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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Portsmouth Genco, LLC) Docket No. EC16-____-000
Virginia Renewable Power – Portsmouth, LLC)

**APPLICATION FOR AUTHORIZATION FOR
DISPOSITION OF JURISDICTIONAL FACILITIES AND
REQUEST FOR EXPEDITED ACTION**

Pursuant to section 203(a)(1)(A) of the Federal Power Act, as amended (FPA),¹ and Part 33 of the regulations of the Federal Energy Regulatory Commission (FERC or Commission),² Portsmouth Genco, LLC (Portsmouth) and Virginia Renewable Power – Portsmouth, LLC (Buyer, and together with Portsmouth, Applicants) hereby request Commission authorization for the disposition of jurisdictional facilities that will result from the transfer of 100% of the direct membership interests in Portsmouth from Portsmouth Genco Holdings, LLC (Seller) to Buyer, a wholly-owned direct subsidiary of Georgia Renewable Power, LLC (GRP).³ Following the consummation of the proposed transaction (Transaction), Portsmouth will be a wholly-owned direct subsidiary of Buyer.

¹ 16 U.S.C. § 824b (2012).

² 18 C.F.R. Part 33 (2015).

³ Prior to consummation of the proposed transaction, Buyer is not a “holding company” within the meaning of FPA section 203(a)(2). Buyer is a wholly-owned subsidiary of GRP, which is a public utility holding company within the meaning of the Public Utility Holding Company Act of 2005 (PUHCA), which currently owns only various qualifying facilities (QFs) and is subject to an exemption from the requirements of PUHCA by virtue of its ownership of such QFs. See 18 C.F.R. § 366.3. GRP is 70% directly owned by Green Fuels Energy, LLC, a Delaware limited liability company, and 30% owned by an individual investor. See confidential Exhibit C-2. Green Fuels Energy, LLC is a limited liability company which invests in both U.S. and international energy and non-energy related projects.

Seller will no longer hold any ownership interests in Portsmouth following the Transaction.

As demonstrated herein, the Transaction will not have any adverse effect on competition, rates, or regulation, and will not result in any cross-subsidization of a non-utility company or the encumbrance or pledge of utility assets for the benefit of an associate company. Accordingly, the Transaction is consistent with the public interest and should be authorized by the Commission pursuant to FPA section 203.

Due to financial considerations, the parties intend to close the Transaction as soon as possible subject to obtaining prior authorization from the Commission. Accordingly, Applicants respectfully request an abbreviated 21-day comment period and expedited action on this Application. Applicants submit that expedited consideration of this Application is warranted under the Commission's regulations to the extent that the Application is not contested, because the Transaction does not involve a merger or any traditional utility with a franchised service territory or captive customers, is consistent with Commission precedent, and does not require an Appendix A analysis.⁴ Therefore, Applicants request Commission action on this Application on or before March 14, 2016, to the extent possible.⁵

⁴ See 18 C.F.R. § 33.11(b).

⁵ See Transactions Subject to FPA Section 203, Order No. 669, 113 FERC ¶ 61,315 at P 194 (2005), order on reh'g, Order No. 669-A, 115 FERC ¶ 61,097 at P 155 (2006) (establishing a 21-day notice period for section 203 applications that do not require a detailed Appendix A competitive analysis and do not raise cross-subsidization concerns).

I. COMMUNICATIONS

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

For Portsmouth and Seller:

Jacob A. Pollack
Senior Vice President, General Counsel
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II. THE TRANSACTION

A. Parties to the Transaction

1. Portsmouth

Portsmouth is a Delaware limited liability company that owns and operates a 114.8 MW (nameplate) electric generation facility (Facility) located in Portsmouth, Virginia. The Facility is interconnected to the transmission system owned by Dominion Virginia Power and operated by PJM Interconnection, L.L.C (PJM). The Facility is located in the AP South submarket of the PJM balancing authority area (BAA). The Facility currently is deactivated in accordance with Part V of the PJM open access transmission tariff.

Portsmouth is certified as an exempt wholesale generator under the Public Utility Holding Company Act of 2005 (PUHCA).⁶ The Commission has authorized Portsmouth to sell energy, capacity, and ancillary services at wholesale at market-based rates.⁷

Portsmouth currently is a wholly-owned direct subsidiary of Seller. Seller is an indirect subsidiary of Cogentrix Virginia Financing Holding Company, LLC, which is directly owned by Cogentrix Power Asset Holdings, LLC (CPAH) (50%) and Quantum Virginia Power, LLC (Quantum) (50%). CPAH is indirectly owned by investment fund vehicles sponsored and managed by The Carlyle Group L.P. Quantum is managed by Quantum Utility Generation, LLC.

2. Buyer

Buyer is a Delaware limited liability company, which was formed in late 2015 for the sole purpose of acquiring the membership interests of Portsmouth. Buyer is a wholly-owned direct subsidiary of GRP, a Delaware limited liability company that is a “holding company” within the meaning of PUHCA, which currently owns only various qualifying facilities (QFs) and is subject to an exemption from the requirements of PUHCA by virtue of its ownership of such QFs.⁸ GRP owns: (1) GRP North Carolina, LLC, a Delaware limited liability company, which owns a 95% interest in North Carolina

⁶ Portsmouth’s predecessor-in-interest, Cogentrix Virginia Leasing Corporation (CVLC), filed a Notice of Self-Certification of Exempt Wholesale Generator Status in Docket No. EG08-16-000 on November 9, 2007. On February 26, 2008, the Commission issued a Notice of Effectiveness of Exempt Wholesale Generator Status for CVLC. On June 28, 2011, CVLC was converted to a limited liability company and changed its name to Portsmouth Genco, LLC. Subsequently, on July 21, 2011, Portsmouth filed a notice of non-material change in facts in Docket No. EG08-16-000 to report these changes.

⁷ See Cogentrix Virginia Leasing Corp. et al., Docket Nos. ER08-201-000, et al., (Jan. 10, 2008) (unpublished letter order); see also James River Genco, LLC, et al., Docket Nos. ER11-4027-000, et al., (Sept. 1, 2011) (accepting for filing notice of succession).

⁸ See 18 C.F.R. § 366.3.

Renewable Power – Lumberton, LLC, a Delaware limited liability company that is a QF located in North Carolina;⁹ (2) GRP Franklin, LLC (GRP Franklin) a Delaware limited liability company, which will be QF located in Georgia; and (3) GRP Madison, LLC, (GRP Madison) a Delaware limited liability company, which will also be a QF located in Georgia. Both GRP Franklin and GRP Madison are currently under development in Georgia. GRP is 70% directly owned by Green Fuels Energy, LLC, a Delaware limited liability company, and 30% owned by a private individual investor. Green Fuels Energy, LLC is a limited liability company which invests in both U.S. and international energy and non-energy related projects.¹⁰

Buyer is only affiliated with QFs as noted above and currently is not affiliated with any generation located in the relevant market, the PJM BAA. Buyer is not affiliated with any electric transmission or distribution facilities in the United States, except that Buyer and its affiliates own or will own only the limited and discrete interconnection facilities necessary to connect individual generating facilities to the transmission grid. Buyer also is not affiliated with any essential inputs to electricity products or electric power production, as defined in sections 33.4 or 35.36 of the Commission’s regulations.¹¹ Buyer is not affiliated with any public utility with a franchised electric service territory in the United States.

⁹ See Form 556 of North Carolina Renewable Power - Lumberton, LLC under QF14-400-001. GRP North Carolina, LLC also owns North Carolina Renewable Power – Elizabethtown, LLC, a Delaware limited liability company. North Carolina Renewable Power – Elizabethtown, LLC owns limited interconnection facilities which previously interconnected a coal generation facility, which has since been decommissioned.

¹⁰ Green Fuels Energy, LLC is 100% owned by a private individual investor. See confidential Exhibit C-2 for information regarding the individual investors that directly and indirectly own GRP.

¹¹ 18 C.F.R. §§ 33.4 and 35.36(a)(4).

B. The Transaction

Pursuant to the Transaction, Buyer will acquire 100% of the direct membership interests in Portsmouth from Seller. As a result, Portsmouth will be a wholly-owned direct subsidiary of Buyer. None of Seller, CPAH, or Quantum will hold any ownership interests in Portsmouth following the consummation of the Transaction.

The details of the proposed Transaction are set forth in the Purchase and Sale of Interests Agreement (PSA), a copy of which is attached to this Application as confidential Exhibit I. Portsmouth requests confidential treatment of the PSA, because it contains sensitive commercial and financial information that is not publicly available. In addition, charts depicting the upstream ownership of Portsmouth before and after the proposed Transaction are attached to this Application as Exhibit C-1 and Exhibit C-2.

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

C. Description of the Jurisdictional Facilities Affected by the Proposed Transaction

The jurisdictional facilities that will be affected by the Transaction consist of various books and records, Portsmouth's market-based rate tariff and certain related agreements, and the interconnection equipment and related agreements associated with the Facility.

III. REQUEST FOR PRIVILEGED AND CONFIDENTIAL TREATMENT

As noted above, pursuant to 18 C.F.R. § 388.112, Applicants request privileged and confidential treatment of Exhibit I and the non-redacted version of Exhibit C-2,

because they contain sensitive commercial and financial information that is privileged or confidential and not publicly available. Should Exhibit I or the non-redacted version of Exhibit C-2 become public, it would likely harm the parties in future negotiations for similar transactions and in structuring future investments. Therefore, pursuant to 18 C.F.R. § 388.112(b)(2)(i), a proposed form of protective agreement is attached to this Application as Attachment 2.

IV. REQUEST FOR SECTION 203 APPROVAL

A. Applicability of Section 203

Applicants seek Commission authorization for the proposed Transaction under section 203(a)(1)(A), because the proposed Transaction involves the transfer of 100% of the direct membership interests in Portsmouth to an unaffiliated third party.¹² Buyer is not currently a public utility or a holding company within the meaning of FPA sections 203(a)(1) or 203(a)(2), respectively and was formed solely to acquire the membership interests in Portsmouth.

B. Satisfaction of Section 203 Criteria

Section 203(a) of the FPA provides that the Commission will approve jurisdictional transactions that are “consistent with the public interest.” As explained in the Merger Policy Statement and in Order Nos. 642 and 669,¹³ the Commission examines

¹² See Central Vermont Public Service Corporation, 39 FERC ¶ 61,295 (1987); see also Central Illinois Public Service Company, 42 FERC ¶ 61,073 (1988); United Illuminating Company, 90 FERC ¶ 62,232 (2000); Public Service Company of New Mexico, 95 FERC ¶ 62,296 (2001).

¹³ Inquiry Concerning the Commission’s Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, FERC Stats. and Regs. ¶ 31,044 (1996), order on reconsideration, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); Order No. 642, 93 FERC ¶ 61,164 (2000), order on reh’g, Order No. 642-A, 94 FERC ¶ 61,289 (2001) (implementing the policies stated in the Merger Policy Statement); Transactions Subject to FPA Section 203, Order

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

C. No Adverse Effect on Competition

The Transaction does not raise horizontal market power concerns. Buyer currently is not affiliated with any generation capacity in the relevant market, the PJM BAA. The approximately 115 MW Facility represents less than 0.06% of the total installed capacity in the PJM BAA.¹⁴ Such a de minimis amount in the relevant market does not raise horizontal market power concerns. Accordingly, the Transaction will not result in any new affiliation or combination of electric generating assets that could have an impact on the competitive situation in the relevant market.

The Transaction also does not raise vertical market power concerns. The Transaction does not involve any transmission facilities (except for limited and discrete interconnection equipment necessary to connect the Facility to the grid) or any essential inputs to electricity products or electric power production. Neither Buyer nor any of its affiliates owns a 10% or greater voting interest in or controls any electric transmission

No. 669, 113 FERC ¶ 61,315 at P 194 (2005), order on reh'g, Order No. 669-A, 115 FERC ¶ 61,097 (2006), order on reh'g, Order No. 669-B, 116 FERC ¶ 61,076 (2006).

¹⁴ As of September 30, 2015, the installed capacity of the PJM BAA is approximately 177,133.4 MW. See Quarterly State of the Market Report for PJM: January through September at Table 1-1, p. 24 (Nov. 12, 2015), available at:

http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2015.shtml

facilities in the United States, except the limited and discrete interconnection facilities necessary to connect individual generating facilities to the transmission grid. In addition, neither Buyer nor any of its affiliates owns or controls any essential inputs to electricity products or electric power production, as defined in sections 33.4 and 35.36 of the Commission's regulations, in the relevant markets. Therefore, the Transaction will have no adverse effect on vertical market power.

D. No Adverse Effect on Rates

In assessing the effect that a proposed transaction could have on rates, the Commission's primary concern is "the protection of wholesale ratepayers and transmission customers."¹⁵ The Transaction will not have any adverse effect on rates. Any wholesale sales of energy, capacity, or ancillary services made by Portsmouth are made at market-based rates as authorized by the Commission.¹⁶ The Transaction does not involve transmission rates or transmission customers. Accordingly, the Transaction will have no adverse effect on wholesale ratepayers or transmission customers.

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

The Transaction will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate Applicants. The extent to which Applicants and their affiliates are subject to the jurisdiction of the Commission (or any other regulatory agency or office) will not change as a result of the Transaction.

¹⁵ New England Power Co., 82 FERC ¶ 61,179 at 61,659, order on reh'g, 83 FERC ¶ 61,275 (1998), aff'd sub nom. Town of Norwood v. FERC, 202 F.3d 392 (1st Cir. 2000); see also, Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,123 (concern is to protect ratepayers from rate increases because of a merger).

¹⁶ The Commission's ratepayer protection concerns do not apply to customers that are charged market-based rates. See NorAm Energy Servs., Inc., 80 FERC ¶ 61,120 at 61,382-83 (1997).

F. No Potential for Cross-Subsidization

Section 203(a)(4) of the FPA requires the Commission to determine whether a transaction will “result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company” and, if so, whether the cross-subsidy, pledge, or encumbrance will be consistent with the public interest.¹⁷ The Commission has stated that the concern over cross-subsidization is principally a concern over the effect of a proposed transaction on captive ratepayers.¹⁸

Because none of the parties to the Transaction is a traditional public utility associate company that has captive ratepayers in the United States or that owns or provides transmission service over jurisdictional transmission facilities in the United States, the Transaction is within the scope of the “safe harbor” for transactions in which “no franchised public utility with captive customers is involved in the transaction”¹⁹ and does not raise any issue with respect to cross-subsidization. Further, because none of the parties to the Transaction is affiliated with a traditional public utility that has captive customers in the United States or that owns or provides transmission service over jurisdictional transmission facilities in the United States, the Transaction will not result in any pledge or encumbrance of utility assets for the benefit of an associate company.

Consistent with the requirements of Order Nos. 669, 669-A, and 669-B, Applicants include verifications regarding cross-subsidization in Exhibit M to this Application, which relates to the time of the Transaction as well as the future, and is

¹⁷ An associate company is any company in the same utility holding company system. A non-utility associate company is any associate company in a holding company system other than a public utility that has wholesale or retail customers served under cost-based rate regulation. See 18 C.F.R. § 33.1(b)(2) and (4).

¹⁸ Order No. 669 at P 167.

¹⁹ FPA Section 203 Supplemental Policy Statement, 120 FERC ¶ 61,060 at P 17 (2007).

based on facts and circumstances known or reasonably foreseeable to Applicants.²⁰

Accordingly, the Transaction does not raise any cross-subsidization concerns.

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

In accordance with section 33.2 of the Commission's regulations, Applicants provide the following information:

(a) Names and principal business offices of Applicants

Portsmouth Genco, LLC
c/o Cogentrix Energy Power Management, LLC
9405 Arrowpoint Boulevard
Charlotte, NC 28273

Virginia Renewable Power – Portsmouth, LLC
2100 South Bridge Parkway, Suite 530
Birmingham, AL 35209

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

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

(c) Description of Applicants, including

(1) Business activities of Applicants

The business activities of Applicants are described in Part II(A) above. Accordingly, Applicants request waiver of the requirement to file Exhibit A.

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

The relevant energy affiliates of Buyer are described in Part II(A)(2) above. Because Seller will no longer own any interest in

²⁰ See Order No. 669 at P 169 (stating that such verifications may be accepted in lieu of any other explanation with respect to cross-subsidization and encumbrance concerns).

the Facility following the Transaction and Buyer's affiliates are all QFs exempt from the requirements of Section 205 of the FPA (as described above), Applicants request a waiver of the requirement to include any energy affiliates of Seller or Buyer in Exhibit B.

(3) Organizational charts

See Exhibit C-1 and Exhibit C-2 to this Application. Pursuant to 18 C.F.R. § 388.112, Applicants request confidential and privileged treatment of the non-redacted version of Exhibit C-2, as discussed in Part III above.

(4) Business agreements

See Exhibit D to this Application. The Transaction involves no jurisdictional arrangements among the parties apart from those described in Part II(B) above.

(5) Common officers or directors

There are no common officers or directors among Portsmouth, Seller and their affiliates, on the one hand, and Buyer and its affiliates, on the other hand. Therefore, Applicants request a waiver of the requirement to file Exhibit E.²¹

(6) Description of customers

See Exhibit F to this Application.

²¹ To the extent that any jurisdictional interlocking directorates result from the Transaction, the affected individuals will comply with any applicable filing requirements under 18 C.F.R. Part 45.

(d) Description of jurisdictional facilities

The jurisdictional facilities affected by the Transaction are described in Part II(C) above and Exhibit G.

(e) Narrative description of the Transaction

A description of the Transaction is set forth in Part II above, which includes identification of the parties, description of the jurisdictional facilities associated with or affected by the Transaction, and the effect of the Transaction on such jurisdictional facilities. Moreover, the consideration for the Transaction, as described in Exhibit I, is the result of arm's-length negotiations among the parties to the Transaction.

Accordingly, Applicants request a waiver of the requirement to file Exhibit H.

(f) Contracts related to the proposed Transaction

A copy of the PSA is attached as Exhibit I. Applicants commit that the Transaction will be consummated in a manner consistent with that described in the PSA and this Application. Pursuant to 18 C.F.R. § 388.112, Applicants request confidential and privileged treatment of Exhibit I, as discussed in Part III above. To the extent necessary, Applicants also request a waiver of the requirements of 18 C.F.R. § 33.2(f) as to other incidental contracts and written instruments that may be entered into by the parties, none of which will be inconsistent with the PSA or the description of the Transaction set forth in this Application.²²

²² See EIF Berkshire Holdings, LLC, 116 FERC ¶ 61,273 (2006).

(g) Consistency of the Transaction with the public interest

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

(h) Maps

The Transaction does not involve a merger or other combination of any public utilities with franchised service territories. The only physical jurisdictional facilities involved in the Transaction are limited and discrete interconnection facilities associated with the Facility. Accordingly, Applicants request a waiver of the requirement of section 33.2(h) of the Commission's regulations to file Exhibit K.

(i) Regulatory orders

Except for the Commission authorization requested herein and certain consents identified in the disclosure schedules to the PSA, Applicants are not required to obtain any other licenses, orders, or approvals from other regulatory bodies in connection with the Transaction.²³ Accordingly, Applicants request a waiver of the requirement to file Exhibit L.

(j) Cross-subsidization

Because the Transaction does not involve a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, there is no issue with respect to cross-subsidization. Statements supporting the fact that the Transaction will not result in cross-subsidization

²³ As indicated in the disclosure schedules to the PSA, Portsmouth must obtain certain permit consents and approvals related to the operation of the Facility for the Transaction.

of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company are provided in Exhibit M.

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

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

VII. VERIFICATIONS

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

VIII. CONCLUSION

For the reasons set forth above, Applicants request that the Commission: (i) issue an order approving the Transaction; (ii) grant the waivers requested herein; and (iii) grant Applicant's request for confidential treatment of Exhibit I and the non-redacted version of Exhibit C-2. Applicants respectfully request that the Commission grant expedited treatment to this Application and issue its order on or before March 14, 2016, so as to permit closing on the Transaction as soon as possible thereafter.

Respectfully submitted,

/s/ Jessica C. Friedman
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February 12, 2016

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Counsel for Virginia Renewable
Power – Portsmouth, LLC

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

Applicants have requested a waiver of the requirement to file

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

Exhibit C

Organizational Charts

Pre-Transaction Organizational Structure

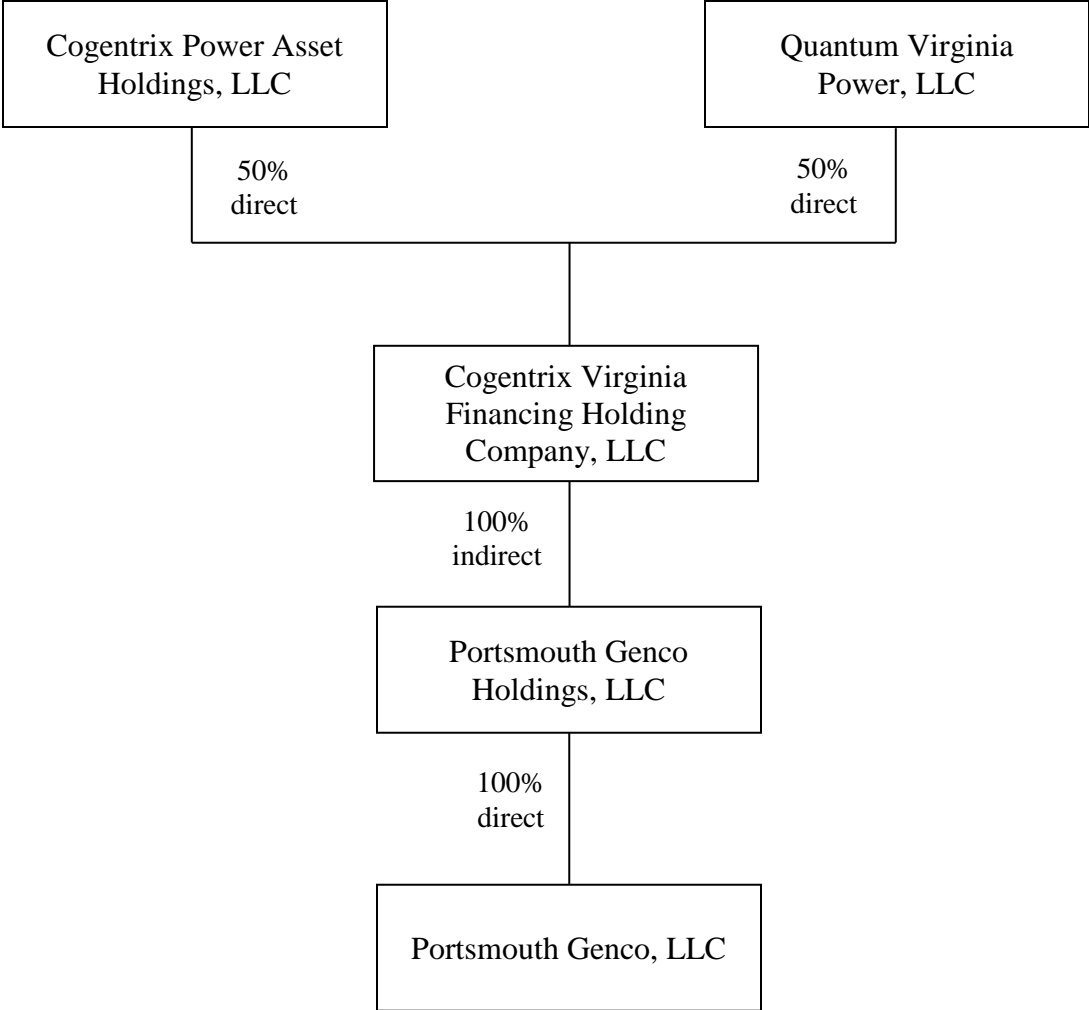


Exhibit C-2 – Public Version

Post-Closing Organizational Structure

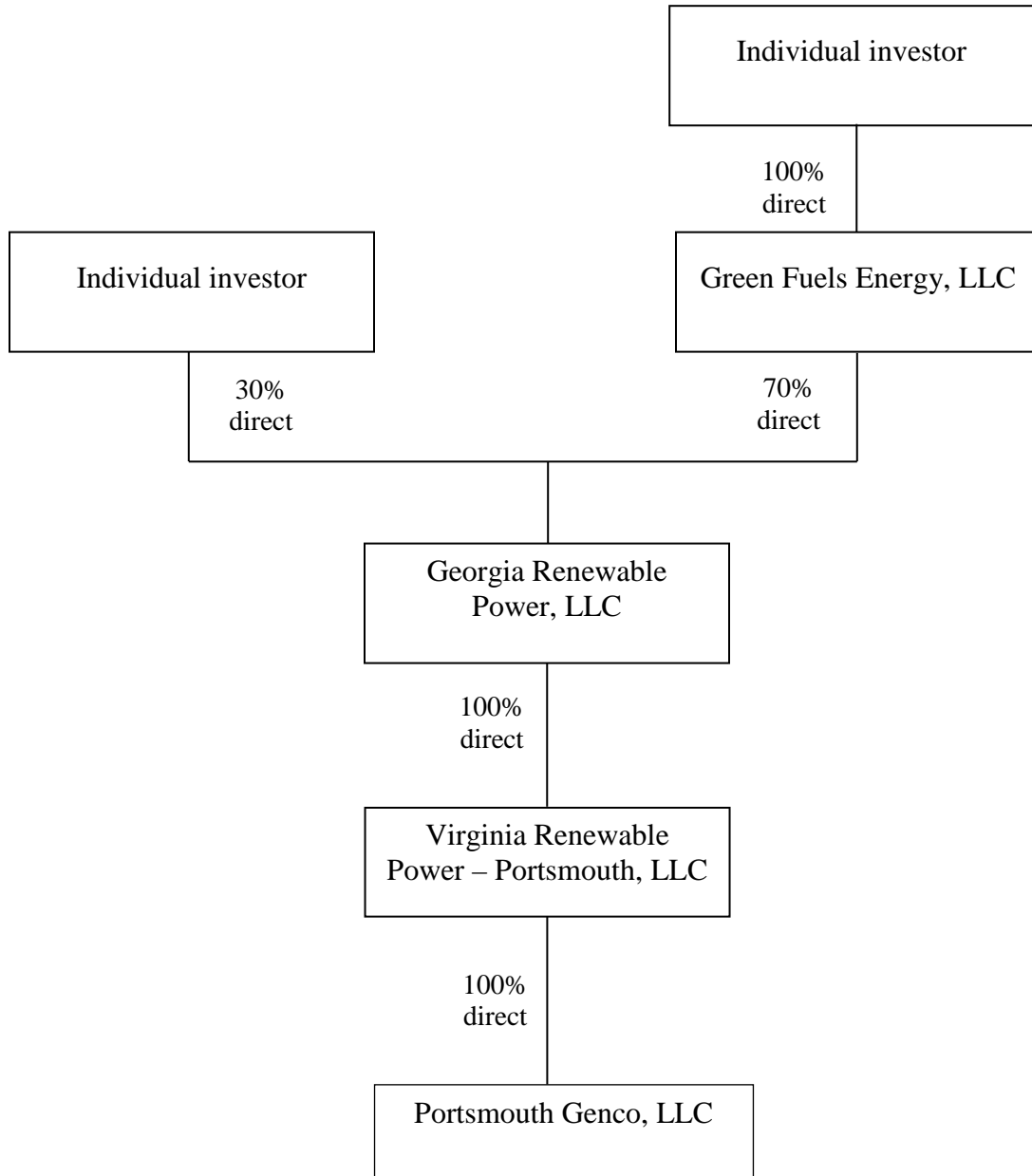


Exhibit D

Description of Business Agreements

The Transaction will involve no jurisdictional business arrangements apart from those described in this Application. In addition, the Transaction will involve no transmission facilities, apart from the disposition of limited and discrete interconnection facilities associated with the Facility. There are no strategic alliances, joint ventures, tolling arrangements, or other proposed business arrangements to which Applicants are parties to that are affected by the Transaction other than as described herein.

Exhibit F

Description of Customers

Any sales of energy, capacity, and ancillary services by Portsmouth are made pursuant to Portsmouth's market-based rate tariff on file with the Commission. None of Portsmouth, Buyer, or any of their parent companies, subsidiaries, affiliates, and associate companies owns a 10% or greater voting interest in or controls any transmission facilities in the United States, other than the limited and discrete equipment necessary to connect individual generating facilities to the transmission grid. Following approval and closing of the Transaction, Buyer will make any necessary filings with the Commission with respect to Portsmouth's market-based rate tariff on file with the Commission. The Transaction does not involve any transmission rates or transmission customers. Therefore, the Transaction will not affect any wholesale ratepayers or unbundled transmission service customers.

Exhibit G

Description of Jurisdictional Facilities

The jurisdictional facilities that will be affected by the Transaction consist of Portsmouth's market-based rate tariff and certain related agreements, various books and records, and the interconnection equipment associated with the Facility and the Facility's interconnection service agreement with PJM and Virginia Electric Power Company.

Exhibit I

Contracts Related to the Transaction

Confidential Exhibit

Confidential Information
Has Been Removed for Privileged Treatment

Exhibit M**Verifications on Cross-Subsidization**

Because none of the parties to the Transaction is a traditional public utility with captive ratepayers in the United States or that owns or provides transmission service over jurisdictional transmission facilities in the United States, there is no issue with respect to cross-subsidization. Pursuant to section 33.2(j)(1) of the Commission's regulations, Applicants provide assurances and verify, based on facts and circumstances known to Applicants or that are reasonably foreseeable, that the proposed Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including:

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

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Portsmouth Genco, LLC) Docket No. EC16-____-000
Virginia Renewable Power – Portsmouth, LLC)

VERIFICATION OF APPLICATION FOR AUTHORIZATION
FOR DISPOSITION OF JURISDICTIONAL FACILITIES

County of Mecklenburg)
State of North Carolina)

Jacob A. Pollack, being duly sworn, deposes and says: He is Senior Vice President and General Counsel of Cogentrix Energy Power Management, LLC and has the authority to verify the foregoing Application on behalf of Portsmouth Genco, LLC. He has read the Application and, to the best of his knowledge, information and belief, all of the statements contained therein with respect to Portsmouth Genco, LLC are true and accurate.

Jacob A. Pollack

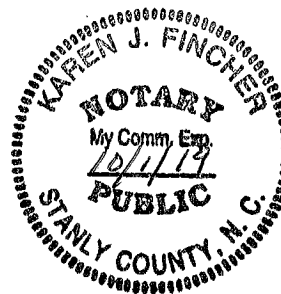
Jacob A. Pollack

Subscribed and sworn to before me on this 9th day of February, 2016.

Karen J. Fincher

Notary Public

My commission expires Oct. 1, 2019



UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Portsmouth Genco, LLC)
Virginia Renewable Power – Portsmouth, LLC) Docket No. EC16-____-000

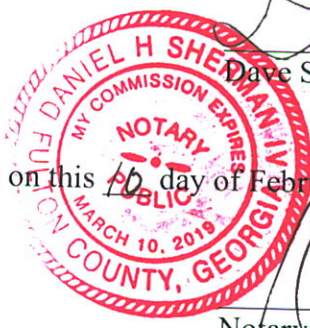
VERIFICATION OF APPLICATION FOR AUTHORIZATION
FOR DISPOSITION OF JURISDICTIONAL FACILITIES

County of Fulton)
State of Georgia)

Dave Shaffer, being duly sworn, deposes and says: He is President and Chief Executive Officer of Georgia Renewable Power, LLC and has the authority to verify the foregoing Application on behalf of Virginia Renewable Power – Portsmouth, LLC (Buyer). He has read the Application and, to the best of his knowledge, information and belief, all of the statements contained therein with respect to Buyer and its affiliates are true and accurate.

[Signature]
Dave Shaffer

Subscribed and sworn to before me on this 10 day of February, 2016.



[Signature]
Daniel H. Sherman IV
Notary Public

My commission expires MARCH 10, 2019

Attachment 2

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

Portsmouth Genco, LLC) **Docket No. EC16-____-000**
Virginia Renewable Power – Portsmouth, LLC)

PROTECTIVE AGREEMENT

This Protective Agreement (“Agreement”) is entered into this ____ day of _____, 2016 by and between _____ (“Applicant”) and _____ (“Intervenor”), and shall govern the use of all Protected Materials produced by Applicant to Intervenor, or vice versa, in connection with the proceeding before the Federal Energy Regulatory Commission (the “Commission”) in Docket No. EC16-____-____. Applicant and Intervenor are sometimes referred to herein individually as a “Party” or jointly as the “Parties.”

1. Applicant filed Protected Materials in the captioned Commission proceeding and Intervenor is a Participant in such proceeding, as the term Participant is defined in 18 C.F.R. § 382.102(b), or has filed a motion to intervene or a notice of intervention in such proceeding. Applicant and Intervenor enter into this Agreement in accordance with their respective rights and obligations set forth in 18 C.F.R. § 388.112(b)(2). Notwithstanding any order terminating such proceeding, this Agreement shall remain in effect until specifically modified or terminated by the Commission or court of competent jurisdiction.

2. This Agreement applies to the following two categories of Protected Materials: (A) a Party may designate as protected those materials which customarily are treated by that Party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Party or its customers to risk of competitive disadvantage or other business injury; and (B) a Party shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 C.F.R. § 388.113(c)(1) (“Critical Energy Infrastructure Information”).

3. Definitions – For purposes of this Order:

(a) (1) The term “Protected Materials” means (A) materials provided by a Party in association with this proceeding and designated by such Party as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials that are made subject to this Protective Order 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 Party 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 Party 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 or discloses materials described in Paragraph 3(a)(1). Notes of Protected Materials are subject to the same restrictions provided in this Agreement for Protected Materials except as specifically provided in this Agreement.

(3) Protected Materials shall not include (A) any information or document contained in the publicly available files of the Commission or of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Agreement, or (C) any information or document labeled as “Non-Internet Public” by a Party, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stats. & Regs. ¶ 31,140 (2003). Protected Materials do include any information or documents contained in the files of the Commission that have been designated as Critical Energy Infrastructure Information.

(b) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which Reviewing Representatives 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 Agreement, and that they have read the Agreement and agree to be bound by it. Each Party shall provide a copy of the Non-Disclosure Certificate(s) executed by its Reviewing Representative(s) to the other Party prior to such Reviewing Representative(s) receiving access to any Protected Materials.

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

- (1) an attorney retained by a Party for purposes of this proceeding;
- (2) attorneys, paralegals, and other employees associated for purposes of this proceeding with an attorney described in Paragraph (3)(c)(1);
- (3) an expert or an employee of an expert retained by a Party for the purpose of advising, preparing for or testifying in this proceeding;
- (4) a person designated as a Reviewing Representative by order of the Commission; or

(5) employees or other representatives of a Party with significant responsibility for matters involving this proceeding.

4. Protected Materials shall be made available under the terms of this Agreement only to Parties and only through their Reviewing Representative(s) as provided in Paragraphs 7–9.

5. Protected Materials shall remain available to a Party until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Party shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Party 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 Materials may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period the Party, if requested to do so, shall also submit to the producing Party 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 this Agreement.

6. All Protected Materials shall be maintained by the Party in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8–9.

7. Protected Materials shall be treated as confidential by the Party and its Reviewing Representative(s) 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 or the buying or selling of electric generation or transmission assets, the direct supervision of any employee or employees whose duties include the foregoing, the provision of consulting services to any person whose duties include the foregoing, or the direct supervision of any employee or employees whose duties include the foregoing, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Party or any competitor of any Party a commercial advantage.

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

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(c), 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 Agreement and the certification.

11. Subject to Paragraph 18, the Commission shall resolve any disputes arising under this Agreement. Prior to presenting any dispute under this Agreement to the Commission, the parties to the dispute shall use their best efforts to resolve it. If a Party contests the designation of materials as protected, it shall notify the Party that provided the Protected Materials by specifying in writing the materials whose designation is contested. This Agreement shall automatically cease to apply to such materials five (5) business days after the notification is made unless the Party, within said 5-day period, files a motion with the Commission, 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 Party seeking protection. If the Commission 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 Party as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Agreement unless a Party requests and obtains a determination from the Commission's Critical

Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. All copies of all documents reflecting Protected Materials, including the portion of any hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or by other appropriate means endorsed to the effect that they are protected pursuant to this Agreement. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Commission 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. Counsel for the producing Party shall, upon the request of a Party, provide 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 Party desires to include, utilize or refer to any Protected Materials or information derived therefrom in pleadings, testimony or exhibits to these proceedings in such a manner that might require disclosure of such material to persons other than Reviewing Representatives, such Party shall first notify both counsel for the disclosing Party and the Commission of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Materials will be governed by procedures determined by the Commission.

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

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

16. The Parties may amend this Agreement only by mutual consent and in writing; provided, however, that a Party has the right to seek changes to this Agreement as appropriate from the Commission.

17. All Protected Materials filed with the Commission 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 means bearing prominent markings indicating that the contents include Protected Materials subject to this Agreement. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information – Do Not Release."

18. If the Commission finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Agreement for three (3) business days from the date of issuance of the Commission’s decision, and if the Party seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. No Party waives its rights to seek additional administrative or judicial remedies after the Commission’s decision respecting Protected Materials or Reviewing Representatives, or the Commission’s denial of any appeal thereof. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests for Protected Materials in the files of the Commission under the Freedom of Information Act (5 U.S.C. § 552).

19. Nothing in this Agreement shall be deemed to preclude any Party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Agreement.

20. No Party 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 Agreement and shall be used only in connection with this proceeding. Any violation of this Agreement and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

IN WITNESS WHEREOF, the Parties each have caused this Protective Agreement to be signed by their respective duly authorized representatives as of the date first set forth above.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Representing Applicant

Representing Intervenor

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

Portsmouth Genco, LLC) **Docket No. EC16-____-000**
Virginia Renewable Power – Portsmouth, 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 Agreement dated _____ by and between [Applicant] and [Intervenor] concerning materials in Federal Energy Regulatory Commission Docket No. _____, 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 Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Name: _____

Title: _____

Representing: _____

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