

PUBLIC VERSION
PRIVILEGED INFORMATION OMITTED PURSUANT TO 18 C.F.R. § 388.112

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

96WI 8ME, LLC

)

Docket No. EC17-____-000

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

Pursuant to Sections 203(a)(1) of the Federal Power Act, as amended (“FPA”),¹ and Part 33 of the regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”),² 96WI 8ME, LLC (“Midway II” or “Applicant”) hereby requests Commission authorization for a disposition of 100% of the membership interests in Applicant, which is currently wholly owned by Solar Frontier Americas Holding LLC, to Dominion Solar Holdings IV, LLC (“Purchaser”) (the “Proposed Transaction”).³

As demonstrated herein, the Proposed Transaction will not have any adverse effect on competition, rates, or regulation and will not result in any cross-subsidization concerns.⁴ Accordingly, the Proposed Transaction is consistent with the public interest and should be authorized by the Commission pursuant to Section 203 of the FPA and Part

¹ 16 U.S.C. § 824b(a)(1)-(2) (2012).

² 18 C.F.R. Part 33 (2016).

³ No approval is required under FPA Section 203(a)(2), 16 U.S.C. § 824b(a)(2), because none of Purchaser or its subsidiaries that are holding companies is a holding company other than with respect to exempt wholesale generators and qualifying facilities (“QF”). See 18 C.F.R. § 33.1(c)(8) (2016); *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005) (“Order No. 669”), *order on reh’g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214 (“Order No. 669-A”), *order on reh’g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225, 116 FERC ¶ 61,076, at P 44 (2006).

⁴ See 18 C.F.R. § 2.26 (2016).

33 of the Commission's regulations. Applicant respectfully requests expedited consideration and Commission action on this application **by December 31, 2016**.

I. COMMUNICATIONS

Applicant requests that all correspondence, pleadings and other communication concerning this filing be served upon the following:

Latasha Terry
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II. REQUEST FOR CONFIDENTIAL TREATMENT AND EXPEDITIOUS COMMISSION APPROVAL

Applicant respectfully requests privileged and confidential treatment of Exhibit I to this Application that is marked "Contains Privileged and Confidential Information Pursuant to 18 C.F.R. § 388.112 - Do Not Release." The Purchase and Sale Agreement in Exhibit I is commercially sensitive and is not normally publicly available. The release of such information would likely cause substantial harm to the competitive position of the Applicant, including an impediment in future negotiations of similar transactions. Applicant is submitting a public version of this Application, with the confidential material omitted. A proposed protective order is included as Attachment 1.

Applicant further requests expeditious Commission consideration pursuant to Sections 33.11(b) and (c) of the regulations.⁵ As shown in this Application, the Proposed Transaction does not involve a merger, is consistent with Commission precedent, and

⁵ 18 C.F.R. §§ 33.11(b) and (c) (2016).

does not require an Appendix A analysis. The parties have committed to closing on January 3, 2017. **Accordingly, Applicant respectfully requests a 21-day notice period and Commission approval of this Application by December 31, 2016.**

III. DESCRIPTION OF APPLICANT AND PURCHASER

A. The Applicant

1. Midway II

Midway II is a Delaware limited liability company with its principal place of business in Imperial County, CA. Midway II is developing a 30 MW_{ac} (nameplate) solar-powered electric generation facility and related generation interconnection facilities to be located in Imperial County, CA (the “Facility”). On November 10, 2016, Midway II filed an application for authorization to make sales of energy, capacity, and ancillary services at market-based rates and a market-based rate tariff proposing an effective date of January 1, 2016.⁶ The Facility will be interconnected to the transmission system owned and operated by Imperial Irrigation District (“IID”). Therefore, the relevant market for the market power analysis is the IID balancing authority area (“BAA”). All the electric energy and capacity from the Facility will be sold under a long-term power purchase agreement (“PPA”) to IID with a term of more than one year. Midway II has filed a notice of self-certification as an exempt wholesale generator (“EWG”).⁷

⁶ *96WI 8ME, LLC*, Docket No. ER17-339-000.

⁷ Notice of Self-Certification of Exempt Wholesale Generator Status, *96WI 8ME, LLC*, Docket No. EG17-16-000 (filed October 27, 2016).

2. Applicant's Upstream Ownership

Midway II is wholly owned by Solar Frontier Americas Holding LLC, which is wholly owned by Solar Frontier Americas, Inc. Solar Frontier Americas Inc., through its subsidiaries, develops and builds solar energy projects in the U.S. It is wholly owned by Solar Frontier K.K., a Japanese company engaged in the manufacture and sale of CIS thin-film solar panels, that is wholly owned by Showa Shell Sekiyu K.K., the shares of which are owned 15% by Saudi Aramco, 35% by Royal Dutch Shell, and the remaining 50% are publicly traded on the Tokyo Stock Exchange. Showa Shell Sekiyu K.K. has two main businesses: (i) the refining of oil and sale of the refined products, and (ii) an energy solutions business that includes the business of Solar Frontier K.K. and related business services.

With the exception of the direct and indirect ownership interests of Solar Frontier Americas, Inc., Showa Shell Sekiyu K.K does not otherwise: (a) directly or indirectly own or control any generation or transmission facilities in the United States; (b) engage in wholesale sales of electric energy, or any other Commission jurisdictional transactions in the United States; (c) hold electric transmission rights and natural gas transportation rights in the United States; or (d) directly or indirectly own or control a franchised utility. In addition, Showa Shell Sekiyu K.K does not directly or indirectly own any physical natural gas transportation facilities or own or control other physical inputs to electric generation or transmission in the United States.

As recently reported in a filing by Shell Energy North America (US), L.P.,⁸ Royal Dutch Shell has ownership interests in generation facilities located throughout the United States,⁹ but it does not own or control electric transmission facilities in the United States, except for the limited and discrete generation interconnection facilities or distribution facilities from the transmission grid and serving particular production fields for oil and gas. In addition, it does not own or control inputs to electric power production in the United States, as defined in section 35.36 of the regulations, and it is not affiliated with any public utility with a franchised electric service territory.

Based on information available to Applicant,¹⁰ Saudi Aramco does not (a) directly or indirectly own or control any generation or transmission facilities in the United States; (b) engage in wholesale sales of electric energy, or any other Commission jurisdictional transactions in the United States; (c) hold electric transmission rights and natural gas transportation rights in the United States; (d) directly or indirectly own or control a franchised utility; or (e) directly or indirectly own any physical natural gas transportation facilities or own or control other physical inputs to electric generation or transmission in the United States.

B. The Purchaser

Dominion Solar Projects C, Inc. owns 99% of the equity interests of the Purchaser, and Dominion Solar Projects D, Inc. owns the remaining 1% of the equity

⁸ Request for Category 1 Seller Status filed by Shell Energy North America (US), L.P., in Docket No. ER17-201-000 (October 27, 2016).

⁹ *Id.*, Appendix A Asset Appendix.

¹⁰ <http://www.saudiaramco.com/en/home/about/worldwide.html> (accessed Dec. 1, 2016); <http://s04.static-shell.com/content/dam/shell-new/local/business/motiva/downloads/pdf/motiva-selected-financial-information.pdf> (accessed Dec. 1, 2016).

interests of the Purchaser. Each of Dominion Solar Projects C, Inc. and Dominion Solar Projects D, Inc. are direct, wholly owned subsidiaries of Dominion Energy, Inc. (“DEI”).¹¹ DEI is a direct, wholly owned subsidiary of Dominion Resources, Inc. (“DRI”), a holding company within the meaning of the Public Utility Holding Company Act of 2005. DRI subsidiaries include Dominion Energy Marketing, Inc. a power marketer that has a Commission approved market-based rate schedule.¹¹ DEI also directly or indirectly owns various subsidiaries that own and operate electric generating facilities in the United States.

Upon closing of the Transaction, Applicant will be affiliated with Imperial Valley Solar Company (IVSC) 2, LLC (“IVSC 2”). IVSC 2 has market-based rate authority and owns and operates a 20 MW solar PV Qualifying Facility located in Niland, California.¹² IVSC 2 sells all of the output of the IVSC 2 facility to IID pursuant to a long-term, firm PPA that expires in 2045.

DRI is also the parent company of Dominion Virginia Power. Dominion Virginia Power is a regulated, vertically integrated public utility engaged in the generation, distribution, and sale of electric energy. It owns and/or operates nuclear, fossil fuel, renewable, and hydroelectric generating units in Virginia, North Carolina, and West Virginia with an aggregate generating capacity of approximately 24,400 MW, as well as approximately 57,000 miles of electric distribution lines. Dominion Virginia Power also

¹¹ *Dominion Energy Marketing, Inc.*, Docket No. ER01-468-000 (Letter Order issued Dec. 15, 2000); (Letter Order).

¹² *Imperial Valley Solar Company (IVSC) 2, LLC*, FERC Form 556, Docket No. QF14-699-000 (filed Aug. 4, 2014); *Imperial Valley Solar Company (IVSC) 2, LLC*, 149 FERC ¶ 61,270 (2014) (market-based rate authorization).

owns approximately 6,400 miles of transmission facilities that are under the operational control of PJM pursuant to the PJM Open Access Transmission Tariff (“OATT”).¹³

Dominion Virginia Power’s generation and transmission assets are identified in the Asset Appendix.

Dominion Virginia Power sells electric energy at retail in Virginia and North Carolina. It also sells electric energy at wholesale on a short-term basis and under long-term contracts to rural electric cooperatives, municipalities, and wholesale electricity markets. Dominion Virginia Power has the authority to make wholesale sales at market-based rates.¹⁴

In addition to electric interests, DRI also owns or holds an interest in (1) two gas utility local distribution companies (“LDCs”), (2) four interstate gas pipeline companies, and (3) Dominion Retail, Inc., a retail marketing entity that sells natural gas. The two LDCs, East Ohio Gas Company d/b/a Dominion East Ohio, and Hope Gas, Inc. d/b/a Dominion Hope, provide retail gas services to customers in Ohio and West Virginia, respectively. The interstate gas pipeline companies are Dominion Transmission, Inc. (“DTI”), Dominion Iroquois, Inc. (“Dominion Iroquois”), which owns a 24.72% interest in Iroquois Gas Transmission System, LP, Dominion Cove Point LNG, LP, and Dominion Carolina Gas Transmission, LLC. DTI, Dominion Iroquois, and Dominion East Ohio are direct subsidiaries of Dominion Gas Holdings, LLC, a wholly-owned subsidiary of DRI. Dominion Carolina Gas Transmission, LLC, is a direct subsidiary of

¹³ *PJM Interconnection, L.L.C. and Virginia Elec. and Power Co.*, 109 FERC ¶ 61,012 (2004).

¹⁴ *Virginia Electric and Power Co.*, Docket No. ER98-3771-000 (Letter Order issued Aug. 13, 1998); *see also* 80 FERC ¶ 61,275 (1997); 86 FERC ¶ 61,027 (1999) (order accepting settlement agreement and terminating Docket No. ER97-3561-0000); and 91 FERC ¶ 61,209 (2000).

Dominion Midstream Partners, LP. DRI and its subsidiaries own 100% of the general partnership interests, and a majority of the outstanding limited partnership interests, in Dominion Midstream Partners, LP. DRI also owns a 50% interest in Blue Racer Midstream, LLC, a joint venture midstream services company and a 45% interest in the proposed Atlantic Coast Pipeline, LLC project.

DRI also owns Questar Corporation (“Questar”). Questar is a Rockies-based integrated natural gas company operating through three principal subsidiaries: Questar Gas provides retail natural gas distribution in Utah, Wyoming and Idaho; Wexpro develops and produces natural gas on behalf of Questar Gas; and Questar Pipeline operates interstate natural gas pipelines and storage facilities in the Western U.S.

IV. DESCRIPTION OF THE PROPOSED TRANSACTION

Pursuant to the Purchase and Sale Agreement, the Purchaser will acquire from Solar Frontier Americas Holdings, LLC 100% of the membership interests in Midway II. Organizational charts depicting the current and post-transaction corporate structures are provided in Exhibits C-1 and C-2, respectively.

V. THE COMMISSION SHOULD AUTHORIZE THE PROPOSED TRANSACTION UNDER SECTION 203 OF THE FPA

Commission approval under Section 203(a)(1)(A) of the FPA is required prior to a public utility selling or otherwise disposing the whole of its jurisdictional facilities, including a disposition of control of the public utility.¹⁵ Midway II has filed a market-based rate tariff with a proposed effective date of January 1, 2017, so at the time of the

¹⁵ See, e.g., *FPA Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060 PP 45-49 (2007); and *Enova Corporation*, 79 FERC ¶ 6,107 (1997).

Proposed Transaction on January 3, 2017, Midway II will own jurisdictional facilities and will be a public utility under the FPA.¹⁶ The Proposed Transaction will result in a disposition of control of a public utility with the sale of 100% of the membership interests in Midway II.

Section 203(a)(4) of the FPA provides that the Commission will authorize a proposed transaction if it is “consistent with the public interest and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.” In determining whether a proposed transaction is consistent with the public interest, the Commission analyzes whether it will have any adverse effects on competition, rates, or regulation.¹⁷ An applicant need not show that a transaction positively benefits the public interest, but rather that it is “consistent with the public interest”, *i.e.*, that the transaction does not harm the public interest.¹⁸

The Applicant respectfully submits that the Commission should conclude based on the showing below, that the Proposed Transaction is consistent with the public interest, because it will not have an adverse effect on competition, rates or regulation. Further, the Proposed Transaction is consistent with the public interest and will not result in the cross-subsidization of a non-utility associate company or the pledge or

¹⁶ Section 201(e) of the FPA defines a “public utility” as “any person who owns or operates facilities subject to the jurisdiction of the Commission...” 16 U.S.C. § 824(e) (2012). The Commission has held that tariffs are jurisdictional facilities. *See Ocean State Power*, 38 FERC ¶ 61,140 at 61,378 (1987) (footnotes omitted)(“With our acceptance of this rate filing, Ocean State owns ‘jurisdictional facilities’ within the meaning of section 201 of the [FPA].”)

¹⁷ 18 C.F.R. § 2.26; *See Revised Filing Requirements Under Part 33 of the Commission’s Regulations*, Order No. 642, FERC Stats. & Regs., Regs. Preambles ¶ 31,111 at 31,879 (2000) (“Order No. 642”), *order on reh’g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001) (*codified at* 18 C.F.R. § 33.2(g)).

¹⁸ *See, e.g., Texas-New Mexico Power Co.* 105 FERC ¶ 61,028, at P 23 and n. 14 (2003) (citing *Pac. Power & light Co. v. FPC*, 111 F.2d 1014, 1016-17 (9th Cir. 1949)).

encumbrance of utility assets for the benefit of an associate company. Accordingly, the Proposed Transaction should be approved.

A. The Transaction Will Have No Adverse Effect on Competition

In Order No. 642, the Commission stated that the filing of a “full-fledged horizontal screen or vertical competitive analysis” is not necessary where it is “relatively easy to determine that [a merger] will not harm competition.”¹⁹ That is the case here.

Section 33.3(a)(2)(i) of the Commission’s Regulations provides that a horizontal competitive analysis screen is not required if applicants demonstrate that they do not conduct business in the same geographic markets or the extent of the business transactions in the same geographic markets is *de minimis*. Similarly, Section 33.4(a)(2)(i) of the Commission’s Regulations provides that a vertical competitive analysis is not required if the merging entities do not provide inputs to electricity products (i.e., upstream relevant products) and electricity products (i.e., downstream relevant products) in the same geographic markets or the extent of the business transactions in the same market is *de minimis*.

The Purchaser is affiliated with one 20 MW_{ac} solar generation facility in the IID BAA so the acquisition of the 30 MW_{ac} Midway II generation will have a *de minimis* impact on the concentration of generation in the IID BAA. More importantly, however, the energy and capacity of both facilities is fully committed under long-term power purchase agreements to IID. Accordingly, there will be no impact on horizontal market power.

¹⁹ Order No. 642 at 31,901.

Nor does the Proposed Transaction have any adverse effect on vertical market power. Neither Midway II nor the Purchaser are affiliated with transmission in the IID BAA other than interconnection facilities necessary to interconnect the generation to the transmission system and that satisfy the requirements for the blanket waiver granted in Section 35.28(d)(2) of the regulations.²⁰ All of the other Commission-jurisdictional transmission facilities affiliated with the Purchaser are located in other geographic markets and either similarly satisfy the requirements for the blanket waiver in Section 35.28(d)(2) of the regulations or are operated under OATTs, which mitigates any vertical competition concerns. Neither Midway II nor the Purchaser or its affiliates own inputs to electricity products in the relevant geographic market. Similarly, all the Purchaser affiliated local distribution is located in other geographic markets. Therefore, there will be no impact on vertical market power.

Accordingly, the Proposed Transaction raises no horizontal or vertical market power concerns and will have no adverse effect on competition.

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

In evaluating the rate impact associated with transactions under Section 203 of the FPA, the Commission focuses on “the protection of wholesale ratepayers and transmission customers.”²¹ The Proposed Transaction will have no adverse effect on the rates for electric energy sold by the Applicant or those of any other entity. The Commission has established that market-based wholesale power sales do not raise

²⁰ 18 C.F.R. § 35.28(d)(2).

²¹ *New England Power Co., et al.*, 82 FERC ¶ 61,179, at 61,659, *order on reh'g*, 83 FERC ¶ 61,275 (1998); *see also Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 at 30,123 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (“*Merger Policy Statement*”).

concerns about a transaction's possible adverse effect on rates.²² Given that all of the Applicant's sales of electric energy will be made pursuant to market-based rate authorization, the Commission should conclude that the Proposed Transaction will not have an adverse effect on rates.

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

The Commission's primary concern with the effect on regulation of a proposed disposition of jurisdictional facilities is whether the Commission's jurisdiction or state regulation will be changed.²³ The Proposed Transaction will not deprive the Commission or any other federal or state agency of jurisdiction it had prior to consummation of the Proposed Transaction, and the Commission will be able to exercise the same regulatory authority over the sale of electricity at wholesale that it did prior to the Proposed Transaction. No facilities will be removed from the Commission's jurisdiction. Therefore, the Commission should conclude that the Proposed Transaction will not have an adverse effect on regulation.

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

Under Section 203(a)(4) of the FPA and Section 2.26(f) of its regulations, the Commission considers whether a transaction will result in a cross-subsidization of a non-utility associate company by a utility company, or in a pledge or encumbrance of utility assets for the benefit of an associate company. The Proposed Transaction does not pose a

²² See, e.g., *NorAm Energy Services, Inc.*, 80 FERC ¶ 61,120 at 61,382-83 (1997).

²³ *Merger Policy Statement* at 30,124-25.

risk of cross-subsidization and does not result in a pledge or otherwise encumber utility assets for the benefit of an associate company.

In its *FPA Section 203 Supplemental Policy Statement*, the Commission stated that it will recognize three classes of transactions that are unlikely to raise the cross-subsidization concerns described in the Order No. 669 rulemaking proceeding.²⁴ One such class involves “transactions where the applicant shows that a franchised public utility with captive customers is not involved. If no captive customers are involved, then there is no potential for harm to customers. Therefore, compliance with Exhibit M could be a showing that no franchised public utility with captive customers is involved in the transaction.”²⁵

The Proposed Transaction does not involve a franchised public utility with captive customers. Accordingly, the Proposed Transaction is in one of the recognized classes that are unlikely to raise cross-subsidization concerns.

VI. INFORMATION AND EXHIBITS REQUIRED BY SECTION 33.2 OF THE COMMISSION’S REGULATIONS

In compliance with Section 33.2 of the Commission’s Regulations, 18 C.F.R. § 33.2 (2016), the Applicant submits the following required information:

A. Section 33.2(a): Name and Address of Applicant

The exact legal name of the Applicant and its principal business address are as follows:

96WI 8ME, LLC
 c/o Solar Frontier Americas, Inc.
 50 California Street, Suite 820
 San Francisco, CA 94111

²⁴ *FPA Section 203 Supplemental Policy Statement* at P 16.

²⁵ *FPA Section 203 Supplemental Policy Statement* at P 17 (footnote omitted).

B. Section 33.2(b): Persons Authorized to Receive Communications

The persons authorized to receive communications are set forth in Section I of the Application.

C. Section 33.2(c): Description of the Applicant

a. Section 33.2(c)(1): Business Activities

See Section III of the Application. To the extent deemed necessary, the Applicant requests waiver of the requirement to submit this information as a separate Exhibit A.

b. Section 33.2(c)(2): Applicant's energy subsidiaries and affiliates

Applicant has no energy subsidiaries and the affiliates of the Applicant are provided in Section III of the Application. Applicant requests waiver of the requirement to submit any additional information as a separate Exhibit B because that information would not assist the Commission in its review of the Application.

c. Section 33.2(c)(3): Organizational charts depicting current and proposed post-transaction corporate structures

See Exhibit C. The Applicant requests a waiver of the information requirements of 18 C.F.R. §33.2(c)(3), to the extent waiver may be deemed necessary, to provide additional information because such information is not relevant to the Commission's evaluation of the Proposed Transaction.

d. Section 33.2(c)(4): A description of business arrangements

The Applicant's pertinent business interests are described in this Application above. The Applicant requests waiver of the requirement to provide Exhibit D, to the extent necessary, as the Proposed Transaction will not affect any business interest except as discussed herein.

e. Section 33.2(c)(5): Common officers or directors

There are no common officers and directors shared between Applicant and Purchaser. Accordingly, the Proposed Transaction does not create any new jurisdictional interlocks. Following the transaction, to the extent that any FPA-jurisdictional interlocking appointment is to be made, the appropriate filing under 18 C.F.R. Part 45 will be prepared and filed. To the extent deemed necessary, the Applicant requests waiver of the requirement to submit this information as a separate Exhibit E.

f. Section 33.2(c)(6): Wholesale power sales and transmission customers

As discussed above, all of the output of the Midway II generation facility will be sold under a long-term power purchase agreement. The generation facility will not have other wholesale power sales or transmission customers. To the extent deemed necessary, Applicant requests waiver of the requirement to submit this information as a separate Exhibit F. Waiver is appropriate because the Applicant will make sales pursuant to market-based rate authorization and a long-term power purchase agreement and the Proposed Transaction will not impact those rates.

D. Section 33.2(d): Jurisdictional Facilities

The jurisdictional facilities that will be owned, operated or controlled by the Applicant are described in the text of this Application and consist of the market-based rate tariff and associated books, records, and accounts. Information regarding the Applicant's energy-related affiliates is included in Section III of the Application. For the reasons set forth herein, the Applicant requests a limited waiver of any requirement of 18 C.F.R. §33.2(d) to re-state the information as a separate Exhibit G.

E. Section 33.2(e): Narrative Description of the Proposed Transaction

See Section IV of the Application. To the extent otherwise deemed necessary, the Applicant requests waiver of the requirement to re-state and submit this information as a separate Exhibit H.

F. Section 33.2(f): Contracts Related to the Proposed Transaction

See Confidential Exhibit I hereto. The Purchase and Sale Agreement is submitted with this Application. Consistent with Section 388.112 of the Commission's regulations, 18 C.F.R. § 388.112 (2016), the Applicant requests privileged, non-public treatment for the agreement contained in Exhibit I of this Application. This document contains commercially sensitive terms and conditions, the disclosure of which could have a material adverse effect on the parties to the agreement, and adversely affect their ability to negotiate similar transactions in the future. As required by Section 33.9 of the Commission's regulations, 18 C.F.R. § 33.9 (2016), the Applicant has included a protective order, which is based on the Commission's model protective order, in Attachment 1 hereto under which the agreement would be designated as protected materials subject to the provisions of the protective order.

The Applicant requests the Commission to waive any requirement under 18 C.F.R. § 33.2(f) to submit immaterial "side" documents associated with the Proposed Transaction, since these may be voluminous and will not relate to any matter subject to Commission review under the Commission's Section 203 policies and regulations.

The Applicant designates the following person as the individual to be contacted regarding the request for confidential treatment and access to documents subject to the protective order:

Andrea Wolfman
Alston & Bird LLP
950 F Street, N.W.
Washington, DC 20004
(202) 239-3300 (tel.)
andrea.wolfman@alston.com

G. Explanatory Statement

The Application above contains an explanatory statement that the Proposed Transaction is consistent with the public interest. To the extent otherwise deemed necessary, the Applicant requests waiver of the requirement to submit this information as a separate Exhibit J.

H. Map

The information required to be included in Exhibit K will not assist the Commission in determining whether to authorize the Proposed Transaction. Therefore, the Applicant requests a waiver of any requirements to provide a map and an Exhibit K.

I. Section 33.2(i): Other Regulatory Approvals

No other approvals are required. To the extent otherwise deemed necessary, the Applicant requests waiver of the requirement to provide this information in Exhibit L.

J. Section 33.2(j): Statement Concerning Cross-Subsidization

See Exhibit M hereto and Section V of this Application.

K. Section 33.3: Horizontal Competitive Impacts

The Commission's regulations provide that a horizontal Competitive Analysis Screen need not be filed if the applicant affirmatively demonstrates that the merging entities do not currently conduct business in the same geographic markets or that the

extent of the business transactions in the same geographic markets is *de minimis*.²⁶

Applicant has affirmatively demonstrated in Section V, above, the *de minimis* extent of the business transactions in the same geographic market.

L. Section 33.4: Vertical Competitive Impacts

The Commission's regulations concerning additional information requirements for applications involving vertical competitive impacts provide that a vertical Competitive Analysis need not be filed if the applicant can affirmatively demonstrate that the merging entities currently do not provide inputs to electricity products and electricity products in the same geographic markets or the extent of the business transactions in the same geographic market is *de minimis*.²⁷ As discussed in Section V, above, the Applicant and the Purchaser do not own or control inputs to electricity products in the same geographic market.

M. Section 33.5: Accounting Entries

The Applicant is not including accounting entries showing the effect of the Proposed Transaction on account balances because Applicant is not required to maintain their books and records in accordance with the Commission's Uniform System of Accounts. As such, the Applicant respectfully requests waiver of the requirement to include Proposed accounting entries in this Application.

²⁶ 18 C.F.R. § 33.3(a)(2) (2016).

²⁷ 18 C.F.R. § 33.4(a)(2) (2016).

N. Section 33.7: Verification

A Verification signed by an authorized representative of the Applicant having appropriate authority and knowledge of the matters set forth in this Application is attached hereto as Attachment 2.

VII. CONCLUSION

For the foregoing reasons, the Applicant requests that the Commission authorize the Proposed Transaction pursuant to Section 203(a)(1)(A) of the FPA and grant a limited waiver of the Commission's Part 33 filing requirements as requested because such information is not necessary to ensure that the Proposed Transaction meets the statutory requirements of Section 203. Applicant respectfully requests a 21-day comment period and for Commission issuance of an order granting the requested **authorization by December 31, 2016** so that the Applicant can consummate the Proposed Transaction on January 3, 2017.

Respectfully submitted,

/s/ **Andrea Wolfman**

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Counsel for 96WI 8ME, LLC

Dated: December 2, 2016

EXHIBIT C

Organizational Charts

Exhibit C-1

CURRENT ORGANIZATION STRUCTURE

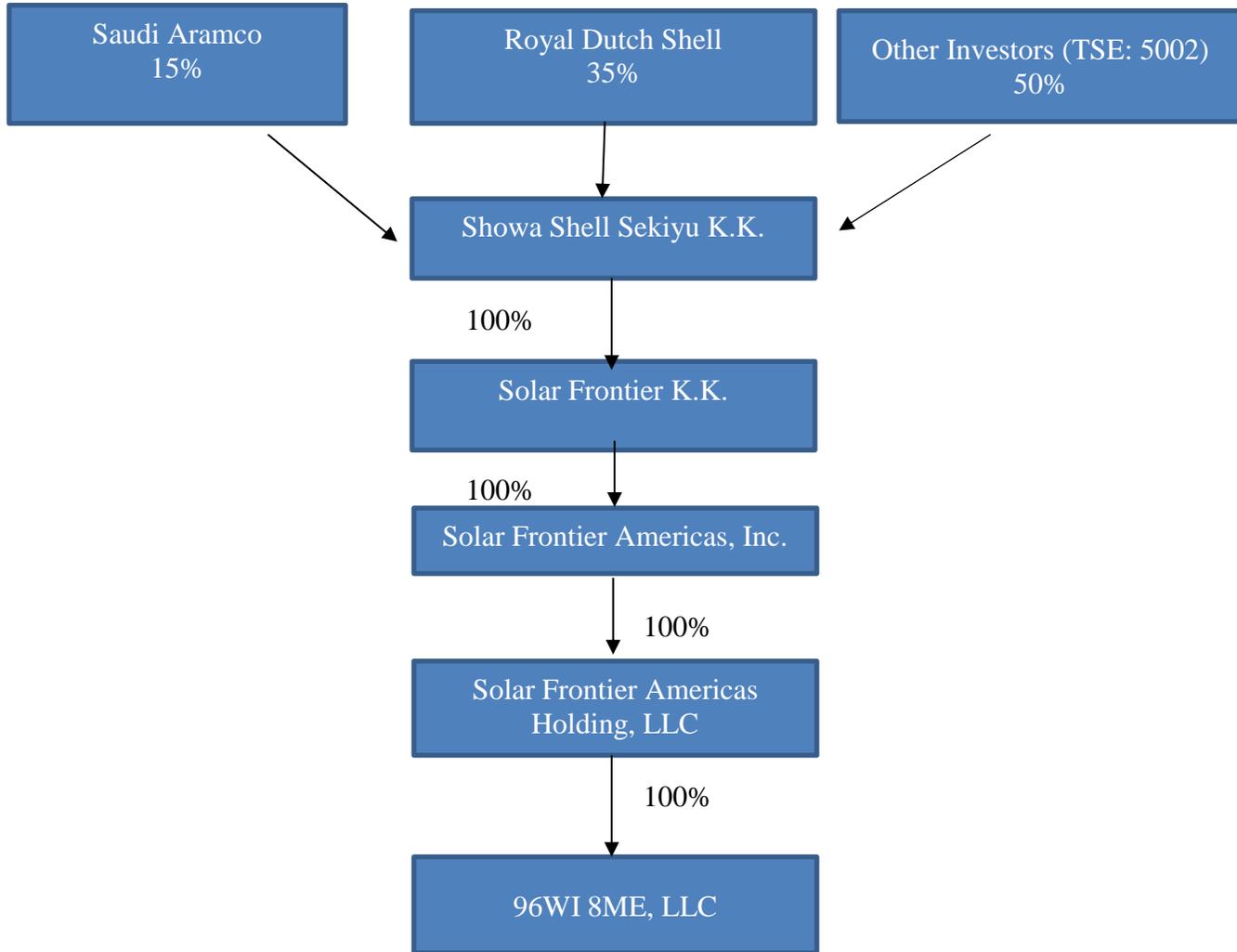


Exhibit C-2

POST-TRANSACTION ORGANIZATION STRUCTURE

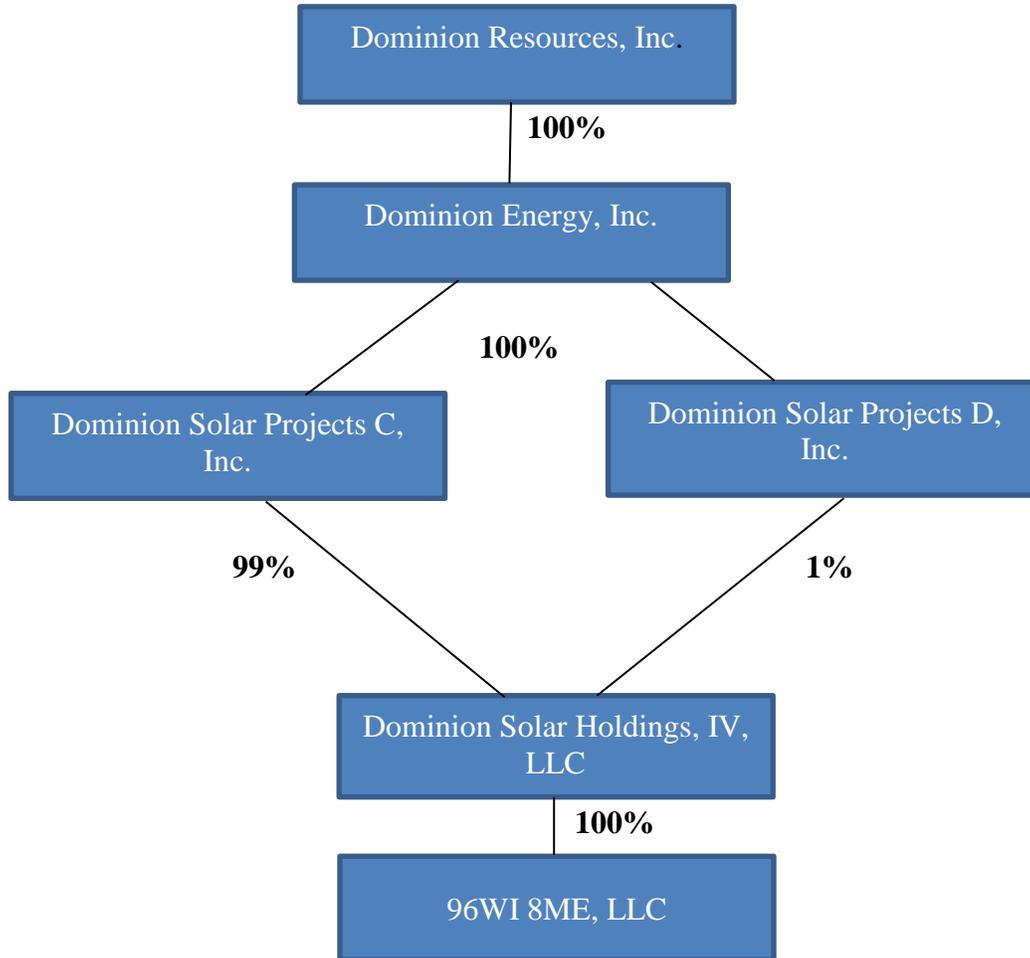


EXHIBIT I

Contracts Related to the Proposed Transaction

**PRIVILEGED INFORMATION REMOVED
PURSUANT TO 18 C.F.R. § 388.112**

EXHIBIT M

Statement Regarding Cross-Subsidization

Exhibit M

STATEMENT REGARDING CROSS-SUBSIDIZATION

As demonstrated in the text of the Application and incorporated by reference into this Exhibit M, the Proposed Transaction raises no issues concerning cross-subsidization.

The Applicant verifies with respect to itself and its affiliates, based on facts and circumstances known to it or that are reasonably foreseeable as of the date of this Application, that the Proposed Transaction will not result in, at the time of the Transaction or in the future:

(1) any transfers of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;

(2) any new issuances of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;

(3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or

(4) any new affiliate contracts between a non-utility associate company and a traditional public utility associate company that has captive customers or that own or provide transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under Sections 205 and 206 of the Federal Power Act.

ATTACHMENT 1

Attachment 1

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

96WI 8ME, LLC

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Docket No. EC17-____-000

PROTECTIVE ORDER

(Issued _____, 2016)

1. This Protective Order shall govern the use of all Protected Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Administrative Law Judge (“Presiding Judge”) or the Federal Energy Regulatory Commission (“Commission”).
2. This Protective Order applies to the following two categories of materials: (A) A Participant may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and (B) A Participant shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 C.F.R. § 388.113(c)(1) (“Critical Energy Infrastructure Information”).
3. Definitions -- For purposes of this Order:
 - (a) The term “Participant” shall mean each captioned Applicant, any person or entity contemplating intervening in this proceeding to whom Protected Materials are provided by the Applicant or its affiliates prior to such intervention, and a Participant as defined in 18 C.F.R. § 385.102(b).
 - (b) (1) The term “Protected Materials” means (A) materials (including depositions) provided by a Participant as part of any application or other pleading filed with the Commission or in response to discovery requests, and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Presiding Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant producing the Protected Materials shall physically mark them on each page as “CONTAINS PRIVILEGED INFORMATION-DO NOT RELEASE” or “PROTECTED MATERIALS” or with words of similar import as long as the term “Protected Materials” is included in that designation to indicate that they are Protected Materials. If the Protected Materials contain Critical Energy Infrastructure Information, the Participant producing such information shall additionally mark on each page containing such information the words “Contains Critical Energy Infrastructure Information - Do Not Release.”

(2) The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraphs 3(b)(1) or 5. Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

(3) Protected Materials shall not include (A) any information or document contained in the files of the Commission, or any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, or (C) any information or document labeled as “Non-Internet Public” by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC 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 Litigation Staff;

(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 Paragraph (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 nonpublic 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 Litigation Staff ("Staff"), Staff shall follow the notification procedures of 18 C.F.R. § 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 whose designation is contested. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Presiding Administrative Law Judge, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the participant seeking protection. If the Presiding Administrative Law Judge finds that the materials at issue are not entitled to protection, the procedures of Paragraph 17 shall apply. The procedures described above shall not apply to protected materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" or "CONTAINS PRIVILEGED INFORMATION-DO NOT RELEASE" 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 decision, 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 C.F.R. §§ 388.112 and 388.113 shall apply to any requests for Protected Materials in the files of the Commission under the Freedom of Information Act. (5 U.S.C. § 552).

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.

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

96WI 8ME, LLC

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Docket No. EC17-____-000

NON-DISCLOSURE CERTIFICATE

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

By: _____
Title: _____
Representing: _____
Date: _____

ATTACHMENT 2

VERIFICATION

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

1 _____

2 _____

3 _____

4 _____

5 _____

6 _____

Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 (if any) _____

State of California
 County of San Francisco

Subscribed and sworn to (or affirmed) before me
 on this 1st day of December, 2016,
Date Month Year
 by
 (1) Cary Vandenberg
Name of Signer



proved to me on the basis of satisfactory evidence
 to be the person who appeared before me (.)

(and
 (2) _____
Name of Signer

proved to me on the basis of satisfactory evidence
 to be the person who appeared before me.)

Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: 96w1 Verification of Appl.

Document Date: December 1, 2016 Number of Pages: 35

Signer(s) Other Than Named Above: [Redacted]

RIGHT THUMBPRINT OF SIGNER #1
 Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
 Top of thumb here

Document Content(s)

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