

Applicant also requests limited waiver of the filing requirements set forth in Part 33 of the Commission's regulations to the extent the information required is not necessary to determine that the Transaction meets the statutory requirements of Section 203. Waiving these filing requirements under Part 33 is consistent with Commission precedent.⁵ In addition, Applicant requests that the Commission grant privileged or confidential treatment of the Equity Capital Contribution Agreement ("ECCA") set forth in Exhibit I pursuant to Sections 33.8(a) and 388.112 of the Commission's regulations⁶ and exemption from the mandatory public disclosure requirements of the Freedom of Information Act pursuant to Section 388.107(d) of the Commission's regulations.⁷ Finally, Applicant requests that the Commission establish a shortened comment period of 21 days and issue an order granting the requested authorizations and waivers as soon as possible, but in no event later than April 11, 2016.

I. COMMUNICATIONS

Applicant requests that all correspondence, pleadings and other communications concerning this filing be served upon the following individuals who should be included on the official service list in this proceeding:⁸

⁵ See, e.g., *MACH Gen, LLC*, 113 FERC ¶ 61,138 (2005); *Alfalfa Elec. Coop., Inc., et al.*, 105 FERC ¶ 61,311 (2003); *Destec Energy, Inc., et al.*, 79 FERC ¶ 61,373 (1997); *Nat'l Energy & Gas Transmission, Inc.*, 108 FERC ¶ 62,148 (2004); *Northbrook N.Y., LLC*, 130 FERC ¶ 62,128 (2010); *EBG Holdings LLC*, 119 FERC ¶ 62,172 (2007); *Boston Generating, LLC*, 113 FERC ¶ 61,109 (2005).

⁶ 18 C.F.R. §§ 33.8(a), 388.112.

⁷ *Id.* § 388.107.

⁸ To the extent necessary, Applicant respectfully requests waiver of Rule 203(b) of the Commission's regulations, 18 C.F.R. § 385.203(b)(3), so that a copy of any communications in this proceeding may be served on all persons listed above.

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II. REQUEST FOR EXPEDITIOUS CONSIDERATION PURSUANT TO SECTION 33.11 OF THE COMMISSION'S REGULATIONS

Applicant respectfully requests expeditious Commission consideration of this Application. Applicant submits that expedited review of this Application is warranted under Section 33.11 of the Commission's regulations, to the extent that the Application is not contested, because the Transaction does not involve a merger, is consistent with Commission precedent, and does not require an Appendix A analysis.⁹

III. REQUEST FOR CONFIDENTIAL TREATMENT

Applicant respectfully requests privileged and confidential treatment for Exhibit I to this Application because it contains commercially-sensitive information that is not publicly-available. Accordingly, Applicant is filing a privileged version of the Application that contains the confidential and privileged information set forth in Exhibit I, which is marked "NON-PUBLIC

⁹ See 18 C.F.R. § 33.11(b).

VERSION – CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS – DO NOT RELEASE PURSUANT TO 18 C.F.R. § 388.112’

and a public version of the Application with the confidential material redacted, marked

“PUBLIC VERSION – PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R.

§ 388.112.” The release of such information would likely cause substantial harm to the competitive position of Applicant, and would cause an impediment to future negotiations of similar transactions for Applicant and for other parties that might engage in similar transactions. In accordance with Section 33.8(a) of the Commission’s regulations, Applicant has included a draft protective order as Attachment 2 to this Application.

IV. DESCRIPTION OF APPLICANT AND ITS RELEVANT AFFILIATES

A. Astoria 2

Astoria 2 is developing and will own and operate an approximately 75 megawatt (“MW”) (nameplate) solar photovoltaic (“PV”) project and related interconnection facilities located in Kern County, California (“Astoria 2 Facility”). The Astoria 2 Facility will interconnect with the transmission system owned by Southern California Edison Company (“SCE”) within the balancing authority area (“BAA”) operated by the California Independent System Operator Corporation (“CAISO”), via a generation tie-line and related interconnection facilities (collectively, the “Astoria Shared Facilities”).¹⁰ Astoria 2 is an exempt wholesale generator (“EWG”)¹¹ with market-based rate authority.¹² Until December 31, 2021, all but ten MW of the

¹⁰ The Astoria Shared Facilities will be owned and shared among RE Astoria LLC (“Astoria”), Astoria 2, RE Garland LLC, RE Garland A LLC, and RE Gaskell West LLC pursuant to (i) a shared facilities agreement (“Astoria SFA”), and (ii) a Large Generator Interconnection Agreement Co-Tenancy Agreement (“Astoria CTA”) that have been filed with the Commission. See RE Astoria LLC, Filing of Shared Facilities Agreement, Docket No. ER16-765-000 (filed Jan. 27, 2016); RE Astoria LLC, Filing of LGIA Co-Tenancy Agreement, Docket No. ER16-764-000 (filed Jan. 27, 2016).

¹¹ See RE Astoria 2 LLC, Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG14-68-

output from the Astoria 2 Facility will be sold at wholesale within the CAISO BAA pursuant to power purchase agreements (“PPAs”), each lasting 20 years, with the Southern California Public Power Authority, the Power and Water Resources Pooling Authority, and the cities of Lodi, Corona, Morena Valley, and Rancho Cucamonga, California (the “Original PPA Parties”). The currently uncommitted ten MW will be sold in the CAISO markets or pursuant to a to-be-negotiated PPA. Commencing January 1, 2022, all of the output of the Astoria 2 Facility (including the currently uncommitted ten MW) will be sold to the Original PPA Parties until the end of the PPAs’ 20-year terms.

Astoria 2 is wholly owned by Astoria 2 Holdings, which is a wholly-owned subsidiary of RE Pioneer Holdings LLC (“Pioneer Holdings”). RE Holiday 2 Holdings LLC (“Holiday 2 Holdings”) owns all of the membership interests in Pioneer Holdings. Holiday 2 Holdings is a wholly-owned subsidiary of Recurrent Energy Development Holdings, LLC (“Development Holdings”). Recurrent Energy, LLC (“Recurrent”) owns all of the membership interests in Development Holdings. Each of Astoria 2, Astoria 2 Holdings, Pioneer Holdings, Holiday 2 Holdings, Development Holdings, and Recurrent is a Delaware limited liability company. Recurrent, which develops, owns, and manages utility scale solar projects throughout the United States, is a wholly-owned subsidiary of Canadian Solar Energy Acquisition Co., a wholly-owned subsidiary of Canadian Solar, Inc. (“Canadian Solar”), a Canadian corporation.

Canadian Solar is a publicly-traded company (NASDAQ: CSIQ), headquartered in Ontario, Canada. It has provided over 500 customers in more than 90 countries with more than 30 million PV modules over the past thirteen years. The company is a vertically-integrated provider of ingot, wafer, solar cell, solar module and other solar applications. In addition to the

000 (filed June 19, 2014); *Danskammer Energy, LLC, et al.*, Docket Nos. EG14-59-000, *et al.* (Sept. 11, 2014) (notice of effectiveness of EWG status).

¹² See *RE Astoria LLC, et al.*, Docket Nos. ER16-341-000, *et al.* (Dec. 22, 2015) (unpublished letter order).

generation and transmission that it owns and controls through its ownership of Recurrent, Canadian Solar is an indirect, minority owner of a number of qualifying small power production facilities (“QFs”), each of which is included in the attached Exhibit B-1.¹³ Except as identified in Exhibit B-1, and described herein, Canadian Solar does not own or control, directly or indirectly, any transmission facilities within the United States other than such facilities used for the interconnection of generation projects. To the extent that the manufacture of PV panels is considered to be an “input to electricity products,”¹⁴ Canadian Solar is one of many manufacturers in that highly competitive industry.¹⁵

Including development projects that are scheduled to achieve commercial operation within the next six months, Astoria 2’s affiliates own or control approximately 332 MW in the CAISO BAA and first-tier markets.¹⁶ All of Astoria 2’s jurisdictional power generation and other energy affiliates are identified in Exhibit B-1. Recurrent’s public utility affiliates located in the CAISO BAA or in first-tier markets thereto, are the following:

- *Astoria*. Astoria is developing, and will own and operate an approximately 100 MW (nameplate) solar PV project and related interconnection facilities located in Kern County, California (“Astoria Facility”). The Astoria Facility will interconnect with the SCE transmission system within the CAISO BAA via the Astoria Shared Facilities pursuant to the Astoria SFA and the Astoria CTA. Astoria is an EWG¹⁷ with market-

¹³ See *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, 80 Fed. Reg. 67,056 (Oct. 30, 2015), FERC Stats. & Regs. ¶ 31,374, at P 255 (2015).

¹⁴ 18 C.F.R. § 35.36 (defining “inputs to electric power production” as “intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development; physical coal supply sources and ownership of or control over who may access transportation of coal supplies”).

¹⁵ 18 C.F.R. § 33.4.

¹⁶ The Commission uses a seller’s BAA or the RTO/ISO market, as applicable, as the default relevant geographic market for the purposes of evaluating an application for market-based rate authority. See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 231, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff’d sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

¹⁷ See RE Astoria LLC, Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG14-67-000 (filed June 19, 2014); *Danskammer Energy, LLC, et al.*, Docket Nos. EG14-59-000, *et al.* (Sept. 11, 2014)

based rate authority.¹⁸ Initial synchronization of the Astoria Facility is scheduled to occur in March 2016. All of the output from the Astoria Facility will be sold at wholesale pursuant to a 15-year PPA with the Pacific Gas & Electric Company (“PG&E”).

- *Mustang*. RE Mustang LLC (“Mustang”) is developing, and will own and operate an approximately 30 MW (nameplate) solar PV project and related interconnection facilities located in Kings County, California (“Mustang Facility”). The Mustang Facility will interconnect with the PG&E transmission system within the CAISO BAA via a generation tie-line and related interconnection facilities (“Mustang Shared Facilities”) that will be owned and shared, as tenants in common, among Mustang, RE Mustang 3 LLC (“Mustang 3”), and RE Mustang 4 LLC (“Mustang 4”) pursuant to a shared facilities agreement (“Mustang SFA”) and a Large Generator Interconnection Agreement Co-Tenancy Agreement (“Mustang CTA”). Mustang is an EWG¹⁹ with market-based rate authority.²⁰ All of the output from the Mustang Facility will be sold at wholesale pursuant to a 20-year PPA with Sonoma Clean Power (“SCP”).
- *Mustang 3*. Mustang 3 is developing, and will own and operate an approximately 40 MW (nameplate) solar PV project and related interconnection facilities located in Kings County, California (“Mustang 3 Facility”). The Mustang 3 Facility will interconnect with the PG&E transmission system within the CAISO BAA via the Mustang Shared Facilities pursuant to the Mustang SFA and the Mustang CTA. Mustang 3 is an EWG²¹ with market-based rate authority.²² All of the output from the Mustang 3 Facility will be sold at wholesale pursuant to a 20-year PPA with SCP.
- *Mustang 4*. Mustang 4 is developing and will own and operate an approximately 30 MW (nameplate) solar PV project and related interconnection facilities located in Kings County, California (“Mustang 4 Facility”). The Mustang 4 Facility will interconnect with the PG&E transmission system within the CAISO BAA via the Mustang Shared Facilities pursuant to the Mustang SFA and the Mustang CTA. Mustang 4 is an EWG²³ with market-based rate authority.²⁴ All of the output from the Mustang 4 Facility will be sold at wholesale pursuant to a 20-year PPA with Marin Clean Energy.

(notice of effectiveness of EWG status).

¹⁸ See *RE Astoria LLC, et al.*, Docket Nos. ER16-341-000, *et al.* (Dec. 22, 2015) (unpublished letter order).

¹⁹ See RE Mustang LLC, Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG15-74-000 (filed Apr. 27, 2015); *Seville Solar One LLC, et al.*, Docket Nos. EG15-71-000, *et al.* (Aug. 7, 2015) (notice of effectiveness of EWG status).

²⁰ See *RE Mustang LLC, et al.*, Docket Nos. ER16-498-000, *et al.* (Feb. 17, 2016) (unpublished letter order).

²¹ See RE Mustang 3 LLC, Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG15-75-000 (filed Apr. 27, 2015); *Seville Solar One LLC, et al.*, Docket Nos. EG15-71-000, *et al.* (Aug. 7, 2015) (notice of effectiveness of EWG status).

²² See *RE Mustang LLC, et al.*, Docket Nos. ER16-498-000, *et al.* (Feb. 17, 2016) (unpublished letter order).

²³ See RE Mustang 4 LLC, Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG15-76-000 (filed Apr. 27, 2015); *Seville Solar One LLC, et al.*, Docket Nos. EG15-71-000, *et al.* (Aug. 7, 2015) (notice of effectiveness of EWG status).

²⁴ See *RE Mustang LLC, et al.*, Docket Nos. ER16-498-000, *et al.* (Feb. 17, 2016) (unpublished letter order).

- *Barren Ridge.* RE Barren Ridge 1 LLC (“Barren Ridge”) is developing and will own and operate an approximately 60 MW (nameplate) solar PV project and related interconnection facilities located in Kern County, California (“Barren Ridge Facility”). The Barren Ridge Facility will interconnect with the SCE distribution system within the BAA controlled by the Los Angeles Department of Water and Power (“LADWP”). Barren Ridge is an EWG²⁵ that has applied for market-based rate authority.²⁶ All of the output from the Barren Ridge Facility will be sold at wholesale pursuant to a 20-year PPA with LADWP.
- *Columbia.* RE Columbia LLC (“Columbia”) is a Delaware limited liability company that owns and operates an approximately eight mile generation tie-line (“Gen-Tie”) and related interconnection facilities (collectively, the “Columbia Shared Facilities”) in Kern County, California. Recurrent indirectly owns 35 percent of Columbia. Columbia is directly owned 45 percent by RE Camelot LLC (“Camelot”), 20 percent by RE Clearwater LLC (“Clearwater”), 20 percent by RE Yakima LLC (“Yakima”), and 15 percent by RE Columbia Two LLC (“Columbia Two”) (together, the “RE Project Companies”). Each of Clearwater and Yakima is a Delaware limited liability company that is indirectly and wholly owned by Recurrent. Each of Camelot and Columbia Two is a Delaware limited liability company that is wholly owned by Dominion Solar Holdings, Inc.²⁷ The RE Project Companies jointly own Columbia; however, Clearwater and Yakima are not affiliated with Camelot and Columbia Two. Columbia’s ownership and operation of the Columbia Shared Facilities is governed by a Shared Facilities Agreement (“Columbia SFA”) and the Amended and Restated CLGIA Co-Tenancy Agreement (“Columbia CTA”) by and among Columbia and the RE Project Companies, which have been filed with and accepted by the Commission.²⁸ Columbia owns and operates the Columbia Shared Facilities, including the Gen-Tie, which are used to interconnect generation owned by the RE Project Companies to the SCE transmission system via the Gen-Tie, pursuant to the Columbia SFA and Columbia CTA.
- *Exempt QFs.* Recurrent is affiliated with entities that own solar PV QFs, which, pursuant to Section 292.601 of the Commission’s regulations, are exempt from Sections 205 and 206 of the FPA (“Exempt QFs”). Within the CAISO BAA, and first tier markets thereto, the Exempt QFs control a combined capacity of 7.1 MW (nameplate), all of which is fully committed under long-term PPAs.

Except as described herein, neither Recurrent nor any of its affiliates owns or controls

²⁵ See RE Barren Ridge 1 LLC, Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG15-41-000 (filed Jan. 9, 2015); *Old Mill Solar, L.L.C., et al.*, Docket Nos. EG15-36-000, *et al.* (Apr. 8, 2015) (notice of effectiveness of EWG status); RE Barren Ridge 1 LLC, Amendment to Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG15-41-000 (filed Apr. 28, 2015).

²⁶ See RE Barren Ridge 1 LLC, *Application for Market-Based Rate Authority and Requests for Waivers and Blanket Authorizations*, Docket No. ER16-645-000 (filed Dec. 29, 2015).

²⁷ Dominion Solar Holdings, Inc. is a direct, wholly owned subsidiary of Dominion Energy, Inc., which is a direct, wholly-owned subsidiary of Dominion Resources, Inc. (“Dominion”). Applicant is not affiliated with any Dominion affiliate other than Columbia.

²⁸ See *Dominion Solar Gen-Tie, LLC, et al.*, 148 FERC ¶ 61,167 (2014) (accepting the Columbia SFA and the Columbia CTA and granting waiver of the Commission’s open access and standards of conduct requirements), *order on reh’g*, 152 FERC ¶ 61,014 (2015).

any generation assets within the relevant market or any transmission or inputs to electric power production in North America.²⁹ Recurrent controls sites in the CAISO market that have the cumulative potential for approximately 1,240 MW of generation.

B. EFS Renewables

EFS Renewables is a wholly-owned subsidiary of Aircraft Services Corporation (“ASC”). Through intermediate holding companies, ASC is a direct and indirect wholly-owned subsidiary of GE Capital U.S. Holdings, Inc., which is a wholly-owned subsidiary GE Capital Global Holdings, LLC, which is a wholly-owned subsidiary of General Electric Company (“GE”).³⁰ Through its subsidiaries, GE is a passive owner of, and investor in, a number of generating facilities in the United States. GE holds four types of passive ownership interests in generating facilities:

1. Lease interests, where a GE affiliate acts as a passive lessor in sale/leaseback arrangements;
2. Tax equity interests, which are a separate class of securities with only limited consent rights and rights to remove the general partner/managing member for cause under the applicable limited partnership agreement or LLC agreement;
3. Limited partnership or non-managing limited liability interests, where a GE affiliate holds majority interests in the investment, but has limited consent rights and rights to remove the general partner/managing member under the applicable limited partnership agreement or LLC agreement; and
4. Limited partnership or non-managing limited liability company interests, where a GE affiliate has a minority investment and the majority partner controls operation of the partnership or company.

In each case, the lessee, majority partner, or owner-manager is not a GE affiliate and has

²⁹ Subsidiaries and affiliates of Recurrent own and are developing generation facilities located within the Electric Reliability Council of Texas.

³⁰ The direct ownership chain between ASC and GE Capital U.S. Holdings, Inc. is as follows: ASC is owned 26.9% by Mongram Credit Services, LLC, 12.6% by EFS-L Inc., 35% by GE Capital US Holdings, Inc., 12.67% by Full Service Leasing Corp., and 12.67% by SFG XXVII Inc. Monogram Credit Services, LLC is owned 99% by Retailer Credit Services, Inc., and 1% by GE Capital US Holdings, Inc. Each of Retailer Credit Services, Inc., EFS-L Inc., Full Service Leasing Corp., and SFG XXVII Inc. is a wholly owned subsidiary of GE Capital US Holdings, Inc.

control over the management, operation, and maintenance of the facility and wholesale sales of its output. Where a GE affiliate is the legal or beneficial owner of the above-described jurisdictional facilities, it is the lessee or owner-manager, not the GE affiliate, that is a “public utility” subject to the Commission’s jurisdiction under the FPA.³¹

In addition to the interests described above, and as identified in the attached Exhibit B-2, GE affiliates also have non-passive interests in generating facilities in the U.S. In the CAISO market, which is the relevant market for the Transaction, affiliates of GE control generating facilities with a combined (nameplate) capacity of 809.7 MW. Inland Empire Energy Center, LLC owns and controls an 819 MW (nameplate) combined-cycle electric generating facility (“Inland Empire Facility”), and, GE affiliate Wind Energy Prototypes, LLC owns a 1.7 MW (nameplate) wind turbine (“WEP Facility”). Both the Inland Empire Facility and the WEP Facility interconnect with the SCE transmission system within the CAISO BAA.³²

In another region, GE is affiliated with Linden VFT, LLC (“Linden VFT”), which owns a merchant transmission facility (the “VFT Facility”) on a site within the Bayway Refinery in Linden, New Jersey.³³ The VFT Facility, consisting of three variable frequency transformers, connects the PJM Interconnection, L.L.C. (“PJM”) and New York Independent System Operator,

³¹ The Commission previously has recognized that such lease transactions constitute financing mechanisms and that the beneficial and legal owners of leased electric generating facilities in such instances play only a passive landlord role in the generation and sale of electric power. *See, e.g., EME Homer City Generation L.P.*, 97 FERC ¶ 61,110 (2001); *Baltimore Refuse Energy Sys. Co.*, 40 FERC ¶ 61,366 (1987); *Pac. Power & Light Co.*, 3 FERC ¶ 61,119 (1978).

³² An affiliate of GE holds a 25 percent interest in Russell City Energy Center, LLC (“Russell City”), which owns a 625 MW (nameplate) gas-fired generating facility, all of the output of which is committed to, and controlled by, PG&E, in the CAISO BAA, under a long-term tolling agreement. While Russell City is included in the GE asset appendix, Exhibit B-2, consistent with its market-based rate application, the Russell City generating facility is controlled by PG&E. *See Russell City Energy Company, LLC, Application for Market-Based Rate Authorization Under Section 205 of the Federal Power Act and Request for Waivers and Blanket Approvals*, Docket No. ER12-2261-000 (filed Jul. 18, 2012) (accepted by letter order dated Sept. 11, 2012). Also, Astoria has received authorization under Section 203 of the FPA for EFS Renewables to acquire a passive, non-controlling interest in RE Astoria Holdings LLC, which owns Astoria. *RE Astoria LLC*, 154 FERC ¶ 62,104 (2016). Because the interests that EFS Renewables will acquire are passive, Astoria will not be an “affiliate” of EFS Renewables.

³³ *Linden VFT, LLC*, 119 FERC ¶ 61,066, *order granting clarification*, 120 FERC ¶ 61,242 (2007).

Inc. (“NYISO”) service territories making use of certain transmission equipment owned by Cogen Technologies Linden Venture, L.P. (“Linden Venture”).³⁴ PJM has operational control of the VFT Facility, and transmission service over the VFT Facility is provided under the merchant transmission provisions of PJM’s Open Access Transmission Tariff (“OATT”).³⁵ All of the transmission capacity on the VFT Facility is committed to non-affiliated customers, except as purchased on the PJM Open Access Same-Time Information System (“OASIS”) pursuant to protocols established by PJM and NYISO.³⁶ Aside from GE’s interest in Linden VFT, neither GE nor any of its affiliates owns or controls any transmission facilities in the United States, other than the limited interconnection facilities required to connect individual generating facilities to the transmission grid. In addition, neither GE nor any of its affiliates is a public utility that has a franchised electric service territory in the United States.

Also, an affiliate of GE holds a 50% indirect interest in Southern Star Central Gas Pipeline, Inc. (“Southern Star”). Southern Star is an interstate natural gas pipeline and storage system which is regulated by the Commission under the Natural Gas Act. Finally, GE is affiliated with Berkshire Feedline Acquisition Limited Partnership, which owns a 6.2 mile gas distribution pipeline in Massachusetts that is used primarily to transport natural gas from the Tennessee Gas Pipeline to the Pittsfield Generating Company generating facility, which is owned by a third-party. The pipeline also is used to transport gas to Berkshire Gas Company for

³⁴ In addition to the three variable frequency transformers, the VFT Facility comprises a total of approximately 1,350 feet of 230 kV and 345 kV transmission cables between its interconnection point with PJM and its point of connection with the transmission facilities that Linden Venture constructed and operates to connect its generation units 1-5 to the transmission facilities of Consolidated Edison Company of New York, Inc. located in Staten Island, New York. *Id.* Until September 21, 2015, when GE sold its indirect ownership interest in Linden Venture, Linden Venture was affiliated with GE. See *Aircraft Services Corporation, et al.*, 152 FERC ¶ 62,191 (2015). A GE affiliate remains as asset manager of Linden Venture under the direction of the new ownership for a limited transition period.

³⁵ In accordance with the Commission’s order, transmission service on the VFT Facility is provided under the merchant transmission provisions of PJM’s OATT, and PJM has operational control over the VFT Facility. *Linden VFT, LLC*, 119 FERC ¶ 61,066 at P 18.

³⁶ Linden VFT has committed all of its transmission capacity to customers pursuant to a Commission-approved open season process.

distribution to Berkshire Gas Company's retail consumers.

V. DESCRIPTION OF THE TRANSACTION

The details of the Transaction are set forth in the ECCA attached as Exhibit I. Pursuant to the ECCA, the Transaction will involve two steps: (1) EFS Renewables will acquire 100 percent of the passive, non-controlling Class A membership interests in Astoria 2 Holdings, and (2) Pioneer Holdings will exchange or convert its existing membership interests in Astoria 2 Holdings for 100 % of Astoria Holdings' Class B membership interests. The Class A membership interests in Astoria 2 Holdings will provide EFS Renewables with consent and/or veto rights over certain major decisions necessary for EFS Renewables to protect its investment interests, but they will not entitle EFS Renewables to exercise day-to-day management, control or similar rights over Applicant or its jurisdictional facilities.³⁷

Pioneer Holdings, which will own all of the Class B membership interests, will be the managing member of Astoria 2 Holdings, and will therefore have the sole and full power and authority to control Applicant and its jurisdictional facilities. Accordingly, the Transaction will not result in a transfer of control over Applicant. Recurrent, through its wholly-owned subsidiary, will continue to be the only entity that controls Applicant's jurisdictional activities. Charts depicting the upstream ownership of Applicant before and after the Transaction are attached to this Application as Exhibit C-1 and Exhibit C-2.

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

³⁷ As described above, the passive, non-controlling Class A membership interests to be acquired by EFS Renewables are consistent with the passive, non-controlling tax equity interests addressed by the Commission in *AES Creative*. *Supra* note 3.

VI. THE COMMISSION SHOULD AUTHORIZE THE TRANSACTION UNDER SECTION 203 OF THE FPA

Section 203(a) of the FPA provides that the Commission will authorize a jurisdictional transaction if it is “consistent with the public interest.” As explained in Order No. 642 and the *Merger Policy Statement*,³⁸ the Commission examines three factors in determining whether a proposed transaction is consistent with the public interest: (i) its effect on competition, (ii) its effect on rates, and (iii) its effect on regulation. An applicant need not show that a transaction positively benefits the public interest, but rather that it is “consistent with the public interest, *i.e.*, that the transaction does not harm the public interest.”³⁹ Additionally, pursuant to the Energy Policy Act of 2005 and Order No. 669, the Commission determines whether a proposed transaction will result in a cross subsidization of a non-utility associate company or a pledge or encumbrance of utility assets for the benefit of an associate company and, if so, whether the cross-subsidizations, pledge or encumbrance is consistent with the public interest.⁴⁰ As demonstrated below, the Transaction is consistent with the public interest with respect to each of these factors and will not result in any cross-subsidization issues.

Applicant respectfully submits that the Commission should conclude, based on the showing below, that the Transaction is consistent with the public interest, because it will not have an adverse effect on competition, rates or regulation. Further, the Transaction will not result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance

³⁸ *Revised Filing Requirements Under Part 33 of the Commission’s Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) (“Order No. 642”), *reh’g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001); *Inquiry Concerning the Commission’s Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044, at 30,123 (1996) (“*Merger Policy Statement*”), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997)

³⁹ *See, e.g., Texas-New Mexico Power Co.*, 105 FERC ¶ 61,028, at P 23 and n.14 (2003) (citing *Pac. Power & Light Co. v. FPC*, 111 F.2d 1014, 1016-17 (9th Cir. 1940)).

⁴⁰ *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh’g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh’g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

of utility assets for the benefit of an associate company. Accordingly, the Transaction should be approved.

A. The Transaction Will Have No Adverse Effect On Competition

Order No. 642 identifies two types of analyses relevant to determining whether a transaction subject to Commission jurisdiction under Section 203 of the FPA will result in adverse effects on competition: a horizontal market analysis and a vertical market analysis. However, the Commission does not require the filing of a horizontal or vertical competitive screen analysis as described in Appendix A to the *Merger Policy Statement* and Sections 33.3 and 33.4 of the Commission's regulations if the applicant "[a]ffirmatively demonstrates that the merging entities do not currently conduct business in the same geographic markets or that the extent of the business transactions in the same geographic markets is *de minimis*["⁴¹ In addition, Section 33.4(a)(2)(i) of the Commission's regulations states that a vertical competitive analysis is not required if the applicant affirmatively demonstrates that "[t]he merging entities currently do not provide inputs to electricity products (*i.e.*, upstream relevant products) and electricity products (*i.e.*, downstream relevant products) in the same geographic markets or that the extent of the business transactions in the same geographic market is *de minimis*."⁴² Although the Transaction involves the transfer of upstream ownership interests in companies owning generation and limited interconnection facilities, rather than a merger, the same *de minimis* standard is applicable.⁴³

As explained above, the Astoria 2 Facility will be interconnected to the SCE transmission system, which is within the CAISO BAA, the relevant market for the Transaction. As

⁴¹ 18 C.F.R. § 33.3(a)(2)(i).

⁴² *Id.* § 33.4(a)(2)(i).

⁴³ *See, e.g., Bridgeport Energy LLC*, 114 FERC ¶ 62,166 (2006) (approving upstream transfer of jurisdictional facilities even though the parties did not file a horizontal competitive screen analysis because the parties held only a *de minimis* interest in the relevant market).

demonstrated below, the Transaction will not affect horizontal or vertical market power in the relevant market.

1. The Transaction Raises No Horizontal Market Power Concerns

Applicant requests that the Commission authorize the Transaction without requiring the filing of a horizontal competitive screen analysis, as set forth in Appendix A to the *Merger Policy Statement*. The Commission previously has found no adverse effect on competition when a proposed transaction involves a change in upstream ownership of a facility where the output of the facility is fully committed under long-term agreements.⁴⁴ As described above, all but ten MW of the electrical output of the Astoria 2 Facility is committed to unaffiliated purchasers under long-term (20-year) PPAs, and the uncommitted ten MW is committed pursuant to the same PPAs beginning January 1, 2022. Since the installed capacity in the CAISO BAA is 54,044 MW,⁴⁵ the uncommitted ten MW of capacity represents a market share of 0.0002 (two one hundredths of one percent), which clearly falls within the Commission's *de minimis* standard.

As a result, the Transaction will not cause any perceptible change to market concentration in the relevant market, and the Commission can approve the proposed Transaction without a horizontal competitive screen analysis.

2. The Transaction Raises No Vertical Market Power Concerns

No vertical market power concentration analysis is required for the Commission to conclude that the Transaction presents no vertical market power concerns. As explained above,

⁴⁴ See *Nevada Sun-Peak Ltd. P'ship*, 97 FERC ¶ 62,017 (2001) (finding no adverse effect on competition when the output of a generating facility is fully committed under long-term agreements); *American Ref-Fuel Co. of Essex Cnty.*, 94 FERC ¶ 62,113 (2001) (same); *Morgan Stanley Capital Grp. Inc.*, 69 FERC ¶ 61,175 (1994) (citing *Enron Power Mktg., Inc.*, 65 FERC ¶ 61,305 (1993)) (finding committed power does not confer generation market power upon an applicant for market-based rate authority).

⁴⁵ See California Independent System Operator Corp., 2015 Summer Loads & Resources Assessment (May 7, 2015) available at <http://www.caiso.com/Documents/2015SummerAssessment.pdf>.

the Astoria 2 Facility will be interconnected to the SCE distribution system, which interconnects with the SCE transmission system, in the CAISO BAA. Neither Applicant nor any of its affiliates owns or controls transmission or distribution facilities in any market (other than limited interconnection facilities necessary to interconnect generation projects to the grid). Further, as a result of the Transaction, Applicant will not become affiliated with any entity or person that owns or controls intrastate gas pipelines or gas distribution facilities or companies or other inputs to power production in the CAISO BAA, which is the relevant market. As noted above, EFS Renewables is affiliated with Linden VFT, which owns a merchant transmission facility that is subject to operational control by PJM. However, EFS Renewables is not affiliated with any company that owns transmission assets in the CAISO market, other than limited interconnection facilities necessary to interconnect generation projects to the grid. Therefore, the Transaction raises no vertical market power concerns in the relevant market.

B. The Transaction Will Have 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."⁴⁶ In the *Merger Policy Statement*, the Commission made clear that its concern with the effect of a proposed transaction on rates is to protect ratepayers from rate increases resulting from a proposed disposition of jurisdictional assets. In evaluating a proposed transaction's effect on rates, the Commission examines whether it will have any adverse impacts on wholesale transmission service rates or on the rates charged to long-term requirements customers.

The Applicant has no captive wholesale requirements customers. The proposed Transaction does not involve any transmission rates or transmission customers. Both before and

⁴⁶ *New England Power Co.*, 82 FERC ¶ 61,179, at 61,659, *order on reh'g*, 83 FERC ¶ 61,275 (1998); *see* Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,914.

after the Transaction is consummated, all wholesale sales of electric energy, capacity and ancillary services by Applicant will be made pursuant to its market-based rate tariff on file with the Commission. The rates that will be charged under the market-based tariff – namely the rates, terms and conditions set forth in Applicant’s long-term PPAs – will not change as a result of the proposed Transaction. The Commission has established that market-based wholesale power sales do not raise concerns about a transaction’s possible adverse effect on rates.⁴⁷ Moreover, Applicant has no captive wholesale customers. Accordingly, the proposed Transaction will not have an adverse effect on wholesale ratepayers or transmission customers.

C. The Transaction Will Have No Adverse Effect On Regulation

The Commission’s review of a jurisdictional transaction’s effect on state or federal regulation is focused on ensuring that the transaction does not result in a regulatory gap.⁴⁸ The Transaction will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate Applicant. Upon completion of the Transaction, Applicant will continue to be subject to the jurisdiction of the Commission (and any other regulatory agency or office) to the same extent as before the Transaction. Accordingly, the Commission should conclude that the Transaction will not have an adverse effect on regulation.

D. The Transaction Will Not Result In Any Cross-Subsidization

The Transaction does not pose a risk of cross-subsidization and does not pledge or otherwise encumber utility assets. Under Section 203(a)(4) of the FPA⁴⁹ and Section 2.26(f) of its regulations,⁵⁰ the Commission considers whether a Transaction will result in a cross-subsidization of a non-utility associate company by a utility company, or in a pledge or

⁴⁷ See, e.g., *NorAm Energy Services, Inc.*, 80 FERC ¶ 61,120, at 61,382-83 (1997).

⁴⁸ *Merger Policy Statement*, FERC Stats. & Regs. ¶ 31,044 at 30,124-25.

⁴⁹ 16 U.S.C. § 824b(a)(4) (2012).

⁵⁰ 18 C.F.R. § 2.26(f).

encumbrance of utility assets for the benefit of an associate company. In the *Supplemental Policy Statement*, the Commission established “safe harbors” for three classes of transactions that are unlikely to raise the cross-subsidization concerns described in the Order No. 669 rulemaking proceeding.⁵¹ The first such “safe harbor” relates to transactions that do not involve a franchised public utility with captive customers. The Commission reasoned that “[i]f no captive customers are involved, then there is no potential for harm to customers.”⁵² If a transaction satisfies the conditions of this “safe harbor,” the applicant is not required to provide a detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization.

The Transaction does not involve a franchised public utility with captive customers. Accordingly, the Transaction falls within the safe harbor for transactions that do not involve a franchised public utility because the Transaction will be among entities that are franchised public utilities. In such cases, the Commission has found that there is no potential for harm to customers and, therefore, detailed explanation and evidentiary support to comply with Exhibit M is not required.⁵³ Nevertheless, Applicant provides in Exhibit M attached hereto, representations that, based on the facts and circumstances known to Applicant or that are reasonably foreseeable, the 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.

VII. INFORMATION AND EXHIBITS REQUIRED BY SECTION 33.2 OF THE COMMISSION’S REGULATIONS

In accordance with Section 33.2 of the Commission’s regulations, Applicant provides the following information:

⁵¹ See *Supplemental Policy Statement*, 120 FERC ¶ 61,060 at P 16.

⁵² *Id.* at P 17 (footnote omitted).

⁵³ *Id.* at P 14, 15.

A. Names And Principal Business Offices Of Applicant

RE Astoria 2 LLC
c/o Recurrent Energy, LLC
300 California Street, 7th Floor
San Francisco, CA 94104

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 Section I above.

C. Description Of Applicant

1. Business Activities Of Applicant

The business activities of the Applicant are described in Section IV above. To the extent otherwise deemed necessary, Applicant requests a waiver of the requirement to file Exhibit A.

2. Energy Subsidiaries And Energy Affiliates And Their Business Activities

Applicant does not have any subsidiaries. Descriptions of Applicant and its relevant affiliates are provided in Section IV of this Application and in Exhibit B-1. A description of EFS Renewables and its relevant subsidiaries and affiliates is provided in Section IV of this Application and in Exhibit B-2. Applicant requests waiver, to the extent such waiver is deemed necessary, of the requirement to provide additional information relating to the energy affiliates and subsidiaries of EFS Renewables because such information is not relevant to the Commission's evaluation of the proposed Transaction.

3. Organizational Charts Depicting Current And Proposed Post-Transaction Structures

Exhibit C-1 and Exhibit C-2, respectively, set forth organizational charts depicting Applicant's current and post-Transaction ownership structure. Applicant respectfully requests waiver to the extent additional detail is required because such information is not relevant to the

Transaction or this Application.

4. Business Agreements

Applicant requests waiver of the requirement to file an Exhibit D because the proposed Transaction will not affect any of the Applicant's business interests. The proposed Transaction does not establish (and by its terms expressly disclaims) the creation of any joint venture, strategic alliance, tolling agreement or other continuing business arrangement. All pre-existing contracts, joint ventures or strategic alliances entered into by Applicant will be honored after consummation of the proposed Transaction, in accordance with their terms.

5. Common Officers Or Directors

There are no common officers or directors among (i) Applicant or its affiliates and (ii) EFS Renewables or its affiliates. Any interlocking officer or director positions created as a result of or following the Transaction will be reported to the Commission to the extent required by, and consistent with, the Commission's rules implementing FPA Section 305. Therefore, Applicant requests a waiver of the requirement to file Exhibit E.⁵⁴

6. Wholesale Power Sales And Transmission Customers

Relevant information about the Applicant's wholesale power sales and rate schedules is provided in Section IV. Additional information would not assist the Commission in its evaluation of the Transaction. Applicant, therefore, respectfully requests a waiver to the extent additional information would be required by 18 C.F.R. § 33.2(c)(6), and of the requirement to provide an Exhibit F.

⁵⁴ To the extent that any jurisdictional interlocking directorates may 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 Owned, Operated Or Controlled By The Applicant Or Its Parent Company, Subsidiaries, Affiliates and Associate Companies

See Section IV. The FPA-jurisdictional facilities consist of Applicant's market-based rate tariff, wholesale power sales agreements, the interconnection facilities used to effectuate wholesale power sales, and/or related books and records.⁵⁵ Applicant respectfully requests waiver of the requirement to provide further information regarding jurisdictional facilities owned, operated or controlled by any of Applicant's affiliates because such information is not relevant to the Commission's evaluation of the Transaction. In addition, to the extent otherwise deemed necessary, Applicant respectfully requests waiver of any requirement to submit this or any additional information as a separate Exhibit G.

E. Narrative Description Of The Transaction

The description of the Transaction is set forth in Section V 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, to the extent otherwise deemed necessary, Applicant requests a waiver of the requirement to file Exhibit H.

F. Contracts Related To The Transaction

A copy of the ECCA is attached as Exhibit I. Pursuant to 18 C.F.R. § 388.112, Applicant requests confidential and privileged treatment of Exhibit I, as discussed in Section III above. This document contains commercially-sensitive terms and conditions, the disclosure of which could have a material adverse effect on the parties to those agreements, and adversely affect their

⁵⁵ Applicant's FPA-jurisdictional facilities will include the Astoria SFA and the Astoria CTA upon their respective filing with and acceptance for filing by the Commission.

ability to negotiate similar transactions in the future. As required by Section 33.8(a) of the Commission's regulations, 18 C.F.R. § 33.8(a), Applicant has included a draft protective order, which is based on the Commission's model protective order, in Attachment 2 hereto under which the ECCA would be designated as protected material subject to the provisions of the protective order. To the extent necessary, Applicant also requests 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 ECCA contained in Exhibit I or the description of the Transaction set forth in this Application.⁵⁶

Applicant designates the following person as the individual to be contacted regarding the request for confidential treatment and access to documents subject to the protective order:

Adam Wenner
 Orrick, Herrington & Sutcliffe LLP
 1152 15th Street, N.W.
 Washington, D.C. 20005
 Tel: (202) 339-8400
 Fax: (202) 339-8500
 awenner@orrick.com

G. Consistency Of The Transaction With The Public Interest

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

H. Maps

No physical jurisdictional facilities will be conveyed in the proposed Transaction. Accordingly, Applicant requests a waiver of the requirement to file Exhibit K.

I. Regulatory Orders

Applicant is not required to obtain any other licenses, orders, or approvals from other

⁵⁶ See *EIF Berkshire Holdings, LLC*, 116 FERC ¶ 61,273 (2006).

regulatory bodies in connection with the Transaction. Accordingly, Applicant requests a waiver of the requirement to file Exhibit L.

J. Cross-Subsidization

Statements supporting the fact that the Transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company are provided in Section VI.D, *supra*, and in Exhibit M, attached hereto.

VIII. ACCOUNTING TREATMENT

Applicant respectfully requests waiver of the requirement to submit proposed accounting entries related to the proposed Transaction pursuant to 18 C.F.R. § 33.5. Astoria 2 has been granted a waiver of compliance with the Commission's Uniform System of Accounts. As described above, the proposed Transaction will have no impact on the Commission-jurisdictional accounts of any public utility. Accordingly, Section 33.5 of the Commission's regulations is not applicable to this Application.

IX. 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.

X. CONCLUSION

For the reasons set forth above, Applicant requests that the Commission: (i) issue an order authorizing the Transaction; (ii) grant the waivers requested herein; and (iii) grant Applicant's request for confidential treatment of Exhibit I. Applicant also respectfully requests that the Commission grant expeditious consideration of this Application, including a shortened comment period of 21 days, and an order granting the authorizations and waivers requested herein as soon as possible, but in no event later than April 11, 2016.

Respectfully submitted,

/s/ Adam Wenner
Adam Wenner
A. Cory Lankford
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clankford@orrick.com

Counsel for RE Astoria 2 LLC

Dated: February 24, 2016

EXHIBITS

EXHIBIT B-1

Energy Affiliates of Recurrent Energy, LLC

Recurrent Energy, LLC

Asset Appendix: Generation Assets

[A]	[B]	[C]	[D]	[E]	[F]	[G] Location [H]		[I]	[J]	[K]	[L]	[M]
Filing Entity and its Energy Affiliates	Docket # where MBR authority was granted	Generation Name (Plant or Unit Name)	Owned By	Controlled By	Date Control Transferred	Market / Balancing Authority Area	Geographic Region	In-Service Date	Capacity Rating: Nameplate (MW)	Capacity Rating: Used in Filing (MW)	Capacity Rating: Methodology Used in [K]: (N)ameplate, (S)easonal, 5-yr (U)nit, 5-yr (E)IA, (A)lternative	End Note Number (Enter text in End Note Tab)
RE Mustang LLC	ER16-498-000	Mustang	RE Mustang LLC	RE Mustang LLC	N/A	CAISO	Southwest	06/30/16 scheduled	30.0	30.0	N	
RE Mustang 3 LLC	ER16-499-000	Mustang 3	RE Mustang 3 LLC	RE Mustang 3 LLC	N/A	CAISO	Southwest	06/30/16 scheduled	40.0	40.0	N	
RE Mustang 4 LLC	ER16-500-000	Mustang 4	RE Mustang 4 LLC	RE Mustang 4 LLC	N/A	CAISO	Southwest	06/30/16 scheduled	30.0	30.0	N	
RE Astoria LLC	ER16-341-000	Astoria	RE Astoria LLC	RE Astoria LLC	N/A	CAISO	Southwest	08/31/16 scheduled	100.0	100.0	N	
RE Astoria 2 LLC	ER16-343-000	Astoria 2	RE Astoria 2 LLC	RE Astoria 2 LLC	N/A	CAISO	Southwest	08/31/16 scheduled	75.0	75.0	N	
RE Barren Ridge 1 LLC	ER16-645-000 (pending)	Barren Ridge	RE Barren Ridge 1 LLC	RE Barren Ridge 1 LLC	N/A	LADWP	Southwest	06/14/16 scheduled	60.0	60.0	N	

Recurrent Energy, LLC

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RE Cranbury Solar 1, LLC	QF11-485-000	RE Cranbury Solar 1, LLC	RE Cranbury Holdings LLC	RE Cranbury Holdings LLC	N/A	PJM	Northeast	01/31/12	5.0	5.0	N	
RE-PRI, LLC	QF10-411-000	RE-PRI, LLC	RE Blocker LLC	RE Blocker LLC	N/A	CAISO	Southwest	03/31/09	0.2	0.2	N	
RE-VFO, LLC	QF10-413-000	RE-VFO, LLC	RE Blocker LLC	RE Blocker LLC	N/A	CAISO	Southwest	04/30/09	1.0	1.0	N	
RE-SDS, LLC	QF10-412-000	RE-SD, LLC	RE Blocker LLC	RE Blocker LLC	N/A	CAISO	Southwest	03/28/09	0.4	0.4	N	
RE Mohican, LLC	QF10-619-000	RE Mohican, LLC	RE Holdco CK 1 LLC	RE Holdco CK 1 LLC	N/A	CAISO	Southwest	09/01/10	1.0	1.0	N	
RE Santa Clara LLC	QF11-53-000	RE Santa Clara LLC	REK Holdings LLC	REK Holdings LLC	N/A	CAISO	Southwest	11/18/10	0.8	0.8	N	

Recurrent Energy, LLC

Asset Appendix: Generation Assets

[A]	[B]	[C]	[D]	[E]	[F]	[G] [H] Location		[I]	[J]	[K]	[L]	[M]
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RE Lancaster LLC	QF11-67-000	RE Lancaster LLC	RE Holdco CK 1 LLC	RE Holdco CK 1 LLC	N/A	CAISO	Southwest	12/31/10	0.8	0.8	N	
RE La Mesa LLC	QF11-157-000	RE La Mesa LLC	REK Holdings LLC	REK Holdings LLC	N/A	CAISO	Southwest	03/15/11	0.8	0.8	N	
RE Vallejo LLC	QF11-165-000	RE Vallejo LLC	RE Holdco CK 1 LLC	RE Holdco CK 1 LLC	N/A	CAISO	Southwest	03/22/11	0.3	0.3	N	
RE Vallejo 2 LLC	QF11-164-000	RE Vallejo 2 LLC	REK Holdings LLC	REK Holdings LLC	N/A	CAISO	Southwest	03/22/11	0.7	0.7	N	
Strata Roof 1, LLC	QF14-313-000	Strata Roof 1, LLC	Strata Roof 1, LLC	Strata Roof 1, LLC	N/A	SMUD/BANC	Southwest	06/01/13	1.1	1.1	N	
Market Farm, LLC	QF13-494-000	Market Farm, LLC	Market Farm, LLC	Market Farm, LLC	N/A	Duke/Progress	Southeast	12/01/14	6.0	6.0	N	
Marshville Farm, LLC	QF12-315-000	Marshville Farm, LLC	Marshville Farm, LLC	Marshville Farm, LLC	N/A	Duke/Progress	Southeast	10/01/14	6.0	6.0	N	

Recurrent Energy, LLC

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Oakboro Farm, LLC	QF13-457-000	Oakboro Farm, LLC	Oakboro Farm, LLC	Oakboro Farm, LLC	N/A	Duke/Progress	Southeast	09/01/14	6.0	6.0	N	
Vickers Farm, LLC	QF12-284-000	Vickers Farm, LLC	Vickers Farm, LLC	Vickers Farm, LLC	N/A	Duke/Progress	Southeast	08/01/14	3.0	3.0	N	
Mile Farm, LLC	QF12-372-000	Mile Farm, LLC	Mile Farm, LLC	Mile Farm, LLC	N/A	Duke/Progress	Southeast	06/01/14	6.0	6.0	N	
New Bern Farm, LLC	QF12-384-000	New Bern Farm, LLC	New Bern Farm, LLC	New Bern Farm, LLC	N/A	Duke/Progress	Southeast	04/01/14	6.0	6.0	N	
Sigmon Catawba Farm, LLC	QF13-462-000	Sigmon Catawba Farm, LLC	Sigmon Catawba Farm, LLC	Sigmon Catawba Farm, LLC	N/A	Duke/Progress	Southeast	04/01/14	6.0	6.0	N	
Roxboro Farm, LLC	QF12-373-000	Roxboro Farm, LLC	Roxboro Farm, LLC	Roxboro Farm, LLC	N/A	Duke/Progress	Southeast	03/01/14	6.0	6.0	N	

Recurrent Energy, LLC

Asset Appendix: Generation Assets

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Daniel Farm, LLC	QF13-11-000	Daniel Farm, LLC	Daniel Farm, LLC	Daniel Farm, LLC	N/A	Duke/Progress	Southeast	03/01/14	6.0	6.0	N	
Haynes Farm, LLC	QF12-305-000	Haynes Farm, LLC	Haynes Farm, LLC	Haynes Farm, LLC	N/A	Duke/Progress	Southeast	10/01/13	6.0	6.0	N	
Yanceyvill e Farm, LLC	QF12-395-000	Yanceyville Farm, LLC	Yanceyville Farm, LLC	Yanceyville Farm, LLC	N/A	Duke/Progress	Southeast	10/01/13	6.0	6.0	N	
Monroe Moore Farm, LLC	QF14-715-000	Moore Farm, LLC	Moore Farm, LLC	Moore Farm, LLC	N/A	Duke/Progress	Southeast	10/01/13	6.0	6.0	N	
Moorings Farm, LLC	QF12-397-000	Moorings Farm, LLC	Moorings Farm, LLC	Moorings Farm, LLC	N/A	Duke/Progress	Southeast	09/01/13	6.0	6.0	N	
White Cross Farm, LLC	QF12-200-000	White Cross Farm, LLC	White Cross Farm, LLC	White Cross Farm, LLC	N/A	Duke/Progress	Southeast	09/01/13	6.0	6.0	N	

Recurrent Energy, LLC

Asset Appendix: Generation Assets

[A]	[B]	[C]	[D]	[E]	[F]	[G] [H] Location		[I]	[J]	[K]	[L]	[M]
Filing Entity and its Energy Affiliates	Docket # where MBR authority was granted	Generation Name (Plant or Unit Name)	Owned By	Controlled By	Date Control Transferred	Market / Balancing Authority Area	Geographic Region	In-Service Date	Capacity Rating: Nameplate (MW)	Capacity Rating: Used in Filing (MW)	Capacity Rating: Methodology Used in [K]: (N)ameplate, (S)easonal, 5-yr (U)nit, 5-yr (E)IA, (A)lternative	End Note Number (Enter text in End Note Tab)
Lenoir Farm, LLC	QF12-402-000	Lenoir Farm, LLC	Lenoir Farm, LLC	Lenoir Farm, LLC	N/A	Duke/Progress	Southeast	07/01/13	6.0	6.0	N	
Lenoir Farm 2, LLC	QF12-403-000	Lenoir Farm 2, LLC	Lenoir Farm 2, LLC	Lenoir Farm 2, LLC	N/A	Duke/Progress	Southeast	07/01/13	6.5	6.5	N	
Fuquay Farm, LLC	QF12-170-000	Fuquay Farm, LLC	Fuquay Farm, LLC	Fuquay Farm, LLC	N/A	Duke/Progress	Southeast	03/01/13	6.4	6.4	N	
Wilson Farm 1, LLC	QF12-400-000	Wilson Farm 1, LLC	Wilson Farm 1, LLC	Wilson Farm 1, LLC	N/A	Duke/Progress	Southeast	07/01/13	6.5	6.5	N	
Berkley East Solar, LLC	QF13-391-000	Berkley East Solar, LLC	Berkley East Solar, LLC	Berkley East Solar, LLC	N/A	ISO-NE	Northeast	08/18/13	4.0	4.0	N	
Sterling Solar LLC	QF13-363-000	Sterling Solar LLC	Sterling Solar LLC	Sterling Solar LLC	N/A	ISO-NE	Northeast	05/01/13	2.4	2.4	N	

Recurrent Energy, LLC

Asset Appendix: Generation Assets

[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]	[J]	[K]	[L]	[M]
Filing Entity and its Energy Affiliates	Docket # where MBR authority was granted	Generation Name (Plant or Unit Name)	Owned By	Controlled By	Date Control Transferred	Location		In-Service Date	Capacity Rating: Nameplate (MW)	Capacity Rating: Used in Filing (MW)	Capacity Rating: Methodology Used in [K]: (N)ameplate, (S)easonal, 5-yr (U)nit, 5-yr (E)IA, (A)lternative	End Note Number (Enter text in End Note Tab)
						Market / Balancing Authority Area	Geographic Region					
Hunt Farm Solar, LLC	QF16-95-000; QF16-96-000	Hunt Farm, LLC	Hunt Farm, LLC	Hunt Farm, LLC	N/A	ISO-NE	Northeast	09/01/13	4.0	4.0	N	
SH Solarne2, LLC	N/A	SH Solarne2, LLC	SH Solarne2, LLC	SH Solarne2, LLC	N/A	ISO-NE	Northeast	N/A	N/A	N/A	N/A	
SE Solarne2 LLC	N/A	SE Solarne2 LLC	SE Solarne2 LLC	SE Solarne2 LLC	N/A	ISO-NE	Northeast	N/A	N/A	N/A	N/A	
SH Solarne7, LLC	N/A	SH Solarne7, LLC	SH Solarne7, LLC	SH Solarne7, LLC	N/A	ISO-NE	Northeast	N/A	N/A	N/A	N/A	

Recurrent Energy, LLC

Asset Appendix: End Notes

End Notes for Entries in the Generation, Long-term PPA and Transmission Lists

[A] End Note Number	[B] List (Generation, PPA or Transmission)	[C] Explanatory Note
1	Transmission	RE Columbia, LLC was granted waiver of the requirement to file an OATT in Docket No. ER14-2420-000.

EXHIBIT B-2

Energy Affiliates of General Electric Company

GE Companies

Asset Appendix: Generation Assets

[A]	[B]	[C]	[D]	[E]	[F]	[G] [H] Location		[I]	[J]	[K]	[L]	[M]
Filing Entity and its Energy Affiliates	Docket # where MBR authority was granted	Generation Name (Plant or Unit Name)	Owned By	Controlled By	Date Control Transferred	Market / Balancing Authority Area	Geographic Region	In-Service Date	Capacity Rating: Nameplate (MW)	Capacity Rating: Used in Filing (MW)	Capacity Rating: Methodology Used in [K]: (N)ameplate, (S)easonal, 5-yr (U)nit, 5-yr (E)IA, (A)lternative	End Note Number (Enter text in End Note Tab)
Birchwood Power Partners, L.P.	ER07-501-000	Birchwood	Birchwood Power Partners, L.P.	Birchwood Power Partners, L.P.	N/A	PJM	Northeast	11/16/96	258.3	258.3	N	1, 2
Shady Hills Power Company, L.L.C.	ER02-537-000	Shady Hills	Shady Hills Power Company, L.L.C.	Shady Hills Power Company, L.L.C.	N/A	Progress Florida	Southeast	02/27/02	541.2	541.2	N	1
EFS Parlin Holdings, LLC	ER08-649-000	Parlin	EFS Parlin Holdings, LLC	EFS Parlin Holdings, LLC	N/A	PJM	Northeast	06/01/08	135.0	135.0	N	1

GE Companies

Asset Appendix: Generation Assets

[A]	[B]	[C]	[D]	[E]	[F]	[G] [H] Location		[I]	[J]	[K]	[L]	[M]
Filing Entity and its Energy Affiliates	Docket # where MBR authority was granted	Generation Name (Plant or Unit Name)	Owned By	Controlled By	Date Control Transferred	Market / Balancing Authority Area	Geographic Region	In-Service Date	Capacity Rating: Nameplate (MW)	Capacity Rating: Used in Filing (MW)	Capacity Rating: Methodology Used in [K]: (N)ameplate, (S)easonal, 5-yr (U)nit, 5-yr (E)IA, (A)lternative	End Note Number (Enter text in End Note Tab)
Inland Empire Energy Center, LLC	ER07-758-000	Inland Empire Energy Center	Inland Empire Energy Center, LLC	Inland Empire Energy Center, LLC	N/A	CAISO	Southwest	05/2010	819.0	819.0	N	1
Homer City Generation, L.P.	ER13-55-000	Homer City Electric Generating Station	Homer City Generation, L.P.	Homer City Generation, L.P.	N/A	PJM	Northeast	06/1969	2,012.0	2,012.0	N	1
Altresco Lynn, Inc.	QF87-506-000	Lynn River Works	General Electric Co.	General Electric Co.	N/A	ISO-NE	Northeast	1948	32.5	32.5	N	1
Somersworth Hydroelectric Facility	QF10-512-000	Somersworth Hydroelectric Facility	General Electric Co.	General Electric Co.	N/A	ISO-NE	Northeast	01/1985	2.1	2.1	N	1

GE Companies

Asset Appendix: Generation Assets

[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]	[J]	[K]	[L]	[M]
						Location						
Filing Entity and its Energy Affiliates	Docket # where MBR authority was granted	Generation Name (Plant or Unit Name)	Owned By	Controlled By	Date Control Transferred	Market / Balancing Authority Area	Geographic Region	In-Service Date	Capacity Rating: Nameplate (MW)	Capacity Rating: Used in Filing (MW)	Capacity Rating: Methodology Used in [K]: (N)ameplate, (S)easonal, 5-yr (U)nit, 5-yr (E)IA, (A)lternative	End Note Number (Enter text in End Note Tab)
Wind Energy Prototypes, LLC	N/A	GE 1.7-100 SFT	Wind Energy Prototypes, LLC	Wind Energy Prototypes, LLC	N/A	CAISO	Southwest	04/2014	1.7	1.7	N	1
GE Energy LLC	QF15-192-000	Project Prairie Dog	GE Energy LLC	GE Energy LLC	N/A	Southwest Power Pool ("SPP")	SPP	01/29/15	2.3	2.3	N	1
GE Energy LLC	QF15-614-000	Project Prairie Dog Phase II	GE Energy LLC	GE Energy LLC	N/A	SPP	SPP	04/30/15	2.0	2.0	N	1
AL Sandersville, LLC	ER02-1024-000; ER04-1186-000; ER10-2150-000	AL Sandersville, LLC	AL Sandersville, LLC	AL Sandersville, LLC	N/A	SOCO	Southeast	06/2002	692.0	692.0	N	1, 3

GE Companies

Asset Appendix: Generation Assets

[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]	[J]	[K]	[L]	[M]
						Location						
Filing Entity and its Energy Affiliates	Docket # where MBR authority was granted	Generation Name (Plant or Unit Name)	Owned By	Controlled By	Date Control Transferred	Market / Balancing Authority Area	Geographic Region	In-Service Date	Capacity Rating: Nameplate (MW)	Capacity Rating: Used in Filing (MW)	Capacity Rating: Methodology Used in [K]: (N)ameplate, (S)easonal, 5-yr (U)nit, 5-yr (E)IA, (A)lternative	End Note Number (Enter text in End Note Tab)
Effingham County Power, LLC	ER01-1418-000	Effingham County Power, LLC	Effingham County Industrial Authority	Effingham County Power, LLC	12/01/01	SOCO	Southeast	08/2003	596.6	596.6	N	1, 3
MPC Generating, LLC	ER02-1238-000; ER99-2324-000	MPC Generating, LLC	MPC Generating, LLC	MPC Generating, LLC	N/A	SOCO	Southeast	12/1999	386.1	386.1	N	1, 3
Walton County Power, LLC	ER03-28-000; ER01-1310-000	Walton County Power, LLC	Walton County Power, LLC	Walton County Power, LLC	N/A	SOCO	Southeast	02/2001	494.1	494.1	N	1, 3

GE Companies

Asset Appendix: Generation Assets

[A]	[B]	[C]	[D]	[E]	[F]	[G] [H] Location		[I]	[J]	[K]	[L]	[M]
Filing Entity and its Energy Affiliates	Docket # where MBR authority was granted	Generation Name (Plant or Unit Name)	Owned By	Controlled By	Date Control Transferred	Market / Balancing Authority Area	Geographic Region	In-Service Date	Capacity Rating: Nameplate (MW)	Capacity Rating: Used in Filing (MW)	Capacity Rating: Methodology Used in [K]: (N)ameplate, (S)easonal, 5-yr (U)nit, 5-yr (E)IA, (A)lternative	End Note Number (Enter text in End Note Tab)
Washington County Power, LLC	ER03-398-000	Washington County Power, LLC	Development Authority of Washington County	Washington County Power, LLC	05/01/01	SOCO	Southeast	06/2003	795.6	795.6	N	1, 3
Mid-Georgia Cogen L.P.	ER15-1447-001	Mid-Georgia Cogen L.P.	Mid-Georgia Cogen L.P.	SOCO	06/01/98	SOCO	Southeast	03/1998	323.0	323.0	N	1, 3, 4
Russell City Energy Company, LLC	ER12-2261-000	Russell City Facility	Russell City Energy Company, LLC	PG&E	2012	CAISO	Southwest	08/2013	625.0	625.0	N	1, 5

GE Companies

Asset Appendix: Transmission Assets / Natural Gas Assets

Electric Transmission Assets and/or Natural Gas Intrastate Pipelines and/or Gas Storage Facilities

[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]	[J]	
						Location		Size		
Filing Entity and its Energy Affiliates	Cite to order accepting OATT or order approving the transfer of transmission facilities to an RTO or ISO	Asset Name and Use	Owned By	Controlled By	Date Control Transferred	Market / Balancing Authority Area	Geographic Region	Size: (length and kV)	End Note Number (Enter text in End Note Tab)	
Berkshire Feedline Acquisition Limited Partnership	N/A	Lateral pipeline	Berkshire Feedline Acquisition Limited Partnership	Berkshire Feedline Acquisition Limited Partnership	N/A	N/A	Northeast	6.2 miles		
Linden VFT, LLC	N/A	Linden VFT variable frequency transformer used as a component of transmission line, used to connect PJM and NYISO	Linden VFT, LLC	Linden VFT, LLC	N/A	PJM	Northeast	1000 foot, 345 kV component of transmission line		

GE Companies

Asset Appendix: End Notes

End Notes for Entries in the Generation, Long-term PPA and Transmission Lists

[A] End Note Number	[B] List (Generation, PPA or Transmission)	[C] Explanatory Note
1	Generation	In order to present the most conservative case, except as otherwise indicated, the information provided in the "Controlled By" and "Date Control Transferred" columns takes the most conservative approach, <i>i.e.</i> , that the generation owner also controls the generation, even though, in many instances, the generation is committed to a wholesale purchaser under a long-term power sale agreement.
2	Generation	Subsidiaries of General Electric Company hold a 50% interest in Birchwood Power Partners, L.P., and subsidiaries of J-POWER own a 50% interest.
3	Generation	Entity is included as a GE affiliate based on GE subsidiary EFS Southeast PowerGen, LLC's 24.95% interest in Southeast PowerGen Holdings, LLC, the indirect owner of the entity.
4	Generation	See the Southern Companies' Generation Resource Inventory filed in Docket Nos. ER10-2881-004, <i>et al.</i> , on July 16, 2012.
5	Generation	The output of the Russell City generating facility is committed to PG&E under a long-term tolling agreement. See Application of Russell City Energy Company, LLC for Market-based Rate Authorization and for Waivers and Blanket Approvals, Docket No. ER12-2261-000, at p. 2 (filed July 18, 2012).

EXHIBIT C-1

Pre-Transaction Organizational Chart

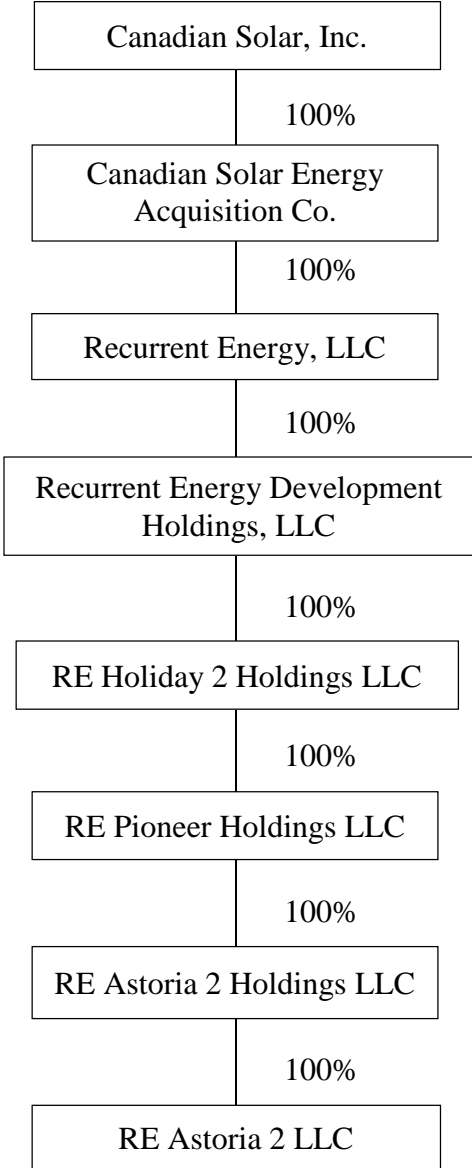
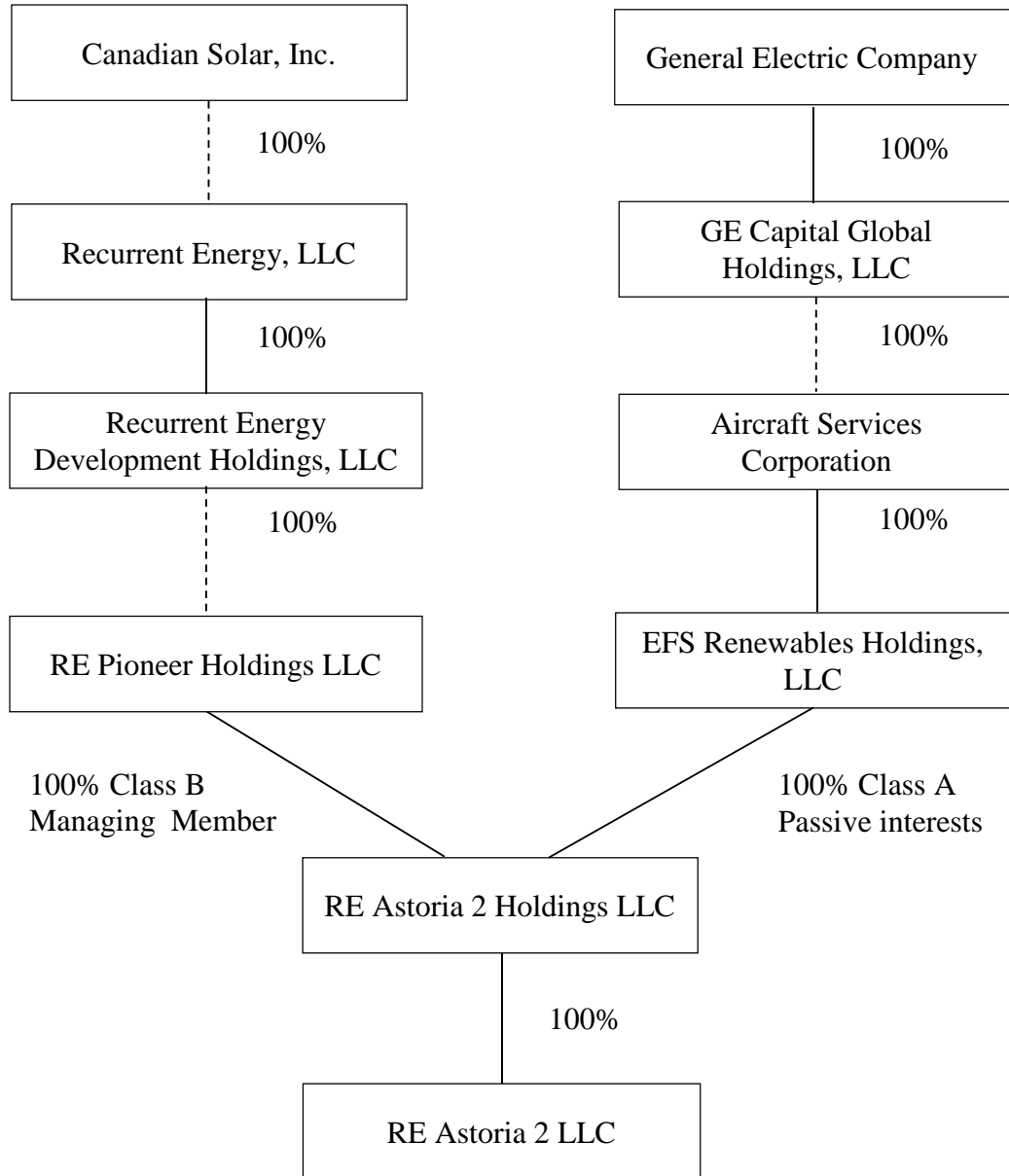


EXHIBIT C-2

Post-Transaction Organizational Chart



* Solid lines indicate direct ownership and broken lines indicate indirect ownership. The upstream ownership of RE Pioneer Holdings LLC will not change as a result of the Transaction. The upstream ownership of Aircraft Services Corporation is described in further detail in the text of the Application.

EXHIBIT I

EQUITY CAPITAL CONTRIBUTION AGREEMENT

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

EXHIBIT M

Explanation Providing Assurance that the Transaction Will Not Result in Cross-Subsidization or Pledge or Encumbrance of Utility Assets

As demonstrated in Section VI.D of the Application and incorporated by reference into this Exhibit M, the Transaction raises no issues concerning cross-subsidization. Applicant verifies, based on facts and circumstances known to it or that are reasonably foreseeable, that the Transaction will not result in, at the time of the Transaction or in the future:

- (1) any transfers 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 issuances 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 contracts between a non-utility associate company and a traditional public utility associate company that has captive customers or that own or provide transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under Sections 205 and 206 of the Federal Power Act.

ATTACHMENTS

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

RE Astoria 2 LLC

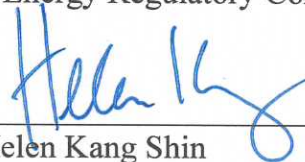
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Docket No. EC16-_____

State of CALIFORNIA
County of SAN FRANCISCO

VERIFICATION

Helen Kang Shin, being duly sworn under oath, states: (1) that she is General Counsel of Recurrent Energy, LLC; (2) that she has read the foregoing application; (3) that the statements made therein with respect to RE Astoria 2 LLC ("Astoria 2") and its affiliates are true and accurate to the best of her knowledge and belief; (4) that she has full power and authority to execute this application on behalf of Astoria 2, and (5) that she authorizes the submission of this application to the Federal Energy Regulatory Commission.



Helen Kang Shin
Vice President

~~Subscribed and sworn before me this _____ day of _____, 2016.~~

Notary Public

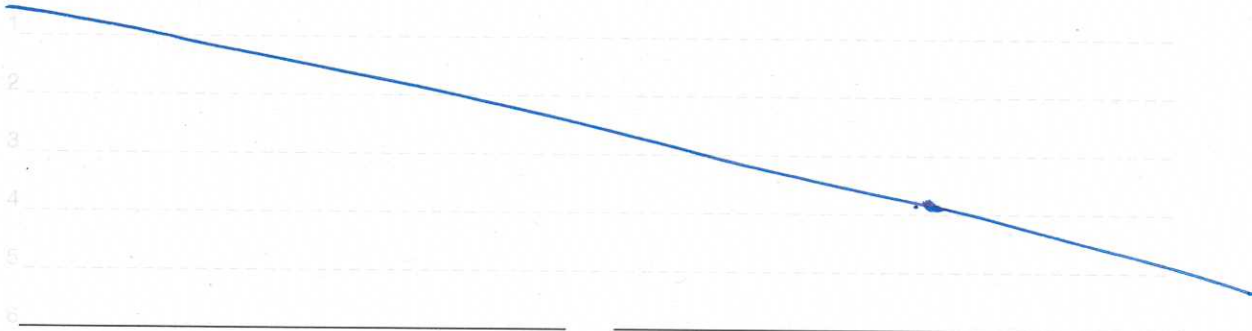
My commission expires _____.

see attached

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)



Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

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 San Francisco

Subscribed and sworn to (or affirmed) before me
 on this 18th day of February, 20 16,
 by Date Month Year

(1) Helen Kang Shin

(and (2) _____),
Name(s) of Signer(s)

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



Signature [Handwritten Signature]
 Signature of Notary Public

Seal
 Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: FERC Verification Document Date: N/A

Number of Pages: 1 Signer(s) Other Than Named Above: _____

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

RE Astoria 2 LLC

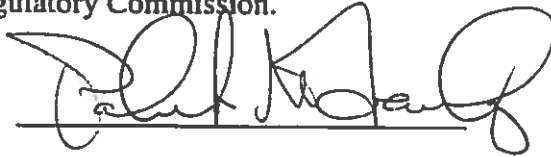
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)
)

Docket No. EC16-_____

State of Connecticut
County of Fairfield

VERIFICATION

Patrick Leahy, being duly sworn under oath, states: (1) that he is Vice President of EFS Renewables Holdings, LLC ("EFS RH"); (2) that he has read the foregoing application; (3) that the statements made therein with respect to EFS RH and its affiliates are true and accurate to the best of his knowledge and belief; (4) that he has full power and authority to execute this application on behalf of EFS RH, and (5) that he authorizes the submission of this application to the Federal Energy Regulatory Commission.



Subscribed and sworn before me this 23rd day of February, 2016.



Notary Public

My commission expires _____

DENISA PLETENIKOVA
Notary Public-Connecticut
My Commission Expires
October 31, 2020



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

RE Astoria 2 LLC

)
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Docket No. EC16-_____

PROTECTIVE ORDER

(Issued _____)

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

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

3. Definitions -- For purposes of this Order:

(a) The term “Participant” shall mean a Participant as defined in 18 CFR § 385.102(b).

(b) (1) The term “Protected Materials” means (A) materials (including depositions) provided by a Participant in response to discovery requests and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Presiding Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant producing the Protected Materials shall physically mark them on each page as “PROTECTED MATERIALS” or with words of similar import as long as the term “Protected Materials” is included in that designation to indicate that they are Protected Materials. If the Protected Materials contain Critical Energy Infrastructure Information, the Participant producing such information shall additionally mark on each page containing such information the words “Contains Critical Energy Infrastructure Information – Do Not Release”.

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

Attachment 2

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

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

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

- (1) Commission Trial Staff designated as such in this proceeding;
- (2) an attorney who has made an appearance in this proceeding for a Participant;
- (3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Subparagraph (2);
- (4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;
- (5) a person designated as a Reviewing Representative by order of the Presiding Judge or the Commission; or
- (6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

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

5. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all

Attachment 2

Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff (“Staff”), Staff shall follow the notification procedures of 18 CFR § 388.112 before making public any Protected Materials.

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

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

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

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

Attachment 2

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

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

11. Subject to Paragraph 18, the Presiding Administrative Law Judge shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any participant that contests the designation of materials as protected shall notify the party that provided the protected materials by specifying in writing the materials the designation of which is contested. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Presiding Administrative Law Judge, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the participant seeking protection. If the Presiding Administrative Law Judge finds that the materials at issue are not entitled to protection, the procedures of Paragraph 18 shall apply. The procedures described above shall not apply to protected materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Presiding Judge and all Reviewing Representatives who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information – 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

Attachment 2

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

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

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

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

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

18. If the Presiding Judge finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for three (3) business days from the date of issuance of the Presiding Judge's determination, and if the Participant seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding Judge's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 CFR §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act. (5 U.S.C. § 552) for Protected Materials in the files of the Commission.

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

20. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

21. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this (these) proceeding(s). Any

Attachment 2

violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

Presiding Administrative Law Judge

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

RE Astoria 2 LLC

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)
)

Docket No. EC16-_____

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: _____

Document Content(s)

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