

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

PETITION OF MACH GEN, LLC AND
NEW ATHENS GENERATING
COMPANY, LLC FOR DECLARATORY
RULING OR, IN THE ALTERNATIVE,
APPROVAL OF THE INDIRECT
TRANSFER OF NEW ATHENS
GENERATING COMPANY, LLC
PURSUANT TO SECTION 70 OF THE
PUBLIC SERVICE LAW, AND FOR
APPROVAL OF A HOLDING
COMPANY TRANSACTION

Case 14-E-_____

PETITION

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Date: January 24, 2014

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PETITION

Pursuant to Part 8 of the Rules and Regulations of the Public Service Commission (the “Commission”), 16 NYCRR Part 8, MACH Gen, LLC (“MACH Gen”) and New Athens Generating Company, LLC (“New Athens” and collectively with MACH Gen, the “Petitioners”) hereby petition the Commission for a declaratory ruling that the indirect upstream transfer of the ownership interests in New Athens, discussed more fully below, will not be reviewed further under Section 70 of the Public Service Law (“PSL”). Petitioners respectfully submit that the acquisition constitutes a transfer of upstream ownership interests in a lightly regulated wholesale merchant generating facility and qualifies for the *Wallkill* presumption. Alternatively, Petitioners request the Commission approve the proposed transaction pursuant to Section 70.

Petitioners also request that the Commission approve, pursuant to PSL Section 70, a separate transaction whereby (i) a new holding company (“MACH Gen Holdings”) may

be inserted in the ownership structure between MACH Gen and New Athens, so that New Athens will be indirectly owned by MACH Gen (and directly owned by MACH Gen Holdings) instead of directly owned by MACH Gen or (ii) any variation of (i) whereby MACH Gen or its successor entity will indirectly own New Athens.

Petitioners respectfully request that the Commission grant expedited review of this Petition so that the transactions contemplated herein are not impeded by any undue delay.

BACKGROUND

Description of the Petitioners

Petitioner MACH Gen, a Delaware limited liability company, is a special purpose vehicle through which a group of financial institutions indirectly hold 100% of the interests in New Athens and two other project companies located outside of the NYISO control area (with New Athens, the “Project Companies” and with Mach Gen, the “MACH Gen Entities”). In addition to New Athens, the Project Companies include Millennium Power Partners, L.P., which owns and operates a 335 MW (summer rating) generating facility located in Charlton, Massachusetts and New Harquahala Generating Company, LLC, which owns and operates a 1,054 MW (summer rating) generating facility located in Maricopa County, Arizona.

Petitioner New Athens is a Delaware limited liability company that owns and operates a three-unit, 936 MW (summer rating) natural gas fired combined cycle electric generating facility, located in the Town of Athens, Greene County, New York (the “New Athens Facility”). The New Athens Facility is interconnected with the transmission system of Niagara Mohawk Power Corporation. The New Athens Facility sells power to,

and receives energy management and marketing services from Consolidated Edison Energy, Inc. through an Energy Management and Marketing Agreement. Consolidated Edison Energy, Inc., in turn, sells power from the New Athens Facility into the markets administered by the New York Independent System Operator, Inc. (“NYISO”).

The Proposed Restructuring Transaction

The MACH Gen Entities intend to commence voluntary cases (the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) and file a prepackaged plan of reorganization under the Bankruptcy Code (“Plan”) that will result in a restructuring of the MACH Gen Entities whereby in full satisfaction of the existing Second Lien Claims,¹ MACH Gen’s existing Second Lien Holders will receive 93.5% of the common voting equity in MACH Gen (“New Equity Holdings”), the holders of the equity interests in MACH Gen (“Existing Equity Holders”) will receive in full satisfaction of their Existing Equity Holdings², 6.5% of the common voting equity in MACH Gen, and the first lienholders’ existing claims will be converted pursuant to a new first lien credit and guaranty agreement. In addition, the holders of all other Allowed Claims³ will be repaid in full and in cash, reinstated, or otherwise unimpaired on the terms set forth in the Plan

¹ Second Lien Claims is defined in Art (I)(A)(110) of the Plan (defined below). The total amount of all Second Lien Claims outstanding as of the date of this Petition is approximately \$990.4 million.

² “Existing Equity Holdings” means all equity interests in MACH Gen including any “equity security” as that term is defined in section 101(16) of the Bankruptcy Code, membership interest, share of common stock, preferred stock or other instrument evidencing an ownership interest in MACH Gen, whether or not transferable, and any option, warrant, restricted stock unit, or right, contractual or otherwise, to acquire any such interest in MACH Gen that existed immediately prior to the effective date of the Plan (the “Effective Date”).

³ “Allowed Claims” is defined in Article I(A)(2) of the Plan.

(the “Proposed Restructuring Transaction”). The Proposed Restructuring Transaction has the full support of the majority of the MACH Gen Entities’ key economic stakeholders⁴ and will eliminate approximately \$1 billion of debt⁵ from the MACH Gen Entities’ balance sheet, allowing them to achieve a sustainable capital structure that is better aligned with their present and future operating needs. Although the Proposed Restructuring Transaction will result in changes in the upstream ownership of New Athens and the other the MACH Gen Entities, New Athens will retain direct ownership and operational control of the New Athens Facility. Moreover, the MACH Gen Entities, including New Athens, intend to operate their businesses, including each of the facilities, in the ordinary course throughout the Bankruptcy case.

In addition, to facilitate minor adjustments in the final ownership interests described above and future transactions involving the transfer of non-controlling interests in MACH Gen to financial entities, MACH Gen further requests that the Commission, consistent with past orders involving MACH Gen,⁶ authorize the future acquisition of up to 20% of the interests in MACH Gen by financial entities that (1) are not primarily engaged in the energy business, and (2) do not own an interest of 5% or greater in any generator (other than New Athens) located within the NYISO market.

⁴ Holders of the following percentages, support the Proposed Restructuring Transaction:

- 100% of the First Lien Claims (as that term is defined in Art I(A)(51) of the Plan);
- in excess of 75% of the Second Lien Claims; and
- in excess of 85% of the Existing Equity Holders in MACH Gen, LLC.

⁵ The debt for New Athens was issued as part of a portfolio financing by MACH Gen, as the borrower, with the debt supported, *inter alia*, by liens on the Project Companies’ assets. New Athens’ proportionate share of the debt is capped at the \$750 million authorized by the Commission in Case 01-E-0816, *Athens Generating Company, L.P.*, Order Authorizing Issuance of Debt (issued July 30, 2001), as clarified by Order Clarifying Prior Order (issued November 15, 2006).

⁶ See Case 05-E-0834, *MACH Gen, LLC and New Athens Generating Company, LLC*, Declaratory Ruling on Review of Ownership Interest Transfers (issued September 6, 2005).

The Second Lien Holders/New Equity Holders

Some of the Second Lien Holders also hold Existing Equity Holdings. A complete list of the Second Lien Holders and each entity's anticipated ownership interest in the New Equity Holdings is contained at Exhibit A. The following entities are the only three Second Lien Holders that that are currently expected to hold in excess of 10% of the New Equity Holdings ("New Equity Holders") at the time of the consummation of the Proposed Restructuring Transaction on the Effective Date⁷:

- Silver Oak Capital, LLC ("Silver Oak"), a Second Lien Holder, is expected at this time, to hold approximately 34.2% of the New Equity Holdings on the Effective Date.
- Deutsche Bank AG, London Branch ("Deutsche Bank"), a Second Lien Holder, is expected at this time to hold 11.5% of the New Equity Holdings as of the Effective Date. ECP Polaris, Ltd. ("ECP Polaris") currently has an indirect interest in Deutsche Bank's interest in the Second Lien Claims by way of a Total Return Swap ("TRS")⁸ between ECP Polaris and Deutsche Bank.

⁷ Effective Date is defined in Art I(A)(40) of the Plan.

⁸ The Petitioners do not concede that the indirect interest of ECP Polaris in the TRS equates to ownership or control for the purposes of PSL Section 70(1), but in the interests of expedient Commission review, the Petitioners have disclosed the indirect indirect interest of ECP Polaris in the Second Lien Claims and the corresponding indirect interest that ECP Polaris will have in the New Equity Holdings. Further, for the purpose of this Petition only, the Petitioners have formulated their submission that the Proposed Restructuring Transaction constitutes a transfer of upstream ownership interests in a lightly regulated wholesale merchant generating facility and qualifies for the Wallkill presumption or alternatively, is in the public interest and should be approved pursuant to PSL Section 70, upon the assumption that the indirect interest of ECP Polaris in the New Equity Holdings does equate to ownership or control. The reason for doing so is to clearly demonstrate to the Commission that even if the Commission adopted the least favorable interpretation of the nature of ECP Polaris's indirect interest in the TRS, i.e., the Commission considered that the indirect interest of ECP under the TRS equated to ownership or control, such an interpretation would have no effect on the Commission's ultimate conclusion that the Proposed Restructuring Transaction constitutes a transfer of upstream ownership interests in a lightly regulated wholesale merchant generating facility and qualifies for the Wallkill presumption or alternatively, is in the public interest and should be approved pursuant to PSL Section 70.

- SOLA Ltd (“SOLA”), Solus Core Opportunities Master Fund, Ltd (“Solus Core”), and Ultra Master Ltd (“Ultra”) (collectively, the “Solus Entities”) are under the management of Solus Alternative Asset Management LP (“Solus”). SOLA and Solus Core are Existing Equity Holders totaling approximately 11.42% of the Existing Equity Holdings in MACH Gen. The Solus Entities are expected to close a trade totaling an additional 3.05% of the Existing Equity Holdings in MACH Gen prior to the Effective Date. The Applicants expect the Solus Entities will hold, on account of their Existing Equity Holdings, approximately 0.94% of the New Equity Holdings on the Effective Date. In addition, the Solus Entities are Second Lien Holders and SOLA also has an economic interest in the Second Lien Claims pursuant to a TRS with SOL Loan Funding, LLC. (“SOL”). The Applicants expect that the Solus Entities’ Second Lien Claims and SOLA’s economic interest held pursuant to the TRS will convert to approximately 9.6% of the New Equity Holdings on the Effective Date. In sum, the Applicants expect the Solus Entities to hold approximately 10.54% of the New Equity Holdings on the Effective Date.

Accordingly, expected New Equity Holders’ holdings on the Effective Date can be summarized as follows:

Name of Second Lien Holder/New Equity Holder	Existing % of Second Lien Claims	Existing % of Equity Holdings	Expected % of New Equity Holdings
Silver Oak Capital, LLC.	36.6	-	34.2
Deutsche Bank (with ECP Polaris, Ltd. having an indirect interest pursuant to the TRS, as amended)	12.3	-	11.5
SOL/the Solus Entities ⁹	10.3	14.5	10.5

The MACH Gen Entities are currently owned by financial institutions as the result of a 2003 restructuring of their then-existing debt, approved by the Commission in 2003 (the “2003 Transaction”)¹⁰. At completion of the Proposed Restructuring Transaction, MACH Gen will continue to be owned by financial institutions with MACH Gen’s existing Second Lien Holders exchanging their Second Lien Claims for 93.5% of the New Equity Holdings, thereby allowing the MACH Gen Entities to significantly deleverage their balance sheets, considerably increase their liquidity, and improve their operating cashflows in a similar (yet simpler) manner to the 2003 Transaction. Only the nature of the existing Second Lien Holders’ interests will change (i.e., the Second Lien Holders will convert their existing Second Lien Claims to the New Equity Holdings).

⁹ These amounts include the Solus Entities’ pending trade for additional Existing Equity Holdings, which trade is not yet reflected on MACH Gen’s books and records but is expected to close prior to the Effective Date and distribution of the New Equity Holdings.

¹⁰ Case 03-E-0516, *Athens Generating Company, L.P.*, Order Approving Transfer and Providing for Lightened Regulation (issued September 17, 2003); *see also* Case 05-E-0834, *MACH Gen, LLC*, Declaratory Ruling on Review of Ownership Interest Transfers (issued September 6, 2005)(authorizing the acquisition of equity interests of up to 20% by certain investors), Case 09-E-0144, *Strategic Value Partners LLC*, Declaratory Ruling on Review of an Ownership Transfer Transaction (issued April 22, 2009)(authorizing Strategic Value Partners to acquire up to 40% of the ownership interests in MACH Gen).

The nature of the interests held by all other creditors of the MACH Gen Entities in the Facilities—including the Existing Equity Holders—will remain unchanged. Further details of the New Equity Holders are as follows:

1. Silver Oak Capital, LLC.

Silver Oak Capital, LLC (“Silver Oak”) is a Delaware limited liability company. The sole purpose of Silver Oak is to be the nominee owner for principals affiliated with Angelo, Gordon & Co., L.P., (listed in the schedule below) (“Silver Oak Principals”) of certain financial instruments, including part of the Second Lien Claims. Silver Oak is not an Existing Equity Holder nor is it primarily engaged in energy-related business activities. After completion of the Proposed Restructuring Transaction, Silver Oak is expected to hold 34.2% of the New Equity Holdings, as set out in the following schedule:

Silver Oak Principals	Existing % the Second Lien Claims	Expected % of the New Equity Holdings
AG MM, L.P.	0.31	0.29
AGCR V Master Account LP	4.05	3.79
AG Capital Recovery Partners VI, L.P.	14.33	13.40
AG Capital Recovery Partners VII, L.P.	5.38	5.03
AG Eleven Partners, L.P.	1.56	1.46
AG Super Fund International Partners, L.P.	2.28	2.13
Nutmeg Partners, L.P.	0.65	0.61
AG Princess, LP	0.26	0.24
AG Super Fund, L.P.	7.76	7.25
Total	36.58	34.20

2. Deutsche Bank AG, London Branch and ECP Polaris, Ltd

Deutsche Bank AG is a New York Stock Exchange traded company organized under the laws of the Federal Republic of Germany. Deutsche Bank AG is one of the largest banking and financial institutions in the world and is the ultimate parent company for its various subsidiaries and affiliates worldwide.

ECP Polaris is a Cayman Island limited company and a portfolio company of Energy Capital Partners II, LP (“ECP II”). ECP II is focused on the development and acquisition of, and investment in, energy infrastructure assets, and related ownership, operation and management of these assets, including electric generation and inputs to electric generation in North America. ECP Polaris was formed for the sole purpose of entering into the TRS with Deutsche Bank. Deutsche Bank is expected, at this time, to hold approximately 11.5% of the New Equity Holdings on the Effective Date. The TRS is expected to be amended in part to allow ECP Polaris to have Deutsche Bank vote Deutsche Bank’s share in the New Equity Holdings as ECP Polaris requests. Deutsche Bank may have the right to vote all or a portion of the units in a different manner than that directed by ECP Polaris in certain circumstances, pursuant to the terms of the TRS. As explained herein, there are no market power issues associated with the direct interest of Deutsche Bank or the indirect interest of ECP Polaris (through the TRS).¹¹

¹¹ The Petitioners do not concede that Deutsche Bank’s expected ownership of approximately 11.5% of the New Equity Holdings will cause Deutsche Bank to be treated as an electric corporation under PSL §70(1), (3), or (4). Deutsche Bank’s expected interest of 11.5%, will not provide Deutsche Bank with the ability to control any of the Project Companies, including New Athens.

3. Solus Alternative Asset Management Entities

The Solus Entities are Cayman Island Exempt Corporations and are hedge funds in the business of investing and trading in a diverse set of investment opportunities, including but not limited to those in the energy sector. SOL is a Delaware limited liability company with Citibank N.A. as its sole member. SOL was formed for the sole purpose of entering into the TRS with SOLA to acquire certain Second Lien Claims. After completion of the Proposed Restructuring Transaction, the Solus Entities are expected to hold the following New Equity Holdings totaling approximately 10.54% of the expected New Equity Holdings:

Name of Entity	Existing % of Second Lien Claims	Existing % of Second Lien Claims pursuant to TRS	Existing % Equity Holdings (including pending trades)	Expected % New Equity Holdings (including TRS)
SOLA	0.87	6.17	11.51	7.33
Solus Core	1.35	-	0.85	1.31
Ultra	1.88	-	2.11	1.90
Total	4.10	6.17	14.48	10.54

4. Ownership Interests of New Equity Holders in Electric Generating Facilities

Of the four unaffiliated entities with interests in the New Equity Holdings discussed above (i.e., Silver Oak, Deutsche Bank, ECP Polaris, and the Solus Entities), only ECP Polaris is affiliated with electric generating facilities located in New York Control Area (“NYCA”)¹². ECP Polaris is an affiliate of the entities set forth in Exhibit B hereto, (“ECP Affiliates”). All of the ECP Affiliates are indirect subsidiaries of Energy

¹² In New York, most parties refer to the NYCA. However, NERC currently refers to the NYCA as the New York Balancing Area Authority. For clarity, we have retained the NYCA designation.

Capital Partners, LLC and its parallel funds (“ECP I”) or ECP II (collectively, “Energy Capital Partners”). Energy Capital Partners is focused on the development and acquisition of, and investment in, energy infrastructure assets, and related ownership, operation and management of these assets, including electric generation and inputs to electric generation in North America.

In New York, Energy Capital Partners is affiliated with Empire Generating Co., LLC (“Empire Generating”) the owner and operator of an approximately 672 MW (winter rating) natural gas fired electric generating facility and related interconnection facilities located in the City of Rensselaer and the towns of East Greenbush and North Greenbush (the “Empire Generating Facility”). Empire Generating is also the holder of a Certificate of Environmental Compatibility and Public Need under PSL Article VII for a natural gas transmission line to exclusively serve the Empire Generating Facility.¹³ The interests in the Empire Generating Facility are held indirectly by Energy Capital Partners GP I, LLC as a general partner and various passive limited partner investors that have no decision-making role. This general partner, in turn, is a wholly owned subsidiary of ECP I. Empire Generating was granted lightened and incidental regulation by the Commission in 2008.¹⁴

As set forth in Exhibit B, Energy Capital Partners is affiliated with five facilities located in ISO-NE, with a total generating capacity of approximately 3,236.6 MW (seasonal). Energy Capital Partners is also affiliated with five facilities located in PJM,

¹³ Case 04-T-0112, *Besicorp-Empire Power Company, LLC*, Order Granting Certificate of Environmental Compatibility and Public Need (issued August 31, 2004).

¹⁴ Case 07-E-1390, *Empire Generating Co., LLC*, Order Granting Lightened and Incidental Regulation, Approving Financing and Ruling on Review of an Acquisition Transaction (issued February 19, 2008).

with a total generating capacity of approximately 3,573 MW (seasonal). In addition, ECP II's indirect subsidiary, EquiPower Resources Management, LLC is a power marketer that provides fuel procurement, risk management and power marketing functions for the Energy Capital Partners' indirectly owned generating facilities. Finally, Energy Capital Partners is affiliated with several natural gas storage or pipeline gathering companies. As relevant herein, only one of those affiliates, Mountaineer Midstream Company, LLC is located in the Northeast, and its facilities consist of 40 miles of gathering pipeline in Doddridge and Harrison counties, West Virginia.

The Proposed Holding Company Transaction

Related to the Proposed Restructuring Transaction described above, as is customary for entities upon their exit from bankruptcy, the MACH Gen Entities intend to refinance their remaining debt by putting in place an exit financing. As part of the refinance, a new holding company, MACH Gen Holdings,¹⁵ may be formed as a subsidiary of MACH Gen to be the direct parent of New Athens and the Project Companies. The principal amount of this refinancing is not anticipated to be higher than the indebtedness currently in place and in fact will reflect the discharge of the second lien pursuant to the Proposed Restructuring Transaction. MACH Gen Holdings will be the borrower under the refinancing transaction, with the debt secured by, *inter alia*, the assets of the Project Companies. MACH Gen will still own New Athens and the Project Companies, but such ownership interests would become indirect instead of direct. New Athens' ownership interest in the New Athens Facility will be unaffected. There is also a

¹⁵ MACH Gen Holdings has not yet been formed and has not yet been named.
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possibility, depending on the preferences and requirements of MACH Gen's lenders, that the holding company transactions will be structured in another way but ultimately MACH Gen or its successor entity will be the indirect owner of all of the ownership interests in New Athens.

DISCUSSION

The Proposed Restructuring Transaction Qualifies for the Walkkill Presumption

Section 70(1) of the PSL provides that “[n]o . . . electric corporation shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the commission.” PSL Section 70(1) has been construed to apply to situations in which a person or corporation purchases a sufficient interest in an electric corporation, through the acquisition of stock or otherwise, to achieve control of the electric corporation.¹⁶ Section 70(4) of the PSL prohibits a company or limited liability partnership from acquiring more than ten percent “of the voting capital stock issued by any . . . electric corporation organized or existing under or by virtue of the laws of [New York]” unless authorized to do so by the Commission.

The Commission has determined that Section 70 of the PSL applies to stock acquisitions and ownership transfers occurring at a holding company (*i.e.*, upstream) level.¹⁷ However, in *Walkkill*, the Commission determined that it generally need not apply Section 70 oversight to the upstream transfer of ownership interests in lightly

¹⁶ See, e.g., Case 07-E-1385, *Calpine Corp. and LS Power Development*, Declaratory Ruling on Review of Stock Transfer and Acquisition Transactions (Jan. 22, 2008) (“*Calpine/LS Power*”).

¹⁷ See *Walkkill*; *T. Rowe Price Associates, Inc.*, Declaratory Ruling on Review of Stock Transfer Transactions (Jul. 21, 2009); Case 08-E-0850, *Harbinger Capital Partners Master Fund I, Ltd.*, Declaratory Ruling on Review of Stock Transfer Transactions (Sept. 19, 2008); *Calpine/LS Power*.

regulated wholesale electric generation facilities if there is little potential for harm to captive ratepayers:

[I]t will be presumed that Section 70 regulation does not adhere to transfer of ownership interests in entities upstream from the parents of the New York competitive electric generation subsidiary, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption.¹⁸

The Commission has applied the *Wallkill* presumption to a number of transactions involving the upstream transfer of interests in wholesale generation facilities.¹⁹ In these orders, the Commission interpreted the *Wallkill* presumption to mean that no Section 70 regulation would adhere to any upstream stock acquisition or transfer of ownership interests unless a potential for the exercise of horizontal or vertical market power sufficient to override the presumption would arise as a result of the transfer.

It is respectfully submitted that the Proposed Restructuring Transaction qualifies for the *Wallkill* presumption. The proposed transfer of ownership interests in the New Athens Facility will occur through the acquisition of New Athens' parent, MACH Gen, *i.e.*, at the upstream level. Furthermore, it is respectfully submitted that the Proposed Restructuring Transaction will not result in the potential to exercise either vertical or horizontal market power.

The Proposed Restructuring Transaction does not raise any vertical market power issues because neither MACH Gen nor any of the Second Lien Holders or their affiliates

¹⁸ *Wallkill*, 1994 WL 323474 at *4.

¹⁹ See, e.g., Case 04-E-1364, *Sithe Energies, Inc., et al.*, Declaratory Ruling on Review of Stock Transfers (Jan. 14, 2005) ("*Sithe Energies II*"); Case 03-E-1136, *Sithe Energies*; Case 02-E-1184, *Sithe/Apollo*; Case 01-E-1680, *Reliant*; Case 00-E-1585, *Sithe/Exelon*; Case 91-E-0350, *Wallkill*.

have any substantial ownership interest in any monopoly electric transmission or delivery facilities, or substantial influence over inputs, like fuel or fuel transportation,²⁰ into the production of generation supply within the NYCA. Thus, there is no threat that the parties to the Proposed Restructuring Transaction will be able to benefit from the market power of any transmission or distribution utility subject to cost-based regulation by the Commission. The affiliations between the lightly regulated electric corporations and any power marketers²¹ can be adequately supervised under PSL § 110, as provided in other lightened regulation orders.²²

It is also respectfully submitted that the Proposed Restructuring Transaction does not raise any horizontal market power issues. The total installed generation capacity in the NYCA is approximately 37,920 MW.²³ Of the New Equity Holders, only Energy Capital Partners' affiliates currently own or operate electric generating facilities in NYCA. Energy Capital Partners affiliates own the Empire Generating Facility, an approximately 672 MW generating facility in the NYCA, which represents only approximately 1.8% of the total installed generation capacity in the NYCA. Following the indirect acquisition of the New Athens Facility, Energy Capital Partners and its

²⁰ An affiliate of Energy Capital Partners, ECP Fund I, owns an approximate 58% interest in Cardinal Gas Storage Partners, LLC, who owns four natural gas storage facilities in the Southeast geographic region, not New York. In addition, other affiliates of Energy Capital Partners own seven gathering pipeline companies, only one of which, Mountaineer Midstream Company, LLC, as discussed above, is located in the Northeast geographic. Mountaineer Midstream owns approximately 40 miles of gathering pipeline in West Virginia, again, not in New York and given its relatively remote location from the NYCA market, it is difficult to see what, if any, effect the Proposed Restructuring Transaction could have on vertical market power in this regard.

²¹ An affiliate of Energy Capital Partners, EquiPower Resources Management, LLC, is a power marketer.

²² See Case 11-E-0245, *Exelon Corp.*, Declaratory Ruling on Review of a Stock Transfer Transaction (issued December 20, 2011) at p. 14 (finding that Constellation's affiliations with retail electric suppliers and power marketers can be adequately addressed under PSL § 110).

²³ *New York Independent System Operator, Inc.*, "2013 Load and Capacity Data" (April 2013) (the "Gold Book").

affiliates will have ownership interests in 1,608 MW of generating capacity in the NYCA (attributing all of the New Athens Facility to Energy Capital Partners), which represents only approximately 4.2% of the total installed generation capacity in the NYCA.²⁴ Petitioners respectfully submit that this conservative percentage represents a *de minimis* amount of generating capacity in the NYCA. Thus, it is respectfully submitted that, following the completion of the Proposed Restructuring Transaction on the Effective Date, Energy Capital Partners and its affiliates will not have the ability to exercise horizontal market power in the NYCA.²⁵

As noted above, certain of the Solus Entities are Existing Equity Holders of approximately 14.48% in MACH Gen (after giving effect to pending trades), and after the Effective Date the Solus Entities collectively will hold approximately 10.54% of the New Equity Holdings. Thus, the Proposed Restructuring Transaction will not materially change the Solus Entities' equity interests in MACH Gen, and in any event, no market power issues are raised because the Solus Entities and their affiliates do not own or control any other electric generating resources in NYISO, ISO-NE or PJM. Neither

²⁴ See, e.g., Case 13-M-0004, *EIF BNY LLC, et al*, Declaratory Ruling on Review of an Acquisition and Stock Transaction (issued February 13, 2013)(finding that following acquisition of the Brooklyn Navy Yard Cogeneration facility, and taking into account EIF's 36% ownership interests in Astoria II, EIF's Zone J market share of about 5.0% was below the level of concern). Calculated attributing only the 11.5% ownership interest in New Athens to Energy Capital Partners, or 81.42 MW, Energy Capital Partners ownership interests in the NYCA would increase to approximately 1.9%, which Petitioners respectfully submit is a *de minimis* amount of installed generating capacity in the NYCA. Case 12-E-0211, *Alliance Energy, New York LLC*, Order Approving a Transfer Subject to Conditions and Approving Financings (issued September 17, 2012)(finding that following Alliance's acquisition of the Power City facility, it would own approximately 1% of the generation capacity in New York which is a *de minimis* amount).

²⁵ See, e.g., Case 04-E-1384, *Sithe Energies, Inc.*, Declaratory Ruling on Review of Stock Transfers (issued January 14, 2005) (Declaratory Ruling finding that the merger of Dynegy and Sithe, which resulted in an approximately 7% market share, did not present an opportunity to exercise market power); Case 08-E-0410, *LS Power Development LLC*, Declaratory Ruling on the Acquisition of Common Stock (issued May 27, 2008)(Declaratory Ruling finding that LS Power's proposed acquisition of additional interests in Calpine Corporation, which resulted in an approximately 8.1% market share, also did not present an opportunity to exercise market power).

Silver Oak nor Deutsche Bank have any active ownership interests of 10% or more in any generation in the NYCA, and therefore their interests in this transaction will not implicate any market power concerns in New York.²⁶

Nor will the Proposed Restructuring Transaction enhance the potential to exercise market power in either of the two neighboring control areas, ISO-NE and PJM, thus impacting the NYCA. There will be no change in PJM, as MACH Gen does not own or operate any generating facilities in PJM,²⁷ and in any event, there are transmission constraints which limit the amount of power which can be transferred from PJM into NYCA.²⁸

With respect to ISO-NE, the 2013 summer seasonal claimed capability in ISO-NE is 31,759 MW.²⁹ Affiliates of Energy Capital Partners currently own or control approximately 3,236.6 MW of capacity within the ISO-NE control area, or approximately 10.2% of the installed capacity in ISO-NE. Even if all of the 335 MW Millennium facility were to be attributed to Energy Capital Partners (and for the reasons set out above there are good reasons why it should not be fully attributed to Energy Capital Partners), Energy Capital Partners through its affiliates would own or control 3,571.6 MW, or 11.2% of the installed capacity in ISO-NE. The Millennium facility accounts for only a *de minimis* share (one percent) of ISO-NE generation. However, if only the 11.5%

²⁶ This statement excludes non-controlling passive interests, debt interests or security interests in these kinds of assets.

²⁷ Energy Capital Partners is affiliated with entities which own 3,573 MW of capacity in PJM, or approximately 2% of the reported 186,884 installed generation capacity in the PJM control area.

²⁸ See Case 10-E-0454, *GDF SUEZ, S.A.*, Declaratory Ruling on Review of a Transfer Transaction (issued November 22, 2010); Case 11-E-0245, *Exelon Corp.*, Declaratory Ruling on Review of a Stock Transfer Transaction (issued December 20, 2011).

²⁹ 2013-2022 Forecast Report of Capacity, Energy, Loads, and Transmission (“CELT Report”), May 1, 2013, available on ISO-NE’s web site.

interest in Millennium is taken into account (38.5 MW), the increase in market share rises 0.1%, or from 10.2% to 10.3%, which Petitioners submit is a *de minimis* increase.³⁰ Finally, it is important to note that Energy Capital Partners' largest facility in ISO-NE, the 1,544 MW Brayton Point Energy facility in Somerset, Massachusetts is scheduled to be retired in 2017, which will reduce, by almost one half, the capacity owned or controlled by affiliates of Energy Capital Partners in ISO-NE. Importantly, to the extent the generation affiliated with Energy Capital Partners in ISO-NE clears the ISO-NE Forward Capacity Market, such supply is required to be offered into both the day-ahead and real-time energy markets in ISO-NE. This would limit Energy Capital Partners' ability to participate in the NYISO energy markets with their affiliated ISO-NE generation.

Finally, across all of the three control areas of NYCA, PJM and ISO-NE, Energy Capital Partners' interests in generating facilities would total 8,752.6 MW (conservatively attributing all of the capacity of New Athens Facility and Millennium Facility to Energy Capital Partners) of the 256,653 MW generation capacity in the three areas,³¹ or only approximately 3.4%, again a level which Petitioners submit is well below a level of concern.

Furthermore, it is respectfully submitted that the indirect acquisition of the New Athens Facility by the New Equity Holders is in the public interest. There will be no change in the operation of the New Athens Facility, and the employees at the New

³⁰ See Case 13-M-0004, *EIF BNY, supra* (finding it appropriate to only take into account EIF's 36% proportionate share of the Astoria II facility in calculating market share within Zone J).

³¹ PJM 2013 Summer installed generation capacity was reported to be 186,884 MW. PJM 2013 Summer Outlook, available on PJM's web site.

Athens Facility will continue to be employed. The Proposed Restructuring Transaction will free MACH Gen of approximately \$1 billion of debt, which will allow the New Athens Facility and the other MACH Gen Entities to compete more effectively in the wholesale generating markets.

In sum, it is respectfully submitted that the Proposed Restructuring Transaction, as an upstream transfer of a steam and electric corporation, with no potential to harm the interests of captive ratepayers, qualifies for treatment under the *Wallkill* Order, and the Commission need not review the Proposed Restructuring Transaction further.

Alternatively, the Commission Should Approve the Proposed Restructuring Transaction

In the alternative, if the Commission finds that review under Section 70 of the PSL is required for the Proposed Restructuring Transaction, Petitioners request that the Commission approve the Proposed Restructuring Transaction pursuant to Section 70. The Proposed Restructuring Transaction satisfies the public interest requirement in Section 70. The New Athens Facility will continue to be owned and operated by New Athens. Finally, the Proposed Restructuring Transaction will not result in vertical or horizontal market power. Accordingly, the Proposed Restructuring Transaction is in the public interest and should be approved.

The Commission Should Approve the Proposed Holding Company Transaction

As noted above, related to the Proposed Restructuring Transaction, as is customary for entities upon their exit from bankruptcy, the MACH Gen Entities will refinance the remaining debt outstanding by putting in place an exit financing, which may

involve the creation of a new wholly owned subsidiary of MACH Gen, MACH Gen Holdings, which may acquire MACH Gen's ownership interests in New Athens and the other Project Companies. As noted, the principal amount of this refinancing is not anticipated to be higher than the indebtedness currently in place and in fact will reflect the discharge of the second lien pursuant to the Proposed Restructuring Transaction. As noted, the specifics of such corporate restructuring may differ as to the actual structure that is implemented, however, MACH Gen or its successor entity will remain the indirect owner of all of the ownership interests in New Athens.³² Petitioners respectfully submit that, as MACH Gen Holdings will be a new entrant into the New York wholesale generation market, there will be no increase in market concentration, nor, for the reasons set forth above, will the Proposed Restructuring Transaction pose the potential for the exercise of vertical market power. MACH Gen Holdings will continue the existing arrangements for the operation of the New Athens Facility, and there will be no change in the ultimate ownership of the New Athens Facility. As a result, Petitioners respectfully submits that pursuant to the lightened regulatory regime applicable to the New Athens Facility, the Proposed Holding Company Transaction, or any materially consistent alternative, is in the public interest and should be approved pursuant to Section 70 of the PSL.³³

³² Petitioners request that the final structure be provided in the form of a post-approval compliance filing.

³³ See Case 12-E-0197, *Caithness Long Island LLC, et al.*, Order Approving Transfers and Declaratory Ruling Concerning a Financing (issued July 16, 2012) (approving a similar transaction).

Other Approvals

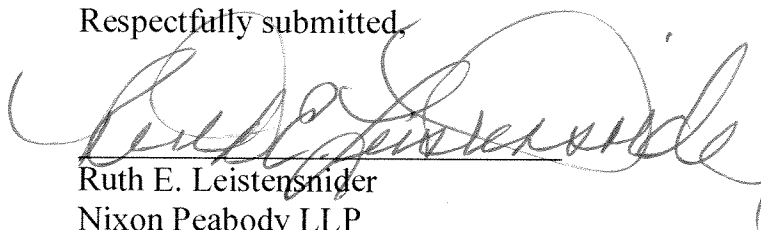
Petitioners are also seeking approval of the Proposed Restructuring Transaction from FERC under Section 203(a)(1) of the FPA, as well as approval of the Plan from the Bankruptcy Court.

CONCLUSION

Petitioners respectfully request that the Commission review this Petition in an expedited manner and issue a declaratory ruling that Section 70 of the PSL does not apply to the Proposed Restructuring Transaction. Petitioners also request a declaratory ruling that the financing approvals and lightened regulation of New Athens will continue after the acquisition. Alternatively, Petitioners request the Commission to approve the Proposed Restructuring Transaction pursuant to Section 70 of the PSL. Petitioners also request the Commission to approve the Proposed Holding Company Transaction pursuant to Section 70 of the PSL.³⁴

Dated: January 24, 2014

Respectfully submitted,



Ruth E. Leistensnider
Nixon Peabody LLP
Attorneys for Petitioners
677 Broadway, 10th Floor
Albany, New York 12207
rleistensnider@nixonpeabody.com
(518) 427-2650

³⁴ To assist the Commission in fulfilling its responsibilities under the State Environmental Quality Review Act, Petitioners have included a short Environmental Assessment Form as Exhibit C. A proposed SAPA notice, as required by 16 NYCRR § 3.5(i), is attached as Exhibit D.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

PETITION OF MACH GEN, LLC AND
NEW ATHENS GENERATING
COMPANY, LLC FOR DECLARATORY
RULING OR, IN THE ALTERNATIVE,
APPROVAL OF THE INDIRECT
TRANSFER OF NEW ATHENS
GENERATING COMPANY, LLC
PURSUANT TO SECTION 70 OF THE
PUBLIC SERVICE LAW, AND FOR
APPROVAL OF A HOLDING
COMPANY TRANSACTION

Case 14-E-_____

VERIFICATION

Garry N. Hubbard, being duly sworn according to law, upon his oath, deposes
and says:


1. I am the Chief Executive Officer of MACH Gen, LLC and New Athens
Generating Company, LLC, and am authorized to make this Verification on behalf of the
Petitioners.

2. I have read the contents of the foregoing Petition and hereby verify that the
statements therein contained are true and accurate to the best of my knowledge and belief
as to the Petitioners.



Garry N. Hubbard

Sworn to and subscribed before me
this 21st day of January, 2014


Notary Public

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

PETITION OF MACH GEN, LLC AND
NEW ATHENS GENERATING
COMPANY, LLC FOR DECLARATORY
RULING OR, IN THE ALTERNATIVE,
APPROVAL OF THE INDIRECT
TRANSFER OF NEW ATHENS
GENERATING COMPANY, LLC
PURSUANT TO SECTION 70 OF THE
PUBLIC SERVICE LAW, AND FOR
APPROVAL OF A HOLDING
COMPANY TRANSACTION

Case 14-E- _____

VERIFICATION

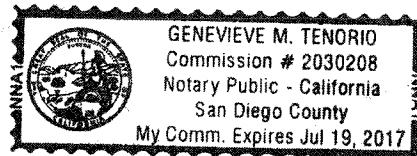
Rahman D'Argenio, being duly sworn according to law, upon his oath, deposes
and says:

1. I am a Principal of Energy Capital Partners II, LLC, and am authorized to
make this Verification on behalf of ECP Polaris, Ltd. and its current affiliates.
2. I have read the contents of the foregoing Petition and hereby verify that the
statements therein contained are true and accurate to the best of my knowledge and belief
as to ECP Polaris, Ltd. and its affiliates.



Sworn to and subscribed before me
this 22nd day of January, 2014



Notary Public

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

PETITION OF MACH GEN, LLC AND
NEW ATHENS GENERATING
COMPANY, LLC FOR
DECLARATORY RULING OR, IN THE
ALTERNATIVE, APPROVAL OF THE
INDIRECT TRANSFER OF NEW
ATHENS GENERATING COMPANY,
LLC PURSUANT TO SECTION 70 OF
THE PUBLIC SERVICE LAW, AND
FOR APPROVAL OF A HOLDING
COMPANY TRANSACTION

CASE NO. 14-E-

VERIFICATION

C.J. Lanktree, being duly sworn according to law, upon his oath, deposes and

says:

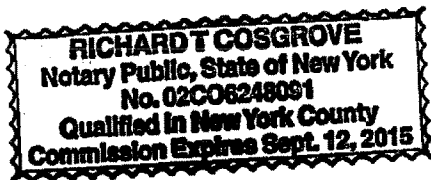
1. I am the Executive Vice President and Portfolio Manager of Solus Alternative Asset Management LP, investment manager for both Sola Ltd and Ultra Master Ltd, and am authorized to make this Verification on behalf of Sola Ltd and Ultra Master Ltd.

2. I have read the contents of the foregoing Petition and hereby verify that the statements therein contained are true and accurate to the best of my knowledge and belief as to Sola Ltd and Ultra Master Ltd.

C. J. Lanktree

Sworn to and subscribed before me
this 24th day of January, 2014

[Signature]
Notary Public



STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

PETITION OF MACH GEN, LLC AND
NEW ATHENS GENERATING
COMPANY, LLC FOR DECLARATORY
RULING OR, IN THE ALTERNATIVE,
APPROVAL OF THE INDIRECT
TRANSFER OF NEW ATHENS
GENERATING COMPANY, LLC
PURSUANT TO SECTION 70 OF THE
PUBLIC SERVICE LAW, AND FOR
APPROVAL OF A HOLDING
COMPANY TRANSACTION

Case 14-E-_____

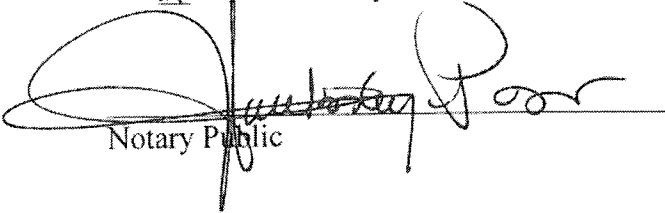
VERIFICATION

I, Mark Landsman, being duly sworn according to law, upon his oath, deposes and says:

1. I am a vice president and legal counsel for Deutsche Bank AG, and am authorized to make this Verification on behalf of Deutsche Bank AG, London Branch.
2. I have read the contents of the foregoing Petition and hereby verify that the statements therein contained are true and accurate to the best of my knowledge and belief as to Deutsche Bank AG, London Branch.



Sworn to and subscribed before me
this 24th day of January, 2014



Notary Public

JOYCE TANKSLEY-PIZZO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01TA6110511
Qualified in New York County
My Commission Expires May 25, 2016

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

PETITION OF MACH GEN, LLC AND
NEW ATHENS GENERATING
COMPANY, LLC FOR
DECLARATORY RULING OR, IN THE
ALTERNATIVE, APPROVAL OF THE
INDIRECT TRANSFER OF NEW
ATHENS GENERATING COMPANY,
LLC PURSUANT TO SECTION 70 OF
THE PUBLIC SERVICE LAW, AND
FOR APPROVAL OF A HOLDING
COMPANY TRANSACTION

CASE NO. 14-E-

VERIFICATION

Kirk Wickman, being duly sworn according to law, upon his oath, deposes and says:

1. I am an authorized signatory, and am authorized to make this Verification on behalf of Silver Oak Capital, L.L.C.

2. I have read the contents of the foregoing Petition and hereby verify that the statements therein contained are true and accurate to the best of my knowledge and belief as to Silver Oak Capital, L.L.C.



Kirk Wickman

Sworn to and subscribed before me
this 23rd day of January, 2014



Notary Public

CORDINA A CHARVIS
Notary Public, State of New York
No. 01CH6020702
Qualified in Westchester County
Commission Expires March 08, 2015

Exhibit A

MACH Gen New Equity Calculation

	<u>Combined</u>		<u>Old</u>	<u>Old</u>
	<u>New</u>	<u>Post Exchange</u>	<u>Debt</u>	<u>Equity</u>
	<u>Equity</u>			
<u>Old Debt (93.5%):</u>				
ANGELO GORDON	34.2049%	34.20%	36.58%	
DEUTSCHE BANK (ECP)	11.5227%	11.52%	12.32%	
SOLUS ALTERNATIVE ASSET	10.5413%	9.60%	10.27%	
METROPOLITAN WEST	6.4168%	6.42%	6.86%	
ROCKLAND CAPITAL	4.7997%	4.80%	5.13%	
LUMINUS	4.5852%	4.59%	4.90%	
OPPENHEIMER	3.4759%	3.48%	3.72%	
SIGULER GUFF ADVISORS	2.9526%	2.95%	3.16%	
CREDIT SUISSE FIRST BOSTON	2.9702%	2.40%	2.57%	
FORTRESS INVESTMENT GROUP LLC	2.0866%	2.09%	2.23%	
SPECTRUM GROUP MANAGEMENT LLC	1.9342%	1.93%	2.07%	
STONEHILL	1.8762%	1.76%	1.88%	
BANK OF AMERICA N.A.	2.6375%	1.73%	1.85%	
NEUBERGER BERMAN	1.4763%	1.48%	1.58%	
CETUS CAPITAL	1.3777%	1.38%	1.47%	
ONEX CREDIT PARTNERS, LLC	0.9590%	0.96%	1.03%	
ONE EAST CAPITAL ADVISORS LP	0.9519%	0.95%	1.02%	
FIDELITY	0.0000%	0.00%	0.00%	
PUTNAM	0.5162%	0.52%	0.55%	
MARATHON ASSET MANAGEMENT, LLC	0.2966%	0.30%	0.32%	
TCW	0.2385%	0.24%	0.26%	
BARCLAYS BANK PLC	0.0974%	0.10%	0.10%	
ROYAL BANK OF SCOTLAND PLC	0.0544%	0.05%	0.06%	
LAKEWATER	0.0407%	0.04%	0.04%	
ADVENT CAPITAL MGMT LLC	0.0144%	0.01%	0.02%	
LOEB	0.0327%	0.00%	0.00%	
<u>Old Equity (6.5%):</u>				
Strategic Value Partners	2.5408%	2.54%		39.090%
Merrill Lynch	x	0.90%		13.899%
Stanfield Offshore/SOLUS	x	0.74%		11.422%
Varde	0.7209%	0.72%		11.091%
CSFB	x	0.57%		8.723%
Texas Pacific Group/TPG Credit	0.4558%	0.46%		7.012%
Longacre (Solus)	x	0.20%		3.054%
Stonehill	x	0.12%		1.843%
Special Value	0.1154%	0.12%		1.775%
Citigroup Alternative Investments	0.0743%	0.07%		1.144%
Mason Capital LP	0.0040%	0.00%		0.062%
UBS	0.0260%	0.03%		0.400%
Loeb Partners Corporation	x	0.03%		0.438%
Lehman Brothers Inc	0.0029%	0.00%		0.045%
Guggenheim Portfolio Company X, LLC	0.0001%	0.00%		0.002%
	100.000%	100.000%		

Exhibit B

Exhibit B

Energy Capital Partners Electric Generating Assets in NYISO, ISO-NE & PJM

NYISO

Generating Facility	Location/Zone	Generating Capacity (MW) (Seasonal)
Empire Generating Co., LLC	Rensselaer/F	672 (winter)
		Total: 672

ISO-NE

Generating Facility	Location	Generating Capacity (MW) (Seasonal)
Brayton Point Energy	Somerset, MA	1,544 (summer)
Dighton Power	Dighton, MA	180 (summer)
Lake Road	Dayville, CT	750 (summer)
Masspower	Indian Orchard, MA	255.6 (summer)
Milford	Milford, CT	507 (summer)
		Total: 3,236.6

PJM

Generating Facility	Location	Generating Capacity (MW) (Nameplate or Seasonal)
Ellwood ¹	Illinois	1,424 (summer)
Kincaid	Illinois	1,158 (summer)
Liberty	Pennsylvania	541 (summer)
Richland ²	Ohio	432
Stryker	Ohio	18
		Total: 3,573

¹ ECP Fund II indirectly owns a 50% interest in the Elwood Energy facility. Remaining interests are held by an unaffiliated joint venture partner.

² Both Richland and Stryker are pending acquisitions that remain subject to regulatory review. The transaction is expected to close in the first quarter of 2014.

Exhibit C

617.20
Appendix B
Short Environmental Assessment Form

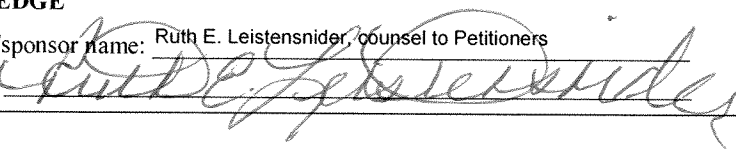
Instructions for Completing

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

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

Part 1 - Project and Sponsor Information			
Name of Action or Project: New Athens Transfer Applications			
Project Location (describe, and attach a location map): Town of Athens, Greene County, New York			
Brief Description of Proposed Action: New Athens Generating Company, LLC and MACH Gen, LLC are seeking approval for the indirect transfer of a portion of the ownership in New Athens Generating Company, LLC to its second lien secured lenders, and for the creation of a new holding company between New Athens Generating Company, LLC and its parent, MACH Gen, LLC.			
Name of Applicant or Sponsor: MACH Gen, LLC and New Athens Generating Company, LLC		Telephone: (240) 723-2332	
		E-Mail: ecada@cpv.com	
Address: 9300 US Route 9 West			
City/PO: Athens, P.O. Box 349		State: NY	Zip Code: 12015
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: Approval from the Federal Energy Regulatory Commission under Section 203 of the Federal Power Act.		NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3.a. Total acreage of the site of the proposed action? _____		N/A acres	
b. Total acreage to be physically disturbed? _____		N/A acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____		N/A acres	
4. Check all land uses that occur on, adjoining and near the proposed action. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): N/A _____ <input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	NO	YES	N/A
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape? <i>N/A</i>	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: <i>N/A</i>	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation service(s) available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: <i>N/A</i>	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: <i>N/A</i>	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: <i>N/A</i>	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? b. Is the proposed action located in an archeological sensitive area? <i>N/A</i>	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? <i>N/A</i> b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban <i>N/A</i>			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered? <i>N/A</i>	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
16. Is the project site located in the 100 year flood plain? <i>N/A</i>	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? <i>N/A</i> If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input type="checkbox"/> YES	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ N/A _____	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ N/A _____	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ N/A _____	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor name: <u>Ruth E. Leistensnider, counsel to Petitioners</u> Date: <u>1/24/14</u>		
Signature: <u></u>		

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing: a. public / private water supplies? b. public / private wastewater treatment utilities?	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input type="checkbox"/>	<input type="checkbox"/>

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input type="checkbox"/>	<input type="checkbox"/>

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.
_____	_____
Name of Lead Agency	Date
_____	_____
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
_____	_____
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

PRINT

Exhibit D

Notice of Proposed Rule Making (Rate Making only)

Public Service Commission

(SUBMITTING AGENCY)

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice.

1. *Proposed action:*

See Attached

2. *Statutory authority under which the rule is proposed:*

Public Service Law Section 70

3. *Subject of the rule:*

Review of the upstream transfer of New Athens Generating Company, LLC and creation of a new holding company

4. *Purpose of the rule:*

Consider upstream transfer of New Athens Generating Company, LLC and creation of a new holding company

5. *Public hearings* (check box and complete as applicable):

A public hearing is not scheduled. (SKIP TO ITEM 8)

A public hearing is required by law and is scheduled below. (*Note:* first hearing date must be at least 45 days after publication of this notice unless a different time is specified in statute.)

A public hearing is not required by law, but is scheduled below.

Time:

Date:

Location:

6. *Interpreter services* (check only if a public hearing is scheduled):

Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

7. Accessibility (check appropriate box only if a public hearing is scheduled):

All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Attached is a list of public hearing locations that are not reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.



8. Terms of rule (SELECT ONE SECTION):

- A. The full text of the rule is attached because it does not exceed 2,000 words.
- B. A summary of the rule is attached because the full text of the rule exceeds 2,000 words.
- C. Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making].

9. The text of the rule and any required statements and analyses may be obtained from:

Agency contact Deborah Swatling

Agency Name Public Service Commission

Office address 3 Empire State Plaza
Albany, New York 12223-1350

Telephone (518) 486-2659 E-mail: deborah.swatling@dps.ny.gov

10. Submit data, views or arguments to (complete only if different than previously named agency contact):

Agency contact Kathleen H. Burgess, Secretary

Agency name Public Service Commission

Office address 3 Empire State Plaza
Albany, New York 12223-1350

Telephone (518) 474-6530 E-mail: secretary@dps.ny.gov

11. Public comment will be received until:

45 days after publication of this notice (MINIMUM public comment period when full text is attached because it does not exceed 2000 words or full text of rule has been posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).

5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing). This box may not be checked and the minimum 60-day comment period applies if full text is not attached or text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).

Other: (specify) _____

12. A prior emergency rule making for this action was previously published in the _____ issue of the Register, I.D. No. _____

13. Additional matter required by statute:

Yes (include below material required by statute).

No additional material required by statute.

14. *Regulatory Agenda* (The **Division of Housing and Community Renewal; Workers' Compensation Board**; and the departments of **Agriculture and Markets, Education, Environmental Conservation, Family Assistance, Financial Services, Health, Labor, Motor Vehicles and State** and other department specified by the Governor or his designee *must complete* this item. If your agency has an optional agenda published, that should also be indicated below):

- This action was a Regulatory Agenda item in the following issue of the *State Register*: _____
- This action was not under consideration at the time this agency's Regulatory Agenda was submitted for publication in the *Register*.
- Not applicable.

15. *Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement*

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

16. **PUBLIC SERVICE COMMISSION ONLY:**

SAPA NO. _____

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice.)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name _____ Signature _____

Address _____

Telephone _____ E-Mail _____

Date _____

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's Register procedures manual, *Rule Making in New York*.
2. Rule making notices with any necessary attachments should be e-filed via the Department of State website.

Attachment to SAPA Notice

1. *Proposed Action:*

The Commission is considering a petition by MACH Gen, LLC, *et al.*, for an expedited declaratory ruling that the Commission need not review under Public Service Law (“PSL”) Section 70 a proposed transaction resulting in the upstream transfer of the ownership interests in New Athens Generating Company, LLC (the “Proposed Transfer Transaction”). In the alternative, MACH Gen LLC, *et al.*, request expedited Commission approval, pursuant to PSL Section 70 and any other statutory or regulatory provision deemed applicable, to consummate the Proposed Transfer Transaction. MACH Gen, LLC, *et al.*, also request approval of a transaction whereby an intermediate holding company will be inserted in between itself and New Athens Generating Company, LLC, so that New Athens Generating Company, LLC will be indirectly, instead of directly, wholly owned by MACH Gen, LLC (the “Proposed Holding Company Transaction”). MACH Gen, LLC requests confirmation that the Proposed Transactions will have no impact on the status of New Athens Generating Company, LLC as a lightly regulated entity.

8. *Substance of proposed rule:*

The Public Service Commission is considering a petition filed on January __, 2014 addressing review of the upstream transfer of New Athens Generating Company, LLC, the owner of an approximately 936 MW (summer rating) electric generating facility. The Commission is also considering the request for approval of the insertion of an intermediate holding company in the corporate tree so that New Athens Generating Company, LLC will be indirectly, instead of directly, wholly owned by MACH Gen, LLC. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.