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September 13, 2013

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

Re: Application for Authorization of Disposition of Jurisdictional Facilities,
Requests for Confidential Treatment and Expedited Action,
Docket No. EC13-____-000

Dear Secretary Bose:

Pursuant to Section 203 of the Federal Power Act and Part 33 of the Rules and Regulations of the Federal Energy Regulatory Commission (the "Commission"), Red Oak Power, LLC ("Applicant") hereby submits the attached Application requesting Commission authorization for a transaction pursuant to which Energy Capital Partners II-A, LP, Energy Capital Partners II, LP, Energy Capital Partners II-B (Red Oak IP), LP, and Energy Capital Partners II-C (Red Oak IP), LP agree to sell, and Cogentrix Red Oak Holdings, LLC ("Purchaser") agrees to purchase, 100 percent of the ownership interests in Red Oak Power Holdings, LLC, which indirectly owns 100 percent of the ownership interests in Applicant (the "Transaction"). As a result of the Transaction, Applicant will become a wholly-owned subsidiary of Purchaser. As described in the Application, the Transaction will not have any adverse impact on competition, rates or regulation, or raise any cross-subsidization/encumbrance concerns, and should therefore be authorized by the Commission pursuant to Section 203 as consistent with the public interest.

Applicant requests that the Commission, consistent with its precedent, grant limited waivers of its Part 33 filing requirements to the extent that the information required by Part 33 is not necessary to determine that the Transaction meets the statutory requirements of Section 203. **Applicant also respectfully requests that the Commission provide for a 21-day comment period and issue an order granting the requested authorizations by October 13, 2013 in order to allow the Transaction to close as expeditiously as possible.**

As discussed in the Application, Applicant also requests privileged treatment of commercially sensitive information included in Confidential Exhibit I of the Application. In accordance with 18 C.F.R. § 33.9, Applicant has provided as Attachment 2 to the Application a draft Protective Order. The confidential version of the Application is marked "**Non-Public**

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Version: Contains Privileged Information; Do Not Release,” and the public version (which does not contain Confidential Exhibit I) is marked **“Public Version: Confidential Information Has Been Removed for Privileged Treatment.”**

Please do not hesitate to contact the undersigned if you have any questions regarding this Application.

Respectfully submitted,

/s/ *Natasha Gianvecchio*

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Enclosures

Public Version:
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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Red Oak Power, LLC) **Docket No. EC13-_____**

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

I. INTRODUCTION

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 Red Oak Power, LLC (Red Oak or Applicant) hereby requests Commission authorization for the disposition of jurisdictional facilities that will result from the transfer to Cogentrix Red Oak Holdings, LLC (Purchaser) of 100 percent of the ownership interests in Red Oak Power Holdings, LLC (Red Oak Holdings), which indirectly owns 100 percent of the ownership interests in Applicant (Transaction).³

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

¹ 16 U.S.C. § 824b (2012).

² 18 C.F.R. Part 33 (2013).

³ Approval of the Transaction is not required under section 203(a)(2) of the FPA, because Purchaser is a special purpose entity and, prior to completion of the Transaction, is not a “holding company” as defined in 18 C.F.R. § 366.1.

associate company.⁴ Accordingly, the Transaction is consistent with the public interest and should be authorized by the Commission pursuant to section 203 of the FPA without hearing or condition.

Applicant further requests that the Commission, consistent with its precedent, grant limited waivers of its Part 33 filing requirements to the extent that the information required by Part 33 is not necessary to determine that the Transaction meets the statutory requirements of section 203.⁵ In addition, Applicant requests confidential treatment, pursuant to sections 33.9, 388.112, and 385.1112 of the Commission's regulations,⁶ 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 for the Acquisition Agreement dated August 30, 2013 pursuant to which the Transaction will occur (Acquisition Agreement), which is attached hereto as Confidential Exhibit I.

The parties intend to close the Transaction as soon as possible after obtaining Commission authorization. Accordingly, Applicant respectfully requests expedited action on this Application. Applicant submits that expedited consideration of this Application is warranted under the Commission's regulations to the extent that the Application is not contested, because the Transaction does not involve a merger or any traditional utility with a franchised service territory or captive customers, is consistent with Commission precedent, raises no cross-subsidization concerns, and does not require

⁴ See 18 C.F.R. § 2.26.

⁵ See, e.g., MACH Gen, LLC, 113 FERC ¶ 61,138 (2005); Boston Generating, LLC, 113 FERC ¶ 61,109 (2005); La Paloma Holding Co., LLC, 112 FERC ¶ 61,052 (2005); Lake Road Holding Co., LLC, 112 FERC ¶ 61,051 (2005).

⁶ 18 C.F.R. §§ 33.9, 388.112, 385.1112.

⁷ 18 C.F.R. § 388.107(d); see also 5 U.S.C. § 552(b)(4).

an Appendix A analysis.⁸ Therefore, Applicant requests a 21-day comment period and Commission action on this Application on or before October 13, 2013.⁹

II. COMMUNICATIONS

Communications regarding this Application should be addressed to the following individuals:¹⁰

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⁸ See id. § 33.11(b).

⁹ 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).

¹⁰ Applicants request waiver of 18 C.F.R. § 385.203(b)(3), so that a copy of any communications in the proceedings referenced above may be served on all persons listed above.

III. THE TRANSACTION

A. Parties to the Transaction

1. Applicant

Applicant, a Delaware limited liability company, owns an approximately 776 MW (summer)¹¹ combined cycle, natural gas-fired generating facility and related interconnection facilities located in the Borough of Sayreville, Middlesex County, New Jersey (Facility), within the PJM Interconnection, L.L.C. (PJM) balancing authority area (BAA). The Facility is located in the PJM-East submarket. Applicant has authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates.¹² Applicant is also an exempt wholesale generator (EWG) under the Public Utility Holding Company Act of 2005 (PUHCA).¹³ The entirety of the Facility's output is committed to TAQA Gen X LLC (TAQA) through a long-term tolling agreement set to expire in 2022.¹⁴

Applicant is directly and wholly-owned by Red Oak Intermediate Holdings, LLC, a Delaware limited liability company, which, in turn, is directly and wholly-owned by Red Oak Holdings, a Delaware limited liability company. Red Oak Holdings' interests are held directly by four affiliated investment funds: (i) Energy Capital Partners II-A, LP,

¹¹ In 2012, Applicant executed a new interconnection agreement increasing its approximate summer capacity from 766 MW to 776 MW.

¹² See AES Red Oak, L.L.C., Letter Order, Docket No. ER01-2401-000 (Aug. 10, 2001).

¹³ See AES Red Oak, L.L.C., 89 FERC ¶ 62,094 (1999).

¹⁴ In connection with this tolling agreement, TAQA has a Commission-approved Rate Schedule for the sale of Reactive Supply and Voltage Control from the Facility. Williams Power Company, Inc., Letter Order, Docket No. ER07-658-000 (May 21, 2007); BE Red Oak LLC, Letter Order, Docket No. ER08-329-000 (Feb. 6, 2008); TAQA Gen X LLC, Letter Order, Docket No. ER09-622-000 (Mar. 4, 2009).

a limited partnership organized under the laws of the State of Delaware; (ii) Energy Capital Partners II, LP, a limited partnership organized under the laws of the State of Delaware; (iii) Energy Capital Partners II-B (Red Oak IP), LP, a limited partnership organized under the laws of the State of Delaware; and (iv) Energy Capital Partners II-C (Red Oak IP), LP, a limited partnership organized under the laws of the State of Delaware (collectively, the Red Oak Partnerships).¹⁵ The Red Oak Partnerships are directly or indirectly wholly-owned by: (i) Energy Capital Partners GP II, LP (ECP GP II), a limited partnership organized under the laws of the State of Delaware, as general partner; and (ii) various passive limited partner investors. ECP GP II, in turn, is directly owned by: (i) Energy Capital Partners II, LLC (ECP II), a limited liability company organized under the laws of the State of Delaware, as general partner; and (ii) various passive limited partner investors. ECP II is owned by five individual persons: Douglas W. Kimmelman and his estate planning vehicle; Thomas K. Lane and his estate planning vehicle; Andrew D. Singer; Peter Labbat; and Tyler Reeder.

2. Purchaser

Purchaser, a Delaware limited liability company, is a wholly-owned subsidiary of Cogentrix Power Holdings IV, LLC (CPH IV). The sole member of CPH IV is Carlyle Power Holdings IV, LLC, which, in turn, is a wholly-owned subsidiary of Carlyle Infrastructure Partners Power III, L.P. (CIPP III). CIPP III is controlled by its general partner, Carlyle Infrastructure General Partner, L.P. (CIGP). CIPP III has several passive

¹⁵ Red Oak Management, LLC (Red Oak Management) also owns an approximately 3.6% net profits interest in Red Oak Holdings. Red Oak Management is owned by the Red Oak Partnerships and certain employees of EquiPower Resources Corp. and Sayreville, LLC.

limited partners (collectively, the Carlyle Funds), all of which are investment fund vehicles sponsored and managed by The Carlyle Group, L.P. (The Carlyle Group), a global alternative investment management firm that is a publicly traded entity listed on NASDAQ, or affiliates of The Carlyle Group. The limited partners of the Carlyle Funds also are passive investors.¹⁶ The general partner of CIGP is TG Group Infrastructure, L.L.C., whose managing member is TC Group Sub, L.P. (TC Group Sub). The general partner of TC Group Sub is TC Group, L.L.C., whose managing member, in turn, is Carlyle Holdings I L.P. (Holdings I LP). The general partner of Holdings I LP is Carlyle Holdings I GP Inc., which, in turn, is a direct subsidiary of The Carlyle Group.

The Carlyle Group holds passive, non-controlling interests in two investment funds that invest in energy-related companies: Riverstone/Carlyle Global Energy and Power Fund, IV, L.P. and Riverstone/Carlyle Renewable and Alternative Energy Fund II, L.P. (together, the R/C Funds).¹⁷ The general structure of these funds is that day-to-day control lies with an upstream general partner that is a wholly-owned subsidiary of Riverstone Holdings, LLC (Riverstone), the sponsor of the funds, while The Carlyle Group and Riverstone each indirectly hold an upstream limited partnership interest in the funds to share the carried interest generated by the funds. The Carlyle Group does not exert any day-to-day authority over the R/C Funds, possesses only limited voting rights that do not affect the ability of the R/C Funds to conduct business, and is not principally

¹⁶ The limited partners do not exert any day-to-day authority over CIPP III or the Carlyle Funds, possess only limited voting rights in respect of their interests in the Carlyle Funds that do not affect the ability of any of CIPP III or the Carlyle Funds to conduct its business, and are not principally in the business of producing, selling or transmitting electric power.

¹⁷ A full description of the holdings of the R/C Funds is contained in the market-based rate application filed by Raven Power Marketing LLC in Docket No. ER12-2513-000.

in the business of producing, selling, or transmitting electric power. Therefore, the R/C Funds and their FERC-jurisdictional subsidiaries are not considered to be affiliates of The Carlyle Group or Purchaser.¹⁸

The Carlyle Group is a sponsor of other funds in which it shares control with Riverstone: the Carlyle/Riverstone Global Energy and Power Fund I and Carlyle/Riverstone Renewable Energy Partners, L.P. However, neither of these additional funds owns any interests in companies that own electric generation, transmission, or distribution assets in the United States.

As indicated in Exhibit B, through The Carlyle Group, Purchaser is affiliated with electric generating facilities in various U.S. markets. Purchaser is not affiliated with any electric generating, transmission, or distribution facilities in PJM-East, the submarket where Applicant is located. In the PJM BAA, Purchaser is affiliated with Portsmouth Genco, LLC (Portsmouth) and James River Genco, LLC (James River). Portsmouth is a Delaware limited liability company that owns and operates a 114.8 MW (nameplate) electric generation facility located in Portsmouth, Virginia. The Portsmouth facility is interconnected to the transmission system owned by Dominion Virginia Power (Dominion) and operated by PJM. Portsmouth is an EWG under PUHCA.¹⁹ The

¹⁸ The Commission has accepted evidence demonstrating that The Carlyle Group is a passive investor in the R/C Funds with only limited consent rights similar to those in AES Creative Resources L.P., 129 FERC ¶ 61,239 (2009). See Cogentrix of Alamosa, LLC, Letter Order, Docket Nos. ER11-4050-001, et al. (Apr. 12, 2013).

¹⁹ 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

Commission has authorized Portsmouth to sell energy, capacity, and ancillary services at market-based rates.²⁰ Portsmouth sells the full net electrical output of its facility to Northern Virginia Electric Cooperative (NOVEC) pursuant to a long-term power purchase agreement that has been in effect since 2008. James River is a Delaware limited liability company that owns and operates a 114.8 MW (nameplate) electric generation facility located in Hopewell, Virginia. The James River facility is interconnected to the transmission system owned by Dominion and operated by PJM. The James River facility currently operates as a qualifying facility under the Public Utility Regulatory Policies Act of 1978, as amended.²¹ James River also is certified as an EWG under PUHCA.²² The Commission has authorized James River to sell energy, capacity, and ancillary services at market-based rates.²³ The James River facility has a steam host that consumes the steam equivalent of approximately 26 MW of the facility's electrical output. James River sells

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.

²⁰ See Cogentrix Virginia Leasing Corp., Letter Order, Docket Nos. ER08-201-000 et al. (Jan. 10, 2008); see also James River Genco, LLC, Letter Order, Docket Nos. ER11-4028-000 et al. (Sept. 1, 2011) (accepting for filing notice of succession).

²¹ See Cogentrix of Virginia, Inc., 34 FERC ¶ 62,311 (1986) and the notices of self-recertification filed in Docket No. QF85-736.

²² James River's predecessor-in-interest, James River Cogeneration Company (JRCC), filed a Notice of Self-Certification of Exempt Wholesale Generator Status in Docket No. EG08-15-000 on November 9, 2007. On February 26, 2008, the Commission issued a Notice of Effectiveness of Exempt Wholesale Generator Status for JRCC. On June 27, 2011, JRCC was converted to a limited liability company and changed its name to James River Genco, LLC. Subsequently, on July 21, 2011, James River filed a notice of non-material change in facts in Docket No. EG08-15-000 to report these changes.

²³ See Cogentrix Virginia Leasing Corp., Letter Order, Docket Nos. ER08-201-000 et al. (Jan. 10, 2008); see also James River Genco, LLC, Letter Order, Docket Nos. ER11-4028-000 et al. (Sept. 1, 2011) (accepting for filing notice of succession).

the remaining net electrical output from its facility (approximately 89 MW) to NOVEC pursuant to a long-term power purchase agreement that has been in effect since 2008.

Neither Purchaser nor any of its affiliates currently owns or controls any electric transmission or distribution facilities in the United States, except for limited interconnection facilities required to connect individual generating facilities to the transmission grid. Further, Purchaser is not affiliated with any franchised public utility.

Through its affiliation with The Carlyle Group, Purchaser is affiliated with entities that own or control inputs to electric power production, as defined in section 35.36 of the Commission's regulations.²⁴ Specifically, The Carlyle Group is a sponsor of Carlyle/Riverstone Renewable Energy Infrastructure Fund I, L.P. (Renew Fund I), Carlyle/Riverstone Global Energy and Power Fund II, L.P. (Fund II), and Carlyle/Riverstone Global Energy and Power Fund III, L.P. (Fund III), in which The Carlyle Group shares control with Riverstone. Through its interests in Renew Fund I, Fund II, and Fund III, The Carlyle Group is affiliated with entities that own or control coal reserves, intrastate natural gas transportation, storage, or distribution facilities,²⁵ and other potential inputs to electric power production.²⁶ Through The Carlyle Group, Purchaser is affiliated with Keyrock Energy LLC (Keyrock), which owns or controls two

²⁴ 18 C.F.R. § 35.36 defines "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."

²⁵ As indicated in Exhibit B, Purchaser's affiliates include entities that own or control intrastate natural gas facilities located outside of the relevant market.

²⁶ In addition, through The Carlyle Group's interests in Renew Fund I, Purchaser also is affiliated with Green Earth Fuels, LLC, which owns and operates a biodiesel production facility located on the Houston Ship Channel. Biodiesel is used most commonly as a transportation fuel, but has potential use as an input to electric power production.

natural gas gathering pipelines, one of which is located in the PJM BAA. Through The Carlyle Group, Purchaser also is affiliated with Genesee & Wyoming Inc. (G&W), which owns rail cars used for transporting coal for third parties and owns and operates railroads that provide open-opportunity short-line and freight transportation service throughout the United States.²⁷ Purchaser is not affiliated with any other inputs to electric power production located within the PJM BAA. In any event, these affiliations with inputs to electric power production do not provide an opportunity for Purchaser to exercise vertical market power.²⁸

B. The Transaction

Pursuant to the Transaction, Purchaser will acquire 100 percent of the ownership interests in Red Oak Holdings and, indirectly, 100 percent of the ownership interests in

²⁷ In addition, Fund III holds non-passive interests in two entities that own or control coal reserves. One affiliate, Foresight Reserves, LP (Foresight), owns or controls through its subsidiaries more than three billion tons of coal reserves in the Illinois and Northern Appalachian coal basins (Central and Southern Illinois, Ohio, and West Virginia). Foresight has a strategic relationship with Natural Resource Partners, L.P. (NRP), a master limited partnership that owns and manages mineral reserve properties, leasing such properties to various operators for mining in exchange for royalty payments. Foresight owns both limited partner and general partner interests in NRP. A second affiliate, Targe Energy LLC, is based in Pittsburgh, Pennsylvania, and operates surface coal and limestone mines in Pennsylvania and reclaims coarse and wet waste coal mines in Pennsylvania and West Virginia.

²⁸ The Commission has adopted a rebuttable presumption that ownership or control of such inputs does not allow an entity selling electricity at market-based rates to erect barriers to entry. See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, Order No. 697, 119 FERC ¶ 61,295 at P 1018 (2007), order on clarification, 121 FERC ¶ 61,260 (2007), order on reh'g, Order No. 697-A, 123 FERC ¶ 61,055 (2008), order on reh'g and clarification, Order No. 697-B, 124 FERC ¶ 61,055 (2008), order on reh'g, Order No. 697-C, 127 FERC ¶ 61,284 (2009); order on reh'g, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010); order on clarification, 131 FERC ¶ 61,021 (2010).

Applicant. The Red Oak Partnerships and Red Oak Power Management will not retain any direct or indirect interests in Applicant following completion of the Transaction.

The details of the Transaction are set forth in the Acquisition Agreement, a copy of which is attached to this Application as Confidential Exhibit I. As discussed herein, Applicant requests confidential treatment of the Acquisition Agreement, because it contains sensitive commercial and financial information that is not publicly available. In addition, charts depicting the upstream ownership of Applicant before and after the Transaction are attached to this Application as Exhibit C.

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.

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

The jurisdictional facilities that may be affected by the Transaction consist of Applicant's market-based rate tariff and any related agreements, books, and records, and the limited interconnection facilities required to interconnect the Facility to the transmission system.

IV. REQUEST FOR PRIVILEGED AND CONFIDENTIAL TREATMENT

As noted above, pursuant to 18 C.F.R. §§ 33.9, 388.112, and 385.1112, Applicant requests privileged and confidential treatment of Confidential Exhibit I and exemption from the mandatory public disclosure requirements of the Freedom of Information Act pursuant to 18 C.F.R. § 388.107(d), because Confidential Exhibit I contains sensitive commercial and financial information that is privileged or confidential and not publicly

available. The Acquisition Agreement is the product of arm's-length commercial negotiations, and should Confidential Exhibit I become public, it would likely harm the parties in future negotiations for similar transactions and in structuring future investments. In accordance with section 33.7 of the Commission's regulations,²⁹ a proposed form of protective order consistent with the Commission's model protective order is attached to this Application as Attachment 2.

V. REQUEST FOR SECTION 203 APPROVAL

A. Applicability of Section 203

Applicant seeks Commission authorization for the Transaction under section 203(a)(1)(A) of the FPA, because it involves a change in the upstream ownership of Applicant and its jurisdictional facilities.³⁰

B. Satisfaction of Section 203 Criteria

Section 203(a)(4) of the FPA provides that the Commission will approve jurisdictional transactions that are "consistent with the public interest."³¹ As explained in the Merger Policy Statement and in Order Nos. 642 and 669,³² the Commission

²⁹ 18 C.F.R. § 33.7.

³⁰ See JP Morgan Chase Co., 123 FERC ¶ 61,088 at P 13 (2008) (citing Phelps Dodge Corp., 121 FERC ¶ 61,251 (2007)); see also Central Vermont Public Service Corporation, 39 FERC ¶ 61,295 (1987); 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).

³¹ 16 U.S.C. § 824b(a)(4).

³² 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 No. 669, 113 FERC ¶ 61,315 at P 194

examines 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, section 203(a)(4) requires a showing that a proposed transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. As explained below, the Transaction is consistent with the public interest under the Commission's applicable tests and should be approved.

C. No Adverse Effect on Competition

The Transaction will have no adverse effect on competition. The Facility is located in the PJM-East submarket of the PJM BAA. As noted above, Purchaser is affiliated with only two electric generating facilities located in the PJM BAA – the James River facility and the Portsmouth facility – with a combined capacity of approximately 230 MW. Neither the James River facility nor the Portsmouth facility is located in the PJM-East submarket, and as such, the Transaction will have no adverse impact on competition in the PJM-East submarket.³³ Further, the entire electrical output of each of the Facility, the James River facility, and the Portsmouth facility, is committed to unaffiliated third parties under long-term agreements. The Commission previously has found no adverse effect on competition when the output of a generating facility is fully

(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).

³³ Applicant is currently affiliated with Liberty Electric Power, LLC (Liberty), which owns and operates an approximately 541 MW (summer) electric generating facility located in the PJM-East submarket. As such, to the extent that the Transaction would have any impact on competition in the PJM-East submarket, the effect would be to deconcentrate the market as Applicant and Liberty will no longer be affiliated following the consummation of the Transaction.

committed under long-term agreements.³⁴ Accordingly, the Transaction will not have any impact on competition in the PJM market.³⁵

The Transaction also will not raise any vertical market power concerns. Neither Purchaser nor any of its affiliates owns or controls electric transmission facilities in the United States, other than the limited facilities necessary to interconnect individual generating units to the transmission grid. As discussed above, Purchaser is affiliated with Keyrock, which owns or controls two natural gas gathering pipelines, one of which is located in the PJM BAA. Purchaser also is affiliated with G&W, which owns rail cars used for transporting coal for third parties and owns and operates railroads that provide open-opportunity short-line and freight transportation service throughout the United

³⁴ 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 County, 94 FERC ¶ 62,113 (2001) (same); Morgan Stanley Capital Group, 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)).

³⁵ Purchaser is affiliated with 922 MW of generation in the New York Independent System Operator, Inc. (NYISO) BAA, a first-tier market to the PJM BAA. Further, Applicant is currently affiliated with Empire Generating Co, LLC, which owns and operates an approximately 672 MW (winter) electric generating facility located in the NYISO BAA. Thus, despite the slight increase in generation with which the Facility will be affiliated following consummation of the Transaction from 672 MW to 922 MW, Purchaser's affiliates' pro rata share of import capacity from NYISO would be so limited, and the PJM BAA is sufficiently large, that the impact of any such imports would be de minimis.

Even if none of the output of the Facility, the James River facility and the Portsmouth facility was fully committed to unaffiliated third parties under long-term agreements, their combined capacity of approximately 1,006 MW represents less than 0.58% of the installed generating capacity of PJM, which is well below a de minimis level. See PJM RPM Resource Model for 2016/2017 delivery year, available at <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/2016-2017-rpm-resource-model.ashx> (reporting 174,956 MW of installed capacity based on existing capacity resources reported for the 2016/2017 period).

States, including in PJM. Purchaser's affiliation with Keyrock and G&W does not raise any competitive concerns because the Commission has adopted a rebuttable presumption that a seller's affiliation with intrastate natural gas transportation, distribution, and storage facilities, or ownership of or control over who may access transportation of coal supplies, does not allow an entity to erect barriers to market entry.³⁶ With the exception of Purchaser's affiliation with Keyrock and G&W, neither Purchaser nor any of its affiliates owns or controls any other inputs located within the PJM BAA. Therefore, the Transaction will have no adverse effect on vertical market power in the PJM BAA or the PJM-East submarket.

D. No Adverse Effect on Rates

The Transaction will have no adverse effect on rates. Applicant's rates will continue to be market-driven, rather than cost-based, as all sales of electric energy, capacity, and ancillary services by Applicant will continue to be made at market-based rates authorized by the Commission.³⁷ Moreover, the Transaction will have no impact on the rates under the long-term agreement with TAQA pursuant to which Applicant sells all of its output. The Transaction does not involve transmission rates or transmission customers. Accordingly, the Transaction will have no adverse effect on wholesale ratepayers or transmission customers.

³⁶ See Order No. 697 at P 1018.

³⁷ The Commission's ratepayer protection concerns do not apply to customers that are charged market-based rates. See, e.g., NorAm Energy Servs., Inc., 80 FERC ¶ 61,120 at 61,382-83 (1997).

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 Applicant and its affiliates. The extent to which Applicant and its 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.

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.³⁸ The Commission has stated that the concern over cross-subsidization is principally a concern over the effect of a proposed transaction on captive ratepayers.³⁹

Because none of the parties to the Transaction is a franchised public utility that has captive ratepayers 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” and does not raise any issue with respect to cross-subsidization.⁴⁰ 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

³⁸ 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).

³⁹ Order No. 669 at P 167.

⁴⁰ Supplemental Policy Statement at P 17.

owns or provides transmission service over jurisdictional transmission facilities in the United States, the Transaction will not result in any pledge or encumbrance of a franchised public utility's assets for the benefit of an associate company.

In Order Nos. 669, 669-A, and 669-B, the Commission established a four-part test that applicants must satisfy in order to demonstrate that the proposed transaction will not result in improper cross-subsidization, or the pledge or encumbrance of utility assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities. Under this test, the Commission examines whether, at the time of the transaction or in the future, the proposed transaction will result in: (i) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (ii) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (iii) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (iv) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA. None of these circumstances is present in this case.

Consistent with the requirements of Order Nos. 669, 669-A, and 669-B, Applicant includes verifications regarding each of these factors in Exhibit M to this Application, which relates to the time of the Transaction as well as the future, and is based on facts and circumstances known or reasonably foreseeable to Applicant.⁴¹ Accordingly, the Transaction does not raise any cross-subsidization concerns.

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

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

(a) Names and principal business office of Applicant

Red Oak Power, LLC
832 Red Oak Lane
Sayreville, NJ 08872

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

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

(c) Description of Applicant, including

(1) Business activities of Applicant

The business activities of Applicant are described in Part III(A) above. Accordingly, Applicant requests a waiver of the requirement to file Exhibit A.

⁴¹ 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).

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

All information pertaining to Applicant is provided in Section III.A. of this Application. Applicant respectfully requests a waiver of the information requirements of 18 C.F.R. § 33.2(c)(2) to provide any additional information on Applicant's other current energy affiliates because such affiliates are not relevant to the Commission's evaluation of the Transaction. The U.S. energy affiliates of Purchaser are listed in Exhibit B to this Application.

(3) **Organizational Charts**

See Exhibit C to this Application.

(4) **Business agreements**

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

(5) **Common officers or directors**

There currently are no common officers or directors between Applicant and its current affiliates, on the one hand, and Purchaser and its current affiliates, on the other hand. The Transaction will affect the officers and directors of Applicant; however, the identity of those officers and directors cannot be finally identified until the

closing of the Transaction. Therefore, Applicant requests a waiver of the requirement to file Exhibit E.⁴²

(6) Description of customers

See Exhibit F to this Application.

(d) Description of jurisdictional facilities

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

(e) Narrative description of the Transaction

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

(f) Contracts related to the proposed Transaction

A copy of the Acquisition Agreement is attached as Confidential Exhibit I. Applicant commits that the Transaction will be consummated in a manner consistent with that described in the Acquisition Agreement and this Application. Pursuant to 18 C.F.R. § 388.112, Applicant requests confidential and privileged treatment of Confidential Exhibit I, as discussed in Part IV above. To the extent necessary, Applicant also requests

⁴² 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.

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 Acquisition Agreement contained in Confidential Exhibit I or the description of the Transaction set forth in this Application.⁴³

(g) Consistency of the Transaction with the public interest

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

(h) Maps

The only physical jurisdictional facilities affected by the Transaction are minor interconnection facilities associated with the Facility. In addition, the Transaction does not involve a merger or other combination of jurisdictional facilities, and a map would not provide the Commission with information relevant to the Transaction. Accordingly, Applicant requests a waiver of the requirement to file Exhibit K.

(i) Regulatory orders

Information regarding licenses, orders, or other approvals required from other regulatory bodies in connection with the Transaction is provided in 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

⁴³ See EIF Berkshire Holdings, LLC, 116 FERC ¶ 61,273 (2006).

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

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

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

VIII. VERIFICATIONS

Pursuant to section 33.7 of the Commission's regulations, 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.

IX. REQUEST FOR SHORTENED COMMENT PERIOD AND EXPEDITED CONSIDERATION

Applicant requests that the Commission establish a 21-day comment period on this Application. In addition, Applicant requests that the Commission issue an order granting the requested authorization as expeditiously as possible, and in any event, no later than October 13, 2013.

Section 203(a)(5) of the FPA requires the Commission to provide for expedited review of applications under section 203.⁴⁴ Pursuant to the Commission's regulations under section 203(a)(5), the Commission typically will act on a completed section 203 application within 180 days but will undertake a more expedited review when the application is not contested, does not involve a merger, and is consistent with

⁴⁴ 16 U.S.C. § 824b(a)(5).

Commission precedent.⁴⁵ The Commission's regulations also generally provide for expedited review if the transaction does not require an Appendix A analysis.⁴⁶ Here, expedited review is warranted because, as described in Section I above, approval of the Transaction is consistent with the Commission's precedent, the Transaction does not involve a merger and because an Appendix A analysis is not required for the Commission's evaluation of the Transaction.

X. CONCLUSION

For the reasons set forth above, Applicant requests that the Commission: (i) issue an order approving the Transaction; (ii) grant the waivers requested herein; (iii) grant Applicant's request for confidential treatment of Confidential Exhibit I; and (iv) establish a comment period of 21 days for this Application. Applicant respectfully requests that the Commission grant expedited treatment to this Application and issue its order on or before October 13, 2013, so as to permit closing of the Transaction as soon as possible thereafter.

Respectfully submitted,

/s/ Natasha Gianvecchio

Natasha Gianvecchio
David E. Pettit
Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004
(202) 637-2200

Counsel for Red Oak Power, LLC

Dated: September 13, 2013

⁴⁵ 18 C.F.R. § 33.11(b); Transactions Subject to FPA Section 203, Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 188 (2006).

⁴⁶ 18 C.F.R. § 33.11(c)(2).

Exhibits A, E, H, J, and K

Applicant has requested a waiver of the requirement to file

Exhibits A, E, H, J, and K

Exhibit B

U.S. Energy Affiliates of The Carlyle Group

Affiliates of The Carlyle Group with Market-Based Rate Authority and Generation Assets¹
(as of September 13, 2013)

Filing Entity and its Energy Affiliates	Docket # Where MBR Authority was Granted	Generation Name	Owned by	Controlled by	Date Control Transferred	Balancing Authority Area	Geographic Region	In-Service Date	Nameplate and/or Seasonal Rating
CalPeak Power LLC	ER06-1331	N/A (Power Marketer)	CalPeak Power LLC	CalPeak Power LLC	(NA)	(NA)	(NA)	(NA)	(NA)
James River Genco, LLC (f/k/a James River Cogeneration Company)	ER08-202	James River Genco, LLC	James River Genco, LLC	James River Genco, LLC	N/A	PJM	Northeast	1/1998	114.8 MW
Portsmouth Genco, LLC (f/k/a Cogentrix Virginia Leasing Corporation)	ER08-201	Portsmouth Genco, LLC	Portsmouth Genco, LLC	Portsmouth Genco, LLC	N/A	PJM	Northeast	4/1998 5/1988	114.8 MW
Cogentrix of Alamosa, LLC	ER11-4050	Cogentrix of Alamosa, LLC	Cogentrix of Alamosa, LLC	Cogentrix of Alamosa, LLC	N/A	PSCo	Northwest	10/2011	30 MW

¹ This chart does not include affiliates operating solely within the Electric Reliability Council of Texas, Inc. (ERCOT).

Filing Entity and its Energy Affiliates	Docket # Where MBR Authority was Granted	Generation Name	Owned by	Controlled by	Date Control Transferred	Balancing Authority Area	Geographic Region	In-Service Date	Nameplate and/or Seasonal Rating
Coastal Carolina Clean Power, LLC	N/A (QF83-263)	Coastal Carolina Clean Power – Kenansville Facility	Coastal Carolina Clean Power, LLC	Coastal Carolina Clean Power, LLC	6/2006	CPLE	Southeast	2/2009 (refurbished)	28 MW
Cedar Bay Generating Company, Limited Partnership	N/A (QF89-126)	Cedar Bay Generating Company, Limited Partnership	Cedar Bay Generating Company, Limited Partnership	Cedar Bay Generating Company, Limited Partnership	N/A	JEA	Southeast	1/1994	291.6 MW
Bottle Rock Power, LLC	N/A (QF95-284)	Bottle Rock Power Plant	Bottle Rock Power, LLC	Bottle Rock Power, LLC	N/A	CAISO	Southwest	9/2007 (refurbished)	55 MW
CalPeak Power – Border LLC	ER01-2547	CalPeak Power – Border Project	CalPeak Power – Border LLC	CalPeak Power – Border LLC	May 26, 2006	CAISO	Southwest	4th Quarter 2001	49.5 MW
CalPeak Power – Enterprise LLC	ER01-2546	CalPeak Power – Enterprise Project	CalPeak Power – Enterprise LLC	CalPeak Power – Enterprise LLC	May 26, 2006	CAISO	Southwest	4th Quarter 2001	49 MW
CalPeak Power – Panoche LLC	ER01-2543	CalPeak Power – Panoche Project	CalPeak Power – Panoche LLC	CalPeak Power – Panoche LLC	May 26, 2006	CAISO	Southwest	4th Quarter 2001	49.5 MW

Filing Entity and its Energy Affiliates	Docket # Where MBR Authority was Granted	Generation Name	Owned by	Controlled by	Date Control Transferred	Balancing Authority Area	Geographic Region	In-Service Date	Nameplate and/or Seasonal Rating
CalPeak Power – Vaca Dixon LLC	ER01-2544	CalPeak Power – Vaca Dixon Project	CalPeak Power – Vaca Dixon LLC	CalPeak Power – Vaca Dixon LLC	May 26, 2006	CAISO	Southwest	4th Quarter 2001	49.5 MW
Starwood Power-Midway, LLC²	ER08-110	Starwood Power-Midway, LLC	Starwood Power-Midway, LLC	Starwood Power-Midway, LLC	N/A	CAISO	Southwest	2009	121.8 MW
Sunray Energy, LLC	N/A (QF85-504)	Solar Energy Generating System II	Sunray Energy, LLC	Sunray Energy, LLC	N/A	CAISO	Southwest	06/1988	30 MW
Sunray Energy, LLC	N/A (QF84-434)	Solar Energy Generating System I	Sunray Energy, LLC	Sunray Energy, LLC	N/A	CAISO	Southwest	07/1984	13.8 MW
Somerset Operating Company, LLC	ER12-1562	Somerset Operating Company, LLC	Somerset Operating Company, LLC	Somerset Operating Company, LLC	N/A	NYISO	Northeast	06/2012	678 MW
Cayuga Operating Company, LLC	ER12-1563	Cayuga Operating Company, LLC	Cayuga Operating Company, LLC	Cayuga Operating Company, LLC	N/A	NYISO	Northeast	06/2012	313 MW

² Pursuant to the terms of the transaction through which Starwood Power-Midway, LLC (Midway) was acquired on September 6, 2013, Midway intends to change its name and file a notice of succession as soon as practicable.

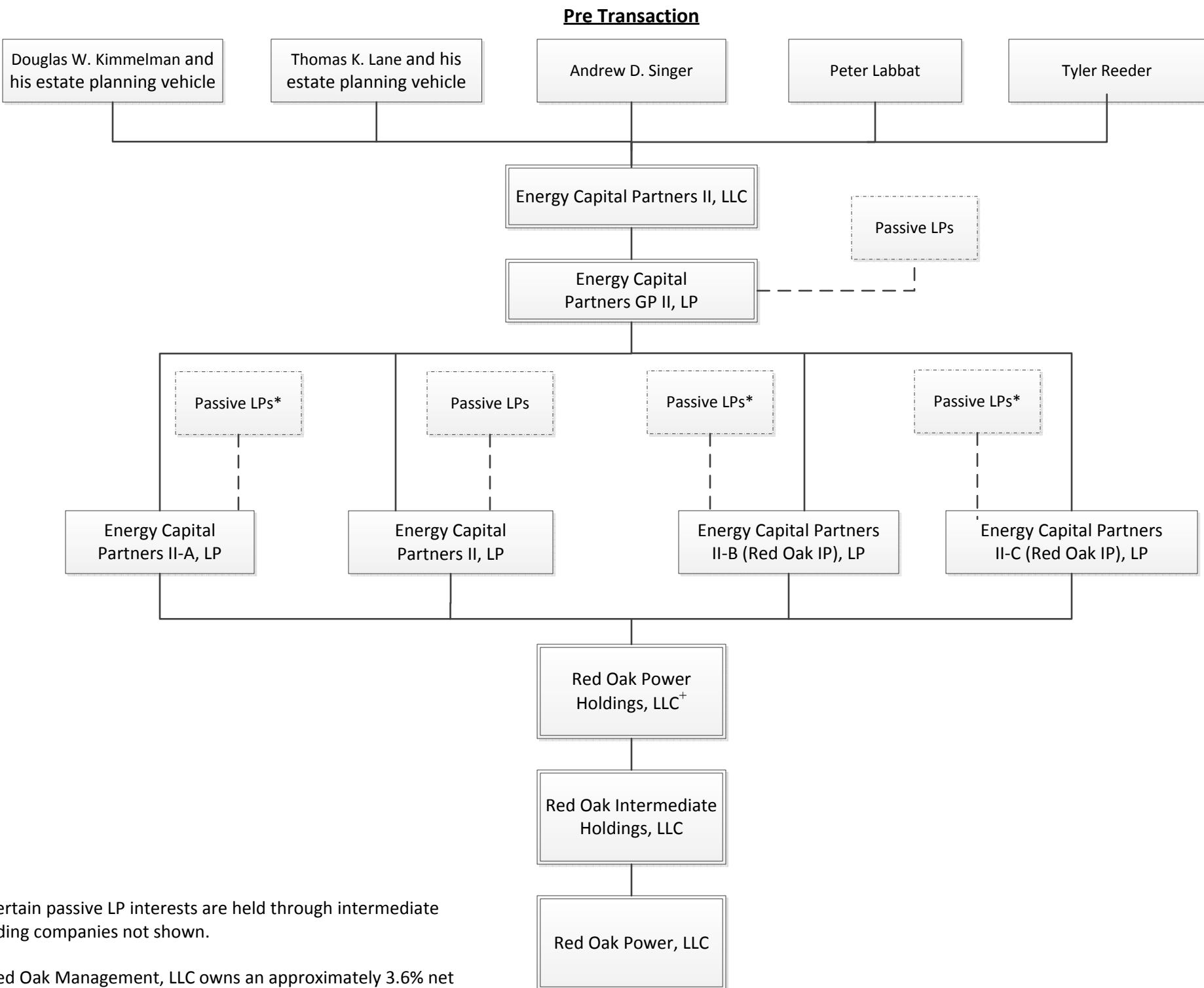
**Affiliates of The Carlyle Group with Electric Transmission Assets
and/or Natural Gas Intrastate Pipelines and/or Gas Storage Facilities³
(as of September 13, 2013)**

Filing Entity and its Energy Affiliates	Asset Name and Use	Owned by	Controlled by	Date Control Transferred	Balancing Authority Area	Geographic Region	Size
Keyrock Energy LLC	Keyrock Gathering Pipeline in Pennsylvania	Keyrock Energy LLC	KEHC LLC	7/2009	PJM	Northeast	74.5 mile low-pressure gathering pipeline, 4-inch to 8-inch diameter; 5.0 to 7.5 MMcf/d capacity
Keyrock Energy LLC	Corinth Project gathering natural gas in Illinois	Keyrock Energy LLC	KEHC LLC	1/2012	MISO	Central	60-mile gathering pipeline
Salt Plains Storage, LLC	Salt Plains Storage, intrastate storage facility located in Grant County, Oklahoma	Niska Gas Storage Partners LLC	Niska Gas Storage Partners LLC	5/2010	WFEC	SPP	13 Bcf
Wild Goose Storage, LLC	Wild Goose Storage, intrastate storage facility located in Butte County, California	Niska Gas Storage Partners LLC	Niska Gas Storage Partners LLC	5/2010	CAISO	Southwest	50 Bcf

³ This chart does not include affiliates operating solely within ERCOT.

Exhibit C

Pre-Transaction Organizational Chart



* Certain passive LP interests are held through intermediate holding companies not shown.

+ Red Oak Management, LLC owns an approximately 3.6% net profits interest in Red Oak Power Holdings, LLC

Exhibit C

Post-Transaction Organizational Chart

Post Transaction

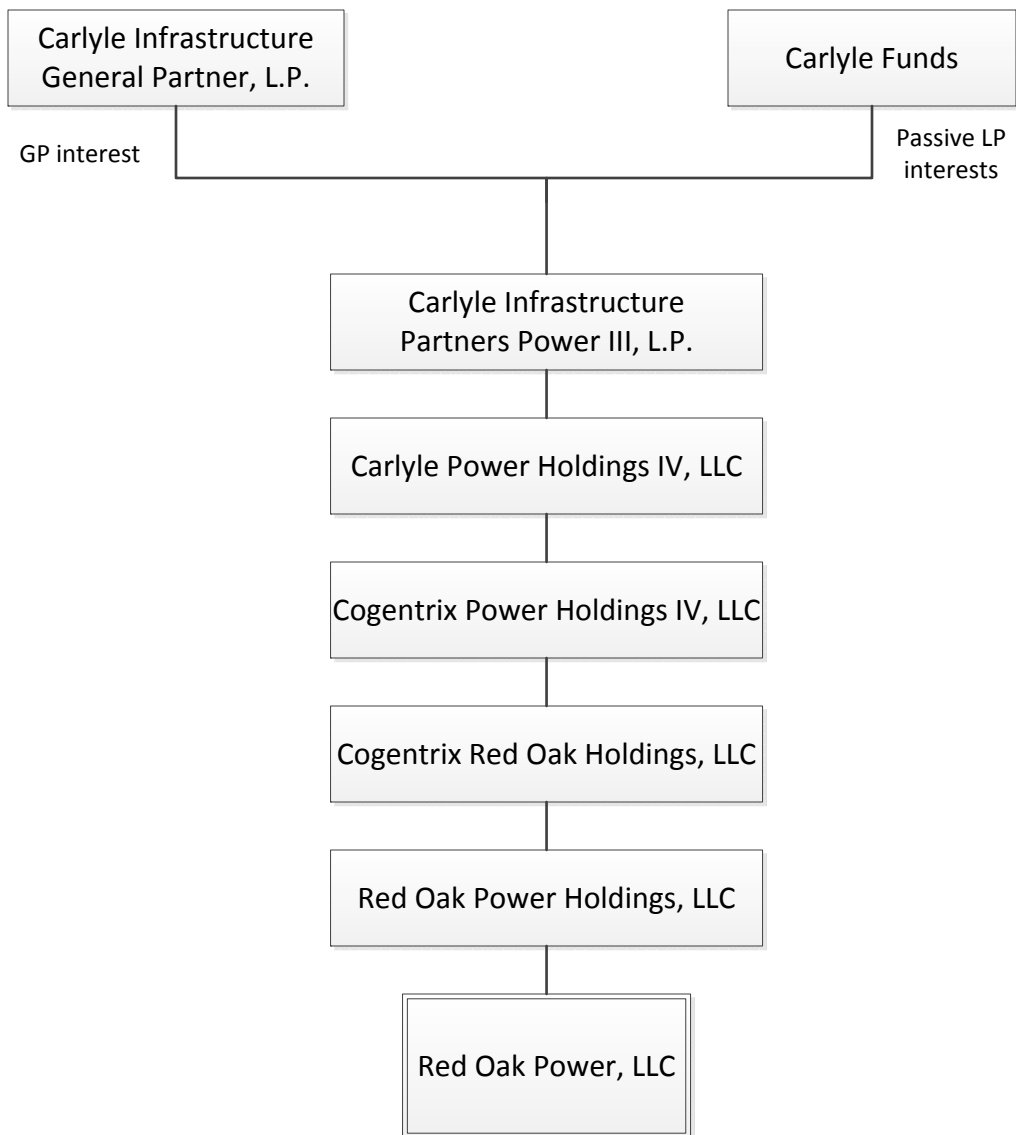


Exhibit D

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 indirect disposition of the interconnection equipment related to the Facility. There are no strategic alliances, joint ventures, tolling arrangements, or other proposed business arrangements to which Applicant is a party that are affected by the Transaction other than as described herein.

Exhibit F

Description of Customers

Applicant sells the electrical output of the Facility pursuant to its market-based rate authorization and related long-term tolling agreement. The terms of that agreement will not be affected by the Transaction. None of Applicant, Purchaser, or any of their parent companies, subsidiaries, affiliates, and associate companies owns or controls any transmission facilities in the United States, other than the limited equipment necessary to interconnect individual generating facilities with the electric power grid. In any event, 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 Applicant's market-based rate tariff and any related agreements, books, and records, and the interconnection equipment associated with the Facility.

Exhibit I

Contracts Related to the Transaction

Confidential Exhibit

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

Exhibit L

Regulatory Approvals

In addition to Commission approval under FPA section 203, the following other notifications or approvals are required:

- Approval from the Federal Communications Commission;
- A filing, issuance or approval to the extent necessary in accordance with the New Jersey Industrial Site Recovery Act; and
- A filing, to the extent necessary in accordance with the New Jersey Bulk Sales Act.

Exhibit M**Verifications on Cross-Subsidization**

Because neither Applicant nor any of its affiliates is a traditional public utility with captive ratepayers in the United States or that owns or provides transmission service over jurisdictional transmission facilities in the United States, there is no issue with respect to cross-subsidization. Pursuant to section 33.2(j)(1) of the Commission's regulations, Applicant provides assurance and verifies, based on facts and circumstances known to Applicant or that are reasonably foreseeable, that the proposed Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including:

- (1) Any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;
- (2) Any new issuance of 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.

Attachment 1

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

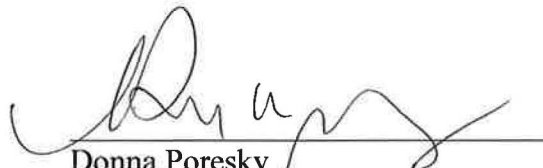
Red Oak Power, LLC

)

Docket No. EC13-_____

VERIFICATION OF APPLICATION FOR AUTHORIZATION
FOR DISPOSITION OF JURISDICTIONAL FACILITIES

Donna Poresky, being duly sworn, deposes and says: She is General Counsel of EquiPower Resources Corp. and has the authority to verify the foregoing Application on behalf of Red Oak Power, LLC (Applicant). She has read the Application and, to the best of her knowledge, information and belief, all of the statements contained therein with respect to Applicant are true and accurate.



Donna Poresky
General Counsel
EquiPower Resources Corp.

Subscribed and sworn to before me
on this 11th day of September, 2013.



Notary Public

My commission expires March 31, 2018

HILARY P. SANDERS
NOTARY PUBLIC
MY COMMISSION EXPIRES MAR. 31, 2018

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Red Oak Power, LLC) Docket No. EC13-_____

VERIFICATION OF APPLICATION FOR AUTHORIZATION
FOR DISPOSITION OF JURISDICTIONAL FACILITIES

County of Mecklenburg)
State of North Carolina)

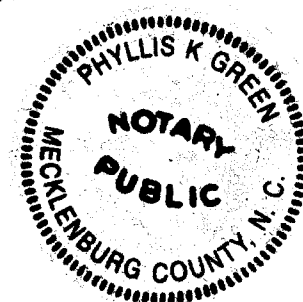
Douglas L. Miller, being duly sworn, deposes and says: He is Executive Vice President – General Counsel and Secretary of Cogentrix Red Oak Holdings, LLC and has the authority to verify the foregoing Application on behalf of Cogentrix Red Oak Holdings, LLC and its affiliates. He has read the Application and, to the best of his knowledge, information and belief, all of the statements contained therein with respect to Cogentrix Red Oak Holdings, LLC and its affiliates are true and accurate.

Douglas L. Miller
Douglas E. Miller

Subscribed and sworn to before me on this 13th day of September, 2013.

Phyllis K Green
Notary Public

My commission expires May 8, 2016



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

Red Oak Power, LLC

)

Docket No. EC13-_____

PROTECTIVE ORDER

(Issued _____)

1. This Protective Order shall govern the use of all Protected Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Administrative Law Judge ("Presiding Judge") or the Federal Energy Regulatory Commission ("Commission").
2. This Protective Order applies to the following two categories of materials: (A) A Participant may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and (B) A Participant shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 CFR § 388.113(c)(1) ("Critical Energy Infrastructure Information").
3. Definitions – For purposes of this Order:
 - (a) The term “Participant” shall mean a Participant as defined in 18 CFR § 38.5.102(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.

(3) Protected Materials shall not include (A) any information or document contained in the files of the Commission, or any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, or (C) any information or document labeled as "Non Internet Public" by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stat. & Reg. 31,140. Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

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

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

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

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

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

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

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

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

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

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

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

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

11. Subject to Paragraph 17, 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 17 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 information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than reviewing representatives, such participant shall first notify both counsel for the disclosing participant and the Presiding Judge of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Presiding Judge.

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

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

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

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

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

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

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

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

Presiding Administrative Law Judge

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

Red Oak Power, LLC

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Docket No. EC13-_____

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: _____

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