

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Verified Joint Petition of AP Cricket Valley Holdings II Inc.,
MC CVEC Project Holdings I, LLC, Ullico Infrastructure Cricket
Valley Holdco, LLC, Kiwoom SPV, Development Bank of Japan
Inc. SPV, SeAH Resources & Investment Co., Ltd., Cricket Valley
Energy Holdings II LLC, Cricket Valley Energy Center LLC, and
Cricket Valley Energy Partners, LLC, for a Declaratory Ruling
Regarding a Transfer of Ownership Interests or, in the Alternative,
an Approval Pursuant to Section 70 of the Public Service Law and
for a Declaratory Ruling on Jurisdiction
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Case No. 16-E-_____

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

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I. INTRODUCTION

AP Cricket Valley Holdings II Inc. (“APCVHII”), MC CVEC Project Holdings I, LLC (“MCCVEC”), Ullico Infrastructure Cricket Valley Holdco, LLC (“UICVH”), Kiwoom SPV, Development Bank of Japan Inc. SPV (“DBJ SPV”), SeAH Resources & Investment Co., Ltd. (“SeAH”), Cricket Valley Energy Holdings II LLC (“CVEH II”), Cricket Valley Energy Center LLC and Cricket Valley Energy Partners, LLC (“CVEP”) (collectively, the “Petitioners”) hereby jointly petition the New York State Public Service Commission (“Commission”) for a declaratory ruling. AP Cricket Valley Holdings I, Inc. (“APCVHI”), APCVHII, and MCCVEC (the “Current Membership”) are the current owners of Cricket Valley Energy Center, LLC (“CVEC”), the developer of a proposed approximately 1,000 MW electric generating facility in Dover, New York (the “Facility”). Petitioners respectfully request a ruling declaring that the Commission need not review under Public Service Law (“PSL”) Section 70 the following transactions as more fully described herein:

- A proposed transfer from MCCVEC of 100% of its membership interests in CVEP to APCVHII (the “APCVHII Transaction”);¹
- APCVHII’s proposed sale of 2.5% to 5.0% of the issued and outstanding membership interests in CVEP to UICVH (the “UICVH Transaction”);
- APCVHII’s proposed sale of 7.5% to 15.0% of the issued and outstanding membership interests in CVEP to DBJ SPV (the “DBJ Transaction”);
- APCVHII’s proposed sale of 3.0% to 6.0% of the issued and outstanding membership interests in CVEP to Kiwoom SPV (the “Kiwoom SPV Transaction”);
- APCVHII’s proposed sale of 5.0% to 10.0% of the issued and outstanding membership interests in CVEP to SeAH or an affiliate of SeAH² (the “SeAH Transaction,” and with the APCVHII Transaction, UICVH Transaction, the DBJ Transaction, and the Kiwoom Transaction collectively, the “Proposed Transactions”).

In the alternative, the Petitioners respectfully request that the Commission approve the Proposed Transactions without modification or condition, pursuant to PSL Section 70 and any other statutory or regulatory provision deemed applicable. Petitioners also request that the Commission declare that an intra-corporate restructuring, whereby CVEH II will be inserted

¹ Prior to consummating the Proposed Current Membership Transaction, CVEP will be formed and will be directly wholly owned by the Current Membership in the same proportion as their interests in CVEC. CVEP will indirectly wholly own CVEC. The Commission ruled that the creation of CVEP will not require further regulator review. Case 16-E-0408, *Joint Petition of Cricket Valley Energy Center, LLC, Cricket Valley Energy Holdings LLC, AP Cricket Valley Holdings II, Inc., APNA Holdings GmbH, 730 Cricket, LLC, BlackRock Financial Management, Inc. and ASG Frontier Holdings, LLC for a Declaratory Ruling Regarding Transfers of Upstream Ownership Interests or, in the Alternative, an Order Approving the Transfers Pursuant to Section 70 of the New York State Public Service Law and for a Declaratory Ruling that 730 Cricket, LLC, BlackRock Financial Management, Inc. and ASG Frontier Holdings, LLC Will Not Become an Electric Corporation*, Declaratory Ruling on Transfer Transactions (Sept. 19, 2016), at 10 (“September 2016 Order”).

² SeAH intends to acquire membership in CVEP directly or indirectly through an affiliate.

between Cricket Valley Energy Holdings, LLC (“CVEH”) and CVEP, is not a jurisdictional transfer and no approval is required under PSL Section 70 (the “Intra-Corporate Restructuring”).

Finally, Petitioners also request a declaratory ruling that neither UICVH nor DBJ SPV will become an electric corporation under the PSL as a result of the consummation of the Proposed Transactions because they will not be able to influence the operations of any electric plant in New York and, therefore, it would not be in the public interest to regulate UICVH or DBJ SPV as an electric corporation.

The Proposed Transactions are in the public interest because they will provide needed equity for the development of CVEC’s proposed approximately 1,000 MW electric generating facility in New York (the “Facility”).

No competitive issues are raised by the Proposed Transactions. Other than passive ownership interests in a transmission line linking New Jersey to Long Island, none of APCVHII, DBJ SPV, UICVH, Kiwoom SPV, SeAH, or their respective affiliates owns or controls any generation or transmission assets in New York, and their ownership interests in the neighboring control areas of PJM Interconnection, L.L.C. (“PJM”) and ISO New England Inc. (“ISO-NE,” and together with the New York Independent System Operator, Inc. (“NYISO”) and PJM, the “Northeastern Markets”) are only *de minimis*. Accordingly, the Proposed Transactions will have no adverse effect on market concentration in New York and will not allow APCVHII, DBJ SPV, UICVH, Kiwoom SPV, SeAH, or their respective affiliates to exercise vertical market power.

The Petitioners have structured and are seeking commitments from equity sources and debt providers for a \$1.5 billion financing of the Facility.³ The Petitioners anticipate a closing of

³ The Commission authorized CVEC to enter into debt instruments in an amount not to exceed \$1.5 billion. Case 15-E-0454, *Petition of Cricket Valley Energy Center, LLC for an Order Approving Financing Pursuant to Section 69 of the Public Service Law*, Order Approving Financing (Nov. 19, 2015).

the financing and commencement of construction of the Facility and a 14.5-mile transmission line to interconnect the Facility to the transmission system in December 2016.⁴ Financing commitments will expire if the financial closing is not achieved within limited time periods. Certain contract rights will terminate, permits will lapse, and construction costs will increase substantially if construction of the Facility is not commenced within specified time frames, thereby jeopardizing the financing and development of the Facility. Therefore, Petitioners request expedited review of this Petition and request Commission action on the Petition no later than the Commission's December 15, 2016 session. Commission approval of this Petition at the soonest possible date is critical because the Commission's approval is needed to obtain financing and begin construction of the Facility.

II. BACKGROUND

A. The Parties

1. CVEC, APCVHII, MCCVEC, AND CVEP

CVEC is a limited liability company formed under the New York Limited Liability Company Law. The Commission granted CVEC a Certificate of Public Convenience and Necessity for the construction of a combined cycle, natural gas-powered approximately 1,000 MW electric generating facility on an inactive industrial site located in the Town of Dover,

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

Dutchess County, New York.⁵ CVEC is lightly regulated by the Commission.⁶ The Facility is currently under development and nearing closing of the construction financing.

CVEC currently has three members: 1) APCVHI holds a 42.84% interest; 2) APCVHII holds a 41.78% interest; and 3) MCCVEC holds a 15.38% interest. Out of an abundance of caution, Petitioners request that the Commission declare that the insertion of CVEH II between CVEP and CVEH, whereby CVEP will directly wholly own CVEH II and CVEH II will directly wholly own CVEH, is not a jurisdictional transfer and no approval is required under PSL Section 70 because no new owner will be brought into the organizational structure, no existing owner will be removed, and the proportionate shares of the indirect owners remain the same after the reorganization.⁷

APCVHI is wholly owned by J Cricket Holdings LLC, a subsidiary of JERA, which is a joint venture owned in equal 50% shares by Chubu Electric Power Company, Inc. and Tokyo Electric Power Company, Inc.⁸ MCCVEC is indirectly wholly owned by Marubeni Corp (Japan). APCVHII is wholly owned by AP Energy Holdings Inc., which is wholly owned by

⁵ See Case 11-E-0593, *Petition of Cricket Valley Energy Center, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation*, Order Granting Certificate of Public Convenience and Necessity and Establishing Lightened Ratemaking Regulation (Feb. 14, 2013) (“CPCN Order”).

⁶ *Id.*

⁷ See September 2016 Order at 14; Case 07-E-0584, *Petition of NRG Energy, Inc. for a Declaratory Ruling that the Public Service Commission Law Section 70 Does Not Apply to Proposed Corporate Reorganization and Stock Transfer*, Declaratory Ruling on Review of an Inter-Corporate Transaction (July 23, 2007) (ruling that “[i]nserting a holding company into an ownership structure upstream from lightly-regulated entities that operate electric plant does not amount to a transfer under PSL §70 because there is no change in the identity of the ultimate ownership”); see also Case 05-E-1582, *NRG Energy Inc. and NRG Northeast Generating LLC*, Petition for a Declaratory Ruling that the Public Service Law Does not Apply to an Intra-Corporate Dissolution Transaction, Declaratory Ruling on Review of an Intra-Corporate Dissolution Transaction (Jan. 26, 2006).

⁸ The Commission declared no further review, under PSL Section 70, of JERA’s proposed acquisition of indirect ownership interests in APCVHI is required in an order issued on April 20, 2016. Case 16-E-0116, *Joint Petition of J Cricket Holdings LLC, et al for a Declaratory Ruling Regarding Transfers of Upstream Ownership Interests or, in the Alternative, an Approval Pursuant to Section 70 of the Public Service Law*, Declaratory Ruling on Review of Acquisition Transactions (Apr. 20, 2016) (“April Order”).

APNA Holdings GmbH (“APNA”). APNA is wholly owned by Advanced Power AG (“APAG”).

2. UICVH

UICVH, a Delaware limited liability company to be formed by UIF GP, LLC (“UIF”), will be wholly owned, in part, by Ullico Infrastructure Master Fund, L.P. (“Master Fund”) and, in part, by Ullico Blocker, which is wholly owned by Master Fund. UICVH will be managed by Ullico Investment Advisors, Inc. (“UIA”) pursuant to an agreement with UIF. UIF is wholly owned by UIA, and UIA is a direct, wholly owned subsidiary of Ullico Inc., a union labor-owned insurance and financial services company based in Washington, D.C. UIF owns a general partnership interest in the Master Fund. Ullico Infrastructure Taxable Fund, L.P. (“Ullico Taxable Fund”) and Ullico Infrastructure Tax Exempt Fund, L.P. (“Ullico Tax Exempt Fund”) own passive limited partnership interests in the Master Fund.

Various labor pension funds own non-controlling limited partnership interests in the Ullico Taxable Fund and Ullico Tax Exempt Fund that do not allow the limited partners to manage, direct, or control the activities of these funds, the Master Fund, UICVH, CVEC or any generation or transmission assets. The management, control and operation of the Ullico Taxable Fund and Ullico Tax Exempt Fund is vested exclusively with the general partner, UIF. The limited partnership interests are transitory and may change from time to time. Some of these labor pension funds owning non-controlling limited partnership interests in the Ullico Taxable Fund and Ullico Tax Exempt Fund may also own indirect passive non-controlling interests from time to time in other private investments funds which may own direct or indirect interests in generation or transmission assets in the Northeast Markets, which are controlled by the relevant general partners of these funds.

UIF and its affiliates do not control any electric generation or transmission in New York State and own only *de minimis* interests in generation in PJM and ISO-NE. UIF owns 100% of the passive, non-managing Class A-1 Interests and 27.8% of the passive, non-managing Class B Interests in Neptune Regional Transmission System, LLC (“Neptune”).⁹ Neptune owns a 660 MW high voltage direct current submarine transmission line linking New Jersey and Long Island, New York. Neptune’s transmission line is under the operational control of PJM and service on the line is provided pursuant to Neptune’s rate schedule under PJM’s open access transmission tariff as approved by the Federal Energy Regulatory Commission.

UIF owns a 10.6% equity interest in Carroll County Energy Holdings, LLC, which is constructing a 700 MW combined cycle power generation facility to be located in Carroll County, Ohio and that will be interconnected with the PJM transmission grid. UIF also owns a 14.48% equity interest in Pirlo Energy Holdings, LLC (“Pirlo”), which owns a 751 megawatt combined cycle power generation facility in West Deptford, New Jersey. The facility achieved commercial operations in November 2014 and sells energy and capacity on a merchant basis into the PJM Interconnection.

Finally, UIF owns a 27.96% equity interest in Towantic Energy Holdings, LLC, which owns a 49% equity interest in CPV Towantic, LLC (“CPV Towantic”). CPV Towantic is constructing a 785 megawatt combined cycle power generation facility in Southwest Connecticut, in which UIF will have an effective 13.7% equity interest. The facility is expected to achieve commercial operations in May 2018. The facility cleared the 2018/2019 Forward Capacity Auction in ISO-New England and expects to sell energy on a merchant basis into ISO-New England.

⁹ *Uif Gp, LLC Neptune Power Ventures, LLC Cianbro Dev. Corp. Standard Energy Dev. Inc. Ctsbm Investments LLC Charles E. Hewett*, 149 FERC ¶ 62072 (2014).

3. DBJ SPV

DBJ SPV is a to-be-formed special purpose entity that will be a Delaware limited liability company. DBJ SPV will be a wholly owned subsidiary of the Development Bank of Japan Inc. (“DBJ”), and will be formed for the purpose of acquiring indirect membership interests in CVEC, as described in this petition, as well as for the purpose of investing in other electric power assets in the United States.

DBJ is a financial institution that is wholly owned by the government of Japan. DBJ provides financing, investment, and consulting and advisory services in Japan and internationally. It offers medium-to long-term loans, syndicated loans, asset-backed loans, debtor-in-possession financing, project/structured financing, and real estate financing services. DBJ also provides investment services, such as equity, leveraged and management buyouts, and mezzanine financing services. In addition, DBJ provides mergers and acquisitions advisory services.

None of DBJ or any of its subsidiaries is engaged primarily in energy-related business activities, and none of DBJ or any of its subsidiaries directly owns or controls any electric generating or transmission assets or generation output in the United States.

Currently, none of DBJ or any of its subsidiaries owns or controls, directly or indirectly, any non-passive ownership interests in entities that own electric generation or transmission facilities in the United States. Currently, and from time to time, DBJ and its subsidiaries own passive, non-managing, limited partnership interests (or similar passive interests) in private investment funds (such as private equity funds and hedge funds), some of which may have direct or indirect ownership interests in entities that own or control facilities used for the generation, sale, distribution or transmission of electric energy, or for the production, gathering, storage,

liquefaction, sale, transmission or distribution of natural gas and other inputs to electric generation in the United States. Management control of such private investment funds resides solely with the relevant general partner, managing member or investment fund. In no case would any such controlling general partner, managing member or investment fund be affiliated with DBJ or any of its subsidiaries.

Also, from time to time, DBJ and its subsidiaries may own debt securities and loans issued by entities that may own or control facilities used for the generation, sale, distribution or transmission of electric energy, or for the production, gathering, storage, liquefaction, sale, transmission or distribution of natural gas and other inputs to electric generation in the United States. However, the ownership of such debt securities and loans would not confer on DBJ or its subsidiaries any ownership or control over any energy facilities.

4. Kiwoom SPV

Kiwoom SPV is a to-be-formed special purpose entity formed for the purpose of acquiring indirect membership interests in CVEC, as described in this petition. Kiwoom SPV will be directly wholly owned by Kiwoom Global Power A.I. Professional & Private Type Investment 2 (“Kiwoom Global”), an investment trust in Korea that will be managed and controlled by Kiwoom Asset Management Co., LTD (“Kiwoom”), which is an asset management company based in Seoul, South Korea. Kiwoom Global will be directly owned by four entities including: NH Investment & Securities Co., LTD, National Agricultural Cooperative Federation, Kiwoom Securities Co., LTD (“Kiwoom Securities”), Kiwoom Asset Management Co., LTD. Kiwoom Securities, which directly wholly owns Kiwoom, may choose not to acquire beneficial interests in Kiwoom Global. In such case, Kiwoom will acquire beneficial interests in Kiwoom Global that were initially planned to be acquired by Kiwoom

Securities. Neither Kiwoom SPV nor its affiliates owns or controls any generation or transmission assets in the Northeast Markets.

5. SeAH

SeAH is Korean corporation based in South Korea that is engaged in investment and new business development. SeAH is wholly owned by SeAH Holdings Corp. (“SeAH Holdings”), which is the holding company of the SeAH corporate group, which is primarily engaged in steel manufacturing business. SeAH is a publicly listed company whose shares are traded on the Korean Stock Exchange (058650 Korea S.E.). Neither SeAH nor its affiliates own or control any generation or transmission assets in the Northeast Markets.

B. The Proposed Transactions

1. APCVHII

APCVHII proposes to purchase 100% of MCCVEC’s membership interests in CVEP and resell those interests pursuant to the Proposed Transactions.

2. UICVH

UICVH may acquire from APCVHII a 2.5% to 5.0% membership interest in CVEP. UICVH’s membership interests in CVEP will be tailored and limited to only those voting rights necessary to protect the company’s respective investments.

3. DBJ SPV

DBJ SPV may acquire from APCVHII a 7.5% to 15.0% membership interest in CVEP. DBJ SPV’s membership interests in CVEP will be tailored and limited to only those voting rights necessary to protect DBJ SPV’s investments.

4. KIWOOM SPV

Kiwoom SPV may acquire from APCVHII a 3.0% to 6.0% membership interest in CVEP. The exact amount of UICVH’s, DBJ SPV’s and Kiwoom SPV’s membership interests

will depend on other key economic terms of the financing of the Facility and will be fixed when the financing transaction is closed.

5. SEAH

SeAH may acquire from APCVH II a 5.0% to 10.0% Membership Interest in CVEP directly or indirectly through an affiliate.

6. RESULTS

Once the Proposed Transactions, the Intra-Corporate Restructuring and the transactions already approved by the Commission in prior orders are consummated,¹⁰ APCVHI will indirectly hold 42.84% of CVEC; APCVHII will indirectly hold between 5.0% and 45.0% of CVEC;¹¹ 730 cricket will indirectly hold between 16.0% and 30.0% of CVEC¹²; ASG Frontier will indirectly hold between 7.75% and 15.0% of CVEC¹³; Kiwoom SPV will indirectly hold between 3.0% and 6.0% of CVEC; DBJ SPV will indirectly hold between 7.5% and 15.0% of CVEC; UICVH will indirectly hold between 2.5% and 5.0% of CVEC and SeAH will indirectly hold between 5.0% and 10.0% of CVEC.

III. THE COMMISSION SHOULD DECLARE THAT THE WALLKILL PRESUMPTION APPLIES TO THE PROPOSED TRANSACTIONS AND DECLINE TO FURTHER REVIEW THEM UNDER PSL SECTION 70 OR APPROVE THEM UNDER PSL SECTION 70.

¹⁰ In its September 2016 Order, the Commission ruled that no further review under the PSL is required to be conducted of the transfer of the membership interests in CVEP to 730 Cricket, LLC (“730 Cricket”) and ASG Frontier Holdings, LLC (“ASG Frontier”). September 2016 Order at 10. The transfers of membership interests to 730 Cricket and ASG Frontier will be consummated at the same time the Proposed New Investor Transactions are consummated. In an order issued on August 2, 2016, the Commission granted, under PSL Section 70, blanket authority to allow ownership interests up to 5% in CVEC to be transferred between members of CVEC to effectuate a provision in the CVEC operating agreement that provides for the dilution of a member’s ownership interest if it fails to make a capital contribution. Case 16-E-0201, *Cricket Valley Energy Center, LLC et al.*, Declaratory Ruling on Transfer Transactions (Aug. 2, 2016).

¹¹ See footnote 9 (Aug. 2, 2016 Order).

¹² See footnote 9.

¹³ *Id*

PSL Section 70 requires written consent of the Commission for transfers of a sufficiently controlling interest in an electric plant, including ownership transfers at a holding company (*i.e.*, upstream) level. The Commission has established a lightened regulatory regime for competitive wholesale generators and merchant transmission lines in New York under which PSL Section 70 review of changes in ownership is not required.¹⁴ In the Wallkill Order, the Commission decided that under this lightened regulatory regime, PSL Section 70 regulation would not adhere to a transfer of ownership interests in parent entities upstream from the affiliates owning and operating New York competitive electric generation facilities, unless there was a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption (the “Wallkill Presumption”).

In prior decisions, the Commission has determined that the Wallkill Presumption applies to transactions involving upstream changes in control of lightly regulated entities and has declined to review those transactions under PSL Section 70 when it has determined that the transactions would not provide the petitioners with the ability to exercise market power to the detriment of captive ratepayers.¹⁵ As discussed more fully above, the Proposed Transactions involve a change of ownership interests in parent entities upstream from the affiliate that is

¹⁴ Case 91-E-0350, *Wallkill Generating Company, L.P.*, Regulation, Order Establishing Regulatory Regime (Apr. 11, 1994), at 9–10 (“Wallkill Order”); *see also* Case 14-E-0195, *Bayonne Energy Center, LLC, et al.*, Order Modifying Lightened Ratemaking Regulation Authorizations and Approving Financing and Declaratory Ruling on a Transfer Transaction (Aug. 15, 2014), at 8–9 (“*Bayonne*”); Case 13-E-0392, *Champlain Hudson Power Express, Inc.*, Declaratory Ruling and Order Concerning Ownership Transfer and Providing For Lightened Ratemaking Regulation (Jan. 21, 2014), at 5–6 (“*Champlain Hudson*”); Case 10-E-0339, *Hudson Transmission Partners, LLC*, Order Providing for Lightened Rate Making Regulation (Apr. 14, 2011), at 15–16 (“*HTP*”).

¹⁵ *See, e.g.*, Case 07-E-0332, *Astoria Generating Company Holdings LLC, et al.*, Declaratory Ruling on Review of a Merger Transaction (May 22, 2007); Case 09-E-0055, *Constellation Energy Nuclear Group LLC, Nine Mile Point Nuclear LLC, R.E. Ginna Nuclear Power Plant LLC and EDF Development, Inc.*, Declaratory Ruling on Review of a Transfer Transaction (Apr. 23, 2009); Case 06-M-0210, *Constellation Energy Group, Inc.*, Declaratory Ruling on Review of Ownership Interest Transfers (July 25, 2006); Case 08-E-0850, *Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund*, Petition for a Declaratory Ruling Regarding Acquisition of Common Stock, and, in the Alternative, Approval Under Public Service Law § 70, Declaratory Ruling on Review of Stock Transfer Transactions (Sept. 19, 2008).

developing the Facility. The Petitioners request that the Commission follow its precedent, afford the Petitioners the Wallkill Presumption, and issue a declaratory ruling stating that the Commission need not review the Proposed Transactions under PSL Section 70.

The Proposed Transactions do not create any potential for harm to the interests of captive utility ratepayers because CVEC will operate in a competitive market and have no captive ratepayers. None of APCVIII, UICVH, Kiwoom SPV, DBJ SPV, SeAH or their affiliates have any ownership interests in any transmission or generating facilities in the Northeastern Market except for the passive and *de minimis* ownership interests as described above. While UICVH's affiliate, UIF, owns interests in Neptune, those interests are passive because they do not allow UICVH to exert control over or influence the management or operation of Neptune.¹⁶ UIF's 10.6% equity interest in a 700 MW facility in Ohio, a 14.48% equity interest in a 751 MW facility in New Jersey and a 13.7% equity interest in a to-be-constructed 785 MW facility in Connecticut, which equates to a total of 290 MW of owned capacity outside of New York, falls well below the level of concern that arises to a horizontal market power concern in the New York wholesale market.¹⁷ Accordingly, the Proposed Transactions will not create or enhance horizontal or vertical market power in New York.

Pursuant to the APCVIII Transaction APCVIII will purchase MC CVEC's interest in CVEC and resell that interest as described in the Proposed Transactions. Neither APCVIII nor its affiliates own or control any generation or transmission in New York and have only *de*

¹⁶ *Uif Gp, LLC*, 153 FERC ¶ 61091 (2015).

¹⁷ See Case 12-E-0174, *AES Eastern Energy, L.P et al.*, Order Approving Transfers and a Financing (June 29, 2012). The Commission stated that "the relevant horizontal market power analysis begins with the de-rating of each owner's interests, by allocating to that owner only the capacity that represents its proportionate share of the total ownership of a generation facility." The Commission ruled that the buyer's share of capacity operating in New York wholesale electric markets of less than 1,000 MW was below the level of concern with respect to horizontal market power. See also Case 08-E-0410, *LS Power Development LLC*, Declaratory Ruling on the Acquisition of Common Stock (May 27, 2008).

minimis interests in generation in PJM and ISO-NE. Neither APCVHII nor its affiliates own any generation or transmission assets in ISO-NE or NYISO. APCVHII's sole affiliated ownership interest in generation or transmission in PJM is a 17.76% interest in the 750 MW Carroll County Energy gas fired generation plant in Carroll County, Ohio.

The Proposed Transactions will not otherwise result in any adverse impacts in New York. No changes in the day-to-day operations of CVEC are expected to be made as a result of the Proposed New Investor Transactions. Based on the foregoing, the Wallkill Presumption that no further PSL Section 70 review is required by the Commission is applicable in this case. If the Commission decides to review the Proposed Transactions or the Proposed Transaction, pursuant to PSL Section 70, the Commission should approve them as in the public interest for the reasons discussed above.

IV. THE COMMISSION SHOULD DECLARE THAT NEITHER UICVH NOR DBJ SPV WILL BE SUBJECT TO REGULATION AS AN ELECTRIC CORPORATION UNDER THE PSL AS A RESULT OF THE PROPOSED TRANSACTIONS.

The Commission has ruled that an entity may request a determination on whether it becomes an electric corporation to determine if it must obtain approval before acquiring any stock in another electric corporation under PSL Section 70.¹⁸ The Commission has stated that an entity owning interests in an electric corporation should not be considered an electric corporation if it cannot exert control over the operation of the generation plant to the point where it “own[s], operate[s], or manages” that plant and market power might potentially be exercised.¹⁹ The

¹⁸ See Cases 08-M-0659 et al., *Proceeding on Motion of the Commission Regarding Regulation of Owners of Stock Interests in Electric and Steam Corporations*, Order Establishing Presumption and Closing Proceedings Without Prejudice (Sept. 21, 2010).

¹⁹ See Cases 08-M-0659 et al., *supra*, Order Instituting Proceeding and Notice Soliciting Comments (June 23, 2008), at 3.

Commission has declared that certain entities including industrial development agencies (“IDAs”) that own electric generators via sale-leaseback arrangements are not electric corporations because the IDAs are merely passive owners.²⁰ The Commission has also declared that entities with ownership interests in electric corporations that grant them voting rights that are limited to protecting their financial interests are not electric corporations because such entities do not have control over the management or operation of the generation facilities.²¹

The Commission should declare that neither UICVH nor DBJ SPV is an electric corporation as a result of the Proposed Transactions because they will not be able to exert control over the management or operation of any electric plant in New York. As described in the July 22, 2016 petition to the Commission in Case 16-E-0408, CVEP will be managed pursuant to the Holdings Operating Agreement.²² The Holdings Operating Agreement establishes two classes of

²⁰ See e.g., Case 07-E-1003, *Petition of Canandaigua Power Partners II, LLC for an Order Approving Financing Pursuant to Section 69 of the PSL and Approving a Lightened Regulatory Regime*, Order Providing for Lightened Regulation and Approving Financing (Jan. 17, 2008); Case 07-E-0138, *Petition of Canandaigua Power Partners, LLC for an Original Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law, Approving Financing Pursuant to Section 69 of the Public Service Law and Approving a Lightened Regulatory Regime*, Order Granting Certificates of Public Convenience and Necessity, Providing for Lightened Regulation and Approving Financing (Aug. 16, 2007); Case 06-E-0745, *Petition of AES Greenidge, L.L.C. for an Order Providing for Lightened Regulation and Authorizing a PILOT Transaction*, Order on Regulation of a Pilot and Sale-Leaseback Transaction (Sept. 29, 2009); Case 99-E-1629, *Petition of Athens Generating Company L.P. for a Declaratory Ruling that It Will Be Regulated Under a Lightened Regulatory Regime and for Approval to Execute a Sale-Leaseback Agreement with the Greene County Industrial Development Authority*, Order providing For Lightened Regulation (July 12, 2000); Case 99-E-0990, *Petition of Oneida County Industrial Development Agency and Griffiss Local Development Corporation for an Original Certificate of Public Convenience and Necessity to Own, Operate and Maintain Existing Electric Plant, to Sell Electricity at Retail and for a Declaratory Ruling that They Will Be Subject Only to Incidental Regulation*, Declaratory Ruling On Electric Corporation Regulation (Sept. 28, 1999); Case 99-E-0148, *Joint Petition of AES Eastern Energy, L.P. and AES Creative Resources, L.P. for a Declaratory Ruling that Light-Handed Regulation be Applied Concerning the Petitioners’ Purchase of Certain Electric Generating Assets from New York State Electric & Gas Corporation*, Declaratory Ruling On Lightened Regulation (Mar. 23, 1999).

²¹ See Case 08-E-1267, *Petition of Noble Altona Windpark, LLC, Noble Chateaugay Windpark, LLC, Noble Wethersfield Windpark, LLC, and EFS Noble II, LLC for a Declaratory Ruling Regarding Transfer of Membership Interests and Regulation*, Declaratory Ruling on Review and Regulation of a Passive Ownership Interest Transfer (Dec. 15, 2008).

²² Case 16-E-0408, *supra*, Verified Joint Petition for a Declaratory Ruling Regarding Transfers of Upstream Ownership Interests or, in the Alternative, an Order Approving the Transfers Pursuant to Section 70 of the New York State Public Service Law and for a Declaratory Ruling that 730 Cricket, LLC, Blackrock Financial

ownership interests in the Company. Class A Members have all voting rights while Class B members are passive owners with limited voting rights. Each of UICVH and DBJ SPV will hold Class B membership interests in CVEP, and thus, their indirect ownership interests in CVEC will be passive, like that of a typical institutional investor. Neither UICVH nor DBJ SPV will have direct operational rights over CVEC. The voting rights that UICVH and DBJ SPV will hold with respect to CVEP will be limited to those rights necessary to protect their investment and financial interests.

In its September 2016 Order, the Commission declared that 730 Cricket's and ASG Frontier's ownership of Class B membership interests will not cause them to "own or control electric plant as defined in PSL §2(12), and therefore will not become electric corporations pursuant to PSL §2(13)."²³ Petitioners request that the Commission make the same declaration with respect to UICVH and DBJ SPV.

V. STATE ENVIRONMENTAL QUALITY REVIEW ACT

Under the State Environmental Quality Review Act ("SEQRA"), Article 8 of the New York State Environmental Conservation Law, and its implementing regulations (6 NYCRR § 617 and 16 NYCRR § 7), the Commission must determine whether certain actions it is authorized to approve may have a significant impact on the environment. The Proposed Transactions do not meet the definition of Type I or Type II actions listed in 6 NYCRR Sections 617.4, 617.5, and 16 NYCRR Section 7.2 and, therefore, is appropriately classified as an

Management, Inc. and ASG Frontier Holdings, LLC Will Not Become an Electric Corporation (July 22, 2016), at 15.

²³ September 2016 Order at 13–14.

“unlisted action” under SEQRA.²⁴ Accordingly, it is proper for the Commission to declare itself the SEQRA “lead agency,” to conduct an environmental assessment, and determine the significance of the actions proposed. To facilitate such assessment, attached hereto as Exhibit B is a Short Environmental Assessment Form with Part I completed, describing and evaluating the potential impact, if any, of the Proposed Transactions.

No significant adverse environmental effect will result from the Proposed Transactions. There will be no physical changes to the Facility as part of the Proposed Transactions. Following consummation of the Proposed Transactions, the Facility will continue to be developed in accordance with the requirements specified in the CPCN Order, relevant environmental permits, and all applicable environmental laws. As such, the Proposed Transactions will not cause new environmental impacts and, thus, the Commission should follow its precedent and issue a negative declaration and undertake no further environmental review.

VI. CONCLUSION

WHEREFORE, the Petitioners respectfully request that the Commission issue a ruling (1) declaring that the Proposed Transactions satisfy the Wallkill Presumption, and no further review is needed under PSL Section 70, or, in the alternative, approving it under PSL Section 70; (2) declaring that the Intra-Corporate Restructuring is not jurisdictional under PSL Section 70, and (3) declaring that neither UICVH nor DBJ SPV will be regulated as an electric corporation as a result of the Proposed Transactions.

²⁴ See, e.g., Case 05-E-1341, *Orion Power Holdings, Inc., Astoria Generating Company, L.P. and Astoria Generating Company Acquisitions, LLC – Petition for Authority to Transfer Ownership Interests and to Issue Corporate Debt*, Order Approving Transfers and Financings and making Other Findings (Feb. 15, 2006), at 4–5.

Dated: October 24, 2016

Respectfully submitted,

/s/
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I, Jeffrey B. Murphy, Vice President of UIF GP, LLC, on behalf of Ullico Infrastructure Cricket Valley Holdco, LLC, do hereby affirm that the contents of this document are true to the best of my knowledge with respect to Ullico Infrastructure Cricket Valley Holdco, LLC.

Signed: JB
Date: 10/2/2017

VERIFICATION

I, Hoyoung Song [Kiwoom SPV, Officer] on behalf of Kiwoom SPV do hereby affirm that the contents of this document are true to the best of my knowledge with respect to Kiwoom SPV.

Signed: Hoyoung Song


Date: 2016.10.4

VERIFICATION

I, Masao Masuda, General Manager, Development Bank of Japan Inc., on behalf of Development Bank of Japan Inc., do hereby affirm that the contents of this document are true to the best of my knowledge with respect to the Development Bank of Japan Inc. and Development Bank of Japan Inc. SPV.

Signed: _____

Date: _____


October 3, 2016


VERIFICATION

I, Robert De Meyere, Vice President of each of AP Cricket Valley Holdings II Inc., Cricket Valley Energy Center LLC, Cricket Valley Energy Holdings II LLC and Cricket Valley Energy Partners, LLC, do hereby affirm that the contents of this document are true to the best of my knowledge with respect to AP Cricket Valley Holdings II Inc., Cricket Valley Energy Center LLC, Cricket Valley Energy Holdings II LLC and Cricket Valley Energy Partners, LLC.

Signed: Robert E. De Meyere
Date: 25 October 2016

VERIFICATION


I, Hiromichi Mizuno, MC CVEC Project Holdings I, LLC president, do hereby affirm that the contents of this document are true to the best of my knowledge with respect to MC CVEC Project Holdings I, LLC.

Signed: 

Date: October 25, 2016

VERIFICATION

I, KiHyun Do, Head of Investment of SeAH Resources & Investment Co., Ltd, do hereby affirm that the contents of this document are true to the best of my knowledge with respect to SeAH Resources & Investment Co., Ltd.

Signed: 
Date: Oct 25, 2016

Short Environmental Assessment Form

Part 1 - Project Information

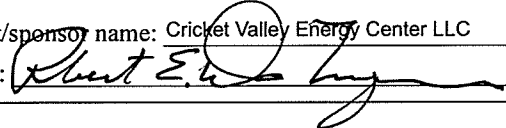
Instructions for Completing

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

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

Part 1 - Project and Sponsor Information				
Name of Action or Project: Cricket Valley Energy Center LLC				
Project Location (describe, and attach a location map): N/A				
Brief Description of Proposed Action: Applicants request the Public Service Commission's approval pursuant to Section 70 of the Public Service Law to consummate five transactions: 1) transfer 100% of interests in Cricket Valley Energy Partners, LLC to AP Cricket Valley Holdings II Inc.; 2) AP Cricket Valley Holdings II Inc. sale of 2.5-5% of its interests in Cricket Valley Energy Partners, LLC to Ullico Infrastructure Cricket Valley Holdco, LLC; 3) AP Cricket Valley Holdings II Inc. sale of 7.5-15% of its interests in Cricket Valley Energy Partners, LLC to Development Bank of Japan Inc. SPV; 4) AP Cricket Valley Holdings II Inc. sale of 3-6% of its interests in Cricket Valley Energy Partners, LLC to Kiwoom SPV; and 5) AP Cricket Valley Holdings II Inc. sale of 5-10% of its interests in Cricket Valley Energy Partners, LLC to SeAH Resources & Investment Co., Ltd.				
Name of Applicant or Sponsor: Cricket Valley Energy Center LLC		Telephone: 617-456-2200 E-Mail: bdemeyere@advancedpowerma.com		
Address: Advanced Power Services (NA) Inc., 31 Milk Street, Suite 1001				
City/PO: Boston		State: MA	Zip Code: 02109	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			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:			NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		_____ N/A acres		
b. Total acreage to be physically disturbed?		_____ N/A acres		
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ N/A acres		
4. Check all land uses that occur on, adjoining and near the proposed action. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input checked="" type="checkbox"/> Other (specify): N/A <input type="checkbox"/> Parkland				

<p>5. Is the proposed action,</p> <p>a. A permitted use under the zoning regulations?</p> <p>b. Consistent with the adopted comprehensive plan?</p>	<p>NO</p> <input type="checkbox"/> <input type="checkbox"/>	<p>YES</p> <input type="checkbox"/> <input type="checkbox"/>	<p>N/A</p> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
<p>6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?</p>	<p>NO</p> <input type="checkbox"/>	<p>YES</p> <input checked="" type="checkbox"/>	
<p>7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____</p>	<p>NO</p> <input checked="" type="checkbox"/>	<p>YES</p> <input type="checkbox"/>	
<p>8. a. Will the proposed action result in a substantial increase in traffic above present levels?</p> <p>b. Are public transportation service(s) available at or near the site of the proposed action?</p> <p>c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?</p>	<p>NO</p> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<p>YES</p> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
<p>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: _____</p>	<p>NO</p> <input type="checkbox"/>	<p>YES</p> <input checked="" type="checkbox"/>	
<p>10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____</p>	<p>NO</p> <input checked="" type="checkbox"/>	<p>YES</p> <input type="checkbox"/>	
<p>11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____</p>	<p>NO</p> <input checked="" type="checkbox"/>	<p>YES</p> <input type="checkbox"/>	
<p>12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?</p> <p>b. Is the proposed action located in an archeological sensitive area?</p>	<p>NO</p> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<p>YES</p> <input type="checkbox"/> <input type="checkbox"/>	
<p>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?</p> <p>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: _____</p>	<p>NO</p> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<p>YES</p> <input type="checkbox"/> <input type="checkbox"/>	
<p>14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:</p> <p><input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional</p> <p><input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban</p>			
<p>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?</p>	<p>NO</p> <input checked="" type="checkbox"/>	<p>YES</p> <input type="checkbox"/>	
<p>16. Is the project site located in the 100 year flood plain?</p>	<p>NO</p> <input checked="" type="checkbox"/>	<p>YES</p> <input type="checkbox"/>	
<p>17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,</p> <p>a. Will storm water discharges flow to adjacent properties? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES</p> <p>b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES</p> <p>_____</p> <p>_____</p>	<p>NO</p> <input checked="" type="checkbox"/> <input type="checkbox"/>	<p>YES</p> <input type="checkbox"/> <input type="checkbox"/>	

<p>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: _____ _____ _____</p>	<p>NO</p> <p><input checked="" type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p>
<p>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: _____ _____ _____</p>	<p>NO</p> <p><input checked="" type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p>
<p>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: _____ _____ _____</p>	<p>NO</p> <p><input checked="" type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p>
<p>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</p> <p>Applicant/sponsor name: Cricket Valley Energy Center LLC Date: 10/7/2016</p> <p>Signature: </p>		