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PURSUANT TO 18 C.F.R. § 388.112



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November 7, 2016

BY ELECTRONIC FILING

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

**Re: Innovative Solar 43, LLC and Innovative Owner 43, LLC, EC17-____-000
Application for Authorization Under Section 203 of the Federal Power Act, Request
for Shortened Comment Period, Expedited Consideration and Confidential
Treatment**

Dear Secretary Bose:

Enclosed for filing is an Application for Authorization Under Section 203 of the Federal Power Act for the Disposition of Jurisdictional Facilities, Request for Expedited Consideration and Confidential Treatment (the "Application") which is being submitted on behalf of Innovative Solar 43, LLC and Innovative Owner 43, LLC ("Applicants").

For the reasons set forth in the Application, Applicants respectfully request that the Federal Energy Regulatory Commission ("Commission") establish a twenty-one (21) day comment period for the Application and issue an order approving the transaction on or before December 5, 2016. While the proposed transaction involves a change in upstream ownership for Applicants, the transaction does not require a competitive screen analysis, is consistent with Commission precedent, and raises no cross-subsidization concerns. Applicants represent that the Application was prepared and filed on an expedited basis following notice to the applicable parties regarding the potential application of Section 203.

Applicants respectfully request confidential treatment of Exhibit I to the Application pursuant to Section 388.112 of the Commission's Regulations. Exhibit I contains commercial information that is privileged and confidential and not publicly available. Applicants are submitting a

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confidential, non-public version of this Application marked “**CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION – DO NOT RELEASE**” and a public version of the Application. Pursuant to 18 C.F.R. § 388.112(b)(2)(i), a proposed protective order and non-disclosure certificate are attached to the filing as Attachment 2.

Respectfully submitted,

/s/ Jennifer L. Mersing

Jennifer L. Mersing
Chad T. Marriott

Counsel for Innovative Solar 43, LLC and Innovative Owner 43, LLC

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

Innovative Solar 43, LLC) Docket No. EC17-____-000
Innovative Owner 43, LLC)

**APPLICATION FOR AUTHORIZATION
UNDER SECTION 203 OF THE FEDERAL POWER ACT
FOR THE DISPOSITION OF JURISDICTIONAL FACILITIES,
REQUEST FOR SHORTENED COMMENT PERIOD, EXPEDITED CONSIDERATION
AND CONFIDENTIAL TREATMENT**

I. INTRODUCTION

Pursuant to Section 203(a)(1) of the Federal Power Act (“FPA”)¹ and Part 33 of the Federal Energy Regulatory Commission’s (the “Commission”) regulations,² Innovative Solar 43, LLC (“Innovative Solar 43”) and Innovative Owner 43, LLC (“Innovative Owner 43” and, together with Innovative Solar 43, the “Applicants”) submit this application seeking authorization for the disposition of jurisdictional facilities related to the 38.9 MWac solar photovoltaic (“solar PV”) power generation facility that is currently under development in the Town of Ivanhoe, Bladen County, North Carolina (the “Project”). Specifically, Applicants seek Commission authorization under Section 203(a)(1)(A) of the FPA for the acquisition by Cypress Creek Holdings, LLC, a Delaware limited liability company (“Cypress Holdings”), of one

¹ 16 U.S.C. § 824b.

² 18 C.F.R. § 33.1 *et seq.* as amended by *Transactions Subject to FPA Section 203*, 71 Fed. Reg. 1,348 (2006), Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005) (“Order No. 669”), *order on reh'g*, 71 Fed. Reg. 28,421 (2006), Order No. 669-A (“Order No. 669-A”), *order on reh'g*, Order No. 669-B, FERC Stats & Regs ¶ 31,225 (2006) (“Order No. 669-B”).

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hundred percent (100%) of the outstanding common and preferred stock in FLS Energy, Inc., a North Carolina corporation (“FLS Energy”), from the stockholders of FLS Energy (the “Proposed Transaction”).³ Upon consummation of the Proposed Transaction, Cypress Holdings will acquire an indirect controlling interest in both Applicants and the Project.

Section 203(a)(4) of the FPA requires the Commission to approve a disposition of jurisdictional facilities that is consistent with the public interest and “will not result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company” The *Merger Policy Statement* states that in determining whether a transaction is consistent with the public interest, the Commission shall consider whether the transaction will have any adverse impact on (i) competition, (ii) rates, or (iii) regulation.⁴ Consistent with the Commission’s applicable policy statements,⁵ the requirements established in Energy Policy Act of 2005 and Order No. 669, *et seq.*, this Application, inclusive of its exhibits, shows that the Proposed Transaction will have no adverse effect on competition, rates, or regulation, and will not result in cross-subsidization. Indeed, as

³ *Phelps Dodge Corp.*, 121 FERC ¶ 61,251 at P 15 (2007). Cypress Holdings holds only indirect interests in exempt wholesale generators (“EWGs”), qualifying facilities (“QFs”), or foreign utility companies (“FUCOs”). Each of Innovative Solar and Innovative Owner is self-certified as an EWG and the Project is self-certified as a QF. Therefore, the Proposed Transaction qualifies for blanket authorization under Section 203(a)(2) of the FPA with respect to Cypress Holdings. See 18 C.F.R. § 33.1(c)(8) (2015) (blanket authorization for a holding company that is a holding company solely by virtue of owning one or more EWGs, QFs, or FUCOs to acquire additional securities of EWGs, QFs, or FUCOs).

⁴ *Inquiry Concerning the Commission’s Merger Policy under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. and Regs. ¶ 31,044 (1996) (“Merger Policy Statement”); see also *FPA Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060 (2007) (“Supplemental Policy Statement”).

⁵ *Merger Policy Statement, id.*; *Supplemental Policy Statement, id.*

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discussed below, the Application does not require a competitive impact screen analysis because the entire output from the Project is fully committed on a long-term basis to a non-affiliated offtaker and Cypress Holdings and its affiliates own zero (0) MW of uncommitted operational capacity in the Duke Energy Progress (“DEP”) balancing authority area.⁶

As demonstrated below, the Proposed Transaction is consistent with the public interest and should be approved expeditiously. This Application includes all information and exhibits required by Part 33 of the Commission’s regulations, Order No. 642,⁷ and Order No. 669, except to the extent that Applicants have requested a waiver of those requirements.

Additionally, Applicants request that the Commission (1) grant a limited waiver of the Commission’s filing requirements to the extent that such information is not necessary to ensure the Proposed Transaction meets the requirements of Section 203, (2) grant confidential treatment to the nonpublic version of the Application, (3) provide expedited review, and (4) approve this Application on or before December 5, 2016.

II. COMMUNICATIONS

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

⁶ As discussed further below, the capacity of the operating generating facilities of Cypress Holdings and its affiliates in the DEP balancing authority area totals approximately 172 MW but is all fully committed on a long-term basis to a non-affiliated offtakers. Even if this capacity were uncommitted, it would only represent 1.26 % of the 13,689 MWs in the DEP balancing authority area, a *de minimus* amount. See Section VIII.A, *infra*.

⁷ *Revised Filing Requirements Under Part 33 of the Commission’s Regulations*, Order No. 642, 65 Fed. Reg. 70,984, FERC Stats and Regs. Preambles 1996-2000 ¶ 31,111 (2000) (“Order No. 642”), *order on reh’g*, Order No. 642-A. 94 FERC ¶ 61,289 (2001) (“Order No. 642-A”).

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III. REQUEST FOR EXPEDITED ACTION AND A 21-DAY COMMENT PERIOD

Applicants respectfully request expedited action on this Application, including a twenty-one (21) day comment period. Applicants request expedited consideration of this Application so that the parties will have sufficient time following the Commission's order to complete any remaining steps needed to close the Proposed Transaction as soon as possible. As demonstrated below, expedited consideration of this Application is warranted because the Proposed Transaction (1) is consistent with Commission precedent and (2) does not require an Appendix A analysis. In addition, a 21-day comment period is consistent with the Commission's policy for applications that do not contain a competitive analysis and do not raise cross-subsidization concerns.⁸ For these reasons, Applicants respectfully submit that the Proposed Transaction wholly comports with the public interest and request the Commission authorize the Proposed

⁸ See Order No. 669, 113 FERC ¶ 61,315 (2005), FERC Stats. & Regs. ¶ 31,200 at P 194.

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Transaction as soon as possible after the comment period expires, but in any event no later than December 5, 2016.

IV. REQUEST FOR CONFIDENTIAL TREATMENT

Pursuant to 18 C.F.R. § 388.112, Applicants request confidential treatment of Exhibit I because it contains sensitive commercial and financial information that is privileged or confidential and not publicly available. Should this information become public, it could subject Applicants and its investors to competitive disadvantage or other business injury. Applicants submit a non-public version of the Application that is marked “**Non-Public Version - Contains Privileged and Confidential Information — Do Not Release Pursuant to 18 C.F.R. § 388.112**” and asks that the Commission keep it confidential. Applicants are also submitting a public copy of this Application, with the confidential material redacted. Any questions concerning this request for confidential treatment should be directed to counsel listed in Part II. Applicants have attached a draft Protective Order as Attachment 2 to this Application.

V. DESCRIPTION OF RELEVANT PARTIES

A. Applicants

Each of Innovative Solar 43 and Innovative Owner 43 is a North Carolina limited liability company with its principal place of business in Asheville, North Carolina. As portrayed in the Organizational Charts in Exhibit C, Innovative Solar 43 and Innovative Owner 43 are affiliates and, as described in detail below, indirect subsidiaries of FLS Energy. Innovative Owner 43 owns the Project and, pursuant to a Master Lease between FLS 2016 Solar I, LLC (“FLS 2016 Solar I”) (as tenant parent), Innovative Solar 43 (as tenant subsidiary), FLS 2016 Owner I, LLC (“FLS 2016 Owner I”) (as lessor parent), and Innovative Owner 43 (as lessor subsidiary) (the

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“Master Lease”), Innovative Solar 43 will operate the Project, control all physical assets comprising the Project, and sell all of the output of the Project. Innovative Solar 43’s sole business will be the operation of the Project and Innovative Owner 43’s sole business is ownership of the Project.⁹

The Project is located within the DEP balancing authority area in the Southeast region. The Applicants expect the Project to begin generating test power in December 2016 and to achieve commercial operation prior to January 1, 2017. Innovative Solar 43 is committed to sell the entire output from the Project under a 10-year power purchase agreement with a non-affiliate, DEP. Innovative Solar 43 received authorization from the Commission to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates¹⁰ and filed a notice with the Commission of the Project’s status as a qualifying small power production facility.¹¹ Each of Innovative Solar 43 and Innovative Owner 43 has filed a notice with the Commission of its status

⁹ Pursuant to the terms of the Master Lease, Innovative Owner 43 is a passive lessor-owner of the Project and therefore may not be required to obtain Commission approval under Section 203(a)(1) of the FPA for the Proposed Transaction. *See Supplemental Policy Statement*, 120 FERC ¶ 61,060, at P 54; *Starwood Energy Group Global, L.L.C.*, 153 FERC ¶ 61,332, at PP 16-17 (2015). Out of an abundance of caution and in the interest of obtaining prompt approval of the Proposed Transaction, Innovative Owner 43 joins in this Application for purposes of completeness and to assist the Commission in understanding FLS Energy’s entire interest in the Project and the related Commission-jurisdictional assets. Applicants request the Commission grant this petition without ruling on the jurisdictional question. *See, e.g., Southern Company, et al.*, 92 FERC ¶ 62,260 (2000); *National Elec. Associates Ltd. P’ship*, 80 FERC ¶ 62,116, n.2 (1997) (citing *Ocean State Power*, 47 FERC ¶ 61,321 (1989)) (Commission makes no jurisdictional determination but assumes jurisdiction in light of the need for expedited action).

¹⁰ Letter Order Granting Market-Based Rate Authorization, Docket No. ER16-2071 (issued Aug. 16, 2016).

¹¹ Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility, Docket No. QF14-379 (filed May 6, 2016).

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as an EWG under the Public Utility Holding Company Act of 2005.¹² Neither Innovative Solar 43 nor Innovative Owner 43 will own or control any transmission facilities other than limited interconnection facilities needed to connect the Project with the DEP-controlled transmission system.

1. Innovative Solar 43, LLC

Innovative Solar 43 is a wholly-owned subsidiary of FLS 2016 Solar I. Membership interests in FLS 2016 Solar I are owned by: (1) FLS 2016 I Manager, LLC, a North Carolina limited liability company (“FLS 2016 I Manager”), which owns one percent (1%) of the membership interests and, as Managing Member of FLS 2016 Solar I, has the right to control Innovative Solar 43 and the Project on a day-to-day basis, and (2) Garnet ITC Fund XLIII, LLC, a Delaware limited liability company (“Garnet ITC XLII”), which owns ninety-nine percent (99%) of the membership interests and, as the passive, non-controlling Investor Member, has only limited rights with respect to the Innovative Solar 43. FLS 2016 I Manager is a wholly-owned subsidiary of FLS Energy. Thus, FLS Energy, through FLS 2016 I Manager and FLS 2016 Solar I, indirectly owns a one percent (1%) controlling interest in Innovative Solar 43.

2. Innovative Owner 43, LLC

Innovative Owner 43 is a wholly-owned subsidiary of FLS 2016 Owner I. Membership interests in FLS 2016 Owner I are owned by (1) FLS Fund I, LLC, a North Carolina limited liability company (“FLS Fund I”), which owns fifty-one percent (51%) of the membership

¹² Notice of Self-Certification of Exempt Wholesale Generator Status of Innovative Solar 43, LLC, Docket No. EG16-38 (filed Jan. 13, 2016) and Notice of Non-Material Change in Facts for Innovative Solar 43, Docket No. EG16-38 (filed June 20, 2016); Notice of Self-Certification of Exempt Wholesale Generator Status of Innovative Owner 43, LLC, Docket No. EG16-117 (filed June 14, 2016).

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interests and (2) FLS 2016 Solar I, which owns forty-nine percent (49%) of the membership interests. Each of FLS 2016 Owner I and FLS Fund I is managed by FLS 2016 I Manager, as non-member manager. The upstream ownership of FLS 2016 Solar I is described in Part V.A.1., above, and FLS Fund I is a wholly-owned subsidiary of FLS Energy. Thus, FLS Energy, through FLS Fund I and FLS 2016 Owner I, indirectly owns a fifty-one percent (51%) interest in Innovative Owner 43 and fifty-one percent (51%) of the Project, which is leased from Innovative Owner 43 to Innovative Solar 43 pursuant to the terms of the Master Lease.

B. FLS Energy, Inc.

FLS Energy is a full-service solar energy provider that, indirectly through its subsidiaries, owns and operates a portfolio of solar energy assets in North Carolina. Prior to closing of the Proposed Transaction, FLS is owned: (1) 22.085% by CleanTech Alliance Direct Fund, L.P., a Delaware limited partnership (“CADF”); (2) 22.085% by NEC Cleantech Infrastructure Fund, LP, a Delaware limited partnership (“NECCIF”); (3) 10% by an individual investor; and (4) 45.83% in the aggregate by additional individual investors, each of which holds less than 10% of FLS Energy’s ownership interests (the individual investors described in (3) and (4), together with CADF and NECCIF, the “Stockholders”).

CADF is an investment fund with one limited partner, Clean Tech Alliance Fund, LP, a Delaware limited partnership (“CTAF”), and one general partner, North Sky Capital, LLC, a Delaware limited liability company formerly known as Piper Jaffray Private Capital, LLC (“North Sky Capital”). North Sky Capital, as general partner, has exclusive control and CTAF, as limited partner, has no control over the business and affairs of CADF. CTAF has sixteen (16)

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limited partners¹³ and one general partner, North Sky Capital. North Sky Capital, as general partner, has exclusive control and the limited partners have no control, over the business and affairs of CTAF. CTAF has appointed North Sky Capital to be the investment advisor for CTAF. As investment advisor, North Sky Capital must comply with its obligations as general partner in providing investment services to CTAF. The sole member and Managing Member of North Sky Capital is an individual person, who is ultimately able to exercise control over both CTAF and CADF, and through CADF, its 22.085% interest in FLS Energy, its approximately 11.26% indirect interest in Innovative Owner 43 and the Project, and its approximately 0.2% indirect interest in Innovative Solar 43.

NECCIF is an investment fund with one limited partner, CTAF, and one general partner, New Energy Capital Partners GP, LLC, a Delaware limited liability company (“NECP GP”). NECP GP, as general partner, has exclusive control and CTAF, as limited partner, has no control, over the business and affairs of NECCIF. NECP GP is owned and managed by three individual persons, who are ultimately able to exercise control over NECCI and, through NECCI, its 22.085% interest in FLS Energy, its approximately 11.26% indirect interest in Innovative Owner 43 and the Project, and its approximately 0.2% indirect interest in Innovative Solar 43.¹⁴

CADF and NECCIF each holds a 50% interest in NECCIF Investment III, Inc., a Delaware corporation (“NECCIF III”). NECP GP, as general partner of NECCIF, has

¹³ CTAF’s limited partners include fourteen pension funds, one foundation, and one individual person, none of which has any control over the business or affairs of CTAF.

¹⁴ New Energy Capital Partners LLC, a Delaware limited liability company (“NECP”) was appointed manager of NECCIF and is obligated to provide management and administrative services to NECCIF. However, ultimate control over the management, policies, and operations of NECCI remain the responsibility of NECP GP.

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management authority over NECCIF III. NECCIF III, through its wholly-owned subsidiary NEC-SV Holding, LLC, a Delaware limited liability company, indirectly owns Celina Solar Project #1, LLC, an Ohio limited liability company (“Celina Solar”). Celina Solar owns a 4.4 MWac solar photovoltaic project located in Celina, Ohio (the “Celina Solar Project”). The Celina Solar Project is operated by Solarvision, LLC, an Ohio limited liability company, and is interconnected with the City of Celina Electric Division (“CED”) within the PJM balancing authority area. Celina Solar is fully committed to sell its generation capacity to a non-affiliated offtaker, CED.

The Stockholders, through their ownership interests in FLS Energy, currently have the right to control the Applicants and the Project on a day-to-day basis. Upon consummation of the Proposed Transaction, (1) Cypress Holdings will own one hundred percent (100%) of the outstanding common and preferred stock in FLS Energy and have the right, through FLS Energy, to control the Applicants and the Project on a day-to-day basis and (2) the Stockholders will no longer have any control over FLS Energy, the Applicants, or the Project.

C. Cypress Creek Holdings, LLC

Cypress Holdings is a Delaware limited liability company with its primary place of business in Santa Monica, California. Cypress Holdings is engaged in the energy industry and in constructing renewable energy projects. As shown in the Organization Chart at Exhibit C-3, the indirect upstream owners who control 10% or more of Cypress Holdings are private individuals, none of whom are otherwise engaged (with limited exceptions)¹⁵ in the energy industry or

¹⁵ There are two exceptions. First, one of the individuals owns a non-controlling interest of over 10% in an entity which provides licensed retail electric services in competitive utility service territories but does not itself own or control electric generation. Second, several of the

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otherwise own or control 10% or more of any other operating electric industry assets or other inputs to power production.

Cypress Holdings does not directly own or control any electric generating or transmission assets or generation output. Ownership of the renewable projects of Cypress Holdings is structured primarily through two subsidiaries, Cypress Creek Renewables, LLC and Cypress Creek Power, LLC. Through these subsidiaries, including as shown on Exhibit B-2, Cypress Holdings is a national provider of solar farms with over \$1.5 billion raised and invested, with approximately 587 MWs expected to be operational by the end of 2016 as part of a total of over 4 gigawatts¹⁶ of solar generation either deployed or under development.

VI. SUMMARY OF THE PROPOSED TRANSACTION

The Proposed Transaction will be implemented pursuant to, and subject to certain conditions precedent in, the Stock Purchase Agreement attached as confidential in Exhibit I. At the closing of the Proposed Transaction, the Stockholders will transfer one-hundred percent (100%) of the outstanding common and preferred stock in FLS Energy to Cypress Holdings and, thereafter, the Stockholders will no longer have any control over FLS Energy, the Applicants, or the Project. Following the closing of the Proposed Transaction: (1) Innovative Owner 43 will continue to own the physical assets of the Project; (2) Innovative Solar 43 will continue to have

(. . . continued)

individuals own controlling interests in other QF solar facilities in North Carolina, with aggregate capacity of approximately 10 MWac in the DEC BAA and 25 MWac in the DEP BAA. The output of all 35 MWac is committed under long term power purchase agreements to non-affiliated entities.

¹⁶ Of the development pipeline, projects with approximately 1,400 MWdc in aggregate have needed to file for QF status as part of the relevant interconnection process.

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full operational control of the jurisdictional assets; (3) Cypress Holdings will own one hundred percent (100%) of the outstanding common and preferred stock in FLS Energy; and (4) Cypress Holdings will have the right, through FLS Energy, to control the Applicants and the Project on a day-to-day basis.

VII. DESCRIPTION OF THE FACILITIES

As described above, the Project is a solar PV power project with a nameplate capacity rating of approximately 38.9 MWac located in the Town of Ivanhoe, Bladen County, North Carolina. The Project is located within the DEP balancing authority area in the Southeast region. The Applicants expects that the Project will begin generating test power in December 2016 and achieve commercial operation prior to January 1, 2017. Innovative Solar 43 is committed to sell the entire output from the Project under a 10-year power purchase agreement with a non-affiliate, DEP. Innovative Owner 43's sole business is ownership of the Project. Innovative Solar 43's sole business will be the operation of the Project. Innovative Solar 43 received authorization from the Commission to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates¹⁷ and filed a notice with the Commission of the Project's status as a qualifying small power production facility.¹⁸ Each of Innovative Solar 43 and Innovative Owner 43 has filed a notice with the Commission of its status as an EWG under the Public Utility Holding Company Act of 2005.¹⁹ Neither Innovative Solar 43 nor Innovative Owner 43 will

¹⁷ Letter Order Granting Market-Based Rate Authorization, Docket No. ER16-2071 (issued Aug. 16, 2016).

¹⁸ Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility, Docket No. QF14-379 (filed May 6, 2016).

¹⁹ Notice of Self-Certification of Exempt Wholesale Generator Status of Innovative Solar 43, LLC, Docket No. EG16-38 (filed Jan. 13, 2016) and Notice of Non-Material Change in Facts

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own or control any transmission facilities other than limited interconnection facilities needed to connect the Project with the DEP-controlled transmission system.

The facilities subject to the Commission's jurisdiction under the FPA involved in the Proposed Transaction include Innovative Solar 43's market-based rate tariff and rate schedules, the limited interconnection facilities associated with the Project that are owned by Innovative Owner 43 and leased to, and operated and controlled by, Innovative Solar 43 pursuant to the Master Lease, the power purchase agreement under which Innovative Solar 43 will sell electric power, and other books and records associated with the wholesale sale of electric energy by Innovative Solar 43.²⁰

VIII. THE TRANSFER IS CONSISTENT WITH THE PUBLIC INTEREST

FPA Section 203(a)(1)(A) requires the Commission's approval before a public utility's indirect disposition of its jurisdictional facilities.²¹ Therefore, Applicants seek the Commission's prior approval for the Proposed Transaction under Section 203(a)(1)(A) of the FPA.

(. . . continued)

for Innovative Solar 43, Docket No. EG16-38 (filed June 20, 2016); Notice of Self-Certification of Exempt Wholesale Generator Status of Innovative Owner 43, LLC, Docket No. EG16-117 (filed June 14, 2016).

²⁰ Although Innovative Solar 43 is a QF and the Project is interconnected and will be selling power pursuant to the Public Utility Regulatory Policies Act, out of an abundance of caution, Applicants include the power purchase agreement and interconnection facilities as FPA-jurisdictional facilities. *See, e.g., Southern Company, et al.*, 92 FERC ¶ 62,260 (2000); *National Elec. Associates Ltd. P'ship*, 80 FERC ¶ 62,116, n.2 (1997) (*citing Ocean State Power*, 47 FERC ¶ 61,321 (1989)) (Commission makes no jurisdictional determination but assumes jurisdiction in light of the need for expedited action.).

²¹ *Phelps Dodge Corp.*, *supra* note 3.

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FPA Section 203(a)(4) instructs the Commission to approve jurisdictional transactions that are “consistent with the public interest,” the analysis for which is set forth in the Commission’s applicable Orders and Policy Statements.²² The *Merger Policy Statement* provides that in determining whether a proposed change in upstream ownership of jurisdictional facilities is consistent with the public interest,²³ the Commission shall consider whether the transaction will have any adverse effects on (1) competition, (2) rates, or (3) regulation.²⁴ Consistent with the Commission’s applicable Policy Statements,²⁵ the requirements established in the Energy Policy Act of 2005 and Order No. 669, *et seq.*,²⁶ this Application, inclusive of its exhibits, shows that the indirect transfer of Applicants’ jurisdictional facilities will have no adverse effects on competition, rates, or regulation, and will not result in cross-subsidization. This Application includes all information and exhibits required by Part 33 of the Commission’s regulations, Order No. 642,²⁷ and Order No. 669, except to the extent that Applicants have requested waiver of, or is afforded safe harbor from, those requirements.

As demonstrated below, an examination of the appropriate criteria demonstrates that the Proposed Transaction is fully consistent with the public interest and should be approved.

²² Order No. 669, *et seq.*, *supra* note 2; Order No. 642, *supra* note 7; *Merger Policy Statement*, *supra* note 4; *Supplemental Policy Statement*, *supra* note 4.

²³ *Merger Policy Statement*, *supra* note 4; Order No. 592-A, 79 FERC ¶ 61,321 (1997).

²⁴ Order No. 642, *et seq.*, *supra* note 7.

²⁵ *Merger Policy Statement*, *supra* note 4; *Supplemental Policy Statement*, *supra* note 4.

²⁶ *See* Order No. 669, *et seq.*, *supra* note 2.

²⁷ Order No. 642, *et seq.*, *supra* note 7.

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A. The Proposed Transaction Will Not Adversely Affect Competition

In analyzing a transaction's effects on competition, the Commission generally focuses on whether the transaction will result in higher prices or reduced output in electricity markets, which may occur if the merged entity is able to exercise market power, either alone or in coordination with other firms.²⁸ The Commission uses competitive analysis screens that help to identify proposed transactions that are unlikely to present such competitive concerns.²⁹

The Proposed Transaction will not result in higher prices or reduced output in electricity markets, and the filing of competitive analysis screens is unnecessary to reach that conclusion. The Proposed Transaction does not raise any horizontal market power concerns. As described above, the full output of the Project is committed to a non-affiliated purchaser (DEP) under a long-term power purchase agreement, and the Proposed Transaction will have no effect on this arrangement. Prior to the Transaction, Applicants and their affiliates own zero (0) MW of uncommitted capacity in the DEP market or in first-tier markets, as all affiliated capacity in the DEP or first-tier markets is committed under long-term power purchase agreements with non-affiliates. In evaluating transactions under the *de minimis* standard, the Commission has historically not counted generation committed pursuant to long-term contracts because it considers long-run generation markets to be competitive.³⁰ In addition, Cypress Holdings and its affiliates own zero (0) MW of uncommitted capacity in the DEP market or in first-tier markets,

²⁸ 18 C.F.R. § 2.26; *see also* Order No. 642, *id.*

²⁹ Order No. 642, *supra* note 7 at 31,879 & 31,903.

³⁰ *See Southern Co., Energy Mktg., L.P.*, 81 FERC ¶ 61,009 at 61,043 (1997) (“the Commission has explained that generating capacity committed under long-term power purchase agreement does not present any generation market power concerns.”).

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as all affiliated capacity in the DEP or first-tier markets is committed under long-term power purchase agreements with non-affiliates. Even if the approximately 172 MWs of capacity affiliated with Cypress Holdings in the DEP BAA that are committed under long-term power purchase agreements were considered, which they should not be, that capacity would still represent only 1.26% of the approximately 13,689 MWs of the installed generation capacity in the DEP balancing authority area,³¹ well within the range the Commission has previously found to be *de minimis*.³² Accordingly, the Proposed Transaction raises no horizontal market power concerns.

Additionally, the Proposed Transaction does not raise any vertical market power concerns. Both the ability and the incentive to exercise vertical market power are necessary for a transaction to harm competition.³³ At closing under the Proposed Transaction, Applicants will own or control no transmission facilities in any market other than those limited interconnection facilities necessary for connecting the Project with the transmission system, nor will Applicants

³¹ See *Progress Energy (Carolina Power & Light Company)*, Annual Electric Balancing Authority Area and Planning Area Report, FERC Form 714 (filed June 3, 2015) (for Duke Energy Progress, Inc. planning area).

³² For previous approvals involving ownership ranges found to be *de minimis*, see, e.g., *NewPage Pub. Utils.*, 143 FERC ¶ 62,121 at 64,074 (2013) (post-transaction shares of 1.65 percent of the installed capacity in the ISO-NE market, 0.9 percent of the installed capacity in the PJM market, and 2.52 percent of the total installed capacity in the MISO market); *Dynegy Roseton, L.L.C.*, 142 FERC ¶ 62,148 at 64,337 (2013) (post-transaction shares of 3.2 percent of the installed capacity in the NYISO market); *Macho Springs Power, I, LLC*, 135 FERC ¶ 62,200 at 64,571 (2011) (post-transaction share of 3 percent of the generating capacity in the El Paso market); *Milford Power Co.*, 134 FERC ¶ 62,038 at 64,393-94 (2011) (post-transaction share of 4.5 percent of installed capacity in ISO-NE); *Majestic Wind Power LLC*, 129 FERC ¶ 62,125 at 64,393-94 (2009) (post-transaction share of 2.36 percent of installed capacity in MISO and 4.8 percent in the Western Area Power Administration Upper Great Plains East BAA).

³³ *Energy E. Corp.*, 121 FERC ¶ 61,236 at P 24 (2007).

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own or control other inputs to power production. Furthermore, as a result of the Proposed Transaction, Applicants will not become affiliated with any entity or person that owns, controls, or operates transmission facilities (other than incidental facilities required for interconnection) or other inputs to power production in the same market as the Project. The Proposed Transaction therefore does not raise vertical market power issues.

Applicants respectfully request waiver of the requirement to submit horizontal and vertical competitive analyses, given the representations above. Because the Proposed Transaction raises no horizontal or vertical market power concerns, the Proposed Transaction will not adversely affect competition.³⁴

B. The Proposed Transaction Will Have No Adverse Effect on Rates

The Proposed Transaction will not subject wholesale customers to increased rates. In determining whether a proposed transaction may adversely affect rates, the Commission's primary concern is to protect wholesale ratepayers and transmission customers from rate increases resulting from the transaction. Various mechanisms are acceptable for protecting ratepayers, including the existence of market-based rates authorized by the Commission.³⁵ Here, all sales from the Project will be made at market-based rates, and the Proposed Transaction will not alter the terms of the long-term power purchase agreement with DEP. Accordingly, the Proposed Transaction will have no effect on rates.

³⁴ See, e.g., *Noble Clinton Windpark I, LLC*, 121 FERC ¶ 62,164 (2007) (finding that the transfer of a 100.5 MW wind-powered generating facility, the output of which was to be sold under power purchase contracts or into NYISO markets, did not adversely affect competition because the transfer involved a *de minimis* share of generation in the relevant market, raising no horizontal market concerns, and because none of the applicants owned transmission facilities or other inputs to power generation, raising no vertical market concerns).

³⁵ See, e.g., *Duquesne Light Holdings*, 117 FERC ¶ 61,326 at P 25 (2006).

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C. The Proposed Transaction Will Have No Adverse Effect on Regulation

The Proposed Transaction will not adversely affect state or federal regulation. When the Commission reviews a proposed transaction to determine its effect on regulation, the Commission focuses on ensuring that the transaction will not result in a regulatory gap at the federal or state level. The Proposed Transaction is not subject to regulation by any state entity and the Proposed Transaction will not affect the extent to which the Commission may regulate Applicant. Therefore, the Proposed Transaction will not create a regulatory gap at the federal or state level or shift regulatory authority between the Commission and any state commission. Thus, the Proposed Transaction will have no adverse effect on regulation.

D. The Proposed Transaction Will Not Result in Cross-Subsidization

The Proposed Transaction does not pose a risk of cross-subsidization and does not pledge or otherwise encumber utility assets. Section 203(a)(4) of the FPA requires the Commission to determine whether a jurisdictional 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.³⁶ The Commission’s principal concern with cross-subsidization is the potential impact of a transaction on rates.³⁷ The Commission has stated that its goal is to “ensure that public utilities with captive customers do not cross-subsidize ‘non-regulated’ associate companies, *i.e.*, companies that are not subject to traditional cost-based regulation.”³⁸

³⁶ Order No. 669, *supra* note 2 at P 146.

³⁷ *Id.* at PP 166, 167.

³⁸ *Id.* at PP 91, 166.

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The Commission has created “safe harbors” for transactions that are unlikely to raise cross-subsidization concerns, *e.g.*, a transaction that is a bona fide, arm’s-length, bargained-for exchange,³⁹ and encompass those transactions in which a franchised utility with captive customers is not involved,⁴⁰ transactions subject to review by a state commission, and transactions involving non-affiliates.⁴¹

The Proposed Transaction falls within the scope of at least two “safe harbors” established by the Commission and thus does not present any issue with respect to cross-subsidization. The Proposed Transaction is a bona fide, arm’s-length, bargained-for exchange between non-affiliated entities (*i.e.*, Cypress Holdings on the one hand and Stockholders on the other) and does not involve a franchised utility with captive customers. Consequently, the Proposed Transaction does not raise any concerns of cross-subsidization. Applicants submit Exhibit M with this Application to verify that the Proposed Transaction will not result in an impermissible cross-subsidization. Further, the Proposed Transaction does not raise any of the concerns regarding cross-subsidization enumerated in the Commission’s regulations in 18 C.F.R. § 33.2(j).

In summary, because the Proposed Transaction satisfies the requirements of Section 203 and the Commission’s regulations, the Commission should find that the Proposed Transaction is consistent with the public interest and approve the Application as soon as possible, without modification or condition and without holding a trial-type adjudicatory hearing.

³⁹ *Id.* at P 15.

⁴⁰ “Captive customers” are defined, for purposes of FPA section 203, as “any wholesale or retail electric energy customers served under cost-based regulation.” 18 C.F.R. § 33.1(b)(5).

⁴¹ Cross-subsidization is less likely when a transaction is between nonaffiliated entities because the risk of improperly benefiting an associate company generally is not present.

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IX. OTHER REQUIREMENTS

Pursuant to Section 33.2 of the Commission's regulations, Applicants submit the following information, and respectfully requests that the Commission waive certain requirements to the extent such information is not applicable to the Commission's consideration of whether the Proposed Transaction is consistent with the requirements of Section 203.

A. The Exact Name and Address of the Principal Business Office

Innovative Solar 43, LLC
Innovative Owner 43, LLC
130 Roberts Street
Asheville, NC 28801
Telephone: (828) 233-8117
Fax: (828) 350-3997
Email: pwright@flsenergy.com

B. Names and Addresses of Persons Authorized to Receive Notices and Communications Regarding this Application

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

C. Description of the Applicants Including:

1. Business Activities

Applicants' business activities are described in Part V above. Accordingly, Applicants request a waiver of the requirement to file Exhibit A.

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2. Energy Subsidiaries and Energy Affiliates and Their Business Activities

Applicants have no energy subsidiaries. Exhibit B-1 contains a list of Applicants energy affiliates. Exhibit B-2 contains a list of Cypress Holdings energy subsidiaries and affiliates.⁴²

3. Organizational Charts

See Exhibit C to this Application. Applicants respectfully request a partial waiver of Section 33.2(c)(3) of the Commission's regulations⁴³ to the extent necessary to permit them to include only those parent companies, energy subsidiaries, and energy affiliates that are relevant to the Proposed Transaction.

4. Business Agreements

There are no strategic alliances, joint ventures, tolling arrangements, or other proposed business arrangements to which either Applicant is a party that will be affected by the Proposed Transaction. Applicants, therefore, request a waiver of the requirement of Section 33.2(c)(4) of the Commission's regulations⁴⁴ to file Exhibit D.

5. Common Officers or Directors

There are no common officers or directors among the parties (*i.e.*, Cypress Holdings on the one hand and Stockholders on the other) to the Proposed Transaction. Therefore, Applicants request a waiver of the requirement of Section 33.2(c)(5) of the Commission's

⁴² Exhibit B-2 excludes subsidiaries still in the development phase whose projects will not reach operational status in 2016.

⁴³ 18 C.F.R. § 33.2(c)(3).

⁴⁴ 18 C.F.R. § 33.2(c)(4).

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regulations⁴⁵ to the extent it would require the submission of additional information in Exhibit E.

6. Description of Customers

Applicants respectfully request a waiver of the requirement of Section 33.2(c)(6) of the Commission's regulations⁴⁶ to submit Exhibit F. As discussed above, the Proposed Transaction does not have any detrimental impact on competition, rates, or regulation and will not 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.

D. Description of Jurisdictional Facilities

See Parts V and VII of this Application. Accordingly, Applicants request a waiver of the requirement to file Exhibit G.

E. Narrative Description of the Proposed Transaction

A description of the Proposed Transaction has been provided above in Part VI. Applicants request a waiver of Section 33.2(e)(2) of the Commission's regulations⁴⁷ to the extent it would require submission of additional information in Exhibit H.

F. Contracts Related to the Proposed Transaction

The Stock Purchase Agreement is attached hereto as Exhibit I. Applicants submit that Exhibit I contains commercially sensitive information, the release of which would cause competitive harm. Further, the release of such information would cause an impediment in future

⁴⁵ 18 C.F.R. § 33.2(c)(5).

⁴⁶ 18 C.F.R. § 33.2(c)(6).

⁴⁷ 18 C.F.R. § 33.2(e)(2).

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negotiations of similar transactions, not just for Applicants, but for other parties that might engage in similar transactions. As such, pursuant to 18 C.F.R. § 388.112, *Applicants request that the documents contained in Exhibit I be accorded confidential treatment.* As required by 18 C.F.R. § 388.112(b)(2)(i), Applicants have included a proposed protective order, based on the Commission's Form Protective Order, as Attachment 2.

G. Consistency of the Proposed Transaction with the Public Interest

Part VIII of this Application demonstrates that the Proposed Transaction will be in the public interest. Accordingly, Applicants request a waiver of the requirement to file Exhibit J.

H. Maps

Applicants request a waiver of the requirement to provide maps because the Proposed Transaction is not a merger of companies with franchised service territories.

I. Regulatory Orders

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

J. Cross-Subsidization

Applicants provide the required verification in Exhibit M.

X. PROPOSED ACCOUNTING ENTRIES

This Application does not include accounting entries showing the effect of the Proposed Transaction on account balances pursuant to Section 33.5 of the Commission's regulations

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because Applicants are not required to maintain their books and records in accordance with the Commission's Uniform System of Accounts.⁴⁸

XI. LIST OF ATTACHMENTS

In addition to the Exhibits described above, this Application includes the following attachments:

A. Verifications

Authorized representatives of Applicants and Cypress Holdings have provided a verification as required by 18 C.F.R. § 33.7, attached as Attachment 1.

B. Protective Order

The Proposed Protective Order applicable to Exhibit I is attached as Attachment 2.

XII. CONCLUSION

As described in this Application, Applicants respectfully request that the Commission (1) authorize the Proposed Transaction pursuant to Section 203 of the FPA, (2) grant a limited waiver of the Commission's filing requirements to the extent that such information is not necessary to ensure the Proposed Transaction meets the requirements of Section 203, (3) grant confidential treatment of Exhibit I and certain information otherwise identified as confidential, and (4) expeditiously review this Application and grant its approval thereof not later than December 5, 2016.

⁴⁸ The Commission has granted similar waivers in the past. *See, e.g., North Western Corp.*, 117 FERC 61,100 at P 66 (2006); *Gen. Elec. Capital Corp.*, 115 FERC ¶ 62,024 (2006); *Exelon New England Holdings, LLC*, 107 FERC ¶ 61,148 (2004).

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Respectfully submitted,

/s/ Jennifer L. Mersing

Jennifer L. Mersing

Chad T. Marriott

Stoel Rives LLP

*Counsel for Innovative Solar 43, LLC and
Innovative Owner 43, LLC*

DATED: November 7, 2016

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EXHIBITS TO THE APPLICATION

EXHIBITS B, C, I, and M

As explained in the Application above, Applicants respectfully request the Commission waive the requirements to file Exhibits A, D, E, F, G, H, J, K and L.

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**Exhibit B-1
FLS ENERGY, INC. AFFILIATES AND ASSETS (Prior to the Transaction)**

Filing Entity and its Energy Affiliates	Docket # MBR authority granted or QF Docket	Generation Name	Owned By	Controlled By	Date Control Transferred ¹	Location		In-service Date	Nameplate and/or Seasonal Rating (MW)
						Balancing Authority Area	Geographic Region (per Appendix D)		
Innovative Solar 43, LLC	ER16-2071	Innovative Solar 43	Innovative Owner 43, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	12/2016 (est.)	38.9
Beetle Solar, LLC	QF14-759	Beetle Solar	Beetle Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	12/2016 (est.)	4
Carol Jean Solar, LLC	QF13-315	Carol Jean Solar	Carol Jean Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	12/2016 (est.)	4
Exum Farm Solar, LLC	QF14-701	Exum Farm Solar	Exum Farm Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	12/2016 (est.)	4.95
Franklinton Solar, LLC	QF14-772	Franklinton Solar	Franklinton Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	12/2016 (est.)	4.999
Husky Solar, LLC	QF13-533	Husky Solar	Husky Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	12/2016 (est.)	5
Innovative Solar 65, LLC	QF14-651	Innovative 65	Innovative Solar 65, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	12/2016 (est.)	4.995
Kennedy Solar, LLC	QF14-690	Kennedy Solar	Kennedy Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	12/2016 (est.)	4.99
Lincoln Solar, LLC	QF15-92	Lincoln Solar	Lincoln Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	12/2016 (est.)	4.99
Pollocksville Solar, LLC	QF14-770	Pollocksville Solar	Pollocksville Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	12/2016 (est.)	4.999
St. Pauls Solar 1, LLC	QF15-422	St. Pauls Solar 1	St. Pauls Solar 1, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	12/2016 (est.)	4.998
Candace Solar, LLC	QF14-545	Candace Solar	Candace Owner, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	7/25/2016	5
Lanier Solar, LLC	QF14-581	Lanier Solar	Lanier Owner, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	7/28/2016	4.99

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						Balancing Authority Area	Geographic Region (per Appendix D)		
South Louisburg Solar, LLC	QF14-771	South Louisburg Solar	South Louisburg Owner, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	8/31/2016	4.99
Meadowbrook Solar, LLC	QF14-760	Meadowbrook Solar	Meadowbrook Owner, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	11/2016 (est.)	4.99
TWE New Bern Solar Project, LLC	QF15-286	TWE New Bern Solar Project	TWE New Bern Solar Owner, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	8/4/2016	4.05
Cohen Solar, LLC	QF14-704	Cohen Solar	Cohen Owner, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	8/8/2016	4.95
Floyd Solar, LLC	QF14-644	Floyd Solar	Floyd Owner, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	7/13/2016	4.99
Charlotte Solar, LLC	QF13-303	Charlotte Solar	Charlotte Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	12/21/2015	4.9
TWE Chocowinity Solar Project, LLC	QF15-293	TWE Chocowinity Solar Project	TWE Chocowinity Solar Project, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	11/24/2015	4.5
TWE Kelford Solar Project, LLC	QF15-294	TWE Kelford Solar Project	TWE Kelford Solar Project, LLC	FLS Energy, Inc.	N/A	DNCP	Southeast	5/20/2016	4.7
Innovative Solar 18, LLC	QF13-408	Innovative Solar 18, LLC	Innovative Solar 18, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	12/15/2015	1.9
Innovative Solar 26, LLC	QF14-130	Innovative Solar 26	Innovative Solar 26, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	12/4/2015	1.9
Innovative Solar 64, LLC	QF14-543	Innovative Solar 64	Innovative Solar 64, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	12/2/2015	4.9
Sun Devil Solar, LLC	QF14-635	Sun Devil Solar	Sun Devil Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	12/15/2015	4.9
Quincy Solar, LLC	QF14-363	Quincy Solar	Quincy Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	12/18/2015	4.0
Innovative Solar 16, LLC	QF13-407	Innovative Solar 16	Innovative Solar 16, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	10/29/2015	2.0
Innovative Solar 10, LLC	QF13-19	Innovative Solar 10	Innovative Solar 10, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	10/27/2015	1.5

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						Balancing Authority Area	Geographic Region (per Appendix D)		
Buddy Solar, LLC	QF13-314	Buddy Solar	Buddy Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	11/4/2015	4.0
Flash Solar, LLC	QF13-308	Flash Solar	Flash Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	11/9/2015	5.0
Innovative Solar 44, LLC	QF14-536	Innovative Solar 44	Innovative Solar 44, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	12/1/2015	5.0
Innovative Solar 48, LLC	QF14-537	Innovative Solar 48	Innovative Solar 48, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	11/20/2015	5.0
TWE Kinston Solar Project, LLC	QF15-295	TWE Kinston Solar Project	TWE Kinston Solar Project, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	8/24/2015	4.9
TWE Laurinburg Solar Project, LLC	QF15-296	TWE Laurinburg Solar Project	TWE Laurinburg Solar Project, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	8/26/2015	4.9
Melinda Solar, LLC	QF14-633	Melinda Solar	Melinda Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	8/24/2015	4.9
Porter Solar, LLC	QF14-634	Porter Solar	Porter Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	8/24/2015	4.9
Royal Solar, LLC	QF14-691	Royal Solar	Royal Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	8/26/2015	4.9
Mt. Olive Solar 1, LLC	QF12-502	Mt. Olive Solar 1	Mt. Olive Solar 1, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	5/19/2015	4.9
FLS Solar 230, LLC	QF13-563	FLS Solar 230	FLS Solar 230, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	5/19/2015	4.8
Beth Solar, LLC	QF12-423	Beth Solar	Beth Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	12/12/2014	4.9
Charlie Solar, LLC	QF12-494	Charlie Solar	Charlie Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	12/12/2014	4.0
Lotus Solar, LLC	QF12-348	Lotus Solar	Lotus Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	12/5/2014	4.0
Big Boy Solar, LLC	QF12-.346	Big Boy Solar	Big Boy Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Carolinas	Southeast	12/5/2014	3.0
Downs Farm Solar, LLC	QF14-23	Downs Farm Solar	Downs Farm Solar, LLC	FLS Energy, Inc.	N/A	DNCP	Southeast	10/31/2015	4.9

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Filing Entity and its Energy Affiliates	Docket # MBR authority granted or QF Docket	Generation Name	Owned By	Controlled By	Date Control Transferred ¹	Location		In-service Date	Nameplate and/or Seasonal Rating (MW)
						Balancing Authority Area	Geographic Region (per Appendix D)		
SolNCPower2, LLC	QF13-618	SolNCPower2	SolNCPower2, LLC	FLS Energy, Inc.	N/A	DNCP	Southeast	8/24/2015	5.0
SolNCPower1, LLC	QF13-625	SolNCPower1	SolNCPower1, LLC	FLS Energy, Inc.	N/A	DNCP	Southeast	6/12/2015	5.0
Soul City Solar, LLC	QF14-630	Soul City Solar	Soul City Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	420/2015	3.5
Stagecoach Solar, LLC	QF14-628	Stagecoach Solar	Stagecoach Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	5/13/2015	4.9
Vicksburg Solar, LLC	QF14-631	Vicksburg Solar	Vicksburg Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	5/19/2015	5.0
FLS Solar 260, LLC	QF13-652	FLS Solar 260	FLS Solar 260, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	8/22/2015	4.9
Rose Hill Solar, LLC	QF12-288	Rose Hill Solar	Rose Hill Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	12/14/2012	1.9
Dunn Solar, LLC	QF12-270	Dunn Solar	Dunn Solar, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	12/4/2012	1.9
FLS Owner 80, LLC	QF12-92	FLS Owner 80	FLS Owner 80, LLC	FLS Energy, Inc.	N/A	Duke Energy Progress	Southeast	12/17/2012	1.5

¹ Unless otherwise referenced, “N/A” shall mean exempt from Sections 205 and 206 of the FPA due to QF status and size not larger than 20 MW.

² This project is a QF that is 1 MW or smaller. Therefore, no QF self-certification has been filed with the Commission

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**ATTACHMENT B-2
CYPRESS CREEK HOLDINGS, LLC Energy Affiliates and Assets Table (Prior to the Transaction)**

Filing Entity and its Energy Affiliates	Docket# MBR Authority Granted or QF Docket	Generation Name	Controlled By	Date Control Transferred	Balancing Authority Area	Geographic Region	Placed-in-Service Date	Site Capacity Nominal (MW DC)
Andrew Solar, LLC	QF14-369	Andrew Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	9/16/2015	6.954
Angel Solar, LLC	QF13-471	Angel Solar	Cypress Creek Power, LLC	N/A	Duke Energy Carolinas, LLC	Southeast	10/7/2015	6.954
Apple One, LLC	QF14-385	Apple One Solar	Cypress Creek Power, LLC	N/A	Duke Energy Carolinas, LLC	Southeast	9/17/2015	6.954
Battleboro Farm, LLC	QF14-447	Battleboro Farm	Cypress Creek Power, LLC	N/A	Dominion North Carolina Power	Southeast	12/31/2015	6.840
BG Stewart Solar Farm, LLC	QF14-209	BG Stewart Solar Farm	Cypress Creek Power, LLC	N/A	Duke Energy Carolinas, LLC	Southeast	12/2/2015	6.786
Bizzell Church Solar 1, LLC	QF15-499	Bizzell Church Solar 1	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	12/15/2015	6.927
Bladenboro Solar, LLC	QF14-346	Bladenboro Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	12/21/2015	7.038
Blueberry One, LLC	QF14-7	Blueberry One	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	12/23/2015	6.840
Boseman Solar Center, LLC	QF13-166	Boseman Solar Center	Cypress Creek Power, LLC	N/A	City of Rocky Mount	Southeast	12/15/2014	6.490
CB Bladen Solar, LLC	QF-741	CB Bladen Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	3/31/2016	7.002
Chei Solar, LLC	QF14-368	Chei Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	12/19/2015	6.715
Coats Solar, LLC	QF15-416	Coats Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	5/11/2016	7.008
Currin Solar, LLC	QF14-509	Currin Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	12/31/2015	6.464
Elliana Solar, LLC	QF13-37	Elliana Solar	Cypress Creek	N/A	Duke Energy	Southeast	10/15/201	7.068

**PUBLIC VERSION – PRIVILEGED AND CONFIDENTIAL
INFORMATION HAS BEEN REMOVED
PURSUANT TO 18 C.F.R. § 388.112**

Filing Entity and its Energy Affiliates	Docket# MBR Authority Granted or QF Docket	Generation Name	Controlled By	Date Control Transferred	Balancing Authority Area	Geographic Region	Placed-in-Service Date	Site Capacity Nominal (MW DC)
			Power, LLC		Carolinas, LLC		5	
Flemming Solar Center, LLC	QF13-165	Flemming Solar Center	Cypress Creek Power, LLC	N/A	Greenville Utilities	Southeast	12/15/2014	6.490
Flint Hill Solar, LLC	QF15-648	Flint Hill Solar	Cypress Creek Power, LLC	N/A	REMC	Southeast	9/1/2016	7.068
Gainey Solar LLC	QF12-462	Gainey	Cypress Creek Power, LLC	N/A	Duke Energy Progress	Southeast	10/27/2016	2.801
Germantown Solar, LLC	QF15-417	Germantown Solar	Cypress Creek Power, LLC	N/A	Duke Energy Carolinas, LLC	Southeast	12/16/2015	2.102
Green Farm Solar, LLC	QF13-675	Green Farm Solar	Cypress Creek Power, LLC	N/A	Dominion North Carolina Power	Southeast	12/30/2015	7.038
Grove Solar Center, LLC	QF13-667	Grove Solar Center	Cypress Creek Power, LLC	N/A	Idaho Power Company	Northwest	10/12/2016	7.855
Happy Solar, LLC	QF14-757	Happy Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	12/21/2015	5.300
Hardison Farm Solar, LLC	QF14-478	Hardison Farm Solar	Cypress Creek Power, LLC	N/A	Duke Energy Indiana, Inc.	Southeast	9/8/2016	7.092
Highwater Solar I, LLC	QF14-525	Highwater Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	5/12/2016	7.008
ID Solar 1, LLC	ER16-1609	ID Solar 1	Cypress Creek Power, LLC	N/A	Idaho Power Company	Northwest	8/16/2016	54.612
Innovative Solar 6, LLC	QF12-307	Innovative Solar 6	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	12/17/2015	4.812
Jacob Solar, LLC	QF13-509	Jacob Solar	Cypress Creek Power, LLC	N/A	Duke Energy Carolinas, LLC	Southeast	9/13/2016	7.068
Kenansville Solar 2, LLC	QF13-53	Kenansville Solar 2	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	12/21/2015	2.592
Kenneth Solar, LLC	QF14-758	Kenneth Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	12/17/2015	3.711
Kirkwall Holdings, LLC	QF14-307	Kirkwall Holdings	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	12/14/2015	6.954
Maxton Solar 1, LLC	QF15-420	Maxton Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	9/20/2016	7.008

**PUBLIC VERSION – PRIVILEGED AND CONFIDENTIAL
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PURSUANT TO 18 C.F.R. § 388.112**

Filing Entity and its Energy Affiliates	Docket# MBR Authority Granted or QF Docket	Generation Name	Controlled By	Date Control Transferred	Balancing Authority Area	Geographic Region	Placed-in-Service Date	Site Capacity Nominal (MW DC)
McDonald Solar Farm, LLC	QF15-856	McDonald Solar Farm	Cypress Creek Power, LLC	N/A	Duke Energy Indiana, Inc.	Southeast	12/22/2015	7.039
Millikan Farm, LLC	QF14-713	Millikan Farm	Cypress Creek Power, LLC	N/A	Duke Energy Carolinas, LLC	Southeast	11/18/2015	7.000
Modlin Farm Solar, LLC	QF14-477	Modlin Farm Solar	Cypress Creek Power, LLC	N/A	Duke Energy Indiana, Inc.	Southeast	9/13/2016	6.948
Murdock Solar, LLC	QF14-354	Murdock Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	12/18/2015	5.390
Nash 97 Solar, LLC	QF15-504	Nash 97 Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	4/6/2016	7.068
Old Pageland Monroe Road Solar Farm, LLC	QF14-370	Old Pageland Monroe Road Solar Farm	Cypress Creek Power, LLC	N/A	Duke Energy Carolinas, LLC	Southeast	11/3/2015	7.068
Open Range Solar Center, LLC	QF13-665	Open Range Solar Center, LLC	Cypress Creek Power, LLC	N/A	Idaho Power Company	Northwest	10/12/2016	13.090
Pastime Farm, LLC	QF15-855	Pastime Farm	Cypress Creek Power, LLC	N/A	Duke Energy Indiana, Inc.	Southeast	12/21/2015	7.054
Perkins Solar, LLC	QF16-7	Perkins Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	10/20/2016	2.801
Rams Horn Solar Center, LLC	QF13-164	Rams Horn Solar Center	Cypress Creek Power, LLC	N/A	Greenville Utilities	Southeast	12/15/2014	6.490
Roxboro Solar Farm, LLC	QF14-512	Roxboro Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	12/31/2015	6.584
Simons Farm Solar, LLC	QF16-60	Simons Farm Solar	Cypress Creek Power, LLC	N/A	Dominion North Carolina Power	Southeast	6/10/2016	7.038
Snow Camp Solar, LLC	QF15-453	Snow Camp Solar	Cypress Creek Power, LLC	N/A	REMC	Southeast	3/29/2016	8.211
Sonne One Solar, LLC	QF14-306	Sonne One Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	12/21/2015	7.000
South Winston Farm, LLC	QF15-63	South Winston	Cypress Creek Power, LLC	N/A	Duke Energy Carolinas, LLC	Southeast	1/18/2016	6.997
Stainback Solar Farm, LLC	QF14-510	Stainback Solar Farm	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	9/27/2016	6.954
Sullivan Solar, LLC	QF16-45	Sullivan Solar, LLC	Cypress Creek Power, LLC	N/A	Duke Energy Indiana, Inc.	Southeast	9/2/2016	7.054

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Filing Entity and its Energy Affiliates	Docket# MBR Authority Granted or QF Docket	Generation Name	Controlled By	Date Control Transferred	Balancing Authority Area	Geographic Region	Placed-in-Service Date	Site Capacity Nominal (MW DC)
Sunfish Farm, LLC	QF13-671	Sunfish Farm	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	10/1/2015	7.000
Tracy Solar, LLC	QF13-360	Tracy Solar	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	11/11/2015	13.995
Upchurch Solar Center, LLC	QF13-169	Upchurch Solar Center	Cypress Creek Power, LLC	N/A	City Of Wilson	Southeast	12/15/2014	6.490
Vance Solar 1, LLC	QF15-368	Vance Solar 1	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	1/12/2016	6.840
White Cross Solar, LLC	QF15-783	White Cross	Cypress Creek Power, LLC	N/A	Duke Energy Carolinas	Southeast	10/6/2016	2.801
White Farm Solar, LLC	QF14-636	White Farm Solar	Cypress Creek Power, LLC	N/A	Duke Energy Indiana, Inc.	Southeast	8/26/2016	7.180
Wortham Solar Farm LLC	QF14-684	Wortham	Cypress Creek Power, LLC	N/A	Duke Energy Progress	Southeast	9/13/2016	6.361
ZV Solar 1, LLC	QF15-427	ZV Solar 1	Cypress Creek Power, LLC	N/A	Duke Energy Progress, Inc.	Southeast	6/21/2016	7.008

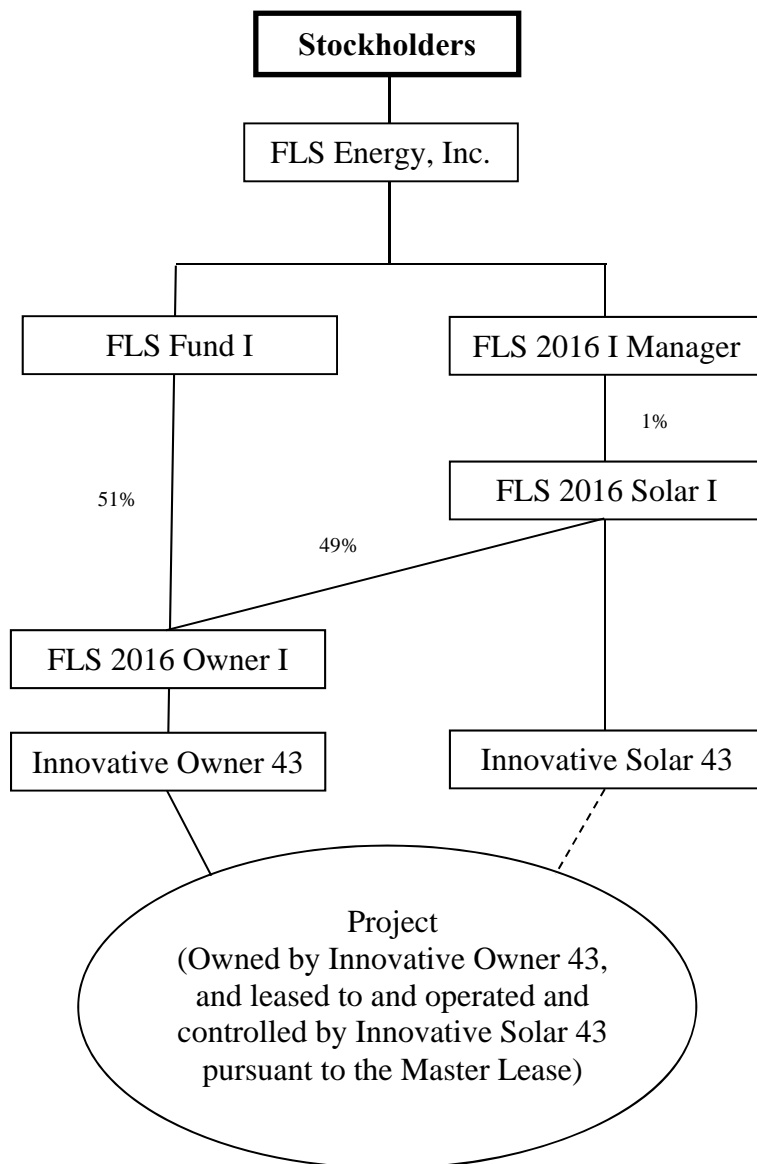
**PUBLIC VERSION – PRIVILEGED AND CONFIDENTIAL
INFORMATION HAS BEEN REMOVED
PURSUANT TO 18 C.F.R. § 388.112**

EXHIBIT C

Organizational Charts

ORGANIZATION CHART BEFORE PROPOSED TRANSACTION

**Each solid line signifies 100% ownership, unless otherwise stated

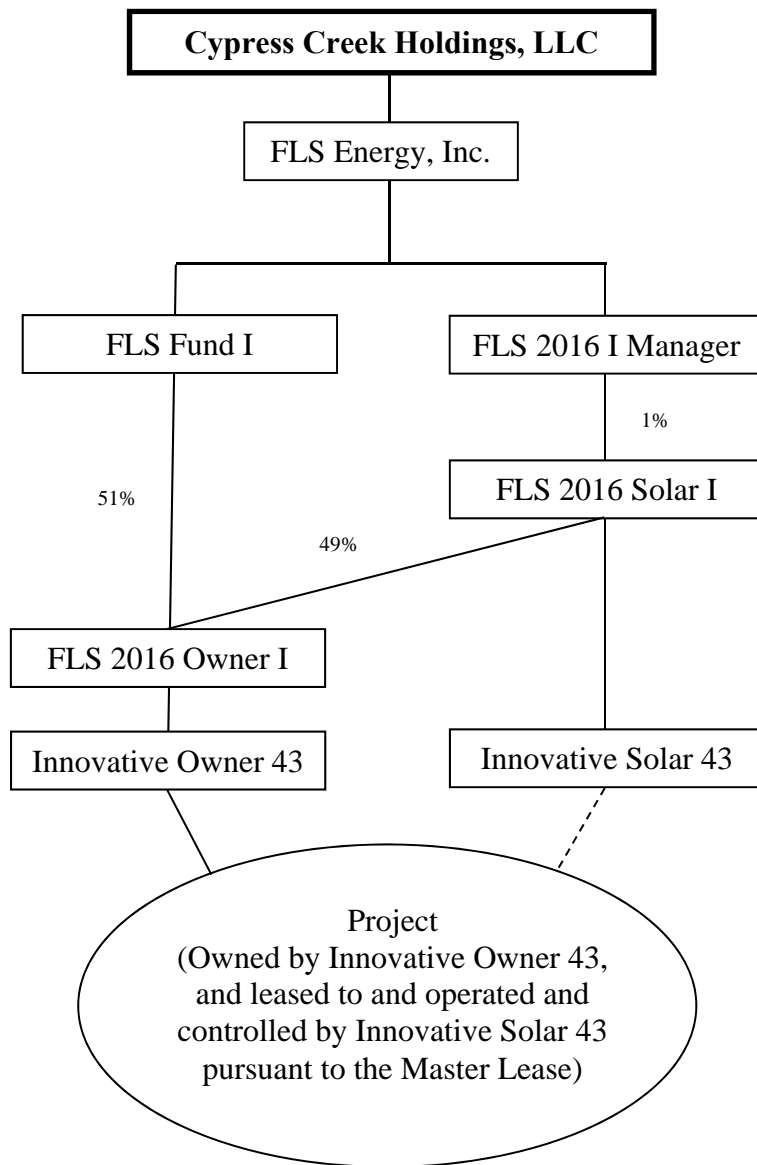


**PUBLIC VERSION – PRIVILEGED AND CONFIDENTIAL
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Organizational Charts

ORGANIZATION CHART AFTER PROPOSED TRANSACTION

**Each solid line signifies 100% ownership, unless otherwise stated



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Cypress Creek Holdings, LLC Organizational Chart

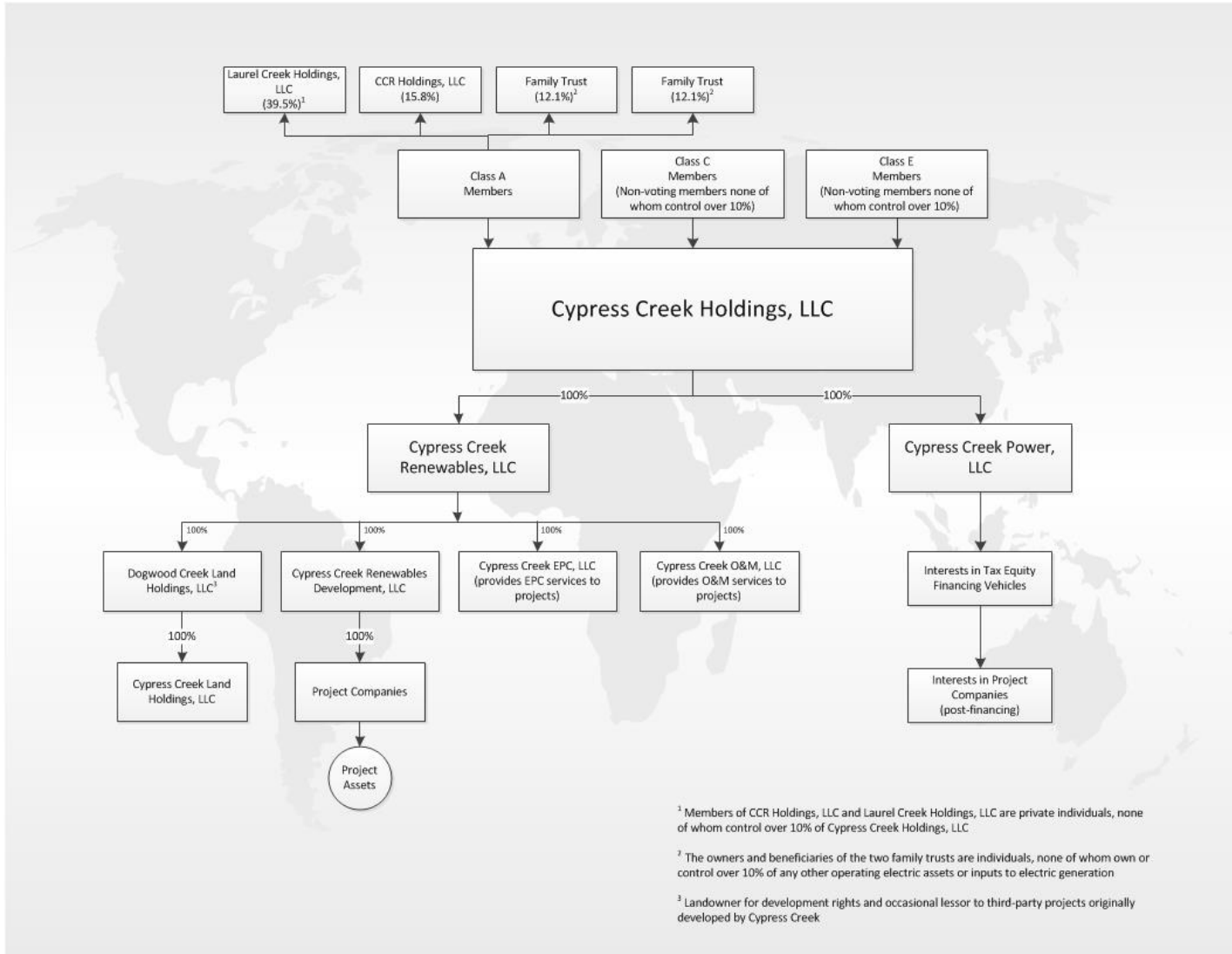


Exhibit C-3

**PUBLIC VERSION – PRIVILEGED AND CONFIDENTIAL
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PURSUANT TO 18 C.F.R. § 388.112**

EXHIBIT I

All contracts related to the Proposed Transaction together with copies of all other written instruments entered into or proposed to be entered into by the parties to the Proposed Transaction.

CONFIDENTIAL EXHIBIT

Protected Materials containing confidential and privileged information
have been removed from the public version of this Application.

Exhibit I

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INFORMATION HAS BEEN REMOVED
PURSUANT TO 18 C.F.R. § 388.112**

EXHIBIT M

Explanation Regarding Cross-Subsidization

**EXPLANATION PROVIDING ASSURANCE THAT THE PROPOSED
TRANSACTION WILL NOT RESULT IN CROSS-SUBSIDIZATION OR PLEDGE OR
ENCUMBRANCE OF UTILITY ASSETS**

The Proposed Transaction raises no issues concerning cross-subsidization. Based on the facts and circumstances known to Applicants or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, cross-subsidization of a nonutility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

(i) Disclosure of existing pledges or encumbrances

No pledges or encumbrances of any assets of a traditional public utility that has captive customers or provides transmission service over jurisdictional transmission facilities will occur as a result of the Proposed Transaction.

(ii) Detailed showing that the Proposed Transaction will not result in:

(A) Any transfer of facilities between a traditional public utility associate company that has captive ratepayers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company

The Proposed Transaction does not involve a transfer of facilities between a traditional public utility associate company that has captive ratepayers, or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company.

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(B) 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

The Proposed Transaction does not result in 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.

(C) 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

The Proposed Transaction does not result in 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.

(D) Any new affiliate contract between a nonutility 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 nonpower goods and services agreements subject to review under sections 205 and 206 of the Federal Power Act.

The Proposed Transaction does not result in any new affiliate contract between a nonutility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission

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facilities, other than nonpower goods and services agreements subject to review under sections
205 and 206 of the Federal Power Act.

**PUBLIC VERSION – PRIVILEGED AND CONFIDENTIAL
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ATTACHMENT 1

Verification

**PUBLIC VERSION – PRIVILEGED AND CONFIDENTIAL
INFORMATION HAS BEEN REMOVED
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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

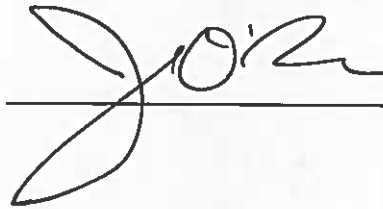
Innovative Solar 43, LLC)
Innovative Owner 43, LLC)

Docket No. EC17-__-000

**VERIFICATION
(18 C.F.R. § 33.7)**

I, Jerome O'Brien, of Cypress Creek Holdings, LLC have read the foregoing Application and have authority with respect thereto. I have knowledge of the matters regarding Cypress Creek Holdings, LLC and its affiliates set forth in the foregoing Application. The statements in said Application regarding Cypress Creek Holdings, LLC and its affiliates are true and correct to the best of my knowledge, information, and belief.

By: _____



SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of _____ this 4th day of November, 2016.

Notary Public:

My Commission Expires: _____

please see Attached

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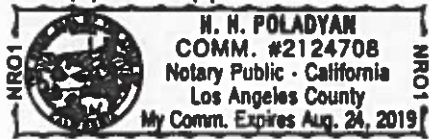
PURSUANT TO 18 C.E.R. § 388.112

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of LOS ANGELES

Subscribed and sworn to (or affirmed) before me on this 4th
day of NOVEMBER, 2016, by JEROME O'BRIEN

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(Seal)

Signature H. H. Poladyan

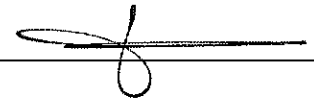
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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

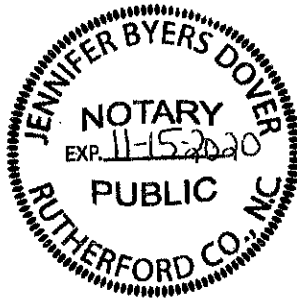
Innovative Solar 43, LLC) Docket No. EC17-__-000
Innovative Owner 43, LLC)

**VERIFICATION
(18 C.F.R. § 33.7)**

I, Dale Freudenberger, CEO, of FLS Energy, Inc. have read the foregoing Application and have authority with respect thereto. I have knowledge of the matters regarding Innovative Solar, 43 LLC and its affiliates set forth in the foregoing Application. The statements in said Application regarding Innovative Solar 43, LLC, Innovative Owner 43, LLC and their affiliates are true and correct to the best of my knowledge, information, and belief.

By: 

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of North Carolina this 4th day of November 2016.



Notary Public:


My Commission Expires: 11-15-2020

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PURSUANT TO 18 C.F.R. § 388.112**

ATTACHMENT 2

Protective Order

**PUBLIC VERSION – PRIVILEGED AND CONFIDENTIAL
INFORMATION HAS BEEN REMOVED
PURSUANT TO 18 C.F.R. § 388.112**

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

Innovative Solar 43, LLC) Docket No. EC17-____-000
Innovative Owner 43, LLC)

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”) 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 – 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

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PURSUANT TO 18 C.F.R. § 388.112**

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 contained in the files of the Commission, or 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, or (C) any information or document labeled as “Non-Internet Public” by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stat. & Reg. & 31,140. 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

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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 nonpublic 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

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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.

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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 – 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

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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

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

Innovative Solar 43, LLC) Docket No. EC17-____-000
Innovative Owner 43, LLC)

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: _____

Title: _____

Representing: _____

Date: _____

By: _____

Title: _____

Representing: _____

Date: _____

Document Content(s)

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