

Google Energy LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043



December 9, 2014

**By Electronic Filing**

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re: Notice of Non-Material Change in Status, Google Energy LLC,  
Docket No. ER10-2835-005**

Dear Secretary Bose:

Pursuant to Section 35.42 of the regulations of the Federal Energy Regulatory Commission (the “Commission”),<sup>1</sup> Google Energy LLC (“Google Energy”) hereby submits for filing this notice of non-material change in status. Google Energy makes this filing to report that its affiliates have acquired passive, non-controlling, upstream tax-equity interests (the “Investments”) in two renewable generation projects, each of which has exempt wholesale generator status:

- On November 10, 2014, Google Energy’s affiliate Comet Wind TX, LLC (“Comet”) completed its acquisition of a passive, non-controlling, upstream tax-equity interest in Pattern Panhandle Wind 2 LLC (“Panhandle 2”), the project company for a 181.7 MW wind turbine generating facility in Carson County, Texas, outside of Amarillo, Texas. Pattern Energy Group LP is the upstream owner of 100 percent of the managing interests in Panhandle 2 and therefore has ultimate control over the project.
- On November 24, 2014, Google Energy’s affiliate Mustang Solar CA, LLC (“Mustang”) acquired a passive, non-controlling, upstream tax-equity interest in Regulus Solar, LLC (“Regulus”), the project company for an approximately 60 MW ground-mounted solar photovoltaic generating facility in Kern County, California, approximately ten (10) miles southeast of Bakersfield, California. SunEdison LLC is the upstream owner of 100 percent of the managing interests in Regulus and therefore has ultimate control over the project.

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<sup>1</sup> 18 C.F.R. § 35.42.

As demonstrated herein, the Investments do not materially change the facts and circumstances relied upon by the Commission in granting market-based rate authority to Google Energy.<sup>2</sup>

## I. Description of Google Energy and Its Affiliates Comet and Mustang

### A. Google Energy LLC

Google Energy is a limited liability company organized under the laws of the State of Delaware. Google Energy is a wholly owned subsidiary of Google Inc. (“Google”). On February 18, 2010, the Commission granted Google Energy market-based rate (“MBR”) authority to sell energy, capacity and ancillary services pursuant to its MBR tariff and granted Google Energy’s request that it be determined to be a Category 1 Seller.<sup>3</sup>

As described in previous filings with the Commission, Google Energy currently controls 114 MW of capacity from a wind facility located in the Central Region that is owned by Garden Wind, LLC<sup>4</sup> and 100.8 MW of capacity from a wind facility located in the Southwest Power Pool Region that is owned by Minco Wind II, LLC.<sup>5</sup> Google Energy also is affiliated with the Ivanpah 1, 2 and 3 facilities, which total approximately 392 MW nameplate capacity and are located in the Southwest Region.<sup>6</sup>

Aside from these interests in Garden Wind, LLC and Minco Wind II, LLC, and the affiliation with the Ivanpah 1, 2 and 3 facilities, neither Google Energy nor its affiliates has any interests subject to Part 35.42(a) of the Commission’s regulations. In particular, neither Google Energy nor its affiliates owns, controls or operates any other generation facilities,<sup>7</sup> any

<sup>2</sup> Google Energy recognizes that a change of status filing is not required because the Investment is a passive, non-controlling interest that does not reflect “ownership or control of generation capacity.” 18 C.F.R. § 35.42(a)(1). Google Energy nonetheless submits this notice of non-material status in the interest of keeping the Commission fully and timely informed.

<sup>3</sup> *Order Granting Market-Based Rate Authorization*, 130 FERC ¶ 61,107, Docket Nos. ER10-468-000, ER10-468-001 (2010).

<sup>4</sup> *See Google Energy LLC*, Notice of Change in Status, Docket No. ER10-468-004 (filed August 13, 2010).

<sup>5</sup> *See Google Energy LLC*, Notice of Change in Status, Docket No. ER 10-2835-001 (filed December 6, 2011).

<sup>6</sup> *See Google Energy LLC*, Notice of Change of Status, Docket No. ER10-2835-002 (filed August 9, 2013).

<sup>7</sup> In addition to the Investments, as previously reported to the Commission, Google, through its subsidiaries, has made nine other passive, non-managing interests in renewable generation facilities. Notably, in each case Google’s interest is pursuant to a non-voting, passive ownership arrangement, such as a tax-equity investment, whereby a subsidiary of Google holds certain non-jurisdictional interests in the facility, but does not directly or indirectly make or manage any sale of power or transmission service associated with the facility. In each case, the owner-manager, and not a Google affiliate, has complete control over the management, operation, and maintenance of the facility. Neither Google nor its subsidiaries or affiliates owns, operates or controls such facilities. *E.g.*, *AES Creative Resources, L.P., et al.*, 129 FERC ¶ 61,239 (2009) (“*AES Creative Resources*”); *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253, at P 54 (2007). Each of these investments has been reported to the Commission in filings, which were accepted by the Commission, setting out the basis for the conclusion that the interests were passive and non-controlling. *See Google Energy LLC*, Supplement to Notice of Change of Status, Docket No. ER10-2835-002 (filed October 2, 2013, accepted by Commission letter order dated December 19, 2013), *Google Energy LLC*, Notice of Change of Status, Docket No. ER10-2835-003 (filed November 12, 2013, accepted by Commission letter order dated December 19, 2013), and *Google Energy LLC*, Notice of Change of Status, Docket No. ER10-2835-004 (filed January 13, 2014, accepted by Commission letter order dated April 2, 2014).

transmission facilities, or any inputs to electric power production, and Google Energy is not affiliated with a franchised public utility.

### **B. Comet**

Comet is a Delaware limited liability company and an indirect wholly-owned subsidiary of Google. Comet's only holding is its passive, non-controlling investment in Panhandle 2. Comet is not in the business of producing, selling or transmitting electric energy, does not own, operate or control facilities used for the generation, transmission or distribution of electric energy, and is not a "public utility" within the meaning of Section 201(e) of the Federal Power Act ("FPA"). Comet does not have any subsidiaries.

### **C. Mustang**

Mustang is a Delaware limited liability company and an indirect wholly-owned subsidiary of Google. Mustang's only holding is its passive, non-controlling investment in Regulus. Mustang is not in the business of producing, selling or transmitting electric energy, does not own, operate or control facilities used for the generation, transmission or distribution of electric energy, and is not a "public utility" within the meaning of Section 201(e) of the FPA. Mustang does not have any subsidiaries.

## **II. Description of Panhandle 2**

The immediate parent of Panhandle 2, a Delaware limited liability company, is Panhandle Wind Holdings 2 LLC, also a Delaware limited liability company. Panhandle Wind Holdings 2 LLC has two classes of membership interests: Class A interests that are passive, non-controlling tax-equity investment interests, and Class B interests. In addition to Comet, other holders of the passive Class A interests are JPM Capital Corporation and Morgan Stanley Wind LLC.

The indirect upstream owner of 100 percent of the Class B managing member interests is Pattern Energy Group Inc., which has the sole authority and obligation to manage and control the operations of the Panhandle 2 project. Panhandle 2 is a 181.7 MW wind turbine generating facility in Carson County, Texas, outside of Amarillo, Texas. Panhandle 2 is an EWG.<sup>8</sup> Panhandle 2 is interconnected into the Electricity Reliability Council of Texas ("ERCOT"), with Cross Texas Transmission LLC as its transmission service provider. The output of the project is sold into the ERCOT wholesale bulk power market.

## **III. Description of Regulus**

The immediate parent of Regulus, a Delaware limited liability company, is SunE Regulus Equity Holdings, LLC, also a Delaware limited liability company. SunE Regulus Equity Holdings, LLC has two classes of membership interests: Class A interests that are passive, non-

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<sup>8</sup> See *Pattern Panhandle Wind 2 LLC*, Notice of Self-Certification of EWG Status, Docket No. EG14-28-000 (filed Feb. 10, 2014).

controlling tax-equity investment interests, and Class B interests. Mustang is the sole holder of the passive Class A interests.

The owner of 100 percent of the Class B managing member interests is SunE Regulus Managing Member, LLC, whose upstream parent, SunEdison LLC, has the sole authority and obligation to manage and control the operations of the Regulus project. Regulus is an approximately 67.5 MW solar generating facility in Kern County, California, which is within the California Independent System Operator Corporation (“CAISO”) balancing authority area. Regulus is an EWG<sup>9</sup> and has market-based rate authority.<sup>10</sup> Regulus is interconnected to the transmission system owned by Southern California Edison Company (“SCE”) and operated by CAISO. All of the output from the Regulus project will be sold to SCE pursuant to a 20-year power purchase agreement.

#### IV. Notice of Non-Material Change of Status

As noted above, Google Energy’s affiliates Comet and Mustang have invested in passive, non-controlling, tax-equity Class A membership interests in, respectively, the Panhandle 2 and Regulus renewable projects (together, the “Projects”). As the holder of the Class A membership interests, Comet and Mustang have only limited rights such as veto and/or consent rights necessary for them to protect their economic interests in the Projects, and they have no day-to-day control over the Projects.<sup>11</sup> Pattern Energy Group Inc. and SunEdison LLC are the upstream owners of the Class B managing membership interests in the Panhandle 2 project and the Regulus project, respectively, and as the managers have indirect day-to-day operational control over the Projects.

The acquisition by Comet and Mustang of passive, non-controlling upstream tax-equity investment interests in the Projects does not cause Google Energy to become affiliated with the projects or their affiliates. In a proceeding involving similar passive tax-equity investments in entities with market-based rates, the Commission determined that the security interests acquired by the passive investors did not constitute voting securities and that the investment did not result in an affiliation.<sup>12</sup> As shown in the information provided in Attachments A and B hereto, the passive interests held by Comet and Mustang as a result of the Investments are substantially similar to the consent rights held by the passive equity investors in *AES Creative Resources*, and do not confer on Comet or Mustang the ability to control the Projects or allow them to participate in the day-to-day management or

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<sup>9</sup> See *Regulus Solar, LLC*, Notice of Self-Certification of EWG Status, Docket No. EG14-83-000 (filed Aug. 11, 2014).

<sup>10</sup> *Regulus Solar LLC*, Letter Order Accepting Application for Market-Based Rate Authority with an Accompanying Tariff, Docket Nos. ER14-2630 and ER14-2800 (Oct. 2, 2014).

<sup>11</sup> In the context of a proceeding under Section 205 of the Federal Power Act, the Commission found that the type of securities acquired by Comet and Mustang pursuant to the Investment are not voting securities. See *AES Creative Resources*, *supra*, at P 28 (2009) (finding that limited approval rights associated with tax equity investment do not constitute “voting securities” since such interests do not entitle the investor to vote in the direction or management of the affairs of the entity).

<sup>12</sup> See *AES Creative Resources*, *supra*.

operations of the Projects.<sup>13</sup> Moreover, the passive interests held by Comet and Mustang as a result of the Investments are substantively similar to those approved by the Commission as passive in a prior, similar investment by a separate Google subsidiary (Torino Solar CA, LLC).<sup>14</sup>

As the Investments do not give rise to an affiliation with additional generation capacity, they have no effect on Google Energy's prior representations regarding absence of horizontal market power. Moreover, the Investments do not change any of Google Energy's previous representations regarding the absence of vertical market power. Google Energy does not own, operate or control any transmission facilities or any inputs to electric power production, and Google Energy is not affiliated with any entity that owns, operates or controls transmission facilities or any inputs to electric power production or that has a franchised service area.<sup>15</sup> Google Energy affirms that neither Google Energy nor any of its affiliates has erected or will erect barriers to entry into the relevant electricity markets. Accordingly, Google Energy continues to lack vertical market power and Google Energy's continued market-based rate authority does not raise affiliate abuse concerns.

In accordance with Section 35.42(c) of the Commission's regulations, Attachment C hereto is a table listing the assets of Google Energy and its affiliates in the format set forth in Appendix B to Subpart H of Part 35 of the Commission's regulations. As for the reasons set forth above, the Investments subject of this notice are passive, non-controlling upstream tax-equity interests, the table remains identical to Google Energy's most recent prior change of status filing on January 13, 2014,<sup>16</sup> and the Investments do not change the generation capacity in any of the FERC regions. Accordingly, Google Energy will retain Category 1 status in all FERC regions.

## V. Communications

Google Energy requests that all communications related to this notice be addressed to the following individual:

Gary Demasi  
 Google Inc.  
 1600 Amphitheatre Parkway

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<sup>13</sup> In other proceedings involving investments by passive equity investors in electric generation companies, the filing parties have provided information regarding the acquiring party's rights under its investments. *See, e.g., EquiPower Resources Management, LLC*, Docket No. ER10-1089-000 (June 16, 2010) (unpublished letter order). Attachments A and B hereto provides information about, respectively Comet's and Mustang's rights under the Investments modeled after the questions in that proceeding.

<sup>14</sup> *See, e.g., Amended Application for Market-Based Rate Authority, RE McKenzie I LLC*, Docket No. ER12-1911-001 (filed July 10, 2012) at Pages 4, 6-7, 11-16, and confidential Appendix E. On August 12, 2012, the Commission issued a letter order in the same docket accepting the filing.

<sup>15</sup> Order 697 at P. 849 fn 1000.

<sup>16</sup> *See Google Energy LLC*, Notice of Non-Material Change of Status, Docket No. ER10-2835-004 (filed January 13, 2014).

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## VI. Conclusion

For the reasons discussed herein, the Investments subject of this notice are passive, non-controlling upstream tax-equity interests that do not materially change the facts and circumstances upon which the Commission in granting market-based rate authority to Google Energy. Further, the Investments do not affect Google Energy's Category 1 status in any FERC region. Accordingly, Google Energy respectfully requests that the Commission accept this notice of change in status.

Sincerely,



Gary Demasi  
Google Energy LLC

Attachments



## Attachment A

### Information Regarding Comet's Passive, Non-Controlling Upstream Class A Membership Interest in the Panhandle 2 Project

Consistent with the Commission's practice in other proceedings involving passive investors,<sup>17</sup> Google Energy provides the following information regarding Comet's Class A membership interest pursuant to the Third Amended and Restated Limited Liability Company Agreement of Panhandle Wind Holdings 2 LLC, dated November 10, 2014 (the "Panhandle 2 LLC Agreement").

**1. Please clarify whether any of the passive interests include voting rights (i.e., common stock or the equivalent of common stock).<sup>18</sup>**

The Class A membership interests are not equivalent to common stock and do not confer full voting rights. The limited consent rights attached to the Class A membership interests are set forth in the Panhandle 2 LLC Agreement. Panhandle B Member 2 LLC, as the Class B Member, and its upstream parent Pattern Energy Group LP have full, complete and exclusive authority to manage and administer the business and affairs of the Panhandle 2 project.

**2. If the passive interests are non-voting, please clarify the following:**

**a. Do they represent a separate class of security in the Company's ownership structure? If so, do such securities confer on the holder limited consent or veto rights over major corporate actions that could affect the value of the holder's investment?**

The passive Class A membership interests represent a separate class of security from the membership interests owned by the Class B Member. The Class A membership interests convey limited consent rights with respect to certain major actions that could affect the value of Comet's investment.

**b. Is there a list describing the major corporate actions over which the holder of the passive or non-voting securities has consent/veto rights? If so, please file a publicly-available exhaustive list describing the major corporate actions over which the holder of the passive or non-voting securities has consent/veto rights.**

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<sup>17</sup> *E.g., EquiPower Resources Management, LLC*, Docket No. ER10-1089-000 (June 16, 2010) (unpublished letter order).

<sup>18</sup> As used herein, "voting security" means "any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company." 18 C.F.R. § 366.1 (2012); *see also AES Creative Resources, supra*, at P 24.

The Panhandle 2 LLC Agreement provides a list in Article 6, at Section 6.05 “Consent Required for Certain Actions” that explains when prior written consent is required. This list includes all of the major corporate actions over which the Class A Members have consent/veto rights. In particular, the consent and veto-type rights reserved for the Class A Members under the Panhandle 2 LLC Agreement relate to the following corporate actions:

1. incurrence of certain indebtedness;
2. encumbrance of the assets or rights of the project company or its parent company;
3. sale, assignment, lease or other transfer or disposition of certain assets;
4. hiring new employees or entering into employment benefits plans or similar arrangements;
5. cancelling, terminating, releasing or relinquishing any rights under certain material contracts unless such action would not result in a material adverse effect;
6. entering into a joint venture with or merging or consolidating with another entity or otherwise change its legal form;
7. changing the purpose of the company;
8. entering bankruptcy;
9. the issuance or sale of any interest, option or warrant in the company of its direct and indirect subsidiaries;
10. certain actions or elections with respect to tax treatment or claims of tax credits or recapture liability;
11. settling claims against the company over a certain enumerated threshold (including criminal proceedings);
12. failing to obtain or amendment of certain permits;
13. making certain loans outside the ordinary course of business;
14. making certain guarantees outside the ordinary course of business; and
15. entering into certain speculative activities.

These rights are reserved for the Class A Members as measures to protect the value of their passive investment in the Panhandle 2 project, and in no way are they intended, nor do they, enable the Class A Members to manage or control the day-to-day operations of the Panhandle 2 project.



- c. Do the holders of the asserted passive or non-voting securities have any power to remove the manager (e.g., the general partner if a partnership, or managing member if a manager-managed limited liability company) of the facility? If so, is their power to remove limited to "cause", i.e., situations such as criminal activity/fraud on the part of the manager? Or, under what circumstances can they remove the manager?**

The Class A Members have the power to remove the Managing Member of the Panhandle 2 project solely for cause. The term "Cause" includes any act by the manager of fraud, willful misconduct or gross negligence in the performance of its duties or the breach by the manager of its obligations in a manner that would result in a material adverse effect or the bankruptcy of such manager.

- d. Who exercises day-to-day control over the Company's jurisdictional facilities? Does the holder of the asserted passive or non-voting securities have any day-to-day input or control over the facility?**

As discussed above, Panhandle B Member 2 LLC, as the Class B Member, and its upstream parent Pattern Energy Group LP have full, complete and exclusive authority to manage and administer the business and affairs of the Panhandle 2 project.

Conversely, the Class A membership interests held by Comet are passive and do not convey any day-to-day input over the control of the Panhandle 2 project or its FERC jurisdictional facilities.

## Attachment B

### Information Regarding Mustang's Passive, Non-Controlling Upstream Class A Membership Interest in the Regulus Project

Consistent with the Commission's practice in other proceedings involving passive investors,<sup>19</sup> Google Energy provides the following information regarding Mustang's Class A membership interest pursuant to the Second Amended and Restated Limited Liability Company Agreement of SunE Regulus Equity Holdings, LLC, dated October 30, 2014 (the "Regulus LLC Agreement").

**1. Please clarify whether any of the passive interests include voting rights (*i.e.*, common stock or the equivalent of common stock).<sup>20</sup>**

The Class A membership interests are not equivalent to common stock and do not confer full voting rights. The limited consent rights attached to the Class A membership interests are set forth in the Regulus LLC Agreement. SunE Regulus Managing Member, LLC, as the Class B Member, and its upstream parent SunEdison LLC have full, complete and exclusive authority to manage and administer the business and affairs of Regulus project.

**2. If the passive interests are non-voting, please clarify the following:**

**a. Do they represent a separate class of security in the Company's ownership structure? If so, do such securities confer on the holder limited consent or veto rights over major corporate actions that could affect the value of the holder's investment?**

The passive Class A membership interests represent a separate class of security from the membership interests owned by the Class B Member. The Class A membership interests convey limited consent rights with respect to certain major actions that could affect the value of Mustang's investment.

**b. Is there a list describing the major corporate actions over which the holder of the passive or non-voting securities has consent/veto rights? If so, please file a publicly-available exhaustive list describing the major corporate actions over which the holder of the passive or non-voting securities has consent/veto rights.**

The Regulus LLC Agreement provides a list in Article 6, at Section 6.04 "Consent Required for Certain Major Decisions" that explains when prior written consent is required. This

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<sup>19</sup> *E.g., EquiPower Resources Management, LLC* Docket No. ER10-1089-000 (June 16, 2010) (unpublished letter order).

<sup>20</sup> As used herein, "voting security" means "any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company." 18 C.F.R. § 366.1 (2012); *see also AES Creative Resources, supra*, at P 24.

list includes all of the major corporate actions over which the Class A Member has consent/veto rights. In particular, the consent and veto-type rights reserved for the Class A Member under the Regulus LLC Agreement relate to the following corporate actions:

1. incurrence of certain indebtedness;
2. encumbrance of the assets of the project company or its parent company;
3. sale, assignment, lease or other transfer of certain assets;
4. hiring new employees or entering into employment benefits plans or similar arrangements;
5. entering into, amending, assigning, or terminating certain material contracts unless such action would not result in a material adverse effect;
6. making material changes in accounting methods;
7. entering into a joint venture with or merging or consolidating with another entity or otherwise change its legal form;
8. changing the purpose of the company;
9. making certain capital expenditures;
10. permitting possession of the property of the company by any member, certain assignments, or other commingling of assets;
11. the issuance or sale of certain interests, options or warrants in the project company or its parent company;
12. certain actions or elections with respect to tax treatment or claims of tax credits or recapture liability;
13. settlement of claims over a certain enumerated threshold;
14. making certain loans outside the ordinary course of business;
15. making certain guarantees for the payment of money or the performance of obligations of another person outside the ordinary course of business;
16. entering bankruptcy;
17. any material amendment or termination of the organizational documents of the project company or its parent company;

18. admitting new owners;
19. certain amendments to the approved budget or entry of any agreement that would require certain payments in excess of a stated threshold;
20. taking of any action that could reasonably be expected to result in a default under material contracts;
21. amendment of, failure to obtain or causing the revocation of certain permits;
22. entering into certain speculative activities;
23. amendment of certain required insurance;
24. removing a substantial portion of a project from service;
25. failing to make certain cash deposits or investments; and
26. taking any action reserved for the members.

These rights are reserved for the Class A Member as measures to protect the value of their passive investment in the Regulus project, and in no way are they intended, nor do they, enable the Class A Member to manage or control the day-to-day operations of the Regulus project.

- c. **Do the holders of the asserted passive or non-voting securities have any power to remove the manager (e.g., the general partner if a partnership, or managing member if a manager-managed limited liability company) of the facility? If so, is their power to remove limited to "cause", i.e., situations such as criminal activity/fraud on the part of the manager? Or, under what circumstances can they remove the manager?**

The Class A Member has the power to remove the Managing Member of the Regulus project solely for cause. The term "Cause" includes any act by the manager of fraud, willful misconduct or gross negligence in the performance of its duties, the breach by the manager of its obligations in a manner that would result in a material adverse effect, the failure of such manager to timely make a required distribution to a member, a change of control of such manager where consent was required but not given, or the bankruptcy of such manager.

- d. **Who exercises day-to-day control over the Company's jurisdictional facilities? Does the holder of the asserted passive or non-voting securities have any day-to-day input or control over the facility?**

As discussed above, SunE Regulus Managing Member, LLC, as the Class B Member, and its upstream parent SunEdison LLC have full, complete and exclusive authority to manage and administer the business and affairs of the Regulus project. Further, SunE Regulus Equity Holdings, LLC, has retained NVT Licenses, LLC to perform certain management services

relating to day to day operations of the Regulus project pursuant to a Management Services Agreement.

Conversely, the Class A membership interests held by Mustang are passive and do not convey any day-to-day input over the control of the Regulus project or its FERC jurisdictional facilities.

Document Content(s)

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