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Transaction ID 59563342
Case No. 12742-CB

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IRA TRUST FBO BOBBIE AHMED, on behalf of similarly situated Class A stockholders of NRG YIELD, INC.	)	
Plaintiff,	)	**PUBLIC VERSION FILED SEPTEMBER 15, 2016**
v.	)	C.A. No. 12742-CB
DAVID CRANE, JOHN F. CHLEBOWSKI, MAURICIO GUTIERREZ, KIRKLAND B. ANDREWS, BRIAN R. FORD, FERRELL P. MCCLEAN, CHRISTOPHER S. SOTOS and NRG ENERGY, INC.,	)	
Defendants.	)	

VERIFIED CLASS ACTION COMPLAINT

Plaintiff IRA Trust FBO Bobbie Ahmed ("Plaintiff"), on behalf of itself and all other similarly situated Class A common stockholders of NRG Yield, Inc. ("Yield" or the "Company"), brings the following Verified Class Action Complaint (the "Complaint") against certain current and former members of the board of directors of Yield (the "Director Defendants") and the Company's controlling stockholder, NRG Energy, Inc. ("NRG"), for breaching their fiduciary duties. The allegations of the Complaint are based on the knowledge of Plaintiff as to itself, and on information and belief, including the investigation of counsel, the review of

publicly-available information, and the review of certain books and records produced by the Company in response to Plaintiff's demand made under Section 220 of the Delaware General Corporation Law, as to all other matters.

NATURE OF THE ACTION

1. This case arises from NRG and the Director Defendants' breaches of fiduciary duty in connection with a stock reclassification that perpetuated NRG's control over Yield while providing little to no benefit to Yield and its public stockholders.

2. In July 2013, NRG commenced an initial public offering ("IPO") of Yield, but retained all of the Company's Class B common stock (the "Class B Stock"), which provided NRG with approximately 65% of Yield's total voting power. Yield's Class B Stock, however, does not carry super-voting rights. Thus, further equity issuances by the Company posed a substantial risk to NRG's control over Yield. In light of Yield's dividend growth-oriented business model and the accompanying need to frequently raise capital, NRG faced a meaningful risk that it would lose control over Yield. Conversely, public stockholders had a meaningful expectation that they would, at some reasonable point in time, collectively gain control from NRG.

3. By the fall of 2014, it became clear to NRG that it would lose majority control over Yield as early as 2015. NRG therefore hatched a plan to

solve this problem by perpetuating its control over Yield: NRG would cause the Yield Board to create a new class of capital stock that would carry no voting rights, allowing Yield to raise capital without fear of diluting NRG's voting control.

4. After minimal negotiation, the Yield board of directors (the "Board") agreed to NRG's proposed reclassification (the "Reclassification") subject to two minor concessions: (a) the new class of capital stock – Class C common stock ("Class C Stock") – would carry 1/100th of a vote per share and (b) NRG would add certain assets to a right-of-first-offer arrangement (the "ROFO Agreement") between NRG and the Company.[1]

5. NRG cemented its control over Yield through the Reclassification. Unless and until the Company issues ***823.4 million*** new shares of Class C Stock—***ten times*** the number of Yield shares outstanding immediately prior to the Reclassification—NRG's voting stake in Yield will remain above 50.1%. It is highly questionable whether Yield will ever issue enough stock to actually jeopardize NRG's control.

6. While the benefits of the Reclassification to NRG are obvious, the benefits to the Company and its public stockholders are meager to non-existent. In

[1] As part of the same transaction, Yield created a fourth class of shares—Class D shares—which were issued to NRG for the express purpose of reducing even the minimal voting dilution suffered by NRG in connection with the initial issuance of the Class C common stock. Like the Class C shares, the Class D shares carried 1/100th of a vote per share. NRG was issued one share of Class D stock for each share of Class B stock that it held.

exchange for bestowing potentially perpetual control on NRG at a time when control was just about to slip out of its grasp, the Class A stockholders received an extra share of stock with a *de minimis* voting right (essentially a split of their existing shares) and the Company obtained the right to acquire certain assets from NRG that NRG was, in all likelihood, already intending to "drop-down" to Yield.

7. On May 5, 2015, Yield stockholders approved the Reclassification, but as detailed herein, a number of material disclosure deficiencies in the Company's proxy materials (the "Proxy") deprived stockholders of their right to cast a fully informed vote on this unfair transaction.

8. Since the Reclassification closed, Yield's stock price has sagged and Yield's Class A stock (the "Class A Stock") now trades at a persistent discount to the Class C Stock because of the capped liquidity now saddling the Class A shares.

9. Through this action, Plaintiff seeks to hold NRG and the Director Defendants accountable for their breaches of fiduciary duty in connection with the Reclassification.

PARTIES AND RELEVANT NON-PARTIES

10. Plaintiff is and has been at all relevant times a holder of Yield Class A Stock.

11. Relevant non-party Yield owns a diversified portfolio of contracted renewable and conventional generation and thermal infrastructure assets in the

United States, including fossil fuel, solar and wind power generation facilities that have the capacity to support more than two million American homes and businesses. Yield is a Delaware corporation with its principal executive offices in Princeton, New Jersey. The Company's Class A Stock and Class C Stock are listed on the New York Stock Exchange ("NYSE") and trade under the ticker symbols "NYLD.A" and "NYLD", respectively. The Company's Class B Stock and Class D common stock ("Class D Stock") are not publicly traded and are owned by NRG.

12. Defendant Kirkland B. Andrews ("Andrews") has served as Executive Vice President, Chief Financial Officer ("CFO") and as a director of Yield since the Company's formation in December 2012. Andrews has also served as Executive Vice President and CFO of NRG since September 2011.

13. Defendant John F. Chlebowski ("Chlebowski") has served as a Yield director since July 2013, and between December 2015 and May 2, 2016, served as Interim Chairman of the Yield Board. Chlebowski was a director of NRG from December 2003 until July 2013. Currently, he serves as the "Lead Independent Director" on the Yield Board.

14. Defendant David Crane ("Crane") was the President and CEO of Yield from its formation in December 2012 until December 4, 2015. Crane also served as the President and CEO of NRG and as a director of NRG from December

2003 until December 2015. He resigned from the Yield Board on December 18, 2015.

15. Defendant Brian R. Ford has served as a Yield director since July 2013.

16. Defendant Mauricio Gutierrez ("Gutierrez") has served as Chairman of the Yield Board since May 2016 and has served as a Yield director since December 2012. Gutierrez served as Yield's Interim President and Chief Executive Officer ("CEO") from December 4, 2015 until May 2, 2016. He also served as Yield's Executive Vice President and Chief Operating Officer ("COO") from December 2012 to December 2015. Prior thereto, he served as President and CEO of NRG since December 2015, and as the Executive Vice President and COO of NRG from July 2010 until December 2015. Gutierrez has been with NRG since August 2004 and served in multiple executive positions therein, including Executive Vice President – Commercial Operations from January 2009 to July 2010 and Senior Vice President – Commercial Operations from March 2008 to January 2009.

17. Defendant Ferrell P. McClean has served as a Yield director since July 2013.

18. Defendant Christopher S. Sotos ("Sotos") has served as a Yield director since May 2013. Sotos has also served as Yield's President and CEO

since May 2, 2016. Prior to becoming Yield's President and CEO, he served as Senior Vice President, Strategy and Mergers and Acquisitions of NRG. Previously, he served as NRG's Senior Vice President and Treasurer from March 2008 to September 2012.

19. The Defendants listed in paragraphs 12 through 18 are herein referred to as the "Individual Defendants."

20. Defendant NRG is an integrated power company that produces, sells and delivers energy, energy products and services in various power markets in the United States. NRG has dual corporate headquarters – one in West Windsor Township, New Jersey, and the other in Houston, Texas.

SUBSTANTIVE ALLEGATIONS

I. Yield Background

21. On December 20, 2012, NRG incorporated Yield in Delaware.

22. Yield had issued two classes of common stock: Class A Stock and Class B Stock, each of which entitled its holder to one vote on all matters.

23. On July 22, 2013, Yield closed an IPO of 22,511,250 shares of its Class A Stock. Yield's Class B Stock was never offered to the public, and NRG retained 42,738,750 shares of Yield Class B Stock, leaving NRG with a roughly 65% stake in the Company.

24. In connection with the IPO, the Company's shares of Class A Stock began trading on the NYSE under the symbol "NYLD."[2]

25. Following the IPO, NRG held a majority of the Company's voting power and elected all of the members of the Yield Board. As a result, the Company is considered a "controlled company" for purposes of the NYSE listing requirements.

26. Also since the IPO, NRG has controlled the Company's daily operations. Through a Management Services Agreement ("MSA"), NRG or certain of its affiliates provide services to the Company including the carrying out of all day-to-day management, accounting, banking, treasury, administrative, liaison, representative, regulatory and reporting functions and obligations. The MSA also allows NRG to make recommendations with respect to the payment of dividends or the exercise of any voting rights to which Yield is entitled in respect of its subsidiaries.[3]

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[2] The net proceeds to the Company from the offering, after deducting underwriting discounts, were approximately $468 million, of which the Company used $395 million to purchase 19,011,250 NRG Yield LLC Class A units from NRG and $73 million to purchase 3,500,000 NRG Yield LLC Class A units directly from NRG Yield LLC. At the time of the offering, NRG owned 42,738,750 NRG Yield LLC Class B units. NRG Yield LLC is the holding company through which various power projects are owned by NRG and Yield.

[3] For the year ended December 31, 2015, NRG received a total of approximately $8 million in management fees and reimbursement for expenses under the MSA.

27. NRG has also always appointed the Company's senior executives. Defendant Crane served as the Company's President and CEO from Yield's formation in December 2012 until December 4, 2015. Crane served as the President, CEO and director of NRG from December 2003 until December 2015. Further, Defendant Andrews has served as the Company's Executive Vice President and CFO since Yield's formation in December 2012. Andrews has simultaneously served as Executive Vice President and CFO of NRG since September 2011.[4]

28. NRG's control over Yield is particularly relevant because their businesses are largely intertwined. In connection with the IPO, the Company entered into a Right of First Offer Agreement with NRG (previously defined herein as the "ROFO Agreement"). Under the ROFO Agreement, NRG granted the Company and its affiliates a right of first offer on any proposed sale, transfer or other disposition of certain assets of NRG.

29. Two key components of Yield's business strategy are its relationship with NRG and the ROFO Agreement, which provide a platform for strategic growth through potentially cash-accretive and tax-advantaged acquisitions. Thus,

[4] The Company concedes in the Proxy that "[t]hose of our executive officers who have economic interests in NRG may be conflicted when advising our Corporate Governance, Conflicts and Nominating Committee or otherwise participating in the negotiation or approval of [related party] transactions."

a large aspect of the Company's business model is dependent on related-party transactions with NRG.[5]

II. NRG Risks Losing Control Over Yield

30. Yield's dividend growth-oriented business model is driven in part by acquisitions.[6] In order to finance acquisitions and continue its growth plan, Yield frequently needs to raise capital. Issuing equity or convertible notes dilutes the Company's common stockholders, including NRG. But while all stockholders share equally in any economic dilution, NRG suffers a unique detriment in the event of continued issuances of equity or convertible notes—*i.e.,* potential loss of its voting control over the Company.

31. Indeed, between the IPO and the fall of 2014, NRG's ownership of Yield was diluted from over 65% to just over 55% because of Yield's follow-on equity issuances.

32. Thus, NRG had a unique interest in avoiding the loss of its majority control over Yield as the Company issued additional equity to fuel growth.

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[5] As of December 31, 2015, the Company and NRG held 53.3% and 46.7% economic interests, respectively, in NRG Yield LLC. The Company is the sole managing member of NRG Yield LLC, and operates and controls all of its business and affairs. Further, the Company consolidates the financial results of NRG Yield LLC and its subsidiaries.

[6] Yield stated in its Form S-1 Registration Statement filed in connection with the IPO, "We expect to … increase [] cash dividends over time as we acquire assets."

III. The Reclassification

33. On October 8, 2014, NRG management provided the Yield Board with several alternatives to increase the Company's access to capital to finance acquisitions while simultaneously preserving NRG's majority voting control over Yield. The proposed alternatives included:

- a shareholder agreement between NRG and the Company that would not prevent economic or voting dilution of NRG but would provide NRG control over certain corporate events;
- issuing Yield preferred stock to third parties in lieu of common stock, which would raise capital but avoid diluting the Company's common stockholders;
- merging Yield into a General Partnership/Limited Partnership structure; and
- requiring that NRG invest 50% of the equity value of future Yield acquisitions.

34. On December 15, 2014, Crane and Andrews presented the other members of the Yield Board with a proposal to create Class C Stock, a new class of Company capital stock that would carry no voting rights.[7] A presentation made in connection with this proposal (the "December 15 Presentation") clarifies that the creation of Class C Stock was meant to address the prospect that NRG would lose

[7] The minutes of this meeting do not reflect any discussion regarding potential alternatives to the Reclassification that were presented to the Board on October 8, 2014.

majority voting control over Yield as the Company continued to issue equity to finance growth.

35. NRG's desire to maintain majority voting control over Yield—and at little or no cost—was the driver of its proposal for Yield to issue non-voting stock. The December 15 Presentation stated that a benefit to NRG of its proposal was that it would "[p]reserve[] NRG's voting control of [Yield] above 50%." Another benefit to NRG reflected in the December 15 Presentation was that the issuance of non-voting Yield stock would "[b]etter manage future potential voting dilution" for NRG.

36. While the benefits flowing to NRG from the potential creation of Class C Stock were obvious, the benefits to NRG's public stockholders fell somewhere between limited and non-existent. Indeed, the prospective harm to the Company's public stockholders from the issuance of a new class of non-voting stock was acute. *First*, the proposed reclassification would reduce (if not altogether eliminate) the previously significant likelihood that future equity issuances would lead to control of the Company shifting from NRG to public stockholders, thereby reducing the value of Class A stock. *Second*, the proposed reclassification would essentially hand future control of the Company to NRG without requiring NRG to pay a control premium. *Third*, because Yield will now fund future growth by issuing Class C shares rather than Class A shares, the Class

A shares will suffer from capped liquidity. As the company's financial advisor, Moelis & Company LLC ("Moelis") warned the Board, the capped liquidity of Class A shares could—and in fact did—lead to a trading discount to the more liquid Class C shares over time. Also, splitting liquidity between Class A and Class C shares would likely have a detrimental effect on the performance of their share price. *Finally*, the creation of Class C stock to protect NRG's control of the Company creates a risk that in a future sale of the Company, NRG could potentially receive a substantial control premium that would not be shared with the Company's public stockholders.

37. Nonetheless, with all of Yield's other means of raising capital inexplicably off the table, the Board authorized its Corporate Governance, Conflicts & Nominating Committee (the "Conflicts Committee" or "Committee") to negotiate a reclassification with NRG.

38. On January 30, 2015, NRG presented to the Committee on its proposal for Yield to issue a new class of non-voting common stock in connection with a proposed reclassification.

39. Then, on February 6, 2015, NRG sent the Conflicts Committee a formal reclassification proposal pursuant to which each holder of a Yield Class A share would receive one share of a new class of non-voting common stock for each Class A share held (the "February 6 Proposal").

40. On February 9, 2015, the Conflicts Committee met with Moelis. Moelis reviewed the February 6 Proposal—as well as several purportedly comparable precedent transactions—with the Conflicts Committee. The Conflicts Committee decided to counter with four purported enhancements: (i) adding assets under the ROFO Agreement, (ii) a special dividend or "true-up" to compensate Class C stockholders for the potential difference in the trading price of Class A and Class C shares, (iii) dividend enhancements or protections to Class C stockholders, and (iv) rights for Class C stockholders to convert their shares into voting shares upon the occurrence of certain events.

41. On February 17, 2015, the Conflicts Committee received an updated proposal from NRG in response to its proposed amendments to the February 6 Proposal (the "February 17 Proposal"). Under the February 17 Proposal, NRG agreed to expand the current pipeline of assets available for purchase by Yield under the ROFO Agreement (the "New ROFO Assets") by adding certain additional assets that NRG previously acquired, up to $250 million of equity investments in residential and distributed generation solar portfolios, and certain power projects in Carlsbad and Mandalay, California.

42. The February 17 Proposal did not include conversion rights for Class C shares, a legitimate "sunset" provision or a "true-up" to account for the difference in value between Class A and Class C shares. Instead, the February 17

Proposal merely provided that the proposed new class of stock to be issued to the holders of Class A shares in the recapitalization would entitle holders of such shares to 1/100 of a vote per share, rather than the non-existent voting rights contemplated in the February 6 Proposal. NRG claimed these voting rights would function as a sunset provision because NRG would lose majority voting control when its economic interest was diluted to approximately 8.7%. In reality, however, that would not occur until after the Company had issued ***over $21 billion in Class C shares***. Moreover, the February 17 Proposal did not include a so-called "stapling" provision[8] requiring NRG to sell Class B shares when selling Class D shares. The absence of this provision means that NRG can—by selling Class D shares alone—liquidate a significant portion of its economic interest in Yield without any meaningful sacrifice of voting control. These entrenchment motives harm public stockholders without any corresponding benefits.

43. The February 17 Proposal also neglected to include the two most valuable aspects of the Committee's proposed amendments: (1) a special dividend or "true-up" to compensate Class C for the future potential difference in trading

[8] When the founders of Google (now Alphabet, Inc.) proposed a similar plan in 2012, the special committee that was tapped to negotiate on behalf of Google's board of directors insisted on so-called "stapling" provisions that prohibited the founders from selling the new non-voting Class C shares unless they also sold an equal number of their super-voting Class B shares. The purpose and effect of the stapling provisions was to prohibit the founders from gaining additional liquidity without paying a price in the form of reduced control.

value between the existing Class A and Class C shares, and (2) dividend enhancements or protections to Class C stockholders.

44. On February 19, 2015, the Committee met with Moelis and NRG, and discussed that a dual-class structure was not implemented at the time of IPO because NRG did not anticipate the pace of acquisitions and rapid growth of Yield.

45. At the meeting, the Committee received no valuation or analysis of the New ROFO Assets, which amounted to the only substantive concession NRG made. Nevertheless, the Committee deemed the February 17 Proposal to be fair and recommendable to the Company's public stockholders. The Committee did not secure a "true-up" or any dividend enhancement for the Class C stock.

46. On February 24, 2015, the Conflicts Committee met and informed NRG that it unanimously approved the February 17 Proposal.

47. The Committee ultimately agreed to adjust Yield's capital structure by (i) establishing two new classes of common stock – *i.e.*, Class C Stock and Class D Stock; and (ii) distributing shares of the Class C Stock and Class D Stock to holders of then outstanding Yield Class A Stock and Yield Class B Stock, respectively, through a stock split.[9] In connection with the Reclassification, the Company and NRG also entered into the Amended and Restated ROFO Agreement

[9] Also, shares of Class D common stock would be distributed to NRG in order to reduce voting dilution associated with the initial issuance of the Class C common stock. Holders of shares of Class C common stock and Class D common stock would have the right to 1/100th of one vote per share.

(the "Amended ROFO Agreement"). The Amended ROFO Agreement made new assets available to Yield, and provided Yield with a right of first offer with respect to up to $250 million of equity in one or more residential or distributed solar generation portfolios developed by affiliates of NRG. The Amended ROFO Agreement also extended the term of the Company's right of first offer to the seventh anniversary of the consummation of the Reclassification.

IV. Yield Stockholders Approve The Reclassification After Dissemination Of The Materially Misleading Proxy

48. In order to effect the Reclassification the Company needed to amend its Certificate of Incorporation (the "Charter"), which required stockholder approval.

49. On March 26, 2015, the Company issued the Proxy to solicit support for the Reclassification.[10] The Proxy was materially deficient for a number of reasons.

50. *First*, the Proxy discloses that:

> As a result, on October 8, 2014, the NRG management team provided members of the Board and the board of directors of NRG ***with several alternatives*** to increase the Company's access to capital to finance

[10] As of March 16, 2015, the record date for the stockholder vote on the Reclassification, NRG was the beneficial owner of 55.3% of Yield's total outstanding voting power. Stockholder approval was conditioned on a majority of outstanding Class A common stockholder not affiliated with NRG approving the proposal.

acquisitions, as well as to preserve the significant long-term benefits of the Company's relationship with NRG, which is important to the Company's continued growth and success. ***The creation of a new class of Company capital stock with no voting rights was among the alternatives presented***." Proxy at 23 (emphasis added).

51. The Proxy, however, failed to disclose what alternatives other than the Reclassification were discussed and evaluated by the Yield Board or Conflicts Committee.

52. Documents produced to Plaintiff pursuant to Section 220 reveal that the following four alternatives other than the Reclassification were potentially available:

nrg

Potential Solutions to 50% Control Threshold

		Execution Risk	Cost	Permanen Solution
Issue low or non-Voting Common Stock	✣ Maintains NRG voting control but dilutes economic interest • New Low/No-Vote shares would have identical economic rights but would likely trade at a discount to existing stock ✣ Maintain "controlled company" qualification as long as NRG's voting control remains above 50%			
Enter into Shareholder Agreement	✣ Enter into agreement in exchange for ROFO assets or other consideration ✣ Maintain control over certain events, such as: – Significant acquisitions/dispositions – Change in Number of Directors – Incurrence of debt – Equity issuance with preferential rights – Liquidation/dissolution ✣ Does not prevent voting and economic dilution; potential NYLD deconsolidation			
Issue Preferred Stock At Inc. or Non-voting Units at LLC	✣ Same dilution risk as Common Equity over long term (if converted or repaid by issuing stock) ✣ Potential size, cost and liquidity limitations			
Merge NYLD into GP/LP structure	✣ Maintains NRG voting control but dilutes economic interest ✣ Need strong business/economic rational for shareholders to accept losing their voting rights			
Invest 50% of Equity Value in NYLD Acquisitions	✣ Maintains NRG voting and economic rights; subject to NYSE limitations ✣ Impacts NRG capital available for allocation unless borrow on non-recourse basis against future dividends to fund equity investment			

19/30

Less Favorable More Favorable

53. Disclosure regarding the existence of these other four alternatives is highly material. Had Yield Class A stockholders known that the Company actually had other reasonable, available alternatives that may not have provided NRG with nearly perpetual control over Yield at little to no cost to NRG, Class A stockholders may not have supported the Reclassification.

54. *Second*, the Proxy failed to disclose that, in the absence of the Reclassification, (a) "NRG's ownership could be reduced below 50.1% ***as early as 2015*** without additional [Yield] equity issued to NRG" (emphasis added) and (b) "[t]o maintain voting control (at least 50.1% ownership) in [Yield], NRG must take back -$118mm in [Yield] stock for scheduled drop-downs through 2019, reducing cash proceeds to NRG."

55. According to Moelis's February 24, 2015 presentation to the Conflicts Committee:

KEY TAKEAWAYS	
	▪ To maintain voting control (at least 50.1% ownership) in NYLD, NRG must take back ~$118mm in NYLD stock for scheduled drop-downs through 2019, reducing cash proceeds to NRG — NRG's ownership could be reduced below 50.1% as early as 2015 without additional NYLD equity issued to NRG ▪ Beyond the current drop-down horizon, significant incremental issuance of NYLD stock to NRG will be required to finance third party acquisitions if NRG is to retain majority ownership — Effectively shifts part of financing obligations back to NRG, undermining rationale for NRG to own NYLD ▪ NYLD's current portfolio and pipeline of drop-down assets generates enough CAFD to meet its stated objective of 15%+ annual dividend growth through 2019 — Additional third party acquisitions are required to support dividend growth in 2020 and beyond ▪ NYLD will need to finance future drop-downs primarily with equity to avoid increasing leverage beyond the 3.0x Debt/EBITDA[1] targeted maximum

56. This information is material to Yield Class A stockholders deciding whether to approve the Reclassification because it would have informed them that Yield had significant leverage to extract concessions from NRG, but Yield refused

to wield such leverage. Yield's significant leverage stemmed from the fact that NRG did not want to: (a) lose majority voting control over Yield, (b) have to invest additional equity in Yield or (c) drop-down assets to Yield in exchange for additional Yield equity. Yield Class A stockholders, however, were left in the dark about this leverage. This information is also material because by alerting stockholders to the imminence of NRG's potential loss of control over Yield, it would have informed stockholders of the true extent to which NRG perpetuated its control over Yield through the Reclassification.

57. *Third*, the Proxy misleadingly characterized the Class C Stock as "a sunset provision [on NRG's control], since additional issuances of Class C common stock will result in NRG losing majority voting control when its economic interest is diluted to approximately 8.7%." *See* Proxy at 24, 41.

58. The Proxy, unlike the Conflicts Committee minutes, failed to disclose that Yield would need to issue roughly ***$21.4 billion*** in new equity for the "sun to set" on NRG's majority voting control. *Compare id.* to NRGY-220_00000358 – February 19, 2015 Conflicts Committee minutes ("In addition, the proposed new class of stock (the "Class C Shares") would have 1/100 of a vote per share, rather than no votes as originally proposed, which would effectively function as a sunset provision as NRG would lose majority voting control when its economic interest

was diluted approximately 8.7%, ***which was anticipated to occur after issuing approximately $21 billion of Class C shares***.") (emphasis added).

59. Similarly, unlike the materials that Moelis provided the Conflicts Committee, the Proxy failed to disclose that Yield would need to issue ***823.4 million shares*** of Class C Stock for NRG's voting stake in Yield to drop below 50.1%. Indeed, the February 24, 2015 materials that Moelis provided to the Conflicts Committee included the following chart, which expressly provided that critical information:

- **Providing conversion rights to holders of the Class C shares (into voting shares) upon certain trigger events**

  This does not appear to be an appropriate request given the new proposal:

  — In lieu of conversion rights or the previously proposed sunset provision, NRG would now suggest granting each Class C shares a 1/100 outright fractional voting right
  - Provides outright voting rights
  - Reduces tax risk that Class C would not qualify for tax deferred treatment in M&A transactions
  - Alleviates potential NYSE voting rights policy constraints
  - Will require creation of Class D units and stock for NRG Energy to balance voting and economics rights (structure presented on following page)
  - Effectively functions as a sunset provision

NYLD could issue ~823 million Low-vote shares representing ~$21.4 billion in proceeds at current stock price while retaining >50% of voting rights at ~8.7% of economics

Economic and Voting Calculations Assuming 1:1 Split and 1/100 C/D Share Vote

Status Quo Voting			
	NRG	Public	Total
A Shares	0.0	34.6	34.6
B Shares	42.7	0.0	42.7
Total Shares	42.7	34.6	77.3
% Voting	*55.3%*	*44.7%*	

Pro Forma (Post-Split) Voting			
Pro Forma	NRG	Public	Total
A Shares	0.0	34.6	34.6
B Shares	42.7	0.0	42.7
C/D Shares	0.427	0.346	0.773
Total Shares	43.1	34.9	78.1
% Voting	*55.3%*	*44.7%*	

Public to Reach 50% Voting			
Pro Forma	NRG	Public	Total
A Shares	0.0	34.6	34.6
B Shares	42.7	0.0	42.7
C/D Shares	0.427	8.580	9.007
Total Shares	43.2	43.2	86.3
% Voting	*50.0%*	*50.0%*	

Economics when Public Reaches 50% Voting			
Pro Forma	NRG	Public	Total
A Shares	0.0	34.6	34.6
B Shares	42.7	0.0	42.7
C/D Shares	42.7	858.0	900.7
Total Shares	85.4	892.6	978.1
% Economics	*8.7%*	*91.3%*	
Incremental C Shares Issued			823.40
NYLD Price (pre-split)			$52.02
NYLD Price (post-split)			$26.01
Proceeds Raised ($mm)			**$21,417**

See NRGY-220_00000460.

60. The Board's failure to disclose this information rendered the Proxy materially misleading. Had Yield publicly disclosed this information, stockholders would have known that the purported "sunset" aspect of the Class C Stock was illusory. Yield—which at that time had approximately 78.1 million shares outstanding—would need to issue more than ***ten times*** that number of shares in new Class C Stock (*i.e.*, 823.4 million shares) for NRG to lose its majority voting control. By selectively disclosing that NRG would lose majority voting control when its economic interest is diluted to approximately 8.7%, the Board consciously obscured the fact that the Reclassification made NRG's control over Yield all but perpetual.

61. *Fourth*, the Proxy failed to disclose that Moelis determined that "NRG's proposed additions to the ROFO pipeline represent - [redacted] in run rate CAFD (cash available for distribution) and [redacted] of generation capacity."

62. Disclosure of this information was necessary to allow Yield Class A stockholders to determine whether the New ROFO Assets constituted a sufficiently significant concession in exchange for granting NRG nearly perpetual control over Yield.

63. A February 18, 2015 email from Chlebowski, the Chairman of the Conflicts Committee, to Roger Wood of Moelis, highlights the materiality of this

information in assessing the fairness of the Reclassification. The email states in relevant part:

> Roger, re their response and 1) their willingness to include 3 sets of assets (their page 2) to the ROFO pipeline, which we'll discuss tomorrow, I'd like to know what impact those assets would have on key [Yield] "dashboard" metrics. Specifically, portfolio composition of assets, CAFD and EBITDA, tax runway life and capital structure...

64. Like the other above-described information that was provided to the Conflicts Committee but withheld from stockholders, if this information was critical to the Conflicts Committee's decision-making process, then it would have been similarly critical for Yield Class A stockholders facing a decision whether to approve the Reclassification.

65. *Fifth*, the Proxy failed to disclose that Moelis failed to perform any analysis concerning the potential value transfer to NRG as a result of the Reclassification. This information is material to stockholders because, as drafted, the Proxy suggests that Moelis analyzed the "get" and the "give" for NRG in advising the Conflicts Committee about the financial fairness of the Reclassification. In reality, Moelis largely ignored the tremendous value associated with the "get" for NRG (*i.e.*, nearly perpetual control over Yield).

66. *Sixth*, the Proxy failed to disclose any of Moelis's past investment banking or capital markets services provided to NRG, Yield or the Conflicts Committee. The bank's past, present and potential future work for these entities

was relevant to its incentives in recommending the Reclassification because all of Yield's senior executives who might hire the bank also work at NRG. Thus, Moelis had an incentive to maintain and foster the relationship with NRG's senior executives by condoning the Reclassification.

67. *Seventh*, the Proxy failed to disclose any details about the size or nature of Moelis's fee for advising the Conflicts Committee in connection with the Reclassification, which directly impacted the bank's incentives in recommending the Reclassification.

V. The Reclassification Was Unfair to the Company's Public Stockholders

68. On May 5, 2015, the Company issued a press release announcing stockholder approval of the Reclassification, which was subsequently effected on May 14, 2015. In connection therewith, each outstanding share of Class A Stock was split into one share of Class A Stock and one share of Class C Stock, and each outstanding share of Class B Stock was split into one share of Class B Stock and one share of Class D Stock. Each newly created share of Class C Stock and Class D Stock entitles its holder to 1/100th of a vote. Following the Reclassification, the Company's Class A Stock continued trading on the NYSE under the new ticker symbol "NYLD.A" and the Class C Stock began trading under the ticker symbol "NYLD."

69. The benefits of the Reclassification to NRG were realized almost immediately. On June 22, 2015, the Company published a prospectus for the issuance and sale of Class C Stock. One week later, on June 29, 2015, the Company completed the issuance of 28,198,000 shares of Class C Stock for net proceeds of $599 million, and utilized the proceeds of the offering to acquire 28,198,000 Class C units of NRG Yield LLC (the "June 2015 Issuance"). In addition, Yield issued $287.5 million aggregate principal amount of 3.25% Convertible Notes due 2020 (convertible into new Yield Class C common stock).

70. Whereas the voting dilution resulting from the issuance of Class A and/or Class B Yield common stock would have jeopardized NRG's control over the Company, the issuance of minimally dilutive (to NRG) Class C Stock (which was, in any event, counterbalanced by the issuance of Class D stock to NRG) allowed NRG to maintain its status as the Company's controller. Indeed, the Company conceded in its 2015 annual meeting proxy statement filed with the SEC on March 16, 2016, that "the [Reclassification] helps to ensure that NRG will remain in a position to influence [Yield]'s direction ***for many years***." (Emphasis added).

71. However, the market for Yield Class A Stock did not react favorably to the Reclassification. The Reclassification was first announced in a preliminary Schedule 14A filed after the close of trading on February 26, 2015. After closing

at $26.57 per share on February 26, 2015, Yield Class A stock declined over 3.4% to close at $25.655 per share on February 27, 2015.[11] Further, the Class A Stock had lost more than half of its value by the end of September 2015, at which point it traded at barely over $12 per share. Yield's Class A Stock has yet to fully recover since the Reclassification, and currently trades around $16.40 per share.

72. Additionally, Yield's Class A Stock has consistently traded at a discount to Yield's Class C Stock.[12] This is due at least in part because the capped liquidity of Class A shares causes them to rank secondary to more liquid Class C shares in the eyes of potential investors. Thus, the issuance of the Class C Stock has impaired the value of the stock held by the Class A stockholders prior to the Reclassification.

73. Further, the Reclassification has also created a risk that in a future sale of the Company, NRG could receive a potentially massive control premium that would not be shared with the Company's public stockholders.

74. In sum, the Reclassification unfairly gave NRG nearly perpetual control over Yield—in exchange for *de minimis* consideration—and subjects the Company and its public stockholders to continued abuse at the hands of Yield's

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[11] This decline is not attributable to broader market trends. Over the same period, the S&P 500 Global Alternative Energy Index was essentially flat, closing at $1347.07 on February 27, 2015—up slightly from its $1345.28 close on February 26, 2015.

[12] Currently, Yield's Class C common stock trades at a roughly 50 cent – or over 3% – premium to Yield's Class A common stock.

controller. The Reclassification was the product of self-dealing and undue influence by NRG, and the Board breached its fiduciary duties by approving it.

CLASS ACTION ALLEGATIONS[13]

75. Plaintiff, a Class A stockholder in the Company, brings this action as a class action pursuant to Court of Chancery Rule 23 on behalf of Plaintiff and all other Class A stockholders of Yield (except the defendants herein, and any person, firm, trust, corporation or other entity related to or affiliated with any of the defendants) (the "Class").

76. This action is properly maintainable as a class action.

77. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

78. The Class is so numerous that joinder of all members is impracticable. There were 34,586,250 shares of Yield Class A common stock outstanding as of

[13] Plaintiff believes that all of his claims are direct class claims. However, even if the Court were to find that Plaintiff's claims are in fact derivative, demand would be futile with respect to such claims. The demand board (the "Demand Board") has seven members: Defendants Andrews, Chlebowski, Gutierrez, Ford, McClean and Sotos, and non-Defendant John Chillemi ("Chillemi"). As detailed above, (a) Defendants Andrews and Gutierrez currently serve as NRG senior executives, (b) Defendant Sotos serves as the President and CEO of Yield, which is controlled by NRG, and Sotos was a long-serving NRG executive before being elevated to the position of Yield President and CEO, (c) Defendant Chlebowski served as an NRG director for a decade and (d) non-Defendant Chillemi currently serves as NRG's Executive Vice President, National Business Development. At a minimum, these five members of the Demand Board could not disinterestedly and independently consider a demand to pursue claims against NRG.

March 16, 2015. Consequently, the number of Class members is believed to be in the thousands and they are likely scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

79. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including: (1) whether NRG and the Individual Defendants breached their fiduciary duties to Plaintiff and the Class in approving and recommending the Reclassification and (2) whether the Class is entitled to damages.

80. Plaintiff's claims and defenses are typical of the claims and defenses of other Class members and Plaintiff has no interests antagonistic or adverse to the interest of other Class members. Plaintiff will fairly and adequately protect the interest of the Class.

81. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

82. The defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

83. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

COUNT I

Breach of Fiduciary Duty by the Individual Defendants

84. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

85. The Individual Defendants owe Plaintiff and the Class fiduciary duties of care and loyalty. By reason of the actions described above, the Individual Defendants have breached their fiduciary duties. The Individual Defendants approved the unfair Reclassification that provides NRG nearly perpetual control of the Company without adequate or appropriate value transferred to the Company and its public stockholders in exchange.

86. Further, the Individual Defendants neither sought nor received any independent valuation of the New ROFO Assets, and therefore could not have made an informed decision on the advisability of the Reclassification to the Company and its public stockholders.

87. As a result of the foregoing, Plaintiff and the Class have been harmed, as, *inter alia*, their equity has been diluted, their influence over the Company's future operations and strategy has been diminished, and the value of their investment in the Company has suffered.

88. In addition, the Individual Defendants breached their fiduciary duties by publishing the false and misleading Proxy in order to secure stockholder approval of the unfair Reclassification.

COUNT II

Breach of Fiduciary Duty Against Defendant NRG As Controlling Stockholder of Yield

89. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

90. Defendant NRG is the controlling stockholder of Yield and, as such, owes Plaintiff and the Class the utmost fiduciary duties of care and loyalty.

91. By reason of the foregoing, NRG has breached its fiduciary duties by, among other things, causing the Company to undertake the Reclassification and causing the Board to agree to the Reclassification, which unfairly secured future control over Yield for NRG.

92. As a result of the foregoing, Plaintiff and the Class have been harmed, as their equity has been diluted, their influence over the Company's future

operations and strategy has been diminished and the value of their investment in the Company has suffered.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks an order granting preliminary and permanent relief, including injunctive relief, in its favor and in favor of the Class against all defendants as follows:

A. Finding that the Individual Defendants breached their fiduciary duties as directors in connection with the Reclassification;

B. Finding that NRG breached its fiduciary duties as controlling stockholder of Yield in connection with the Reclassification;

C. Declaring the Proxy false and/or misleading;

D. Directing that the Defendants account to Plaintiff and the other members of the Class for all damages caused by the Defendants to the rights and interests of the Class, including the loss of economic value and voting rights;

E. Certifying this action as a class action;

F. Awarding Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, costs, and expenses; and

G. Granting such other and further relief as the Court deems just and proper.

Dated: September 15, 2016

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