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August 2, 2013

Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: Carthage Energy, LLC and Allegany Generating Station LLC  
Docket No. EC13-131-000

Dear Secretary Bose:

On July 22, 2013 in the above-referenced proceeding, Carthage Energy, LLC (“Carthage”) and Allegany Generating Station LLC (“Allegany” and collectively “Applicants”) submitted a request for Federal Power Act Section 203 authorization, 16 U.S.C. § 824b, for two proposed transactions (collectively referred to as the “Transaction”). In response to a request from Federal Energy Regulatory Commission Staff, this supplement is intended to provide some clarification related to two issues: (1) the description of the Transaction; and (2) the analysis of the effect of the Transaction on competition included in the July 22, 2013 application (“Application”).

As described in the Application, the Transaction actually consists of two separate deals: (1) the proposed transfer of control over the approximately 63 MW Carthage generation facility in the New York Independent System Operator, Inc. (“NYISO”) market and (2) the asset sale (transfer) of the Allegany generation facility, a 67 MW generation facility, also in the NYISO market. Affiliates of Iberdrola USA, Inc. (“Iberdrola USA”) are the sellers in each instance and the purchaser in each instance is an affiliate of Alliance Energy, New York LLC (“AENY”). Following the Transaction, Iberdrola USA will no longer have indirect control over either of the generation facilities. Instead, following the Transaction, AENY will have indirect control over the two generation facilities.

The agreements for each transaction are included in Exhibit I to the Application: (1) a Membership Interest Purchase Agreement; and (2) an Asset Purchase Agreement. As detailed in the Membership Interest Purchase Agreement included in Exhibit I, AENY will acquire 100% of the ownership interest in Applicant Carthage from an Iberdrola USA affiliate, resulting in the transfer of control over the 63 MW Carthage generation facility

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from Iberdrola USA to AENY. In addition, as described in the Asset Purchase Agreement included in Exhibit I, Allegheny will acquire the 67 MW Allegheny generation facility and related assets from Rochester Gas and Electric Corporation. Allegheny is a wholly-owned direct subsidiary of AENY.

As to the effect of the Transaction on competition, the aggregate amount of generation owned or controlled by AENY and its affiliates in the Northeast is 385.5 (nameplate) MW, of which 352 MW (nameplate) is located in the NYISO market.<sup>1</sup> With the additional 130 MW (nameplate) of generation that will be controlled by AENY after the Transaction, the total capacity to be owned or controlled by AENY and its affiliates in the NYISO balancing authority area would be 482 MW (nameplate). As the Application notes, this amounts to a post-Transaction market share of about 1.3% of the total installed capacity in the NYISO market.<sup>2</sup> Currently, AENY and its affiliates have an approximate 0.93% market share so the increase that will result from the Transaction is approximately 0.37%. Due to the small size of the generation facilities involved and the size of the NYISO market, the Transaction would have a very small effect on market concentration and “the extent of the business transactions in the same geographic market is *de minimis*.” See 18 C.F.R. § 33.3(a)(2)(i). In fact, the Transaction should have a slightly deconcentrating effect on the NYISO market as Iberdrola USA and its affiliates own and/or control more than 396 MW in NYISO.<sup>3</sup>

As described in the Application, AENY is also affiliated with the Lowell Cogeneration Company Limited Partnership (“Lowell”), the owner of a 32.5 MW (nameplate) generation facility in Massachusetts in the ISO New England Inc. (“ISO-NE”) market. The Transaction will not result in any combination of assets in the ISO-NE market. Moreover, Lowell is only 0.10% of the installed capacity in ISO-NE and its pro-rata allocation of imports into NYISO would be very small.<sup>4</sup>

Accordingly, as to market power, the Applicants respectfully submit that AENY’s post-Transaction market share of 1.3% is low, the amount of the increase is likewise low, and the amount will result in no accretion of market power by AENY.

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<sup>1</sup> This is a correction to the Application, which overstated the total nameplate capacity by 11.1 MW. Allegheny will shortly be filing its application for market-based rate authority, including the requisite market power analysis. However, as the market shares presented in the Application suggest, it is clear that AENY and its affiliates post Transaction cannot exercise horizontal market power and easily pass the indicative screens.

<sup>2</sup> See, 2013 Load & Capacity Data “Gold Book” (Apr. 2013) at p 21. [http://www.nyiso.com/public/webdocs/markets\\_operations/services/planning/Documents\\_and\\_Resources/Planning\\_Data\\_and\\_Reference\\_Docs/Data\\_and\\_Reference\\_Docs/2013\\_GoldBook](http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/Planning_Data_and_Reference_Docs/Data_and_Reference_Docs/2013_GoldBook). (noting the total installed generating capacity in NYISO as approximately 37,920 MW).

<sup>3</sup> See Appendix B submitted to support Iberdrola Updated Market Power Analysis – Southwest Region, Docket Nos. ER10-2994 *et al.* (June 28, 2013). See, *e.g.*, Iberdrola Updated Market Power Analysis – Northeast Region, Docket Nos. ER10-2822 *et al.* (December 30, 2010).

<sup>4</sup> See ISO New England Seasonal Claimed Capability Report (July 1, 2013) (reflecting a summer capability of 31,366 MW). [http://www.iso-ne.com/genrtion\\_resrcs/snl\\_clmd\\_cap/](http://www.iso-ne.com/genrtion_resrcs/snl_clmd_cap/).

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Please do not hesitate to call me or Gregory Brown, counsel for Allegany, if you have any questions regarding the Application or this supplement. Mr. Brown's telephone number is (315) 422-9380 and his email address is [gbrown@bplaw.us.com](mailto:gbrown@bplaw.us.com).

Very truly yours,

/s/ Catherine P. McCarthy

Catherine P. McCarthy

*Counsel for Carthage Energy, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served this 2<sup>nd</sup> day of August 2013 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Catherine P. McCarthy  
Catherine P. McCarthy

Document Content(s)

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