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October 13, 2015

Via eFiling

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

Re: *GreeleyEnergy Facility LLC*, Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Action, Docket No. EC15-_____

Dear Secretary Bose:

Enclosed for filing please find the application (the "Application") of Greeley Energy Facility LLC ("Applicant") for authorization under Section 203 of the Federal Power Act (the "FPA")¹ and Part 33 of the regulations of the Federal Energy Regulatory Commission (the "Commission")² in connection with the transaction described in the Application. Applicant respectfully requests, given the absence of material issues raised by the transaction, that the Commission set a public notice period for this Application of 21 days and issue an order approving the transaction on or before November 10, 2015.

In accordance with Section 388.112 of the Commission regulations,³ Applicant seeks confidential treatment of the transaction documents provided in Exhibit I to the Application. The transaction documents contain highly sensitive commercial and financial information that is privileged and confidential and not publicly available. The nonpublic materials are marked "Contains Confidential and Privileged Information" and "Do Not Release." In accordance with Section 33.9 of the Commission's regulations, Applicant has provided a proposed Protective Order, consistent with the Commission's Model Protective Order as Attachment 2.

¹ 16 U.S.C. § 824b (2006).

² 18 C.F.R. Pt. 33 (2015).

³ 18 C.F.R. § 388.112 (2015).

Kimberly D. Bose
October 13, 2015
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Please do not hesitate to contact me if you have any questions regarding this filing.
Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gregory M. Brown', with a long horizontal flourish extending to the right.

Gregory M. Brown

Counsel for Greeley Energy Facility LLC

Enclosures

Cc: Office of Energy Markets Regulation (Room 91-13)

Public Version
Confidential Information Has Been Removed
For Privileged Treatment

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Greeley Energy Facility LLC)	
)	Docket No. EC15-___
)	

**APPLICATION FOR AUTHORIZATION UNDER SECTION 203 OF THE
FEDERAL POWER ACT AND REQUEST FOR EXPEDITED ACTION**

I. INTRODUCTION

Pursuant to section 203(a)(1) of the Federal Power Act (“FPA”), 16 U.S.C. § 824b(a)(1), and Part 33 of the regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. Part 33 (2015), Greeley Energy Facility LLC (“GEF” or “Applicant”) hereby requests prior authorization for Applicant’s acquisition of the an existing qualifying cogeneration facility (QF) and related assets from Thermo Greeley, LLC (“Thermo Greeley”) (the “Proposed Transaction”).¹

As demonstrated herein, the Proposed Transaction will not have any adverse effect on competition, rates, or regulation, and will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.² Accordingly, the Proposed Transaction is consistent with the

¹ Because Thermo Greeley owns a QF, it is exempt from Section 203 of the FPA and is not included as an Applicant in this filing. See 18 C.F.R. § 292.601(c)(2015).

² See 18 C.F.R. § 2.26 (2015).

public interest and should be authorized by the Commission pursuant to FPA section 203. The Applicant respectfully requests, as described below, that the Commission grant limited waivers of its Part 33 filing requirements to the extent that information otherwise required to be filed is not necessary to determine that the Proposed Transaction satisfies the requirements for Commission authorization under FPA Section 203.

Applicant intends to close the Proposed Transaction as soon as possible after obtaining Commission authorization. Applicant submits that expedited consideration of this Application is warranted under the Commission's regulations to the extent that the Application is not contested, because the Proposed Transaction does not require an Appendix A analysis or raise cross-subsidization concerns.³ Therefore, Applicant respectfully requests, given the absence of material issues raised by the Proposed Transaction that the Commission set a public notice period for this Application of 21 days and issue an order approving the Proposed Transaction on or before November 10, 2015.⁴

³ See id. §§ 33.11(b).

⁴ See Transactions Subject to FPA Section 203, Order No. 669, 113 FERC ¶ 61,315 at P 194 (2005), order on reh'g, Order No. 669-A, 115 FERC ¶ 61,097 at P 155 (2006) (establishing a 21-day notice period for section 203 applications that do not require a detailed Appendix A competitive analysis and do not raise cross-subsidization concerns).

II. COMMUNICATIONS

Communications regarding this Application should be addressed to the following individuals:

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Greeley Energy Facility, LLC
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III. THE PROPOSED TRANSACTION

A. The Parties to the Proposed Transaction

Thermo Greeley

Thermo Greeley, a Colorado limited liability company, owns a 35 MW (nameplate) gas turbine cogeneration facility located in Greeley, Colorado (“Greeley Facility”). The Greeley Facility is interconnected to the transmission system owned by the Public Service Company of Colorado (“PSCo”). Thermo Greeley is a certified qualifying facility under the Public Utility Holding Company Act of 2005 (“PUHCA”).⁵ The Greeley Facility has been mothballed since 2011, with the expiration of a power purchase agreement with PSCo.

Thermo Greeley is owned by Stark Thermo LLC, which, in turn, is owed by certain private investment funds that are affiliates of Stark Investments, specifically, Shepherd Investments International, Ltd. and Stark Investments Limited Partnership,

⁵ Certification for Qualifying Facility Status of Thermo Greeley, LLC, Docket QF96-35-004 (Feb. 13, 1996).

funds affiliated with Stark Investments, respectively and indirectly hold 64% and 27.6% ownership in Thermo Greeley. The remaining interests are indirectly held by Stark Global Opportunities Fund LP (2.4%), Stark Global Opportunities Fund Ltd. (3%) and Stark Criterion Fund Ltd. (3%), also Stark Investment funds.

GEF and Affiliates

GEF is a limited liability company formed in 2015 and currently holds no assets. It has been formed for the purpose of implementing the Proposed Transaction pursuant to which it will acquire the Greeley Facility. GEF is wholly-owned by an individual investor. Aside from the holdings in GEF, the investor owns Alliance Energy Group, LLC (“AEG”), a Nevada limited liability company. Through subsidiaries, AEG is engaged in electric power generation, natural gas exploration, production and transportation, and energy technology research into various forms of renewable fuels such as biodiesel and hydropower. Aside from the holdings in AEG, the investor does not own or control any other energy-related facilities.

AEG owns 100% of the membership interest in Alliance Energy New York LLC (“AENY”), a limited liability company organized under the laws of the State of New York. AENY owns, directly and indirectly, 100% of the partnership and membership interests in: Allegany Generating Station LLC (Allegany”), which owns a 67 MW gas-fired combined-cycle power plant located in Hume, New York, and Carthage Energy, LLC (“Carthage”), which owns a 62.9 MW dual fuel (gas/oil) combined-cycle cogeneration facility located in Carthage, New York; Lowell Cogeneration Company Limited Partnership (“Lowell”), the owner of a 32.5 MW (nameplate) cycle electric generation facility located in Lowell, Massachusetts (“Lowell facility”); Power City

Partners (“Power City”), the owner of a 103.1 MW (nameplate) electric generation facility located in Massena, New York; Seneca Power Partners, L.P. (“Seneca”), the owner of a 67.3 MW (nameplate) electric generation facility located in Batavia, New York; Sterling Power Partners, L.P. (“Sterling”), the owner of a 67.3 MW (nameplate) electric generation facility located in Sherrill, New York; and, AGENCY, L.P. (“AG-Energy”), which owns a 99.3 MW electric generation plant in Ogdensburg (the “Ogdensburg Plant”) that is no longer in service.⁶ Allegany, Carthage, Lowell, Power City, Seneca, Sterling, and AG-Energy have each received authority to sell power at market-based rates from the Commission.⁷ The output of the Allegany, Carthage, Power City, Seneca and Sterling facilities are sold into the NYISO market.⁸ The output of the Lowell facility is sold into the ISO New England Inc. (“ISO-NE”) market.

In addition to AENY, AEG also owns 100% of the membership interest of Alliance NYGT, LLC (“Alliance NYGT”), and indirectly, 100% of the membership

⁶ Two of the three generators at Ogdensburg that had been rated at 48.8 MW and 23.6 MW respectively have been retired and physically removed from the site. The third remaining generator with a rating of 26.9 MW has been taken out of service.

⁷ Allegany Generating Station LLC, Docket ER13-2199-000 (September 25, 2013) (unpublished letter order); Carthage Energy, LLC, Docket No. ER99-2541-000, Notice of Issuance of Order (June 21, 1999); Lowell Cogeneration Company Limited Partnership, 80 FERC ¶ 61,052 (1997); Power City Partners, L.P., Docket No. ER98-2782-000 (June 17, 1998) (unpublished letter order); Power City Partners, L.P., 82 FERC ¶ 62,131 (1998); AG-Energy, L.P., Docket No. ER98-2782-000 (June 17, 1998) (unpublished letter order).

⁸ The output of the Ogdensburg facility was previously sold into the NYISO market. However, the facility has not generated electricity since 2007 and is not currently capable of generating power, but pursuant to a steam delivery agreement, provides steam to the St. Lawrence Psychiatric Center of the New York State Office of Mental Health using auxiliary boilers.

interest of AER-NY-Gen, LLC (“AER-NY-Gen”).⁹ Alliance NYGT owns the 46.5 (nameplate) MW Hillburn Gas Turbine located in Hillburn, New York (“Hillburn facility”), and the 41.9 (nameplate) MW Shoemaker Gas Turbine located in Middletown, New York (“Shoemaker facility”). AER NY-Gen currently holds no assets.¹⁰ Alliance NYGT, LLC is authorized to sell power at market-based rates. Alliance NYGT, LLC is authorized to sell power at market-based rates and the output of the Hillburn and Shoemaker facilities is sold into the NYISO market.¹¹

Lastly, AEG is also affiliated with Alliance Energy Marketing, LLC (“AEM”), a New York limited liability company, formed to act as a marketer of wholesale power and other services. AEM has received market-based rate authority from the Commission, but is not currently engaged in making any sales of electric energy.¹² All of AEG’s affiliates that own or control generation facilities are located in the NYISO market, with the exception of Lowell, which is located in the in the ISO-NE market.

None of AEG or any of its affiliates owns or controls any electric transmission or distribution facilities in the United States, other than the limited interconnection facilities necessary to connect individual generating facilities to the transmission grid. AEG owns

⁹ Southern Energy NY-Gen, L.L.C., et al., 87 FERC ¶ 61,108 (1999). See also Mirant NY-Gen, LLC, et al., Docket No. ER01-1275-000, et al. (letter order accepting notice of succession issued June 12, 2001); AER NY-Gen, LLC, et al., Docket Nos. ER07-930-000, et al. (letter order accepting notice of succession issued July 12, 2007).

¹⁰ AER NY-Gen previously owned the Hillburn and Shoemaker turbines and the Swinging Bridge hydroelectric facility, a 12 MW (nameplate) hydroelectric generating facility located in Forestburgh, New York that were transferred pursuant to Commission authorization. AER NY-Gen, LLC, et al., 139 FERC ¶ 62,049 (2012).

¹¹ Alliance NYGT, LLC, Docket No. ER12-1359-000 (Apr. 20, 2012) (unpublished letter order).

¹² Alliance Energy Mktg., LLC, Docket Nos. ER06-146-000 and ER06-146-001 (Jan. 18, 2006) (unpublished letter order).

100% of the membership interests in Alliance Energy Transmissions, LLC (“AET”), which holds the certificate for an approximately 11.2-mile intrastate natural gas pipeline in upstate New York that is used to transport gas to the Seneca facility. AEG also owns 100% of the membership interests in Alliance Energy Transmissions–Syracuse LLC (“AET-Syracuse”), which holds the certificate for an approximately 9.5-mile intrastate natural gas pipeline in upstate New York that is used to transport gas to a location within the Syracuse University campus. AEG is not affiliated with any other inputs to electric power production that could be used to prevent competitors from entering Applicants’ relevant markets. Further, AEG is not affiliated with any public utility with a franchised electric service territory.

B. The Proposed Transaction

On September 3, 2015, Thermo Greely and Allegheny executed an Asset Purchase Agreement (“APA”) which provides the terms and conditions governing the Proposed Transaction. On October 6, 2015, Allegheny assigned its rights and obligations under the APA to GEF pursuant to an Assignment and Assumption Agreement (“Assignment”). At closing, GEF will acquire the Greeley Facility, including interconnection facilities and books and records.

The details of the Proposed Transaction are set forth in an APA. Copies of the APA and Assignment are attached to this Application as confidential Exhibit I. The Applicant requests confidential treatment of the APA and Assignment, because they contain sensitive commercial and financial information that is not publicly available. In addition, charts depicting the upstream ownership of the Greeley Facility before and after

the Proposed Transaction is attached to this Application as Exhibit C-1 (Greeley pre-Transaction), Exhibit C-2 (Greeley post-Transaction).

As described below, the Proposed Transaction will have no adverse effect on competition, rates, or regulation, and does not raise any cross-subsidization issues. Accordingly, Applicant requests that the Commission issue an order approving the Proposed Transaction as described herein.

C. Description of the Facilities to Be Transferred for Which FPA Section 203 Approval is Requested

The jurisdictional facilities affected by the Proposed Transaction consist of various books and records and the interconnection equipment associated with the Greeley Facility.

IV. REQUEST FOR PRIVILEGED AND CONFIDENTIAL TREATMENT

As noted above, pursuant to 18 C.F.R. § 388.112 (2015), Applicant requests privileged and confidential treatment of Exhibit I, because it contains sensitive commercial and financial information that is privileged or confidential and not publicly available. Should Exhibit I become public, it would likely harm the parties in future negotiations for similar transactions and in structuring future investments. A proposed form of protective order that complies with the Commission's model protective order is attached to this Application as Attachment 2.

V. REQUEST FOR FPA SECTION 203 APPROVAL

A. Applicability of FPA Section 203

Applicant seeks Commission authorization under FPA section 203(a)(1), for the Transaction,¹³ because the Transaction involves GEF's acquisition of the Greeley Facility and related assets from Thermo Greeley.¹⁴

B. Satisfaction of FPA Section 203 Criteria

Section 203(a) of the FPA provides that the Commission will approve jurisdictional transactions that are "consistent with the public interest."¹⁵ As codified in Section 2.26 of the Commission's regulations¹⁶ and explained in Order No. 642, in the Merger Policy Statement,¹⁷ and in Order No. 669, the Commission examines three factors

¹³ See supra note 1.

¹⁴ Section 203(a)(1)(B) of the FPA, 16 U.S.C. § 824b(A)(1)(B); see also AER NY-Gen, LLC, et al., 139 FERC ¶ 62,049 (2012). Thermo Greeley is not included as an applicant in this proceeding under Section 203(a)(1) for the disposition of the interconnection facilities associated with the Greeley Facility that will occur as a result of the Transaction because it is a QF, supra n 1. In addition, the assets are valued at less than \$10 million and GEF does not currently own FERC jurisdictional assets so there will be no combination of Thermo Greeley and GEF jurisdictional assets resulting from the Proposed Transaction. With respect to 203(a)(2), the Commission's regulations provide a blanket authorization for holding companies, such as AEG, that are holding companies solely by virtue of owning one or more EWGs, QFs, or FUCOs to acquire additional securities of EWGs, QFs, or FUCOs. 18 C.F.R. § 33.1(c)(8) (2015).

¹⁵ Section 203 does not require Applicants to demonstrate that a proposed transaction will result in a positive benefit to the public. Rather, the Commission need only conclude that the proposed transaction is consistent with the public interest. See Tex.-N.M. Power Co., 105 FERC ¶ 61,028 at P 23 (2003); Entergy Servs., Inc., 62 FERC ¶ 61,073 at 61,370 (1993); Fitchburg Gas & Elec. Light Co., 58 FERC ¶ 61,201 at 61,624 (1992). The Transaction addressed in the instant filing meets all of the Commission's public interest standards under section 203.

¹⁶ 18 C.F.R. § 2.26.

¹⁷ Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. and Regs. ¶ 31,044 (1996), order on reconsideration, Order No. 592-A, 62 Fed. Reg. 33,341 (1997),

in analyzing whether a proposed transaction is consistent with the public interest: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation. In addition, section 203(a)(4), 16 U.S.C. § 824b(a)(4), requires a showing that a proposed transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. As explained below, the Proposed Transaction is consistent with the public interest, does not result in cross-subsidization, and should be approved.

C. No Adverse Effect on Competition

The Proposed Transaction will have no adverse effect on competition. The Commission previously has found that affiliates of GEF do not have market power in the distant NYISO and ISO-NE geographic markets where they are located.¹⁸ After closing, GEF will own 35 MW (nameplate) capacity in the distinct PSCo market, in which neither AEG, nor any of its subsidiaries, currently own any generation capacity.¹⁹ Therefore, the Proposed Transaction does not raise any horizontal market power concerns.

Moreover, the Proposed Transaction raises no vertical market concerns in Applicant's relevant market. Neither Applicant, nor of its affiliates, owns or controls electric transmission or distribution facilities in the United States, other than those

79 FERC ¶ 61,321 (1997) (Merger Policy Statement). On November 15, 2000, the Commission issued Order No. 642, 65 Fed. Reg. 70,984 (Nov. 28, 2000), 93 FERC ¶ 61,164 (2000), order on reh'g, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), which implements the policies stated in the Merger Policy Statement.

¹⁸ See Allegany Generating Station, LLC, Docket No. ER13-2199-000 (September 25, 2013) (unpublished letter order designating AEG's market-based rate sellers in all regions as Category 1 Seller status).

¹⁹ See 18 C.F.R. § 33.3(a)(2)(i) (2015) (horizontal competitive analysis screen is not required when merging entities do not currently conduct business in the same geographic markets).

facilities necessary to interconnect individual generating units to the transmission grid. Except for AENY's affiliation through AET and AET-Syracuse with two intrastate natural gas pipelines in the NYISO market, neither Applicant, nor any of its affiliates, owns or controls any other inputs to electric power production in the PSCo, NYISO or ISO-NE markets. The Commission has adopted a rebuttable presumption that ownership or control of intrastate natural gas pipelines does not allow an entity to erect barriers to entry.²⁰ Therefore, the Proposed Transaction raises no vertical market power concerns in the relevant markets.

D. No Adverse Effect on Rates

Under the Merger Policy Statement, the Commission examines whether existing wholesale power sales and transmission customers will be protected from adverse rate impacts that might occur as a result of the Proposed Transaction.²¹ The Proposed Transaction will have no such adverse rate impacts. The Greeley Facility has no customers and is currently mothballed.

Also, the transfer of the Greeley Facility and related assets does not involve any electric transmission facilities (other than the limited interconnection facilities necessary

²⁰ See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007), clarified, 121 FERC ¶ 61,260 (2007), order on reh'g, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268 (2008); order on reh'g, Order No. 697-B, 73 Fed. Reg. 79,610 (Dec. 30, 2008), FERC Stats. & Regs. ¶ 31,285 (2008); order on reh'g, Order No. 697-C, 74 Fed. Reg. 30,924 (June 29, 2009), FERC Stats. & Regs. ¶ 31,291 (2009); order on reh'g, Order No. 697-D, 75 Fed. Reg. 14,342 (Mar. 25, 2010), FERC Stats. & Regs. ¶ 31,305 (2010); order on clarification, 131 FERC ¶ 61,021 (2010).

²¹ Merger Policy Statement at 30,111–12.

to connect the Greeley Facility to the transmission grid), and thus it will have no effect on transmission rates.

Accordingly, the Proposed Transaction will have no adverse effect on wholesale ratepayers or transmission customers.

E. No Impairment of the Effectiveness of State or Federal Regulation

The Proposed Transaction will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate the Applicant. The extent to which Applicant is subject to the jurisdiction of the Commission (or any other regulatory agency or office) will not change as a result of the Proposed Transaction. The Proposed Transaction will not remove any facilities from the Commission's jurisdiction, diminish the Commission's regulatory authority or create a regulatory gap. The Proposed Transaction also will not affect state regulation. After the Proposed Transaction is consummated, Applicant will continue to be regulated by the state in which they operate in the same way as before the Proposed Transaction. Accordingly, the Proposed Transaction will not impair the Commission's jurisdiction over the Applicant or have any adverse effects on regulation.

F. No Potential for Cross-Subsidization

Section 203(a)(4) of the FPA requires the Commission to determine whether a transaction will "result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company" and, if so, whether the cross-subsidy, pledge, or encumbrance will be consistent with the public

interest.²² The Commission has stated that the concern over cross-subsidization is principally a concern over the effect of a proposed transaction on captive ratepayers.²³

The Proposed Transaction is within the scope of the “safe harbor” for transactions in which “no franchised public utility with captive customers is involved in the transaction”²⁴ and does not raise any issue with respect to cross-subsidization. The Commission has defined the term “captive customers” for purposes of Section 203 to mean “any wholesale or retail electric energy customers served under cost-based regulation.”²⁵

In Order Nos. 669, 669-A, and 669-B, the Commission established a four-part test that applicants must satisfy in order to demonstrate that the proposed transaction will not result in improper cross-subsidization, or the pledge or encumbrance of utility assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities. Under this test, the Commission examines whether, at the time of the transaction or in the future, the proposed transaction will result in: (i) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;

²² An associate company is any company in the same utility holding company system. A non-utility associate company is any associate company in a holding company system other than a public utility that has wholesale or retail customers served under cost-based rate regulation. See 18 C.F.R. § 33.1(b)(2) and (4).

²³ Order No. 669 at P 167.

²⁴ FPA Section 203 Supplemental Policy Statement, 120 FERC ¶ 61,060 at P 17 (2007).

²⁵ See 18 C.F.R. § 33.1(b)(5). The definition of captive customer refers to *energy* customers and therefore does not turn on whether a franchised public utility has transmission customers.

(ii) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (iii) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (iv) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA. None of these circumstances are present in this case.

Consistent with the requirements of Order Nos. 669, 669-A, and 669-B, Applicants include verifications regarding each of these factors in Exhibit M to this Application, which relates to the time of the Proposed Transaction as well as the future, and is based on facts and circumstances known or reasonably foreseeable to the Applicant.²⁶ Accordingly, the Proposed Transaction does not raise any cross-subsidization concerns.

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

In accordance with section 33.2 of the Commission's regulations, Applicant provides the following information:

²⁶ See Order No. 669 at P 169 (stating that such verifications may be accepted in lieu of any other explanation with respect to cross-subsidization and encumbrance concerns).

(a) Names and principal business offices of Applicant

Greeley Energy Facility LLC
634 Main Street
Upper Suite 300
East Aurora, NY 14052

(b) Names and addresses of the persons authorized to receive notices and communications

The names and addresses of persons authorized to receive notices and communications with respect to this Application are identified in Part II above.

(c) Description of Applicant, including

(1) Business activities of Applicant

The business activities of Applicant and its affiliates are described in Part III above. Accordingly, Applicant respectfully requests a waiver of the requirement to file Exhibit A to the extent otherwise deemed necessary.

(2) Energy subsidiaries and energy affiliates and their business activities

All relevant information pertaining to energy subsidiaries and affiliates of Applicant and its affiliates are provided in Part II of this Application. Applicant respectfully requests a waiver of the requirement of 18 C.F.R. § 33.2(c)(2) to provide any additional information on Applicant and its current energy affiliates because such information is not relevant to the Commission's evaluation of the Proposed Transaction. Applicant also respectfully requests a waiver of the requirement to list any energy affiliates of Thermo

Greeley, LLC in Exhibit B, because Thermo Greeley, LLC will not be affiliated with Applicant following the Proposed Transaction.

(3) **Organizational Charts**

See Exhibit C to this Application.

(4) **Business agreements**

See Exhibit D to this Application. The Proposed Transaction involves no jurisdictional arrangements between the parties apart from those described in Part III above.

(5) **Common officers or directors**

There are no common officers or directors among the parties to the Proposed Transaction. Therefore, Applicant requests a waiver of the requirement to file Exhibit E.

(6) **Description of customers**

The Proposed Transaction will not alter any existing wholesale power sales or transmission services. Thermo Greeley does not have any wholesale power or transmission customers and the Proposed Transaction and will have no detrimental effect on competition, rates or regulation. Applicant's energy affiliates are described in Part III above and are located distant geographic markets (NYISO and ISO-NE) from the market relevant to the Proposed Transaction (PSCo). Neither Applicant, nor any of its affiliates, have transmission service customers or provide unbundled transmission services in any market. Accordingly,

Applicant respectfully requests a waiver of the requirement to file Exhibit F.

(d) Description of jurisdictional facilities

The jurisdictional facilities affected by the Transaction are described in Part III above and Exhibit G.

(e) Narrative description of the Transaction

The description of the Proposed Transaction is set forth in Part III above, which includes identification of the parties, description of the jurisdictional facilities associated with or affected by the Proposed Transaction, and the effect of the Proposed Transaction on such jurisdictional facilities. Moreover, the consideration for the Proposed Transaction, as described in Exhibit I, was the result of arms-length negotiations between the parties. Accordingly, Applicant respectfully requests a waiver of the requirement to file Exhibit H.

(f) Contracts related to the proposed Transaction

Copies of the APA and Assignment are attached as Exhibit I-1 and Exhibit I-2, respectively. Pursuant to 18 C.F.R. § 388.112, Applicant requests confidential and privileged treatment of Exhibit I as discussed in Part IV above. To the extent necessary, Applicant requests a waiver of the requirements of section 33.2(f)²⁷ as to other incidental contracts and written instruments that may be entered into by the parties, none of which is inconsistent with the agreements contained in Exhibit I or the description of the Proposed Transaction set forth in this Application.²⁸

²⁷ 18 C.F.R. § 33.2(f).

²⁸ See EIF Berkshire Holdings, LLC, 116 FERC ¶ 61,273 (2006).

(g) Consistency of the Transaction with the public interest

As discussed above in Part V, the facts provided in this Application are sufficient to demonstrate that the Proposed Transaction will be in the public interest. Accordingly, Applicant requests a waiver of the requirement to file Exhibit J.

(h) Maps

The only physical jurisdictional facilities involved in the Proposed Transaction are minor interconnection facilities associated with Greeley Facility. A map showing the location of the Greeley Facility is contained in Exhibit K.

(i) Regulatory orders

The parties to the Transaction are not required to obtain any licenses, orders, or approvals from other regulatory bodies in connection with the Proposed Transaction. Accordingly, Applicant requests a waiver of the requirement to file Exhibit L.

(j) Cross-subsidization

Statements supporting the fact that the Proposed Transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company are provided in Exhibit M.

**VII. INFORMATION ON PROPOSED ACCOUNTING ENTRIES
REQUIRED BY SECTION 33.5 OF THE COMMISSION'S
REGULATIONS**

Applicant is not required to maintain its books of account in accordance with the Commission's Uniform System of Accounts. Accordingly, section 33.5 of the Commission's regulations is not applicable to this Application.

VIII. VERIFICATIONS

Pursuant to section 33.7 of the Commission's regulations, a signed verification by a person having authority with respect thereto and having knowledge of the matters set forth in this Application are included as Attachment 1.

IX. CONCLUSION

For the reasons set forth above, Applicant requests that the Commission: (i) issue an order approving the Proposed Transaction; (ii) grant the waivers requested herein; and (iii) grant Applicant's request for confidential treatment of Exhibit I. Applicant also respectfully requests that the Commission grant expedited treatment to this Application and issue its order on or before November 10, 2015 so as to permit closing on the Transaction as soon as possible thereafter.

Respectfully submitted,

/s/

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*Attorneys for Greeley Energy
Facility, LLC*

October 13, 2015

Exhibits A, B, E, F, H, J, and L

Applicant has requested a waiver of the requirement to file

Exhibits A, B, E, F, H, J, and L

Exhibit C-1

Greeley Pre-Transaction Organizational Chart

Confidential Exhibit

**Confidential Information Has Been Removed
For Privileged Treatment**

Greeley Post-Transaction Organizational Chart

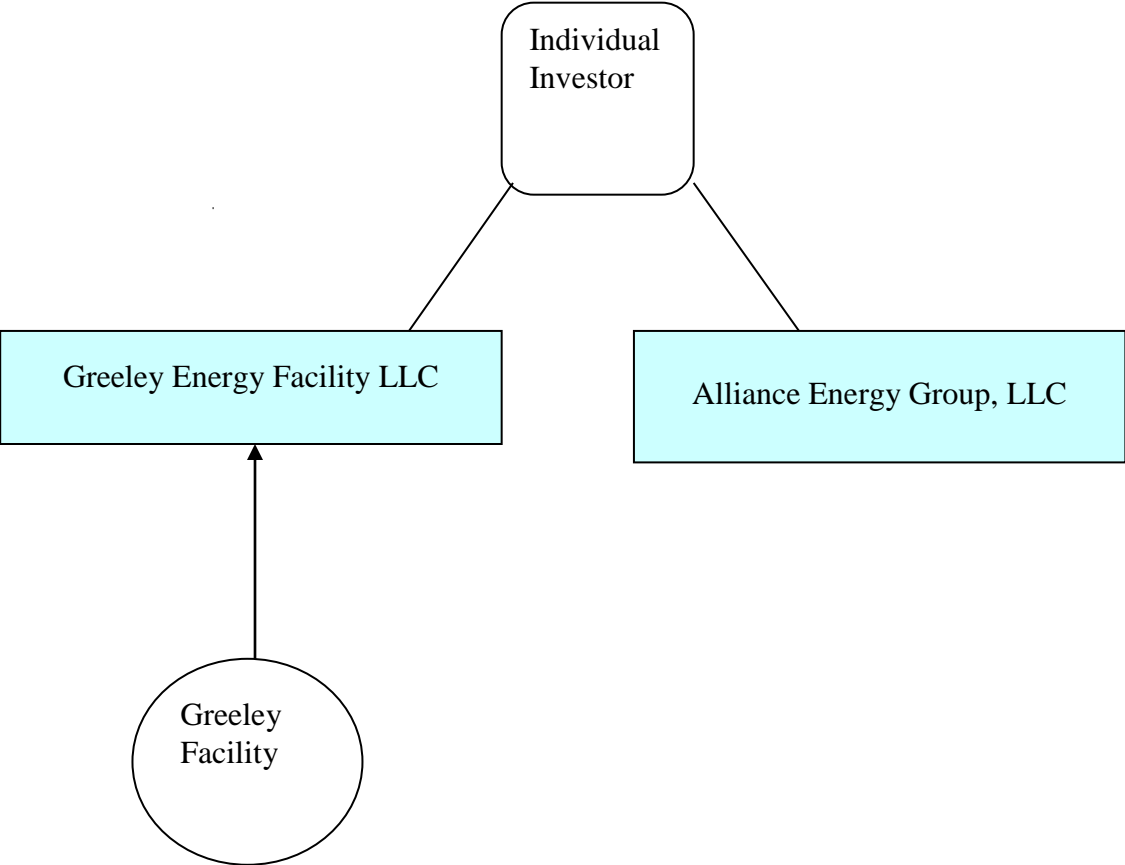


Exhibit D

Description of Business Agreements

The Proposed Transaction will involve no jurisdictional arrangements apart from those described in this Application. In addition, the Transaction will involve no transmission facilities, apart from the indirect disposition of the interconnection facilities related to the Greeley facility. There are no strategic alliances, joint ventures, tolling arrangements, or other proposed business arrangements to which Applicant is a party that are affected by the Proposed Transaction other than as described herein.

Exhibit G

Description of Jurisdictional Facilities

The jurisdictional facilities affected by the Proposed Transaction consist of various books and records and the interconnection equipment associated with the Greeley facility.

Exhibit I-1

Contracts Related to the Transaction

Confidential Exhibit

**Confidential and Privileged Information Has Been Removed
for Privileged Treatment**

Exhibit I-2

Contracts Related to the Transaction

Confidential Exhibit

**Confidential and Privileged Information Has Been Removed
for Privileged Treatment**

Exhibit K



Exhibit M

Verifications on Cross-Subsidization

Because Applicant, nor any of Applicant's affiliates is a traditional public utility with captive ratepayers in the United States or that owns or provides transmission service over jurisdictional transmission facilities in the United States, there is no issue with respect to cross-subsidization. Applicant has no existing pledges or encumbrances of public utility assets to disclose. Pursuant to section 33.2(j)(1) of the Commission's regulations, Applicant provides assurance and verifies, based on facts and circumstances known to Applicant or that are reasonably foreseeable, that the proposed Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including:

- (1) Any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;
- (2) Any new issuance of any securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;
- (3) Any pledge or encumbrance of any assets of any traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;
or
- (4) Any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.

Attachment 1

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Greeley Energy Facility LLC)
)
)

Docket No. EC15-___

VERIFICATION OF APPLICATION FOR AUTHORIZATION UNDER
SECTION 203 OF THE FEDERAL POWER ACT AND REQUEST FOR
EXPEDITED ACTION

St. Lawrence
County of Orleans)
)
State of New York)

Greg Sharland, being duly sworn, deposes and says: he is an authorized representative of Greeley Energy Facility LLC and has the authority to verify the foregoing Application on behalf of Greeley Energy Facility LLC; he has read said Application; and based on his knowledge, information and belief, all of the statements contained therein with respect to Greeley Energy Facility LLC and its affiliates are true and accurate.

Greg Sharland
Greg Sharland

Subscribed and sworn to before me on this 8th day of October, 2015.

Christine M. Rutherford
Notary Public

My commission expires 5/12/19

CHRISTINE M. RUTHERFORD
Notary Public, State of New York
No. 01RU6092091
Qualified in Franklin County
Commission Expires May 12, 2019

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

Greeley Energy Facility, LLC)
) Docket No. EC15-___
)

PROTECTIVE ORDER

(Issued)

1. This Protective Order shall govern the use of all Protected Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Administrative Law Judge (Presiding Judge) (which includes the Chief Administrative Law Judge) or the Federal Energy Regulatory Commission (Commission).

2. This Protective Order applies to the following two categories of materials: (A) A Participant may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and (B) A Participant shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 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 "Protected Materials" means (A) materials (including depositions) provided by a Participant in response to discovery requests and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Presiding Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant producing the

Protected Materials shall physically mark them on each page as "PROTECTED MATERIALS" or with words of similar import as long as the term "Protected Materials" is included in that designation to indicate that they are Protected Materials. If the Protected Materials contain Critical Energy Infrastructure Information, the Participant producing such information shall additionally mark on each page containing such information the words "Contains Critical Energy Infrastructure Information B Do Not Release".

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

(3) Protected Materials shall not include (A) any information or document 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 protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order. Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(c) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(d) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) Commission 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 Commission; or

(6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

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

5. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a 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 Protected Materials.

7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3 (d) above, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraphs 3(d) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Presiding Judge for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided, that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

11. Subject to Paragraph 18, the Presiding Administrative Law Judge shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any participant that contests the designation of materials as protected shall notify the party that provided the protected materials by specifying in writing the materials 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 Administrative Law Judge, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the participant seeking protection. If the Presiding Administrative Law Judge finds that the materials at issue are not entitled to protection, the procedures of Paragraph 18 shall apply. The procedures described above shall not apply to protected materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" 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 B Do Not Release". For anything filed under seal, redacted versions or, where an entire

document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list and the Presiding Judge. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

13. If any Participant desires to include, utilize or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than reviewing representatives, such participant shall first notify both counsel for the disclosing participant and the Presiding Judge of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Presiding Judge.

14. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

15. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge, the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. The Presiding Judge may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

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

17. All Protected Materials filed with the Commission, the Presiding Judge, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information – Do Not Release."

18. If the Presiding Judge finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for three (3) business days from the date of issuance of the Presiding Judge's determination, and if the Participant seeking protection files an interlocutory

appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding Judge's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 CFR §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act. (5 U.S.C. § 552) for Protected 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 Protected Materials.

21. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this (these) proceeding(s). Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

Presiding Administrative Law Judge

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

Greeley Energy Facility, LLC)
)
) Docket No. EC15-___

NON-DISCLOSURE CERTIFICATE

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

By: _____
Printed Name: _____
Title: _____
Representing: _____
Date: _____

Document Content(s)

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