

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

63SU 8ME LLC

)

Docket No. ER16-___ - ___

**APPLICATION OF 63SU 8ME LLC FOR ORDER ACCEPTING
MARKET-BASED RATE TARIFF FOR FILING AND GRANTING WAIVERS
AND BLANKET AUTHORIZATIONS, INCLUDING BLANKET
AUTHORIZATION UNDER 18 C.F.R. PART 34 FOR ALL FUTURE ISSUANCES
OF SECURITIES AND ASSUMPTIONS OF LIABILITIES**

Pursuant to Section 205 of the Federal Power Act (“FPA”),¹ Rules 205 and 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”),² and Part 35 of the Commission’s regulations under the FPA,³ 63SU 8ME LLC (“Seller”) hereby respectfully requests: (1) that the Commission issue an order granting its Application no later than May 23, 2016, and accepting its market-based rate tariff effective June 7, 2016, which is 60 days from the date of this filing; (2) waiver of certain Commission regulations under the FPA; and (3) the granting of certain blanket authorizations.

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. §§ 385.205, 385.207 (2016).

³ 18 C.F.R. Part 35.

I. COMMUNICATIONS

Communications with regard to this Application should be addressed to:⁴

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II. REQUEST FOR EXPEDITED ACTION

Seller requests that the Commission issue an order granting its Application no later than May 23, 2016, to be effective on June 7, 2016. Seller requests expedited action because, as described in Section III.A below, certain tax equity investments in DESRI Springbok 2 Holdings, L.L.C., of which Seller is a direct and wholly owned subsidiary, need to occur on or before mechanical completion of the Springbok 2 Solar Project, which is scheduled to occur on June 8, 2016. Seller also requests expedited action to allow time for the Commission to consider and act on its application under Section 203 of the FPA for prior authorization of the tax equity investment in DESRI Springbok 2 Holdings, L.L.C. Seller is filing that Section 203 application out of an abundance of caution even though, as demonstrated herein, the tax equity investors in DESRI Springbok 2 Holdings, L.L.C. will hold only indirect interests in Seller that are passive and non-controlling.

⁴ To the extent necessary, Seller respectfully requests waiver of Section 385.203(b)(3) of the Commission's regulations, 18 C.F.R. § 385.203(b)(3), in order to permit designation of such persons for service.

III. DESCRIPTION OF SELLER AND ITS RELEVANT AFFILIATES

A. Seller

Seller is a Delaware limited liability company that is developing and will own and operate the Springbok 2 Solar Project, an approximately 155 MW (nameplate) solar photovoltaic electric generating facility located in Kern County, California (the “Facility”). Seller also owns certain transmission facilities (“Seller Interconnection Facilities”) necessary to interconnect the Facility to a substation and to a 3.2 mile, 230 kV generator tie-line. A portion of the substation and the 3.2 mile, 230 kV generator tie-line (the “Interconnection Facilities”) are the subject of a Co-Tenancy and Shared Facilities Agreement (“Shared Facilities Agreement”) between Seller, 62SK 8ME LLC (“Springbok 1”), 64KT 8ME LLC (together with Seller and Springbok 1, the “Co-Tenants”), and 60TM 8ME LLC (“SFA Manager”).⁵ Seller will use its undivided interest in the Interconnection Facilities to transmit electricity from the Facility to the point of interconnection with the electric transmission system owned by the Los Angeles Department of Water and Power (“LADWP”) within the LADWP balancing authority area (“LADWP BAA”).⁶ Seller expects to place the Facility into commercial operation

⁵ Contemporaneously with this Application, Springbok 1 is filing the Shared Facilities Agreement as a rate schedule under its tariff with the Commission pursuant to Section 205 of the FPA, and Seller will file a certificate of concurrence to that rate schedule. Prior to energization of Seller’s Facility, Seller will have no rights to exercise control over the Interconnection Facilities under the Shared Facilities Agreement.

⁶ Seller’s and the other Co-Tenants’ interconnection facilities are also the subject of a Large Generator Interconnection Agreement (“LGIA”) between Co-Tenants and LADWP. The rights and obligations of Seller, the other Co-Tenants, and the SFA Manager with respect to the interconnection facilities subject to the LGIA are set forth in the Large Generator Interconnection Agreement Co-Tenancy Agreement (“LGIA Co-Tenancy Agreement”) between Co-Tenants and the SFA Manager. Contemporaneously with this Application, Springbok 1 is filing the LGIA Co-Tenancy Agreement as a rate schedule under its tariff with the Commission pursuant to Section 205 of the FPA, and Seller will file a certificate of concurrence to that rate schedule. Prior to energization of

during the third quarter of 2016. Seller's sole business is developing, owning, and operating the Facility and Seller plans to file with the Commission a self-certification of Seller's status as an exempt wholesale generator under the Commission's regulations under the Public Utility Holding Company Act of 2005 ("PUHCA").⁷ Seller is committed to sell the full output of the Facility under a 27-year power purchase agreement with the Southern California Public Power Authority ("SCPPA") expiring in 2043. SCPPA is not affiliated with Seller. Seller will own or control no transmission facilities other than the Seller Interconnection Facilities and its undivided interest in the Interconnection Facilities.

Seller is a direct and wholly owned subsidiary of DESRI Springbok 2 Holdings, L.L.C. ("Holdco"), a Delaware limited liability company. DESRI Springbok 2 Financing, L.L.C., a Delaware limited liability company, is the managing member of Holdco and owns all of the managing interests in Holdco. (In addition, Antrim Corporation ("Antrim") and Citicorp North America, Inc. ("Citi"), will own passive, non-managing interests in Holdco as of the mechanical completion date of the Facility pursuant to a tax equity partnership arrangement.⁸) DESRI Springbok 2 Financing, L.L.C. is a direct and wholly owned subsidiary of DESRI Springbok 2 Acquisition,

Seller's Facility, Seller will have no rights to exercise control over the interconnection facilities subject to the LGIA under the LGIA Co-Tenancy Agreement.

⁷ See 18 C.F.R. § 366.7.

⁸ As explained in Attachment C, the interests in Holdco to be held by Antrim and Citi are substantially equivalent to the types of interests that the Commission has found not to constitute voting interests for purposes of Section 205 of the FPA. See *AES Creative Resources L.P.*, 129 FERC ¶ 61,239 (2009). Exhibit C-1 to Attachment C includes relevant excerpts of the Second Amended and Restated Limited Liability Company Agreement of Holdco to be entered into by and among Antrim, Citi and DESRI Springbok 2 Financing, L.L.C., demonstrating that Antrim's and Citi's interests in Holdco are passive and non-controlling. Accordingly, Antrim and Citi should not be considered to be affiliates of Seller for purposes of Section 205 of the FPA.

L.L.C., a Delaware limited liability company, which, in turn, is a direct and wholly owned subsidiary of DESRI Springbok 2 Acquisition Holdings, L.L.C. (“Acquisition Holdco”), a Delaware limited liability company. Acquisition Holdco is a direct and wholly owned subsidiary of DESRI Springbok 2 Management Services, L.L.C., a Delaware limited liability company. (An affiliate of 8minutenergy Renewables LLC (“8me”) has the option to acquire a 20% passive, non-managing membership interest in Acquisition Holdco prior to the commercial operations date of the Facility.⁹) DESRI Springbok 2 Management Services, L.L.C. is a direct and wholly owned subsidiary of DESRI Financing 3, L.L.C., a Delaware limited liability company. DESRI Financing 3, L.L.C., in turn, is a direct and wholly owned subsidiary of DESRI Financing 2, L.L.C., a Delaware limited liability company, which, in turn, is a direct and wholly owned subsidiary of DESRI Financing 1, L.L.C., a Delaware limited liability company. DESRI Financing 1, L.L.C. is a direct and wholly owned subsidiary of D. E. Shaw Renewable Investments, L.L.C. (“DESRI”), which is a direct and wholly owned subsidiary of D. E. Shaw & Co., L.P. (“DESCO LP”), a Delaware limited partnership. (A description of DESCO LP and its affiliates is provided below.) Eighty percent (80%) of the passive, non-managing limited partnership interests in DESCO LP are owned by Dr. David E. Shaw, certain current and former managing directors of DESCO LP, certain other natural persons, and investment vehicles controlled by the foregoing; the substantial majority of

⁹ As explained in Attachment D, the interests in Acquisition Holdco that 8me has an option to hold are substantially equivalent to the types of interests that the Commission has found not to constitute voting interests for purposes of Section 205 of the FPA. *See AES Creative Resources L.P.*, 129 FERC ¶ 61,239 (2009). Exhibit D-1 to Attachment D includes relevant excerpts of the Amended and Restated Limited Liability Company Agreement of Acquisition Holdco pursuant to which 8me would own passive interests in Acquisition Holdco, demonstrating that 8me’s interests, if any, would be passive and non-controlling. Accordingly, 8me should not be considered to be an affiliate of Seller for purposes of Section 205 of the FPA.

these 80% interests are owned by Dr. Shaw, and no other person or entity owns more than 10% of these 80% interests (*i.e.*, no other person or entity owns more than 8% of the total limited partnership interests in DESCO LP). The remaining 20% of the passive, non-managing limited partnership interests in DESCO LP are owned by Plaintext Holdings, LLC (“Plaintext”), a Delaware limited liability company.¹⁰ D. E. Shaw & Co., Inc. (“DESCO Inc.”), a Delaware corporation, is the general partner of DESCO LP. Dr. Shaw is the chairman, president, and sole stockholder of DESCO Inc.

DESCO LP and certain of its subsidiaries are registered with the U.S. Securities and Exchange Commission as investment advisers. As of March 1, 2016, DESCO LP and its affiliated entities (collectively, the “D. E. Shaw group”) managed approximately \$37 billion in investment capital for sophisticated institutional and high-net-worth investors through commingled investment funds and separate accounts. In the aggregate, investment vehicles managed by the D. E. Shaw group hold tens of thousands of positions in equity, debt, derivative, and other financial instruments across a wide range of industries (including the U.S. energy industry), sectors, and markets around the world. The vast majority of such positions are non-controlling investments in publicly traded

¹⁰ Plaintext’s interests in DESCO LP are substantially equivalent to the types of interests that the Commission has found not to constitute voting interests for purposes of Section 205 of the FPA. *See AES Creative Resources L.P.*, 129 FERC ¶ 61,239 (2009). A detailed description of Plaintext’s interests in DESCO LP, including relevant excerpts of the Second Amended and Restated Limited Partnership Agreement of DESCO LP that demonstrate that Plaintext’s interests in DESCO LP are passive and non-controlling, was provided in the application for market-based rate authorization of Red Horse III, LLC (“Red Horse III”) filed February 4, 2016 in Docket No. ER16-892-000, and is hereby incorporated by reference pursuant to Section 35.19 of the Commission’s regulations. 18 C.F.R. § 35.19. The Commission accepted Red Horse III’s market-based rate tariff on March 24, 2016. *Red Horse III, LLC*, Docket No. ER16-892-000 (letter order issued Mar. 24, 2016). Accordingly, Plaintext should not be considered to be an affiliate of Seller for purposes of Section 205 of the FPA.

issuers, and in no case does any such position constitute 10% or more of the voting interests of any publicly traded company in the U.S. energy industry.

In addition, investment vehicles managed by the D. E. Shaw group may make investments in privately held issuers in various industries, sectors, and markets around the world. Such investments include investments in issuers involved in the U.S. energy industry in various ways, including debt and/or equity investments in oil and gas exploration companies, in companies that provide equipment and services to such exploration companies, and in manufacturers of solar panels and other energy-related equipment. Further, a D. E. Shaw group investment vehicle indirectly owns non-controlling interests in two operational electricity generation assets. These interests include an approximately 38% passive limited partner interest in LSP-Cottage Grove, L.P. (“Cottage Grove”), which owns and operates an approximately 245 MW natural gas-fired qualifying cogeneration facility in the Midcontinent Independent System Operator (“MISO”) balancing authority area (the “Cottage Grove Facility”) and an approximately 39% passive limited partner interest in LSP-Whitewater Limited Partnership (“Whitewater”), which owns and operates an approximately 249 MW natural gas-fired qualifying cogeneration facility in the MISO balancing authority area (the “Whitewater Facility”). Neither the D. E. Shaw group investment vehicle that owns these interests nor any other member of the D. E. Shaw group has the right to manage, direct, or control the operation of the Cottage Grove Facility or the Whitewater Facility. The passive, non-managing interests held by a D. E. Shaw group investment vehicle in the Cottage Grove Facility and Whitewater Facility are substantially similar to the consent rights held by the

passive tax equity investors in *AES Creative Resources, L.P.*¹¹ In *AES Creative Resources*, the Commission held that passive investors with limited consent rights with respect to major decisions of electric generation companies were not affiliates of such electric generation companies for purposes of the Commission’s market power analysis. Accordingly, as a result of the passive, non-managing limited partnership interests held by a D. E. Shaw group investment vehicle in Cottage Grove and Whitewater, neither Cottage Grove nor Whitewater meets the standards under Commission precedent to be an affiliate of the D. E. Shaw group investment vehicle or the Seller.¹²

Because the term “energy industry” is not defined in Order No. 697 or its progeny, it is not possible to identify with certainty each interest in the “energy industry” held by D. E. Shaw group investment vehicles,¹³ but to the best of Seller’s knowledge such vehicles do not hold any interests, other than as disclosed in this Application (including the disclosure above regarding non-controlling interests in publicly traded companies), in companies that generate electric energy, that transmit electric energy, or that provide inputs to electric power production, as defined in Section 35.36(4) of the

¹¹ 129 FERC ¶ 61,239 (2009).

¹² Red Horse Wind 2, LLC previously provided evidence of the passive, non-controlling nature of the D. E. Shaw group investment vehicle’s interests in Cottage Grove and Whitewater as Attachment D to its Second Filing of Supplemental Information in Support of Market-Based Rate Application; Requests for Shortened Comment Period, Waiver of 60-Day Prior Notice Requirement, and Expedited Action. *See Red Horse Wind 2, LLC*, Docket No. ER15-1066-001 (filed April 17, 2015).

¹³ Order No. 697-A, in addressing “affiliate” requirements and restrictions, provides as follows: “[A]n entity seeking market-based rate authority must describe the business activities of its owners, stating whether they are in any way involved in the energy industry.” Order No. 697-A, No. 697-A, FERC Stats. & Regs. ¶ 31,268 (hereinafter “Order 697-A”) at n. 258. Although the applicability of this provision is ambiguous, Seller nonetheless provides additional information out of an abundance of caution.

Commission's regulations.¹⁴ Focusing on the types of interests that are relevant to the Commission's market-power analysis under Part 35 of the Commission's regulations under the FPA, Seller states that, other than as disclosed in this Application (including the disclosure above regarding non-controlling interests in publicly traded companies), no D. E. Shaw group investment vehicle (a) directly or indirectly owns or controls any electric generation or electric transmission facilities in the United States, (b) holds electric transmission rights or natural gas transportation rights in the United States, or (c) directly or indirectly owns or controls a franchised utility.

As the result of his indirect ownership interests in DESCO LP and its affiliates, as well as his personal investments in D. E. Shaw group investment vehicles described in the immediately preceding paragraphs, Dr. Shaw—along with all other investors in such vehicles—indirectly beneficially owns fractional interests in all of the investments held by such vehicles. Other than (a) via such interests in D. E. Shaw group investment vehicles described in the immediately preceding paragraphs and (b) holdings representing less than 10% of the voting interests in publicly traded companies, Dr. Shaw owns no equity or other voting interests in companies in the U.S. energy industry. Further, Dr. Shaw holds no positions on the board of any company in the U.S. energy industry.

B. Seller's Relevant Generation Affiliates

A table listing Seller's energy affiliates and their associated assets is attached hereto as Attachment B. In addition to the Facility, Seller is affiliated with the following entities that own or control electric generation facilities located within the LADWP BAA or first-tier markets to the LADWP BAA.

¹⁴ 18. C.F.R. § 35.36(a)(4).

1. 62SK 8ME LLC

Springbok 1 is a Delaware limited liability company that is developing and will own and operate an approximately 108 MW (nameplate) solar-powered electric generating facility (the “Springbok 1 Facility”) located in Kern County, California within the LADWP BAA. Springbok 1 also owns certain transmission facilities (“Springbok 1 Interconnection Facilities”) necessary to interconnect the Springbok 1 Facility to the Interconnection Facilities discussed in Section III.A above, in which Springbok 1 owns an undivided interest. Springbok 1’s sole business is developing, owning, and operating the Springbok 1 Facility and associated interconnection facilities, and Springbok 1 expects to place the Springbok 1 Facility into commercial operations during the second quarter of 2016. Springbok 1 has filed with the Commission a self-certification of Springbok 1’s status as an exempt wholesale generator under the Commission’s regulations under PUHCA,¹⁵ and has been granted market-based rate authority by the Commission under Section 205 of the FPA.¹⁶ Springbok 1 is committed to sell the full output of the Springbok 1 Facility under a 25-year power purchase agreement with SCPPA expiring in 2041. SCPPA is not affiliated with Springbok 1. Springbok 1 will own or control no transmission facilities other than the Springbok 1 Interconnection Facilities and its undivided interest in the Interconnection Facilities discussed above.

2. Tulare PV I LLC

Tulare PV I LLC (“Tulare PV I”) is a Delaware limited liability company that owns four solar-powered electric generation facilities with a total combined rating

¹⁵ Notice of Self-Certification of Exempt Wholesale Generator Status of 62SK 8ME LLC, Docket No. EG16-57-000 (Feb. 23, 2016).

¹⁶ 62SK 8ME LLC, Docket No. ER16-893-000 (letter order issued Mar. 24, 2016).

capacity of 14.5 MW (nameplate) located in Tulare County, California within the California Independent System Operator (“CAISO”) balancing authority area (“CAISO BAA”): the Porterville Facility, the Lindsey Facility, the Ivanhoe Facility, and the Exeter Facility (collectively, the “Tulare PV I Facilities”). All output from the Tulare PV I Facilities is fully committed under long-term contracts.

a. The Porterville Facility

The Porterville Facility is a solar-powered electric generation facility consisting of Units 1, 2, and 5 with a total combined capacity rating of 3.5 MW (nameplate) located in Tulare County, California. The Porterville Facility is interconnected to the transmission system owned by Southern California Edison (“SCE”) and operated by CAISO. Each of the Porterville Facility’s units is a qualifying small power production facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”) and Section 292.204 of the Commission’s regulations.¹⁷ All output from the Porterville Facility is committed to SCE until January 12, 2034 under three separate 20-year power purchase agreements.

b. The Lindsay Facility

The Lindsay Facility is a solar-powered electric generation facility consisting of Units 1, 3, and 4 with a total combined capacity rating of 4.0 MW (nameplate) located in Tulare County, California. The Lindsay Facility is interconnected to the transmission system owned by SCE and operated by CAISO. Each of the Lindsay Facility’s units is a

¹⁷ See *Tulare PVI LLC*, Docket No. QF13-189-001 (filed Oct. 21, 2013); *Tulare PVI LLC*, Docket No. QF13-191-001 (filed Oct. 21, 2013); *Tulare PVI LLC*, Docket No. QF13-190-002 (filed Feb. 26, 2014).

QF.¹⁸ All output from the Lindsay Facility is committed to SCE until January 14, 2034 under three separate 20-year power purchase agreements.

c. The Ivanhoe Facility

The Ivanhoe Facility is a solar-powered electric generation facility consisting of Units 1, 2, and 3 with a total combined capacity rating of 3.5 MW (nameplate) located in Tulare County, California. The Ivanhoe Facility is interconnected to the transmission system owned by SCE and operated by CAISO. Each of the Ivanhoe Facility's units is a QF.¹⁹ All output from the Ivanhoe Facility is committed to SCE until January 16, 2034 under three separate 20-year power purchase agreements.

d. The Exeter Facility

The Exeter Facility is a solar-powered electric generation facility consisting of Units 1, 2, and 3 with a total combined capacity rating of 3.5 MW (nameplate) located in Tulare County, California. The Exeter Facility is interconnected to the transmission system owned by SCE and operated by CAISO. Each of the Exeter Facility's units is a QF.²⁰ All output from the Exeter Facility is committed to SCE until February 11, 2034 under three separate 20-year power purchase agreements.

¹⁸ See *Tulare PVI LLC*, Docket No. QF13-195-001 (filed Oct. 18, 2013); *Tulare PVI LLC*, Docket No. QF13-193-001 (filed Oct. 18, 2013); *Tulare PVI LLC*, Docket No. QF13-192-001 (filed Oct. 18, 2013).

¹⁹ See *Tulare PVI LLC*, Docket No. QF13-199-001 (filed Oct. 18, 2013); *Tulare PVI LLC*, Docket No. QF13-200-001 (filed Oct. 18, 2013); *Tulare PVI LLC*, Docket No. QF13-194-001 (filed Oct. 18, 2013).

²⁰ See *Tulare PVI LLC*, Docket No. QF13-196-001 (filed Oct. 18, 2013); *Tulare PVI LLC*, Docket No. QF13-197-001 (filed Oct. 18, 2013); *Tulare PVI LLC*, Docket No. QF13-198-001 (filed Oct. 18, 2013).

3. Tulare PV II LLC

Tulare PV II LLC (“Tulare PV II”) is a Delaware limited liability company that owns a 3.75 MW (nameplate) solar-powered electric generation facility consisting of Units 1, 2, and 3, located in Tulare County, California within the CAISO BAA (the “Kingsburg Facility”). The Kingsburg Facility is interconnected to the transmission system owned by Pacific Gas and Electric Company (“PG&E”) and operated by CAISO. Each of the Kingsburg Facility’s units is a QF.²¹ All output from the Kingsburg Facility is committed to PG&E until December 29, 2033 under three separate 20-year power purchase agreements.

4. American Capital Energy – Searchlight Solar, LLC

American Capital Energy – Searchlight Solar, LLC (“Searchlight Solar”) is a Nevada limited liability company that owns a 17.5 MW (nameplate) solar-powered electric generation facility located in Clark County, Nevada (the “Searchlight Facility”) within the Nevada Power Company (“NV Energy”) balancing authority area. The Searchlight Facility is interconnected to the transmission system owned and operated by NV Energy. The Searchlight Facility is a QF.²² All output from the Searchlight Facility is committed to NV Energy through December 2034 under a 20-year power purchase agreement.

²¹ See *Tulare PV II LLC*, Docket No. QF13-260-001 (filed Oct. 18, 2013); *Tulare PV II LLC*, Docket No. QF13-261-001 (filed Oct. 18, 2013); *Tulare PV II LLC*, Docket No. QF13-262-001 (filed Oct. 18, 2013).

²² See *American Capital Energy - Searchlight Solar, LLC*, Docket No. QF14-484-001 (filed Nov. 20, 2014).

5. Kona Solar LLC

Kona Solar LLC (“Kona Solar”) is a Delaware limited liability company that owns three distributed solar-powered electric generation facilities with a combined capacity rating of 4.7 MW (nameplate) (the “Kona Facilities”). Two facilities are located in San Bernardino, California within the CAISO BAA and one facility is located in Riverside County, California within the CAISO BAA. The Kona Facilities are all interconnected to the transmission system owned by SCE and operated by CAISO. The Kona Facilities are QFs.²³ All output from the Kona Facilities is committed to SCE until either March or April 2035 under three separate 20-year power purchase agreements.

6. The Prologis Projects

Seller is also affiliated with the following entities that own or control distributed solar-powered generation within the LADWP BAA (collectively, the “Prologis Projects”). The generation owned or controlled by the following entities has a combined power production capacity of 3.2 MW (nameplate) and is all fully committed under long-term contracts:

a. The MRB Facility

The MRB Facility is a 0.8 MW (nameplate) distributed solar-powered electric generation facility owned by MRB Solar LLC (“MRB Solar”). It is located in Los Angeles County, California and is interconnected to the transmission system owned and operated by LADWP. The MRB Facility is a QF.²⁴ All output from the MRB

²³ See *Kona Solar LLC*, Docket No. QF14-693-001 (filed April 22, 2015); *Kona Solar LLC*, Docket No. QF14-694-001 (filed April 22, 2015); *Kona Solar LLC*, Docket No. QF14-695-001 (filed April 22, 2015).

²⁴ See *MRB Solar LLC*, Docket No. QF14-423-000 (filed Mar. 28, 2014).

Facility is committed to LADWP until November 2034 under a 20-year power purchase agreement.

b. The Heizenberg Facility

The Heizenberg Facility is a 0.9 MW (nameplate) distributed solar-powered electric generation facility owned by Heizenberg Solar LLC (“Heizenberg Solar”). It is located in Los Angeles County, California and is interconnected to the transmission system owned and operated by LADWP. The Heizenberg Facility is a QF.²⁵ All output from the Heizenberg Facility is committed to LADWP until October 2034 under a 20-year power purchase agreement.

c. The Hannah Facilities

The Hannah Facilities are two distributed solar-powered electric generation facilities owned by Hannah Solar LLC (“Hannah Solar”) with a total combined capacity rating of 1.5 MW (nameplate). They are located in Los Angeles County, California and are interconnected to the transmission system owned and operated by LADWP. The Hannah Facilities are QFs.²⁶ All output from the Hannah Facilities is committed to LADWP until October or December 2034 under two separate 20-year power purchase agreements.

C. Seller’s Other Energy Affiliates

A complete list of Seller’s energy affiliates is set forth in Seller’s Appendix B attached hereto as Attachment B. Two of those affiliates, Balko Wind Transmission, LLC (“Balko Wind Transmission”) and Red Horse Wind 2, LLC (“Red Horse 2”), own

²⁵ See *Heizenberg Solar LLC*, Docket No. QF14-421-000 (filed Mar. 28, 2014).

²⁶ See *Hannah Solar LLC*, Docket No. QF14-422-000 (filed Mar. 28, 2014); *Hannah Solar LLC*, Docket No. QF14-424-000 (filed Mar. 28, 2014).

and operate certain radial transmission facilities which are used solely to interconnect generation facilities to the transmission grid.²⁷ The Commission has determined that the interconnection facilities owned by Balko Wind Transmission and Red Horse 2 are limited and discrete transmission facilities and are not integrated transmission facilities.²⁸ Additionally, Springbok 1 owns, in part, the Interconnection Facilities that are the subject of the Shared Facilities Agreement and the LGIA Co-Tenancy Agreement, and the Interconnection Facilities will be used solely to interconnect generation facilities, including Seller's Facility, to the transmission grid.²⁹ Aside from these interconnection facilities and the disclosure above regarding non-controlling interests in publicly traded companies, neither Seller nor any of its affiliates owns any voting interest in or controls any other electric transmission facilities in the United States, except for the limited equipment necessary to interconnect individual generation facilities to the transmission grid.

Seller is not affiliated with any intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, physical coal supply sources, entities who may access transportation of coal supplies or any other essential inputs to electric power production in the United States. Moreover, other than the disclosure above regarding

²⁷ As discussed in the market-based rate application of Red Horse III filed February 4, 2016 in Docket No. ER16-892-000, Red Horse 2 has granted Red Horse III a non-exclusive and irrevocable license under a shared facilities agreement to use a portion of the radial transmission facilities.

²⁸ See *Balko Wind Transmission, LLC*, 152 FERC ¶ 61,011, P 22 (2015); *Red Horse Wind 2, LLC*, 151 FERC ¶ 61,169, P 24 (2015).

²⁹ As noted above, the Commission accepted Springbok 1's market-based rate tariff on March 24, 2016. See *62SK 8ME LLC*, Docket No. ER16-893-000 (letter order issued Mar. 24, 2016).

non-controlling interests in publicly traded companies, neither Seller nor any of its affiliates owns or controls a franchised public utility in the United States.

IV. REQUEST FOR AUTHORIZATION TO SELL ENERGY, CAPACITY, AND ANCILLARY SERVICES AT MARKET-BASED RATES

Seller requests authorization to sell electric energy, capacity, and ancillary services at market-based rates pursuant to its proposed Market-Based Rate Tariff. The Commission allows such market-based sales if the seller and its affiliates satisfy the Commission's standards for the grant of market-based rate authority regarding horizontal market power and vertical market power. The Commission also considers whether there is evidence of, or potential for, affiliate abuse or reciprocal dealing. As demonstrated herein, Seller satisfies each of the Commission's requirements for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates.

A. Seller and Its Affiliates Satisfy the Commission's Standards Regarding Horizontal Market Power

The Commission has adopted two indicative screens for horizontal market power—a pivotal supplier screen and a wholesale market share screen. The pivotal supplier screen evaluates the potential of a seller and its affiliates to exercise market power based on uncommitted capacity at the time of the market's peak demand. The wholesale market share screen measures whether a seller and its affiliates have a dominant position in the market, for each of the four seasons, based on the number of megawatts owned or controlled by the seller and its affiliates compared to the uncommitted capacity of the entire market. If an entity fails to pass either of these two screens, there is a presumption of horizontal market power and further analysis is required. The Commission has indicated that the relevant geographic market is the balancing authority area or submarket, as applicable, where the seller's generation is

physically located.³⁰ Accordingly, the relevant geographic market for Seller is the LADWP BAA.

In Order No. 816, the Commission clarified that, when all of a seller's generation capacity is sold on a long-term firm basis to one or more buyers, the seller has no uncommitted capacity and, in such cases, is not required to file indicative market power screens.³¹ Instead, a seller may explain that all generation owned or controlled by the seller and its affiliates in the relevant balancing authority areas or markets, including first-tier balancing authority areas or markets, is fully committed to satisfy the Commission's requirements regarding horizontal market power.³² Seller satisfies all applicable Order No. 816 requirements. As explained in Section III.A of this Application, Seller is committed to sell the full output of the Facility (155 MW) under a 27-year power purchase agreement with SCPPA, an unaffiliated third party, that expires in 2043. The power purchase agreement is for firm sales for one year or longer. As explained in Section III.B of this Application, Seller's affiliates in the LADWP BAA and first-tier markets to the LADWP BAA are also committed to sell the full output of their respective facilities under long-term (multi-year) firm power purchase agreements with unaffiliated third-party purchasers. Accordingly, Seller and its affiliates satisfy the Commission's standards regarding horizontal market power.

³⁰ See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, clarified, 121 FERC ¶ 61,260 (2007) (hereinafter "Order No. 697") at P 231-32; *AEP Power Mktg., Inc.*, 107 FERC ¶ 61,018 at P 73 n. 63, order on reh'g, 108 FERC ¶ 61,026 at P 31 (2004).

³¹ See *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, 153 FERC ¶ 61,065 (2015) (hereinafter "Order No. 816") at P 39.

³² *Id.*

B. Seller and Its Affiliates Satisfy the Commission’s Standards Regarding Vertical Market Power

Other than as discussed in the disclosure above regarding non-controlling interests in publicly traded companies, neither Seller nor any of its affiliates owns any voting interest in or controls any electric transmission facilities used for the transmission of electricity in interstate commerce in the United States, except for limited and discrete transmission facilities necessary to interconnect individual generating facilities to the transmission grid. As discussed above, the interconnection facilities owned in whole or in part by Balko Wind Transmission, Red Horse 2,³³ and Springbok 1³⁴ are limited and discrete transmission facilities that are not integrated transmission facilities. Moreover, Seller’s rights pursuant to the Shared Facilities Agreement and the LGIA Co-Tenancy Agreement are not rights that confer an owner with transmission market power.³⁵ Furthermore, Seller has included in this Application a statement affirming that it qualifies for the blanket waiver with respect to the Commission’s open access requirements. Accordingly, Seller and its affiliates satisfy the Commission’s standards regarding vertical market power as related to the ownership and control of transmission facilities.

Affiliates of Seller may own or control sites for new generation capacity development. The Commission has adopted a rebuttable presumption that ownership or control of sites does not allow a seller to erect barriers to entry.³⁶ Other than as set forth

³³ As noted above, Red Horse 2 has granted Red Horse III a non-exclusive and irrevocable license under a shared facilities agreement to use a portion of the radial transmission facilities.

³⁴ As noted above, Springbok 1 and Seller are parties to the Shared Facilities Agreement and the LGIA Co-Tenancy Agreement.

³⁵ See, e.g., *Eastern Desert Power, LLC, et al.*, 114 FERC ¶ 61,340 (2006).

³⁶ Order No. 697 at P 1018.

in Appendix B attached hereto as Attachment B and described herein (including the disclosure above regarding non-controlling interests in publicly traded companies), neither Seller nor any of its affiliates owns or controls, directly or indirectly, any voting equity interest in any electric transmission facility or any essential resource or input to power production in the United States. Seller affirms that Seller and its affiliates have not erected barriers to entry in the relevant market and will not erect barriers to entry in the relevant market. Accordingly, Seller and its affiliates satisfy the Commission's standards regarding vertical market power as related to barriers to entry.

C. There Is No Potential for Affiliate Abuse or Reciprocal Dealing

The Commission has traditionally indicated its concern that a public utility having a franchised service territory and an affiliate may be able to transact in ways that transfer benefits from the captive customers of the franchised utility to the affiliate and its shareholders. In Order No. 697, the Commission discontinued considering affiliate abuse as a separate "prong" of the market-based rate analysis and codified affiliate restrictions in the Commission's regulations as a condition of obtaining and retaining market-based rate authority. Seller currently is not affiliated with a public utility having a franchised service territory. Nonetheless, Seller agrees to abide by the Commission's codified affiliate restrictions as a condition of its market-based rate authority.

D. Ancillary Services

Seller also respectfully requests authorization to sell certain ancillary services in the markets administered by CAISO, PJM Interconnection, L.L.C. ("PJM"), the New York Independent System Operator, Inc. ("NYISO"), MISO, ISO New England Inc. ("ISO-NE"), and Southwest Power Pool, Inc. ("SPP"). With respect to sales of ancillary services in the markets operated by CAISO, PJM, NYISO, MISO, ISO-NE, and SPP,

Seller relies, in the same manner as other market-based rate sellers, on the studies submitted and accepted by the Commission in previous orders.³⁷

In addition, Seller seeks authorization to sell ancillary services at market-based rates under requirements set forth in *Avista Corp.*,³⁸ as modified by Order No. 697³⁹ and 784,⁴⁰ in markets for which the Commission has not accepted a market power study and has not generically authorized the sale of ancillary services at market-based rates. Seller has included in its Market-Based Rate Tariff the applicable standard tariff provisions adopted in Order Nos. 697, 697-A, and 784 for the proposed sales of ancillary services described above.

E. Determination of Category Seller Status

The Commission's regulations define Category 1 Sellers as wholesale power marketers and wholesale power producers that meet each of the following criteria: (1) own or control 500 MW or less of generation in aggregate per region;⁴¹ (2) do not own, operate, or control transmission facilities other than limited equipment necessary to

³⁷ For CAISO, *see, e.g., AES Redondo Beach, L.L.C.*, 83 FERC 161,123 (1998), *order on reh'g*, 87 FERC ¶ 61,208 (1999), *order on reh'g and clarification*, 90 FERC ¶ 61,036 (2000). For ISO-NE, *see, e.g., New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC 61,074. For NYISO, *see, e.g., Central Hudson Gas & Electric Corporation*, 86 FERC ¶ 61,062 (1999), *order on reh'g*, 88 FERC ¶ 61,138 (1999). For PJM, *see, e.g., Atlantic City Electric Company*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC 61,074 (2000). For MISO, *see, e.g., Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,172 (2008), *order on reh'g*, 123 FERC ¶ 61,297. For SPP, *see, e.g., Southwest Power Pool, Inc.*, 141 FERC ¶ 61,048 (2012), *order on reh'g and clarification*, 142 FERC ¶ 61,205 (2013).

³⁸ 87 FERC ¶ 61,223 (1999), *order on reh'g*, 89 FERC ¶ 61,136 (1999).

³⁹ *See* Order No. 697 at PP 1058-61.

⁴⁰ *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, 78 Fed. Reg. 46,178 (July 30, 2013), FERC Stats. & Regs. ¶ 31,349 at PP 200-201 (2013), *order granting reh'g*, 146 FERC ¶ 61,114 (2014).

⁴¹ For purposes of this analysis, the regions are Central, Northeast, Northwest, Southeast, Southwest, and Southwest Power Pool. *See* Order No. 697-A at Appendix D.

connect individual generating facilities to the transmission grid; (3) are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; (4) are not affiliated with a franchised public utility in the same region as the seller's generation assets; and (5) do not raise other vertical market power issues.⁴² Category 2 Sellers are all sellers that are not Category 1 Sellers.⁴³

Seller and its affiliates do not own or control over 500 MW of generation capacity in aggregate in any region. Furthermore, other than the disclosure above regarding non-controlling interests in publicly traded companies, neither Seller nor any of its affiliates (i) owns, operates, or controls transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid, (ii) is affiliated with anyone that owns, operates or controls transmission in the same region as the seller's generation assets, (iii) is affiliated with a franchised public utility in the same region as the seller's generation assets, or (iv) raises other vertical market power issues. Accordingly, Seller is a Category 1 Seller in all regions.

F. Reporting Requirements

Seller agrees to comply with the reporting requirements normally imposed on sellers that are permitted to sell electric energy, capacity, and ancillary services at market-based rates. In particular, Seller will file Electric Quarterly Reports concerning its sales in conformance with the Commission's requirements.⁴⁴ In addition, pursuant to

⁴² 18 C.F.R. § 35.36(a)(2).

⁴³ 18 C.F.R. § 35.36(a)(3).

⁴⁴ See 18 C.F.R. § 35.10(b); see also *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs., Regs. Preambles ¶ 31,127 (2002), *order on reh'g*, Order No. 2001-A, 100 FERC ¶ 61,074 (2002), *order on reconsideration and clarification*, Order No. 2001-B, 100 FERC ¶ 61,342 (2002), *order directing filings*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing refiling*, Order No. 2001-D, 102 FERC ¶ 61,334

the requirements set forth in Section 35.42 of the Commission's regulations, Seller agrees to file timely notices of material changes in status that explain whether such changes reflect a departure from the characteristics relied on by the Commission in originally granting Seller market-based rate authority.⁴⁵

Seller also agrees to comply with the Commission's market behavior rules codified at 18 C.F.R. § 35.41. In accordance with Section 35.41(c) of the Commission's regulations, as amended by Order Nos. 768 and 768-A,⁴⁶ to the extent Seller engages in reporting of transactions to publishers of electric or natural gas price indices, Seller will identify in its EQRs the publishers of electricity and natural gas indices to which it reports its transactions.

V. REQUEST FOR PRE-APPROVALS AND WAIVERS

Seller seeks the same pre-approvals and waivers of Commission rules and filing requirements previously granted to other sellers permitted to sell electric energy, capacity, and ancillary services at market-based rates. This relief consists of:

- Waiver of Parts 41, 101, and 141 of the Commission's accounting and periodic reporting regulations, except as to Sections 141.14 and 141.15;

(2003), *order on filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *clarification order*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order adopting dictionary*, Order No. 2001-G, 120 FERC ¶ 61,270 (2007), *clarification order*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising EQR data dictionary*, Order No. 2001-I, 73 Fed. Reg. 65,526 (Nov. 4, 2008), FERC Stats. & Regs. ¶ 31,282 (2008); *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, 77 Fed. Reg. 61,896 (Oct. 11, 2012), FERC Stats. & Regs. ¶ 31,336 (2012), *order partially extending compliance date*, 142 FERC ¶ 61,105 (2013); *order on reh'g*, Order No. 768-A, 78 Fed. Reg. 24,101 (Apr. 24, 2013), 143 FERC ¶ 61,054 (2013) (requiring market participants excluded from Commission jurisdiction under Section 205 of the FPA that have more than a *de minimis* market presence to file electronic quarterly reports); *Revisions to Electric Quarterly Report Filing Process*, Order No. 770, 77 Fed. Reg. 71,288 (Nov. 30, 2012), FERC Stats. & Regs. ¶ 31,338 (2012) (implementing new EQR filing software).

⁴⁵ See 18 C.F.R. § 35.42.

⁴⁶ Order No. 768 at PP 137-138, 178; Order No. 768-A at PP 40, 47.

- Waiver of Subparts B and C of Part 35 of the Commission’s regulations, except as to Sections 35.12(a), 35.13(b), 35.15, and 35.16;
- Blanket authorization under Section 204 of the FPA and Part 34 of the Commission’s regulations for all future issuances of securities and assumptions of liability; and
- Other appropriate waivers and authorizations granted to other similarly situated entities that Seller may not have requested specifically.

The Seller Interconnection Facilities and the Interconnection Facilities will be limited and discrete transmission facilities that do not form an integrated transmission grid.⁴⁷ Seller hereby affirms that it qualifies for the blanket waiver with respect to the Commission’s open access requirements as described in Order No. 807⁴⁸ because the interconnection facilities that are part of its facilities are limited and discrete and not part of an integrated transmission network and Seller does not own or operate any other electric transmission facilities other than the limited and discrete interconnection facilities required to interconnect its facilities to the transmission system.⁴⁹

VI. CONFIDENTIAL TREATMENT

Seller respectfully requests privileged and confidential treatment of certain provisions of Attachment C and Attachment D describing the rights and obligations of upstream owners of Seller (the “Confidential Provisions”). Additionally, Seller requests full confidential treatment of the excerpts of the agreements provided as Confidential Exhibit C-1 and Confidential Exhibit D-1 (the “Confidential Exhibits”). Seller seeks to

⁴⁷ *Silver State Solar Power North, LLC*, 139 FERC ¶ 61,088, at PP 24-25 (2012) (“*Silver State*”); *Detroit Edison Co.*, 136 FERC ¶ 61,210, at PP 14-19 (2011) (“*Detroit Edison*”); *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,940-41 (1996).

⁴⁸ Open Access and Priority Rights on Interconnection Customer’s Interconnection Facilities, Order No. 807, FERC Stats. & Regs. ¶ 31,367 (2015) (“Order No. 807”).

⁴⁹ *See Kingfisher Wind, LLC*, 151 FERC ¶ 61,276 at P 27 (2015) (“An applicant that qualifies for the blanket OATT waiver under 18 C.F.R. § 35.28(d)(2) should affirm in its market-based rate application that it qualifies for the blanket OATT waiver.”).

protect the Confidential Provisions and Confidential Exhibits from public disclosure pursuant to Sections 388.112 and 385.1112 of the Commission's regulations and to exempt the same from the mandatory public disclosure requirements of the Freedom of Information Act pursuant to Section 388.107(d) of the Commission's regulations.⁵⁰ The information contained in the Confidential Provisions and Confidential Exhibits is of a sensitive commercial nature, the product of arm's-length commercial negotiations and not publicly available. As such, public disclosure could severely hamper the ability of the upstream owners of Seller to engage in any future transactions of a similar nature with other parties or individuals. In accordance with Section 388.112(b)(ii) of the Commission's regulations,⁵¹ Seller has provided as Attachment E hereto a draft protective order.

VII. REQUESTED EFFECTIVE DATE

As noted above, Seller currently expects to place the Facility into commercial operation during the third quarter of 2016. In order to ensure that Seller can place the Facility into commercial operation during the third quarter of 2016, Seller respectfully requests that the Commission issue an order on or before May 23, 2016, accepting for filing Seller's Market-Based Rate Tariff effective June 7, 2016, which is 60 days from the date of this Application.

⁵⁰ 18 C.F.R. §§ 388.112, 385.1112, 388.107(d).

⁵¹ 18 C.F.R. § 388.112(b)(ii).

VIII. CONCLUSION

For the foregoing reasons, Seller respectfully requests that the Commission accept for filing Seller's proposed Market-Based Rate Tariff, effective June 7, 2016 and grant Seller's requests for waivers and blanket authorizations.

Respectfully submitted,

/s/ Michael J. Gergen _____

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Tyler Brown

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Counsel for 63SU 8ME LLC

Dated: April 8, 2016

Attachment C
Analysis of the Passive Interests of
Antrim Corporation and Citicorp North America, Inc. in
DESRI Springbok 2 Holdings, L.L.C. and 63SU 8ME LLC

63SU 8ME LLC (“Seller”) is a direct and wholly owned subsidiary of DESRI Springbok 2 Holdings, L.L.C. (“Holdco”). Each of the interests to be held by Antrim Corporation (“Antrim Investor”) and Citicorp North America, Inc. (“Citi Investor”) and, collectively with the Antrim Investor, the “Passive Equity Investors”) in Holdco will be passive as set forth herein.

- 1. Do the securities acquired confer full voting rights? Do the securities represent a separate class of securities? If passive and a separate class, do such securities confer limited voting rights over major corporate actions that could affect the value of the holder’s investment?*

The membership interests in Holdco to be held by the Passive Equity Investors will not confer full voting rights.

The limited veto and consent rights of the Passive Equity Investors with respect to their membership interests in Holdco will be substantially similar to the rights held by the tax equity investors in *AES Creative Resources*, 129 FERC ¶ 61,239 (2009), regarding major corporate actions that could affect the value of the Passive Equity Investors' investments. For example,

these rights are consistent with the consent rights that lenders have under typical debt financing agreements with respect to a borrower's major contracts, and appear to be similar to the rights held by the tax equity investors at issue in *AES Creative Resources*. Exhibit C-1 attached hereto includes the relevant excerpts from the LLC Agreement.

2. *Is there a list of actions over which the holder of the passive securities has veto rights?*

Yes.

Exhibit C-1 attached hereto sets forth an exhaustive list of the major actions over which the Passive Equity Investors will have consent/veto rights.

3. *Do holders of the passive securities have any right to remove the manager of the facility? If so, under what circumstances can they do so? Is the power to remove limited to cause (such as criminal activity or fraud by the manager)?*

No.

Those cure rights are outlined in Exhibit C-1 attached hereto.

4. *Who exercises day-to-day control over the facilities in question? Does the holder of the passive securities have any day-to-day input over the control over such facilities?*

Springbok 2 Financing will exercise day-to-day control over Holdco, which will exercise day-to-day control over Seller, which, in turn, will exercise day-to-day control over Seller's FERC-jurisdictional facilities. The Passive Equity Investors will not have

any day-to-day input over the control of Holdco, Seller, or Seller's FERC-jurisdictional facilities.

Attachment D

Analysis of the Passive Interests of 8minutenergy SB Holding, LLC in DESRI Springbok 2 Acquisition Holdings, L.L.C. and 63SU 8ME LLC

63SU 8ME LLC (“Seller”) is an indirect subsidiary of DESRI Springbok 2 Acquisition Holdings, L.L.C. (“Acquisition Holdco”). Each of the interests to be potentially held by 8minutenergy SB Holding, LLC (“Passive Equity Investor”) in Acquisition Holdco as of the commercial operations date will be passive as set forth herein.

- 1. Do the securities acquired confer full voting rights? Do the securities represent a separate class of securities? If passive and a separate class, do such securities confer limited voting rights over major corporate actions that could affect the value of the holder’s investment?*

The membership interests in Acquisition Holdco to be held by the Passive Equity Investor will not confer full voting rights.

The limited veto and consent rights of the Passive Equity Investor with respect to its membership interests in Acquisition Holdco will be substantially similar to the rights held by the tax equity investors in *AES Creative Resources*, 129 FERC ¶ 61,239 (2009), regarding major corporate actions that could affect the value of the Passive Equity Investor’s investment. For example,

these

rights are consistent with the consent rights that lenders have under typical debt financing agreements with respect to a borrower's major contracts, and appear to be similar to the rights held by the tax equity investors at issue in *AES Creative Resources*. Exhibit D-1 attached hereto includes the relevant excerpts from the LLC Agreement.

2. *Is there a list of actions over which the holder of the passive securities has veto rights?*

Yes.

Exhibit D-1 attached hereto sets forth an exhaustive list of the major actions over which the Passive Equity Investor will have consent/veto rights.

3. *Do holders of the passive securities have any right to remove the manager of the facility? If so, under what circumstances can they do so? Is the power to remove limited to cause (such as criminal activity or fraud by the manager)?*

No.

4. *Who exercises day-to-day control over the facilities in question? Does the holder of the passive securities have any day-to-day input over the control over such facilities?*

Springbok 2 Management will exercise day-to-day control over Acquisition Holdco. The Passive Equity Investor will not have any day-to-day input over the control of Acquisition Holdco, Seller, or Seller's FERC-jurisdictional facilities.

subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

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

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

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

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

4. Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7-9.

5. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or

the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff ("Staff"), Staff shall follow the notification procedures of 18 CFR §388.112 before making public any Protected Materials.

7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3(d) above, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is

reached that person shall be a Reviewing Representative pursuant to Paragraphs 3(d) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Presiding Judge for resolution.

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

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

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

11. Subject to Paragraph 18, the Presiding Administrative Law Judge shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any participant that contests the designation of materials as protected shall notify the party that provided the protected materials by specifying in writing the materials the designation of which is contested. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Presiding Administrative Law Judge, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the participant seeking protection. If the Presiding Administrative Law Judge finds that the materials at issue are not entitled to protection, the procedures of Paragraph 18 shall apply. The procedures described above shall not apply to protected materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

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

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

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

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

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

17. All Protected Materials filed with the Commission, the Presiding Judge, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information – Do Not Release."

18. If the Presiding Judge finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless,

be subject to the protection afforded by this Protective Order for three (3) business days from the date of issuance of the Presiding Judge's determination, and if the Participant seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding Judge's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 CFR §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act (5 U.S.C. § 552) for Protected Materials in the files of the Commission.

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

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

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

Presiding Administrative Law Judge

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

63SU 8ME LLC

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Docket No. ER16-____-____

NON-DISCLOSURE CERTIFICATE

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

By Signature: _____
Print Name: _____
Title: _____
Employed By: _____
Representing: _____
Date: _____