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**UNITED STATES OF AMERICA**  
**FEDERAL ENERGY REGULATORY COMMISSION**

<b>Cogentrix of Alamosa, LLC</b>	)	
<b>James River Genco, LLC</b>	)	<b>Docket No. EC12-_____</b>
<b>Portsmouth Genco, LLC</b>	)	

**APPLICATION FOR AUTHORIZATION FOR  
DISPOSITION OF JURISDICTIONAL FACILITIES AND  
REQUEST FOR EXPEDITED ACTION**

**I. INTRODUCTION**

Pursuant to section 203(a)(1)(A) of the Federal Power Act, as amended (FPA),<sup>1</sup> and Part 33 of the regulations of the Federal Energy Regulatory Commission (FERC or Commission),<sup>2</sup> Cogentrix of Alamosa, LLC (Alamosa), James River Genco, LLC (James River), and Portsmouth Genco, LLC (Portsmouth) (collectively, the Project Companies or Applicants) hereby request Commission authorization for the disposition of jurisdictional facilities that will result from the transfer of certain indirect interests in the Project Companies from Cogentrix Energy, LLC (Cogentrix) to Carlyle Power Holdings, L.L.C. (Carlyle Power).<sup>3</sup> As a result of the proposed transaction (Transaction), Carlyle

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<sup>1</sup> 16 U.S.C. § 824b (2006).

<sup>2</sup> 18 C.F.R. Part 33 (2012).

<sup>3</sup> As part of the proposed transaction, Carlyle Power also will acquire an indirect interest in Cedar Bay Generating Company, Limited Partnership (Cedar Bay) and Sunray Energy, Inc. (Sunray). Cedar Bay owns a 250 MW cogeneration facility located in the Jacksonville Electric Authority balancing authority area (BAA). Sunray owns two solar parabolic trough generating facilities with a combined capacity of 43.8 MW located in the California Independent System Operator Corporation BAA. The generation facilities owned by Cedar Bay and Sunray are qualifying facilities (QFs) under the Public Utility Regulatory Policies Act of 1978, as amended (PURPA). See Docket Nos. QF89-126, QF84-434, and QF85-504. Further, neither Cedar Bay nor Sunray currently is required under FERC's PURPA regulations to have rate tariffs on file with FERC. As QFs, Cedar

Power will indirectly own: (i) 55% of the Series A Units and 100% of the Series B Units in a newly formed upstream owner of Alamosa (NewCo2);<sup>4</sup> and, (ii) Cogentrix's 50% ownership interest in each of James River and Portsmouth.<sup>5</sup> An affiliate of Cogentrix will own the remaining 45% of the Series A Units in NewCo2. Cogentrix will no longer hold any ownership interests in James River or Portsmouth following the Transaction.

As demonstrated herein, the Transaction will not have any adverse effect on competition, rates, or regulation and will not result in any cross-subsidization concerns.<sup>6</sup> Accordingly, the Transaction is consistent with the public interest and should be authorized by the Commission pursuant to FPA section 203.

The parties intend to close the Transaction as soon as possible after obtaining Commission authorization. Accordingly, Applicants respectfully request expedited action on this Application. Applicants submit that expedited consideration of this Application is warranted under the Commission's regulations to the extent that the

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Bay and Sunray are therefore eligible for the federal regulatory exemptions set forth in section 292.601 of the Commission's regulations, including the exemption from Commission regulation under FPA section 203. See 18 C.F.R. § 292.601; see also Revised Regulations Governing Small Power Production and Cogeneration Facilities, Order No. 671, 114 FERC ¶ 61,102 at P 102 (2006) (rejecting proposals to eliminate the QF exemption from the FPA section 203(a)(i) filing requirements); Pedricktown Cogeneration Company, LP, 115 FERC ¶ 61,147 (2006) ("We note that Order No. 671 . . . did not change the exemption accorded to a QF from the filing requirements of section 203 of the FPA."). Accordingly, Cedar Bay and Sunray are not included as applicants to this Application.

<sup>4</sup> Prior to the Transaction, the upstream ownership of the Project Companies will be restructured pursuant to an internal corporate reorganization described below in Part III(B). Because the ultimate upstream ownership of the Project Companies will not be affected by the internal corporate reorganization, the reorganization qualifies for blanket authorization under FPA sections 203(a)(1) and 203(a)(2) as set forth in 18 C.F.R. § 33.1(c)(6).

<sup>5</sup> Quantum Virginia Power, LLC (Quantum) indirectly owns the remaining 50% interest in each of James River and Portsmouth. Quantum's ownership interests will not be affected by the Transaction.

<sup>6</sup> See 18 C.F.R. § 2.26.

Application is not contested, because the Transaction does not involve a merger or any traditional utility with a franchised service territory or captive customers, is consistent with Commission precedent, and does not require an Appendix A analysis.<sup>7</sup> Therefore, Applicants request an abbreviated comment period and Commission action on this Application on or before October 29, 2012.<sup>8</sup>

## II. COMMUNICATIONS

Communications regarding this Application should be addressed to the following individuals:

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<sup>7</sup> See *id.* § 33.11(b).

<sup>8</sup> See *Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315 at P 194 (2005), *order on reh'g*, Order No. 669-A, 115 FERC ¶ 61,097 at P 155 (2006) (establishing a 21-day notice period for section 203 applications that do not require a detailed Appendix A competitive analysis and do not raise cross-subsidization concerns).

### **III. THE TRANSACTION**

#### **A. Parties to the Transaction**

##### **Alamosa**

Alamosa is a Delaware limited liability company that owns and operates a 30 MW concentrating photovoltaic solar generation facility located in the San Luis Valley in Alamosa County, Colorado (Alamosa Facility). The Alamosa Facility is interconnected to the transmission system owned and operated by the Public Service Company of Colorado (PSCo).

The Alamosa Facility operates as a qualifying facility (QF) under the Public Utility Regulatory Policies Act of 1978, as amended (PURPA).<sup>9</sup> Alamosa also is an exempt wholesale generator (EWG) under the Public Utility Holding Company Act of 2005 (PUHCA).<sup>10</sup> The Commission has authorized Alamosa to sell energy, capacity, and ancillary services at market-based rates.<sup>11</sup> All of the output of the Alamosa Facility is sold to PSCo under a long-term power purchase agreement that took effect upon commercial operation of the facility in early 2012.

Alamosa currently is a wholly-owned indirect subsidiary of Cogentrix.

##### **Portsmouth**

Portsmouth is a Delaware limited liability company that owns and operates a 120 MW electric generation facility located in Portsmouth, Virginia (Portsmouth Facility).

The Portsmouth Facility is interconnected to the transmission system owned by

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<sup>9</sup> See Docket No. QF11-418.

<sup>10</sup> Alamosa filed a Notice of Self-Certification of Exempt Wholesale Generator Status in Docket No. EG11-112-000 on July 25, 2011. On October 17, 2011, the Commission issued a Notice of Effectiveness of Exempt Wholesale Generator Status for Alamosa.

<sup>11</sup> Cogentrix of Alamosa, LLC, Docket No. ER11-4050-000 (Aug. 16, 2011) (unpublished letter order).

Dominion Virginia Power (Dominion) and operated by PJM Interconnection, L.L.C. (PJM).

Portsmouth is an EWG under PUHCA.<sup>12</sup> The Commission has authorized Portsmouth to sell energy, capacity, and ancillary services at market-based rates.<sup>13</sup> Portsmouth sells the full net electrical output of its facility (115 MW) to Northern Virginia Electric Cooperative (NOVEC) pursuant to a long-term power purchase agreement that has been in effect since 2008.

Portsmouth currently is indirectly owned by Cogentrix (50%) and Quantum Virginia Power, LLC (Quantum) (50%).

### **James River**

James River is a Delaware limited liability company that owns and operates a 120 MW electric generation facility located in Hopewell, Virginia (Hopewell Facility). The Hopewell Facility is interconnected to the transmission system owned by Dominion and operated by PJM.

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<sup>12</sup> Portsmouth's predecessor-in-interest, Cogentrix Virginia Leasing Corporation (CVLC), filed a Notice of Self-Certification of Exempt Wholesale Generator Status in Docket No. EG08-16-000 on November 9, 2007. On February 26, 2008, the Commission issued a Notice of Effectiveness of Exempt Wholesale Generator Status for CVLC. On June 28, 2011, CVLC was converted to a limited liability company and changed its name to Portsmouth Genco, LLC. Subsequently, on July 21, 2011, Portsmouth filed a notice of non-material change in Docket No. EG08-16-000 to report these changes.

<sup>13</sup> See Cogentrix Virginia Leasing Corp. et al., Docket No. ER08-201-000 et al. (Jan. 10, 2008) (unpublished letter order); see also James River Genco, LLC, et al., Docket Nos. ER11-4028-000 et al. (Sept. 1, 2011) (unpublished letter order accepting notice of succession).

The Hopewell Facility currently operates as a QF under PURPA.<sup>14</sup> James River also is certified as an EWG under PUHCA.<sup>15</sup> The Commission has authorized James River to sell energy, capacity, and ancillary services at market-based rates.<sup>16</sup> The Hopewell Facility has a steam host that consumes the steam equivalent of approximately 26 MW of the facility's electrical output. James River sells the remaining net electrical output from its facility (89 MW) to NOVEC pursuant to a long-term power purchase agreement that has been in effect since 2008.

James River currently is indirectly owned by Cogentrix (50%) and Quantum (50%).

### **Cogentrix**

Cogentrix is a wholly-owned indirect subsidiary of The Goldman Sachs Group, Inc. (GS Group). GS Group is a Delaware corporation and a bank holding company under the Bank Holding Company Act. GS Group, together with its subsidiaries, is a leading global investment banking, securities, and investment management firm that provides a wide range of services worldwide to a substantial and diversified client base that includes corporations, financial institutions, governments, and high-net worth individuals.

<sup>14</sup> See Cogentrix of Virginia, Inc., 34 FERC ¶ 62,311 (1986) and the notices of self-recertification filed in Docket Nos. QF85-736.

<sup>15</sup> James River's predecessor-in-interest, James River Cogeneration Company (JRCC), filed a Notice of Self-Certification of Exempt Wholesale Generator Status in Docket No. EG08-15-000 on November 9, 2007. On February 26, 2008, the Commission issued a Notice of Effectiveness of Exempt Wholesale Generator Status for JRCC. On June 27, 2011, JRCC was converted to a limited liability company and changed its name to James River Genco, LLC. Subsequently, on July 21, 2011, James River filed a notice of non-material change in Docket No. EG08-15-000 to report these changes.

<sup>16</sup> See Cogentrix Virginia Leasing Corp. and James River Cogeneration Co., Docket Nos. ER08-201-000, et al. (Jan. 10, 2008) (unpublished letter order); see also James River Genco, LLC, et al., Docket Nos. ER11-4027-000 et al. (Sept. 1, 2011) (unpublished letter order accepting notice of succession).

GS Group is affiliated with J. Aron & Company (J. Aron), an international commodities dealer that is primarily engaged in the purchase, sale, processing, storage, and shipment of various commodities, including electricity, natural gas, precious metals, base metals, currencies, crude oil, and petroleum products. J. Aron also develops and provides products that assist suppliers and users of these commodities in managing risks associated with their businesses. The Commission has authorized J. Aron to sell energy, capacity, and ancillary services at market-based rates.<sup>17</sup> GS Group also is affiliated with Power Receivable Finance, LLC, a power marketer whose market-based rate authority is limited to the balancing authority area of the California Independent System Operator Corporation.<sup>18</sup>

GS Group is affiliated with certain entities that own or control electric generation facilities in the United States. Aside from the Alamosa Facility, none of these facilities is located in the PSCo balancing authority area (BAA).<sup>19</sup> A description of all of GS Group's affiliated generating facilities in the United States is contained in Exhibit B.

Investment vehicles associated with GS Group hold interests in Energy Future Holdings Corp. (EFH).<sup>20</sup> EFH is a holding company with energy assets located primarily within the Electric Reliability Council of Texas (ERCOT). EFH's affiliates include Luminant Energy Company LLC (Luminant Energy), a power marketer formerly known

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<sup>17</sup> See J. Aron & Company, Letter Order, Docket No. ER02-237-000 (Dec. 31, 2001) (granting market-based rate authority); AER NY-Gen. LLC, Letter Order, Docket Nos. ER10-2937-000, et al. (accepting for filing eTariff baseline filing).

<sup>18</sup> See Power Receivable Finance, LLC, Letter Order, Docket Nos. ER11-2588-000, et al. (May 4, 2011). On September 21, 2012, Power Receivable Finance, LLC filed a Notice of Cancellation of its market-based rate tariff in Docket No. ER12-2675-000 requesting cancellation of its tariff effective November 20, 2012.

<sup>19</sup> GS Group is affiliated with another generator in the PJM BAA in addition to James River and Portsmouth; however, Alamosa is the only Project Company in which GS Group will retain an interest following the Transaction.

<sup>20</sup> EFH was formerly known as TXU Corp.

as TXU Portfolio Management Company LP that is authorized by the Commission to sell electricity at market-based rates,<sup>21</sup> and Oncor Electric Delivery Company LLC (Oncor). Oncor owns and operates electric transmission facilities in ERCOT, except for a 100 MW undivided interest in the East High Voltage Direct Current (EHVDC) Interconnection between ERCOT and the Southwest Power Pool. Transmission service over the EHVDC Interconnection is subject to the Commission's open-access requirements.<sup>22</sup>

Aside from GS Group's interest in Oncor, neither GS Group nor any of its affiliates currently owns or controls any electric transmission or distribution facilities in the United States, other than the limited interconnection facilities required to connect individual generating facilities to the transmission grid.<sup>23</sup> Further, GS Group is not affiliated with any franchised public utility. Affiliates of GS Group own or control certain inputs to electric power production, as defined in section 35.36 of the Commission's regulations,<sup>24</sup> none of which is located in the PSCo BAA. Exhibit B identifies, among other things, any affiliated entities that own or control natural gas intrastate pipelines and/or gas storage facilities in other markets.

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<sup>21</sup> See TXU Portfolio Management Co. LP, Letter Order, Docket No. ER03-506-000 (Apr. 29, 2003).

<sup>22</sup> Oncor Electric Delivery Company, 120 FERC ¶ 61,215 at P 3 (2007).

<sup>23</sup> GS Group also is affiliated with Power Network New Mexico, LLC (Power Network). Power Network is wholly-owned by funds affiliated with the GS Infrastructure Partners family of funds, which is managed by direct or indirect subsidiaries of GS Group. Power Network is developing a new 1,500 MW merchant transmission collector system for renewable power in New Mexico. Power Network does not currently own or control any electric generation or transmission facilities.

<sup>24</sup> 18 C.F.R. § 35.36, as amended by Order No. 697-A, defines "inputs to electric power production" as "intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development; physical coal supply sources and ownership of or control over who may access transportation of coal supplies."

### Carlyle Power

Carlyle Power is a Delaware limited liability company owned by Carlyle Infrastructure Partners, L.P. (CIP) (63.09%), CIP ECI, L.P. (ECI) (33.12%), and CIP Coinvestment, L.P. (3.79%) (collectively, the Carlyle Funds). The Carlyle Funds are investment fund vehicles sponsored by The Carlyle Group, L.P. (The Carlyle Group), a global alternative investment management firm which is a publicly traded entity listed on NASDAQ. All of the management, operational, and investment decisions with respect to the Carlyle Funds are made by Carlyle Infrastructure General Partner, L.P. (CIGP), the general partner to these funds. Carlyle Investment Management L.L.C., an affiliated entity that is a registered investment adviser with the U.S. Securities and Exchange Commission, provides investment advisory services to the Carlyle Funds in return for a management fee, but does not have any decision-making authority with respect to the Carlyle Funds or CIGP.

The limited partners of the Carlyle Funds are passive investors. Three investors in CIP and two in ECI have capital commitments of more than 10% of the total capital committed to the relevant fund, but these investors do not exert any day-to-day authority over the funds, possess only limited voting rights that do not affect the ability of CIP and ECI to conduct business, and are not principally in the business of producing, selling, or transmitting electric power. None of the three investors that have greater than 10% interests in CIP serve on the board of CIP or on the investment advisory committee of CIP. Both of the investors that have greater than 10% interests in ECI serve on the investment advisory committee of that fund. The investment advisory committee of ECI does not have any consent or veto rights over any transactions of the fund and has no

control over day-to-day operations. The role of the investment advisory committee is to review potential conflicts; it may also allow for modifications to the investment guidelines set forth in the organizational document of the fund (the limited partnership agreement).

The general partner of CIGP is TC Group Infrastructure, L.L.C., and the sole member of TC Group Infrastructure, L.L.C. is TC Group Sub L.P. TC Group Sub L.P. is the indirect subsidiary of Carlyle Holdings I GP Inc. (Holdings I), a Delaware corporation. Holdings I is a direct subsidiary of The Carlyle Group. While The Carlyle Group and its general partner, Carlyle Group Management L.L.C. (CGM) are the ultimate upstream owners of the general partner interests in the Carlyle Funds and their parent entities, all investment, managerial, and operational decisions for the Carlyle Funds are made by CIGP. The business and operations of CGM is managed by its board of directors.

The Carlyle Group also indirectly controls two investment funds called Carlyle Strategic Partners II, LP and CSP Co-Investment II, LP (collectively, the CSP II Entities). The CSP II Entities are owners of non-voting debt securities of Somerset Cayuga Holding Company, Inc. (SCHC) that can be converted into SCHC common stock. SCHC owns Somerset Operating Company, LLC (Somerset) and Cayuga Operating Company, LLC (Cayuga). Somerset owns and operates the Somerset Facility, a single coal-fired generating unit with a summer rating of 678 MW located in Barker, New York. Cayuga owns and operates the Cayuga Facility, which consists of two coal-fired generating units with a combined summer rating of 313 MW located in Lansing, New York. Both the

Somerset Facility and the Cayuga Facility are interconnected to the transmission grid operated by the New York Independent System Operator, Inc. (NYISO).

The Carlyle Group holds non-controlling interests in two investment funds that invest in energy-related companies: Riverstone/Carlyle Global Energy and Power Fund, IV, L.P. (R/C Fund IV) and Riverstone/Carlyle Renewable and Alternative Energy Fund II, L.P. (R/C Renewable Fund II). The general structure of these funds is that day-to-day control lies with an upstream general partner that is a wholly-owned subsidiary of Riverstone Holdings, LLC (Riverstone), the sponsor of the funds, while The Carlyle Group and Riverstone each indirectly hold an upstream limited partnership interest in the funds to share the carried interest generated by the funds. With respect to R/C Fund IV, The Carlyle Group, through its subsidiary TCG Energy Investment Holdings III Cayman, L.P. (Fund IV ILP) owns a limited partnership interest in Riverstone/Carlyle Energy Investment Holdings IV, L.P. (R/C Holdings IV). R/C Holdings IV, in turn, owns a limited partnership interest in Riverstone/Carlyle Energy Partners IV, L.P. (R/C EP IV). The general partner interests in R/C EP IV are held by R/C Energy GP IV, LLC (R/C GP IV), a wholly-owned subsidiary of Riverstone.<sup>25</sup> R/C GP IV controls the day-to-day operations of R/C EP IV, which is the general partner of R/C Fund IV. As a result, R/C GP IV has the decision-making authority for R/C Fund IV.

With respect to R/C Renewable Fund II, the general partner interests in R/C Renewable Fund II are held by either Riverstone/Carlyle Renewable Energy Partners II, L.L.C or Riverstone/Carlyle Renewable Energy Partners II, L.P. (collectively, Renewable GP II). The general partner of Renewable GP II is R/C Renewable Energy GP II, LLC

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<sup>25</sup> See the Application requesting section 203 approval filed in Docket No. EC12-137-000 on August 23, 2012 for a full description of Riverstone's energy company assets, which includes assets owned by R/C Fund IV and other Riverstone funds.

(R/C Renewable GP II), a wholly-owned subsidiary of Riverstone. Riverstone/Carlyle Renewable Energy Investment Holdings II, L.P. (Renewable ILP II) holds a limited partnership interest in Renewable GP II. The general partner of Renewable ILP II is R/C Renewable Energy II ILP GP LLC, a wholly-owned subsidiary of Riverstone. The limited partners of Renewable ILP II are a Riverstone-affiliated entity and TCG Energy Investment Holdings III Cayman SI, L.P. (Renewable Fund II ILP), a wholly-owned, indirect subsidiary of The Carlyle Group. Decision-making authority for R/C Renewable Fund II is held by R/C Renewable GP II.

The Carlyle Group's interests in R/C Fund IV and R/C Renewable Fund II are passive interests for the purpose of the Commission's analysis that are held through limited partnership interests in upstream companies from the funds. The Commission uses a three-part test to determine whether an owner plays a passive role in the operation of another entity. First, the Commission considers if the interest gives authority "to manage, direct or control the day-to-day wholesale power sales activities" of the jurisdictional entity.<sup>26</sup> Pursuant to the contract setting forth the organization of R/C Fund IV and R/C Renewable Fund II, The Carlyle Group is entitled to two representatives on the Board of Managers of the controlling entity for each fund, but Riverstone controls five positions on the board of R/C Fund IV and six positions on the board of R/C Renewable Fund II. Because a majority vote of the Board of Managers is required to authorize actions of the controlling entities, The Carlyle Group is unable to exercise control over day-to-day operations of the funds.

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<sup>26</sup> FPA Section 203 Supplemental Policy Statement, 120 FERC ¶ 61,060 at P 54 (2007) (Supplemental Policy Statement).

Second, the Commission considers whether the company has only limited rights necessary to protect its economic investment interests.<sup>27</sup> The Carlyle Group does have certain limited consent rights necessary to protect its investments. Examples of such consent rights include consent to affiliate transactions between Riverstone and the funds, to amendments of the organizational agreements of the funds and certain upstream owners, to the investment in the funds by a competitor of The Carlyle Group, to the issuance of debt, and to the use of the name “Carlyle” in connection with the funds. None of these consent rights gives Carlyle control over the funds.

Third, the Commission considers whether the owner has a “principal business other than producing, selling, or transmitting electric power.”<sup>28</sup> Fund IV ILP and Renewable Fund II ILP are entities that exist solely to hold an upstream limited partnership interest in the Riverstone Funds and receive carried interest from those funds, with a principal business that does not involve producing, selling, or transmitting power. All three elements of the Commission’s test support the conclusion that Fund IV ILP and Renewable Fund II ILP and, by extension, The Carlyle Group and its subsidiaries, are passive investors in the R/C Funds. Therefore, the R/C Funds and their jurisdictional subsidiaries are not considered as part of this Application.<sup>29</sup>

The Carlyle Group is also a sponsor of other funds in which it shares control with Riverstone: the Carlyle / Riverstone Global Energy and Power Fund I, Carlyle / Riverstone Global Energy and Power Fund II, Carlyle / Riverstone Global Energy and Power Fund III, and Carlyle / Riverstone Renewable Energy Partners, L.P. However,

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<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> A full description of the holdings of the R/C Funds is contained in the market-based rate application filed by Raven Power Marketing LLC in Docket No. ER12-2513-000.

none of these additional funds own any interests in companies that own electric generation, transmission, or distribution assets.

Aside from Carlyle Power's affiliation with SCHC, which owns only the limited interconnection facilities required to connect generating facilities to the transmission grid, neither Carlyle Power nor any of its affiliates currently own or control any electric transmission or distribution facilities in the United States. Further, Carlyle Power is not affiliated with any franchised public utility. Affiliates of Carlyle Power do not own or control any inputs to electric power production, as defined in section 35.36 of the Commission's regulations.<sup>30</sup>

#### **B. The Transaction**

Prior to the Transaction, the upstream ownership of the Project Companies will be restructured pursuant to an internal corporate reorganization. Specifically, Cogentrix will transfer all of its indirect ownership interests in James River and Portsmouth to Rhea Holdco, LLC (Rhea Holdco), a newly formed wholly-owned direct subsidiary of Cogentrix.<sup>31</sup> As a result, Rhea Holdco will indirectly own 50% of the membership interests in each of James River and Portsmouth. Quantum's indirect membership interests in James River and Portsmouth will not be affected by the reorganization. In addition, NewCo2 will be created as an intermediate holding company that will indirectly own Alamosa after the Transaction, as described below.

Pursuant to the Transaction, Carlyle Power will acquire Cogentrix's 100% direct membership interest in Rhea Holdco. As a result, Carlyle Power will indirectly own 50%

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<sup>30</sup> See 18 C.F.R. § 35.36.

<sup>31</sup> Because the ultimate upstream ownership of the Project Companies will not be affected by the internal corporate reorganization, the reorganization qualifies for blanket authorization under FPA sections 203(a)(1) and 203(a)(2) as set forth in 18 C.F.R. § 33.1(c)(6).

of the membership interests in each of James River and Portsmouth. Cogentrix will not retain any ownership interests in James River and Portsmouth following the Transaction. Quantum will continue to indirectly own the remaining membership interests in James River and Portsmouth.

Through a series of steps, Carlyle Power also will indirectly acquire 55% of the Series A Units and 100% of the Series B Units in NewCo2. NewCo2 will own 100% of the indirect membership interests in Alamosa following a series of simultaneous membership contributions. Carlyle Power will indirectly own its Series A and Series B Units in NewCo2 through Rhea Holdco.<sup>32</sup>

The details of the Transaction are set forth in the Purchase and Sale Agreement dated September 6, 2012 (Purchase Agreement), a copy of which is attached to this Application as confidential Exhibit I. Applicants request confidential treatment of the Purchase Agreement, because it contains sensitive commercial and financial information that is not publicly available. In addition, charts depicting the upstream ownership of the Project Companies before and after the Transaction are attached to this Application as Exhibit C.

As described below, the Transaction will have no adverse effect on competition, rates, or regulation, and does not raise any cross-subsidization issues. Accordingly, Applicants request that the Commission issue an order approving the Transaction as described herein.

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<sup>32</sup> The Series A Units and Series B Units have different rights and restrictions; however, both Carlyle Power and Cogentrix will have representatives on NewCo2's board of managers.

**C. Description of the Facilities to Be Transferred for Which FPA Section 203 Approval is Requested**

The jurisdictional facilities that may be affected by the Transaction consist of the Project Companies' market-based rate tariffs and any related agreements, books, and records, and the interconnection equipment associated with the Portsmouth Facility. The interconnection equipment associated with the Alamosa Facility and the Hopewell Facility is part of a QF that qualifies for the exemption from regulation under FPA section 203 set forth in 18 C.F.R. § 292.601.<sup>33</sup>

**IV. REQUEST FOR PRIVILEGED AND CONFIDENTIAL TREATMENT**

As noted above, pursuant to 18 C.F.R. § 388.112, Applicants request privileged and confidential treatment of Exhibit I, because it contains sensitive commercial and financial information that is privileged or confidential and not publicly available. Should Exhibit I become public, it would likely harm the parties in future negotiations for similar transactions and in structuring future investments. A proposed form of protective order that complies with the Commission's model protective order is attached to this Application as Attachment 2.

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<sup>33</sup> See 18 C.F.R. §§ 292.101(b)(1) and 292.601(c); see also Revised Regulations Governing Small Power Production and Cogeneration Facilities, Order No. 671, 114 FERC ¶ 61,102 at P 102 (2006) (rejecting proposals to eliminate the QF exemption from the FPA section 203(a)(1) filing requirements); Pedricktown Cogeneration Co., LP, 115 FERC ¶ 61,147, at P 19 and n.13 (2006) ("We note that Order No. 671 . . . did not change the exemption accorded to a QF from the filing requirements of section 203 of the FPA."); Midway Sunset Cogeneration Co., 115 FERC ¶ 61,184 at P 25 and n.24 (2006) (same).

## V. REQUEST FOR SECTION 203 APPROVAL

### A. Applicability of Section 203

Applicants seek Commission authorization for the Transaction under section 203(a)(1)(A), because it involves the transfer of indirect ownership interests in the Project Companies' jurisdictional facilities to a new upstream owner.<sup>34</sup>

### B. Satisfaction of Section 203 Criteria

Section 203(a) of the FPA provides that the Commission will approve jurisdictional transactions that are "consistent with the public interest." As explained in the Merger Policy Statement and in Order Nos. 642 and 669,<sup>35</sup> the Commission examines three factors in analyzing whether a proposed transaction is consistent with the public interest: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation. In addition, section 203 requires a showing that a proposed transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. As explained below, the Transaction clearly is consistent with the public interest, does not result in cross-subsidization, and should be approved.

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<sup>34</sup> See Central Vermont Public Service Corporation, 39 FERC ¶ 61,295 (1987); see also Central Illinois Public Service Company, 42 FERC ¶ 61,073 (1988); United Illuminating Company, 90 FERC ¶ 62,232 (2000); Public Service Company of New Mexico, 95 FERC ¶ 62,296 (2001).

<sup>35</sup> Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, FERC Stats. and Regs. ¶ 31,044 (1996), order on reconsideration, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); Order No. 642, 93 FERC ¶ 61,164 (2000), order on reh'g, Order No. 642-A, 94 FERC ¶ 61,289 (2001) (implementing the policies stated in the Merger Policy Statement); Transactions Subject to FPA Section 203, Order No. 669, 113 FERC ¶ 61,315 at P 194 (2005), order on reh'g, Order No. 669-A, 115 FERC ¶ 61,097 (2006), order on reh'g, Order No. 669-B, 116 FERC ¶ 61,076 (2006).

### C. No Adverse Effect on Competition

The Transaction will have no adverse effect on competition. The Commission has found that the Project Companies do not have horizontal market power in their relevant markets – the PSCo BAA for Alamosa and the PJM BAA for Portsmouth and James River – under their current ownership.<sup>36</sup> As noted above, Carlyle Power is not affiliated with any generation capacity in the PSCo BAA or PJM BAA for purposes of this Application. Carlyle Power is affiliated with 922 MW of generation in NYISO, a first-tier market to the PJM BAA,<sup>37</sup> but Carlyle Power’s pro rata share of import capacity from NYISO would be so limited, and the PJM BAA is sufficiently large, that the impact of any such imports would be *de minimis*. Therefore, the Transaction will not result in any new combination of electric generating assets that could have an impact on the competitive situation in the relevant markets.

Further, the entire electrical output of the Project Companies’ facilities is committed to unaffiliated third parties under long-term agreements. The Commission previously has found no adverse effect on competition when the output of a generating

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<sup>36</sup> Cogentrix of Alamosa, LLC, Docket No. ER11-4050-000 (Aug. 16, 2011) (unpublished letter order granting Alamosa market-based rate authority); Portsmouth Genco, LLC, et al., Docket Nos. ER10-2278-001 et al. (Apr. 13, 2012) (unpublished letter order accepting the June 30, 2011 updated market power analysis for Portsmouth and James River as supplemented on October 24, 2011 and December 28, 2011 to reflect Quantum’s ownership). As indicated in the underlying filings by Portsmouth and James River, Quantum and its affiliates do not own a 10% or greater voting interest in or control any other electric generating facilities in the PJM BAA.

<sup>37</sup> Although the sum of the nameplate capacity of facilities owned by SCHC is 991 MW, the aggregate gross capacity of these facilities is 922 MW. See AES Eastern Energy, L.P., et al., 139 FERC ¶ 62,201 (2012).

facility is fully committed under long-term agreements.<sup>38</sup> Accordingly, the Transaction will have no adverse effect on horizontal market power in the relevant markets.

The Transaction also will not raise any vertical market power concerns. Neither Carlyle Power nor any of its affiliates owns or controls electric transmission facilities in the United States, other than the limited facilities necessary to interconnect individual generating units to the transmission grid. In addition, neither Carlyle Group nor any of its affiliates owns or controls any inputs to electric power production, which could be used to prevent competitors from entering the Project Companies' relevant markets. Therefore, the Transaction will have no adverse effect on vertical market power in the relevant markets.

**D. No Adverse Effect on Rates**

The Transaction will have no adverse effect on rates. The Project Companies' rates will continue to be market-driven, rather than cost-based. Moreover, the Transaction will have no impact on the rates under the long-term agreements pursuant to which the Project Companies sell all of their output. The Transaction does not involve transmission rates or transmission customers. Accordingly, the Transaction will have no adverse effect on wholesale ratepayers or transmission customers.

**E. No Impairment of the Effectiveness of State or Federal Regulation**

The Transaction will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate Applicants and their affiliates. The

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<sup>38</sup> See Nevada Sun-Peak Ltd. P'ship, 97 FERC ¶ 62,017 (2001) (finding no adverse effect on competition when the output of a generating facility is fully committed under long-term agreements); American Ref-Fuel Co. of Essex County, 94 FERC ¶ 62,113 (2001) (same); Morgan Stanley Capital Group, Inc., 69 FERC ¶ 61,175 (1994) (citing Enron Power Mktg., Inc., 65 FERC ¶ 61,305 (1993) (finding committed power does not confer generation market power upon an applicant for market-based rate authority)).

extent to which Applicants and their affiliates are subject to the jurisdiction of the Commission (or any other regulatory agency or office) will not change as a result of the Transaction.

**F. No Potential for Cross-Subsidization**

Section 203(a)(4) of the FPA requires the Commission to determine whether a transaction will “result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company” and, if so, whether the cross-subsidy, pledge, or encumbrance will be consistent with the public interest.<sup>39</sup> The Commission has stated that the concern over cross-subsidization is principally a concern over the effect of a proposed transaction on captive ratepayers.<sup>40</sup>

Because none of the parties to the Transaction is a traditional public utility that has captive ratepayers in the United States, the Transaction is within the scope of the “safe harbor” for transactions in which “no franchised public utility with captive customers is involved in the transaction” and does not raise any issue with respect to cross-subsidization.<sup>41</sup> Further, because none of the parties to the Transaction is affiliated with a traditional public utility that has captive customers in the United States or that owns or provides transmission service over jurisdictional transmission facilities in the United States, the Transaction will not result in any pledge or encumbrance of utility assets for the benefit of an associate company.

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<sup>39</sup> An associate company is any company in the same utility holding company system. A non-utility associate company is any associate company in a holding company system other than a public utility that has wholesale or retail customers served under cost-based rate regulation. See 18 C.F.R. § 33.1(b)(2) and (4).

<sup>40</sup> Order No. 669 at P 167.

<sup>41</sup> Supplemental Policy Statement at P 17.

In Order Nos. 669, 669-A, and 669-B, the Commission established a four-part test that applicants must satisfy in order to demonstrate that the proposed transaction will not result in improper cross-subsidization, or the pledge or encumbrance of utility assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities. Under this test, the Commission examines whether, at the time of the transaction or in the future, the proposed transaction will result in: (i) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (ii) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (iii) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (iv) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA. None of these circumstances is present in this case.

Consistent with the requirements of Order Nos. 669, 669-A, and 669-B, Applicants include verifications regarding each of these factors in Exhibit M to this Application, which relates to the time of the Transaction as well as the future, and is

based on facts and circumstances known or reasonably foreseeable to Applicants.<sup>42</sup>

Accordingly, the Transaction does not raise any cross-subsidization concerns.

## **VI. INFORMATION AND EXHIBITS REQUIRED BY SECTION 33.2 OF THE COMMISSION'S REGULATIONS**

In accordance with section 33.2 of the Commission's regulations, Applicants provide the following information:

### **(a) Names and principal business offices of Applicants**

Cogentrix of Alamosa, LLC  
c/o Cogentrix Energy, LLC  
9405 Arrowpoint Boulevard  
Charlotte, NC 28273

James River Genco, LLC  
c/o Cogentrix Energy, LLC  
9405 Arrowpoint Boulevard  
Charlotte, NC 28273

Portsmouth Genco, LLC  
c/o Cogentrix Energy, LLC  
9405 Arrowpoint Boulevard  
Charlotte, NC 28273

### **(b) Names and addresses of the persons authorized to receive notices and communications**

The names and addresses of persons authorized to receive notices and communications with respect to this Application are identified in Part II above.

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<sup>42</sup> See Order No. 669 at P 169 (stating that such verifications may be accepted in lieu of any other explanation with respect to cross-subsidization and encumbrance concerns).

**(c) Description of Applicants, including****(1) Business activities of Applicants**

The business activities of Applicants are described in Part III(A) above. Accordingly, Applicants request a waiver of the requirement to file Exhibit A.

**(2) Energy subsidiaries and energy affiliates and their business activities**

The U.S. energy affiliates of GS Group and Carlyle Power are listed in Exhibit B to this Application. Applicants request a waiver of the requirement to list any energy affiliates of Quantum in Exhibit B, because Quantum's indirect membership interests in James River and Portsmouth will not be affected by the Transaction.<sup>43</sup>

**(3) Organizational Charts**

See Exhibit C to this Application.

**(4) Business agreements**

See Exhibit D to this Application. The Transaction involves no jurisdictional arrangements among the parties apart from those described in Part III(B) above.

**(5) Common officers or directors**

There are no common officers or directors among: (i) Cogentrix and its current affiliates, including the Project Companies, and (ii)

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<sup>43</sup> Further, as noted above, Quantum and its affiliates do not own a 10% or greater voting interest in or control any electric generating facilities in the PJM BAA other than the Hopewell Facility and Portsmouth Facility. See supra note 36.

Carlyle Power and its current affiliates. Therefore, Applicants request a waiver of the requirement to file Exhibit E.<sup>44</sup>

**(6) Description of customers**

See Exhibit F to this Application.

**(d) Description of jurisdictional facilities**

The jurisdictional facilities affected by the Transaction are described in Part III(C) above and Exhibit G.

**(e) Narrative description of the Transaction**

The description of the Transaction is set forth in Part III above, which includes identification of the parties, description of the jurisdictional facilities associated with or affected by the Transaction, and the effect of the Transaction on such jurisdictional facilities. Moreover, the consideration for the Transaction, as described in Exhibit I, was the result of arm's-length negotiations among the parties to the Transaction.

Accordingly, Applicants request a waiver of the requirement to file Exhibit H.

**(f) Contracts related to the proposed Transaction**

A copy of the Purchase Agreement is attached as Exhibit I. Applicants commit that the Transaction will be consummated in a manner consistent with that described in the Purchase Agreement and this Application. Pursuant to 18 C.F.R. § 388.112, Applicants request confidential and privileged treatment of Exhibit I, as discussed in Part IV above. To the extent necessary, Applicants also request a waiver of the requirements of 18 C.F.R. § 33.2(f) as to other incidental contracts and written instruments that may be entered into by the parties, none of which will be inconsistent with the Purchase

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<sup>44</sup> To the extent that any jurisdictional interlocking directorates may result from the Transaction, the affected individuals will comply with any applicable filing requirements under 18 C.F.R. Part 45.

Agreement contained in Exhibit I or the description of the Transaction set forth in this Application.<sup>45</sup>

**(g) Consistency of the Transaction with the public interest**

As discussed above in Part V, the facts provided in this Application are sufficient to demonstrate that the Transaction will be in the public interest. Accordingly, Applicants request a waiver of the requirement to file Exhibit J.

**(h) Maps**

The only physical jurisdictional facilities affected by the Transaction are minor interconnection facilities associated with the Portsmouth Facility.<sup>46</sup> Accordingly, Applicants request a waiver of the requirement to file Exhibit K.

**(i) Regulatory orders**

The parties to the Transaction will obtain any necessary regulatory approval under the Hart-Scott-Rodino Act. Applicants are not required to obtain any other licenses, orders, or approvals from other regulatory bodies in connection with the Transaction. Accordingly, Applicants request a waiver of the requirement to file Exhibit L.

**(j) Cross-subsidization**

Because the Transaction does not involve a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, there is no issue with respect to cross-subsidization. Statements supporting the fact that the Transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company are provided in Exhibit M.

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<sup>45</sup> See EIF Berkshire Holdings, LLC, 116 FERC ¶ 61,273 (2006).

<sup>46</sup> See supra Part III(C).

**VII. INFORMATION ON PROPOSED ACCOUNTING ENTRIES REQUIRED BY SECTION 33.5 OF THE COMMISSION'S REGULATIONS**

Applicants are not required to maintain their books of account in accordance with the Commission's Uniform System of Accounts. Accordingly, section 33.5 of the Commission's regulations is not applicable to this Application.

**VIII. VERIFICATIONS**

Pursuant to section 33.7 of the Commission's regulations, signed verifications by persons having authority with respect thereto and having knowledge of the matters set forth in this Application are included as Attachment 1.

## IX. CONCLUSION

For the reasons set forth above, Applicants request that the Commission: (i) issue an order approving the Transaction; (ii) grant the waivers requested herein; and (iii) grant Applicants' request for confidential treatment of Exhibit I. Applicants respectfully request that the Commission grant expedited treatment to this Application and issue its order on or before October 29, 2012, so as to permit closing of the Transaction as soon as possible thereafter.

Respectfully submitted,

/s/ Jessica C. Friedman  
Margaret A. Moore  
Jessica C. Friedman  
Van Ness Feldman, P.C.  
1050 Thomas Jefferson St., N.W.  
Washington, D.C. 20007  
(202) 298-1800  
(202) 338-2416 (fax)

Counsel for Applicants

September 27, 2012

**Exhibits A, E, H, J, K, and L**

**Applicants have requested a waiver of the requirement to file**

**Exhibits A, E, H, J, K, and L**

**AFFILIATES OF THE GOLDMAN SACHS GROUP, INC.  
WITH MARKET-BASED RATE AUTHORITY AND GENERATION ASSETS**

**AND**

**AFFILIATES OF THE GOLDMAN SACHS GROUP, INC.  
WITH ELECTRIC TRANSMISSION ASSETS AND/OR NATURAL GAS INTRASTATE PIPELINES  
AND/OR GAS STORAGE FACILITIES**

**Affiliates of The Goldman Sachs Group, Inc. with Market-Based Rate Authority and Generation Assets<sup>1</sup>**  
**(as of September 2012)**

<b>Filing Entity and its Energy Affiliates</b>	<b>Docket # Where MBR Authority was Granted</b>	<b>Generation Name</b>	<b>Owned by</b>	<b>Controlled by</b>	<b>Date Control Transferred</b>	<b>Balancing Authority Area</b>	<b>Geographic Region</b>	<b>In-Service Date</b>	<b>Nameplate and/or Seasonal Rating</b>
<b>J. Aron &amp; Company</b>	ER02-237	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
<b>Power Network New Mexico, LLC</b>	ER12-605	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
<b>Luminant Energy Company LLC (f/k/a TXU Portfolio Management Company LP)</b>	ER99-3333 ER03-506 ER06-515	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
<b>Power Receivable Finance, LLC</b>	ER03-1151	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)	(NA)
<b>CleanLight Energy, L.L.C.</b>	(NA)	CleanLight Energy, L.L.C.	CleanLight Energy, L.L.C.	CleanLight Energy, L.L.C.	(NA)	PJM	Northeast	11/2011	2.5 MW

<sup>1</sup> This chart does not include affiliates operating solely within ERCOT.

<b>Filing Entity and its Energy Affiliates</b>	<b>Docket # Where MBR Authority was Granted</b>	<b>Generation Name</b>	<b>Owned by</b>	<b>Controlled by</b>	<b>Date Control Transferred</b>	<b>Balancing Authority Area</b>	<b>Geographic Region</b>	<b>In-Service Date</b>	<b>Nameplate and/or Seasonal Rating</b>
<b>James River Genco, LLC (f/k/a James River Cogeneration Company)</b>	ER08-202	James River Genco, LLC	James River Genco, LLC	James River Genco, LLC	(NA)	PJM	Northeast	1/1998	120 MW
<b>Northampton Generating Company, L.P.</b>	ER12-281	Northampton Generating Company, L.P.	Northampton Generating Company, L.P.	Northampton Generating Company, L.P.	(NA)	PJM	Northeast	8/1995	134 MW
<b>Portsmouth Genco, LLC (f/k/a Cogentrix Virginia Leasing Corporation)</b>	ER08-201	Portsmouth Genco, LLC	Portsmouth Genco, LLC	Portsmouth Genco, LLC	(NA)	PJM	Northeast	4/1998 5/1988	120 MW
<b>Raft River Energy I LLC</b>	(NA)	Raft River Energy I LLC	Raft River Energy I LLC	Raft River Energy I LLC	(NA)	Idaho Power	Northwest	1/2008	13 MW
<b>Rock River I, LLC</b>	ER01-2742	Rock River I, LLC	Rock River I, LLC	Rock River I, LLC	(NA)	PACE	Northwest	10/2001	50 MW
<b>Cogentrix of Alamosa, LLC</b>	ER11-4050	Cogentrix of Alamosa, LLC	Cogentrix of Alamosa, LLC	Cogentrix of Alamosa, LLC	(NA)	PSCo	Northwest	10/2011	30 MW

<b>Filing Entity and its Energy Affiliates</b>	<b>Docket # Where MBR Authority was Granted</b>	<b>Generation Name</b>	<b>Owned by</b>	<b>Controlled by</b>	<b>Date Control Transferred</b>	<b>Balancing Authority Area</b>	<b>Geographic Region</b>	<b>In-Service Date</b>	<b>Nameplate and/or Seasonal Rating</b>
<b>Cedar Bay Generating Company, Limited Partnership</b>	(NA)	Cedar Bay Generating Company, Limited Partnership	Cedar Bay Generating Company, Limited Partnership	Cedar Bay Generating Company, Limited Partnership	(NA)	JEA	Southeast	1/1994	292 MW
<b>Cabazon Wind Partners, LLC</b>	ER02-1695	Cabazon Wind Partners, LLC	Cabazon Wind Partners, LLC	Cabazon Wind Partners, LLC	(NA)	CAISO	Southwest	10/2002	41 MW
<b>Sunray Energy, Inc.</b>	(NA)	Solar Energy Generating System II	Sunray Energy, Inc.	Sunray Energy, Inc.	(NA)	CAISO	Southwest	06/1988	32.5 MW
<b>Sunray Energy, Inc.</b>	(NA)	Solar Energy Generating System I	Sunray Energy, Inc.	Sunray Energy, Inc.	(NA)	CAISO	Southwest	07/1984	13.8 MW
<b>Whitewater Hill Wind Partners, LLC</b>	ER02-2309	Whitewater Hill Wind Partners, LLC	Whitewater Hill Wind Partners, LLC	Whitewater Hill Wind Partners, LLC	(NA)	CAISO	Southwest	10/2002	61.5 MW

**Affiliates of The Goldman Sachs Group, Inc. with Electric Transmission Assets  
and/or Natural Gas Intrastate Pipelines and/or Gas Storage Facilities<sup>2</sup>  
(as of September 2012)**

<b>Filing Entity and its Energy Affiliates</b>	<b>Asset Name and Use</b>	<b>Owned by</b>	<b>Controlled by</b>	<b>Date Control Transferred</b>	<b>Balancing Authority Area</b>	<b>Geographic Region</b>	<b>Size</b>
<b>Kinder Morgan Tejas Pipeline, LLC</b>	KM Tejas Pipeline, purchases and/or receives natural gas from producing fields in South Texas, the Gulf Coast area, and the Gulf of Mexico for sale and/or delivery to markets in the Houston, Corpus Christi, East Texas, and Beaumont/Port Arthur areas	Kinder Morgan Tejas Pipeline, LLC	Kinder Morgan Tejas Pipeline, LLC	(NA)	LAGN CLEC	Southeast SPP	Approximately 3,244 miles of natural gas pipeline (a portion of which is outside of ERCOT)

<sup>2</sup> This chart does not include affiliates operating solely within ERCOT.

<b>Filing Entity and its Energy Affiliates</b>	<b>Asset Name and Use</b>	<b>Owned by</b>	<b>Controlled by</b>	<b>Date Control Transferred</b>	<b>Balancing Authority Area</b>	<b>Geographic Region</b>	<b>Size</b>
<b>Kinder Morgan Texas Pipeline, LLC</b>	KM Texas Pipeline, Texas purchases and/or receives natural gas from producing fields in South Texas, the Gulf Coast area, the Gulf of Mexico and the Permian Basin of West Texas for sale and/or delivery to markets in the Austin, Houston and Beaumont/Port Arthur areas	Kinder Morgan Texas Pipeline, LLC	Kinder Morgan Texas Pipeline, LLC	(NA)	LAGN	Southeast	Approximately 2,900 miles of natural gas pipeline (a portion of which is outside of ERCOT)
<b>Kinder Morgan Texas Pipeline, LLC</b>	North Dayton Salt Cavern, located in Liberty Co., Texas	Kinder Morgan Texas Pipeline, LLC	Kinder Morgan Texas Pipeline, LLC	(NA)	LAGN	Southeast	2,364 MMCF of working gas

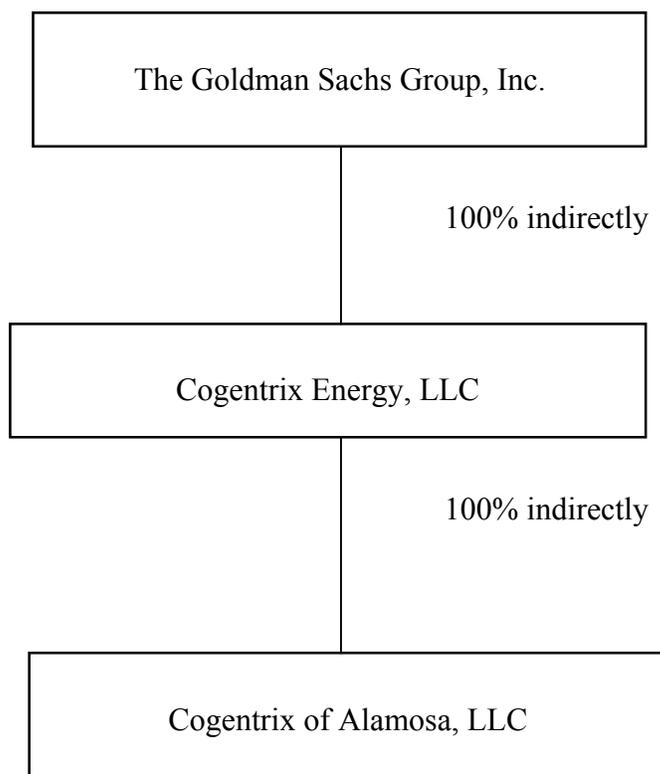
<b>Filing Entity and its Energy Affiliates</b>	<b>Asset Name and Use</b>	<b>Owned by</b>	<b>Controlled by</b>	<b>Date Control Transferred</b>	<b>Balancing Authority Area</b>	<b>Geographic Region</b>	<b>Size</b>
<b>Oncor Electric Delivery Company</b>	Transmission and distribution lines in Texas	Oncor Electric Delivery Company	Oncor Electric Delivery Company	(NA)	CSWS	SPP	100 MW undivided interest in the East high voltage direct current Interconnection between ERCOT and SPP

**Exhibit B****Carlyle Power Holdings, L.L.C.'s Energy Affiliates**

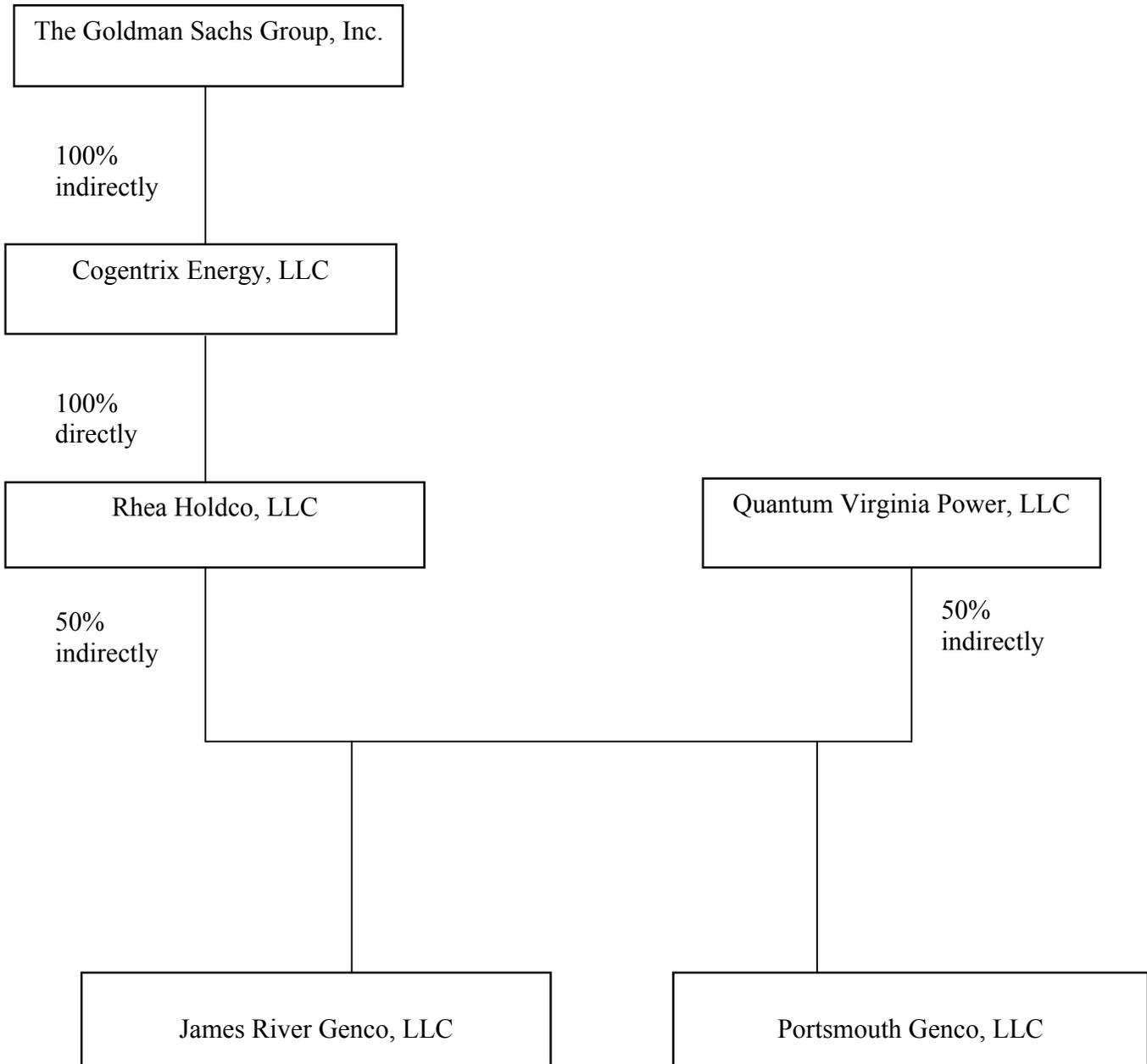
<b>Entity</b>	<b>Description</b>
Somerset Operating Company, LLC	Owns and operates a 678 MW coal-fired generating facility in Barker, New York
Cayuga Operating Company, LLC	Owns and operates a 313 MW coal-fired generating facility in Lansing, New York

Carlyle Power is also affiliated with certain funds as discussed in Part III(A) of the Application. A full description of the energy company assets held by these funds was included in the application requesting section 203 approval filed in Docket No. EC12-137-000 on August 23, 2012.

**Pre-Transaction Organizational Chart  
for Alamosa**

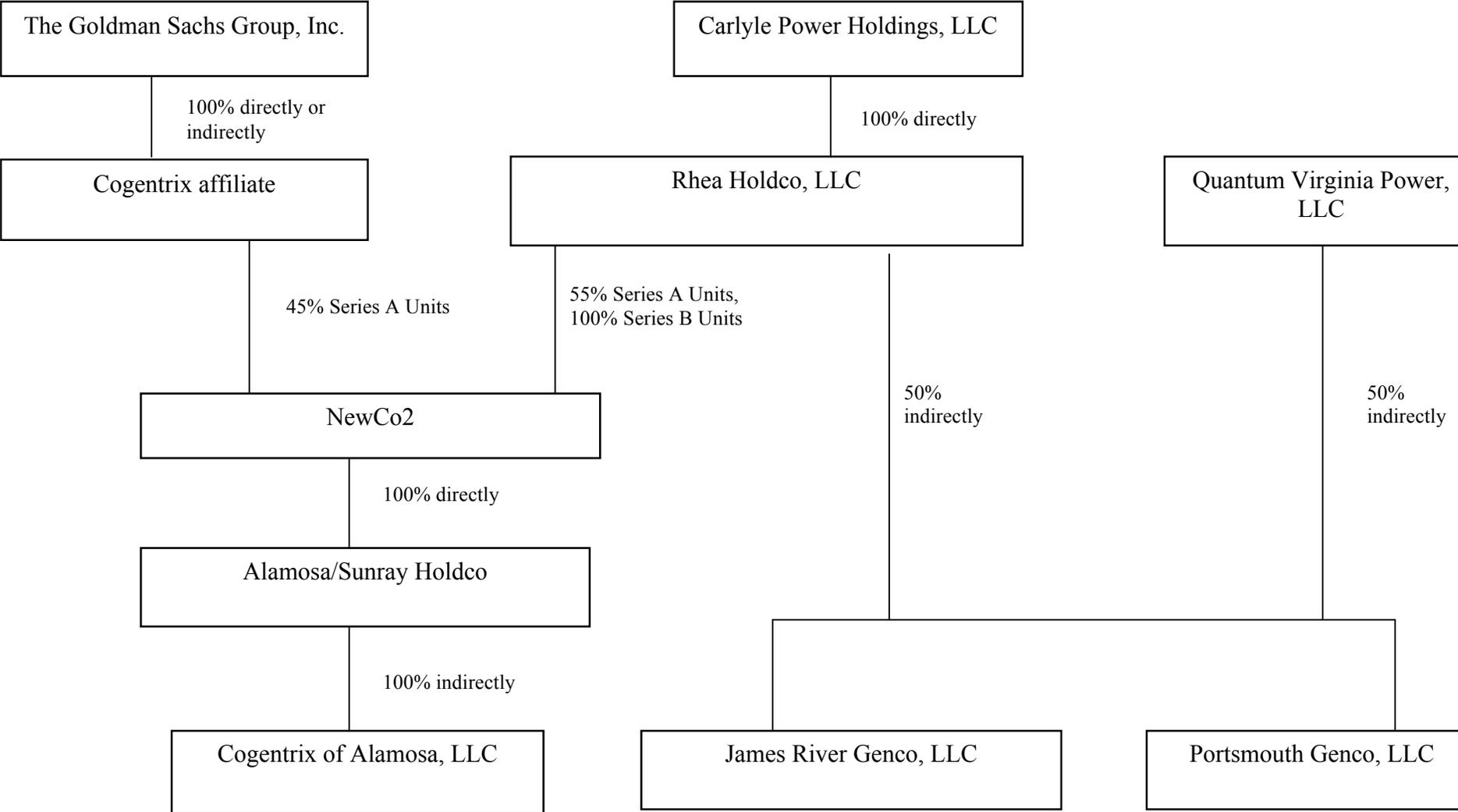


**Pre-Transaction Organizational Chart for  
James River and Portsmouth<sup>1</sup>**

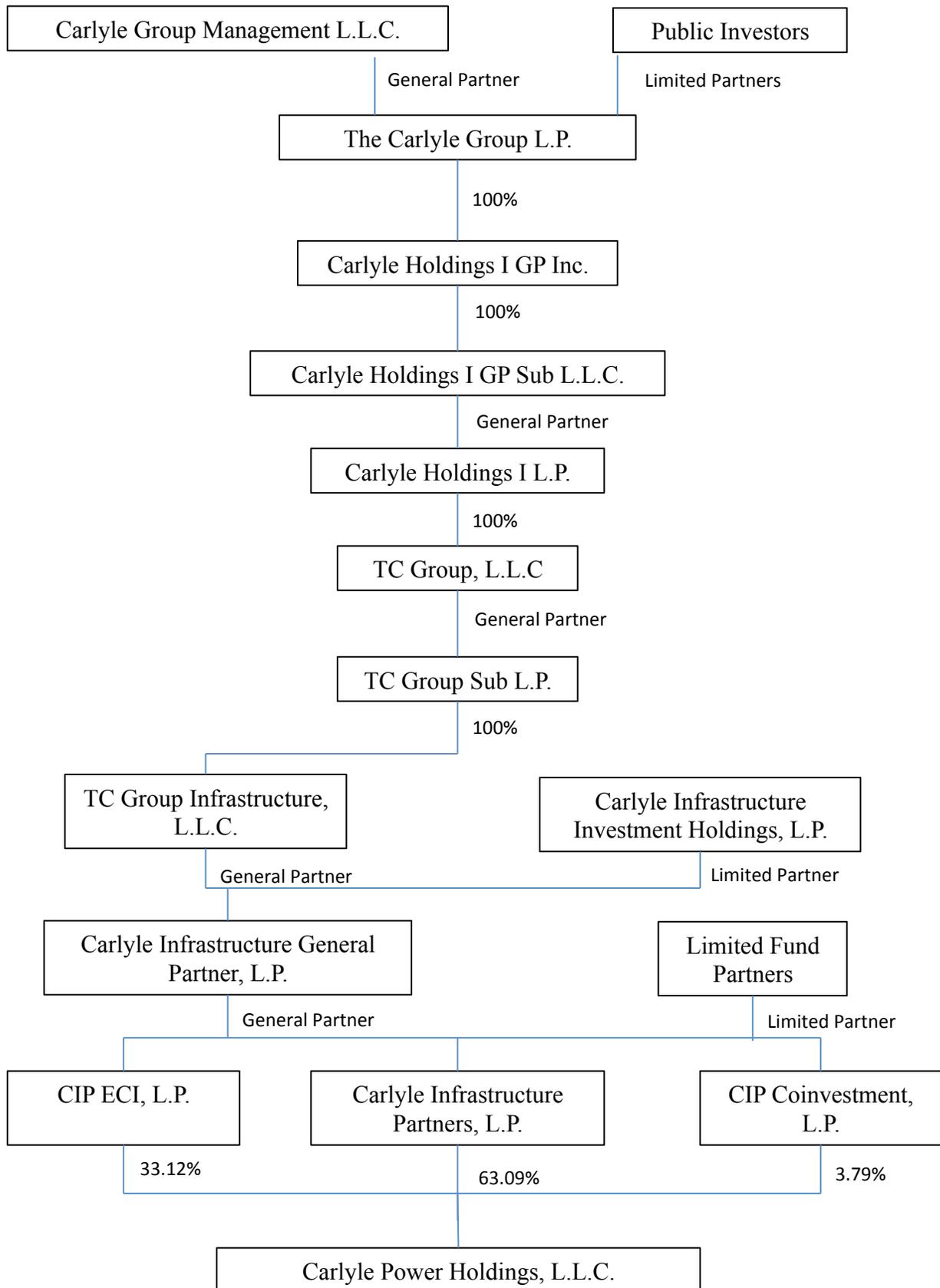


<sup>1</sup> This chart reflects the upstream ownership of James River and Portsmouth following the internal corporate reorganization that will occur prior to the Transaction.

Post-Transaction Organizational Chart



# Ownership Structure of Carlyle Power Holdings, L.L.C.



**Exhibit D**

**Description of Business Agreements**

The Transaction will involve no jurisdictional business arrangements apart from those described in this Application. In addition, the Transaction will involve no transmission facilities, apart from the indirect disposition of the interconnection facilities related to the Project Companies' facilities. There are no strategic alliances, joint ventures, tolling arrangements, or other proposed business arrangements to which Applicants are a party that are affected by the Transaction other than as described herein.

**Exhibit F**

**Description of Customers**

The Project Companies sell the electrical output of their facilities pursuant to their market-based rate authorizations and related long-term power purchase agreements. The terms of those agreements will not be affected by the Transaction. None of the Project Companies, Carlyle Power, or any of their parent companies, subsidiaries, affiliates, and associate companies owns or controls any transmission facilities in the United States, other than the limited equipment necessary to interconnect individual generating facilities with the electric power grid or facilities subject to open access requirements. In any event, the Transaction does not involve any transmission rates or transmission customers. Therefore, the Transaction will not affect any wholesale ratepayers or unbundled transmission service customers.

**Exhibit G**

**Description of Jurisdictional Facilities**

The jurisdictional facilities that will be affected by the Transaction consist of the Project Companies' market-based rate tariffs and any related agreements, books, and records, and the interconnection equipment associated with the Portsmouth Facility.

**Exhibit I**

**Contracts Related to the Transaction**

**Confidential Exhibit**

**Confidential Information Has Been Removed**  
**For Privileged Treatment**

**Exhibit M****Verifications on Cross-Subsidization**

Because none of Applicants or any of their affiliates is a traditional public utility with captive ratepayers in the United States or that owns or provides transmission service over jurisdictional transmission facilities in the United States, there is no issue with respect to cross-subsidization. Pursuant to section 33.2(j)(1) of the Commission's regulations, Applicants provide assurance and verify, based on facts and circumstances known to Applicants or that are reasonably foreseeable, that the proposed Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including:

- (1) Any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;
- (2) Any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;
- (3) Any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;  
or
- (4) Any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Cogentrix of Alamosa, LLC )  
James River Genco, LLC ) Docket No. EC12-\_\_\_\_\_  
Portsmouth Genco, LLC )

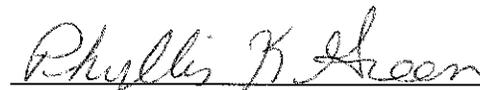
VERIFICATION OF APPLICATION FOR AUTHORIZATION  
FOR DISPOSITION OF JURISDICTIONAL FACILITIES

County of Mecklenburg )  
State of North Carolina )

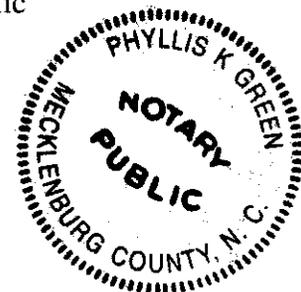
Douglas L. Miller, being duly sworn, deposes and says: he is Executive Vice President, General Counsel and Secretary of Cogentrix Energy, LLC and has the authority to verify the foregoing Application on behalf of Cogentrix of Alamosa, LLC, James River Genco, LLC, and Portsmouth Genco, LLC. He has read the Application and, to the best of his knowledge, information and belief, all of the statements contained therein with respect to Cogentrix of Alamosa, LLC, James River Genco, LLC, and Portsmouth Genco, LLC are true and accurate.

  
Douglas L. Miller

Subscribed and sworn to before me on this 27<sup>th</sup> day of September, 2012.

  
Notary Public

My commission expires May 8, 2016



Attachment 1

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Cogentrix of Alamosa, LLC )  
James River Genco, LLC ) Docket No. EC12-\_\_\_\_\_  
Portsmouth Genco, LLC )

VERIFICATION OF APPLICATION FOR AUTHORIZATION  
FOR DISPOSITION OF JURISDICTIONAL FACILITIES

County of Washington )  
State of District of Columbia )

Daniel A. D'Aniello, being duly sworn, deposes and says: He is Managing Director of TC Group Infrastructure, L.L.C. and has the authority to verify the foregoing Application on behalf of Carlyle Power Holdings, L.L.C. and its affiliates. He has read the Application and, to the best of his knowledge, information and belief, all of the statements contained therein with respect to Carlyle Power Holdings, L.L.C. and its affiliates are true and accurate.

CARLYLE POWER HOLDINGS, L.L.C.

By: Carlyle Infrastructure Partners Power, L.P., its managing member  
By: Carlyle Infrastructure General Partner; its general partner  
By: TC Group Infrastructure, L.L.C.; its general partner

By: [Signature]  
Name: Daniel A. D'Aniello  
Its: Managing Director



Subscribed and sworn to before me on this 26 day of September, 2012.

[Signature]  
Notary Public

My commission expires April 14, 2016

Kathy W. Smith  
Notary Public, District of Columbia  
My Commission Expires 4/14/2016

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

**Cogentrix of Alamosa, LLC** )  
**James River Genco, LLC** ) **Docket No. EC12-\_\_\_\_\_**  
**Portsmouth Genco, LLC** )

**PROTECTIVE ORDER**

(Issued )

1. This Protective Order shall govern the use of all Protected Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Administrative Law Judge ("Presiding Judge") or the Federal Energy Regulatory Commission ("Commission").

2. This Protective Order applies to the following two categories of materials: (A) A Participant may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and (B) A Participant shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 CFR § 388.113(c)(1) ("Critical Energy Infrastructure Information").

3. Definitions – For purposes of this Order:

(a) The term "Participant" shall mean a Participant as defined in 18 CFR § 38 5.102(b).

(b) (1) The term "Protected Materials" means (A) materials (including depositions) provided by a Participant in response to discovery requests and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Presiding Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant producing the Protected Materials shall physically mark them on each page as "PROTECTED MATERIALS" or with words of similar import as long as the term "Protected Materials" is included in that designation to indicate that they are Protected Materials. If the Protected Materials contain Critical Energy Infrastructure Information, the Participant producing such

information shall additionally mark on each page containing such information the words "Contains Critical Energy Infrastructure Information – Do Not Release".

(2) The term "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b)(1). Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

(3) Protected Materials shall not include (A) any information or document contained in the files of the Commission, or any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, or (C) any information or document labeled as "Non Internet Public" by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stat. & Reg. 31,140. Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(c) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(d) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) Commission Trial Staff designated as such in this proceeding;
- (2) an attorney who has made an appearance in this proceeding for a Participant;
- (3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Subparagraph (2);
- (4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;
- (5) a person designated as a Reviewing Representative by order of the Presiding Judge or the Commission; or
- (6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

4. Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7-9.
5. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.
6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff ("Staff"), Staff shall follow the notification procedures of 18 CFR § 388.112 before making public any Protected Materials.
7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.
8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such Reviewing Representative may not use information contained in any Protected Materials obtained through this

proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3(d) above, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraphs 3(d) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Presiding Judge for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

11. Subject to Paragraph 17, the Presiding Administrative Law Judge shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any participant that contests the designation of materials as protected shall notify the party that provided the protected materials by specifying in writing the materials the designation of which is contested. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Presiding Administrative Law Judge, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the participant seeking protection. If the Presiding Administrative Law Judge finds that the materials at issue are not entitled to protection, the procedures of Paragraph 17 shall apply. The procedures described

above shall not apply to protected materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Presiding Judge and all Reviewing Representatives who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information – Do Not Release". For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list and the Presiding Judge. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

13. If any Participant desires to include, utilize or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than reviewing representatives, such participant shall first notify both counsel for the disclosing participant and the Presiding Judge of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Presiding Judge.

14. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

15. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge, the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. The Presiding Judge may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

16. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge or the Commission.

17. All Protected Materials filed with the Commission, the Presiding Judge, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include

Protected Materials subject to this Protective Order. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information – Do Not Release."

18. If the Presiding Judge finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for three (3) business days from the date of issuance of the Presiding Judge's determination, and if the Participant seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding Judge's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 CFR § 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act. (5 U.S.C. § 552) for Protected Materials in the files of the Commission.

19. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

20. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

21. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this (these) proceeding(s). Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

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**Presiding Administrative Law Judge**

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

**Cogentrix of Alamosa, LLC** )  
**James River Genco, LLC** ) **Docket No. EC12-\_\_\_\_\_**  
**Portsmouth Genco, LLC** )

**NON-DISCLOSURE CERTIFICATE**

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Representing: \_\_\_\_\_  
Date: \_\_\_\_\_

Document Content(s)

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