

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

<b>PSEG Fossil, LLC</b>	)	
	)	
<b>Yards Creek Energy, LLC</b>	)	<b>Project No. 2309-__</b>
	)	
<b>Jersey Central Power &amp; Light Company</b>	)	
	)	

**JOINT APPLICATION FOR APPROVAL OF PARTIAL TRANSFER OF LICENSE  
AND REQUEST FOR EXPEDITED CONSIDERATION**

Pursuant to Section 8 of the Federal Power Act (“FPA”), as amended,<sup>1</sup> and Part 9 of the regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”),<sup>2</sup> PSEG Fossil, LLC (“PSEG” or “Transferor”) and Jersey Central Power & Light Company (“JCPL”), current co-licensees of the Yards Creek Pumped Storage Hydroelectric Project No. 2309 (“Yards Creek Project” or “Project”), and Yards Creek Energy, LLC (“YCE” or “Transferee”) (collectively with Transferor and JCPL, “Applicants”) respectfully submit this Joint Application for Approval of Partial Transfer of License (“Application”). The Applicants seek Commission approval for a partial transfer of the license for the Project to remove PSEG as a co-licensee and to add YCE as a co-licensee. Applicants respectfully request expedited consideration of this Application and approval by June 3, 2020. As described herein, this Application is in the public interest.

**I. BACKGROUND AND PROPOSED TRANSACTION**

The Yards Creek Project is an approximately 420 megawatt (“MW”) (summer rating) pumped storage hydroelectric project located on Yards Creek in Warren County, New Jersey. The Commission issued a new license for the Project on May 9, 2013, for a term of 40 years.<sup>3</sup>

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<sup>1</sup> 16 U.S.C. § 801.

<sup>2</sup> 18 C.F.R. § Part 9.

<sup>3</sup> *Jersey Central Power & Light Co., PSEG Fossil, LLC*, 143 FERC ¶ 62,102 (2013).

Currently, JCPL and PSEG each own a 50 percent undivided interest in the Project. Pursuant to an operating agreement between JCPL and PSEG (as successor-in-interest to Public Service Electric and Gas Corporation), JCPL operates the Yards Creek Project.<sup>4</sup>

On February 23, 2020, YCE and PSEG entered into an Asset Purchase Agreement (“APA”) under which YCE will acquire PSEG’s undivided 50 percent interest in the Project, subject to Commission approval.

## **II. INFORMATION REQUIRED BY PART 9 OF FERC’S REGULATIONS**

Part 9 of the Commission’s regulations requires an application for approval of transfer of license to include certain additional information, statements, and verifications in a form that conforms to the requirements of Section 131.20 of the Commission’s regulations.<sup>5</sup> This information is set forth below.

1. PSEG, as Transferor, and JCPL, co-licensees under the license for the Yards Creek Project, FERC Project No. 2309, issued by the Commission on May 9, 2013, and
2. YCE, as Transferee,
3. Hereby jointly and severally apply for the written approval by the Commission of the partial transfer of the license for the Yards Creek Project to remove PSEG from the license and to add YCE as a new co-licensee with JCPL, and request that the instrument of such approval by the Commission be made effective as of the date of conveyance of Transferor PSEG’s interests in the Project properties. In support thereof, Applicants state as follows:
4. YCE is a limited liability company, organized under the laws of the State of Delaware, with authority to do business in the State of New Jersey where the Project is located; copies

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<sup>4</sup> The operating agreement is dated October 6, 1965, and is on file with the Commission as JCPL’s FERC Electric Rate Schedule No. 66 (Accession No. 19950309-0370).

<sup>5</sup> 18 C.F.R. § 131.20.

of its certificate of formation, limited liability company agreement, and certificate of authority to do business in the State of New Jersey are submitted herewith as Exhibits A-1 through A-3, and are hereby incorporated herein and made a part hereof.

5. Transferee has complied with all applicable State laws as required by Section 9(a)(2) of the FPA.
6. Transferee will submit certified copies of all instruments of conveyance whereby PSEG's undivided ownership interest in Project properties is conveyed to YCE, upon the completion of such conveyance, if and when the Commission shall have given its approval to the proposed transfer.
7. If and when the Commission shall have given its approval to the proposed transfer, and upon completion of the conveyance of PSEG's undivided ownership interest in the Project properties to the Transferee, PSEG, to the extent it has actual possession, will deliver to Transferee and Transferee will accept and permanently retain all license instruments and all maps, plans, specifications, contracts, reports of engineers, accounts, books, records, and all other papers and documents relating to the original Project and to all additions thereto and betterments thereof.
8. PSEG certifies that it has fully complied with the terms and conditions of the license for the Yards Creek Project, as amended, as applicable to the license interest being transferred, and that it has fully satisfied and discharged all of its liabilities and obligations thereunder to the date hereof, and obligates itself to pay all annual charges accrued under the license with respect to the property interests being transferred, to the date of transfer.
9. Contingent upon the final written approval by the Commission of the transfer of the license, YCE accepts all the terms and conditions of the said license, as amended, and the FPA, and

agrees to be bound thereby to the same extent as though it were the original licensee thereunder.

10. The name, title, and address of the persons to whom correspondence regarding this Application shall be addressed, and who should be placed on the official service list compiled by the Commission Secretary for this proceeding are as follows:

**PSEG Fossil, LLC  
(Transferor)**

Cara J. Lewis  
Managing Counsel – Federal Regulatory  
PSEG Services Corporation  
80 Park Plaza – T5G  
Newark, New Jersey 07102  
(973) 430-8836  
cara.lewis@pseg.com

**Jersey Central Power & Light Company  
(co-licensee)**

Anne M. Rericha  
FirstEnergy Service Company  
76 S. Maine Street  
Akron, Ohio 44308  
(330) 374-6550  
arericha@firstenergycorp.com

**Yards Creek Energy, LLC  
(Transferee)**

Kimberly Ognisty  
Winston & Strawn LLC  
1901 L Street N.W.  
Washington, DC 20036  
(202) 282-5217  
kognisty@winston.com

**III. TRANSFER OF THE LICENSE IS IN THE PUBLIC INTEREST**

The proposed partial transfer of the Project license is in the public interest because YCE is legally, technically, and financially qualified to hold the Project license.

YCE is legally qualified to hold the license and to operate and maintain the Project. As set forth in Exhibits A-1 through A-3 attached hereto, YCE was formed for the sole purpose of owning and operating power generation facilities, including the Project, and is authorized to engage in any

lawful activity to accomplish this purpose. In addition, YCE possesses the requisite certification and authority to engage in business in the State of New Jersey.

YCE is technically qualified to be a licensee. Although it has not previously been issued a license, YCE is an indirect, wholly-controlled subsidiary of LS Power Development, LLC (“LS Power”). LS Power operates a portfolio of over 10,000 MW of generation with an annual operation and maintenance budget of over \$150 million. LS Power is familiar with the requirements and responsibilities of being a Commission licensee, and its employees and those of affiliated companies possess the requisite expertise to operate and maintain Commission-licensed hydroelectric projects. LS Power draws on a team of highly skilled professionals that provide extensive capabilities to manage every aspect of the power business, including real property, environmental, power marketing and origination, project finance, regulatory, engineering, construction management, and operation and management of assets of all fuel types, including hydroelectric generation. LS Power’s asset management team identifies all maintenance and other activities required for safe and reliable operations, and budgets funding to undertake such activities.

Affiliates of YCE own and operate the following two FERC-licensed hydroelectric facilities: (1) Seneca Generation, LLC, owns and operates the approximately 484 MW (summer rating) Kinzua Pumped Storage Project No. 2280;<sup>6</sup> and (2) Bath County Energy, LLC, owns an undivided 23.75 percent interest in the approximately 3,015 MW (summer rating) Bath County Pumped Storage Project No. 2716.<sup>7</sup> Thus, LS Power, through its affiliates, is an experienced hydroelectric plant operator and licensee in good standing with the Commission.

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<sup>6</sup> *Seneca Generation, LLC*, 152 FERC ¶ 62,045 (2015).

<sup>7</sup> *Va. Elec. & Power Co.*, 57 F.P.C. 24 (1977) (order issuing license); *Va. Elec. & Power Co.*, 161 FERC ¶ 62,193 (2017) (order approving partial transfer of license to Bath County Energy, LLC).

YCE also is financially qualified to be a licensee. YCE possesses the financial resources necessary to comply with the terms and conditions of the Project license and any Commission directives that could affect the Project. As described above, YCE is part of a corporate family that safely, responsibly, and economically operates and maintains power generation facilities, including two FERC-licensed hydroelectric projects. The assets under management by LS Power are substantial, and the sale of power and related products from these assets provides revenue in excess of the financial resources necessary to capitalize YCE and to operate and manage the Project. Accordingly, YCE possesses the necessary financial resources to comply with the terms and conditions of the license.

For these reasons, YCE is fully qualified to own and operate the Yards Creek Project, as required by the FPA and the Commission's regulations.

#### **IV. REQUEST FOR EXPEDITED CONSIDERATION**

Applicants request expedited consideration and approval of this Application. YCE and PSEG wish to consummate the transactions contemplated by the APA, including partial transfer of the license requested in this Application by the end of the second quarter of 2020. There could be significant adverse commercial consequences to YCE and affiliated LS Power companies if this Application, and the other requests for approvals, submitted to the Commission pursuant to the APA are not approved by this time. In order to coordinate the Commission's approvals with other regulatory approvals, Applicants request that the Commission expeditiously issue the public notice of this Application and thereafter approve the Application no later than June 3, 2020.

#### **V. CONCLUSION**

As demonstrated above, upon acquisition of an undivided ownership interest in the Project, YCE will be legally, technically, and financially qualified to be a joint licensee of the Yards Creek Project. In addition, YCE has agreed to accept all of the terms and conditions of the license, to be

bound by the license as if it were the original licensee, and to operate and maintain the Project in accordance with the license and regulations and directives of the Commission under the FPA.

WHEREFORE, for the foregoing reasons, Applicants respectfully request that the Commission approve the transfer of license requested herein by **June 3, 2020**.

Respectfully submitted,

Cara J. Lewis  
Managing Counsel – Federal Regulatory  
PSEG Services Corporation  
80 Park Plaza – T5G  
Newark, New Jersey 07102  
(973) 430-8836  
Cara.lewis@pseg.com

*Counsel for PSEG Fossil, LLC*

/s/ Kimberly Ognisty  
Kimberly Ognisty  
Winston & Strawn LLP  
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(202) 282-5217  
kognisty@winston.com

*Counsel for Yards Creek Energy, LLC*

Anne M. Rericha  
FirstEnergy Service Company  
76 S. Main Street  
Akron, Ohio 44308  
(330) 374-6550  
Anne.rericha@firstenergycorp.com

*Counsel for Jersey Central Power & Light*

Dated: March 30, 2020

IN WITNESS WHEREOF, PSEG Fossil, LLC, has caused its name to be hereunder  
signed by TIMOTHY P. PEWENKIN, its  
AUTUMN (2020) ABOUT, thereunto duly authorized this 21<sup>ST</sup> day  
of March 2020.

PSEG Fossil, LLC

By: Timothy P. Pewekin



IN WITNESS WHEREOF, Yards Creek Energy, LLC, has caused its name to be hereunder signed by Darpan Kapadia, its Executive Vice President, thereunto duly authorized this 18<sup>th</sup> day of March 2020.

Yards Creek Energy, LLC

By:   
Darpan Kapadia

IN WITNESS WHEREOF, Jersey Central Power & Light Company, has caused its name to be hereunder signed by James V. Fakult, its President, thereunto duly authorized this 20<sup>th</sup> day of March 2020.

Jersey Central Power & Light Company

By:



**VERIFICATION**

TIMOTHY P. PELLEGRIN, being duly sworn deposes and says: That ~~s~~he is the AUTHORIZED AGENT of PSEG Fossil, LLC, one of the applicants for approval of transfer of license; that ~~s~~he has read the foregoing application and knows the contents thereof; and that the same are true to the best of his~~er~~ knowledge and belief.

Timothy P. Pellegrin

Subscribed and sworn to before me, a notary public of the State of New Jersey this 21st day of March, 2020.


Brigitte Richter-Hajduk  
Notary Public

My Commission expires June 7, 2021

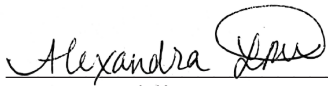


**VERIFICATION**

Darpan Kapadia, being duly sworn deposes and says: That s/he is the  
Executive Vice President of Yards Creek Energy, LLC, one of the applicants for  
approval of transfer of license; that s/he has read the foregoing application and knows the contents  
thereof; and that the same are true to the best of his/her knowledge and belief.



Subscribed and sworn to before me, a notary public of the State of New York, this 18<sup>th</sup>  
day of March, 2020.

  
Notary Public

My Commission expires 09/15/2020

ALEXANDRA LINARES-PENA MEJIA  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01LI6192833  
QUALIFIED IN QUEENS COUNTY  
COMMISSION EXPIRES 09/15/2020

**VERIFICATION**

James Fakult, being duly sworn deposes and says: That s/he is the President of Jersey Central Power & Light Company, one of the applicants for approval of transfer of license; that s/he has read the foregoing application and knows the contents thereof; and that the same are true to the best of his/her knowledge and belief.

James V. Fakult  
[Insert printed name]

Subscribed and sworn to before me, a notary public of the State of New Jersey this 20<sup>th</sup> day of March, 2020.

Janet C. Hrbek  
Notary Public

My Commission expires 9/22/21

**Janet C. Hrbek**  
**Notary Public of New Jersey**  
**My Commission Expires Sept. 22, 2021**

# **EXHIBITS**

**Exhibit A-1**

**Certificate of Formation**

# Delaware

Page 1

The First State

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "YARDS CREEK ENERGY LLC", FILED IN THIS OFFICE ON THE THIRTIETH DAY OF DECEMBER, A.D. 2019, AT 2:38 O`CLOCK P.M.*



  
Jeffrey W. Bullock, Secretary of State

7775569 8100  
SR# 20198920366

Authentication: 204320551  
Date: 12-30-19

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



**CERTIFICATE OF FORMATION**

**OF**

**YARDS CREEK ENERGY LLC**

The undersigned, an authorized natural person, for the purpose of forming a limited liability company under the provisions and subject to the requirements of the Delaware limited Liability Company Act, hereby certifies that:

1. Name. The name of the limited liability company is

**YARDS CREEK ENERGY LLC**

2. Registered Office. The address of the registered office of the Company in the State of Delaware is c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, County of New Castle, Delaware 19808.

3. Registered Agent. The name and address of the registered agent for service of process on the Company in the State of Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, County of New Castle, Delaware 19808.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation of YARDS CREEK ENERGY LLC this 27<sup>TH</sup> day of December, 2019.

By: /s/ Michelle Genieczko  
Michelle Genieczko, Authorized Person

**Exhibit A-2**

**Limited Liability Company Agreement**

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**YARDS CREEK ENERGY LLC**

**DATED: December 30, 2019**

LIMITED LIABILITY COMPANY AGREEMENT  
OF  
YARDS CREEK ENERGY LLC

This Limited Liability Company Agreement of Yards Creek Energy LLC (the “Company”), dated and effective as of December 30, 2019, is entered into by LS Power Equity Partners III, L.P., as the sole member of the Company (the “Member”). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

The Company is a limited liability company formed pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18-101 et seq.), as amended from time to time (the “Act”) by the filing of its Certificate of Formation on December 30, 2019.

The Member hereby agrees as follows:

Section 1.     Name.

The name of the limited liability company is Yards Creek Energy LLC.

Section 2.     Principal Business Office.

The principal business office of the Company shall be located at One Tower Center, 21<sup>st</sup> Floor, East Brunswick, New Jersey 08816, or such other location as may hereafter be determined by the Member.

Section 3.     Registered Office.

The address of the registered office of the Company in the State of Delaware is c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, DE, 19808.

Section 4.     Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is Corporation Service Company, 251 Little Falls, Wilmington, DE, 19808.

Section 5.     Members.

The mailing address of the Member is set forth on Schedule B attached hereto. If one or more additional Members of the Company are admitted to the Company pursuant to Section 19 or 20, then Schedule B shall be updated to include the name and mailing address of such Member or Members and the respective percentage of the limited liability company interests in the Company (each such interest, a “Membership Interest”) held by each of the Members of the Company following the addition of such Member or Members.

Section 6. Certificate of Formation.

The Company was formed upon the filing of the Certificate of Formation of the Company with the Secretary of State of the State of Delaware (such filing being hereby approved and ratified in all respects). A Member or an Officer shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business. The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. Purposes.

7.1 The purpose to be conducted or promoted by the Company is to engage in the following activities:

- 7.1.1 to acquire, own or control, directly or indirectly, entities engaged in the ownership, development, construction, design, engineering, finance, improvement, operation and/or maintenance of power generation facilities which may include battery storage facilities or renewable energy facilities and to engage in any other activities related or incidental thereto or in anticipation thereof,
- 7.1.2 to manage and administer its assets (including by acquiring and/or disposing of direct and/or indirect equity interests in other entities);
- 7.1.3 to execute, perform and enforce such agreements, documents and instruments as may be desirable or necessary to conduct its business, manage its assets and perform its obligations;
- 7.1.4 to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware.

Section 8. Powers.

The Company, and the Officers of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

Section 9. Management.

The business and affairs of the Company shall be managed by or under the direction of the Member, which Member may act through its manager, directors, officers, employees, representatives, agents and designees.

Section 10. Officers.

10.1 Officers. The Officers as of the date of this Agreement are listed on Schedule C hereto. The additional or successor Officers of the Company shall be chosen by the Member and shall consist of at least a President, a Secretary and a Treasurer. The Member may also choose one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person. The Member may appoint such other Officers and agents as the Member shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Member. The Officers of the Company shall hold office until their successors are chosen and qualified. Any Officer may be removed at any time, with or without cause, by the Member. Any vacancy occurring in any office of the Company shall be filled by the Member. Any of the President, any Vice President and/or Treasurer may execute all bonds, mortgages and other contracts, or open bank accounts, except: (i) where required or permitted by law or this Agreement to be otherwise signed and executed, or (ii) where signing and execution thereof shall be expressly delegated by the Member to one of such Officers or some other Officer or agent of the Company.

10.2 Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by an action of the Member not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business and the actions of the Officers taken in accordance with such powers shall bind the Company.

Section 11. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and no Member or Officer shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member or Officer of the Company.

Section 12. Capital Contributions.

The Member has contributed to the Company property of an agreed value as listed in the books and records of the Company.

Section 13. Additional Contributions.

The Member is not required to make any additional Capital Contribution to the Company. However, the Member may make additional Capital Contributions to the Company at any time. The provisions of this Agreement, including this Section 13, are intended to benefit the Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (other than a Covered Person) (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and the Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 14. Tax Status.

The Member intends that so long as there is only a single beneficial owner of the Company, the Company shall be treated as a disregarded entity for federal income tax purposes.

Section 15. Distributions.

15.1 Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be permitted or required to make a distribution to the Member on account of its interest in the Company if such distribution would violate Section 18-607 of the Act or any other applicable law.

15.2 The Company may withhold distributions or portions thereof if it is required to do so by any applicable rule, regulation, or law, and the Member hereby authorizes the Company to withhold from or pay on behalf of or with respect to such Member any amount of federal, state, local or foreign taxes that the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement. Any amount withheld pursuant to this Section 15.2 shall be treated as having been distributed to such Member.

Section 16. Books and Records.

The Company shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Company.

Section 17. Other Business.

Notwithstanding any duty otherwise existing at law or in equity, the Member and any Affiliate of the Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others, and the Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 18. Exculpation and Indemnification.

18.1.1 To the fullest extent permitted by law, neither the Member, nor any Officer, employee or agent of the Company nor any employee, representative, agent or Affiliate of the Member (collectively, the "Covered Persons") shall be liable to the Company or any other Person who is bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement. Notwithstanding any other provision of this Agreement to the contrary, to the fullest extent permitted by applicable law, (A) no Covered Persons shall have any personal liability to any other Person resulting from, arising out of or related to this Agreement or any other agreement entered into in connection herewith or the transactions contemplated hereby, under any law or any transaction contemplated hereby, and this Agreement

may only be enforced against, and any proceeding for breach of this Agreement may only be made against, the parties hereto, and (B) no Covered Persons shall have any personal liability for any liabilities or obligations of the Company, the Company's subsidiaries, or its manager or any of their respective Affiliates for any action or proceeding (whether in tort, contract or otherwise) arising in connection with this Agreement and no personal liability with respect thereto shall attach to any such Covered Persons, whether by or through attempted piercing of the corporate veil, by the enforcement of any judgment, fine or penalty or by the virtue of any statute, regulation or other applicable law, or otherwise. A Covered Person may be liable for any such loss, damage or claim incurred by reason and, if found (following any possible appeals) by a Court of Competent Jurisdiction to have occurred as a direct and primary result, of such Covered Person's gross negligence or willful misconduct. No provision of this Agreement is intended to reduce, limit or otherwise abrogate any fiduciary duty of the manager; provided, however, that the manager shall not be liable to the Company or to any such other Member for its good faith reliance on the provisions of this Agreement.

18.2 To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement. No Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason and, if found (following any possible appeals) by a Court of Competent Jurisdiction to have occurred as a direct and primary result, of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 18 by the Company shall be provided out of and to the extent of Company assets only, and no Member shall have any personal liability on account thereof.

18.3 To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 18.

18.4 A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to any Member might properly be paid.

18.5 The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Member to replace such other duties and liabilities of such Covered Person.



18.6 The foregoing provisions of this Section 18 shall survive any termination of this Agreement.

Section 19. Transfers.

The Member may sell, assign, transfer, convey, pledge or otherwise dispose of (collectively, “Transfer”) in whole or in part its limited liability company interest in the Company. If the Member Transfers all or part of its limited liability company interest in the Company pursuant to this Section 19, the transferee shall be admitted to the Company as a Member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If such Member Transfers all of its limited liability company interest, such admission shall be deemed effective immediately prior to the Transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company.

Section 20. Admission of Additional Members.

One or more additional Members of the Company may be admitted to the Company in connection with a Transfer as described in Section 19 or with the written consent of the Member.

Section 21. Dissolution.

21.1 The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) written consent of the Member, (ii) the termination of the legal existence of the last remaining Member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining Member of the Company in the Company unless the Company, without dissolution, is continued in a manner permitted by this Agreement or the Act and (iii) the entry of a decree of judicial dissolution under Section 18-802 of the Act. Upon the occurrence of any event that causes the last remaining Member of the Company to cease to be a member of the Company (other than (i) upon an assignment by such Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 19 and 20, or (ii) the resignation of such Member and the admission of an additional member of the Company pursuant to Sections 19 and 20), to the fullest extent permitted by law, the personal representative of such Member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such Member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute Member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining Member of the Company.

21.2 Notwithstanding any other provision of this Agreement, the Bankruptcy of a Member shall not cause such Member to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

21.3 In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly

manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

21.4 The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

Section 22. Miscellaneous.

22.1 Waiver of Partition; Nature of Interest. Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, each Member hereby irrevocably waives any right or power that such Person might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. No Member shall have any interest in any specific assets of the Company, and such Member shall not have the status of a creditor with respect to any distribution pursuant to Section 15 hereof. The limited liability company interest or interests in the Company are personal property.

22.2 Benefits of Agreement; No Third-Party Rights. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of a Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person.

22.3 Severability of Provisions. Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

22.4 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

22.5 Binding Agreement. Notwithstanding any other provision of this Agreement, each Member agrees that this Agreement constitutes a legal, valid and binding agreement of such Member, and is enforceable against such Member, in accordance with its terms.

22.6 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

22.7 Amendments. This Agreement may be modified, altered, supplemented or amended pursuant to a written consent of the Member.

22.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

22.9 Notices. Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 2, (b) in the case of a Member, to such Member at its address as listed on Schedule B attached hereto and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the first date written above.

**SOLE MEMBER:**

LS POWER EQUITY PARTNERS III, L.P.

By: LS POWER PARTNERS III, L.P.  
Its general partner

By: LS POWER FUND III GP, LLC  
Its general partner

By:   
Name: DARPAN KAPADIA  
Title: EXECUTIVE VICE PRESIDENT

## SCHEDULE A

### Definitions

#### A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

“Act” has the meaning set forth in the preamble to this Agreement.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person.

“Agreement” means this Limited Liability Company Agreement of the Company, together with the schedules and exhibits attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

“Bankruptcy” means, with respect to any Person, if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (vii) if 90 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person’s consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of “Bankruptcy” is intended to replace and shall supersede and replace the definition of “Bankruptcy” set forth in Sections 18-101(1) and 18-304 of the Act.

“Capital Contributions” means, with respect to any Member, the total amount of cash and the fair market value of property (other than cash) contributed to the capital of the Company by such Member, whether as an initial Capital Contribution or as an additional Capital Contribution.

“Certificate of Formation” means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on December 30, 2019, as amended or amended and restated from time to time.

“Company” has the meaning set forth in the preamble to this Agreement.

“Covered Persons” shall have the meaning ascribed to such term in Section 18.1.

“Member” or “Members” means LS Power Equity Partners III, L.P., as the member of

the Company as of the date of this Agreement, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its capacity as a member of the Company.

“Membership Interest” shall have the meaning ascribed to such term in Section 5.

“Officer” means an officer of the Company described in Section 10.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

“Transfer” shall have the meaning ascribed to such term in Section 19

## B. Rules of Construction

The following interpretations and rules of construction shall apply to this Agreement:

(a) titles and headings are for convenience only and will not be deemed part of this Agreement for purposes of interpretation;

(b) unless otherwise stated, references in this Agreement to “Sections”, “Schedules”, or “Exhibits” refer, respectively, to Sections, Schedules or Exhibits of this Agreement;

(c) “including” means “including, but not limited to”, and “include” or “includes” means “include, without limitation” or “includes, without limitation”;

(d) “hereunder”, “herein”, “hereto” and “hereof”, when used in this Agreement, refer to this Agreement as a whole and not to a particular Section or clause of this Agreement;

(e) in the case of defined terms, the singular includes the plural and vice versa;

(f) unless otherwise indicated, all accounting terms not specifically defined shall be construed in accordance with generally accepted accounting practices in the United States;

(g) unless otherwise indicated, each reference to a particular law is a reference to such law as it may be amended, modified, extended, restated or supplemented from time to time, as well as to any successor law thereto;

(h) unless otherwise indicated, references to agreements shall be deemed to include all subsequent amendments, supplements and other modifications thereto; and

(i) unless otherwise indicated, each reference to any Person shall include such Person’s successors and permitted assigns.

SCHEDULE B

Members

<u>Name</u>	<u>Mailing Address</u>	<u>Percentage Interest</u>
LS Power Equity Partners III, L.P.	One Tower Center Blvd., 21 <sup>st</sup> Floor, East Brunswick, New Jersey 08816	100%

SCHEDULE C

Officers

<u>Name</u>	<u>Office</u>	<u>Effective Date</u>
Paul Segal	President	December 30, 2019
Joseph Esteves	Executive Vice President	December 30, 2019
David Nanus	Executive Vice President	December 30, 2019
Darpan Kapadia	Executive Vice President	December 30, 2019
Shimon Edelstein	Executive Vice President, Tax	December 30, 2019
John Burke	Senior Vice President	December 30, 2019
Ernest Kim	Senior Vice President	December 30, 2019
Carolyn Murff	Vice President	December 30, 2019
Joseph Myers	Vice President	December 30, 2019
Uendra Prajapati	Vice President, Tax	December 30, 2019
John Staikos	Secretary	December 30, 2019
Ron Fischer	Assistant Secretary	December 30, 2019
Scott Carver	Assistant Secretary	December 30, 2019
David Sass	Assistant Secretary	December 30, 2019
Mark Brennan	Treasurer	December 30, 2019
Jeff Wade	Chief Compliance Officer	December 30, 2019



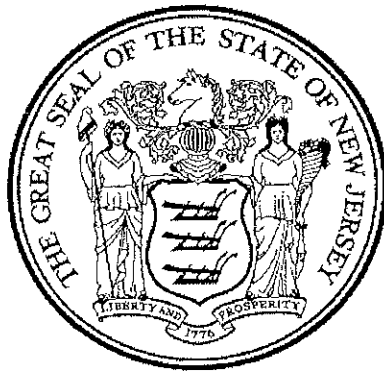
**Exhibit A-3**

**Certificate of Authority To Do Business in New Jersey**

STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
CERTIFICATE OF AUTHORITY

YARDS CREEK ENERGY, LLC  
0600467378

*I, the Treasurer of the State of New Jersey, do hereby certify that the above-named Foreign Limited Liability Company organized under the laws of Delaware, has complied with all the requirements of Title 42:2C of the New Jersey Statutes, and that the business or activity of said Foreign Limited Liability Company to be carried on within the State of New Jersey is such as may be lawfully carried on by Foreign Limited Liability Company filed under the laws of this State for similar business or activity. The Certificate of Authority was duly filed March 19th, 2020.*



Certificate Number: 142163793

Verify this certificate online at

<https://www.njportal.com/DOR/businessrecords/Validate.aspx>

*IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this 23rd day of March, 2020*

A handwritten signature in black ink, appearing to read 'Elizabeth Maher Muoio'.

Elizabeth Maher Muoio  
State Treasurer



New Jersey Department of the Treasury  
Division of Revenue  
Registration of Foreign Limited Liability Company

0600467378

This form may be used to obtain authorization for a foreign Limited Liability Company to conduct business in New Jersey, pursuant to New Jersey State law. Applicants must insure strict compliance with NJSA 42, the New Jersey Limited Liability Company Act, and insure that all applicable filing requirements are met. This form is intended to simplify filing with the STATE OFFICE. Applicants are advised to seek out private legal assistance before submitting filings to the STATE'S OFFICE.

1. Name of Limited Liability Company:

Yards Creek Energy, LLC

2. Main Business or Principal Business Address:

1 Tower Center Blvd., 21st Floor, East Brunswick, New Jersey 08816

3. The purpose for which this Limited Liability Company is organized is:

ownership, management or operation, directly or indirectly, of a power generation facility

4. Limited Liability Company State:

Delaware

5. Original Date of formation:

December 30, 2019

6. Registered Agent Name & Address (must be in NJ):

Corporation Service Company, Princeton South Corporate Ctr, Ste 160  
100 Charles Ewing Blvd, Ewing, NJ 08628

7. Date Limited Liability Company intends to start business activity in NJ:

upon filing

8. Other provisions (list below or attach to certificate):

The undersigned represent(s) that this Limited Liability Company has been formed under the laws of the state of origin and continues to exist as an active, valid Limited Liability Company or registered Limited Liability Partnership in that state. The undersigned also attest(s) that they are authorized to sign this certificate on behalf of the Limited Liability Company and that this filing complies with New Jersey State law as detailed in NJSA 42.

Name : *Michelle Henning*

Date: March 19, 2020