

LATHAM & WATKINS LLP

August 29, 2013

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

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Re: Application for Authorization of  
Transaction under Section 203 of the Federal Power Act, and Requests for  
Expedited Action, Waivers of Filing Requirements and Confidential  
Treatment of Transaction Documents, 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”), Niagara Generation, LLC (the “Applicant”) hereby submits the attached Application requesting Commission authorization for a transaction pursuant to which USRG Finance Company, LLC (“USRG Finance”) agrees to sell, and Sterling Energy Group, Inc. (“Sterling”) agrees to purchase, 100% of the ownership interests in the Applicant (the “Transaction”). As a result of the Transaction, Applicant will become a wholly-owned subsidiary of Sterling. 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 issue an order granting the requested authorizations by October 8, 2013 in order to allow the Applicant to restart and return its facility to operation as soon 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 Version; Contains Confidential Information – Do Not Release,**” and the public version (which does not contain Confidential Exhibit I) is marked “**Public Version; Confidential Information Removed.**”

LATHAM & WATKINS<sup>LLP</sup>

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

Respectfully submitted,

/s/ Jared W. Johnson

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Enclosures

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

Niagara Generation, LLC ) Docket No. EC13-\_\_\_\_-000

**APPLICATION FOR AUTHORIZATION OF TRANSACTION UNDER SECTION 203  
OF THE FEDERAL POWER ACT AND REQUESTS FOR  
EXPEDITED ACTION,  
WAIVERS OF FILING REQUIREMENTS AND  
CONFIDENTIAL TREATMENT OF TRANSACTION DOCUMENTS**

Pursuant to Section 203(a)(1)(A) of the Federal Power Act (“FPA”)<sup>1</sup> and Part 33 of the Rules and Regulations of the Federal Energy Regulatory Commission (“FERC” or the “Commission”),<sup>2</sup> Niagara Generation, LLC (“Niagara Generation” or “Applicant”) hereby requests Commission authorization for a transaction (as described herein, the “Transaction”) pursuant to which USRG Finance Company, LLC (“USRG Finance”) agrees to sell, and Sterling Energy Group, Inc. (“Sterling”) agrees to purchase, 100% of the ownership interests in Niagara Generation, which owns and operates an electric generating facility located in the New York Independent System Operator, Inc. (“NYISO”) balancing authority area. As a result of the Transaction, Niagara Generation will become a wholly-owned subsidiary of Sterling.<sup>3</sup>

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<sup>1</sup> 16 U.S.C. § 824b(a)(1)(A) (2006).

<sup>2</sup> 18 C.F.R. pt. 33 (2011).

<sup>3</sup> As discussed in Section I.B below, Crawfordsville Energy, LLC, (“Crawfordsville Energy”) which is a direct, wholly-owned subsidiary of Sterling, has self-certified as an exempt wholesale generator but does not yet own any generation facilities or other energy-related facilities. Accordingly, Applicant believes that Sterling may not be considered a “holding company” within the meaning of Section 203(a)(2); however, even assuming that it were considered a holding company, Sterling would be a holding company solely with respect to its ownership in Crawfordsville Energy, an exempt wholesale generator, and therefore the blanket authorization set forth in 18 C.F.R. § 33.1(c)(8) would apply.

As described herein, the Transaction will have no adverse effect on competition, rates, or regulation, and will not result in any cross-subsidization of a non-utility company or the encumbrance or pledge of utility assets for the benefit of an associate company. The Commission should therefore approve the Transaction as consistent with the public interest 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.<sup>4</sup> In addition, Applicant requests confidential treatment pursuant to Sections 33.9, 388.112 and 385.1112 of the Commission's regulations,<sup>5</sup> 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,<sup>6</sup> for the Purchase and Sale Agreement pursuant to which the Transaction will occur (the "PSA"), which is attached hereto as Confidential Exhibit I.

Finally, Applicant respectfully requests that the Commission issue an order granting the requested authorizations as expeditiously as possible, and in any event, by no later than October 8, 2013 (*i.e.*, 40 days after filing). This Application qualifies for expedited action under Section 33.11 of the Commission's regulations<sup>7</sup> because the Transaction does not involve a merger or require a competitive screen analysis, is consistent with Commission precedent and raises no cross-subsidization concerns. Further, expedited treatment will facilitate the closing of

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<sup>4</sup> 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).

<sup>5</sup> 18 C.F.R. §§ 33.9, 388.112, 385.1112.

<sup>6</sup> 18 C.F.R. § 388.107(d); *see also* 5 U.S.C. § 552(b)(4).

<sup>7</sup> 18 C.F.R. § 33.11.

the Transaction, and the anticipated re-start of the Niagara Generation facility, which has been temporarily mothballed. The re-start of the facility will make additional energy available to the NYISO balancing authority and is anticipated to provide employment and economic benefits to the local economy.

## **I. THE PARTIES**

### **A. Niagara Generation and its Current Owners**

#### **1. Niagara Generation**

Niagara Generation, a public utility under Section 201 of the FPA, is a Delaware limited liability company. Niagara Generation owns and operates an approximately 53 MW generating facility that utilizes a single Pyropower circulating fluidized bed boiler that can burn bituminous coal, petroleum coke, biomass and tire-derived fuel (the “Niagara Generation Facility”), located in Niagara Falls, New York. The Niagara Generation Facility also includes limited interconnection facilities necessary to interconnect the Niagara Generation Facility with the transmission system controlled by NYISO. Niagara Generation is authorized to sell electric energy, capacity and ancillary services at market-based rates and exclusively at wholesale.<sup>8</sup> Niagara Generation is also an exempt wholesale generator (“EWG”).<sup>9</sup>

#### **2. Upstream Ownership of Niagara Generation**

Niagara Generation is a direct, wholly-owned subsidiary of USRG Finance. USRG Finance, a Delaware limited liability company, is directly owned by USRG Power & Biofuels Fund II, L.P. (“USRG Fund II”), which holds a 60.36% ownership interest and USRG Niagara CB, LLC (“USRG Niagara”), which holds the remaining 39.64% ownership interest.

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<sup>8</sup> See *WPS Beaver Falls Generation, LLC, et al.*, Docket No. ER03-55-000 (letter order issued Dec. 3, 2002).

<sup>9</sup> See *WPS Beaver Falls Generation, LLC, et al.*, 101 FERC ¶ 62,157 (2002).

USRG Niagara, in turn, is a wholly-owned subsidiary of USRG Power & Biofuels Fund II-A, L.P. (“USRG Fund II-A” and together with USRG Fund II, the “USRG Funds”).

USRG Power & Biofuels Fund II GP, LLC (“USRG Fund II GP”) has management control and an approximately 20% economic interest in Niagara Generation through each of the USRG Funds and their subsidiaries. The remaining interests in the USRG Funds are held by limited partner investors whose interests are passive and who do not exercise control, directly or indirectly over Applicant.

USRG Fund II GP is held by various individual investors and entities, most of whom hold less than a 10% ownership interest. The following individuals and entities hold a 10% or greater ownership interest in USRG Fund II GP: (i) Rusheen Capital Partners, LLC (approximately 19.5%, and which is wholly owned by James McDermott); Lee Bailey (approximately 14.3%); Millwood Energy Holdings, LLC (approximately 13%, and which is wholly owned by Jonathan Koch); and CrossRiver Capital, LLC (approximately 10.3%, and which is wholly owned by Thomas King).<sup>10</sup>

## **B. Sterling**

Sterling, an Indiana corporation privately owned by its shareholders, is an energy company with operations in power generation and oil and gas production and transmission. Sterling is held by a group of individual private investors and entities, most of whom hold less than a 5% ownership interest. The only individuals and entities that hold a 10% or greater

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<sup>10</sup> None of these entities hold a 10% or greater voting equity ownership interest in any other energy-related companies. Bottle Rock Power, LLC (“Bottle Rock”), an approximately 16 MW facility certified as a qualifying facility (“QF”) in Docket QF95-284, and Wineagle Developers, an approximately 800 kW facility that is also a QF, are currently affiliates of Niagara Generation. Both of these affiliates are located within the California Independent System Operator Corporation balancing authority area.

ownership interest in Sterling are William J. Harrington, who holds approximately 47.5% and Fred L. Solomon, who holds approximately 31.6%.

Crawfordsville Energy, an Indiana limited liability company, is a direct, wholly-owned subsidiary of Sterling. Crawfordsville Energy holds a purchase contract with the city of Crawfordsville, Indiana for the acquisition of a 25 MW power plant currently owned and operated by Crawfordsville Electric Light & Power (“Crawfordsville Energy Facility”).

Crawfordsville Energy expects to close on this transaction by December 31, 2013.

Crawfordsville Energy has self-certified as an exempt wholesale generator (“EWG”)<sup>11</sup> but, as noted, does not yet own or control any generation assets.

Sterling also holds a 99% ownership interest in Gulfstar Energy Group, LLC, which is a Kentucky limited liability company (“Gulfstar”). Gulfstar owns and operates an approximately 20-mile natural gas pipeline and gathering system in Butler and Warren County, Kentucky.

## **II. THE TRANSACTION**

Pursuant to the terms of the PSA, Sterling will purchase, and USRG Finance will sell, 100% of its ownership interests in Niagara Generation in exchange for a combination of preferred stock in Sterling, which can be converted to common stock at USRG’s election, and a warrant to purchase additional common stock in Sterling. Additionally, USRG Finance will have the right to appoint a board member to a newly created sixth seat on Sterling’s board of directors. As result of the Transaction, Niagara Generation will become a wholly-owned subsidiary of Sterling.

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<sup>11</sup> See Crawfordsville Energy, LLC, Docket No. EG12-110-000 (Notice of Effectiveness issued Dec. 5, 2012).

### III. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST

Section 203(a)(4) of the FPA provides that the Commission must authorize a proposed transaction under Section 203 if it determines that the transaction “will be consistent with the public interest.”<sup>12</sup> The Commission reviews three factors when evaluating proposed transactions under the Section 203 public interest standard: (i) the effect on competition; (ii) the effect on rates; and (iii) the effect on regulation.<sup>13</sup> In addition, Section 203(a)(4) also requires the Commission to consider whether a proposed transaction would “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.”<sup>14</sup> As described below, the Transaction is consistent with the public interest under the Commission’s applicable tests and otherwise meets the statutory requirements of Section 203 of the FPA.

#### A. The Transaction Will Not Have an Adverse Effect on Competition

##### 1. The Transaction Does Not Raise Any Horizontal Market Power Issues

Applicant respectfully 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*. Section 33.3(a)(2)(i) of the Commission’s regulations provides that such a filing is not required if the applicant “[a]ffirmatively demonstrates that the

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<sup>12</sup> 16 U.S.C. § 824b(a)(4). Section 203 does not require a demonstration that a proposed transaction will result in a positive benefit to the public. Rather, the Commission need only conclude that the proposed transaction is *consistent with* the public interest. See *Tex.-N.M. Power Co.*, 105 FERC ¶ 61,028 at P 23 (2003); *Entergy Servs., Inc.*, 62 FERC ¶ 61,073 at 61,370 (1993); *Fitchburg Gas & Elec. Light Co.*, 58 FERC ¶ 61,201 at 61,624 (1992); *Ky. Utils. Co.*, 56 FERC ¶ 61,184 at 61,654 (1991h); *Savannah Elec. & Power Co.*, 42 FERC ¶ 61,240 at 61,780 (1988); *Pac. Power & Light Co. v. FPC*, 111 F.2d 1014, 1016-17 (9th Cir. 1940).

<sup>13</sup> *Inquiry Concerning the Commission’s Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 at 30,111-112 (1996) (“*Merger Policy Statement*”), *order on recons.*, Order No. 592-A, 79 FERC ¶ 61,321 (1997).

<sup>14</sup> 16 U.S.C. § 824b(a)(4).



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*[.]”<sup>15</sup> While the Transaction involves a transfer of upstream interests in generation, rather than a merger, the same exception applies.<sup>16</sup>

This *de minimis* standard is met with respect to the Transaction. The Transaction involves the transfer of an approximately 53 MW generation facility in the NYISO market (currently not operating) from USRG Finance to Sterling, which represents approximately 0.13% of the NYISO market.<sup>17</sup> Because none of USRG Finance, Sterling or any of their affiliates holds any interests in any other generating facilities in the NYISO market or in any first-tier markets to NYISO, there will be no changes in these market shares as a result of the Transaction.

Therefore, the Transaction will not raise any horizontal market power concerns because it will not have more than a *de minimis* impact on the NYISO market. Thus, no Appendix A analysis is required with respect to the Transaction.

## **2. The Transaction Does Not Raise Any Vertical Market Power Issues**

The Transaction does not raise any vertical market power issues. Neither Sterling nor its affiliates own or control any transmission facilities in the NYISO market, and Niagara Generation only owns limited transmission facilities necessary to connect the Niagara Generation Facility to the transmission grid. In addition, neither Sterling nor its affiliates has

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<sup>15</sup> 18 C.F.R. § 33.3(a)(2)(i).

<sup>16</sup> See *Liberty Elec. Power, LLC*, 110 FERC ¶ 62,152 at P 3 (2005) (approving upstream transfer of jurisdictional facilities without requiring a horizontal competitive screen analysis where parties held only *de minimis* interests in the relevant markets); *LenderCo*, 110 FERC ¶ 61,044 (2005) (same); *Athens Generating Co., LP*, 103 FERC ¶ 61,290 (2003) (same).

<sup>17</sup> As of April 2013, the NYISO market had a total installed capacity of 41,452 MW. See 2013 Load & Capacity Data: a report by the New York Independent System Operator, “Gold Book” at 3 (Apr. 2013), available at [http://www.nyiso.com/public/webdocs/markets\\_operations/services/planning/Documents\\_and\\_Resources/Planning\\_Data\\_and\\_Reference\\_Docs/Data\\_and\\_Reference\\_Docs/2013\\_GoldBook.pdf](http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/Planning_Data_and_Reference_Docs/Data_and_Reference_Docs/2013_GoldBook.pdf).

any ownership interest in or control of fuel supplies, fuel delivery systems, other inputs to electricity markets or any new sites for electric generation that could raise barriers to entry in the NYISO market. Accordingly, under Section 33.4(a)(2) of the Commission’s regulations,<sup>18</sup> there is no need to file a vertical competitive analysis, and the Transaction does not raise any vertical market power concerns.

**B. The Transaction Will Not Have an 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.”<sup>19</sup> The Transaction will not have any adverse effect on rates because any sales of electric energy, capacity and ancillary services by Niagara Generation will be made at market-based rates authorized by the Commission.<sup>20</sup> In addition, neither Niagara Generation nor Sterling has any transmission customers whose rates could be affected by the Transaction.

**C. The Transaction Will Not Have an Adverse Effect on Regulation**

The Transaction will not diminish the Commission’s regulatory authority or create a regulatory gap or shift regulatory authority between the Commission and any state commission. Niagara Generation’s status as an FPA-jurisdictional utility will not change as a result of the Transaction, and the Transaction will not result in any facilities being removed from the Commission’s jurisdiction. Accordingly, the Transaction will not impair the Commission’s jurisdiction over Niagara Generation.

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<sup>18</sup> 18 C.F.R. § 33.4(a)(2).

<sup>19</sup> *New England Power Co.*, 82 FERC ¶ 61,179 at 61,659, *order on reh’g*, 83 FERC ¶ 61,275 (1998), *aff’d sub nom. Town of Norwood v. FERC*, 202 F.3d 392 (1st Cir. 2000); *see also Merger Policy Statement*, FERC Stats. & Regs. ¶ 31,044 at 30,123 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (concern is to protect ratepayers from rate increases because of a merger).

<sup>20</sup> 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).

**D. The Transaction Will Not Result in Cross-Subsidization or the Pledge or Encumbrance of Utility Assets**

Section 203(a)(4) of the FPA provides that the Commission must find that a proposed jurisdictional 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, unless the Commission finds that such cross-subsidization, pledge or encumbrance is consistent with the public interest.<sup>21</sup> The Commission has stated that its concern about cross-subsidization is principally a concern over the effect of a transaction on rates charged to captive customers.<sup>22</sup> Here, the Transaction falls within one of the Commission’s “safe harbors” under Section 203(a)(4), such that detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization is not required.<sup>23</sup> As explained in Sections I and II above, the Transaction does not involve any franchised public utility with captive customers (*i.e.*, wholesale or retail electric energy customers served under cost-based regulation). The Commission has found that, in these circumstances, there is no potential for harm to customers due to cross-subsidization, and no further showing is required under the Commission’s FPA Section 203 Supplemental Policy.<sup>24</sup>

**IV. INFORMATION REQUIRED OF APPLICANT BY SECTION 33.2 OF THE COMMISSION’S REGULATIONS AND REQUESTS FOR WAIVERS**

Applicant herein provides the information necessary for the Commission to determine that the Transaction is consistent with the public interest as required under FPA

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<sup>21</sup> See 16 U.S.C. § 824b(a)(4).

<sup>22</sup> *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 167 (2006); *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at P 13 (2007).

<sup>23</sup> *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at P 17.

<sup>24</sup> *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at P 17 (“If no captive customers are involved, then there is no potential for harm to customers. Therefore, compliance with Exhibit M could be a showing that no franchised public utility with captive customers is involved in the transaction.”) (footnote omitted).

Section 203. Because certain information specified in the Commission's regulations is inapplicable to the Commission's consideration of whether the Transaction is consistent with the public interest, Applicant respectfully requests that the Commission waive certain of the filing requirements in Part 33 of its regulations, as discussed below. The Commission has granted such waivers in similar circumstances.<sup>25</sup>

**A. The exact name and address of the principal business office of Applicant**

Applicant's exact legal name and principal business address is as follows:

Niagara Generation, LLC  
5300 Frontier Avenue  
Niagara Falls, NY 14304

**B. Name and address of persons authorized to receive notices and communications regarding this Application**

Applicant requests that the following persons be placed on the official service list for this proceeding and, to the extent necessary, respectfully requests waiver of Section 385.203(b)(3) of the Commission's regulations,<sup>26</sup> in order to permit designation of such persons for service in this proceeding.

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<sup>25</sup> See, e.g., *MACH Gen, LLC*, 113 FERC ¶ 61,138; *Boston Generating, LLC*, 113 FERC ¶ 61,109; *La Paloma, Holding Co., LLC*, 112 FERC ¶ 61,052; *Lake Road Holding Co., LLC*, 112 FERC ¶ 61,051.

<sup>26</sup> 18 C.F.R. § 385.203(b)(3).

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**C. Description of Applicants, including:**

**1. All business activities of the applicants, including authorizations by charter or regulatory approval**

The business activities of Applicant and Sterling are described in Section I of this Application. Applicant respectfully requests a waiver of the requirement to submit Exhibit A to the extent otherwise deemed necessary.

2. **A list of all energy subsidiaries and energy affiliates, percentage ownership in such subsidiaries and affiliates, and a description of the primary business in which each energy subsidiary and affiliate is engaged**

All information pertaining to Applicant is provided in Section I.A. of this Application and all information pertaining to Sterling is provided in Section I.B. of this Application. Applicant respectfully requests a waiver of the information requirements of 18 C.F.R. § 33.2(c)(2) to the extent necessary to provide any additional information on Niagara Generation's or Sterling's other current energy affiliates because such affiliates are not relevant to the Commission's evaluation of the Transaction.

3. **Organizational charts depicting the applicant's current and post-transaction corporate structures (including any pending authorized but not implemented changes), indicating all parent companies, energy subsidiaries and energy affiliates unless the applicant demonstrates that the proposed transaction does not affect the corporate structure of any party to the transaction**

An organizational chart illustrating the current ownership structure of Niagara Generation is attached hereto as Exhibit C-1. An organizational chart depicting Applicant's post-Transaction ownership structure is attached hereto as Exhibit C-2.

4. **Description of all joint ventures, strategic alliances, tolling arrangements or other business arrangements, including transfers of operational control of transmission facilities to Commission approved Regional Transmission Organizations, both current, and those planned to occur within a year from the date of filing, to which the applicant or its parent companies, energy subsidiaries, and energy affiliates is a party, unless the proposed transaction does not affect any of its business interests**

The pertinent business interests of Niagara Generation and Sterling are described in the text of this Application. Applicant requests waiver of the requirement to provide Exhibit D, to the extent necessary, as the Transaction will not affect any business interests except as discussed herein.

**5. Identity of common officers or directors of parties to the proposed transaction**

There are no common officers or directors between Niagara Generation and Sterling. To the extent that any person may in the future hold an interlocking position subject to the Commission's regulations, the appropriate filings under 18 C.F.R. Parts 45 and 46 will be timely made.

**6. Description and location of wholesale power customers and unbundled transmission services customers served by the applicants or their parent companies, subsidiaries, affiliates and associate companies**

The Transaction will not alter any existing wholesale power sales or transmission services. All sales of electric energy, capacity and ancillary services made by Niagara Generation will be made at market-based rates authorized by the Commission. Moreover, neither Niagara Generation, nor Sterling or its affiliates, have transmission service customers or provide unbundled transmission services in any market.

Niagara Generation and any affiliates or subsidiaries of Sterling that engage in wholesale power sales make such sales pursuant to market-based rate tariffs on file with the Commission and report such transactions, where applicable, in their electric quarterly reports. Any such sales will not be affected by the Transaction. Applicant requests a waiver of the requirement of Section 33.2(c)(6) of the Commission's regulations to the extent it requires that a list be provided of all wholesale power sales customers of Applicant, Sterling, or their respective affiliates because such a list would not assist the Commission in the evaluation of the Transaction. Accordingly, to the extent necessary, Applicant respectfully requests waiver of the requirement to file Exhibit F.

**D. Description of jurisdictional facilities owned, operated, or controlled by the applicants or their parent companies, subsidiaries, affiliates and associate companies**

The jurisdictional facilities owned, operated or controlled by Niagara Generation that are the subject of this Application are described in the text of the Application, and consist of Niagara Generation's market-based rate tariff, associated books, records, and accounts and related agreements and limited interconnection facilities required to interconnect the Niagara Generation Facility to the NYISO transmission system. In addition, information regarding Sterling's energy-related affiliates is included in the discussion in Section I.B of this Application. Niagara Generation's current affiliates in CAISO are Qualifying Facilities and will not be impacted by the Transaction. Therefore, to the extent necessary, Applicant respectfully requests waiver of the requirement to provide such information in Exhibit G.

**E. A narrative description of the proposed transaction for which Commission authorization is requested**

The Transaction is described in Section II of this Application. Therefore, to the extent necessary, Applicant respectfully requests waiver of the requirement to file Exhibit H.

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

The Transaction PSA is attached hereto as Confidential Exhibit I. In Section VIII below, Applicant requests confidential treatment of the Transaction PSA.

**G. A statement explaining the facts relied upon to demonstrate that the proposed transaction is consistent with the public interest**

This information is provided in Section III of this Application. Therefore, to the extent necessary, Applicant respectfully requests waiver of the requirement to file Exhibit J.



**H. A general or key map showing the properties of each party to the transaction**

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. Therefore, Applicant respectfully requests waiver of the requirement to file a map showing the properties of USRG Finance and Sterling in Exhibit K.

**I. Identify the licenses, orders, or other approvals required from other regulatory bodies in connection with the proposed transaction, and the status of other regulatory actions**

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

**J. An explanation, with appropriate evidentiary support for such explanation (i) of how applicants are providing assurances that the proposed transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company; or (ii) if no such assurance can be provided, an explanation of how such cross-subsidization, pledge or encumbrance will be in the public interest**

This information is provided in Section III.D of this Application and restated in Exhibit M.

**V. PROPOSED ACCOUNTING ENTRIES**

Applicant is not including accounting entries showing the effect of the Transaction on account balances because Applicant is not required to maintain its books and records in accordance with the Commission's Uniform System of Accounts.

**VI. REQUEST FOR EXPEDITED CONSIDERATION**

Applicant respectfully requests that the Commission issue an order granting the requested authorization as expeditiously as possible, and in any event, no later than October 8, 2013 (*i.e.*, 40 days after filing) in order to allow the Niagara Generation Facility to restart and return to operation as soon as possible. Section 203(a)(5) of the FPA requires the Commission to

provide for expedited review of applications under Section 203.<sup>27</sup> 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 Commission precedent.<sup>28</sup> The Commission's regulations also generally provide for expedited review if the transaction does not require an Appendix A analysis.<sup>29</sup> Here, expedited review is warranted because it will allow the Niagara Generation Facility to return to operation, thereby stimulating the local economy and providing additional employment; and, as described in Section III above, approval of the Transaction is consistent with the Commission's precedent, the Transaction does not involve a merger and an Appendix A analysis is not required for the Commission's evaluation of the Transaction. Finally, issuing an order on this Application within the requested timeframe is consistent with other examples where the Commission has given such expedited consideration.<sup>30</sup>

## VII. VERIFICATIONS

In addition to the Exhibits described above, attached to this Application as Attachment 1 are verifications from authorized representatives of Niagara Generation and Sterling, as required under Section 33.7 of the Commission's regulations.

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<sup>27</sup> 16 U.S.C. § 824b(a)(5).

<sup>28</sup> 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).

<sup>29</sup> 18 C.F.R. § 33.11(c)(2).

<sup>30</sup> See, e.g., *Broad River Energy, LLC*, 141 FERC ¶ 62,200 (2012) (authorizing disposition of jurisdictional facilities in 32 days); *AES Red Oak, L.L.C.*, 138 FERC ¶ 62,312 (2012) (authorizing disposition of jurisdictional facilities in 37 days); *Entegra Power Group LLC*, 135 FERC ¶ 62,134 (2011) (authorizing disposition of jurisdictional facilities in 30 days); *Williams Gas Mktg., Inc.*, 122 FERC ¶ 62,152 (2008) (authorizing disposition of jurisdictional facilities in 26 days); *Lehman Bros. Commodity Servs. Inc.*, 122 FERC ¶ 62,070 (2008) (authorizing disposition of jurisdictional facilities in 34 days); *Iberdrola Renovables, S.A.*, 122 FERC ¶ 62,061 (2008) (authorizing disposition of jurisdictional facilities in 34 days).

## VIII. REQUEST FOR CONFIDENTIAL TREATMENT

Applicant seeks to protect the Transaction PSA from public disclosure pursuant to Sections 33.9, 388.112 and 385.1112 of the Commission's regulations, 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.<sup>31</sup> The information contained in the Transaction PSA, attached hereto as Confidential Exhibit I, is of a sensitive commercial nature and the product of arm's-length commercial negotiations. As such, public disclosure could severely hamper the ability of the parties to the Transaction to engage in any future transactions of a similar nature with other parties. In accordance with Section 33.7 of the Commission's regulations,<sup>32</sup> Applicant has provided as Attachment 2 hereto a draft Protective Order.

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<sup>31</sup> 18 C.F.R. §§ 33.9, 388.112, 385.1112, 388.107(d).

<sup>32</sup> 18 C.F.R. § 33.7.

## IX. CONCLUSION

For the reasons described herein, Applicant respectfully requests that the Commission: (i) authorize the Transaction pursuant to Section 203 of the FPA; (ii) grant a limited waiver of the Commission's Part 33 filing requirements with respect to information not necessary to ensure that the Transaction meets the statutory requirements of Section 203; (iii) grant confidential treatment of the Transaction PSA in Confidential Exhibit I; and (iv) issue an order granting the requested authorizations no later than October 8, 2013.

Respectfully submitted,

/s/ George M. Pond

George M. Pond  
Ekin Senlet  
Hiscock & Barclay LLP  
80 State Street  
Albany, NY 12207

*Counsel for Sterling Energy Group, Inc.*

/s/ Jared W. Johnson

Jared W. Johnson  
Tyler Brown  
Latham & Watkins LLP  
555 Eleventh Street, NW, Suite 1000  
Washington, DC 20004

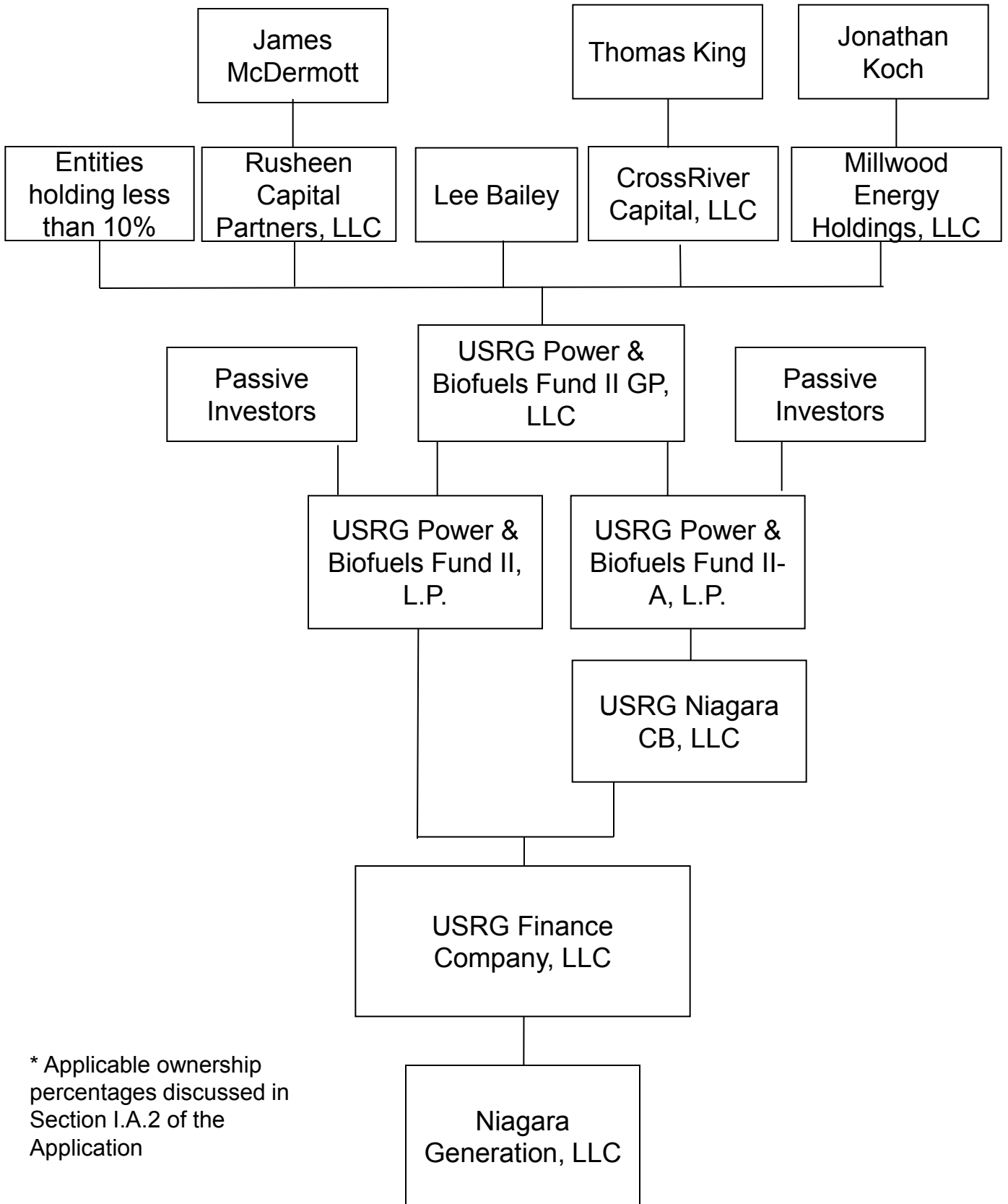
*Counsel for Applicant*

Dated: August 29, 2013

**EXHIBIT C**

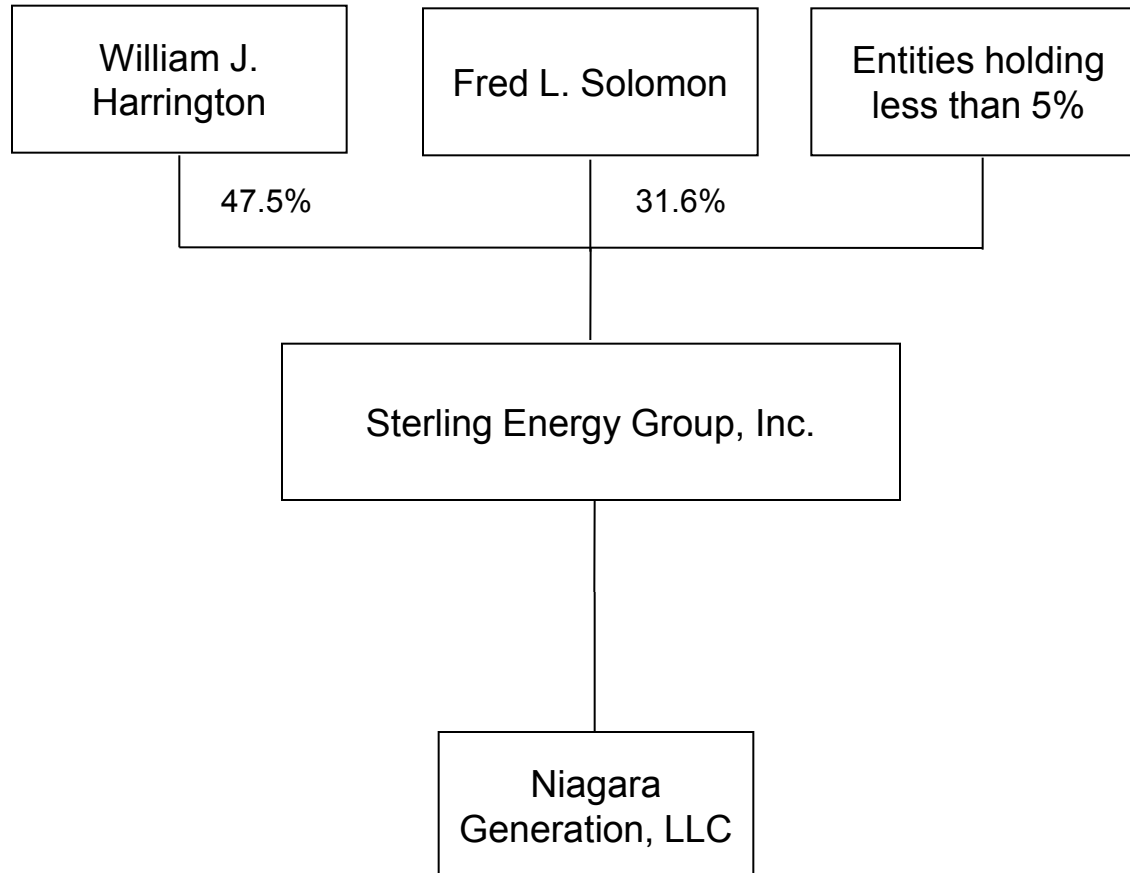
**ORGANIZATIONAL CHARTS**

# Exhibit C-1 Pre-Transactional Organizational Structure\*



\* Applicable ownership percentages discussed in Section I.A.2 of the Application

## Exhibit C-2 Post-Transactional Organizational Structure



Public Version;  
Confidential Information Removed

**CONFIDENTIAL**  
**EXHIBIT I**  
**TRANSACTION DOCUMENT:**  
**REDACTED**



**EXHIBIT L**

**LICENSES, ORDERS**

**AND OTHER APPROVALS**

## **Exhibit L**

In addition to Commission approval under FPA Section 203, the requisite notification with the Federal Communications Commission is required. Applicant further notes that it is seeking a Declaratory Ruling from the New York Public Service Commission (“PSC”) that it is an “Alternate Energy Production Facility” exempt from regulation under the New York Public Service Law (“PSL”) (“Declaratory Ruling”) in a Petition currently pending before the PSC in Case No. 13-E-0223. Applicant is also seeking an alternative PSC approval of the Transaction under Section 70 of the PSL (this alternative request for approval will be moot, if and to the extent the Declaratory Ruling is granted).

**EXHIBIT M**

**EXPLANATION REGARDING**

**CROSS SUBSIDIZATION**

### **Exhibit M**

The Commission has stated that it will recognize three classes of transactions that are unlikely to raise cross-subsidization concerns under Section 203(a)(4) of the FPA. The first such class involves:

transactions where the applicant shows that a franchised public utility with captive customers is not involved. If no captive customers are involved, then there is no potential for harm to customers. Therefore, compliance with Exhibit M could be a showing that no franchised public utility with captive customers is involved in the transactions.<sup>33</sup>

No franchised public utility with captive customers is involved in the Transaction. Accordingly, the Commission should find that Applicant has complied with Exhibit M requirements and that the Transaction does not raise cross-subsidy concerns under Section 203(a)(4) of the FPA.

In addition to the Transaction falling within this safe harbor, Applicant represents that, based on facts and circumstances known to it or that are reasonably foreseeable, 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. Specifically, there are no existing pledges and/or encumbrances of the assets of traditional utilities involved in the Transaction, and the Transaction will not result in: (a) 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; (b) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (c) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission

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<sup>33</sup> *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at P 17.

facilities, for the benefit of an associate company; or (d) 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 service agreements subject to review under sections 205 and 206 of the FPA.

# **ATTACHMENT 1**

# **VERIFICATIONS**

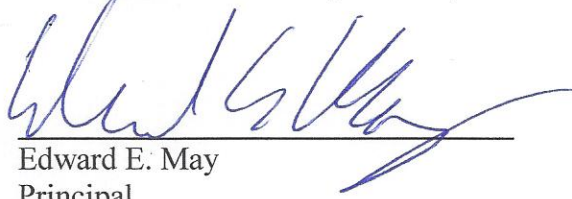
UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Niagara Generation, LLC

) Docket No. EC13-\_\_-000

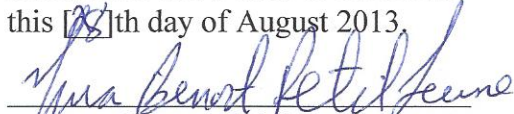
VERIFICATION PURSUANT TO 18 C.F.R. § 33.7

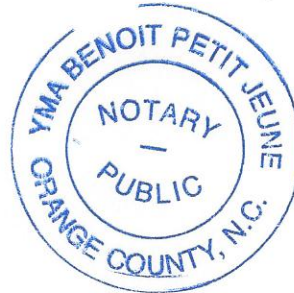
Edward E. May, being duly sworn, deposes and says that: he is Principal of USRG Finance Company, LLC ("USRG Finance") and has the authority to verify the foregoing Application on behalf of USRG Finance; he has read said Application; and based on his knowledge, information and belief, all of the statements contained therein pertaining to USRG Finance are true and accurate.



Edward E. May  
Principal  
USRG Finance Company, LLC

Subscribed and Sworn to before me  
this [28]th day of August 2013.

  
Notary Public



My Commission expires:

12/11/2015  
state of North Carolina  
Orange County

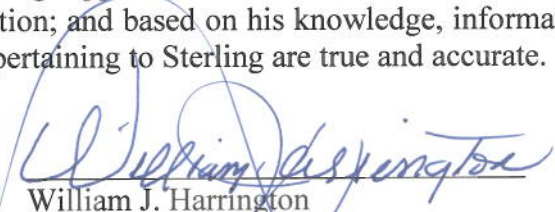
UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Niagara Generation, LLC

) Docket No. EC13-\_\_\_-000

VERIFICATION PURSUANT TO 18 C.F.R. § 33.7

William J. Harrington, being duly sworn, deposes and says that: he is Chief Executive Officer and has the authority to verify the foregoing Application on behalf of Sterling Energy Group, Inc. ("Sterling"); he has read said Application; and based on his knowledge, information and belief, all of the statements contained therein pertaining to Sterling are true and accurate.

  
William J. Harrington  
Chief Executive Officer  
Sterling Energy Group, Inc.

Subscribed and Sworn to before me  
this 28th day of August 2013.



Notary Public

My Commission expires: November 29<sup>th</sup> 2014

Paul Jakubowski  
01JA6231592  
Notary Public, State of New York  
Qualified in Niagara County  
My commission expires NOVEMBER 29th, 2014



**ATTACHMENT 2**

**PROTECTIVE ORDER**

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

Niagara Generation, LLC

)

Docket No. EC13-\_\_\_\_-000

**PROTECTIVE ORDER**

(Issued \_\_\_\_\_, 2013)

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

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

3. Definitions -- For purposes of this Order:

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

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

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

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

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**Presiding Administrative Law Judge**

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

Niagara Generation, LLC

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Docket No. EC13-\_\_\_\_-000

**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 Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Employed By: \_\_\_\_\_  
Representing: \_\_\_\_\_  
Date: \_\_\_\_\_