

PUBLIC VERSION

Pursuant to the Commission's Regulations Regarding Requests for Privileged Treatment of Documents, 18 C.F.R. § 388.112, Information Contained in Section IV of This Submission Constitutes Privileged, Protected, and Confidential Information and Has Been Redacted from This Public Version

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

Albany Green Energy, LLC) Docket No. ER17-___-000

**APPLICATION OF ALBANY GREEN ENERGY, LLC FOR
ORDER ACCEPTING MARKET-BASED RATE TARIFF FOR FILING
AND GRANTING WAIVERS AND BLANKET APPROVALS**

Pursuant to section 205 of the Federal Power Act ("FPA"),¹ Rule 205 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC or Commission"),² and Part 35 of the Commission's regulations under the FPA,³ Albany Green Energy, LLC ("Applicant") hereby petitions the Commission for: (1) acceptance of Applicant's market-based rate ("MBR") tariff effective February 20, 2017, sixty (60) days from the date of this filing; (2) waiver of certain Commission regulations under the FPA; and (3) the granting of certain blanket approvals.

I. REQUEST FOR PRIVILEGED TREATMENT

Applicant requests privileged treatment pursuant to Section 388.112 of the Commission's regulations for portions of the ownership information provided in this filing. The ownership information is confidential financial and/or trade secret information that is not normally disclosed to the public and could harm Applicant if publicly released. Accordingly, Applicant is providing certain information on a

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 385.205 (2016).

³ *Id.* Part 35.

confidential, non-public basis. Pursuant to Section 35.37(f) of the Commission's regulations, a proposed protective order is included herewith as Attachment D.

Communications concerning this request for privileged treatment should be directed to Jane Rueger at 202-626-6534 or Harold Bulger at 202-637-6182.

II. COMMUNICATIONS

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* Persons denoted with an asterisk are those designated for service pursuant to 18 C.F.R. § 385.2010. Applicant respectfully requests waiver of 18 C.F.R. § 385.2010(k) so that it may designate three persons to receive service on its behalf.

III. LIST OF DOCUMENTS SUBMITTED WITH THIS APPLICATION

Applicant includes the following attachments with this Application:

- Proposed FERC Electric Tariff (Attachment A and filed concurrently in RTF format);
- Appendices in the format set forth in Appendix B to 18 C.F.R. Part 35, Subpart H listing by balancing authority area and geographic region: (1) all affiliates that have MBR authority and all reportable generation assets owned by Applicant or its affiliates; (2) all reportable long-term power purchase agreements of Applicant or its affiliates; and (3) all electric transmission

facilities and natural gas intrastate pipelines and/or gas storage facilities owned or controlled by the Applicant or its affiliates (Attachment B).⁴

- Horizontal market power indicative screens and related documents (Attachment C).
- Proposed Protective Order (Attachment D).

IV. DESCRIPTION OF APPLICANT AND RELEVANT AFFILIATES

A. Applicant

Applicant is developing and will own and operate an approximately 50 MW (summer) biomass electric generation facility located in Dougherty County, Georgia (“Facility”). The Facility will be interconnected to the Georgia Power Electric System, the transmission system owned and operated by Georgia Power Company (“Georgia Power”) and located in the Southern Company Services, Inc. (“SOCO”) balancing authority area (“BAA”). It is currently anticipated that injection of test power from the Facility into the grid could begin as early as March 1, 2017 and commercial operation is expected to occur in June, 2017. All of the output of the Facility is committed to Georgia Power under a long-term contract in accordance with the Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”), with a term expiring November 30, 2035. Prior to the sale of test power from the Facility, Applicant will file its self-certification as a small power production qualifying facility (“QF”) under PURPA. Applicant does not own or operate any transmission facilities, except for the limited and discrete equipment necessary to interconnect the Facility to the grid.

⁴ Applicant includes in the long-term purchase agreement tab of the Exelon asset appendix, power purchase agreements from generation facilities that may be QFs and that may not have market-based rate authority. These power purchase agreements are included out of an abundance of caution, because neither Applicant nor its Exelon affiliates own such generation facilities and may not be able to make definitive representations regarding their regulatory status.

Applicant is a wholly owned subsidiary of Constellation DCO Albany Power Holdings, LLC (“Constellation DCO”). Constellation NewEnergy, Inc. (“CNE”) holds a 90% ownership interest in Constellation DCO and DCO Energy, LLC (“DCO Energy”) holds the remaining 10% ownership interest.

B. CNE and Relevant Exelon Affiliates

CNE is owned by Constellation Energy Resources, LLC (“Constellation Energy Resources”). Constellation Energy Resources is owned by Exelon Generation Company, LLC (“Exelon Generation”). Exelon Generation is a wholly owned subsidiary of Exelon Corporation (“Exelon”). Exelon is a publicly traded company headquartered in Chicago, Illinois and has operations and business activities in 48 states, the District of Columbia, Canada, and the United Kingdom.⁵ Exelon is a holding company within the meaning of the Public Utility Holding Company Act of 2005.

1. Exelon Generation and Relevant Subsidiaries

Exelon Generation is owned directly by Exelon. Exelon Generation is one of the largest competitive power generators in the United States. Exelon Generation and its subsidiaries operate one of the nation’s cleanest and lowest-cost power generation fleets, with generation facilities located in a number of organized markets across the country. In addition, Constellation, an Exelon Generation business unit consisting of subsidiaries and divisions of Exelon Generation, is one of the nation’s leading marketers of electricity, natural gas, and related products in wholesale and retail markets. Exelon Generation serves as a supplier of energy to, among others, utilities and municipalities to meet their native load obligations. Through various subsidiaries, Exelon Generation is also a retail

⁵ No individual shareholder of Exelon owns a 10% or greater interest in Exelon’s outstanding voting securities.

competitive energy provider. The Commission granted Exelon Generation MBR authority.⁶

In the SOCO BAA—the relevant market for Applicant’s market analysis—Exelon Generation does not directly own any electric generation facilities. Exelon Generation owns 100% of the interests in Constellation Holdings, LLC, which in turn owns 100% of the interests in CER Generation, LLC (“CER”). CER owns an approximately 753 MW natural gas-fired, combined-cycle generation facility located in Alabama, within the SOCO BAA. The Commission granted CER MBR authority.⁷

In markets first-tier to SOCO, Exelon Generation and its affiliates own, or purchase under long-term firm contract, approximately 2,448 MW of generation located in the Midcontinent Independent System Operator, Inc. (“MISO”) BAA.⁸

In addition, Exelon Generation indirectly owns the following power marketers:

- Constellation Energy Commodities Group Maine, LLC (“CECG Maine”), which is owned by Constellation Energy Upstream Holdings, Inc. Constellation Energy Upstream Holdings, Inc. is owned by Exelon Generation.
- CNE, which is owned by Constellation Energy Resources, whose upstream ownership is described in Section IV above.
- Constellation Energy Services, Inc. (“CES”), which is owned by Constellation Energy Resources, whose upstream ownership is described in Section IV above. CES was formerly known as Integrys Energy Services, Inc. and changed its name effective April 1, 2015.
- Constellation Energy Services of New York, Inc. (“CES of NY”), which is owned by CES. CES of NY was formerly known as Integrys Energy Services of New York, Inc. and changed its name effective April 1, 2015.

⁶ *Exelon Generation Co.*, 93 FERC ¶ 61,140 (2000), *reh’g denied*, 95 FERC ¶ 61,309 (2001).

⁷ *CER Generation, LLC*, Docket Nos. ER10-662-000, -001 (unpublished delegated letter order issued May 13, 2010).

⁸ The generation facilities located in the first-tier market are identified in the asset appendix provided as Attachment B hereto. Consistent with Order No. 816, Applicant has not included in the asset appendix and the market power analysis generation facilities that are QFs exempt from section 205 of the FPA or are located behind the meter.

Each of these four marketers operates primarily as a competitive retail supplier and has been granted MBR authority by the Commission.⁹ None of the four marketers owns or controls any generation facilities, except for limited behind-the-meter facilities, or any transmission facilities in the United States. CNE owns Pepco Energy Services, Inc. (“PES”), which is primarily engaged in providing energy services, including investment-grade energy audits and installation of energy conservation measures for federal, state and local governments, specialized construction work for electric utilities, and the delivery of thermal energy under long-term contracts. PES does not own any electrical generation facilities, except for certain limited behind-the-meter generation facilities, and has MBR authority.¹⁰

Except as described above, neither Exelon Generation nor any of its affiliates owns any generation facility in the SOCO BAA or any first-tier market and or purchases the output of generation facilities located in the SOCO BAA or any first-tier market under long-term firm contracts reportable in the asset appendix pursuant to Order No. 816.

2. Exelon’s Franchised Public Utilities

Exelon’s indirect wholly owned subsidiaries Commonwealth Edison Company (“ComEd”), PECO Energy Company (“PECO”), Baltimore Gas and Electric Company

⁹ See *Constellation Power Source Maine, LLC*, Letter Order, Docket No. ER02-699-000 (Feb. 26, 2002); *NEV, L.L.C.*, 81 FERC ¶ 61,186 (1997) (granting Constellation NewEnergy, Inc. market-based rate authority); *Wisconsin Public Service Corp., et al.*, 75 FERC ¶ 61,057 (1996) (granting Constellation Energy Services, Inc. market-based rate authority); *Advantage Energy, Inc.*, Letter Order, Docket No. ER97-2758-000 (July 14, 1997) (granting Constellation Energy Services of New York, Inc. market-based rate authority). In a letter order issued on June 23, 2015 in Docket Nos. ER15-1537-000, *et al.*, the Commission accepted for filing the notice of succession reflecting the names changes from Integrys Energy Services, Inc. to Constellation Energy Services, Inc. and from Integrys Energy Services of New York, Inc. to Constellation Energy Services of New York, Inc.

¹⁰ *Pepco Energy Services, Inc.*, 84 FERC ¶ 61,024 (1998).

“BGE”), Potomac Electric Power Company (“Pepco”), Delmarva Power & Light Company (“DPL”), and Atlantic City Electric Company (“ACE”) (collectively the “Franchised Public Utilities”), are franchised public utilities within the meaning of 18 C.F.R. § 35.36(a)(5).

ComEd and PECO are owned by Exelon Energy Delivery Company, LLC (“EEDC”), which in turn is owned by Exelon. BGE is owned by RF HoldCo LLC, which in turn is owned by EEDC. Pepco, DPL, and ACE are owned by Pepco Holdings LLC, which is owned by PH Holdco LLC. PH Holdco LLC is owned by EEDC. Together, the Franchised Public Utilities own electric distribution systems through which they deliver electricity to customers in Illinois, Pennsylvania, Maryland, the District of Columbia, Delaware, and New Jersey. All of the Franchised Public Utilities’ retail customers have access to competitively priced retail power and, as a result, are not considered captive for purposes of the Commission’s market-based rate regulations.¹¹

The Commission granted each of the Franchised Public Utilities MBR authority.¹² The Franchised Public Utilities do not own any electric generation facilities, except for limited behind-the-meter facilities located at substation sites,¹³ and serve as default

¹¹ See *Exelon Generation Co.*, 126 FERC ¶ 61,031 at PP 43-48 (2009); *Baltimore Gas & Elec. Co.*, Letter Order, Docket Nos. ER99-2948-012, *et al.* (Sept. 16, 2008); *Exelon Generation Co.*, 93 FERC ¶ 61,140 at 61,425 (2000), *on reh’g*, 95 FERC ¶ 61,309 (2001); *AmerGen VT, LLC*, 90 FERC ¶ 61,307 at 61,995, *on reh’g*, *Baltimore Gas & Elec. Co.*, 91 FERC ¶ 61,270 (2000); *Potomac Elec. Power Co., et al.*, 93 FERC ¶ 61,240 at 61,781-82 (2000); *Pepco Holdings, Inc.*, 141 FERC ¶ 61,034 (2012).

¹² *Commonwealth Edison Co.*, 82 FERC ¶ 61,317 (1998); *PECO Energy Company*, 74 FERC ¶ 61,336 (1996); *Green Power Partners I, LLC*, 88 FERC ¶ 61,005 (1999); *Potomac Electric Power Company*, 85 FERC ¶ 61,019 (1998); *Delmarva Power & Light Company*, 76 FERC ¶ 61,331 (1996); *Atlantic City Electric Company*, 75 FERC ¶ 61,167 (1996).

¹³ These behind-the-meter facilities have not been included in the indicative screens or asset appendix submitted with this application. 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 at P 255 (2015), *reh’g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016) (“[W]e clarify that qualifying facilities that are exempt from [Federal Power Act] section 205 and facilities that are behind-the-meter facilities do not need to be reported in the asset appendix or indicative screens.”).

service providers for those electric customers that do not choose competitive suppliers or whose competitive supplier failed to deliver electric supply.

The Franchised Public Utilities own transmission facilities, but have transferred operational control over such facilities to PJM Interconnection, L.L.C. (“PJM”), which provides transmission service pursuant to an Open Access Transmission Tariff (“OATT”) on file with the Commission.¹⁴ In addition, PECO and BGE own certain intrastate natural gas transportation and distribution facilities used to distribute natural gas to customers in Philadelphia and central Maryland and operate liquefied natural gas facilities and propane-air facilities associated with their respective distribution activities that do not offer services to third parties. Furthermore, DPL supplies and delivers natural gas to retail customers and provides transportation-only services to retail customers that purchase natural gas from another supplier. DPL owns intrastate natural gas transportation and distribution facilities pipelines, and a liquefied natural gas storage facility.

Except as described above, neither Exelon Generation nor any of its affiliates owns or controls any transmission facilities in the United States, other than limited and discrete interconnection facilities necessary to interconnect generation facilities to the grid, or owns or controls in the United States any inputs to electric power production as defined in section 35.36(a)(4) of the Commission’s regulations, *i.e.*, intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; physical coal supply sources and ownership of or control over who may access transportation of coal supplies.

¹⁴ Commonwealth Edison Company of Indiana, Inc. (“ComEd of Indiana”), a wholly owned subsidiary of ComEd, also owns a small amount of electric transmission property in Indiana. As with ComEd, the transmission facilities owned by ComEd of Indiana, Inc. are under the operational control of PJM.

C. DCO Energy and Relevant Affiliates

DCO Energy is a privately held company, which has three managing members – [CONFIDENTIAL INFORMATION REDACTED], none of whom own electric generation or transmission facilities or any inputs to electric power production in SOCO or in markets first-tier to SOCO. DCO Energy itself does not own electric generation or transmission facilities or any inputs to electric power production in SOCO or in markets first-tier to SOCO. Outside of SOCO and markets first-tier to SOCO, DCO Energy owns certain generation facilities that are QFs exempt from Section 205 of the FPA.¹⁵

DCO Energy is affiliated with Joseph Jingoli & Son, Inc. (“Jingoli”), which is a privately-owned company that provides general contracting and construction management services. Jingoli owns the following subsidiaries, none of which owns or controls any generation or transmission facilities:

- JJS Management Services, LLC, which provides maintenance and oversight services for public sector entities transitioning into the private sector; and
- Strategic Program Support, LLC, which provides program management, disaster preparedness, enterprise-based information technology, and security services.

DCO Energy is also affiliated with Goldstar Energy Group, Inc. (“Goldstar”), which is owned by four individuals each with a 25% ownership interest – [CONFIDENTIAL INFORMATION REDACTED]. Goldstar provides consulting and energy management services for business clients but does not own or control any electric generation or transmission facilities.

¹⁵ Consistent with Order No. 816, Applicant has not included in the asset appendix and the market power analysis, DCO Energy generation facilities that are QFs exempt from section 205 of the FPA or are located behind the meter. Because the only other generation facilities owned by DCO Energy are QFs, Attachment B does not include a separate asset appendix for DCO Energy.

DCO Energy and Jingoli also are affiliated with JDC Energy Services, LLC (“JDC”), which is an engineering, procurement and construction firm that helps clients self-fund energy- efficiency projects without upfront capital expenditures. JDC does not own or control any electric generation or transmission facilities.

Except as described above and except for generation facilities that are either located behind-the-meter or are QFs exempt from section 205 of the FPA, neither DCO Energy nor any of its affiliates owns any electric generation facilities located within the SOCO BAA or first-tier markets and neither DCO Energy nor any of its affiliates purchases the output of generation facilities located in the SOCO BAA or any first-tier market under long-term firm contracts reportable in the asset appendix pursuant to Order No. 816.

Further, neither DCO Energy nor any of its affiliates owns or controls in the United States any transmission facilities, other than limited and discrete interconnection facilities required to connect individual generating facilities to the transmission grid, or any inputs to electric power production as defined in section 35.36(a)(4) of the Commission’s regulations, *i.e.*, intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; physical coal supply sources and ownership of or control over who may access transportation of coal supplies.

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

A. Description of Applicant’s Rate Schedule

Applicant requests authorization under its proposed MBR tariff to sell energy, capacity, and ancillary services to any purchaser for resale consistent with the terms of its proposed MBR tariff.

B. Satisfaction of Criteria for Market-Based Rates

The Commission permits sales of energy and capacity at market-based rates if the applicant and its affiliates (i) lack horizontal market power in the relevant geographic market, *i.e.*, they do not have (or have adequately mitigated) market power in generation; and (ii) lack vertical market power in the relevant geographic market, *i.e.*, they do not have (or have adequately mitigated) market power in transmission and cannot erect barriers to entry to competing suppliers through the control of inputs to electric power production.¹⁶ As discussed below, because Applicant and its affiliates do not have horizontal or vertical market power in the relevant market, Applicant meets the Commission's criteria and its MBR tariff should be accepted for filing.

1. Applicant Lacks Horizontal Market Power

The Commission reviews horizontal market power by assessing the market power of the applicant and any of its affiliates that own generation or purchase energy and/or capacity under certain long-term firm power purchase agreements.¹⁷ The Commission has indicated that the relevant geographic market is the BAA, Regional Transmission Operator ("RTO")/Independent System Operator ("ISO"), or submarket, as applicable, where the Applicant's generation is physically located.¹⁸ Accordingly, Applicant is using the SOCO BAA as the relevant geographic market for purposes of its request for MBR

¹⁶ 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), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009); see also *Heartland Energy Servs., Inc.*, 68 FERC ¶ 61,223 at p. 62,060-63 (1994); *Enron Power Enterprise Corp.*, 52 FERC ¶ 61,193 at p. 61,708 (1990); *FirstEnergy Servs., Inc.*, 94 FERC ¶ 61,052 (2001).

¹⁷ See Order No. 697 at P 232 n.261; Order No. 816 at P 130.

¹⁸ See Order No. 697 at P 37; see also *AEP*, 107 FERC ¶ 61,018 at P 41, *order on reh'g*, 108 FERC ¶ 61,026 at P 31 (2004).

authority.

The Commission has authorized the submission of streamlined applications and the use of simplifying assumptions, where appropriate.¹⁹ Applicant performed its pivotal supplier and market share screens for the SOCO market, attached as Attachment C hereto, using the study period December 1, 2013-November 30, 2014. Applicant's screens rely on data recently accepted by the Commission.²⁰ Applicant submits that the use of more recent data for the SOCO market (i.e., a study period of December 2014 through November 2015) would not result in significantly higher market shares because market conditions would not change materially over the course of one year.²¹

As demonstrated below, Applicant passes the pivotal supplier and market share screens for the SOCO market.

a. Pivotal Supplier Screen

The pivotal supplier screen compares the amount of uncommitted capacity owned or purchased under long-term firm contract by an applicant and its affiliates in the relevant market and the net uncommitted capacity in that market. If the applicant's total affiliated uncommitted capacity in the market is less than the difference between the total uncommitted capacity in the market and the wholesale load, then the applicant passes the screen.²²

¹⁹ See Order No. 697 at PP 321, 337, 1113 (permitting the use of simplifying assumptions and reliance on prior studies); *AEP*, 107 FERC ¶ 61,018 at PP 113-117.

²⁰ See *White Oak Solar, LLC*, Application for Market-Based Rates, *as amended*, Docket No. ER16-1293-000 (Mar. 30, 2016); See also *White Oak Solar, LLC*, Docket No. ER16-1293-001 (unpublished delegated letter order issued June 21, 2016).

²¹ See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities*, Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 12(d) (2007).

²² *AEP Power Mktg., Inc.*, 107 FERC ¶ 61,018 at P 99.

As demonstrated in the pivotal supplier screen in Attachment C, the sum of uncommitted capacity owned or purchased under long-term firm contract by Applicant and its affiliates in the SOCO market is 3,251 MW. The net uncommitted capacity in SOCO is 28,665 MW. Therefore, Applicant passes the pivotal supplier screen in SOCO.

b. Market Share Screen

The market share screen calculates the applicant's and its affiliates' share of uncommitted capacity in the relevant market during each of the four seasons. If an applicant's and its affiliates' share of uncommitted capacity in the relevant market is under 20% in each season, the applicant passes the market share screen. The market share screen included in Attachment C reflects the total share of uncommitted capacity owned or controlled in the SOCO market by Applicant and its affiliates during each of the four seasons. Their market share does not exceed 10.6% of the total uncommitted capacity in any season. Therefore, Applicant passes the market share screen in SOCO.

2. Applicant Lacks Vertical Market Power

Except for the transmission facilities owned in PJM by the Franchised Public Utilities,²³ which are operated by PJM under its OATT, neither Applicant nor any of its affiliates owns, operates, or controls facilities in the United States for the transmission of electricity in interstate commerce, other than limited and discrete equipment necessary to interconnect individual generation facilities to the transmission grid. Applicant affirms that Applicant and its affiliates that own limited and discrete interconnection customer interconnection facilities qualify for the blanket OATT waiver pursuant to section 35.28(d)(2) of the Commission's regulations.

²³ Including ComEd's subsidiary, ComEd of Indiana.

Applicant's affiliation with the natural gas distribution facilities owned by PECO, BGE, and DPL does not raise any vertical market power concerns, because the Commission has adopted a rebuttable presumption that ownership or control of such inputs to electric power production does not allow an entity selling electricity at market-based rates to erect barriers to entry.²⁴ Except for the affiliation with the assets described in Section IV above, neither Applicant nor any of its affiliates owns or controls any inputs to electric power production, *i.e.*, intrastate natural gas transportation; intrastate natural gas storage or distribution facilities; physical coal supply sources; and ownership of or control over who may access transportation of coal supplies. Applicant affirms that Applicant and its affiliates have not erected barriers to entry in the relevant markets and will not erect barriers to entry in the relevant markets. Therefore, Applicant and its affiliates do not have vertical market power.

3. Affiliate Restrictions

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.

The Commission previously determined that the affiliate restrictions do not apply to the relationship between the Franchised Public Utilities and their market-regulated

²⁴ Order No. 697 at P 1018.

power sales affiliates, because the Franchised Public Utilities do not have any captive wholesale or retail customers.²⁵ Consistent with Commission precedent, waiver of the affiliate restrictions with respect to Applicant is similarly appropriate.

The Commission’s regulations define “captive customers” as “any wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation.”²⁶ None of the Franchised Public Utilities has any wholesale electric customers served under cost-based rates. While the Franchised Public Utilities serve retail electric customers under cost-based rates, all of their retail customers have the option to choose a competitive retail supplier. The Commission clarified that the definition of “captive customers” does not include customers that have retail choice.²⁷ Therefore, none of the Franchised Public Utilities has any retail captive customers.

Because none of Franchised Public Utilities has any captive customers, waiver of the affiliate restrictions is appropriate. Applicant’s proposed tariff reflects waiver of the affiliate restrictions in the Limitations and Exemption section of the tariff.

C. Ancillary Services

Applicant seeks authorization to sell certain ancillary services in the markets administered by PJM, New York Independent System Operator, Inc. (“NYISO”), MISO, ISO New England, Inc. (“ISO-NE”), California Independent System Operator Corporation, Inc. (“CAISO”), and Southwest Power Pool, Inc. (“SPP”). The

²⁵ See *Exelon Generation Co.*, 126 FERC ¶ 61,031 at PP 43-48 (2009); *Baltimore Gas & Elec. Co.*, Letter Order, Docket Nos. ER99-2948-012, *et al.* (Sept. 16, 2008); *Exelon Generation Co.*, 93 FERC ¶ 61,140 at 61,425 (2000), *on reh’g*, 95 FERC ¶ 61,309 (2001); *AmerGen VT, LLC*, 90 FERC ¶ 61,307 at 61,995, *on reh’g*, *Baltimore Gas & Elec. Co.*, 91 FERC ¶ 61,270 (2000); *Potomac Elec. Power Co., et al.*, 93 FERC ¶ 61,240 at 61,781-82 (2000); *Pepco Holdings, Inc.*, 141 FERC ¶ 61,034 (2012).

²⁶ 18 C.F.R. § 35.36(a)(6).

²⁷ Order No. 697 at P 479.

Commission requires a separate study of the ancillary services markets to support a market-based rate filing for ancillary services. With respect to sales of ancillary services in the markets operated by PJM, NYISO, MISO, ISO-NE, CAISO, and SPP, Applicant relies, in the same manner as other sellers, on the studies submitted and accepted by the Commission in previous orders.²⁸

In addition, Applicant seeks authorization to sell ancillary services at market-based rates under requirements set forth in *Avista Corp.*,²⁹ as modified by Order No. 697³⁰ and 784,³¹ 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. Applicant 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.

D. Reporting Requirements

Applicant agrees to comply with the reporting requirements normally imposed on sellers that are authorized to sell power at market-based rates. In particular, Applicant will file Electric Quarterly Reports (“EQRs”) concerning its sales in conformance with

²⁸ See e.g., *AES Redondo Beach, L.L.C.*, 83 FERC ¶ 61,358 (1998), *order on reh’g*, 85 FERC ¶ 61,123 (1998), *order on reh’g*, 87 FERC ¶ 61,208, *order on reh’g*, 88 FERC ¶ 61,096 (1999), *order on reh’g and clarification*, 90 FERC ¶ 61,036 (2000) (CAISO); see e.g. *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh’g denied*, 95 FERC ¶ 61,074 (2001) (ISO-NE); see e.g., *Cent. Hudson Gas & Elec. Corp.*, 86 FERC ¶ 61,062 (1999), *order on reh’g and clarification*, 88 FERC ¶ 61,138 (1999) (NYISO); see e.g., *PJM Interconnection, L.L.C.*, 86 FERC ¶ 61,247 (1999); *Atlantic City Elec. Co.*, 86 FERC ¶ 61,248 (1998), *clarified*, 86 FERC ¶ 61,310 (1999) (PJM); *PJM Interconnection, L.L.C.*, 91 FERC ¶ 61,021 (2000); see e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008), *order on reh’g and clarification*, 123 FERC ¶ 61,297 (2008) (MISO); *Southwest Power Pool, Inc.*, 144 FERC ¶ 61,224 at PP 412-413 (2013) (SPP).

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

³⁰ See Order No. 697 at PP 1058-61.

³¹ *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).

the Commission's requirements.³² Pursuant to the requirements set forth in section 35.42 of the Commission's regulations, Applicant agrees to file timely notices of material changes in status that explain whether such changes reflect a departure from the characteristics relied upon by the Commission in originally granting Applicant market-based rate authority.³³ To the extent Applicant is a Category 2 Seller in any region, Applicant commits to file an updated market power analysis pursuant to the regional schedule adopted in Order Nos. 697 and 697-A.

Applicant 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,³⁴ to the extent Applicant engages in reporting of transactions to publishers of electric or natural gas price indices it will identify in its EQRs the publishers of electricity and natural gas indices to which it reports its transactions.

³² 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 (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).

³³ See 18 C.F.R. § 35.42.

³⁴ Order No. 768 at PP 137-138, 178; Order No. 768-A at PP 40, 47.

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;³⁵ (2) do not own, operate, or control transmission facilities other than limited equipment necessary to 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.³⁶ Market-based rate sellers that do not qualify as Category 1 Sellers are defined as Category 2 Sellers.³⁷ Once the Commission determines that a seller meets the criteria for classification as a Category 1 Seller, such seller is not required to file updated market power analyses, or evidence of Category 1 Seller status, as long as it continues to meet the criteria for classification as a Category 1 Seller.³⁸

Applicant is located in the Southeast region, where its affiliates own or control more than 500 MW. Accordingly, Applicant is a Category 2 Seller in the Southeast region. Applicant does not own or control generation in any region outside of the Southeast region.³⁹ Applicant also does not own, operate, or control transmission facilities other than limited and discrete equipment necessary to interconnect its

³⁵ 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.

³⁶ 18 C.F.R. § 35.36(a)(2).

³⁷ *Id.* § 35.36(a)(3).

³⁸ Order No. 697-A at P 376.

³⁹ *See* Order No. 816 at P 317 (“[A] power producer may qualify as a Category 1 seller in a region where the power producer itself does not own or control any generation or transmission assets but where it has affiliates that are Category 2 sellers.”).

individual generating facility to the transmission grid. Further, in the Northeast, Central, Northwest, Southwest, and SPP regions, Applicant is not affiliated with any entity that owns, operates, or controls transmission facilities, or is a franchised public utility, in the same region as Applicant's generation assets. Finally, Applicant does not raise other vertical market power issues. Therefore, Applicant respectfully requests a determination that it meets the criteria for classification as a Category 2 Seller in the Southeast region and Category 1 Seller in all other regions – Northeast, Central, Northwest, Southwest, and SPP regions.

VI. REQUEST FOR PRE-APPROVALS AND WAIVERS

Applicant seeks the same pre-approvals and waivers of Commission rules and filing requirements previously granted to other sellers permitted to sell electricity 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;
- 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; and
- Blanket approval under Part 34 for all future issuances of securities and assumptions of liability.

VII. REQUESTED EFFECTIVE DATE

As noted above, Applicant currently expects that the sale of test power from the Facility could begin on March 1, 2017. In order to ensure that Applicant can begin the sale of test power on the anticipated date, Applicant respectfully requests that the Commission issue an order on or before February 20, 2017, accepting for filing Applicant's tariff effective February 20, 2017, which is sixty (60) days from the date of this Application.

VIII. CONCLUSION

WHEREFORE, for the reasons stated above, Applicant respectfully requests that the Commission issue an order accepting for filing Applicant's proposed MBR tariff effective February 20, 2017, and granting Applicant's request for waivers and blanket approvals. In addition, Applicant requests that the Commission issue an order on this Application on or before February 20, 2017.

Respectfully submitted,

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Counsel for Albany Green Energy, LLC

December 22, 2016

Attachment A:
Proposed FERC Electric Tariff

Market-Based Rate Tariff

I. Availability

Seller makes electric energy, capacity, and ancillary services available under this tariff to any purchaser with whom Seller has contracted, except as prohibited below.

II. Rates

All sales shall be made at rates established by agreement between the purchaser and Seller.

III. Other Terms and Conditions

All other terms and conditions of sales shall be established by agreement between the purchaser and Seller.

IV. Compliance with Commission Regulations

Seller shall comply with the provisions of 18 CFR Part 35, Subpart H, as applicable, and with any conditions the Commission imposes in its orders concerning seller's market-based rate authority, including orders in which the Commission authorizes seller to engage in affiliate sales under this tariff or otherwise restricts or limits the seller's market-based rate authority. Failure to comply with the applicable provisions of 18 CFR Part 35, Subpart H, and with any orders of the Commission concerning seller's market-based rate authority, will constitute a violation of this tariff.

V. Seller Category

Seller is a Category 2 Seller in the Southeast region and a Category 1 Seller in all other regions, as defined in 18 CFR § 35.36(a).

VI. Limitations and Exemptions Regarding Market-Based Rate Authority

In *Albany Green Energy, LLC*, Docket No. ER17-____-000 (_____, 2017) (unpublished letter order):

The Commission has granted waiver of its code of conduct and affiliate sales restrictions for transactions between Seller and its franchised public utility affiliates. See *Exelon Generation Co.*, 93 FERC ¶ 61,140, at 61,425 (2000), *on reh'g*, 95 FERC ¶ 61,309 (2001); *AmerGen VT, LLC*, 90 FERC ¶ 61,307, at 61,995, *reh'g denied*, *Baltimore Gas & Elec. Co.*, 91 FERC ¶ 61,270 (2000); *Potomac Electric Power Co.*, 93 FERC ¶ 61,240 (2000).

Seller has received (1) waiver of Subparts B and C of Part 35, except for sections

35.12(a), 35.13(b), 35.15 and 35.16; (2) waiver of Parts 41, 101 and 141 except sections 141.14 and 141.15, and with the exception that waiver of the provisions of Part 101 that apply to hydropower licenses is not granted with respect to licensed hydropower projects; and (3) blanket authorization for all future issuances of securities or assumptions of liabilities pursuant to Part 34 of the Commission's regulations.

VII. Ancillary Services

(A) **PJM:** Seller offers regulation and frequency response service, energy imbalance service, and operating reserve service (which includes spinning, 10-minute, and 30-minute reserves) for sale into the market administered by PJM Interconnection, L.L.C. ("PJM") and, where the PJM Open Access Transmission Tariff permits, the self-supply of these services to purchasers for a bilateral sale that is used to satisfy the ancillary services requirements of the PJM Office of Interconnection.

(B) **New York:** Seller offers regulation and frequency response service, and operating reserve service (which include 10-minute non-synchronous, 30-minute operating reserves, 10-minute spinning reserves, and 10-minute non-spinning reserves) for sale to purchasers in the market administered by the New York Independent System Operator, Inc.

(C) **New England:** Seller offers regulation and frequency response service (automatic generator control), operating reserve service (which includes 10-minute spinning reserve, 10-minute non-spinning reserve, and 30-minute operating reserve service) to purchasers within the markets administered by the ISO New England, Inc.

(D) **California:** Seller offers regulation service, spinning reserve service, and non-spinning reserve service to the California Independent System Operator Corporation ("CAISO") and to others that are self-supplying ancillary services to the CAISO.

(E) **MISO:** Seller offers regulation service and operating reserve service (which include 10-minute spinning reserve and 10-minute supplemental reserve) for sale to the Midcontinent Independent System Operator, Inc. (MISO) and to others that are self-supplying ancillary services to MISO.

(F) **Southwest Power Pool:** Seller offers regulation service and operating reserve service (which include 10-minute spinning reserve and 10-minute supplemental reserve) for sale to the Southwest Power Pool, Inc. (SPP) and to others that are self-supplying ancillary services to SPP.

(G) **Ancillary Services - Third Party Provider:** Third-party ancillary services: Seller offers Regulation Service, Reactive Supply and Voltage Control Service, Energy and Generator Imbalance Service, Operating Reserve-Spinning, Operating

Reserve-Supplemental, and Primary Frequency Response Service. Sales will not include the following: (1) sales to an RTO or an ISO, *i.e.*, where that entity has no ability to self-supply ancillary services but instead depends on third parties; and (2) sales to a traditional, franchised public utility affiliated with the third-party supplier, or sales where the underlying transmission service is on the system of the public utility affiliated with the third-party supplier. Sales of Operating Reserve-Spinning and Operating Reserve-Supplemental will not include sales to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers, except where the Commission has granted authorization. Sales of Regulation Service and Reactive Supply and Voltage Control Service will not include sales to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers, except at rates not to exceed the buying public utility transmission provider's OATT rate for the same service or where the Commission has granted authorization.

VIII. Effective Date

This Rate Schedule shall be effective as of the date specified by the Federal Energy Regulatory Commission.

Attachment B:
Asset Appendices

**Attachment C:
Market Screens**

Generation

**Albany Green Energy, LLC and Affiliated Generation in SOCO BAA
and Relevant First-Tier Markets**

Balancing Authority Area	Plant Name	Total Capacity (MW)		Ownership Share	Ownership Interest (MW)	
		Summer	Winter		Summer	Winter
SOCO						
SOCO	Albany Green Energy, LLC	50.0	50.0	100%	50.0	50.0
SOCO	Hillabee	752.7	797.6	100%	752.7	797.6
Total, SOCO					802.7	847.6
First-Tier Markets						
MISO	Beebe Renewable Energy	81.6	81.6	100%	81.6	81.6
MISO	Beebe 1B Renewable Energy, LLC (2014)	50.4	50.4	100%	50.4	50.4
MISO	Clinton	1,065.0	1,078.0	100%	1,065.0	1,078.0
MISO	Harvest Windfarm	52.8	52.8	100%	52.8	52.8
MISO	Harvest II Windfarm	59.4	59.4	100%	59.4	59.4
MISO	Michigan Wind 1	69.0	69.0	100%	69.0	69.0
MISO	Michigan Wind 2	90.0	90.0	100%	90.0	90.0
Long-Term Purchases						
MISO	Tenaska Frontier				870.0	936.0
MISO	Pioneer Trail Wind Farm, LLC				110.4	110.4
Subtotal, MISO					2,448.6	2,527.6

Part I – Pivotal Supplier Analysis

Applicant-> **Albany Green Energy, LLC**Market -> **SOCO**Data Year -> **Dec 2013-Nov 2014**

Row

Generation		Reference	
Seller and Affiliate Capacity (owned or controlled)			
A	Installed Capacity (from inside the study area)	803	Generation
A1	Remote Capacity (from outside the study area)	-	
B	Long-Term Firm Purchases (from inside the study area)	-	
B1	Long-Term Firm Purchases (from outside the study area)	-	
C	Long-Term Firm Sales (in and outside the study area)	-	
D	Uncommitted Capacity Imports	2,449	Affiliated uncommitted capacity in MISO
Non-Affiliate Capacity (owned or controlled)			
E	Installed Capacity (from inside the study area)	66,062	White Pine MBR Application less Row A plus Albany Green
E1	Remote Capacity (from outside the study area)	-	
F	Long-Term Firm Purchases (from inside the study area)	-	
F1	Long-Term Firm Purchases (from outside the study area)	-	
G	Long-Term Firm Sales (in and outside the study area)	-	
H	Uncommitted Capacity Imports	5,288	White Pine MBR Application less Row D
I	Study Area Reserve Requirement	2,049	White Pine MBR Application
J	Amount of Line I Attributable to Seller, if any	-	
K	Total Uncommitted Supply (A+A1+B+B1+D+E+E1+F+F1+H-C-G-I-M)	38,963	
Load			
L	Balancing Authority Area Annual Peak Load	43,888	White Pine MBR Application
M	Average Daily Peak Native Load in Peak Month	33,590	White Pine MBR Application
N	Amount of Line M Attributable to Seller, if any	-	
O	Wholesale Load (L-M)	10,298	
P	Net Uncommitted Supply (K-O)	28,665	
Q	Seller's Uncommitted Capacity (A+A1+B+B1+D-C-J-N)	3,251	
Result of Pivotal Supplier Screen (Pass if Line Q < Line P) (Fail if Line Q > Line P)		Pass	
Total Imports (Sum D,H), as filed by Seller ->		7,737	
% of SIL for Seller's imported capacity ->		0.32	
% of SIL for Other's imported capacity ->		0.68	
SIL value ->		7,737	White Pine MBR Application
Do Total Imports exceed the SIL value? ->		No	

Source: Data are from *White Oak Solar, LLC*, Docket No. ER16-1293-001, filed March 30, 2016. Accepted by Letter Order dated June 21, 2016.

Part II – Market Share Analysis

Applicant-> **Albany Green Energy, LLC**
 Study Area -> **SOCO**
 Data Year -> **Dec 2013-Nov 2014**

Row	As filed by the Applicant/Seller				Reference
	Winter (MW)	Spring (MW)	Summer (MW)	Fall (MW)	
Seller and Affiliate Capacity (owned, controlled or under LT contract)					
A	848	848	803	848	Generation
A1	-	-	-	-	
B	-	-	-	-	
B1	-	-	-	-	
C	-	-	-	-	
D	-	-	-	-	
E	2,449	2,528	2,528	2,528	Affiliated uncommitted capacity in MISO
Capacity Deductions					
F	29,977	26,530	35,830	28,644	White Pine MBR Application
G	-	-	-	-	
H	29,977	26,530	35,830	28,644	
I	2,111	2,079	2,053	2,098	White Pine MBR Application
J	-	-	-	-	
K	2,111	2,079	2,053	2,098	
Non-Affiliate Capacity (owned, controlled or under LT contract)					
L	66,017	66,047	63,167	66,695	White Pine MBR Application less Row A plus Albany Green
L1	-	-	-	-	
M	-	-	-	-	
M1	-	-	-	-	
N	-	-	-	-	
O	2,603	4,844	607	5,349	White Pine MBR Application
P	5,288	6,307	3,282	3,969	White Pine MBR Application
Supply Calculation					
Q	36,614	38,901	27,959	34,572	
R	3,297	3,376	3,331	3,376	
S	39,911	42,277	31,289	37,948	
T	8.3%	8.0%	10.6%	8.9%	
	Pass	Pass	Pass	Pass	
U	7,737	8,835	5,810	6,497	
V	7,737	8,835	5,810	6,497	White Pine MBR Application
	No	No	No	No	

Source: Data are from *White Oak Solar, LLC*, Docket No. ER16-1293-001, filed March 30, 2016. Accepted by Letter Order dated June 21, 2016.

Attachment D:
Proposed Protective Order

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

Albany Green Energy, LLC

)

Docket No. ER17-___-000

PROTECTIVE ORDER

(Issued ___)

1. This Protective Order shall govern the use of all Privileged 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 Chief Administrative Law Judge (Chief 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 privileged 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 privileged those materials which contain critical energy infrastructure information, as defined in 18 CFR § 388.113(c)(1) (Critical Energy Infrastructure Information).

3. Definitions -- For purposes of this Order:

(a) The term "Participant" shall mean a Participant as defined in 18 CFR § 385.102(b).

(b) (1) The term "Privileged Materials" means (A) materials (including depositions) provided by a Participant in response to discovery requests and designated by such Participant as privileged; (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 or the Chief Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Privileged Materials; and (E) copies of Privileged Materials. The Participant producing the Privileged Materials shall physically mark them on each page as "PRIVILEGED MATERIALS" or with words of similar import as long as the term "Privileged Materials" is included in that designation to indicate that they are Privileged Materials. If the Privileged 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 Privileged Materials" means memoranda, handwritten notes, or any other form of information (including electronic form) which

copies or discloses materials described in Paragraph 3(b)(1). Notes of Privileged Materials are subject to the same restrictions provided in this order for Privileged Materials except as specifically provided in this order.

(3) Privileged 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 privileged by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, or (C) any information or document labeled as "Non-Internet Public" by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stat. & Reg. ¶ 31,140. Privileged 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 Privileged Materials shall certify their understanding that such access to Privileged 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 Chief Judge or the Commission; or
- (6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

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

5. Privileged 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 Privileged 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 Privileged Materials (excluding Notes of Privileged 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 Privileged Materials, and Notes of Privileged 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 Privileged Materials and all Notes of Privileged Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Privileged Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Privileged 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 Privileged 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 Privileged Materials.

7. Privileged Materials shall be treated as privileged by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Privileged 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 Privileged Materials, but such copies become Privileged Materials. Reviewing Representatives may make notes of Privileged Materials, which shall be treated as Notes of Privileged Materials if they disclose the contents of Privileged 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 Privileged 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 Privileged 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 Privileged 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 privilege prior to disclosure of any Privileged 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 Privileged 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 Privileged 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 Privileged 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 Judge or the Chief Judge or the Commission shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Judge or the Chief Judge or the Commission, the parties to the dispute shall use their best efforts to resolve it. Any Participant that contests the designation of materials as privileged shall notify the Participant that provided the privileged 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 Judge or the Chief Judge or the Commission, with supporting affidavits, demonstrating that the materials should continue to be privileged. In any challenge to the designation of materials as privileged, the burden of proof shall be on the Participant seeking protection. If the

Presiding Judge or the Chief Judge or the Commission finds that the materials at issue are not entitled to privilege, the procedures of Paragraph 18 shall apply. The procedures described above shall not apply to privileged materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain privileged 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 privileged.

12. All copies of all documents reflecting Privileged Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents, which refer to Privileged 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 "PRIVILEGED 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 privileged, a letter indicating such, will also be filed with the Commission and served on all Participants 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 Privileged Materials are not distributed to unauthorized persons.

13. If any Participant desires to include, utilize or refer to any Privileged 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 Privileged Materials. Thereafter, use of such Privileged 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 Privileged Materials on any legal grounds.

15. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge, the Chief 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 Privileged Materials pursuant to this Protective Order. The Presiding Judge or the Chief Judge or the Commission may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

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

17. All Privileged 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 Privileged 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 or the Chief Judge finds at any time in the course of this proceeding that all or part of the Privileged Materials need not be privileged, those materials shall, nevertheless, be subject to the privilege afforded by this Protective Order for three (3) business days from the date of issuance of the Presiding Judge's or the Chief Judge's determination, and if the Participant seeking privilege 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 or the Chief Judge's decision respecting Privileged 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 Privileged 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 Privileged Materials.

21. The contents of Privileged Materials or any other form of information that copies or discloses Privileged 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**

Albany Green Energy, LLC

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Docket No. ER17-____-000

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Privileged 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 Privileged Materials, any notes or other memoranda, or any other form of information that copies or discloses Privileged 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: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____