

**DOCKET NO. 27488**

**IN RE: GEORGIA POWER COMPANY'S 2015 REQUEST FOR PROPOSALS**

**ORDER APPROVING CHANGE OF CONTROL AND AMENDMENTS TO ALBANY GREEN ENERGY, LLC PROXY-PRICE CONTRACT**

On January 16, 2014, the Georgia Public Service Commission (“Commission”) ordered that all Qualifying Facilities (“QF”) biomass projects that had noticed into Georgia Power Company’s (“Georgia Power” or “Company”) 2015 RFP, including the projects on the Proxy QF Notice of Intent waiting list, be granted the opportunity to enter into contracts under Georgia Power’s 2015 Proxy-Price QF program. The Commission ordered that the date required to deliver Eligible Collateral under Georgia Power’s 2015 QF Proxy-Price power purchase agreement (“PPA”) be modified to August 1, 2014.

On July 3, 2014, Albany Green Energy LLC (“AGE”) filed a request for amendments and consent of its Contract For The Purchase of Firm Capacity And Energy From a Renewable Qualifying Facility Utilizing Proxy Methodology dated November 1, 2013 (the “Agreement”) with Georgia Power. Pursuant to the Agreement, AGE will sell to Georgia Power, and Georgia Power will purchase from AGE, electric energy and capacity associated with the approximately 42 MW biomass cogeneration power plant that is currently being developed in Albany, Georgia (the “Facility”).

Per the filing, for more than eighteen months, AGE and its affiliates have worked with The Procter & Gamble Paper Products Company (“P&G”) to develop the Facility. The construction, operation and ownership of the Facility will provide long term jobs in Georgia and utilize a plentiful Georgia-based renewable fuel source, while helping establish and diversify Georgia’s renewable installed generation base. The Facility will

be co-located with, and provide a significant amount of renewable energy generated steam to, the paper manufacturing facility of P&G in Albany, Georgia which is one of the largest industrial customers of Georgia Power and one of the largest employers in the Albany area. As such, the project has the potential to make the Albany Plant P&G's single largest renewable energy site globally.

On May 15, 2014, Sterling Planet Holdings, Inc., an affiliate of AGE ("Sterling Planet"), and Constellation NewEnergy, Inc. ("Constellation"), an independent power producer that desires to finance, construct, own and operate the Facility, entered into a letter of intent ("LOI"). Under the LOI, Sterling Planet and Constellation agreed to negotiate, among other documents, a purchase and sale agreement ("PSA"), pursuant to which Sterling Planet would cause the sale of AGE to Constellation or its designee, subject to the terms and conditions to be set forth in the PSA. The entire project is in the final stages of formal due diligence by P&G and Constellation. One of the closing conditions under the PSA will be the finalization and execution of the Steam Supply Agreement and Ground Lease between AGE and P&G.

As a result, AGE, P&G and Constellation anticipate that such condition will be satisfied on or about September 1, 2014, at which time the closing of the transactions contemplated under the PSA is anticipated to occur. In connection with negotiating the PSA, Constellation has selected DCO Energy, LLC ("DCO") as its preferred engineering, procurement and construction contractor to finalize construction of the Facility, subject to the execution of a binding engineering, procurement and construction contract, which is also under final negotiations. DCO has informed Constellation that, following September 1, 2014, it will take thirty-three (33) months to complete construction of the Facility and achieve commercial operation. Per AGE's filing, without significant extensions that reflect the particular factors associated with the project, the project is not expected to be economically viable and the benefits associated with the Facility, including P&G's goals for its Albany Plant and more broadly as part of P&G's corporate sustainability goals, are unlikely to be realized. AGE is requesting that the Required Commercial Operation Date ("RCOD") be changed from December 1, 2015, to June 1, 2017. In its July 3, 2014 filing, AGE also requested that it be allowed to provide the required Eligible Collateral on August 1, 2014 in the form of a QF Guaranty that may be terminated without further obligation if a Change of Control Transaction is not finalized on or prior to September 15, 2014. In addition, AGE also requested several amendments to its PPA, which were provided in the July 3, 2014 filing. Thereafter, on July 16, 2014, AGE sent a letter to the Commission clarifying its position and stating that it would also be supportive of a forty-five (45) day extension of the date upon which Eligible Collateral may be refunded.

Staff reviewed AGE's requests and advised the Commission that any change to the PPA's Eligible Collateral provisions and RCOD was a Commission policy decision. However, it is Staff's position that if any variances such as a third party posting Eligible Collateral on behalf of AGE are approved, then the same variances should also be made available to other developers and any third parties posting security on behalf of such developers. As for the other requested amendments to AGE's PPA, if the RCOD and posting of collateral issues are resolved, Staff recommended that Georgia Power work with AGE to prepare a Consent and Amendment Document for Commission approval.

At the July 17, 2014 Administrative Session, Commissioner Everett made the following motion:

"The Commission has been supportive of the biomass industry over the last year by providing multiple extensions to allow developers the time to acquire financing for their projects. Before us today, we have a request from Albany Green Energy, the company that has worked with Procter and Gamble Paper Products Company to develop a 42 megawatt project at their Albany facility. This facility will provide numerous long-term jobs to the Albany area, and encourage economic development for a suppressed area of the state. The facility will also offer the added benefit of using a plentiful Georgia-based renewable fuel source, while helping to build Georgia's installed renewable generation. This project also has the potential to make the Albany Plant P&G's single largest renewable energy site globally and better allow the facility to compete effectively with its sister companies.

As we heard last Thursday at energy committee, Constellation and Procter and Gamble and in the final stages of performing due diligence and anticipate closing on the project around September 1, 2014, and have determined that it will take 33 months to complete construction of the facility and achieve commercial operation. As we know, Georgia Power is currently long on capacity. As a result, granting the request before us will not harm ratepayers. For this reason, as well as the importance of the project on the southern area of the state and the continuation of renewable development, I propose that Albany Green Energy's request pertaining to the posting of collateral and its ability to be refunded through September 15, 2014, be approved; provided, however, that an amount equal to five percent of liquidated damages (which, for AGE, is \$126,000) would not be refunded. Such amount shall be applied towards the liquidated damages. Albany Green Energy shall continue to be responsible for all remaining liquidated damages.

I further propose that their request for an extension of the required commercial operation date to June 1, 2017, be granted.

I also propose that Georgia Power work with Albany Green Energy on the other requested amendments to their power purchase agreement and prepare a consent and amendment document for Commission approval.

Finally, I propose that the other pending QFs be allowed to opt into these same provisions by providing notice to Georgia Power within five days of the date of the Commission's Order."

The Commission unanimously approved Commissioner Everett's motion at the July 17, 2014 Administrative Session.

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**WHEREFORE IT IS ORDERED**, that Albany Green Energy LLC's request for an extension of the Required Commercial Operation Date to June 1, 2017 is hereby approved.

**ORDERED FURTHER**, that Albany Green Energy's request that it be allowed to post a QF Guaranty from a qualifying third party as Eligible Collateral, and that such QF Guaranty would be refunded if Change of Control Transaction is not finalized on or before September 15, 2014 is hereby approved; provided, however, that an amount equal to five percent of liquidated damages (which, for AGE, is \$126,000) would not be refunded and Albany Green Energy shall continue to be responsible for all remaining liquidated damages.

**ORDERED FURTHER**, that Georgia Power shall negotiate with Albany Green Energy on the other requested amendments to Albany Green Energy's Power Purchase Agreement and prepare a Consent and Amendment document for Commission approval.

**ORDERED FURTHER**, by providing notice to Georgia Power within five business days of the date of the Commission's Order that all other pending Qualifying Facilities are allowed to opt into these same provisions.

**ORDERED FURTHER**, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

**ORDERED FURTHER**, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem proper.

**ORDERED FURTHER**, any motion for reconsideration, rehearing, or oral argument shall not stay the effectiveness of this order unless expressly ordered by the Commission.

The above by action of the Commission in Administrative Session on the 17th day of July, 2014.

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Reece McAlister  
Executive Secretary

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Chuck Eaton  
Chairman

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Date

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Date