obligation to cooperate pursuant to this paragraph shall terminate at the time the relevant applicable statute of limitations expires (giving effect to any extension thereof).

6.4 Pre-2013 Taxes and Tax Returns. Other than as set forth in Section 6.1 and subject to Section 2.1(c)(i), the Seller and its Affiliates shall prepare and file, and pay the Taxes shown as due on, Tax Returns of the Seller and other Tax Returns in respect of the Assets, for all taxable periods ending on or before December 31, 2012.

6.5 Post-2013 Taxes and Tax Returns. Subject to Section 2.1(c)(i), the Purchaser shall prepare and file, and pay the Taxes shown as due on any Tax Returns in respect of the Assets, for all taxable periods beginning on or after January 1, 2013 (including all Real Property Taxes due in respect of the Owned Real Property).

6.6 Pre-2013 Tax Controversies. The Seller shall have the right (but not the obligation) to control, defend, prosecute, settle and compromise any audit, assessment, inquiry, claim, adjustment or proposed adjustment with respect to Taxes on any Tax Return if and to the extent such audit, assessment, inquiry, claim, adjustment or proposed adjustment would reasonably be expected to adversely affect Taxes for which the Seller or its Affiliates are liable.

ARTICLE VII
CONDITIONS TO THE CLOSING

7.1 Conditions to Each Party's Obligation. Each Party's obligation to effect the Closing is subject to the satisfaction or the express written waiver of the Parties, at or prior to the Closing, of the condition that there shall be in effect no Law or Order in the U.S. or Canada prohibiting the consummation of the transactions contemplated hereby that has not been withdrawn or terminated.

7.2 Conditions to Seller's Obligation. The Seller's obligation to effect the Closing shall be subject to the fulfillment (or express written waiver by the Seller), at or prior to the Closing, of each of the following additional conditions:

(a) Except to the extent any failure has not resulted in or would not reasonably be expected to result in a Material Adverse Effect, each of the representations and warranties of the Purchaser contained herein shall be true and correct on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except to the extent that any such representation or warranty

is expressly made as of a specified date, in which case the accuracy of such representation or warranty shall be determined as of such specified date. The Seller shall have received a certificate of the Purchaser to such effect signed by a duly authorized officer thereof.

(b) The covenants contained in this Agreement to be complied with by the Purchaser on or before the Closing shall have been complied with and not been breached in any material respect. The Seller shall have received a certificate of the Purchaser to such effect signed by a duly authorized officer thereof.

(c) The Purchaser shall have paid and delivered the Purchase Price.

(d) The Sale Order shall have been entered and not be the subject of any stay or injunction.

(e) The Transfer Agreement Closing shall have occurred.

(f) The Purchaser shall have delivered the replacement Credit Support Arrangements to the relevant beneficiary or counterparty as contemplated by clause (a) of Section 5.10.

(g) All Consents of the Federal Energy Regulatory Commission required for the completion of the transactions contemplated hereby to comply with applicable Law shall have been obtained and remain in full force and effect, not subject to any unfulfilled conditions to their effectiveness.

7.3 Conditions to Purchaser's Obligation. The Purchaser's obligation to effect the Closing shall be subject to the fulfillment (or express written waiver by the Purchaser), at or prior to the Closing, of each of the following additional conditions:

(a) Except to the extent any failure has not resulted in or would not reasonably be expected to result in a Material Adverse Effect, each of the representations and warranties of the Seller contained herein shall be true and correct on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except to the extent that any such representation or warranty is expressly made as of a specified date, in which case the accuracy of such representation or warranty shall be determined as of such specified date. The Purchaser shall have received a certificate of the Seller to such effect signed by a duly authorized officer thereof.

(b) The covenants, obligations and agreements contained in this Agreement to be complied with by the Seller on or before the Closing shall not have been breached in any material respect. The Purchaser shall have received a certificate of the Seller to such effect signed by a duly authorized officer thereof.

(c) The Sale Order shall have been entered and not be the subject of any stay or injunction.

(d) The Transfer Agreement Closing shall have occurred.

(e) All Consents of the Federal Energy Regulatory Commission required for the completion of the transactions contemplated hereby to comply with applicable Law shall

have been obtained and remain in full force and effect, not subject to any unfulfilled conditions to their effectiveness.

ARTICLE VIII
TERMINATION

8.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by either the Seller or the Purchaser by mutual written consent of the Seller and the Purchaser;

(b) by either the Seller or the Purchaser in the event of a material breach by the other Party of such other Party's representations, warranties, agreements or covenants set forth in this Agreement, if (i) such breach (A) would result in a failure of the conditions to Closing set forth in Section 7.2 or Section 7.3, as applicable, and (B) is not cured within seven days from receipt of a written notice from the non-breaching Party, upon 10 days' written notice to the other Party and (ii) the terminating Party is not in material breach of this Agreement as of the date of attempted termination; or

(c) [Reserved]

(d) by either the Seller or the Purchaser in the event that the Sale Order is not entered by September 30, 2013 or that the Closing does not take place on or before the date that is 60 days after entry of the Sale Order, unless the Closing has not occurred due to a pending regulatory approval, in which instance the Seller or the Purchaser may only terminate pursuant to this Section 8.1(d) if the Closing does not take place on or before the date that is 120 days after entry of the Sale Order.

8.2 Effects of Termination. If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for the provisions of (i) Section 2.2(b) (Deposit), (ii) Section 5.7 (Transaction Expenses), (iii) Section 8.2 (Effects of Termination), (iv) Section 9.7 (Successors and Assigns), (v) Section 9.8 (Governing Law; Submission to Jurisdiction; Waiver of Jury Trial) and (vi) Section 9.9 (Notices); *provided that* nothing herein shall relieve any Party from liability for any breach of this Agreement occurring before such termination.

ARTICLE IX
MISCELLANEOUS

9.1 No Survival of Representations and Warranties or Covenants. No representations or warranties, covenants or agreements in this Agreement or in any of the Ancillary Agreements shall survive beyond the Closing Date. Accordingly, no claim of any nature whatsoever for breach of such representations, warranties, covenants or agreements may be made, or Action instituted, after the Closing Date. Notwithstanding the foregoing, the covenants and agreements that by their terms are to be satisfied after the Closing Date shall survive until satisfied in accordance with their terms.

9.2 Data Room. Any information or documents provided in the Data Room shall be deemed to have been "made available to the Purchaser" as such phrase is used in this Agreement.

9.3 Enforcement of Liabilities. Notwithstanding anything herein to the contrary, nothing in this Agreement releases, nullifies, precludes or enjoins the enforcement of any Liability to a Government Entity under police and regulatory statutes or regulations (including but not limited to environmental Laws), and any associated Liabilities for penalties, damages, cost recovery, or injunctive relief to which any entity would be subject as the owner, lessor, lessee, or operator of the Assets. Nothing contained in this Agreement shall in any way diminish the obligation of any entity, including the Parties, to comply with environmental Laws. Nothing in this Agreement authorizes the transfer to the Purchaser of any licenses, permits, registrations, or governmental authorizations and approvals without the Purchaser's compliance with all applicable legal requirements under non-bankruptcy Law governing such transfers. The preceding language of this Section 9.3 shall be included in the Sale Order.

9.4 Remedies. No failure to exercise, and no delay in exercising, any right, remedy, power or privilege under this Agreement by any Party will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise of such right, remedy, power or privilege or the exercise of any other right, remedy, power or privilege. The Seller's sole remedy for any breach by the Purchaser of this Agreement shall be as set forth in Section 2.2(b) and Section 9.12.

9.5 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

9.6 Consent to Amendments; Waivers. No Party shall be deemed to have waived any provision of this Agreement or any of the other Transaction Documents unless such waiver is in writing, and then such waiver shall be limited to the circumstances set forth in such written waiver. This Agreement and the Ancillary Documents shall not be amended, altered or qualified except by an instrument in writing signed by all the parties hereto or thereto, as the case may be.

9.7 Successors and Assigns. Except as otherwise expressly provided in this Agreement, all representations, warranties, covenants and agreements set forth in this Agreement or any of the Ancillary Agreements by or on behalf of the parties thereto will be binding upon and inure to the benefit of such parties and their respective successors and permitted assigns. Neither this Agreement or the Ancillary Agreements nor any of the rights, interests or obligations hereunder may be assigned by any Party without the prior written consent of the other Party, which consent may be withheld in such Party's sole discretion, except for assignment to an Affiliate of a Party (provided that such Party remains liable jointly and severally with its assignee Affiliate for the assigned obligations to the other Party).

9.8 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) Any questions, claims, disputes, remedies or Actions arising from or related to this Agreement, and any relief or remedies sought by the Parties, shall be governed exclusively by the Laws of the State of New York without regard to the rules of conflict of laws

applied therein or any other jurisdiction except to the extent that such Laws are superseded by the Bankruptcy Code.

(b) To the fullest extent permitted by applicable Law, each Party (i) agrees that any claim, action or proceeding by such Party seeking any relief whatsoever arising out of, or in connection with, this Agreement or the transactions contemplated hereby shall be brought only in the Bankruptcy Court, if brought prior to the entry of a final decree closing the Chapter 11 Case, with respect to the Seller and its Subsidiaries, or in the federal courts in the Southern District of New York (collectively, the "***Courts***"), if brought after entry of such final decree closing the Chapter 11 Case and shall not be brought, in any court in the United States of America or any court in any other country, (ii) agrees to submit to the exclusive jurisdiction of the Courts, as applicable pursuant to the preceding clauses (i), for purposes of all legal proceedings arising out of, or in connection with, this Agreement or the transactions contemplated hereby, (iii) waives and agrees not to assert any objection that it may now or hereafter have to the laying of the venue of any such Action brought in such a court or any claim that any such Action brought in such a court has been brought in an inconvenient forum, (iv) agrees that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 9.9 or any other manner as may be permitted by Law shall be valid and sufficient service thereof, and (v) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

(c) EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THE TRANSACTION DOCUMENTS OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THE TRANSACTION DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.8.

9.9 Notices. All demands, notices, communications and reports provided for in this Agreement shall be deemed given if in writing and delivered, if sent by telecopy, electronic mail, courier or sent by reputable overnight courier service (delivery charges prepaid) to any Party at the address specified below, or at such address, to the attention of such other Person, and with such other copy, as the recipient Party has specified by prior written notice to the sending Party pursuant to the provisions of this Section 9.9.

If to the Purchaser to:

Helios Power Capital, LLC
5005 Riverway Drive
Suite 440
Houston, Texas 77056

Attention: Trey Helle
E-mail address: thelle@heliospowercapital.com

With copies (that shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017-3954
Attention: Brian E. Chisling and Morris J. Massel
E-mail address: bchisling@stblaw.com and mmassel@stblaw.com

If to the Seller:

Dynegy Danskammer, L.L.C.
601 Travis, Suite 1400
Houston, TX 77002
Attention: Mario E. Alonso
Email: Mario.E.Alonso@dynegy.com

Dynegy Danskammer, L.L.C.
601 Travis, Suite 1400
Houston, TX 77002
Attention: Cleve Lancaster
Email: Cleve.Lancaster@dynegy.com

With copies to:

Sidley Austin LLP
One South Dearborn
Chicago, IL 60603
Attention: Paul Caruso
Email: pcaruso@sidley.com

Sidley Austin LLP
1000 Louisiana, Suite 6000
Houston, TX 77002
Attention: Cliff Vrielink
Email: cvrielink@sidley.com

Any such demand, notice, communication or report shall be deemed to have been given pursuant to this Agreement when delivered personally, when confirmed if by facsimile transmission or electronic mail, or on the calendar day after deposit with a reputable overnight courier service, as applicable.

9.10 Counterparts. The Parties may execute this Agreement in two or more original or electronic counterparts (no one of which need contain the signatures of all Parties), each of which will be an original and all of which together will constitute one and the same instrument.

9.11 Severability. If any provision, clause, or part of this Agreement, or the application thereof under certain circumstances, is held invalid, illegal or incapable of being enforced in any jurisdiction, (a) as to such jurisdiction, the remainder of this Agreement or the application of such provision, clause or part under other circumstances, and (b) as for any other jurisdiction, any provision of this Agreement, shall not be affected and shall remain in full force and effect, unless, in each case, such invalidity, illegality or unenforceability in such jurisdiction materially impairs the ability of the Parties to consummate the transactions contemplated by this Agreement. Upon such determination that any clause or other provision is invalid, illegal or incapable of being enforced in such jurisdiction, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible even in such jurisdiction.

9.12 Specific Performance.

(a) Each Party acknowledges and agrees that any breach of the terms of this Agreement by such Party would give rise to irreparable harm for which money damages would not be an adequate remedy, and, accordingly agrees that, in addition to any other remedies, the other Party shall be entitled to enforce the terms of this Agreement, including, for the avoidance of doubt, the Purchaser's obligation to fund the Purchase Price, by a decree of specific performance without the necessity of proving the inadequacy of money damages as a remedy and without the necessity of posting a bond.

(b) Each Party agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that (i) there is adequate remedy at law or (ii) an award of specific performance is not an appropriate remedy for any reason at law or equity. In the event any Party seeks an injunction or injunctions to prevent breaches of this Agreement when expressly available pursuant to the terms of this Agreement and to enforce specifically the terms and provisions of this Agreement when expressly available pursuant to the terms of this Agreement, it shall not be required to provide any bond or other security in connection with any such order or injunction.

9.13 Entire Agreement. The Transaction Documents set forth the entire understanding of the Parties relating to the subject matter thereof, and all prior or contemporaneous understandings, agreements, representations and warranties, whether written or oral, are superseded by the Transaction Documents, and all such prior or contemporaneous understandings, agreements, representations and warranties are hereby terminated. In the event of any irreconcilable conflict between this Agreement and any of the Ancillary Agreements, the provisions of this Agreement shall prevail, regardless of the fact that certain Ancillary Agreements may be subject to different governing Laws.

9.14 Damages. Under no circumstances shall any Party be liable for punitive damages or indirect, special, incidental, or consequential damages arising out of or in connection with this Agreement or the transactions contemplated hereby or any breach or alleged breach of any of the terms hereof, including damages alleged as a result of tortious conduct.

9.15 Bulk Sales Laws. Each Party waives compliance by the other Party with any applicable bulk sales Law.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first written above.

SELLER:

DYNEGY DANSKAMMER, L.L.C.

By: _____
Name:
Title:

PURCHASER:

HELIOS POWER CAPITAL, LLC

By: _____
Name:
Title:

Exhibit M

Cross-Subsidization and Encumbrance of Utility Assets

Based on the facts and circumstances known to Dynegy Danskammer or that are reasonably foreseeable, the Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. The Transaction does not involve a franchised public utility with captive customers and, therefore, falls within one of the safe harbors established by the Commission.[1] The Commission has recognized that "the detailed explanation and evidentiary support required by Exhibit M may not be warranted" for safe harbor transactions,[2] and that, as a general matter "there is no potential for harm to customers" in the case of such transactions.[3]

Furthermore, in accordance with Section 33.2(j)(1)(ii) of the Commission's regulations,[4] Dynegy Danskammer verifies that the Transaction will not result in: (1) transfers of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) new issuances of securities by traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) new pledges or encumbrances of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an

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1 *FPA Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060 at P 16 (2007).

2 *Id.* at P 15.

3 *Id.* at P 17.

4 18 C.F.R. § 33.2(j)(1)(ii) (2013).

associate company; or (4) new affiliate contracts between non-utility associate companies and traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review pursuant to FPA Sections 205 and 206.

Attachment 1

Verification

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Dynegy Danskammer, L.L.C.) **Docket No. EC13-___-000**

VERIFICATION OF APPLICATION

The undersigned, being duly sworn, states that she is the authorized representative of Dynegy Danskammer, L.L.C., as identified in the foregoing application; that she has read said application and knows the contents thereof; and that all of the statements contained therein with respect to the foregoing entities are true and correct to the best of her knowledge, information, and belief.

Catherine Callaway
Executive Vice President, General Counsel and
Chief Compliance Officer

Subscribed and sworn to before me
this 9th day of September, 2013

Notary Public
for the State of Texas

My Commission expires:

KATHERINE D. FISHER
Notary Public
STATE OF TEXAS
My Comm. Exp. November 18, 2016

EXHIBIT C

FERC Order

145 FERC ¶ 62,049
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Dynegy Danskammer, L.L.C. Docket No. EC13-144-000

ORDER AUTHORIZING ACQUISITION AND DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued October 22, 2013)

On September 9, 2013, as supplemented on September 18, 2013, Dynegy Danskammer, L.L.C. (Dynegy Danskammer or Applicant) filed an application pursuant to section 203(a)(1)(B) of the Federal Power Act (FPA)[1] requesting Commission authorization for all approvals deemed required in connection with a transaction under which Dynegy Danskammer will acquire legal and beneficial title to Units 3 and 4 of the Danskammer Generating Station and then sell them, together with the other units at the Danskammer Generating Station to Helios Power Capital, LLC (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction are the limited facilities used to connect individual generating facilities to the transmission grid.

The Applicant states that Helios Power Capital, LLC (Helios) specializes in capturing the value of power generation assets at any point in the course of their life cycle, including through demolition and salvage and site redevelopment efforts. Neither Helios nor any of its affiliates owns or controls operational generation or transmission facilities in the NYISO market or in any market first-tier to the NYISO market. The Applicant states that Helios intends to demolish the Danskammer Generating Station once it acquires ownership.

The Applicant states that Dynegy Danskammer is an exempt wholesale generator with market-based rate authority, and it is a direct, wholly owned subsidiary of Hudson Power, L.L.C. (Hudson Power). Hudson Power is a direct, wholly-owned subsidiary of Dynegy Northeast Generation, Inc., which is a wholly-owned subsidiary of Dynegy Inc. The Applicant states that Dynegy Inc., through its various subsidiaries, produces and sells electric energy, capacity, and ancillary services in various U.S. markets.

The Applicant states that Dynegy Danskammer leases Danskammer 3 & 4, a 373 megawatt (MW) coal-fired electric generating facility, from Danskammer OL LLC (Danskammer OL) pursuant to a lease entered as part of a sale/leaseback arrangement.

[1] 16 U.S.C. § 824b (2006).

Danskammer OL is a purely passive owner of Danskammer 3 & 4. Dynegy Danskammer also owns and operates the remaining units at the Danskammer Generating Station: two oil and natural gas-fired units with a net capacity totaling approximately 130 MW (Units 1 and 2) and two diesel generators with a net capacity of approximately 2.5 MW (Units 5 and 6). The Danskammer Generating Station is located in Newburgh, New York and is interconnected with the transmission grid controlled by the New York Independent System Operator, Inc. (NYISO). The Applicant states that Danskammer Generating Station is currently inoperable.

The Applicant states that in the Proposed Transaction, Dynegy Danskammer will acquire legal and beneficial title to Danskammer 3 & 4 from Danskammer OL (the Transfer Agreement). The Applicant states that following the Transfer Agreement, Dynegy Danskammer will sell the Danskammer Generation Station to Helios.

Applicant states that the Proposed Transaction is consistent with the public interest because it will have no adverse impact on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company.

With respect to competition, Dynegy Danskammer states that the Proposed Transaction will not result in any single corporate entity obtaining ownership or control over the generating facilities of previously unaffiliated entities because Helios and its affiliates do not own or control any generation in NYISO, the relevant market. The Applicant also states that the Proposed Transaction does not involve the combination of any generating facilities. Therefore, according to Dynegy Danskammer, the Proposed Transaction does not raise any horizontal market power concerns.

Dynegy Danskammer states that the Proposed Transaction raises no vertical market power concerns, because neither Helios nor any of its affiliates owns or controls any generation in the NYISO market. Dynegy Danskammer states that the Proposed Transaction does not involve any electric transmission facilities, other than the limited facilities necessary to interconnect generating facilities to the transmission grid or any other upstream inputs to electricity products. Therefore, Dynegy Danskammer states that the Proposed Transaction does not raise any vertical market power concerns.

Dynegy Danskammer states that the Proposed Transaction will have no adverse effect on rates because Dynegy Danskammer wholesale sales are not being made, nor will be made from the Danskammer Generating Station, and the Danskammer Generating Station will be dismantled following the consummation of the Proposed Transaction. Therefore, Dynegy Danskammer states that the Proposed Transaction will have no adverse effect on rates.

Dynegy Danskammer states that the Proposed Transaction will not impair the

effectiveness of regulation, because Helios will not operate or make wholesale sales of electric energy from the Danskammer Generating Station and it will not be a public utility under Section 201 (e) of the FPA. Therefore, Dynegy Danskammer states that the Proposed Transaction will not impair the effectiveness of regulation.

Dynegy Danskammer states that, based on facts and circumstances known to it or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company, including: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns, or provides transmission service over, jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contracts between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA.

The filing was noticed on September 9, 2013, with comments, protests or interventions due on or before September 30, 2013. None was filed. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provision of Rule 214.

Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.[2] The foregoing authorization may result in a change in status. Accordingly, Dynegy Danskammer is advised that it must comply with the requirements of Order No. 652. In addition, Dynegy Danskammer shall make appropriate filings under section 205 of the FPA, to implement the Proposed Transaction.

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[2] *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority,* Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, order on reh'g, 111 FERC ¶ 61,413 (2005).

Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to the information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc. must comply with all applicable reliability and cybersecurity standards. The Commission, NERC or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is hereby authorized, subject to the following conditions:

(1) The Proposed Transaction is authorized upon the terms and conditions described in this Order and for the purposes set forth in the application;

(2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before the Commission;

(3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;

(4) The Commission retains authority under sections 203(b) and 309 of the FPA, to issue supplemental orders as appropriate;

(5) If the Proposed Transaction results in changes in the status or the upstream ownership of Dynegy Danskammer's affiliated Qualifying Facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2012) shall be made;

(6) Dynegy Danskammer shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction;

(7) Dynegy Danskammer must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Proposed Transaction; and

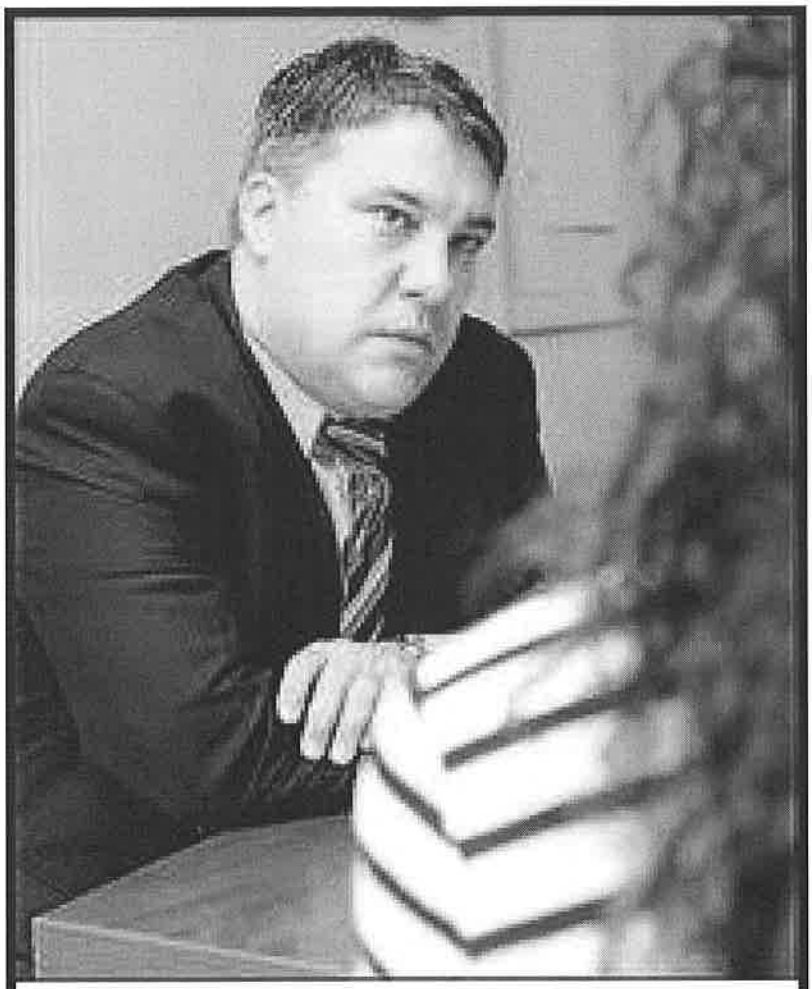
(8) Dynegy Danskammer shall notify the Commission within 10 days of the date that the Proposed Transaction has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation – West under 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713.

Steve P. Rodgers
Director, Division of Electric
Power Regulation - West

EXHIBIT D

Times Herald-Record Article



Tom Rumsey, a vice president at New York State Independent System Operator, says the price-hike zone is meant to attract new power plants.

Power zone might hike rates

By Jessica DiNapoli
Times Herald-Record
October 23, 2013 - 2:00 AM

Mid-Hudson electricity bills might jump anywhere from 6 to 15 percent in the spring, because of a change in the state power grid designed to bring more power into the region and New York City.

The change is meant to address a transmission bottleneck in Albany County that prevents the surplus of power generated upstate from reaching hungry markets in the Hudson Valley and metropolitan New York. The shortfalls are likely to worsen over time, according to the New York State Independent System Operator, which operates the state's power grid. The NYISO worked with the Federal Energy Regulatory Commission to create the new capacity zone, which stretches from New York City to Albany, including Orange County, most of Ulster and southern Sullivan.

The new zone is designed to increase electricity prices in the hope of attracting new power plants to the region or repowering shuttered ones like Danskammer in the Town of Newburgh, said Tom Rumsey, NYISO's vice president of external affairs. The new zone's price hikes would be bundled into the supply charges on customers' bills, said Central Hudson Gas & Electric Corp. spokesman John Maserjian. Residential customers in Central Hudson's territory could see about a 10 percent increase, and large industrial customers a 15 percent increase, Maserjian said.

Orange and Rockland Utilities customers face a 6 to 10 percent increase, said spokesman Mike Donovan. NYSEG supports the new zone, a spokesman said.

Electricity prices in New York City are not expected to change, Maserjian said. "This homogenizes utility rates in New York City and the Hudson Valley," he said.

PSC, O&R, CenHud fight zone

Danskammer's retirement this year added to a shortfall that exists even with the Indian Point Energy Center in Buchanan continuing to run, Rumsey said. Indian Point's license expires at the end of 2015.

The zone is scheduled to go into effect in May, but utility companies, including O&R and Central Hudson, and their regulator, the New York State Public Service Commission, are fighting it.

The PSC is asking FERC to delay the new zone until 2017 or phase in the price increases.

In a public filing, the PSC says the zone would provide a short-term windfall for existing power generators on the backs of customers. The PSC argues that power plants the zone might attract will take several years to build, and transmission projects proposed by Gov. Andrew Cuomo's Energy Highway program might help solve the problem.

One of the main goals of the Energy Highway is to build transmission projects that bring power produced cheaply upstate past the bottleneck and into the Hudson Valley, according to Central Hudson.

The PSC has approved three such projects that can be online by 2016. One $11 million project would run from Central Hudson's Rock Tavern substation to Con Edison's Ramapo

substation in Rockland County.

Rumsey said that as new transmission and generation projects come online, electricity prices will decrease.

Steve Remillard, vice president of Competitive Power Ventures, which plans to build a power plant in Wawayanda, supports both the new zone and the Energy Highway. CPV is seeking financial incentives under the Energy Highway.

Remillard sees the zone as validating Cuomo's Energy Highway project, and CPV's plans.

"It's a signal that came from the ISO that validated the decision we made a couple of years ago to pursue this project," he said.

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