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July 6, 2016

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BY ELECTRONIC FILING

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

**Re: Western Antelope Blue Sky Ranch B LLC
Docket No. EC16-____-000
Application for Authorization Under Section 203 of the Federal Power Act, Request
for Expedited Consideration and Confidential Treatment**

Dear Secretary Bose:

Enclosed for filing is this Application for Authorization Under Section 203 of the Federal Power Act for the Disposition of Jurisdictional Facilities, Request for Expedited Consideration and Confidential Treatment (the "Application") which is being submitted on behalf of Western Antelope Blue Sky Ranch B LLC ("Applicant").

Applicant respectfully requests that the Commission issue an order approving the transaction on or before August 22, 2016.

Applicant respectfully requests confidential treatment of Exhibit I to the Application pursuant to Section 388.112 of the Commission's Regulations. Exhibit I contains commercial information that is privileged and confidential and not publicly available. Applicant is submitting a confidential, non-public version of this Application marked "**NON-PUBLIC - CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION – DO NOT RELEASE**" and a public version of this Application. Pursuant to 18 C.F.R. § 388.112(b)(2)(i), a proposed protective order and non-disclosure certificate are attached to the filing as Attachment 2.

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The Honorable Kimberly D. Bose
Federal Energy Regulatory Commission
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Respectfully submitted,

/s/ Jason Johns

Jason Johns
Jennifer L. Mersing
Counsel for Western Antelope Blue Sky Ranch B LLC

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

Western Antelope Blue Sky Ranch B LLC)

Docket No. EC16-____-000

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

I. INTRODUCTION

Pursuant to Section 203(a)(1) of the Federal Power Act (“FPA”)¹ and Part 33 of the Federal Energy Regulatory Commission’s (the “Commission”) regulations,² Western Antelope Blue Sky Ranch B LLC (“Applicant”) submits this application seeking authorization for the disposition of jurisdictional facilities resulting from the acquisition by SPW Solar Holdings 3, LLC, a Delaware limited liability company (“SPW3”) of 100% of the membership interests in Applicant, which will own certain Commission-jurisdictional assets at the time the subject transaction (the “Proposed Transaction”) is closed. More specifically, Applicant seeks Commission authorization for the disposition to JPM Capital Corporation, a Delaware corporation (“JPMCC”) and passive investor in SPW3, of an indirect interest in Applicant as a result of the Proposed Transaction.

¹ 16 U.S.C. § 824b.

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

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Section 203(a)(1)(A) of the FPA requires Commission approval for a public utility to directly or indirectly dispose of its jurisdictional facilities.³ Applicant submits that the Proposed Transaction does not result in a transfer of control over its jurisdictional facilities because SPW3 is an affiliate of Applicant, and SPW Solar Managing Member 3, LLC, a Delaware limited liability company (“SPWSMM3”) and also an affiliate of Applicant, will serve as the Managing Member of SPW3 with the right to control and make the decisions affecting Applicant and its jurisdictional assets on a day-to-day basis. Furthermore, JPMCC’s indirect interests in Applicant are those of a passive tax equity investor. Nevertheless, for the reasons set forth herein, Applicant seeks the Commission’s prior approval under Section 203(a)(1) of the FPA to facilitate the Proposed Transaction.⁴

Section 203(a)(4) of the FPA requires the Commission to approve a disposition of jurisdictional facilities that is consistent with the public interest and “will not result in the cross-

³ Because the Proposed Transaction involves the acquisition of indirect, passive membership interests that do not confer rights to control Applicant, authorization under Section 203(a)(1) may not be required for the Proposed Transaction. *See FPA Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060 at P 54 (2007) (“Supplemental Policy Statement”). Under the Commission’s holding in *AES Creative Resources, L.P.*, 129 FERC ¶ 61,239 (2009) (“*AES Creative Resources*”), JPMCC will not be acquiring voting securities in Applicant and therefore will not be an affiliate of Applicant for purposes of Section 205 of the FPA. However, out of an abundance of caution and in the interest of obtaining prompt approval of the Proposed Transaction, Applicant nonetheless requests the Commission grant this petition without ruling on the jurisdictional question. *See, e.g., Southern Company, et al.*, 92 FERC ¶ 62,260 (2000); *National Elec. Associates Ltd. P’ship*, 80 FERC ¶ 62,116, n.2 (1997) (citing *Ocean State Power*, 47 FERC ¶ 61,321 (1989)) (Commission makes no jurisdictional determination but assumes jurisdiction in light of the need for expedited action.).

⁴ *Phelps Dodge Corp.*, 121 FERC ¶ 61,251 at P 15 (2007). JPMCC is a “holding company” within the meaning of Section 203(a)(2) of the FPA but holds only passive interests in exempt wholesale generators (“EWGs”), qualifying facilities (“QFs”), or foreign utility companies (“FUCOs”). Applicant has self-certified as an EWG and the WABSRB Project (defined below) is self-certified as a QF. Therefore, the Proposed Transaction qualifies for blanket authorization under Section 203(a)(2) of the FPA with respect to JPMCC. *See* 18 C.F.R. § 33.1(c)(8) (2015) (blanket authorization for a holding company that is a holding company solely by virtue of owning one or more EWGs, QFs, or FUCOs to acquire additional securities of EWGs, QFs, or FUCOs).

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subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company” The *Merger Policy Statement* states that in determining whether a transaction is consistent with the public interest, the Commission shall consider whether the transaction will have any adverse impact on (i) competition, (ii) rates, or (iii) regulation.⁵ Consistent with the Commission’s applicable policy statements,⁶ the requirements established in Energy Policy Act of 2005 and Order No. 669, *et seq.*, this Application, inclusive of its exhibits, shows that the Proposed Transaction will have no adverse effect on competition, rates, or regulation, and will not result in cross-subsidization. Indeed, as discussed below, the Application does not require a competitive impact screen analysis because no change of control over Applicant will occur as a result of the Proposed Transaction, as SPWSMM3, an affiliate of Applicant, will control Applicant and its jurisdictional facilities, and the output from Applicant’s solar-powered electric generation facility is fully committed on a long-term basis to a non-affiliated offtaker.

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

⁵ *Inquiry Concerning the Commission’s Merger Policy under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. and Regs. ¶ 31,044 (1996) (“Merger Policy Statement”); *see also Supplemental Policy Statement*, *supra* note 3.

⁶ *Merger Policy Statement*, *id.*; *Supplemental Policy Statement*, *supra* note 3.

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

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Additionally, Applicant requests that the Commission (1) grant a limited waiver of the Commission's filing requirements to the extent that such information is not necessary to ensure the Proposed Transaction meets the requirements of Section 203, (2) grant confidential treatment to the nonpublic version of the Application, (3) provide expedited review, and (4) approve this Application on or before August 22, 2016.

II. COMMUNICATIONS

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

Sean McBride
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III. REQUEST FOR EXPEDITED ACTION

Applicant respectfully requests expedited action on this Application so that the parties will have sufficient time following the Commission's order to complete any remaining steps needed to close the Proposed Transaction as soon as possible. As demonstrated below, expedited consideration of this Application is warranted under the Commission's regulations because the Proposed Transaction (1) does not involve a merger, (2) is consistent with Commission precedent, and (3) does not require an Appendix A analysis. For these reasons, Applicant respectfully submits that the Proposed Transaction wholly comports with the public interest and

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requests the Commission authorize the Proposed Transaction as soon as possible after the comment period expires, but in any event no later than August 22, 2016.

IV. REQUEST FOR CONFIDENTIAL TREATMENT

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

V. DESCRIPTION OF THE PARTIES TO THE PROPOSED TRANSACTION

A. Applicant

Applicant is a Delaware limited liability company with its principal place of business in Salt Lake City, Utah. Applicant owns a solar photovoltaic (“solar PV”) power project with a nameplate capacity rating of approximately 20 MWac located in the City of Lancaster, Los Angeles County, California (the “WABSRB Project”). The WABSRB Project is located within the California Independent System Operator Corp. (“CAISO” or “California ISO”) balancing authority area in the Southwest region. Applicant expects to begin generating test power from the WABSRB Project in October 2016 and achieve commercial operation in November 2016.

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Applicant is committed to sell the entire output from the WABSRB Project under a 25-year power purchase agreement with a non-affiliate, the City of Palo Alto. Applicant's sole business is ownership and operation of the WABSRB Project. Applicant has submitted an application to the Commission for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates⁸ and has filed notices with the Commission of Applicant's status as an EWG under the Public Utility Holding Company Act of 2005⁹ and the WABSRB Project's status as a qualifying small power production facility.¹⁰ Applicant will own no transmission facilities other than limited interconnection facilities needed to connect the WABSRB Project with the CAISO-controlled transmission system.

Applicant is currently a wholly-owned subsidiary of FTP Power LLC, a Delaware limited liability company ("FTP"). Prior to closing of the Proposed Transaction, Applicant will become a wholly-owned subsidiary of sPower FinCo 4 LLC, a Delaware limited liability company and affiliate of FTP ("FinCo 4"), through an internal corporate reorganization that qualifies for blanket authorization under Section 203(a)(1) of the FPA.¹¹ FinCo 4 is a wholly-owned subsidiary of sPower Solar Holdings 4, LLC, a Delaware limited liability company ("Holdings"). Holdings, in turn, is a wholly-owned subsidiary of Sustainable Power Group LLC, a Delaware limited liability company ("sPower"), which itself is a wholly-owned subsidiary of FTP.

⁸ Application for Order Accepting Market-Based Rate Tariff, Granting Waivers and Blanket Authority, Docket No. ER16-1973 (filed June 21, 2016).

⁹ Notice of Self-Certification of Exempt Wholesale Generator Status of Western Antelope Blue Sky Ranch B LLC, Docket No. EG16-118 (filed June 21, 2016).

¹⁰ Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility, Docket No. QF16-900.

¹¹ See 18 C.F.R. § 33.1(c)(6) (blanket authorization for internal corporate reorganizations that do not result in the reorganization of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and that do not present cross-subsidization issues).

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Therefore, Applicant is currently a direct wholly-owned subsidiary of FTP and, prior to the closing of the Proposed Transaction, will be a wholly-owned indirect subsidiary of FTP; and FTP, though its control over sPower, Holdings, and FinCo 4 has, and will have prior to the closing of the Proposed Transaction, the right to control Applicant and the WABSRB Project on a day-to-day basis. After the closing of the Proposed Transaction, FTP will continue to have control over Applicant due to its control over SPWSMM3, as described in Part V.B.1, below.

FTP's issued membership interests consist of Class A Units and Common Units. C2E, LLC, a Utah limited liability company ("C2E"), owns 28.4% of FTP's Class A Units and 0.8% of FTP's Common Units. C2E, in turn, is owned in equal parts by Creamer Group, LLC, a Utah limited liability company, Creamer Investments, Inc., a Nevada corporation, and two individual investors. Fir Tree Solar LLC, a Delaware limited liability company, owns 71.6% of FTP's Class A Units and 98.4% of FTP's Common Units. Martifer-Silverado Fund I, LLC, a Delaware limited liability company ("MS Fund"), owns 0.8% of FTP's Common Units. Silverado Power, LLC, a Delaware limited liability company, owns a 42% interest in MS Fund and Martifer Solar, Inc., a Delaware corporation, owns a 58% interest in MS Fund.

The Proposed Transaction includes multiple fundings over a period of time with respect to certain of Applicant's affiliates, each of which will require the Commission's approval under Section 203.¹² Each other affiliate will therefore request Commission approval for its separate funding. Accordingly, the scope of this application is limited to the impacts of the Proposed Transaction on Applicant.

¹² The Proposed Transaction involves multiple funding dates pursuant to which JPMCC will obtain indirect interests in a portfolio of solar PV facilities. This Application focuses solely on a single near-term funding in the Proposed Transaction.

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B. SPW3

SPW3 is a Delaware limited liability company with its principal place of business in Salt Lake City, Utah. SPW3's principal business is, through various subsidiaries including the Applicant, indirectly owning and operating solar PV energy generation facilities in the United States. At the time of closing of the Proposed Transaction, SPW3's issued membership interests will consist of Class A Units and Class B Units. SPWSMM3 will hold one hundred percent (100%) of SPW3's Class B Units and JPMCC will own one hundred percent (100%) of SPW3's non-controlling passive Class A Units. But for JPMCC's ownership of SPW3's Class A Units, the Proposed Transaction would qualify for blanket authorization under Section 203(a)(1) of the FPA.¹³ Thus, any interests owned or controlled by SPW3 or its affiliates in generation, transmission, or inputs to generation are not relevant to the Commission's review of the effect of the Proposed Transaction on competition in the relevant market. However, based upon JPMCC's ownership of SPW3's Class A Units, the Proposed Transaction would result in the acquisition by JPMCC of an indirect passive, non-managing interest in Applicant. For that reason, Applicant seeks Commission authorization for the Proposed Transaction.

1. SPWSMM3

SPWSMM3 is the Managing Member of SPW3 and, as such, SPWSMM3 will have the right to control SPW3 on a day-to-day basis following the closing of the Proposed Transaction. SPWSMM3 is a wholly-owned subsidiary of FinCo 4. As described in Part V.A., above, (a) FinCo 4 is a wholly owned subsidiary of Holdings, (b) Holdings is a wholly-owned

¹³ See 18 C.F.R. § 33.1(c)(6) (blanket authorization for internal corporate reorganizations that do not result in the reorganization of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and that do not present cross-subsidization issues).

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subsidiary of sPower, and (c) sPower is a wholly-owned subsidiary of FTP. FTP's ownership is also described in Part V.A., above. Upon closing of the Proposed Transaction, SPWSMM3, as Managing Member of SPW3, will have the right to control Applicant and the WABSRB Project on a day-to-day basis.

C. JPMCC

JPMCC, a Delaware corporation, is an indirect, wholly-owned subsidiary of JPMorgan Chase & Co. ("JPMorgan Chase"), an international financial services company. JPMorgan Chase, a publicly-traded Delaware corporation with its headquarters in New York, New York, is a financial holding company regulated by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956, as amended.

JPMCC and JPMorgan Chase are not primarily engaged in energy-related business activities and do not directly own or control any electric generating or transmission assets or generation output. None of JPMorgan Chase's affiliates own any electric transmission (other than limited interconnection facilities) or interstate natural gas pipeline facilities. Further, JPMorgan Chase does not control and is not affiliated with any entity that controls any essential inputs to generation in the relevant market, including any intrastate pipeline facilities.

Through direct or indirect subsidiaries, JPMorgan Chase has a number of energy affiliates that engage in wholesale sales of electricity in the United States and that own various interests in electric generating facilities. For example, J.P. Morgan Ventures Energy Corporation ("JPMVEC"), a non-banking affiliate of JPMCC and wholly-owned subsidiary of JPMorgan Chase, is currently authorized to sell capacity, energy, and ancillary services at market-based

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rates in all regions of the United States, except the Southwest Power Pool.¹⁴ Subsidiaries of JPMVEC are parties to one or more tolling agreements that convey to each entity, respectively, the exclusive right to the output of generation facilities in various markets. Accordingly, numerous direct and indirect subsidiaries of JPMVEC are authorized to sell capacity, energy, and ancillary services in various regions.

JPMCC holds direct or indirect, passive, non-controlling interests in various companies that own and operate wind- and solar-powered electric generation facilities in the CAISO balancing authority area, but these are not considered to be affiliates in accordance with *AES Creative Resources*.¹⁵ Neither JPMCC nor any subsidiary or affiliate or upstream owner of JPMCC directly or indirectly owns or controls (1) any operational electric generation in the CAISO balancing authority area, (2) any electric transmission or distribution facilities in the CAISO balancing authority area, (3) any intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development; physical coal

¹⁴ JPMVEC obtained market-based rate authority on September 20, 2005 in Docket No. ER05-1232-000. The Commission accepted a Notice of Succession on December 29, 2008, pursuant to which JPMVEC succeeded to Bear Energy LP's market-based rate tariff and issued a revised rate schedule. On November 17, 2010, the Commission accepted JPMVEC's baseline e-tariff filing, filed to comply with Order No. 714. JPMVEC is currently a Category 2 Seller as defined in 18 C.F.R. 35.36(a). On March 17, 2016, JPMVEC and certain of its affiliates, BE CA LLC ("BE CA") and Utility Contract Funding, L.L.C. ("UCF"), submitted revisions to their FERC market-based rate schedules to reflect changes in their seller category status. JPMVEC and UCF are now Category 1 Sellers in all regions except the Northeast. BE CA is now a Category 1 Seller in the Southwest region.

¹⁵ For example, JPMCC owns indirect passive equity interests in certain of Applicant's affiliates located within the CAISO balancing authority area: Western Antelope Blue Sky Ranch A LLC, Victor Mesa Linda B2 LLC, Victor Mesa Linda C2 LLC, Victor Mesa Linda D2 LLC, Victor Mesa Linda E2 LLC, Lancaster Little Rock C LLC, Victor Dry Farm Ranch A, LLC, Victor Dry Farm Ranch B, LLC, SEPV Palmdale East LLC, Sierra Solar Greenworks LLC, 67RK 8me LLC, 65HK 8me LLC, 87RL 8me LLC, Central Antelope Dry Ranch C LLC, and Summer Solar LLC. In all such cases, JPMCC's passive interests are substantially similar to the interests held by the passive tax equity investors in *AES Creative Resources*, and therefore do not create an affiliation between JPMCC and the subject public utilities.

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supply sources and ownership of or control over who may access transportation of coal supplies in the CAISO balancing authority area, or (4) any franchised public utility in the United States. Because in the relevant market JPMCC owns only such passive, non-managing membership interests in electric generation and limited and discrete transmission assets associated with the energy projects in which JPMCC owns such passive, non-managing membership interests, Applicant requests a waiver from including a list of JPMCC's energy subsidiaries and affiliates in Exhibit B.¹⁶

Subsidiaries of JPMorgan Chase also may manage mutual funds, other collective investment vehicles, separate accounts, or any combination thereof as a fiduciary on behalf of persons who hold interests in such funds, investment vehicles, or separate accounts; and such funds, investment vehicles, and separate accounts may buy and sell securities of public utilities and other companies engaged in energy-related activities without exercising control over such public utilities or other companies.

VI. SUMMARY OF THE PROPOSED TRANSACTION

Pursuant to the Proposed Transaction, SPW3 will acquire one hundred percent (100%) of Applicant's interests from FinCo 4. As a result of the Proposed Transaction,

¹⁶ In some cases, JPMCC affiliates with market-based rate authority have filed with the Commission information demonstrating that these companies are not considered to be affiliates in accordance with *AES Creative Resources*, and as long as the relevant facts presented in such demonstrations remain accurate, JPMCC does not treat such companies as being affiliates for purposes of the Commission's market power analyses under sections 203 and 205 of the FPA. However, in certain other cases, even if JPMCC's interests in companies with electric generation facilities are passive, non-controlling interests, affiliates of JPMCC that have market-based rates on file with the Commission have not made a filing demonstrating that the companies are not affiliates under *AES Creative Resources*. In these latter cases, out of an abundance of caution, JPMCC treats such companies in which it has made investments as affiliates for purposes of the Commission's market power analyses. None of these entities are within the CAISO BAA, however, thus they are not further discussed in this filing.

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SPWSMM3 and JPMCC will each acquire indirect interests in Applicant. Subject to the provisions of the Limited Liability Company Agreement of SPW Solar Holdings 3, LLC, (1) SPWSMM3, as Managing Member and owner of one hundred percent (100%) of the Class B Units in SPW3, will have the right to control Applicant and the WABSRB Project on a day-to-day basis and (2) JPMCC, as owner of one hundred percent (100%) of the Class A Units in SPW3, will have only limited rights with respect to the actions of SPW3 (and through SPW3, Applicant), such as consent rights necessary for JPMCC to protect its economic investment in SPW3. JPMCC will not, by virtue of the Proposed Transaction or its ownership of SPW3's Class A Units, have the ability to manage Applicant or the WABSRB Project. Accordingly, JPMCC will have only non-controlling, passive equity interests in SPW3, and through SPW3, Applicant. In summary, upon the closing of the Proposed Transaction, one hundred percent (100%) of Applicant's interests will be held by SPW3. SPW3's membership interests, in turn, are divided into two classes — Class A Units and Class B Units. SPWSMM3 owns one hundred percent (100%) of SPW3's controlling Class B Units and JPMCC owns one hundred percent (100%) of SPW3's non-controlling, passive Class A Units.

The Proposed Transaction will be implemented pursuant to, and subject to certain conditions precedent in, the (1) Master Membership Interest Purchase Agreement and (2) Limited Liability Company Agreement of SPW Solar Holdings 3, LLC, attached hereto as confidential Exhibit I.

Following closing of the Proposed Transaction: (1) Applicant will continue to have operational control and full ownership of its jurisdictional assets; (2) Applicant will be a wholly-owned subsidiary of SPW3; (3) JPMCC will continue to own one hundred percent (100%) of the

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Class A Units in SPW3; (4) SPWSMM3 will continue to hold one hundred percent (100%) of the Class B Units in SPW3; and (5) FTP, through its indirect ownership of SPWSMM3, will have the right to control Applicant and the WABSRB Project on a day-to-day basis.

VII. DESCRIPTION OF THE FACILITIES

As described above, the WABSRB Project is a solar PV power project with a nameplate capacity rating of approximately 20 MWac located in the City of Lancaster, Los Angeles County, California. The WABSRB Project is located within the California ISO balancing authority area in the Southwest region. Applicant expects to begin generating test energy from the WABSRB Project in October 2016 and achieve commercial operation in November 2016. Applicant is committed to sell the entire output from the WABSRB Project under a 25-year power purchase agreement with a non-affiliate, the City of Palo Alto. Applicant's sole business is ownership and operation of the WABSRB Project. Applicant has submitted an application to the Commission for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates,¹⁷ and has filed notices with the Commission of Applicant's status as an EWG under the Public Utility Holding Company Act of 2005,¹⁸ and the WABSRB Project's status as a qualifying small power production facility.¹⁹ Applicant will own no transmission facilities other than limited interconnection facilities needed to connect the WABSRB Project with the CAISO-controlled transmission system.

¹⁷ Application for Order Accepting Market-Based Rate Tariff, Granting Waivers and Blanket Authority, Docket No. ER16-1973 (filed June 21, 2016).

¹⁸ Notice of Self-Certification of Exempt Wholesale Generator Status of Western Antelope Blue Sky Ranch B LLC, Docket No. EG16-118 (filed June 21, 2016).

¹⁹ Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility, Docket No. QF16-900.

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Closing under the Proposed Transaction is planned to coincide with the WABSRB Project's mechanical completion date. The facilities subject to the Commission's jurisdiction under the FPA involved in the Proposed Transaction include Applicant's market-based rate tariff and rate schedules, the limited interconnection facilities associated with the WABSRB Project, the power purchase agreement under which Applicant sells electric power, and other books and records associated with the wholesale sale of electric energy by the Applicant.

VIII. THE TRANSFER IS CONSISTENT WITH THE PUBLIC INTEREST

FPA Section 203(a)(1)(A) requires the Commission's approval before a public utility's indirect disposition of its jurisdictional facilities.²⁰ Therefore, Applicant seeks the Commission's prior approval for the Proposed Transaction under Section 203(a)(1)(A) of the FPA.

FPA Section 203(a)(4) instructs the Commission to approve jurisdictional transactions that are "consistent with the public interest," the analysis for which is set forth in the Commission's applicable Orders and Policy Statements.²¹ The *Merger Policy Statement* provides that in determining whether a proposed change in upstream ownership of jurisdictional facilities is consistent with the public interest,²² the Commission shall consider whether the transaction will have any adverse effects on (1) competition, (2) rates, or (3) regulation.²³ Consistent with the Commission's applicable Policy Statements,²⁴ the requirements established

²⁰ *Phelps Dodge Corp.*, *supra* note 4.

²¹ Order No. 669, *et seq.*, *supra* note 2; Order No. 642, *supra* note 7; *Merger Policy Statement*, *supra* note 5; *Supplemental Policy Statement*, *supra* note 3.

²² *Merger Policy Statement*, *supra* note 5; Order No. 592-A, 79 FERC ¶ 61,321 (1997).

²³ Order No. 642, *et seq.*, *supra* note 7.

²⁴ *Merger Policy Statement*, *supra* note 5; *Supplemental Policy Statement*, *supra* note 3.

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in the Energy Policy Act of 2005 and Order No. 669, *et seq.*,²⁵ this Application, inclusive of its exhibits, shows that the indirect transfer of Applicant's jurisdictional facilities will have no adverse effects on competition, rates, or regulation, and will not result in cross-subsidization. This Application includes all information and exhibits required by Part 33 of the Commission's regulations, Order No. 642,²⁶ and Order No. 669, except to the extent that Applicant has requested waiver of, or is afforded safe harbor from, those requirements.

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

A. The Proposed Transaction Will Not Adversely Affect Competition

In analyzing a transaction's effects on competition, the Commission generally focuses on whether the transaction will result in higher prices or reduced output in electricity markets, which may occur if the merged entity is able to exercise market power, either alone or in coordination with other firms.²⁷ The Commission uses competitive analysis screens that help to identify proposed transactions that are unlikely to present such competitive concerns.²⁸

The Proposed Transaction will not result in higher prices or reduced output in electricity markets, and the filing of competitive analysis screens is unnecessary to reach that conclusion. The Proposed Transaction does not raise any horizontal market power concerns. As described above, the full output of the WABSRB Project is committed to a non-affiliated purchaser (the City of Palo Alto) under a long-term power purchase agreement, and the Proposed Transaction

²⁵ See Order No. 669, *et seq.*, *supra* note 2.

²⁶ Order No. 642, *et seq.*, *supra* note 7.

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

²⁸ Order No. 642, *supra* note 7 at 31,879 & 31,903.

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will have no effect on this arrangement. Applicant and its affiliates own zero (0) MW of uncommitted capacity in the CAISO market or in first-tier markets. Accordingly, the Proposed Transaction raises no horizontal market power concerns.

JPMCC's ownership of the Class A Units in SPW3 will not result in a change in the market share of JPMCC or Applicant because JPMCC will not gain control over Applicant or the WABSRB Project as a result of the Proposed Transaction. JPMCC's interests in SPW3 give it only those limited rights that are necessary to protect its investments. JPMCC will not have voting control over Applicant's wholesale power sales or day-to-day operation of power generation or transmission facilities.

Additionally, the Proposed Transaction does not raise any vertical market power concerns. Both the ability and the incentive to exercise vertical market power are necessary for a transaction to harm competition.²⁹ At closing under the Proposed Transaction, Applicant will own no transmission facilities in any market other than those limited interconnection facilities necessary for connecting the WABSRB Project with the transmission system, nor will Applicant own or control other inputs to power production. Furthermore, (1) as a result of the Proposed Transaction, Applicant will not become affiliated with any entity or person that owns, controls, or operates transmission facilities or other inputs to power production in the same market as the WABSRB Project and (2) neither Applicant nor JPMCC, or their affiliates, owns or controls sites for the development of new generation capacity in the United States that would prevent third parties from entering the relevant market and, therefore ownership or control of any such sites

²⁹ *Energy E. Corp.*, 121 FERC ¶ 61,236 at P 24 (2007).

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does not raise vertical market power concerns.³⁰ The Proposed Transaction therefore does not raise vertical market power issues.

Applicant respectfully requests waiver of the requirement to submit horizontal and vertical competitive analyses, given the representations above. Because the Proposed Transaction raises no horizontal or vertical market power concerns, the Proposed Transaction will not adversely affect competition.³¹

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

The Proposed Transaction will not subject wholesale customers to increased rates. In determining whether a proposed transaction may adversely affect rates, the Commission's primary concern is to protect wholesale ratepayers and transmission customers from rate increases resulting from the transaction. Various mechanisms are acceptable for protecting ratepayers, including the existence of market-based rates authorized by the Commission.³²

Here, all sales from the WABSRB Project will be made at market-based rates, and the Proposed

³⁰ Applicant's affiliates are irrelevant for purposes of the Proposed Transaction. As of the date of this Application, Applicant's affiliates control various electricity generation development assets (consisting of site control and interconnection queue positions) for future electric generating capacity spread throughout the United States, as follows: (1) 620 MW interconnecting with CAISO at ten discrete sites, (2) 20 MW in South Carolina, interconnecting to Duke Energy at a single site, (3) 45 MW in Arizona interconnecting to Salt River Project at a single site, (4) 40 MW on Long Island, New York, interconnecting with PSE&G at three discrete sites, (5) 560 MW in Utah at two sites, (6) 47.7 MW located North Carolina, interconnecting with Duke Energy Progress and Duke Energy Carolinas, (7) 80 MW in Wyoming at a single site, and (8) 5.48 MW located in Massachusetts. None of these sites is unique and prevents any third party from entering the relevant market.

³¹ See, e.g., *Noble Clinton Windpark I, LLC*, 121 FERC ¶ 62,164 (2007) (finding that the transfer of a 100.5 MW wind-powered generating facility, the output of which was to be sold under power purchase contracts or into NYISO markets, did not adversely affect competition because the transfer involved a *de minimis* share of generation in the relevant market, raising no horizontal market concerns, and because none of the applicants owned transmission facilities or other inputs to power generation, raising no vertical market concerns).

³² See, e.g., *Duquesne Light Holdings*, 117 FERC ¶ 61,326 at P 25 (2006).

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Transaction will not alter the terms of Applicant’s long-term power purchase agreement with the City of Palo Alto. Accordingly, the Proposed Transaction will have no effect on rates.

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

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

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

The Proposed Transaction does not pose a risk of cross-subsidization and does not pledge or otherwise encumber utility assets. Section 203(a)(4) of the FPA requires the Commission to determine whether a jurisdictional transaction will “result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company,” and, if so, whether the cross-subsidy, pledge, or encumbrance will be consistent with the public interest.³³ The Commission’s principal concern with cross-subsidization is the potential impact of a transaction on rates.³⁴ The Commission has stated that its goal is to “ensure

³³ Order No. 669, *supra* note 2 at P 146.

³⁴ *Id.* at PP 166, 167.

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that public utilities with captive customers do not cross-subsidize ‘non-regulated’ associate companies, *i.e.*, companies that are not subject to traditional cost-based regulation.”³⁵

The Commission has created “safe harbors” for transactions that are unlikely to raise cross-subsidization concerns, *e.g.*, a transaction that is a bona fide, arm’s-length, bargained-for exchange,³⁶ and encompass those transactions in which a franchised utility with captive customers is not involved,³⁷ transactions subject to review by a state commission, and transactions involving non-affiliates.³⁸

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

In summary, because the Proposed Transaction satisfies the requirements of Section 203 and the Commission’s regulations, the Commission should find that the Proposed Transaction is

³⁵ *Id.* at PP 91, 166.

³⁶ *Id.* at P 15.

³⁷ “Captive customers” are defined, for purposes of FPA section 203, as “any wholesale or retail electric energy customers served under cost-based regulation.” 18 C.F.R. § 33.1(b)(5).

³⁸ Cross-subsidization is less likely when a transaction is between nonaffiliated entities because the risk of improperly benefiting an associate company generally is not present.

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consistent with the public interest and approve the Application as soon as possible, without modification or condition and without holding a trial-type adjudicatory hearing.

IX. OTHER REQUIREMENTS

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

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

Western Antelope Blue Sky Ranch B LLC
2180 South 1300 East, Suite 600
Salt Lake City, UT 84106
Telephone: (801) 679-3500
Fax: (801) 679-3501
Email: smcbride@spower.com

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

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

C. Description of the Applicant Including:

1. Business Activities

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

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2. Energy Subsidiaries and Energy Affiliates and Their Business Activities

Applicant has no energy subsidiaries, and the subject funding in the Proposed Transaction has no impact on Applicant's energy affiliates. Applicant therefore respectfully requests a waiver of Section 33.2(c)(2) of the Commission's regulations³⁹ to the extent it would require the submission of additional information in Exhibit B. Furthermore, because JPMCC does not hold non-passive interests in energy subsidiaries or affiliates in the relevant market, Applicant respectfully requests a waiver from the requirement to list JPMCC's energy subsidiaries and energy affiliates in Exhibit B.

3. Organizational Charts

See Exhibit C to this Application. Applicant respectfully requests a partial waiver of Section 33.2(c)(3) of the Commission's regulations⁴⁰ to the extent necessary to permit them to include only those parent companies, energy subsidiaries, and energy affiliates that are relevant to the Proposed Transaction.

4. Business Agreements

There are no strategic alliances, joint ventures, tolling arrangements, or other proposed business arrangements to which Applicant is a party that will be affected by the Proposed Transaction. Applicant, therefore, requests a waiver of the requirement of Section 33.2(c)(4) of the Commission's regulations⁴¹ to file Exhibit D.

³⁹ 18 C.F.R. § 33.2(c)(2).

⁴⁰ 18 C.F.R. § 33.2(c)(3).

⁴¹ 18 C.F.R. § 33.2(c)(4).

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5. Common Officers or Directors

Applicant does not anticipate that there will be common officers or directors among the parties to the Proposed Transaction. Therefore, Applicant requests a waiver of the requirement of Section 33.2(c)(5) of the Commission's regulations⁴² to the extent it would require the submission of additional information in Exhibit E.

6. Description of Customers

Applicant respectfully requests a waiver of the requirement of Section 33.2(c)(6) of the Commission's regulations⁴³ to submit Exhibit F. As discussed above, the Proposed Transaction does not have any detrimental impact on competition, rates, or regulation and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

D. Description of Jurisdictional Facilities

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

E. Narrative Description of the Proposed Transaction

A description of the Proposed Transaction has been provided above in Part VI. Applicant requests a waiver of Section 33.2(e)(2) of the Commission's regulations⁴⁴ to the extent it would require submission of additional information in Exhibit H.

⁴² 18 C.F.R. § 33.2(c)(5).

⁴³ 18 C.F.R. § 33.2(c)(6).

⁴⁴ 18 C.F.R. § 33.2(e)(2).

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F. Contracts Related to the Proposed Transaction

The Transaction Documents are attached hereto as Exhibit I. Applicant submits that Exhibit I contains commercially sensitive information, the release of which would cause competitive harm. Further, the release of such information would cause an impediment in future negotiations of similar transactions, not just for Applicant, but for other parties that might engage in similar transactions. As such, pursuant to 18 C.F.R. § 388.112, *Applicant requests that the documents contained in Exhibit I be accorded confidential treatment.* As required by 18 C.F.R. § 388.112(b)(2)(i), Applicant has included a proposed protective order, based on the Commission's Form Protective Order, as Attachment 2.

G. Consistency of the Proposed Transaction with the Public Interest

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

H. Maps

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

I. Regulatory Orders

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

J. Cross-Subsidization

Applicant provides the required verification in Exhibit M.

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X. PROPOSED ACCOUNTING ENTRIES

This Application does not include accounting entries showing the effect of the Proposed Transaction on account balances pursuant to Section 33.5 of the Commission's regulations because Applicant is not required to maintain its books and records in accordance with the Commission's Uniform System of Accounts.⁴⁵

XI. LIST OF ATTACHMENTS

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

A. Verifications

An authorized representative of Applicant has provided a verification as required by 18 C.F.R. § 33.7, attached as Attachment 1.

B. Protective Order

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

XII. CONCLUSION

As described in this Application, Applicant respectfully requests that the Commission (1) authorize the Proposed Transaction pursuant to Section 203 of the FPA, (2) grant a limited waiver of the Commission's filing requirements to the extent that such information is not necessary to ensure the Proposed Transaction meets the requirements of Section 203, (3) grant confidential treatment of Exhibit I and certain information otherwise identified as confidential,

⁴⁵ The Commission has granted similar waivers in the past. *See, e.g., North Western Corp.*, 117 FERC 61,100 at P 66 (2006); *Gen. Elec. Capital Corp.*, 115 FERC ¶ 62,024 (2006); *Exelon New England Holdings, LLC*, 107 FERC ¶ 61,148 (2004).

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and (4) expeditiously review this Application and grant its approval thereof not later than August 22, 2016.

DATED: July 6, 2016.

Respectfully submitted,

/s/ Jason Johns _____

Jason Johns
Jennifer L. Mersing
Stoel Rives LLP
*Counsel for Western Antelope Blue Sky Ranch B
LLC*

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EXHIBITS TO THE APPLICATION

EXHIBITS C, I, and M

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

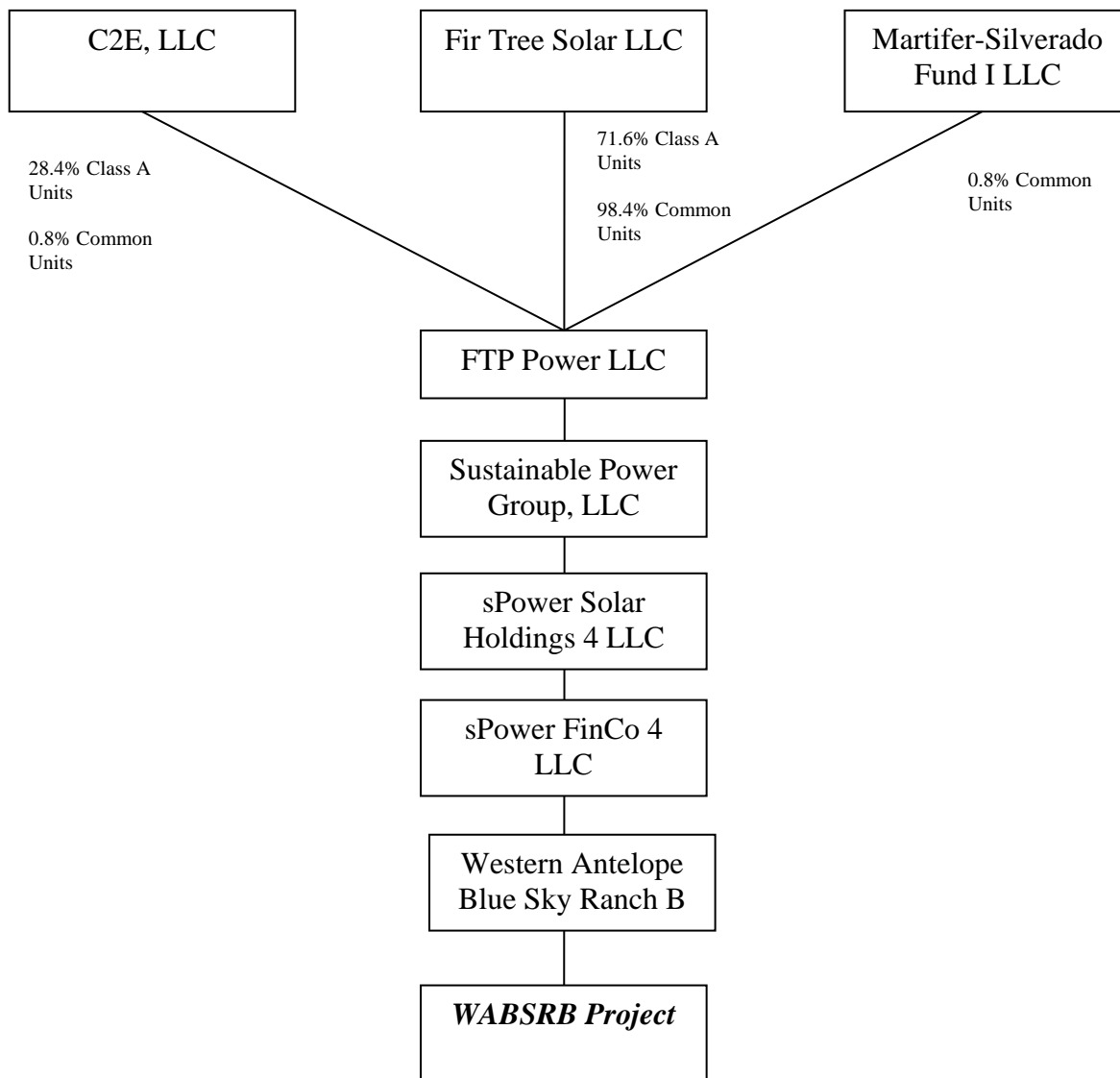
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EXHIBIT C

Organizational Charts

**WESTERN ANTELOPE BLUE SKY RANCH B LLC
ORGANIZATION CHART BEFORE PROPOSED TRANSACTION**

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



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Organizational Charts

WESTERN ANTELOPE BLUE SKY RANCH B LLC
ORGANIZATION CHART AFTER PROPOSED TRANSACTION

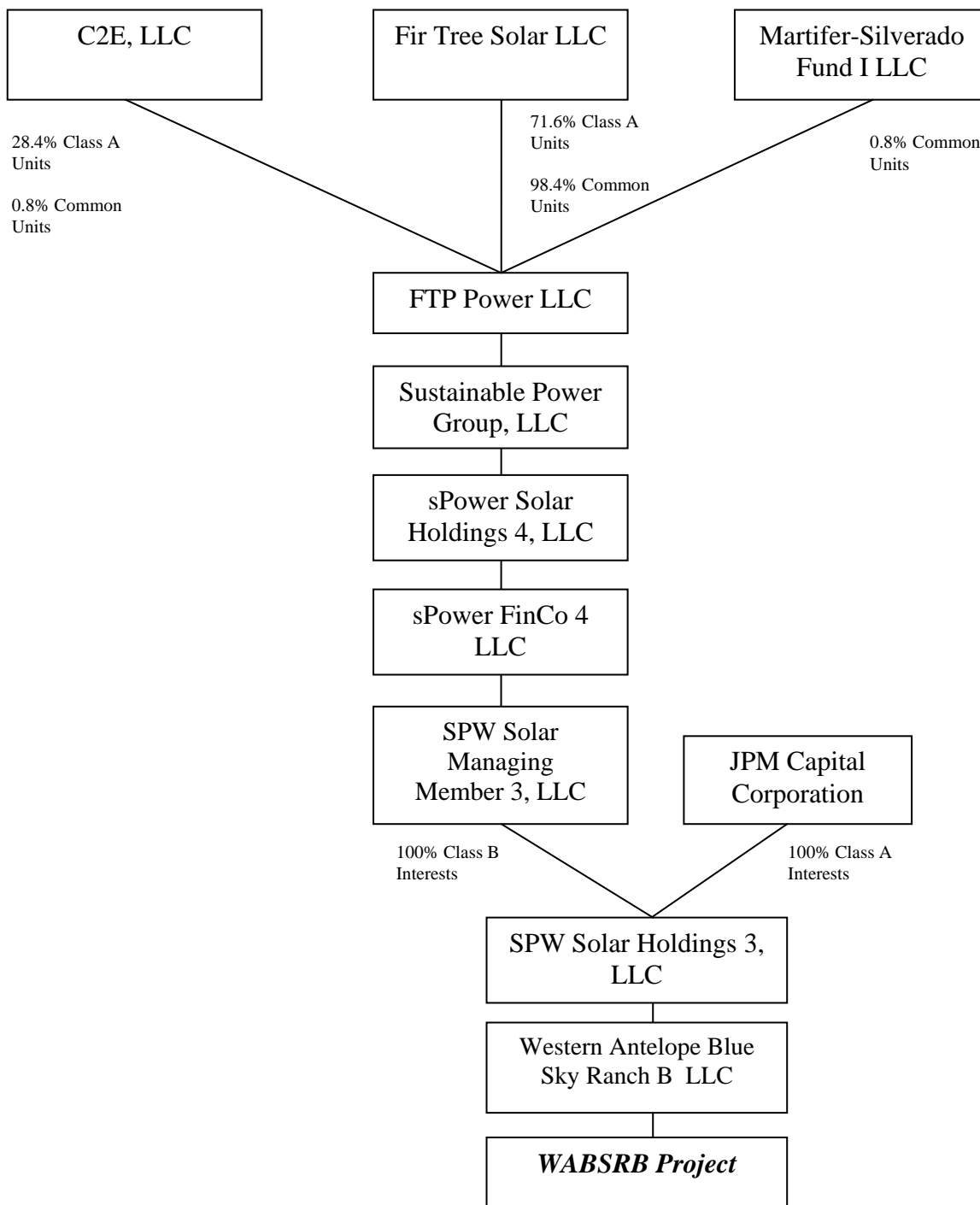


Exhibit C-2

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EXHIBIT I

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

CONFIDENTIAL EXHIBIT

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

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EXHIBIT M

Explanation Regarding Cross-Subsidization

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

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

(i) Disclosure of existing pledges or encumbrances

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

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

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

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

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(B) Any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company

The Proposed Transaction does not result in any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company.

(C) Any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company

The Proposed Transaction does not result in any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company.

(D) Any new affiliate contract between a nonutility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than nonpower goods and services agreements subject to review under sections 205 and 206 of the Federal Power Act.

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

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

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ATTACHMENT 1

Verification

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

Western Antelope Blue Sky Ranch B LLC)

) Docket No. EC16-___-000

))
**VERIFICATION
(18 C.F.R. § 33.7)**

I, Ryan Creamer , of FTP Power LLC, have read the foregoing Application and have authority with respect thereto. I have knowledge of the matters regarding Western Antelope Blue Sky Ranch B LLC and its affiliates (including SPW Solar Holdings 3, LLC and SPW Solar Managing Member 3, LLC) set forth in the foregoing Application. The statements in said Application regarding Western Antelope Blue Sky Ranch B LLC and its affiliates are true and correct to the best of my knowledge, information, and belief.

By: _____


SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of
 Utah this 6th day of July , 2016.



Notary Public:

_____ 
My Commission Expires: August 24, 2017

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ATTACHMENT 2

Protective Order

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

Western Antelope Blue Sky Ranch B LLC)

Docket No. EC16-___-000

PROTECTIVE ORDER

(Issued)

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

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

3. Definitions – For purposes of this Order:

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

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

(2) The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b)(1). Notes of Protected Materials are

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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

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

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

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

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

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3 (d) above, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraphs 3(d) above with respect to those materials. If

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no agreement is reached, the Participant shall submit the disputed designation to the Presiding Judge for resolution.

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

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

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

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

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12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked “PROTECTED MATERIALS” and shall be filed under seal and served under seal upon the Presiding Judge and all Reviewing Representatives who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked “Contains Critical Energy Infrastructure Information – Do Not Release.” For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list and the Presiding Judge. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

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

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

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

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

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

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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

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

Western Antelope Blue Sky Ranch B LLC)

Docket No. EC16-____-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: _____

Title: _____

Representing: _____

Date: _____

By: _____

Title: _____

Representing: _____

Date: _____

Document Content(s)

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