


**BAKER & MCKENZIE**
**Baker & McKenzie LLP**

300 East Randolph Street, Suite 5000  
Chicago, IL 60601  
United States

Tel: +1 312 861 8000  
Fax: +1 312 861 2899  
www.bakermckenzie.com

James P. O'Brien  
Tel: +1 312 861 7588  
James.P.O'Brien@bakermckenzie.com

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\* Associated Firm

\*\* In cooperation with  
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Advogados

December 9, 2016

Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

Re: JPM Capital Corporation and HA Wind IV LLC, Docket No. EC16-\_\_\_\_-\_\_\_\_,  
Application for Approval Under Section 203 of the Federal Power Act

Dear Ms. Bose:

JPM Capital Corporation (“JPMCC”) and HA Wind IV LLC (“HA Wind IV” and, collectively with JPMCC, “Applicants”) submit this Application (“Application”) under Section 203(a)(1) of the Federal Power Act (“FPA”) and Part 33 of the regulations of the Federal Energy Regulatory Commission (“FERC” or the “Commission”)<sup>1</sup> for Commission authorization of a proposed transaction (“Proposed Transaction”) in which JPMCC will transfer its non-managing, direct or indirect, equity interests in six public utilities to one company (“Newco”) to be owned jointly by JPMCC and HA Wind IV, which will be an indirect, newly-formed subsidiary of JPMCC and Hannon Armstrong Sustainable Infrastructure Capital, Inc. (“Hannon Armstrong”). The six public utilities are FPL Energy Mower County, LLC (“Mower”), FPL Energy Oliver Wind I, LLC (“Oliver I”), FPL Energy Oliver Wind II, LLC (“Oliver II”), Logan Wind Energy LLC (“Logan”), Peetz Table Wind Energy, LLC (“Table Wind”) and Peetz Logan Interconnect, LLC (“PL Interconnect”) (collectively, “Project Companies”). Each of the Project Companies other than PL Interconnect is engaged in the generation of wind-powered electric energy and PL Interconnect is engaged in transmission of electric energy generated only by Logan and Table Wind.

### Request for Expedited Consideration

Expedited consideration of this Application is warranted under the Commission’s regulations because the Proposed Transaction does not raise any cross-subsidization issues and does not require an Appendix A analysis. Because the Application satisfies the Commission’s standards for expedited review under section 33.11(c) of the Commission’s regulations, Applicants respectfully request that the Commission grant expedited review and approve this Application by as early as possible and no later than January 12, 2017.

<sup>1</sup> 18 C.F.R. Part 33 (2012).

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### **Request for Confidential Treatment**

The documentation for the Proposed Transaction has not yet been finalized. Specifically, the Proposal Letter provided in confidential Exhibit I to this Application, does not constitute the final documentation for the Proposed Transaction. The undersigned counsel for HA Wind IV hereby certifies that, to the best of his knowledge, the final agreements for the Proposed Transaction will reflect, in all material respects, the description of the Proposed Transaction in the Application.<sup>2</sup>

Please do not hesitate to contact the undersigned should you have questions regarding the Application. Thank you for your assistance.

Very truly yours,

/s/ James P. O'Brien  
James P. O'Brien

*Counsel for HA Wind IV LLC*

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<sup>2</sup> As provided in Order No. 642, in circumstances in which documentation has not been finalized, the Commission has stated that “applicants may submit a draft contract, a term sheet, a letter of intent or a memorandum of understanding to satisfy the § 33.2(f) filing requirement. However, in such instances, we will require that in the transmittal letter accompanying the application, counsel for applicants certify that, to the best of their knowledge, the final agreements will reflect the terms and conditions contained in the draft agreements in all material respects.” Order No. 642 at 31,877.

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

JPM Capital Corporation ) Docket No. EC17-\_\_\_\_-\_\_\_\_  
HA Wind IV LLC )

**APPLICATION FOR AUTHORIZATION UNDER  
SECTION 203 OF THE FEDERAL POWER ACT FOR DISPOSITION OF  
JURISDICTIONAL FACILITIES, REQUEST FOR WAIVER  
OF CERTAIN COMMISSION REQUIREMENTS, REQUEST FOR  
EXPEDITED CONSIDERATION AND REQUEST FOR CONFIDENTIAL  
TREATMENT**

JPM Capital Corporation (“JPMCC”) and HA Wind IV LLC (“HA Wind IV” and, collectively with JPMCC, “Applicants”) submit this Application (“Application”) under Section 203(a)(1) of the Federal Power Act (“FPA”) and Part 33 of the regulations of the Federal Energy Regulatory Commission (“FERC” or the “Commission”)<sup>1</sup> for Commission authorization of a proposed transaction (“Proposed Transaction”) in which JPMCC will transfer its non-managing, direct or indirect, equity interests in six public utilities to one company (“Newco”) to be owned jointly by JPMCC and HA Wind IV, which will be an indirect, newly-formed subsidiary of JPMCC and Hannon Armstrong Sustainable Infrastructure Capital, Inc. (“Hannon Armstrong”). The six public utilities are FPL Energy Mower County, LLC (“Mower”), FPL Energy Oliver Wind I, LLC (“Oliver I”), FPL Energy Oliver Wind II, LLC (“Oliver II”), Logan Wind Energy LLC (“Logan”), Peetz Table Wind Energy, LLC (“Table Wind”) and Peetz Logan Interconnect, LLC (“PL Interconnect”) (collectively, “Project Companies”). Each of the Project Companies other than PL Interconnect is engaged in the generation of wind-powered electric energy and PL Interconnect is engaged in transmission of electric energy generated only by Logan, Table Wind,

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<sup>1</sup> 18 C.F.R. Part 33 (2012).

and Northern Colorado Wind Energy, LLC, all affiliates of PL Interconnect. JPMCC's equity interests in the Project Companies are passive, non-managing interests.<sup>2</sup>

Because the Proposed Transaction involves the disposition of direct and indirect, passive, non-managing membership interests that do not confer rights to control the Project Companies, authorization under Section 203(a)(1) of the FPA may not be required. However, Applicants are filing this Application out of an abundance of caution to ensure that all required regulatory approvals have been obtained for the Proposed Transaction.<sup>3</sup> The Project Companies are not parties to the Proposed Transaction and therefore have not been included in this Application as applicants; however, JPMCC has sent or will send notices to the other equity owners of each of the Project Companies to inform them of the Proposed Transaction and of this Application.

As explained more fully below, the Proposed Transaction will not have an adverse effect on competition, rates, or regulation and 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

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<sup>2</sup> Following the issuance of the *AES Creative Resources* order on December 17, 2009 (*See AES Creative Resources, L.P.*, 129 FERC ¶ 61,239 (2009) ("*AES Creative Resources*")), J.P. Morgan Ventures Energy Corporation submitted several filings pursuant to Section 205 of the FPA demonstrating that JPMCC should not be considered an affiliate of the Project Companies or their related wind generation facilities because the limited consent rights of the JPMCC's equity interests were substantially similar to the consent rights held by the tax equity investors in *AES Creative Resources*. *See J.P. Morgan Ventures Energy Corporation*, Docket No. ER05-1232, "*Updated Market Power Analysis and Order No. 697 Compliance Filing*" submissions dated May 5, 2010 (with respect to Mower, Oliver I, and Oliver II) and December 31, 2010 and January 3, 2011 (with respect to Table Wind and Logan).

<sup>3</sup> Because the Proposed Transaction involves the transfer of direct and indirect, non-managing membership interests that do not confer rights to control the Project Companies, authorization under Section 203(a)(1) may not be required for the Proposed Transaction. *See* FPA Section 203 Supplemental Policy Statement, 120 FERC ¶ 61,060 at P 54 (2007) ("*Supplemental Policy Statement*"). In the context of a proceeding under section 205 of the FPA, the Commission has found that the type of securities to be transferred pursuant to the Proposed Transaction does not constitute voting securities. *See AES Creative Resources*. Under the Commission's holding in *AES Creative Resources*, Newco will not be acquiring voting securities in the Project Companies and, therefore, will not be an affiliate of the Project Companies for purposes of Section 205 of the FPA. However, out of an abundance of caution and in the interest of obtaining prompt approval of the Proposed Transaction, Applicants nonetheless consent to the Commission's jurisdiction under FPA Section 203(a)(1). *See, e.g., Southern Company, et al.*, 92 FERC ¶ 62,260 (2000); *National Elec. Associates Ltd. P'ship*, 80 FERC ¶ 62,116, n.2 (1997) (citing *Ocean State Power*, 47 FERC ¶ 61,321 (1989)) (Commission makes no jurisdictional determination but assumes jurisdiction in light of the need for expedited action).

company. Accordingly, the Proposed Transaction should be approved by the Commission as consistent with the public interest.

## **I. REQUEST FOR EXPEDITED CONSIDERATION**

Applicants submit that the Application qualifies for expedited consideration, as the Proposed Transaction does not involve a merger, does not require an Appendix A analysis and is consistent with Commission precedent and the public interest.<sup>4</sup> Accordingly, consistent with Order No. 669,<sup>5</sup> Applicants request a 21-day comment period, expedited consideration of this Application, and that the Commission issue an order authorizing the Proposed Transaction by or before January 12, 2017.

## **II. REQUEST FOR CONFIDENTIAL TREATMENT**

Pursuant to 18 C.F.R. §§ 33.9 and 388.112, Applicants request confidential treatment of Exhibit I because it contains sensitive commercial and financial information that is privileged or confidential and not publicly available. Should this information become public, it could subject Applicants to competitive disadvantage or other business injury. Applicants submit a nonpublic version of Exhibit I that is marked “Non-Public Version - Contains Privileged and Confidential Information — Do Not Release Pursuant to 18 C.F.R. § 388.112,” and ask that the Commission keep it confidential. Applicants also are submitting a public copy of this Application, with the confidential material redacted. Any questions concerning this request for confidential treatment should be directed to counsel listed in Section VI. Applicants have attached a draft Protective Order as Attachment 2 to this Application.

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<sup>4</sup> 18 C.F.R. § 33.11(c)(2).

<sup>5</sup> *Transactions Subject to FPA Section 203*, Order No. 669, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,200, at P 194 (2005), order on reh’g, Order No. 669-A, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,214, order on reh’g and clarification, Order No. 669-B, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,225 (2006) (“Order No. 669”).

### **III. DESCRIPTION OF APPLICANTS AND OTHER RELEVANT PARTIES**

#### **A. JPMCC**

JPMCC, a Delaware corporation, is an indirect, wholly-owned subsidiary of JPMorgan Chase & Co. (“JPMorgan Chase”), an international financial services company. JPMorgan Chase, a publicly-traded Delaware corporation with its headquarters in New York, New York, is a financial holding company regulated by the Board of Governors of the Federal Reserve System (“Federal Reserve”) under the Bank Holding Company Act of 1956, as amended (“BHC Act”).

JPMCC and JPMorgan Chase are not primarily engaged in energy-related business activities and do not directly own or control any electric generation or transmission assets. None of JPMorgan Chase’s affiliates own any electric transmission (other than limited interconnection facilities) or interstate natural gas pipeline facilities. Further, JPMorgan Chase does not control and is not affiliated with any entity that controls any essential inputs to generation in the relevant markets, including any intrastate pipeline facilities.

Through direct or indirect subsidiaries, JPMorgan Chase has a number of energy affiliates that engage in wholesale sales of electricity in the United States and that own various interests in electric generating facilities. For example, J.P. Morgan Ventures Energy Corporation (“JPMVEC”), a non-banking affiliate of JPMCC and wholly-owned subsidiary of JPMorgan Chase, is currently authorized to sell capacity, energy, and ancillary services at market-based rates in all regions of the United States, except the Southwest Power Pool (“SPP”) region.<sup>6</sup> BE

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<sup>6</sup> JPMVEC obtained market-based rate authority on September 20, 2005 in Docket No. ER05-1232-000. The Commission accepted a Notice of Succession on December 29, 2008, pursuant to which JPMVEC succeeded to Bear Energy LP’s market-based rate tariff and issued a revised rate schedule. On November 17, 2010, the Commission accepted JPMVEC’s baseline e-tariff filing, filed to comply with Order No. 714. JPMVEC is currently a Category 2 Seller in the Northeast region and a Category 1 Seller in all other regions as defined in 18 C.F.R. 35.36(a).

CA and several other direct and indirect subsidiaries of JPMVEC are authorized to sell capacity, energy, and ancillary services in various regions.<sup>7</sup>

JPMCC holds direct or indirect, passive, non-controlling interests in various companies that own and operate wind- and solar-powered electric generation facilities in the United States, but these entities are generally not considered to be affiliates in accordance with *AES Creative Resources, L.P.* As indicated in this Application, JPMVEC has previously demonstrated to the Commission that the Project Companies should not be considered affiliates of JPMCC.<sup>8</sup>

Neither JPMCC nor any subsidiary or upstream owner of JPMCC directly or indirectly owns<sup>9</sup> or controls (1) any operational electric generation in the relevant market areas for purposes of this application, which are the Public Service Company of Colorado (“PSCO”) and Midcontinent Independent System Operator, Inc. (“MISO”) balancing authority areas (“BAAs”), (2) any electric transmission or distribution facilities in the PSCO or MISO BAA, (3) any 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 in the PSCO or MISO BAA, or (4) any franchised public utility in the United States. The same is true for JPMCC’s affiliates. Because in the relevant markets JPMCC owns only such passive, non-managing membership interests in electric generation and limited and discrete transmission assets associated with the energy projects in which JPMCC owns such passive, non-managing membership interests, Applicants

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<sup>7</sup> BE CA originally obtained market-based rate authority in Docket No. ER07-1113-000. *See BE CA, LLC et al.*, Docket No. ER07-1113-000, Letter Order (August 9, 2007) (unpublished). BE CA is a Category 1 Seller as defined in 18 C.F.R. 35.36(a).

<sup>8</sup> *See supra* note 2.

<sup>9</sup> Other than through passive, non-managing interests that do not confer rights control rights, as demonstrated in filings made with the Commission showing that such interests meet the standards for non-affiliation established in *AES Creative Resources*.

request a waiver from including a list of JPMCC's energy subsidiaries and affiliates in Exhibit B.<sup>10</sup>

Subsidiaries of JPMorgan Chase also may manage mutual funds, other collective investment vehicles, separate accounts, or any combination thereof as a fiduciary on behalf of persons who hold interests in such funds, investment vehicles, or separate accounts, and such funds, investment vehicles, and separate accounts may buy and sell securities of public utilities and other companies engaged in energy-related activities without exercising control over such public utilities or other companies.

#### **B. HA Wind IV**

HA Wind IV, a Delaware limited liability company, is a wholly owned subsidiary of its sole member, HA Wind IV Holdings LLC, a Delaware limited liability company, which is a wholly owned subsidiary of HAT Holdings II LLC, a Maryland limited liability company ("HAT Holdings"), which is a wholly owned subsidiary of Hannon Armstrong Capital, LLC ("HA Capital LLC"), which is a Maryland limited liability company. HA Capital LLC is a wholly owned subsidiary of Hannon Armstrong Sustainable Infrastructure, L.P. ("Hannon LP"), a Delaware limited partnership. Hannon LP is owned 99% by Hannon Armstrong, and 1% by various individuals and investment funds. Hannon Armstrong acts as general partner and majority limited partner in Hannon LP.

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<sup>10</sup> In some cases, JPMCC affiliates with market-based rate authority have filed with the Commission information demonstrating that these companies are not considered to be affiliates in accordance with *AES Creative*, and as long as the relevant facts presented in such demonstrations remain accurate, JPMCC does not treat such companies as being affiliates for purposes of the Commission's market power analyses under sections 203 and 205 of the FPA. However, in certain other cases, even if JPMCC's interests in companies with electric generation facilities are passive, non-controlling interests, affiliates of JPMCC that have market-based rates on file with the Commission have not made a filing demonstrating that the companies are not affiliates under *AES Creative*. In these latter cases, out of an abundance of caution, JPMCC treats such companies in which it has made investments as affiliates for purposes of the Commission's market power analyses. None of these entities are within the PSCO or MISO BAAs, however, thus they are not further discussed in this filing.



Hannon Armstrong was formed to provide debt and equity financing to the energy efficiency and renewable energy markets and is publically traded on the New York Stock Exchange. Hannon Armstrong has elected and qualified to be taxed as a real estate investment trust ("REIT") for federal income-tax purposes, beginning with its taxable year ended December 31, 2013. Hannon Armstrong's continuing status as a REIT is contingent on compliance with certain ownership restrictions under the Internal Revenue Code (the "Code"). To ensure compliance with certain requirements of the Code applicable to a REIT, the Hannon Armstrong Articles of Amendment and Restatement dated as of April 17, 2013 (the "Charter"), generally prohibit any single shareholder, or any group of affiliated shareholders, from beneficially owning more than 9.8 percent of Hannon Armstrong shares by value or number, whichever is more restrictive. Under the Charter, Hannon Armstrong's Board of Directors can waive this restriction if it is satisfied, based on a ruling of the Internal Revenue Service or opinion of tax counsel, that such action would not affect Hannon Armstrong's continuing qualification as a REIT under the Code. As of the date hereof, only one shareholder or group of affiliated shareholders beneficially owns more than 9.8 percent of Hannon Armstrong's shares, and such shareholder or group of affiliated shareholders owns 12.34% of Hannon Armstrong's shares and has declared that such acquisition was solely in the ordinary course of business and not for the purpose of changing or influencing the control of Hannon Armstrong.

Hannon Armstrong holds indirect ownership interests in five public utilities (Oasis Power Partners, LLC, Blue Canyon Windpower II LLC, High Trail Wind Farm, LLC, Flat Rock Windpower LLC, and Flat Rock Windpower II, LLC) and Madison Windpower, LLC that is a QF, in addition to four wind-powered electric generation project companies located in the ERCOT region of Texas and not subject to the Commission's jurisdiction under Section 203 of

the FPA, through its interests in Strong Upwind Holdings LLC, Strong Upwind Holdings II LLC and Strong Upwind Holdings III LLC, each an indirect, wholly owned subsidiary of HAT Holdings, and in HAT OBS OP A LLC, an indirect, wholly owned subsidiary of HA Capital LLC (“HAT OBS”).<sup>11</sup> Additionally, Hannon Armstrong holds indirect ownership interests in three public utilities (Elk River Windfarm, LLC (“Elk River”), Shiloh I Wind Project, LLC (“Shiloh I”) and Trimont Wind 1, LLC (“Trimont”)), each an indirect, wholly owned subsidiary of HAT OBS. Elk River is an owner of a wind-powered electric generating facility with a generating capacity of 150 MW (nameplate), located in Butler County, Kansas. Shiloh I is an owner of a wind-powered electric generating facility with a generating capacity of 150 MW (nameplate), located in Solano County, California. Trimont is an owner of a wind-powered electric generating facility with a generating capacity of 100.5 MW (nameplate), located in Jackson and Martin Counties, Minnesota. Also, Hannon Armstrong holds indirect ownership interests in Buckeye Wind Energy LLC, an owner of a wind-powered electric generating facility with a generating capacity of 200.48 MW (nameplate), located near Ellis County, Kansas, through HA INV Buckeye LLC, an indirect, wholly owned subsidiary of HA Capital, LLC.<sup>12</sup> Additionally, Hannon Armstrong holds indirect ownership interests in Gunsight Mountain Wind Energy LLC, an owner of a wind-powered electric generating facility with a generating capacity of 120 MW (nameplate), located in the ERCOT region of Texas and not subject to the Commission’s jurisdiction under Section 203 of the FPA, through its interests in HA INV Gunsight LLC, an indirect, wholly owned subsidiary of HA Capital, LLC.

Hannon Armstrong also holds indirect ownership interests in one small wind power production facility that is a QF. This 6.8 MW facility with gross power production capacity of

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<sup>11</sup> *JPM Capital Corp.*, 149 FERC ¶ 62,014 (2014) (order issued by Commission Staff under delegated authority).

<sup>12</sup> *Buckeye Wind Energy, LLC* 153 FERC ¶ 62,074 (2015) (order issued by Commission Staff under delegated authority).

6.8 MW is located in Platte County, Nebraska. It is owned by Creston Ridge, LLC, a Nebraska limited liability company, which is owned by HAT OBS and Bluestem Creston Ridge, LLC through their respective interests in Creston Ridge Management, LLC, acquired on August 3, 2015.

Hannon Armstrong also holds indirect ownership interests in four small solar power production facilities, each certified as a QF, with an aggregate gross power production capacity of 4,242 kW. Three of these facilities are located in Puerto Rico and are held by Hannon Armstrong PR Solar LLC, a Maryland limited liability company, which is a wholly owned subsidiary of HA Capital LLC. The fourth facility is located in Texas and is owned by Hannon Armstrong (FB) Solar, LLC, a Maryland limited liability company, which is an indirect, wholly owned subsidiary of HA Capital, LLC.

Additionally, Hannon Armstrong recently acquired indirect, passive, non-managing ownership interests that do not confer rights to control in entities that own a 42.8 MW DC portfolio of distributed commercial, industrial and residential solar projects and a 3,268.8 kW DC portfolio of commercial and industrial solar projects. The first portfolio is indirectly owned by HA Daybreak Holdings LLC, a Delaware limited liability company (“HA Daybreak Holdings”), and the second portfolio is owned by HA Helix LLC, a Delaware limited liability company (“HA Helix”). Both HA Daybreak Holdings and HA Helix are indirect, wholly owned subsidiaries of HA Capital, LLC. The passive investments held by Hannon Armstrong indirect subsidiaries provide only those limited consent or veto rights necessary to protect the investments, and do not confer day-to-day operational or managerial authority on the investor consistent with *AES Creative Resources*.

The public utility subsidiaries and affiliates of HA Wind IV are described above. Neither HA Wind IV nor any subsidiary or upstream owner of HA Wind IV directly or indirectly owns or controls (1) any operational electric generation in PSCO or MISO BAA, other than with respect to Trimont project in MISO where upstream owners of HA Wind IV own passive, non-managing membership interests that do not confer rights to control Trimont, (2) any electric transmission or distribution facilities in the PSCO or MISO BAA, (3) any 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 in the PSCO or MISO BAA, or (4) any franchised public utility in the United States. The same is true for HA Wind IV affiliates. Accordingly, Applicants request a waiver from including a list of HA Wind IV's energy subsidiaries and affiliates in Exhibit B.

### **C. Mower**

Mower owns and operates a 98.9 MW wind generation facility located in Mower County, Minnesota, which is located in the MISO BAA. Mower is authorized by the Commission to sell power at market-based rates.<sup>13</sup> The output of the Mower facility is committed under long-term contract with a non-affiliate.

Mower is a wholly-owned direct subsidiary of Northern Frontier Wind, LLC ("Northern Frontier Wind"). Pursuant to a tax equity financing, the passive, non-managing Class B Membership interests in Northern Frontier Wind are held by (i) BAL Investment and Advisory, Inc., which holds a 10.6% interest, (ii) JPMCC, which holds a 35.5% interest, and (iii) Morgan Stanley Wind LLC, which holds a 53.9% interest. The managing Class A Membership interest in Northern Frontier Wind is held by Northern Frontier Wind Funding, LLC ("Northern Frontier

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<sup>13</sup> See *FPL Energy Mower County, LLC*, Docket No. ER06-1261-000, Letter Order (issued September 21, 2006).

Wind Funding”), which is a wholly-owned direct subsidiary of Northern Frontier Wind Holding, LLC (“Northern Frontier Wind Holding”), which in turn is a wholly-owned direct subsidiary of ESI Energy. ESI Energy is a wholly-owned direct subsidiary of NextEra Resources, which is a wholly-owned direct subsidiary of NextEra Capital Holdings, which in turn is a wholly-owned direct subsidiary of NextEra Energy, Inc (“NextEra”).

#### **D. Oliver I**

Oliver I owns and operates a 50.6 MW wind-powered generation facility located in Oliver County, North Dakota, which is located in the MISO BAA. Oliver I is authorized by the Commission to sell power at market-based rates.<sup>14</sup> All of Oliver I’s capacity is fully committed pursuant to a long-term contract with a non-affiliate.

Oliver I is a wholly-owned direct subsidiary of Northern Frontier Wind. Pursuant to a tax equity financing, the passive, non-managing Class B Membership interests in Northern Frontier Wind are held by (i) BAL Investment and Advisory, Inc., which holds a 10.6% interest, (ii) JPMCC which holds a 35.5% interest, and (iii) Morgan Stanley Wind LLC, which holds a 53.9% interest. The managing Class A Membership interest in Northern Frontier Wind is held by Northern Frontier Wind Funding, which is a wholly-owned direct subsidiary of Northern Frontier Wind Holding, which in turn is a wholly-owned direct subsidiary of ESI Energy. ESI Energy is a wholly-owned direct subsidiary of NextEra Resources, which is a wholly-owned direct subsidiary of NextEra Capital Holdings, which in turn is a wholly-owned direct subsidiary of NextEra.

#### **E. Oliver II**

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<sup>14</sup> See *FPL Energy Oliver Wind, LLC*, Docket No. ER06-1392-000, Letter Order (issued Sept. 29, 2006).

Oliver II owns and operates a 48 MW wind-powered generation facility located in Oliver County, North Dakota, which is located in the MISO BAA. Oliver II is authorized by the Commission to sell power at market-based rates.<sup>15</sup> All of Oliver II's capacity is committed under long-term contract with a non-affiliate.

Oliver II is a wholly-owned direct subsidiary of Northern Frontier Wind. Pursuant to a tax equity financing, the passive, non-managing Class B Membership interests in Northern Frontier Wind are held by (i) BAL Investment and Advisory, Inc., which holds a 10.6% interest, (ii) JPMCC, which holds a 35.5% interest, and (iii) Morgan Stanley Wind LLC, which holds a 53.9% interest. The managing Class A Membership interest in Northern Frontier Wind is held by Northern Frontier Wind Funding, which is a wholly-owned direct subsidiary of Northern Frontier Wind Holding, which in turn is a wholly-owned direct subsidiary of ESI Energy. ESI Energy is a wholly-owned direct subsidiary of NextEra Resources, which is a wholly-owned direct subsidiary of NextEra Capital Holdings, which in turn is a wholly-owned direct subsidiary of NextEra.

#### **F. Logan**

Logan owns and operates an approximately 201 MW wind generation facility located in Logan County, Colorado, in the PSCO region. Logan is authorized by the Commission to sell power at market-based rates.<sup>16</sup> All of Logan's capacity is fully committed pursuant to a long-term contract with a non-affiliate.

Logan is a wholly-owned indirect subsidiary of Northern Frontier Wind. Pursuant to a tax equity financing, the passive, non-managing Class B Membership interests in Northern Frontier

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<sup>15</sup> See *FPL Energy Oliver Wind II, LLC*, Docket No. ER08-197-000, Letter Order (issued December 19, 2007).

<sup>16</sup> See *Logan Wind Energy LLC*, Docket No. ER07-1157-000, Letter Order (issued Oct. 16, 2007).

Wind are held by (i) BAL Investment and Advisory, Inc., which holds a 10.6% interest, (ii) JPMCC, which holds a 35.5% interest, and (iii) Morgan Stanley Wind LLC, which holds a 53.9% interest. The managing Class A Membership interest in Northern Frontier Wind is held by Northern Frontier Wind Funding, which is a wholly-owned direct subsidiary of Northern Frontier Wind Holding, which in turn is a wholly-owned direct subsidiary of ESI Energy. ESI Energy is a wholly-owned direct subsidiary of NextEra Resources, which is a wholly-owned direct subsidiary of NextEra Capital Holdings, which in turn is a wholly-owned direct subsidiary of NextEra.

#### **G. Table Wind**

Table Wind owns and operates a 200 MW wind generating facility located in Logan County, Colorado, and its Class A membership interests are indirectly wholly-owned by NextEra Energy. All power is transmitted over transmission facilities owned by its affiliate, PL Interconnect, to a substation owned by PSCO, and all power is sold to PSCO under a long-term contract. Table Wind is authorized by the Commission to sell power at market-based rates.<sup>17</sup>

Table Wind is a wholly-owned direct subsidiary of Northern Frontier Wind. Pursuant to a tax equity financing, the passive, non-managing Class B Membership interests in Northern Frontier Wind are held by (i) BAL Investment and Advisory, Inc., which holds a 10.6% interest, (ii) JPMCC, which holds a 35.5% interest, and (iii) Morgan Stanley Wind LLC, which holds a 53.9% interest. The managing Class A Membership interest in Northern Frontier Wind is held by Northern Frontier Wind Funding, which is a wholly-owned direct subsidiary of Northern Frontier Wind Holding, which in turn is a wholly-owned direct subsidiary of ESI Energy. ESI Energy is a wholly-owned direct subsidiary of NextEra Resources, which is a wholly-owned

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<sup>17</sup> See *Peetz Table Wind Energy, LLC*, Docket No. ER07-875-000, Letter Order (issued Jun. 26, 2007).

direct subsidiary of NextEra Capital Holdings, which in turn is a wholly-owned direct subsidiary of NextEra.

#### **H. PL Interconnect**

PL Interconnect, a wholly-owned indirect subsidiary of Northern Frontier Wind owns and operates an approximately 78.2 mile, 230 kV radial transmission line and related facilities (“Facilities”) located in northeastern Colorado that connect three affiliated wind generation projects to the Public Service Company of Colorado’s transmission system at the Pawnee substation. Peetz Logan provides transmission-only service to three affiliates, all of whom are indirect subsidiaries of NextEra Energy Resources,<sup>18</sup> LLC, pursuant to transmission service agreements on file accepted by the Commission. Pursuant to a tax equity financing, the passive, non-managing Class B Membership interests in Northern Frontier Wind are held by (i) BAL Investment and Advisory, Inc., which holds a 10.6% interest, (ii) JPMCC, which holds a 35.5% interest, and (iii) Morgan Stanley Wind LLC, which holds a 53.9% interest. The managing Class A Membership interest in Northern Frontier Wind is held by Northern Frontier Wind Funding, which is a wholly-owned direct subsidiary of Northern Frontier Wind Holding, which in turn is a wholly-owned direct subsidiary of ESI Energy. ESI Energy is a wholly-owned direct subsidiary of NextEra Resources, which is a wholly-owned direct subsidiary of NextEra Capital Holdings, which in turn is a wholly-owned direct subsidiary of NextEra.

On February 28, 2011, PL Interconnect submitted its proposed OATT in response to a request for third-party interconnection and transmission services over its Facilities. The Commission issued an order on August 2, 2011, conditionally accepting PL Interconnect’s

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<sup>18</sup> The affiliates of PL Interconnect taking transmission service are Logan, Peetz Table Wind Energy, and Northern Colorado Energy Wind, LLC.



OATT.<sup>19</sup> In a March 23, 2016 Letter Order in Docket No. ER16-807, Commission accepted PL Interconnect’s request to cancel its OATT.<sup>20</sup>

#### **IV. THE PROPOSED TRANSACTION**

Under the Proposed Transaction, JPMCC will transfer all of its direct interests in Northern Frontier Wind, and thereby its indirect interests in the Project Companies, (“Project Company Interests”) to Newco. As described in Section III, the Project Company Interests all are passive, non-managing interests that do not provide JPMCC—and, consequently, will not provide Newco — with the right to control the Project Companies. Newco will be jointly owned by JPMCC and HA Wind IV, each of which will be co-managing members of Newco. JPMCC and HA Wind IV will, through Newco, have only those limited consent/veto rights with respect to the Project Companies under the Project Company Interests that JPMCC currently holds and that are necessary to protect their respective investments. The Proposal Letter between JPMCC and HA Capital LLC, attached as nonpublic Exhibit I, provides additional details on the terms of the Proposed Transaction.

#### **V. THE PROPOSED TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST**

Under Section 203 of the FPA, the Commission must approve a transaction if the Commission finds that the transaction “will be consistent with the public interest.”<sup>21</sup> In reviewing transactions under Section 203, the Commission follows a three-part test set forth in its *Inquiry Concerning the Commission’s Merger Policy under the Federal Power Act: Policy Statement*,<sup>22</sup> and codified in Section 2.26 of the Commission’s regulations.<sup>23</sup> Under this test, the

<sup>19</sup> *Peetz Logan Interconnect, LLC*, 136 FERC ¶ 61,075 (2011).

<sup>20</sup> See *Peetz Logan Interconnect, LLC*, Docket No. ER16-807-000, Letter Order (issued March 23, 2016).

<sup>21</sup> 16 U.S.C. § 824b(D)(4).

<sup>22</sup> *Inquiry Concerning the Commission’s Merger Policy under the Federal Power Act: Policy Statement*, Order No. 592, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,044 (1996), *order on reconsideration*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (“Merger Policy Statement”); *FPA Section 203 Supplemental Policy*

Commission examines a transaction's effects on competition, rates, and regulation. In addition, Section 203(a)(4) of the FPA requires the Commission to ensure that a proposed transaction will not result in cross-subsidization of a non-utility associate company or any pledge or encumbrance of utility assets for the benefit of an associate company.<sup>24</sup> In its Supplemental Merger Policy Statement, the Commission clarified the information required to demonstrate that a transaction does not raise cross-subsidization concerns, and identified "safe harbors" or classes of transactions that do not raise cross-subsidization concerns.<sup>25</sup>

As demonstrated below, the Proposed Transaction satisfies these statutory standards and therefore should be authorized by the Commission as consistent with the public interest pursuant to Section 203 of the FPA.

**A. The Proposed Transaction Will Have No Adverse Effect on Competition**

The Commission's objective in analyzing the effect on competition of a proposed transaction is to determine whether the proposed transaction will "result in higher prices or reduced output in electricity markets."<sup>26</sup> The Commission has ruled that higher prices and reduced output in electricity markets may occur if the applicants for Section 203 authorization are able to exercise market power, either alone or in conjunction with others.<sup>27</sup> The Commission's Merger Policy Statement and Order No. 642 established both horizontal and vertical competitive analysis screens to allow the Commission to identify proposed transactions

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*Statement*, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,253 (2007), *clarified*, 122 FERC ¶ 61,157 (2008) ("Supplemental Merger Policy Statement").

<sup>23</sup> 18 C.F.R. § 2.26.

<sup>24</sup> 16 U.S.C. § 824b(a)(4); Order No. 669; *see also* Supplemental Merger Policy Statement.

<sup>25</sup> Supplemental Merger Policy Statement at PP 11-26.

<sup>26</sup> *Revised Filing Requirements under Part 33 of the Commission's Regulations*, Order No. 642, 1996-2000 FERC Stats. & Regs. Preambles ¶ 31,111, at 31,879 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001) ("Order No. 642"); Merger Policy Statement at 31,044; 18 C.F.R. § 2.26.

<sup>27</sup> Order No. 642 at 31,879.

that may present competitive concerns.<sup>28</sup> As explained below, the Proposed Transaction will not have an adverse effect on competition because the Proposed Transaction will create neither horizontal nor vertical market power.

1. Horizontal Competition Issues

The Proposed Transaction raises no horizontal market power concerns. The only effect of the Proposed Transaction with respect to Commission-jurisdictional public utilities is that the Project Company Interests that are now held by JPMCC will instead be held indirectly by JPMCC and HA Wind IV through Newco. The net effect is that HA Wind IV will acquire an indirect interest in the passive, non-managing Project Company Interests now held by JPMCC.

None of Newco, JPMCC, or HA Wind IV will be able to control the output of the Project Companies' electric generation facilities or otherwise control the day-to-day management of the Project Companies as a result of acquisition by Newco of the Project Company Interests, which are passive, non-managing interests in the Project Companies. After consummation of the Proposed Transaction, each of the Project Companies will continue to be managed by its respective managing member in the same way as before the Proposed Transaction.

Applicants request that the Commission authorize the Proposed Transaction without requiring the filing of a horizontal competitive-screen analysis, as set forth in Appendix A to the *Merger Policy Statement*. Section 33.3(a)(2)(i) of the Commission's regulations provides that an Appendix A analysis is not required if the applicants affirmatively demonstrate that they do not currently conduct business in the same geographic markets or that the extent of the business transactions in the same geographic markets is *de minimis*.<sup>29</sup>

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<sup>28</sup> Order No. 642 at 31,879, 31,903.

<sup>29</sup> 18 C.F.R. § 33.3(a)(2)(i).

The Proposed Transaction clearly meets the standard under Section 33.2(a)(2)(i), since HA Wind IV and its affiliates do not own interests that confer rights to control any electric generation capacity in any of the markets in which any of the Project Companies is interconnected. Accordingly, there is no overlap in generation capacity between HA Wind IV and the Project Companies, and the Proposed Transaction and the Proposed Transaction will have no effect on horizontal market concentration. Applicants, therefore, respectfully request that the Commission authorize the Proposed Transaction without requiring the filing of a horizontal market concentration analysis.

## 2. Vertical Competition Issues

The Commission's concern with regard to vertical market power generally arises in circumstances in which an entity may restrict potential downstream competitors' access to upstream supply markets or increase potential competitors' costs. Commission regulations provide that a vertical market concentration analysis is not required if "[t]he merging entities currently do not provide inputs to electricity products (*i.e.*, upstream relevant products) and electricity products (*i.e.*, downstream relevant products) in the same geographic markets or that the extent of the business transactions in the same geographic market is *de minimis*."<sup>30</sup> Except for the limited interconnection facilities and transmission line owned by PL Interconnect, in each case, necessary to connect the electric generation facilities of the Project Companies to the electric transmission grid, no Commission-jurisdictional transmission facilities are involved in the Proposed Transaction. Further, the Proposed Transaction will have no effect on vertical power in markets that are relevant to the Project Companies because HA Wind IV and its affiliates do not own or control any electric transmission facilities or inputs to electric generation in any of the relevant markets. Therefore, the Proposed Transaction will not result in adverse

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<sup>30</sup> 18 C.F.R. § 33.4(a)(2)(i).

vertical competitive effects. Applicants therefore respectfully request that the Commission authorize the Proposed Transaction without requiring the filing of a vertical market concentration analysis.

**B. The Proposed Transaction Will Have No Adverse Effect on Rates**

In assessing the effect that a proposed jurisdictional transaction could have on rates, the Commission's primary concern is "the protection of wholesale ratepayers and transmission customers."<sup>31</sup> In the Merger Policy Statement, the Commission stated that its concern with the effect of a proposed transaction on rates is to protect ratepayers from rate increases resulting from a proposed disposition of jurisdictional assets.<sup>32</sup>

The Proposed Transaction will have no effect on the rates charged by the Project Companies. The Project Companies will continue to make sales pursuant to their market-based rate tariffs and their existing long-term wholesale contracts or merchant sales arrangements. The Proposed Transaction will not change the rates, terms, or conditions contained in any of the tariffs or long-term sales contracts of any of the Project Companies. Moreover, Applicants and their affiliates, and the Project Companies do not have any captive customers that could be affected by the Proposed Transaction. Therefore, the Commission should conclude that the Proposed Transaction will not have an adverse effect on rates.

**C. The Proposed Transaction Will Have No Adverse Effect on Regulation**

In accordance with Order No. 669, the Commission evaluates the effect of a proposed transaction on regulation at both the federal and state levels.<sup>33</sup> The Proposed Transaction will have no adverse effect on regulation at either level. After the Proposed Transaction is consummated, the Commission will continue to exercise the same jurisdiction over the Project

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<sup>31</sup> *New England Power Co., L.L.C.*, 82 FERC ¶ 61,179, at ¶ 61,659, *order on reh'g*, 83 FERC ¶ 61,275 (1998).

<sup>32</sup> See Merger Policy Statement at 30,123.

<sup>33</sup> Order No. 669 at P 10.

Companies and their sales of electric energy at wholesale as it exercises currently. No facilities will be removed from the Commission's jurisdiction. Also, the Proposed Transaction will have no effect on state commission regulation and is not subject to approval by any state commission. Therefore, the Commission should conclude that the Proposed Transaction will not have an adverse effect on regulation.

**D. The Proposed Transaction Will Not Result in Cross-Subsidization**

Under Section 203(a)(4) of the FPA<sup>34</sup> and Section 2.26(f) of its regulations,<sup>35</sup> the Commission considers whether a proposed transaction will result in a cross-subsidization of a non-utility associate company by a utility company, or in a pledge or encumbrance of utility assets for the benefit of an associate company. The Proposed Transaction does not pose a risk of cross-subsidization and does not involve any pledge or encumbrance of utility assets. In the Supplemental Merger Policy Statement, the Commission stated that it will recognize three classes of transactions that are unlikely to raise the cross-subsidization concerns described in the Order No. 669 rulemaking proceeding.<sup>36</sup> The first such class involves "transactions where the applicant shows that a franchised public utility with captive customers is not involved. If no captive customers are involved, then there is no potential for harm to customers. Therefore, compliance with Exhibit M could be a showing that no franchised public utility with captive customers is involved in the transaction."<sup>37</sup>

The Proposed Transaction does not involve a franchised public utility with captive customers. Therefore, based on facts and circumstances known to Applicants or that are reasonably foreseeable as of the date of this Application, the Proposed Transaction will not result

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<sup>34</sup> 16 U.S.C. § 824b(a)(4).

<sup>35</sup> 18 C.F.R. § 2.26(f).

<sup>36</sup> Supplemental Merger Policy Statement at P 16.

<sup>37</sup> *Id.* at P 17 (footnote omitted).

in, at the time of the Proposed Transaction or in the future, cross-subsidization of a non-utility associate company, or the pledge or encumbrance of utility assets for the benefit of an associate company.

## **VI. INFORMATION REQUIRED BY PART 33 OF THE COMMISSION'S REGULATIONS**

Applicants submit the following information pursuant to Part 33 of the Commission's regulations. Applicants have provided all information necessary to determine that the Proposed Transaction is consistent with the public interest, as required under Section 203 of the FPA. However, because certain information is not relevant to the Commission's consideration of whether the Proposed Transaction is consistent with the public interest, Applicants respectfully request that the Commission waive certain of the filing requirements in Part 33 of its regulations, as discussed below.

Subject to the foregoing, Applicants provide the following information pursuant to Part 33 of the Commission's regulations:

### **A. Exact Name of the Applicants and Their Principal Places of Business<sup>38</sup>**

JPM Capital Corporation  
Mail Code 11.1-0502  
10 S. Dearborn, 12<sup>th</sup> Floor  
Chicago, IL 60670  
Facsimile: 312-732-2231

HA Wind IV LLC  
c/o Hannon Armstrong Sustainable  
Infrastructure Capital, Inc.  
1906 Towne Centre Blvd.  
Suite 370  
Annapolis, Maryland 21401  
Facsimile: (410) 571-6199

### **B. Names and Addresses of the Persons Authorized to Receive Notices and Communications Regarding this Application<sup>39</sup>**

Jane Keil\*  
Vice President  
JPM Capital Corporation  
10 S. Dearborn, 12<sup>th</sup> Floor

Hugh E. Hilliard\*  
O'Melveny & Myers LLP  
1625 Eye St., NW  
Washington, D.C. 20006

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<sup>38</sup> 18 C.F.R. § 33.2(a).

<sup>39</sup> 18 C.F.R. 33.2(b).

Chicago, IL 60670  
(312) 732-7946  
Facsimile: (312) 732-2569  
[jpmcc.energy@jpmorgan.com](mailto:jpmcc.energy@jpmorgan.com)

(202) 383-5109  
[hhilliard@omm.com](mailto:hhilliard@omm.com)

Steven L. Chuslo\*  
Secretary  
HA Wind IV LLC  
c/o Hannon Armstrong Sustainable  
Infrastructure Capital, Inc.  
1906 Towne Centre Blvd., Suite 370  
Annapolis, Maryland 21401  
(410) 571-6161  
Facsimile: (410) 571-6199  
[LegalDepartment@hannonarmstrong.com](mailto:LegalDepartment@hannonarmstrong.com)

James P. O'Brien\*  
Stanislav L. Sirot\*  
Baker & McKenzie LLP  
300 East Randolph Drive, Suite 5000  
Chicago, IL 60601  
(312) 861-7588  
Facsimile: (312) 451-3117  
[James.P.O'Brien@bakermckenzie.com](mailto:James.P.O'Brien@bakermckenzie.com)

\*Denotes those persons designated for service pursuant to Rule 2010.<sup>40</sup>

### C. Description of the Applicants

1. All business activities of the Applicants, including authorizations by charter or regulatory approval (Exhibit A)<sup>41</sup>

The business activities of Applicants and the Project Companies are described in Section III, above. Therefore, Applicants request waiver of the requirement to file Exhibit A.

2. List of Applicants' energy subsidiaries and energy affiliates, percentage ownership interest in such subsidiaries and affiliates, and a description of the primary business in which each energy subsidiary and affiliate is engaged (Exhibit B)<sup>42</sup>

The public utility subsidiaries and affiliates of Applicants and the Project Companies are described in Section III, above.<sup>43</sup> Because the Proposed Transaction involves only the transfer of passive, non-managing interests in the Project Companies, the Proposed Transaction will not effectuate any change in Applicants' or the Project Companies' affiliations or

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<sup>40</sup> 18 C.F.R. § 385.2010.

<sup>41</sup> 18 C.F.R. § 33.2(c)(1).

<sup>42</sup> 18 C.F.R. § 33.2(c)(2).

<sup>43</sup> This list excludes entities in which JPMCC holds non-managing equity interests for which one or more JPMorgan Chase affiliates has filed with the Commission a change-in-status notice pursuant to Section 205 of the FPA demonstrating that the equity interests are non-voting securities such that the entities in which JPMCC holds such equity interests are not considered to be affiliates of JPMCC.



subsidiaries. Therefore, Applicants request a waiver from including a list of Applicants' energy subsidiaries and affiliates in Exhibit B.

3. Organizational charts depicting the Applicants' current and proposed post-transaction corporate structures (including any pending authorized but not implemented changes) indicating all parent companies, energy subsidiaries and energy affiliates of the Applicants, unless the Applicants demonstrate that the Proposed Transaction does not affect the corporate structure of any party to the Proposed Transaction (Exhibit C)<sup>44</sup>

Attached as Exhibit C are organizational charts depicting the pre- and post-closing ownership and management structures of Applicants and the Project Companies.

4. Description of all joint ventures, strategic alliances, tolling arrangements, or other business arrangements, including transfers of operational control of transmission facilities to Commission-approved Regional Transmission Organizations, both current and planned to occur within a year from the date of filing, to which the Applicants or their respective parent companies, energy subsidiaries, and energy affiliates is a party, unless the Applicants demonstrate that the Proposed Transaction does not affect any of their business interests (Exhibit D)<sup>45</sup>

The Proposed Transaction will not have any effect on joint ventures, strategic alliances, or other business arrangements of Applicants or the Project Companies or their parent companies, energy subsidiaries, and energy affiliates, separate from the Proposed Transaction, as described in Section IV above. Therefore, Applicants request waiver of the requirement to file Exhibit D.

5. Identity of common officers or directors of parties to the Proposed Transaction (Exhibit E)<sup>46</sup>

There will there be no common officers or directors as between JPMCC and HA Wind IV and their affiliates, on the one hand and any of the Project Companies, on the other hand. Therefore, Applicants request waiver of the requirement to file Exhibit E.

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<sup>44</sup> 18 C.F.R. § 33.2(c)(3).

<sup>45</sup> 18 C.F.R. § 33.2(c)(4)

<sup>46</sup> 18 C.F.R. § 33.2(c)(5).

6. Description and location of wholesale power sales customers and unbundled transmission services customers served by the Applicants or their respective parent companies, subsidiaries, affiliates, and associate companies (Exhibit F)<sup>47</sup>

The Proposed Transaction will not alter any existing wholesale power sales or transmission services. As described in Section III above, the Project Companies make sales at wholesale pursuant to their respective market-based rate tariffs and their respective long-term sales agreements or merchant sales arrangements. Accordingly, to the extent necessary, Applicants request waiver of the requirement to file Exhibit F.

**D. Description of Jurisdictional Facilities Owned, Operated, or Controlled by Applicants or Their Respective Parent Companies, Subsidiaries, Affiliates, and Associate Companies (Exhibit G)**<sup>48</sup>

A description of the relevant jurisdictional facilities is included in Section III above. Therefore, Applicants request waiver of the requirement to file Exhibit G.

**E. Narrative Description of the Proposed Transaction (Exhibit H)**<sup>49</sup>

A narrative description of the Proposed Transaction is provided in Section IV, above. Therefore, Applicants request waiver of the requirement to file Exhibit H.

**F. Contracts Related to the Proposed Transaction (Exhibit I)**<sup>50</sup>

JPMCC and HA Wind IV have entered into the Proposal Letter setting out the material terms and conditions of the Proposed Transaction but have not yet entered into the definitive documentation of the Proposed Transaction. Consistent with the Commission's requirements for submitting draft documentation, the undersigned counsel for the Applicants hereby certifies that,

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<sup>47</sup> 18 C.F.R. § 33.2(c)(6).

<sup>48</sup> 18 C.F.R. § 33.2(d).

<sup>49</sup> 18 C.F.R. § 33.2(e).

<sup>50</sup> 18 C.F.R. § 33.2(f).

to the best of his knowledge, the final agreements for the Proposed Transaction will reflect, in all material respects, the document submitted in Exhibit I.<sup>51</sup>

**G. Explanatory Statement Demonstrating That the Proposed Transaction Is Consistent with the Public Interest (Exhibit J)<sup>52</sup>**

A statement regarding the consistency of the Proposed Transaction with the public interest is provided in Section V above. Therefore, Applicants request waiver of the requirement to file Exhibit J.

**H. If the Proposed Transaction Involves Physical Property of Any Party, Applicants Must Provide a General or Key Map Showing in Different Colors the Properties of Each Party to the Transaction (Exhibit K)<sup>53</sup>**

Because the Proposed Transaction will not result in any new combination of market participants, a map would convey no useful information concerning the relative proximity of properties that previously were not under common ownership. Applicants, therefore, respectfully request a waiver of the requirement to file Exhibit K.

**I. If Applicants Are Required to Obtain Licenses, Orders, or Other Approvals from Other Regulatory Bodies in Connection with the Proposed Transaction, Applicants Must Identify the Regulatory Bodies and Indicate the Status of Other Regulatory Actions, and Provide a Copy of Each Order of Those Regulatory Bodies That Relates to the Proposed Transaction (Exhibit L)<sup>54</sup>**

No other federal or state approvals are required for the Proposed Transaction. Applicants, therefore, respectfully request waiver of the requirement to file Exhibit L.

**J. Cross-Subsidization<sup>55</sup>**

*See* Section V.D, above, and Exhibit M.

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<sup>51</sup> As provided in Order No. 642, in circumstances in which documentation has not been finalized, the Commission has stated that “applicants may submit a draft contract, a term sheet, a letter of intent or a memorandum of understanding to satisfy the § 33.2(f) filing requirement. However, in such instances, we will require that in the transmittal letter accompanying the application, counsel for applicants certify that, to the best of their knowledge, the final agreements will reflect the terms and conditions contained in the draft agreements in all material respects.” Order No. 642 at 31,877.

<sup>52</sup> 18 C.F.R. § 33.2(g).

<sup>53</sup> 18 C.F.R. § 33.2(h).

<sup>54</sup> 18 C.F.R. § 33.2(i).

<sup>55</sup> 18 C.F.R. § 33.2(j).

## **VII. PROPOSED ACCOUNTING ENTRIES**

Under Section 33.5 of the Commission's regulations, applicants that are required to maintain their books of account in accordance with the Commission's Uniform System of Accounts in Part 101 must provide their proposed accounting entries. With respect to the Proposed Transaction, none of the Applicants or the Project Companies is required to maintain accounts in accordance with the Commission's Uniform System of Accounts. Therefore, Section 33.5 does not require that Applicants present proposed accounting entries to their (or the Project Companies') books or financial statements showing the effect of the Proposed Transaction.

## **VIII. VERIFICATIONS UNDER SECTION 33.7 OF THE COMMISSION'S REGULATIONS**

Pursuant to Section 33.7 of the Commission's regulations, verifications on behalf of Applicants are included as Attachment 1 to this Application.

## **IX. CONCLUSION**

For the reasons stated above, Applicants respectfully request that the Commission issue an order by January 12, 2017 approving the Proposed Transaction as consistent with the public interest pursuant to Section 203 of the FPA and granting all waivers requested in this Application and all other waivers necessary for such approval.

Respectfully submitted,

/s/ James P. O'Brien

James P. O'Brien

Stan Sirot

Baker & McKenzie LLP

300 East Randolph Drive, Suite 5000

Chicago, IL 60601

Phone: 312-861-7588

Fax: 312-451-3117

James.P.O'Brien@bakermckenzie.com

*Counsel for HA Wind IV LLC*

Date: December 9, 2016

**EXHIBIT C**  
Exhibit C-1  
**Prior to Transaction**

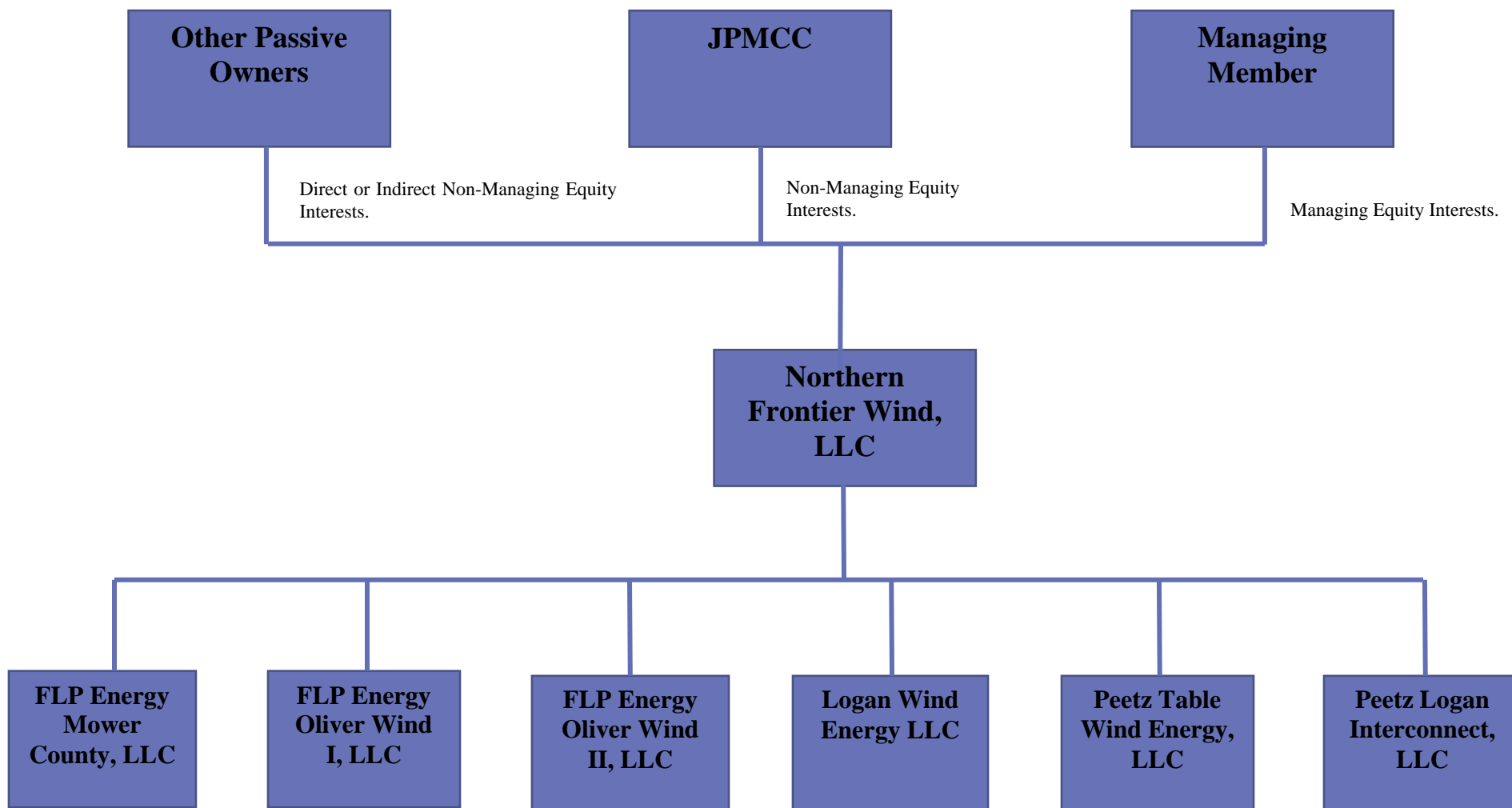
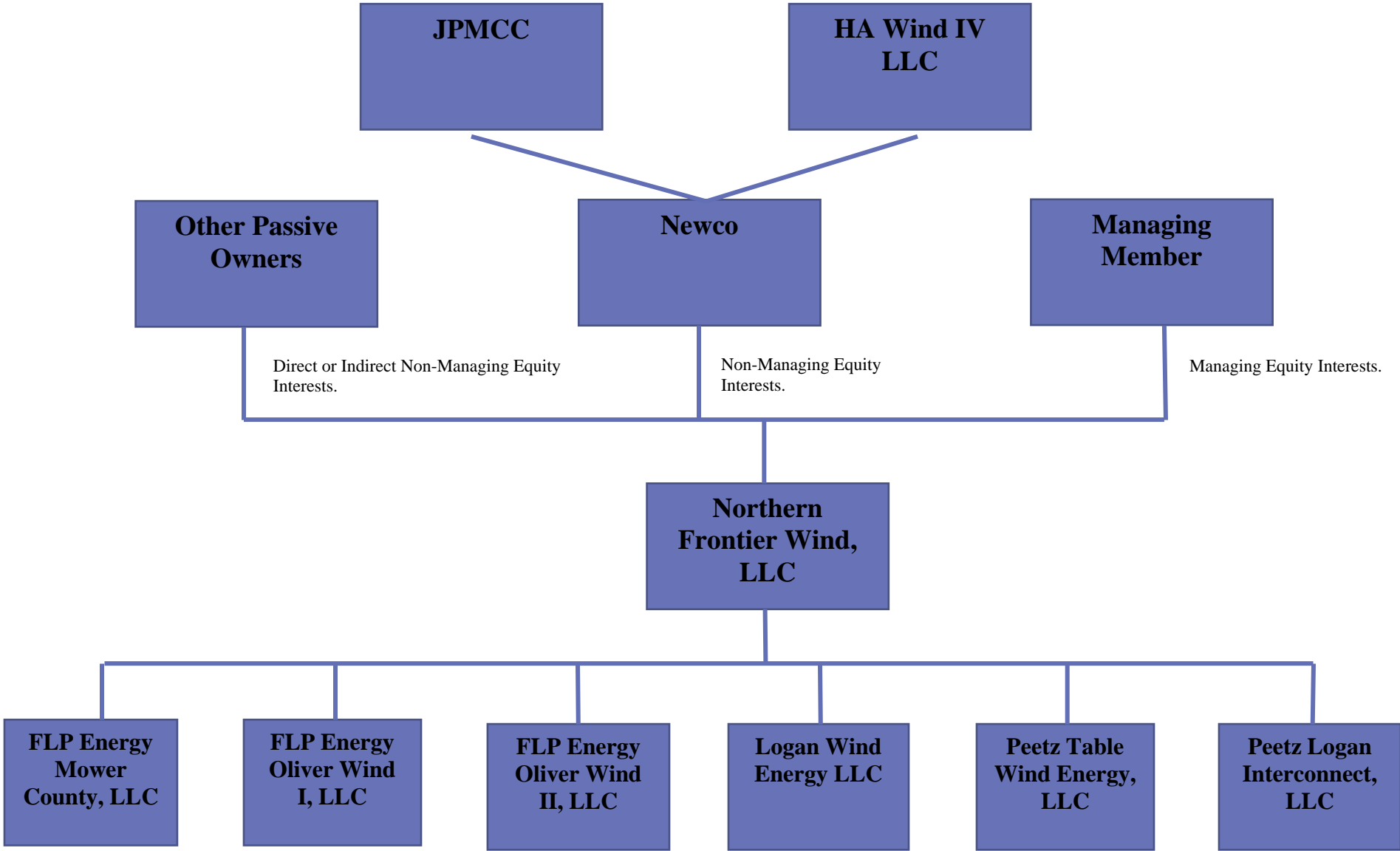


Exhibit C-2  
Following the Transaction



**EXHIBIT I**

**Contract Related to the Proposed Transaction**

**CONFIDENTIAL INFORMATION REMOVED**



## EXHIBIT M

### **Explanation Providing Assurance That the Proposed Transaction Will Not Result in Cross-Subsidization or Pledge or Encumbrance of Utility Assets**

Because the Proposed Transaction does not involve a franchised public utility with captive customers, the Proposed Transaction raises no issues concerning cross-subsidization and falls within one of the safe harbors set forth in the FPA Section 203 Supplemental Merger Policy Statement. The Commission has recognized that “the detailed explanation and evidentiary support required by Exhibit M may not be warranted” for safe harbor transactions,<sup>56</sup> and that, as a general matter “there is no potential for harm to customers” in the case of such transactions.<sup>57</sup> Based on the facts and circumstances known to Applicants or that are reasonably foreseeable as of the date of this Application, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, cross-subsidization of a non-utility associate company, or the pledge or encumbrance of utility assets for the benefit of an associate company.

**(i) Disclosure of existing pledges or encumbrances**

No pledges or encumbrances of any assets of a traditional public utility that has captive customers or provides transmission service over jurisdictional transmission facilities will occur as a result of the Proposed Transaction.

**(ii) Detailed showing that the Proposed Transaction will not result in:**

- (A) Any transfer of facilities between a traditional public utility associate company that has captive ratepayers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company.

The Proposed Transaction does not involve a transfer of facilities between a traditional public utility associate company that has captive ratepayers, or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company.

- (B) 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.

The Proposed Transaction does not involve such a new issuance of securities, and none of the Applicants or any of the Project Companies is a traditional public utility that has captive customers.

- (C) Any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides

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<sup>56</sup> Supplemental Merger Policy Statement at P 17.

<sup>57</sup> *Id.*

transmission service over jurisdictional transmission facilities, for the benefit of an associate company.

The Proposed Transaction will not result in 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.

- (D) 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 Federal Power Act.

No such affiliate contract will be entered into as a result of the Proposed Transaction.

**ATTACHMENT 1**

**Verifications**


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

JPM Capital Corporation ) Docket No. EC17-\_\_\_\_-\_\_\_\_  
HA Wind IV LLC )

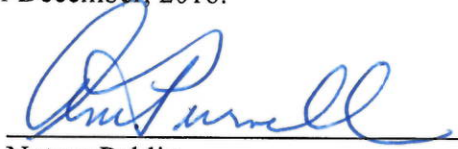
**VERIFICATION OF APPLICATION FOR AUTHORIZATION  
FOR DISPOSITION OF JURISDICTIONAL FACILITIES**

County of Cook )  
 )  
State of Illinois )

Jane Keil states as follows: She is Vice President of JPM Capital Corporation (“JPMCC”) and has the authority to verify the foregoing Application on behalf of JPM Capital Corporation and its affiliates, JPMorgan Chase & Co. (“JPMorgan Chase”), J.P. Morgan Ventures Energy Corporation (“JPM Ventures”), and J.P. Morgan Investment Management, Inc. (“JPMIM”). She has read the Application and, to the best of her knowledge, information and belief, all of the statements contained therein with respect to JPMCC and its affiliates noted above are true and accurate.

  
\_\_\_\_\_  
Jane Keil

Acknowledged before me on this 8th day of December, 2016.

  
\_\_\_\_\_  
Notary Public

My commission expires July 20, 2020



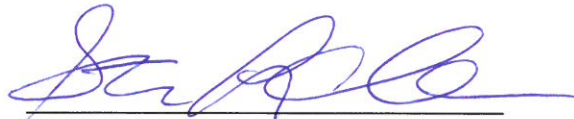
UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

JPM Capital Corporation ) Docket No. EC17- \_\_\_ - \_\_\_  
HA Wind IV LLC )

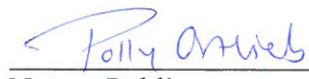
VERIFICATION OF APPLICATION FOR AUTHORIZATION  
FOR DISPOSITION OF JURISDICTIONAL FACILITIES

County of Anne Arundel )  
 )  
State of Maryland )

Steven L. Chuslo states as follows: He is Secretary - HA Wind IV LLC ("HA Wind IV"). He has read the Application and, to the best of his knowledge, information and belief, all of the statements contained therein with respect to HA Wind IV and its affiliates noted above are true and accurate.

  
\_\_\_\_\_  
Steven L. Chuslo

Acknowledged before me on this 9<sup>th</sup> day of December, 2016.

  
\_\_\_\_\_  
Notary Public

My commission expires: 5/6/2018

**POLLY ORTLIEB  
NOTARY PUBLIC  
ANNE ARUNDEL COUNTY  
MARYLAND  
MY COMMISSION EXPIRES 5/6/2018**



**ATTACHMENT 2**

**Protective Order**

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

JPM Capital Corporation ) Docket No. EC17\_\_\_\_-\_\_\_\_  
HA Wind IV 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 § 385.102(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 18, 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 18 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  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

JPM Capital Corporation ) Docket No. EC17-\_\_\_\_-\_\_\_\_  
HA Wind IV 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: \_\_\_\_\_

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

Document Content(s)

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